

REPUBLIC OF SOUTH AFRICA

DRAFT

**GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM
FINANCING) AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill
and prior notice of its introduction published in Government Gazette...)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

BILL

To amend—

- the Nonprofit Organisations Act, 1997, so as to provide for the appeal in respect to administrative sanction; to extend the functions of the Directorate to include monitoring and enforcement of nonprofit organisations; to provide for the director to impose administrative sanctions; to provide for maximum penalties for offences;
- the Financial Intelligence Centre Act, 2001, so as to amend and insert certain definitions; to expand the sharing of information by the Centre; to provide for the Centre to conduct lifestyle audits; to expand the general powers of the Centre to include the requesting of information from a public entity, municipality and municipal entity; to extend the period for which records must be kept; to require the Director to give notice pursuant to an order in terms of section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; to expand the circumstances under which a person or entity referred to in section 26A may be permitted provision of financial services to include providing for extraordinary expenses; to provide for the accrual of interest or other earnings due on accounts holding property affected by a prohibition under section 26B that arose before the date on which the person or entity was identified by the Security Council of the United Nations; to expand the type of information accountable institutions, reporting institution and persons subject to reporting obligations are required to advise the Centre of; to require the person authorised by the Minister to receive a report relating to the conveyance of cash to or from the Republic to send a copy of the report to the Centre within a prescribed period; to provide for magistrate or judge of an area of jurisdiction within which the accountable institution conducts business to hear applications by the Centre in respect of monitoring orders; to expand the circumstance under which the protection of persons making reports apply; to require accountable institutions to take into account the risk of new delivery mechanisms and the use of new or developing technologies which may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities; to expand the sections of the Act that the protection of personal information apply with regard to the Protection of Personal Information Act, 2013; to provide for consequential amendments to the relevant offences and failure to comply sections;
- the Companies Act, 2008, so as to empower the Commission to deregister a company that fails to submit a securities register within a certain period; to

empower the Commission to impose administrative penalties; to empower the Companies Tribunal to review a decision of the Commission to impose an administrative penalty;

- the Financial Sector Regulation Act, 2017, so as to provide for the circumstances under which new services are expanded to include arrangements that are similar in nature or have similar outcomes as financial products and services; to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation; to empower financial sector regulators to obtain information from significant owners or beneficial owners; to empower financial sector regulators to institute an investigation under certain circumstances; to exclude transactions concluded under a ‘master agreement’ as defined in the Insolvency Act, 1936, from the application of a certain section, and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 5 of Act 71 of 1997, as amended by section 10 of Act 22 of 2022

1. Section 5 of the Nonprofit Organisation Act, 1997, is hereby amended—
 - (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) liaising with other organs of state and interested parties; **[and]**”;
 - (b) by the substitution for the full stop after paragraph (d) of subsection (1) of the expression
“; and”; and
 - (c) by the addition after paragraph (d) in subsection (1) of the following paragraph:

“(e) monitor and enforce compliance with this Act by nonprofit organisations to whom this Act apply.”.

Amendment of section 14 of Act 71 of 1997

2. The following section is hereby substituted for section 14 of the Nonprofit Organisations Act, 1997:

“Appeals against refusal to register and administrative sanction

14. (1) Within one month after receipt of a notice of a decision of the director—

- (a) not to register a nonprofit organisation[,] or

(b) to impose an administrative sanction contemplated in section 20,

the organisation may appeal against the decision by submitting to the Directorate for consideration by an Arbitration Tribunal—

[(a)](i) in respect of subsection (1)(a), the application to register as contemplated in section 13;

[(b)](ii) the notice sent to the applicant by the director in terms of section 13(3) or section 20(1), as may be applicable;

[(c)](iii) details of the organisation's response to the director's notice; and

[(d)](iv) the director's notice and reasons for the decision which is the subject of the appeal.

(2) Within three months after receipt of the relevant items, the Arbitration Tribunal must consider the appeal in the prescribed manner, including providing the appellant and the Directorate with the opportunity to make oral representations, and send a written notice of its decision to the appellant and to the director, stating the reasons for the decision.

(3) If the Arbitration Tribunal upholds an appeal contemplated in subsection(1)(a), the director must register the organisation by entering its name in the register.

(4) The Arbitration Tribunal may—

(a) confirm, modify or set aside the administrative sanction contemplated in subsection (1)(b); or

(b) refer the matter back for reconsideration by the director in accordance with the directions of the Arbitration Tribunal.

(5) A decision by the Arbitration Tribunal in terms of this section is binding, subject to any right of review by, or appeal to, a court.

(6) The Arbitration Tribunal may, on good cause shown, grant condonation to an appellant who has failed to lodge an appeal timeously as provided for in subsection (1).

(7) An application for condonation in terms of subsection (6) may be made on affidavit or in written submissions.

(8) If opposed by an interested party, the grounds of opposition must be stated.

(9) Depending on the nature of the application, the application, opposed or unopposed, may be decided on the papers or during the hearing by the Arbitration Tribunal.

Amendment of section 20 of Act 71 of 1997

3. Section 20 of the Nonprofit Organisation Act, 1997, is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “Noncompliance with constitution and obligations by [registered] nonprofit organisation”;** and
- (b) by the substitution of subsection (1) of the following subsection:
- “(1) The director **[must]**—
- (a) must send a compliance notice in the prescribed form to a **[registered]** nonprofit organisation if the organisation has not complied with—
- (i) a material provision of its constitution;
- (ii) a condition or term of any benefit or allowance conferred on it in terms of section 11; or
- (iii) its obligations in terms of sections 12, 17, 18 and 19 and any other provision of this Act; and
- (b) may—
- (i) refer the nonprofit organisation to the South African Police Service for criminal investigation if satisfied that any noncompliance may constitute an offence~~[.]~~; or
- (ii) impose an administrative sanction on any nonprofit organisation as contemplated in section 29(4) when satisfied on available facts and information.

Amendment of section 30 of Act 71 of 1997

4. The following section is hereby substituted for section 30 of the Nonprofit Organisations Act, 1997:

“Penalties

30. A person convicted of an offence in terms of this Act is liable to a fine not exceeding R1 million or to imprisonment not exceeding five years or to both a fine and imprisonment.”.

Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008, section 53 of Act 11 of 2013, section 1 of Act 1 of 2017 and section 18 of Act 22 of 2022

5. Section 1 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in subsection (1) in the definition of “authorised officer” for paragraph (i) of the following paragraph:
 - “(i) an investigative division in a national department authorised by the head of that national department to act under this Act; **[or]**”;
 - (b) by the addition in subsection (1) in the definition of “authorised officer” of the following paragraphs:
 - “(k) the Public Procurement Office authorised by the Head of the Public Procurement Office to act under this Act; or
 - “(l) the Border Management Authority authorised by the Commissioner for the Border Management Authority to act under this Act;”
 - (c) by the insertion in subsection (1) after the definition of “beneficial owner” of the following definition:

“**Border Management Authority**’ means the Border Management Authority established by section 4 of the Border Management Authority Act, 2020 (Act No. 2 of 2020);”
 - (d) by the insertion in subsection (1) after the definition of “legal person” of the following definition:

“**lifestyle audit**’ means an audit to determine if a person’s living standards are consistent with the income from legitimate sources that can be attributed to that person;”;
 - (e) by the insertion in subsection (1) after the definition of “money laundering” of the following definition:

“**municipality**’ has the meaning as defined in section 1 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and includes a

municipal entity referred to section 1 of the Local Government: Municipal Systems Act, 2002 (Act No. 32 of 2000);”; and

- (f) by the insertion in subsection (1) after the definition of “property” of the following definitions:

“‘public entity’ means a public entity listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

“‘Public Procurement Office’ means the Public Procurement Office established by section 4 of the Public Procurement Act, 2024 (Act No. 28 of 2024), and having the function in terms of section 54 of that Act to investigate any alleged non-compliance with that Act;”.

Amendment of section 3 of Act 38 of 2001, as substituted by section 27 of Act 33 of 2004, section 3 of Act 11 of 2008, section 2 of Act 1 of 2017 and by section 19 of Act 22 of 2022

6. Section 3 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The other objectives of the Centre are to facilitate the administration and enforcement of the laws of the Republic by—

(a) **[to make]**making information it collects and produces available to—

- (i) an investigating authority;
- (ii) the National Prosecuting Authority;
- (iii) an intelligence service;
- (iv) the South African Revenue Service;
- (v) the Independent Police Investigative Directorate;
- (iv) the Intelligence Division of the National Defence Force;
- (vii) a Special Investigating Unit;
- (viii) the office of the Public Protector;
- (ix) an investigative division a national department;
- (x) a supervisory body; **[or]**
- (xi) the investigative division of the Auditor-General[.];
- (xii) the Border Management Authority; or
- (xiii) the Public Procurement Office;

[to facilitate the administration and enforcement of the laws of the Republic;]

- (aA) **[to administer]**administering measures requiring persons to freeze property and transactions pursuant to financial sanctions that may arise from resolutions adopted by the Security Council of the United Nations contemplated in section 26A;
- [(aaA)](aB)[to produce]**producing forensic evidence, based on the application of specialised scientific methods and techniques, pertaining to the flow of financial transactions and the links between persons, and between persons and property, based on the flow of financial transactions;
- (aC) conducting lifestyle audits;
- (b) **[to exchange]**exchanging information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities;
- (c) **[to supervise]**supervising and **[enforce]**enforcing compliance with this Act or any directive made in terms of this Act and to facilitate effective supervision and enforcement by supervisory bodies.”.

Amendment of section 4 of Act 38 of 2001, as amended by section 4 of Act 11 of 2008, section 3 of Act 1 of 2017 and section 20 of Act 22 of 2022

7. Section 4 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for subparagraph (x) of paragraph (b) of the following subparagraph:
 - “(x) a supervisory body; **[or]**”;
 - (b) by the addition in paragraph (b) of the following subparagraphs:
 - “(xii) the Public Procurement Office; or
 - (xiii) the Border Management Authority;” and
 - (c) by the insertion after paragraph (b) of the following paragraph:
 - “(bA) where appropriate, conduct lifestyle audits—
 - (i) in the course of the performance of its functions contemplated in paragraphs (a), (aA) and (b); or
 - (ii) without limiting the generality of subparagraph (i) and in addition thereto, of persons referred to in Schedule 3A or any other category of persons prescribed by the Minister at the request of an organ of state, public entity or municipality, if the Centre

reasonably believes the entity is affected by or has an interest in the information it obtains through conducting a lifestyle audit;”.

Amendment of section 5 of Act 38 of 2001, as amended by section 21 of Act 22 of 2022

8. Section 5 of the Financial Intelligence Centre Act, 2001 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Centre may, for the purposes of this Act and to perform its functions effectively—

- (a) request information from any organ of state, public entity and any municipality;
- (b) request access to any database held by any organ of state, public entity and any municipality; or
- (c) have regular access to information contained in a register that is kept by an organ of state, public entity and any municipality in the execution of a statutory function of that organ of state, public entity or municipality.”.

Substitution of section 23 of Act 38 of 2001, as amended by section 13 of Act 1 of 2017

9. The following section is hereby substituted for section 23 of the Financial Intelligence Centre Act, 2001:

“Period for which records must be kept

23. An accountable institution must keep the records which relate to—

- (a) the establishment of a business relationship referred to in section 22, for at least **[five]** seven years from the date on which the business relationship is terminated;
- (b) a transaction referred to in section 22A which is concluded, for at least **[five]** seven years from the date on which that transaction is concluded; and
- (c) a transaction or activity which gave rise to a report contemplated in section 29, for at least **[five]** seven years from the date on which the report was submitted to the Centre.”.

Amendment of section 26A of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017, substituted by section 28 of Act 22 of 2022 and amended by section 24 read with Schedule to Act 23 of 2022

- 10.** Section 26A of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for the heading of the following heading:

“Notification of persons and entities identified [by] pursuant to resolutions of Security Council of [the] United Nations or order of High Court”;
 - (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A) to previously identified persons or entities; **[and]**”;
 - (c) by the substitution for the full stop after paragraph (c) of subsection (3) of the expression
“; and”; and
 - (d) by the addition in subsection (3) of the following paragraphs:

“(d) an entity identified in the notice published by the National Director of Public Prosecutions in accordance with section 23(5) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 in respect of which a High Court has made an order pursuant to section 23 of that Act; and

“(e) a variation, rescission or setting aside of an order published by the National Director of Public Prosecutions pursuant to section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004.”.

Amendment of section 26C of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017 and amended by section 30 of Act 22 of 2022

- 11.** Section 26C of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) provide for extraordinary expenses.”; and
 - (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) accrue interest or other earnings due on accounts holding property affected by a prohibition under section 26B that arose before the date on

which the person or entity was identified by the Security Council of the United Nations; or”.

Substitution of section 27 of Act 38 of 2001, as amended by section 18 of Act 1 of 2017

12. The following section is hereby substituted for section 27 of the Financial Intelligence Centre Act, 2001:

“Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients

27. If an authorised representative of the Centre—

(a) provides an accountable institution, reporting institution or person that is required to make a report in terms of section 29 with the identifying particulars of a specified person and requests that accountable institution, reporting institution or person to advise—

(i) whether the specified person is or has been a client of the accountable institution, reporting institution or person;

(ii) whether the specified person is acting or has acted on behalf of any client of the accountable institution, reporting institution or person;

(iii) whether a client of the accountable institution, reporting institution or person is acting or has acted for the specified person;

(iv) on the type and status of a business relationship that is associated with the specified person or client contemplated in subparagraph (i), (ii) or (iii), as the case may be, or

(v) on the date on which the business relationship that is associated with the specified person or client contemplated in subparagraph (i), (ii) or (iii), as the case may be, had commenced and, if applicable, the date on which the business relationship in question had terminated,

(b) provides an accountable institution, reporting institution or person that is required to make a report in terms of section 29 with a number specified by the

Centre and requests that accountable institution, reporting institution or person to advise—

- (i) whether the accountable institution, reporting institution or person allocated the specified number to a person with whom the accountable institution, reporting institution or person has or has had a business relationship;
- (ii) on the type and status of a business relationship that is associated with the specified number contemplated in subparagraph (i), or
- (iii) on the date on which the business relationship that is associated with the specified number contemplated in subparagraph (i) had commenced and, if applicable, the date on which the business relationship in question had terminated.

the accountable institution, reporting institution or person must inform the Centre accordingly.”.

Amendment of section 27A of Act 38 of 2001, as inserted by section 19 of Act 1 of 2017 and amended by section 31 of Act 22 of 2022

13. Section 27A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), an authorised representative of the Centre has access during ordinary working hours to any records kept by or on behalf of an accountable institution in terms of section 22, 22A or 24, and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information—

(a) in respect of a report made or ought to be made in terms of section 28, 28A, 29, 30(1) or 31;

(b) for use in the production of forensic evidence in accordance with section 3(2)(aB);
or

(c) for use in the conduct of a lifestyle audit contemplated in section 4(bA).”.

Substitution of section 28A of Act 38 of 2001, as inserted by section 27 of Act 33 of 2004 and amended by section 20 of Act 1 of 2017, section 32 of Act 22 of 2022 and section 24 read with Schedule to Act 23 of 2022

14. The following section is hereby substituted for section 28A of the Financial Intelligence Centre Act, 2001:

“Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council or order of High Court

28A. (1) An accountable institution must upon notice being given by the Director under section 26A(3), scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity mentioned in the notice by the Director.

(2) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of a person or an entity identified in a notice given by the Director under section 26A(3), must within the prescribed period, report that fact and the prescribed particulars to the Centre.

(3) An accountable institution contemplated in subsection (2) must, within the prescribed period, report to the Centre the prescribed particulars about an attempt to conduct a transaction or enquiries at conducting a transaction pertaining to—

(a) a person or entity identified in a notice given by the Director under section 26A(3);
or

(b) property owned or controlled by or on behalf of, or at the direction of such a person or an entity.

(4) The Director may direct an accountable institution which has made a report under subsection (2) to report—

(a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (2) had been made; and

(b) any change in the circumstances concerning the accountable institution's possession or control of that property.”.

Amendment of section 30 of Act 38 of 2001, as substituted by section 8 of Act 11 of 2008

15. Section 30 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person authorised in terms of subsection (1) must **[without delay]** send a copy of the report within the prescribed period to the Centre.”.

Substitution of section 35 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 24 of Act 1 of 2017 and section 34 of Act 22 of 2022

16. Section 35 of the Financial Intelligence Centre Act, 2001, is hereby amended—
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) A magistrate or judge of an area of jurisdiction within which the accountable institution conducts business **[designated by the Minister of Justice for the purposes of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002),]** may, upon written application by the Centre, order an accountable institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specified person with the accountable institution or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that—”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) A magistrate or judge referred to in subsection (1) may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if —

(a) the reasonable grounds for the suspicion on which the order is based still exist;
and

(b) the magistrate or judge is satisfied that the interest of justice is best served by monitoring the person, account or facility referred to in subsection (1) in the manner provided for in this section.”.

Amendment of section 38 of Act 38 of 2001, as amended by section 12 of Act 11 of 2008

17. Section 38 of the Financial Intelligence Centre Act, 2001, is hereby amended—
(a) by the substitution for the heading of the following heading:

“Protection of persons [making reports] complying with provisions of the Act”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) No action, whether criminal or civil, lies against an accountable institution, reporting institution, supervisory body, the South African Revenue Service or any other person **[complying in good faith with a provision of this Part, Part 4 and Chapter 4, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person]**, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person, in respect of any action that such an accountable institution, reporting institution, supervisory body, the South African Revenue Service or other person takes in good faith to—

(a) make, initiate or contribute to a report in terms of section 28, 28A, 29 or 31;

(b) share information with another person to facilitate the making, initiating or contributing to a report in terms of section 28, 28A, 29 or 31;

(c) provide information to the Centre in terms of section 27, 32, 35 or 36;

(d) comply with Part 4, and

(e) comply with Chapter 4.”.

Amendment of section 40 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 13 of Act 11 of 2008, section 25 of Act 1 of 2017 and section 37 of Act 22 of 2022

18. Section 40 of the Financial Intelligence Centre Act, 2001, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Subject to this section, the Centre must make information reported to **[it,]** or obtained by it under this Part, **[and]** information generated by its analysis of information so reported or obtained, information it obtains through conducting lifestyle audits under section 4(bA)(i) and information generated by its analysis of information so obtained, available to—”.

(b) by the substitution for paragraph (aH) of subsection (1) of the following paragraph:

“(aH) the South African Revenue Service; **[or]**”;

(c) by the insertion after paragraph (aI) of subsection (1) of the following paragraphs:

- “(aJ) the Border Management Authority; or;
 (aK) the Public Procurement Office; and”;
- (d) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:
- “(1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aA), (aB), (aC), (aD), (aE), (aF), (aG), (aH), **[or]** (aI) (aJ), or (aK)—”;
- (e) by the insertion after subsection (1D) of the following subsections:
- “(1D) The Centre may make available information it obtains through conducting lifestyle audits under section 4(bA)(ii) and information generated by its analysis of information so obtained, to-
- (a) an entity contemplated in subsection (1) and only in accordance with subsections (1A), (1B) or (1C), as the case may be; or
- (b) subject to subsection (1E), an organ of state, public entity or municipality.”.
- (1E) Information contemplated in subsection (1D)(b) may be made available to an organ of state, public entity or municipality at the request of the organ of state, public entity or municipality or municipal entity, only if the Centre reasonably believes that such information is relevant to the exercise by the organ of state, public entity or municipality of its powers or performance by it of its functions under any law and that it is affected by or has an interest in the information.”;
- (f) by the substitution of subsection (2) of the following subsection:
- “(2) A request for information contemplated in subsection (1A), **[or]** (1C) or (1E) must be in writing and must specify the required information and the purpose for which the information is required.”; and
- (g) by the substitution of subsection (3) of the following subsection:
- “(3) The Director may, as a condition to the provision of any information contemplated in subsection (1) or (1D), make the reasonable procedural arrangements and impose the reasonable safeguards regarding the furnishing of such information that the Director considers appropriate to maintain the confidentiality of that information before the information is provided.”.

Amendment of section 41A of Act 38 of 2001, as inserted by section 26 of Act 1 of 2017 and as amended by section 38 of Act 22 of 2022

19. Section 41A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when the sharing of information is necessary for the purposes of carrying out the provisions of section 27, 28, 28A, 29, 31, 32, 35 or 36 in accordance with **[to ensure that adequate safeguards are in place as required by section 6(1)(c) of]** the Protection of Personal Information Act, 2013.”.

Amendment of section 42 of Act 38 of 2001, as amended by section 27 of Act 1 of 2017 and section 39 of Act 22 of 2022

20. Section 42 of the Financial Intelligence Centre Act, 2001, is hereby amended—
(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) enable the accountable institution to—

- (i) identify;
- (ii) assess;
- (iii) monitor;
- (iv) mitigate; and
- (v) manage,

the risk that the provision by the accountable institution of **[new and existing]** products or services to its clients may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;”;

(b) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) enable the accountable institution, prior to making a new product or service available to its clients, to—

- (i) (aa) identify, and
- (bb) assess,

the risk that the provision by the accountable institution of that new product or service, including a new delivery mechanism and the use of new or developing technology, to its clients, may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities, and

- (ii) based on the identification and assessment of the risks contemplated in sub-paragraph (i), take appropriate measures to—
 - (aa) manage, and
 - (bb) mitigate,
 - the risks contemplated in sub-paragraph (i);”; and
- (c) by the substitution for subparagraph (iv) of paragraph (q) of subsection (2) of the following subparagraph:
 - “(iv) taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under this Act and will inform the Centre and the supervisory body concerned of the additional measures applied;”.

Amendment of section 46 of Act 38 of 2001, as substituted by section 35 of Act 1 of 2017

21. Section 46 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 20A or 21(1) **[or (1A)]** is non-compliant and is subject to an administrative sanction.”.

Substitution of section 51A of Act 38 of 2001, as inserted by section 17 of Act 11 of 2008 and substituted by section 42 of Act 1 of 2017

22. The following section is hereby substituted for section 51A of the Financial Intelligence Centre Act, 2001:

“Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council or order of High Court

51A. (1) An accountable institution that has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of an entity

contemplated in section **[28A(1)] 28A(2)**, and that fails, within the prescribed period, to report that fact and the prescribed information in respect of such property to the Centre in accordance with that section, is guilty of an offence.

(2) An accountable institution that fails to comply with a direction by the Director in accordance with section **[28A(2)] 28A(4)**, is guilty of an offence.

(3) An accountable institution that fails to scrutinise the information as contemplated in section **[28A(3)] 28A(1)**, is guilty of an offence.

(3A) An accountable institution that fails to report an attempt to conduct a transaction or enquiries at conducting a transaction as contemplated in section 28A(3), within the prescribed period, the prescribed information in respect of such person or entity or such property to the Centre in accordance with that section, is guilty of an offence.

(4) An accountable institution that fails to—

- (a) report to the Centre in accordance with section **[28A(1)] 28A(2)**, within the prescribed period, the prescribed information in respect of its possession or control of property owned or controlled by or on behalf of, or at the direction of an entity contemplated in that section;
- (b) comply with a direction by the Director in accordance with section **[28A(2)] 28A(4)**; **[or]**
- (c) scrutinise the information as contemplated in section **[28A(3),] 28A(1)**; or
- (d) report an attempt to conduct a transaction or enquiries at conducting a transaction as contemplated in section 28A(3), within the prescribed period, the prescribed information in respect of such person or entity or such property to the Centre in accordance with that section.

is non-compliant and is subject to an administrative sanction.”.

Amendment to section 59 of Act 38 of 2001, as amended by section 44 of Act 22 of 2022

23. Section 59 of the Financial Intelligence Centre Act, 2001 is hereby amended by the substitution of the following section:

“59. (1) An accountable institution that fails to comply with an order by a magistrate or judge in accordance with section 35, is guilty of an offence.

(2) An accountable institution that fails to comply with an order by a magistrate or judge in accordance with section 35 is non-compliant and is subject to an administrative sanction.”

Amendment of Schedule 3A to Act 38 of 2001, as inserted by section 59 of Act 1 of 2017 and amended by section 51 of Act 22 of 2022

- 24.** Schedule 3A to the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraph (x) of the following subparagraph:

“(x) the chairperson of the controlling body, the chief executive officer, or a natural person who is the accounting authority, the chief financial officer or the chief investment officer of a public entity **[listed in Schedule 2 or 3 to the Public Finance Management Act, 1999 (Act 1 of 1999)]**,” and
 - (b) by the substitution in paragraph (a) for subparagraph (xi) of the following subparagraph:

(xi) the chairperson of the controlling body, chief executive officer, chief financial officer or chief investment officer of a **[municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)] municipality**.”

Amendment of Arrangement of Sections of Act 38 of 2001

- 25.** The Arrangement of Sections of the Financial intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for item 26A of the following item:

“26A. Notification of persons and entities identified **[by]** pursuant to resolutions of Security Council of [the] United Nations or order of High Court”;
 - (b) by the substitution for item 28A of the following item:

“28A Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council or order of High Court”;
 - (c) by the substitution for item 38 of the following item:

“38 Protection of persons **[making reports]** complying with provisions of the Act”;
 - (d) by the substitution for item 51A of the following item:

“51A Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council or order of High Court”; and

(e) by the insertion after item 79B of the following item:

“79C. Amendment of the list of prominent influential persons”.

Amendment of section 82 of Act 71 of 2008, as amended by section 51 of Act 3 of 2011

26. Section 82 of the Companies Act, 2008, is hereby amended—

- (a) by the deletion of the word “or” after item *(bb)* of subparagraph (ii) of paragraph (a) of subsection (3); and
- (b) by the insertion after paragraph (a) of subsection (3) of the following paragraph:

“(aA) on demand by the Commission, the company has failed to submit a securities register or register of beneficial interest, in the prescribed manner and form in terms of section 33 for two years or more in succession; or”.

Amendment of section 171 of Act 71 of 2008, as amended by section 108 of Act 3 of 2011

27. Section 171 of the Companies Act, 2008, is hereby amended by the addition of the following subsection:

“(8) If a person to whom a compliance notice has been issued for failure to submit the securities register or the register of beneficial interest, fails to comply with the notice, the Commission may impose an administrative fine in terms of section 175(1A).”.

Amendment of section 175 of Act 71 of 2008, as amended by section 110 of Act 3 of 2011

28. Section 175 of the Companies Act, 2008, is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:

“(1A) The Commission may impose an administrative fine—

(a) only for failure to comply with a compliance notice issued for failure to submit the securities register or the register of beneficial interest, as contemplated in section 171(8); and

(b) not exceeding the greater of—

- (i) 10% of the company's turnover for the period during which the company failed to comply with the compliance notice; and
 - (ii) the maximum prescribed in terms of subsection (5)."; and
- (b) by the substitution for subsection (5) of the following subsection:
 - "(5) The Minister may make a regulation prescribing the maximum amount of an administrative fine, which amount must be not less than **[R1 000 000]** R10 000 000.".

Insertion of section 175A in Act 71 of 2008

29. The following section is hereby inserted after section 175 of the Companies Act, 2008:

"Review of administrative fine

175A. (1) Any person on whom an administrative fine has been imposed, as contemplated in section 175(1A), may apply to the Companies Tribunal to review the administrative fine imposed within—

(a) 15 business days after receiving notice of the administrative fine; or

(b) such longer period as may be allowed by the Companies Tribunal on good cause shown.

(2) After considering any representations by the applicant and any other relevant information, the Companies Tribunal may confirm, modify or set aside the administrative fine.

(3) If the Companies Tribunal confirms or modifies all or part of the administrative fine, the applicant must pay that administrative fine as confirmed or modified, within the time period specified in it, subject to subsection (4).

(4) A decision by the Companies Tribunal in terms of this section is binding, subject to any right of review by, or appeal to, a court."

Amendment of Arrangement of Sections

30. The Arrangement of Sections of the Companies Act, 2008, is hereby amended by the addition of item 175A after item 175:

"175A. Review of administrative fine".

Amendment of section 2 of Act 9 of 2017

31. Section 2 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of subsection (2)(b)(ii), a person makes a financial investment **[when the person (the "investor")]**—

- (a) when the person (the "investor") gives a contribution of economic value**[, in money or money's worth,]** to another person or arrangement and any of the following apply:
 - (i) The **[other person uses the]** contribution is used to generate a financial return for the investor;
 - (ii) the investor intends that **[the other person will use]** the contribution will be used to generate a financial return for the investor, even if no return, or a loss, is in fact generated; or
 - (iii) the other person or arrangement **[intends]** represents or implies in any manner that the contribution be used to generate a financial return for the investor, even if no return, or a loss, is in fact generated; and
- (b) **[has no]** irrespective of whether the investor has day-to-day control over the use of the contribution.”.

Amendment of section 3 of Act 9 of 2017

32. Section 3 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

- “(i) a financial product, a foreign financial product, a financial instrument **[or]**, a foreign financial instrument, or an arrangement that is similar in nature to, or has similar outcomes to, a financial product, a foreign financial product, a financial instrument, a foreign financial instrument, irrespective of the technology used to provide the product or instrument;”.

Amendment of section 111 of Act 9 of 2017

- 33.** Section 111 of the Financial Sector Regulation Act, 2017, is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) if no specific financial sector law provides for such a licence, in accordance with a licence in terms of this Act~~[.]~~; and”; and
- (b) by the insertion after paragraph (b) of subsection (1) of the following paragraph:
- “(c) if so required in terms of section 113, in accordance with a licence in terms of this Act and a licence in terms of the Acts referred to in paragraph (a).”.

Amendment of section 113 of Act 9 of 2017

- 34.** Section 113 of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The responsible authority may, in a standard, require a category of financial institutions to be licensed in terms of this Act to provide a financial product or financial service, despite a requirement to be licensed in terms of the Acts referred to in section 111(1)(a), if the Authority deems it necessary to license the category of financial institutions in order to achieve its objective.”.

Amendment of section 131 of Act 9 of 2017

- 35.** Section 131 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) A supervised entity, significant owner or beneficial owner that has been given a notice in terms of paragraph (a) must comply with the requirements in the notice.”.

Amendment of section 135 of Act 9 of 2017

- 36.** Section 135 of the Financial Sector Regulation Act, 2017, is hereby amended—
- (a) by the substitution for subsection (1) for the words preceding paragraph (a) of the following words :

“(1) A financial sector regulator may instruct an investigator appointed by it to conduct an investigation in terms of this Part **[in respect of any person]**, if the financial sector regulator—”; and

(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) reasonably suspects that **[a person may have contravened, may be contravening or may be about to contravene,]** a financial sector law for which the financial sector regulator is the responsible authority, has been contravened, may be in the process of being contravened or may be about to be contravened; or”.

Amendment of section 166S of Act 9 of 2017, as inserted by section 51 of Act 23 of 2021

37. Section 166S of Financial Sector Regulation Act, 2017, is hereby amended by the substitution for paragraph (b) of subsection (9) of the following paragraph:

“(b) transactions concluded under a “master agreement” as defined in section 35B(2) of the Insolvency Act;”.

Short title and commencement

38. This Act is called the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2025 and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON OBJECTS OF GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL, 2025

1. INTRODUCTION

1.1 In order to prepare for the next Financial Action Task Force (FATF) mutual evaluation, which is anticipated to be completed in October 2027, the Republic needs to address the outstanding deficiencies that were identified during the FATF enhanced follow up process as well as the grey listing process of the FATF. In order to address these deficiencies and enhance the AML/CTF system, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2025 ('the Bill') proposes amendments to the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997 – 'the NPO Act'), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001 – 'the FIC Act'), the Companies Act, 2008 (Act No. 71 of 2008 – 'the Companies Act') and the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017 – 'the FSR Act').

1.2 The Bill proposes amendments to—

- the NPO Act to extend the functions of the Directorate to include monitoring and enforcement of nonprofit organisations; to provide for the director to impose administrative sanctions; to extend the appeal in respect to administrative sanction; and to provide for maximum penalties for offences;
- the FIC Act to amend and insert certain definitions; to expand the sharing of information by the Centre; to provide for the Centre to conduct lifestyle audits; to expand the general powers of the Centre to include the requesting of information from a public entity, municipality and municipal entity; to extend the period for which records must be kept; to require the Director to give notice pursuant to an order in terms of section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; to expand the circumstances under which a person or entity referred to in section 26A may be permitted provision of financial services to include providing for extraordinary expenses; to provide for the accrual of interest or other earnings due on accounts holding property affected by a prohibition under section 26B that arose before the date on which the person or entity was identified by the Security Council of the United Nations; to expand the type of information accountable institutions, reporting institution and persons subject to reporting obligations are required to advise the Centre of; to require the person authorised by the Minister to receive a report relating to the conveyance of cash to or

from the Republic to send a copy of the report to the Centre within a prescribed period; to provide for magistrate or judge of an area of jurisdiction within which the accountable institution conducts business to hear applications by the Centre in respect of monitoring orders; to expand the circumstance under which the protection of persons making reports apply; to require accountable institutions to take into account the risk of new delivery mechanisms and the use of new or developing technologies which may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities; to expand the sections of the Act that the protection of personal information apply with regard to the Protection of Personal Information Act, 2013; to provide for consequential amendments to the relevant offences and failure to comply sections;

- the Companies Act to empower the Commission to deregister a company that fails to submit a securities register within a certain period; to empower the Commission to impose administrative penalties; to empower the Companies Tribunal to review a decision of the Commission to impose an administrative penalty; and
- the FSR Act to provide for the circumstances under which new services are expanded to include arrangements that are similar in nature or have similar outcomes as financial products and services; to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation; to empower financial sector regulators to obtain information from significant owners or beneficial owners; to empower financial sector regulators to institute an investigation under certain circumstances; to exclude transactions concluded under a 'master agreement' as defined in section 35B(2) of the Insolvency Act, 1936, from the application of a certain section.

2. SUMMARY OF BILL

2.1 *Clause 1* of the Bill proposes to amend section 5 of the NPO Act so as to extend the functions of the Directorate to include the monitoring and enforcement of compliance with the Act by nonprofit organisations to whom the Act applies.

2.2 *Clause 2* of the Bill proposes to amend section 14 of the NPO Act so as to provide for the Arbitration Tribunal to hear appeals on administrative sanctions imposed by the director.

2.3. *Clause 3* of the Bill proposes to amend section 20 of the NPO Act so as to extend the issuing of the compliance notice by the director to instances where an administrative sanction may be imposed. The section is further proposed to be amended to provide for the director to impose administrative sanctions for contraventions contemplated in section 29(4) of the Act.

2.4 *Clause 4* of the Bill proposes an amendment to section 30 of the NPO Act so as to provide for the maximum penalty of R1 million or maximum imprisonment of five years for offences committed in terms of the NPO Act or both a fine and an imprisonment.

2.5 *Clause 5* of the Bill proposes to include the Public Procurement Office established by section 4 of the Public Procurement Act, 2024 (Act No. 28 of 2024) and the Border Management Authority established by section 4 of the Border Management Authority Act, 2020 (Act No. 2 of 2020) in the definition of “authorised officer” in section 1 of the FIC Act. Furthermore, clause 5 defines the Public Procurement Office and the Border Management Authority so as to allow for the Financial Intelligence Centre (FIC) to share information with the Public Procurement Office and the Border Management Authority. *Clause 5* also makes provision for the definitions of ‘lifestyle audit’, ‘municipality’ and ‘public entity’.

2.6 *Clauses 6 and 7* of the Bill propose amendments to sections 3 and 4 of the FIC Act so as to allow the FIC to share information with the Public Procurement Office and the Border Management Authority. The clauses also extend the powers and functions of the Centre to include the conducting of lifestyle audits.

2.7 *Clause 8* of the Bill proposes an amendment to section 5 of the FIC Act so as to expand the general powers of the Centre to include the requesting of information from a public entity or municipality.

2.8 *Clause 9* of the Bill proposes an amendment to section 23 of the FIC Act so as to increase the record keeping period to enable the respective authorities to have access to records for a longer period of time, and to ensure effectiveness in terms of the ability to access, assess and review records pertaining to compliance obligations for a longer period of time. This is particularly important in the context of analysis of transactions linked to suspicious and unusual transaction obligations, as well as the ability of authorities to conduct investigations or reviews in terms of the FIC Act, FSR Act or other applicable legislation, which are comprehensive enough to cover

a longer period of time to gauge if there were deficiencies in specific areas which are required to be addressed.

2.9 *Clause 10* of the Bill proposes an amendment to section 26A of the FIC Act which deals with the implementation of resolutions adopted by the Security Council of the United Nations, so as to expand the requirement for the Director of the FIC to give notice by appropriate means of publication of an entity in respect of which a High Court has made an order pursuant to section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 as published by the National Director of Public Prosecutions in accordance with section 23(5) of that Act as well as a variation, rescission or setting aside of an order pursuant to section 23 of that Act.

2.10 *Clause 11* of the Bill proposes an amendment to section 26C of the FIC Act which provides for the Minister to permit a person to conduct financial services or deal with property under certain circumstances, so as to expand the circumstances to include providing for extraordinary expenses. In addition, to empower the Minister to permit the accrual of interest or other earnings due on accounts holding property affected by a prohibition under section 26B of the FIC Act that arose before the date on which the person or entity was identified by the Security Council of the United Nations.

2.11 *Clause 12* of the Bill proposes to amend section 27 of the FIC Act to expand the type of information accountable institutions, reporting institution and persons subject to reporting obligations are required to advise the Centre of to include the date the business relationship commenced and, if applicable, the date the business relationship terminated;

2.12 *Clause 13* of the Bill proposes to amend section 27A to make provision for the authorised representative of the Centre to have access to records kept by or on behalf of an accountable institution for purposes of producing forensic evidence or for use in the conduct of lifestyle audits.

2.13 *Clause 14* of the Bill provides for the substitution for section 28A of the FIC Act so as to provide for certain reporting obligations for accountable institutions that have in their possession or under its control property owned or controlled by or on behalf, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations.

2.14 *Clause 15* of the Bill proposes an amendment to section 30 of the FIC Act to specify the requirement for the person authorised by the Minister to receive the report relating to the conveyance of cash to or from the Republic to send a copy of the report to the Centre within a prescribed period.

2.15 *Clause 16* of the Bill proposes to amend section 35 of the FIC Act to provide for magistrate or judge of an area of jurisdiction within which the accountable institution conducts business to hear applications by the Centre in respect of monitoring orders.

2.16 *Clause 17* of the Bill proposes to amend section 38 of the Bill to expand the circumstance under which the protection of persons making reports apply.

2.17 *Clause 18* of the Bill proposes to amend section 40 of the FIC Act to allow the FIC to share information with the Public Procurement Office and the Border Management Authority. *Clause 18* further proposes to amend section 40 to authorise the Centre to share information it obtains through conducting lifestyle audits

2.18 *Clause 19* of the Bill proposes to amend section 41A of the FIC Act to expand the sections of the Act that the protection of personal information apply with regard to the Protection of Personal Information Act, 2013.

2.19 *Clause 20* of the Bill proposes an amendment to section 42 of the FIC Act so as to require accountable institutions to take into account the risk that new delivery mechanisms and the use of new or developing technologies, may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities. In addition, taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under this Act and will inform the Centre and the supervisory body concerned of the additional measures applied.

2.20 *Clause 21* of the Bill proposes an amendment to section 46 of the FIC Act so as to provide that an accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 20A is non-compliant and is subject to administrative sanctions.

2.21 *Clause 22* of the Bill proposes an amendment to section 51A of the FIC Act which deals with the offence or act of non-compliance relating to the reporting obligations in section 28A. The amendments in clause 23 provide for the consequential amendments following the amendments to section 28A in clause 14.

2.22 *Clause 23* of the Bill proposes an amendment to section 59 of the FIC Act which deals with the offence or act of non-compliance relating to an order by a judge to include an order made by a magistrate.

2.23 *Clause 24* of the Bill proposes to amend Schedule 3A of the FIC Act to effect certain consequential amendments as a result of the certain definitions being inserted.

2.24 *Clause 25* of the Bill proposes to amend the arrangement of sections in the FIC Act.

2.25 *Clause 26* of the Bill proposes an amendment to section 82 of the Companies Act to require the Companies and Intellectual Property Commission (CIPC) to deregister a company (or close corporation) if such a company has failed to submit a securities register or beneficial interest register, in the prescribed manner and form, in terms of section 33 of the Act, for two years or more in succession.

2.26 *Clause 27* of the Bill proposes an amendment to section 171 of the Companies Act to provide that the CIPC may impose an administrative fine in instances where it has issued a compliance notice for failure to submit the securities register or the register of beneficial interest.

2.27 *Clause 28* of the Bill proposes an amendment to section 175 of the Companies Act to provide for the CIPC to impose administrative fines for failure to comply with a compliance notice contemplated in section 171(8) of the Companies Act.

2.28 *Clause 29* of the Bill proposes a new section 175A in the Companies Act which empowers any person on whom an administrative fine has been imposed to apply to the Companies Tribunal to review the administrative fine imposed.

2.29 *Clause 30* of the Bill proposes to amend the Arrangement of Sections in the Companies Act to add the proposed new section 175A.

2.30 *Clause 31* of the Bill proposes an amendment to the definition of ‘making a financial investment’ in section 2(3) of the FSR Act.

2.31 *Clause 32* of the Bill provides for the circumstances under which new services are expanded in section 3(3)(a) of the FSR Act to include arrangements that are similar in nature or have similar outcomes as financial products and services irrespective of the technology used to provide the products or services. This will enable the Minister to identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products, and if required to designate new financial products or services to be regulated to ensure that regulation keeps abreast with the development of new financial products and services, innovation and technology.

2.32 *Clauses 33 and 34* of the Bill proposes amendments to sections 111 and 113 of the FSR Act to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation. Section 111(1) currently stipulates that a person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of Chapter 8 of the FSR Act. It is important that in certain circumstances, responsible authorities are enabled to license financial institutions despite these institutions being licensed in terms of other legislation to ensure that the responsible authority may execute its mandate appropriately and that a ‘competent authority’ as envisaged in Recommendation 15 is able to impose AML requirements.

2.33 *Clause 35* of the Bill proposes an amendment to section 131 of the FSR Act so as to empower financial sector regulators to obtain information from significant owners or beneficial owners.

2.34 *Clause 36* of the Bill proposes an amendment to section 135 of the FSR Act so as to empower financial sector regulators to institute an investigation if the regulator suspects that a financial sector law has been contravened, may be in the process of being contravened or may be about to be contravened.

2.35 *Clause 37* of the Bill proposes an amendment to section 166S(9) of the FSR Act so as to exclude transactions concluded under a ‘master agreement’ as defined in section 35B(2) of the Insolvency Act, 1936 (Act No. 24 of 1936) from the application of section 166S(7) of the FSR Act.

2.36 *Clause 38* of the Bill provides for the short title and commencement of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following organisations have been consulted:

- (a) Department of Social Development;
- (b) Department of Trade, Industry and Competition;
- (c) Financial Intelligence Centre;
- (d) Financial Sector Conduct Authority;
- (e) South African Reserve Bank; and
- (f) Companies and Intellectual Property Commission.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Constitution of the Republic of South Africa, 1996 (‘the Constitution’) regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.

5.2 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the “test for determining how a Bill is to be tagged must be broader than that for determining legislative

competence'. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence (see paragraphs 70-72 of the judgment). The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

5.3 We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution and found that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary to consider sections 74 and 77 of the Constitution.

5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 77 of the Constitution applies.

5.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.