

REPUBLIC OF SOUTH AFRICA

**STANDING COMMITTEE AMENDMENTS
TO

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

[B 18—2022]

(As agreed to by the Standing Committee on Finance (National Assembly))

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AMENDMENTS AGREED TO

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

[B 18—2022]

CLAUSE 1

1. On page 3, in the definition of “accountable institution”, in line 7, to omit “1” and to substitute “1(1)”.
2. On page 3, from line 12, to omit the definition of “beneficial owner” and to substitute the following definition:

“**beneficial owner**”, in respect of the provisions of a trust instrument, means—

- (a) a natural person who directly or indirectly ultimately owns the relevant trust property;
- (b) a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;
- (c)
 - (i) each founder of the trust; or
 - (ii) if a founder of the trust is a legal person, a person acting on behalf of a partnership or in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;
- (d)
 - (i) each trustee of the trust; or
 - (ii) if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; and
- (e)
 - (i) each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or
 - (ii) if a beneficiary referred to by name in the trust instrument is a legal person, a partnership or a person acting on behalf of a partnership or a person acting in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;”.

CLAUSE 2

1. On page 4, in line 25, after “amount” to insert “in terms of section 69 of the Companies Act, 2008”.
2. On page 4, from line 27, in paragraph (e) to omit subparagraph (i) and to substitute the following subparagraph:

- (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing

activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

3. On page 4, in line 42, to omit “or”.
4. On page 4, after line 42, to insert the following paragraph after paragraph (e):

(f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution; or
5. On page 4, in line 43, to renumber paragraph “(f)” in the tabled Bill as paragraph “(g)”.
6. On page 4, in line 48, to renumber paragraph “(1C)” in the tabled Bill as paragraph “(1D)”.
7. On page 4, after line 48, to insert the following subsection:

(1C) A disqualification in terms of subsection (1A)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.
8. On pages 4 to 5, to renumber subsections (1C) to (1G) as subsections (1D) to (1H), respectively.
9. On page 4, in line 58, to omit the space between “(1A)” and (a)”.

NEW CLAUSE 3

1. That the following be inserted as a new clause after clause 2, and that the subsequent clauses be renumbered accordingly:

Amendment of section 8 of Act 57 of 1998

3. The following section is hereby substituted for section 8 of the Trust Property Control Act, 1998:

“Foreign trustees

8. When a person who was appointed outside the Republic as trustee has to administer or dispose of trust property in the Republic, the provisions of this Act shall apply to such trustee in respect of such trust property and such person shall act in that capacity only if authorized thereto in writing by the Master [may authorize such trustee] under section 6 [to act as trustee in respect of that property].”.

CLAUSE 4 [Renumbered Clause 5]

1. On page 5, in line 27, to omit “(dA)” and to substitute “(e)”;
2. On page 5, in line 31, to omit “;” and to substitute “.”.
3. On page 5, in line 32, to omit “(dB) the” and to substitute “(1A) The”.

CLAUSE 6 [Renumbered Clause 7]

1. On page 6, in line 16, to omit “(dA)” and to substitute “(e)”.

CLAUSE 8 [Renumbered Clause 9]

1. On page 6, from line 45, to omit paragraphs (b) and (c) and to substitute:
 - “(b) establishing an administrative and regulatory framework within which registered nonprofit organisations **[can]** must conduct their affairs;
 - (c) **[encouraging]** requiring registered nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards.”.

CLAUSE 9 [Renumbered Clause 10]

1. On page 7, in line 17, to omit “.” and to substitute “;”;
2. On page 7, after line 17, to insert the following subparagraph:
 - (iii) the delegation by the Directorate to another organ of state of specified administrative functions.”.

CLAUSE 10 [Renumbered Clause 11]

1. To omit the clause, and to substitute:

“Amendment of section 12 of Act 71 of 1997

11. Section 12 of the Nonprofit Organisations Act, 1997, is hereby amended—

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

“(1) (a) A nonprofit organisation referred to in paragraph (b) must apply, and any other nonprofit organisation that is not an organ of state may apply, to the director for registration, subject to paragraph (c), and in accordance with the requirements and procedure contemplated in sections 13, 14 and 15.

(b) A nonprofit organisation must be registered under this Act if it—

- (i) makes donations to individuals or organisations outside of the Republic’s borders; or
- (ii) provides humanitarian, charitable, religious, educational or cultural services outside of the Republic’s borders.

(c) A nonprofit organisation referred to in paragraph (b) that is operating but is not registered in terms of this Act on the date of commencement of this provision, must apply to register within the period determined by the Minister by notice in the *Gazette*.

(d) A registered nonprofit organisation, and a nonprofit organisation referred to in paragraph (b) whether it is in fact registered in terms of the Act or not, must comply with the requirements of this Act.”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the matters in this subsection, the constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or intends to register must—”; and
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “The constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or that intends to register may make provision for matters relevant to conducting its affairs, including matters that—”; and
- (d) by the insertion after subsection (3) of the following subsection:
 “(4) The director when considering an application for registration in terms of section 13, after having received amendments to the constitution in terms of section 19, or at any other time, may only require a nonprofit organisation to make an alteration to its constitution to ensure that the constitution addresses the matters referred to in subsection (2).”.

NEW CLAUSE 12

1. That the following be inserted as a new clause after clause 10 in the tabled Bill, which is renumbered as clause 11, and that the subsequent clauses be renumbered accordingly:

Amendment of section 13 of Act 71 of 1997

12. Section 13 of the Nonprofit Organisations Act, 1997, is hereby amended—

- (a) by the substitution in subsection (1) for the wording preceding paragraph (a) of the following wording:
 “(1) A nonprofit organisation [**may apply**] applies for registration by submitting to the director—”;
- (b) by the insertion after subsection (6) of the following paragraphs:
 “(7) The director may only refuse to register a nonprofit organisation on the grounds that the applicant has not complied with the requirements for registration in section 12 or has not complied with a notice issued in terms of subsection (3), as referred to in subsection (6).
 (8) A nonprofit organisation that has submitted an application for registration is deemed to be registered unless and until the director has given notice to the applicant in terms of subsection (3) and the process envisaged in subsections (4) to (6) has been completed.”.

CLAUSE 11 [Renumbered Clause 13]

1. On page 7, in line 51, before “nonprofit” to insert “registered”.
2. On page 7, in line 52, to omit “subsection” and to substitute “subsections”.

3. On page 7, in line 54, to omit “having consulted” and to substitute “consultation with”.
4. On page 7, in line 56, to omit: ”.
5. On page 7, after line 56, after subsection (1A) to insert the following subsection:

(1B) A registered nonprofit organisation must ensure that the information referred to in subsection (1)(bA) that must be provided to the director is kept up to date.”.

CLAUSE 12 [Renumbered Clause 14]

1. On page 8, in line 9, after “of” to insert “registered”.
2. On page 8, in line 10, after “organisations” to omit “;” and to substitute “.”.
3. On page 8, in line 12, after “A” to insert “registered”.

CLAUSE 13 [Renumbered Clause 15]

1. On page 8, in line 27, before “nonprofit” to insert “registered”.
2. On page 8, in line 31, to omit “72” and to substitute “71”.
3. On page 8, from line 40, in paragraph (e) to omit subparagraph (i) and to substitute:

(i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

4. On page 8, in line 56, to omit “or”;
5. On page 8, after line 56, to insert the following paragraph:

(f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution contemplated in that subsection; or
6. On page 8, in line 57, to renumber paragraph “(f)” in the tabled Bill as paragraph “(g)”.
7. On page 9, in line 2, after “a” to insert “registered”.
8. On page 9, in line 5, after “a” to insert “registered”.
9. On page 9, after line 11, to insert the following subsection:

(4) A disqualification in terms of subsection (1)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.
10. On page 9, to renumber subsections (4) to (11) as subsections (5) to (12), respectively.

11. On page 9, in line 29, after “each” to insert “registered”.
12. On page 9, in line 40, after “a” to insert “registered”.
13. On page 9, in line 43, after “a” to insert “registered”.
14. On page 9, in line 45, after “a” to insert “registered”.

NEW CLAUSE 16

1. That the following be inserted as a new clause after clause 13 in the tabled Bill, which is renumbered as clause 15, and that the subsequent clauses be renumbered accordingly:

Amendment of section 21 of Act 71 of 1997

16. Section 21 of the Nonprofit Organisations Act, 1997, is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) The director may only cancel the registration of a non-profit organisation as contemplated in section 20 and this section.”.

CLAUSE 14 [Renumbered Clause 17]

1. To omit the clause, and to substitute the following clause:

Amendment of section 29 of Act 71 of 1997

17. Section 29 of the Nonprofit Organisations Act, 1997, is hereby amended—

(a) by the substitution for the heading of the section of the following heading:

“Offences and contraventions”; and

(b) by the insertion after subsection (3) of the following subsection:

“(4) The following contraventions of this Act by a nonprofit organisation are subject to a prescribed administrative sanction:

- (a) a registered nonprofit organisation that fails to perform any duty imposed or comply with a requirement in terms of section 12 or 18(1)(bA); and
- (b) a nonprofit organisation that is required to register in terms of section 12(1)(b) but fails to do so.”.

CLAUSE 19 [Renumbered Clause 22]

1. On page 13, from line 26, in paragraph (c) to omit subparagraph (ii) and to substitute the following subparagraph:
 - (ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust;
2. On page 13, in line 41, in paragraph (e), to omit “deed” and to substitute “[**deed**] instrument”.
3. On page 13, in line 43, in paragraph (e), to omit “deed” and to substitute “instrument”.

4. On page 13, in line 48, in paragraph (e), to omit “deed” and to substitute “[**deed**] instrument”.

CLAUSE 30 [Renumbered Clause 33]

1. On page 16, in line 52, after “amended” to omit “—”.
2. On page 16, in line 53, to omit “(a)”.
3. On page 17, from line 5, to omit paragraph (b) and subsection (1A).

CLAUSE 35 [Renumbered Clause 38]

1. On page 18, from line 14, to omit subsection (3) and to substitute:

“(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 29, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013.”.

CLAUSE 52 [Renumbered Clause 55]

1. To omit the clause, and to substitute:

Amendment of section 1 of Act 71 of 2008, as amended by section 1(1) of Act 3 of 2011 and section 111 of Act 19 of 2012

55. Section 1 of the Companies Act, 2008, is hereby amended—

(a) by the insertion after the definition of “advertisement” of the following definition:

“**affected company**” means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);” and

(b) by the insertion after the definition of “beneficial interest” of the following definition:

“**beneficial owner**”, in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through—

- (a) the holding of beneficial interests in the securities of that company;
- (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;
- (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
- (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
- (e) the ability to exercise control, including through a chain of ownership or control, of—
 - (i) a juristic person other than a holding company of that company;
 - (ii) a body of persons corporate or unincorporate;

- (iii) a person acting on behalf of a partnership;
- (iv) a person acting in pursuance of the provisions of a trust agreement; or
- (f) the ability to otherwise materially influence the management of that company;”.

CLAUSE 53 [Renumbered Clause 56]

1. On page 26, in line 24, to omit “56” and to substitute “56(7)(aA)”.

CLAUSE 54 [Renumbered Clause 57]

1. On page 26, in line 36, after “company” to insert “that does not fall within the meaning of an “affected company” ”.

CLAUSE 55 [Renumbered Clause 58]

1. On page 26, in line 50, to omit “and”.
2. On page 26, after line 50, to insert the following paragraphs:
 - (b) by the substitution in subsection (7) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:
 - “(7) [A] An affected company must—
 - (a) establish and maintain a register of the disclosures made in terms of this section; **[and]**”;
 - (c) by the insertion in subsection (7) after paragraph (a) of the following paragraph:
 - “(aA) establish and maintain a register of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests, and ensure that this register is updated within the prescribed period after having received a notice contemplated in section 122(1); and”.
3. On page 26, in line 51, to omit “(b)” and to substitute “(d)”.
4. On page 26, in line 52, after “company” to insert “that does not fall within the meaning of an “affected company” ”.
5. On page 26, in line 54, to omit “natural persons” and to substitute “individuals”.
6. On page 26, in line 55, to omit “Notices” and to substitute “notices”.
7. On page 27, after line 4, to insert the following paragraph:
 - “(14) The Commission must maintain a register of the information contained in the records contemplated in subsections (7)(aA) and (12).”.

CLAUSE 56 [Renumbered Clause 59]

1. To omit the clause, and to substitute the following clause:

“Amendment of section 69 of Act 71 of 2008, as amended by section 46 of Act 3 of 2011 and section 111 of Act of Act 19 of 2012

59. Section 69 of the Companies Act, 2008, is hereby amended—

- (a) in paragraph (b) of subsection (8) by the deletion in subparagraph (iii) of “or”;
- (b) in paragraph (b) of subsection (8) by the substitution for subparagraph (iv) of the following subparagraph:

“(iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—

(aa) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing, or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001); or

(bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or

(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 [(Act 38 of 2001)], the Financial Markets Act, 2012, [or] Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) or the Tax Administration Act, 2011 (Act 28 of 2011); or”;

- (c) in paragraph (b) of subsection (8) by the insertion after subparagraph (iv) of the following subparagraph:

“(v) when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution.”; and

- (d) by the insertion after subsection (9) of the following subsection:

“(9A) A disqualification in terms of subsection (8)(b)(v) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.”.

NEW CLAUSE 60

1. That the following be a new clause inserted after clause 56 in the tabled Bill, which has been renumbered as clause 59, and that the subsequent clauses in the Bill be renumbered accordingly:

Amendment of section 122 of Act 71 of 2008, as amended by section 76 of Act 3 of 2011

60. Section 122 of the Companies Act, 2008, is hereby amended—

- (a) in subsection (1) by the substitution for “a regulated” of “an affected”;

- (b) by the insertion after subsection (3) of the following subsection:

“(3A) An affected company that has received a notice in terms of this section must file a record of that notice with the Commission, in the prescribed form and containing the prescribed information and within the prescribed period after having received that notice.”; and

- (c) by the insertion after subsection (4) of the following subsections:

(5) The prescribed requirements referred to in subsection (3A) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(6) The Commission must maintain a register of the information contained in the notices contemplated in subsection (3A).”.

CLAUSE 59 [Renumbered Clause 63]

1. On page 27, from line 42, to omit subsection (1) and to substitute:

“159A. (1) For the purposes of this Chapter, “beneficial owner” means a natural person who, directly or indirectly, ultimately owns a financial institution or exercises effective control of that financial institution.

LONG TITLE

1. On page 2, in the long title of the Bill, to omit the first two bullet points relating to the Trust Property Control Act, 1988, and the Nonprofit Organisation Act, 1997, and to substitute the following bullet points:

- **the Trust Property Control Act, 1988, by inserting definitions of “accountable institution” and “beneficial owner”; by imposing certain requirements on trustees; by specifying matters that would disqualify a person from being appointed or continuing to act as a trustee; by clarifying that a person who was appointed outside the Republic as trustee must be authorised by the Master to act as trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and by specifying certain offences;**
- **the Nonprofit Organisations Act, 1997, by requiring registration of specified nonprofit organisations in terms of the Act; by enabling the Nonprofit Organisations Directorate, in order to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state; by clarifying the scope of powers of the director in relation to the registration and cancellation of registration of nonprofit organisations, and in respect of the power to require amendments to be effected to the constitution of a nonprofit organisation; by requiring registered nonprofit organisations to submit prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to the director; to require prescribed information relating to the office-bearers, control**

structure, governance, management, administration and operations of registered nonprofit organisations to be included in the register that the director must keep, and by providing for access to that information; by providing for grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a registered nonprofit organisation; by providing for the removal of an office-bearer; and by providing for certain contraventions;

2. On page 3, in the long title of the Bill, to omit the first bullet point relating to the Companies Act, 2008, and to substitute the following bullet point:
 - the Companies Act, 2008, by inserting definitions of “affected company” and “beneficial owner”; by providing for a comprehensive mechanism through which the Companies and Intellectual Property Commission can keep accurate and updated beneficial ownership information; by requiring a company to keep a record of a natural person who owns or controls the company in terms of the definition of “beneficial owner”, and by providing for specified timelines within which the company must record any changes in this information; by requiring a company to file a record of any natural person who owns or controls the company in terms the definition of “beneficial owner”, with the Commission; and by specifying that persons who are convicted of offences relating to money laundering, terrorist financing, or proliferation financing activities or are subject to a resolution of the UN Security Council are prohibited from registering as company directors; and