
ciba
academy

Contents

1. Introduction 3
2. Understanding the basics 4
   2.1 What is Money Laundering? 4
   2.2 What is terrorist Financing 6
   2.3 Risks making South Africa vulnerable to terrorist financing 6
   2.4 The role of FATF - the global watchdog 7
   2.5 The Financial Intelligence Centre (FIC) 8
   2.6 The National Treasury 10
   2.7 Mutual Evaluation Report Findings by FATF 10
   2.8 What is beneficial ownership? 12
3. Understand the implications for your clients 15
   3.1 New requirements proposed in the GLA Bill 15
      3.1.1 Trust Property Control Act, 57 of 1988 (including Nov 2022 proposals) and Regulations 15
      3.1.2 Non-profit Organisations Act, 71 of 1997 (including Oct/Nov 2022 proposals) 21
      3.1.3 Companies Act, 71 of 2008 (including Oct 2021 and Nov 2022 proposals) and Regulations 28
      3.1.4 The Financial Intelligence Centre Act 29
4. Offer new services to clients 31
   4.1 Responsibilities of accountants 31
   4.2 IFAC'S Action Plan for Fighting Corruption and Economic Crime 32
   4.3 Potential new services regarding the beneficial ownership register 33
   4.4 Know your customer (KYC) checks 35
   4.5 How does KYC work? 37
5. Conclusion 37

1. Introduction

This purpose of this guidance document on the General Laws Amendment Bill (GLA Bill) and its impact on accountants is to:

- Provide background for the GLA Bill including reports and event up to date.
- Explain key concepts and role-players
- Highlight the role of accountants
- What does the GLA Bill mean for us, new services that can be offered.

South Africa is on the verge of being greylisted by the Financial Action Task Force (FATF). This would mean that the country would be labeled as a 'high-risk jurisdiction to transact', requiring anyone wanting to do business with South Africa to jump through an additional layer of compliance hoops.

You can download the relevant documents here:

GLA Bill: https://pmg.org.za/bill/1098/

Mutual Evaluation Report by FATF: https://www.treasury.gov.za/publications/other/Mutual-Evaluation-Report-South-Africa.pdf

The greylisting emanates from the Mutual Evaluation Report published by FATF, finding South Africa non-compliant in various aspects.

Greylisting comes with unwelcome consequences and to avoid it National Treasury published the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill. The bill proposes amendments to the following Acts:

- Financial Intelligence Centre Act
- Nonprofit Organisations Act
- Trust Property Control Act
- Companies Act.

The amendments will bring new rules, for example, about how companies keep records of people who own and control the firm, and bar people who are convicted of offences relating to money laundering and terrorist financing from registering as company directors as well as trustees.

What does this mean to us as accountants?

New requirements mean that there are over 2 million entities (companies, NPOs, trust etc.) that will need additional support. This means new opportunities to take advantage of and new services you may be able to offer to clients.

Understanding the proposed requirements will enable you to approach clients proactively and This guide and course contain information you need to know so you can approach your clients proactively, offer these services and increase your client base.

How can we do it?

Step 1. Learn about the underlying concepts and the background to the legislative changes

Step 2. Understand the implications for your clients

Step 3. Offer new services to clients

a. Assist clients to comply with legislation
b. Preparing and maintaining information and registers required.

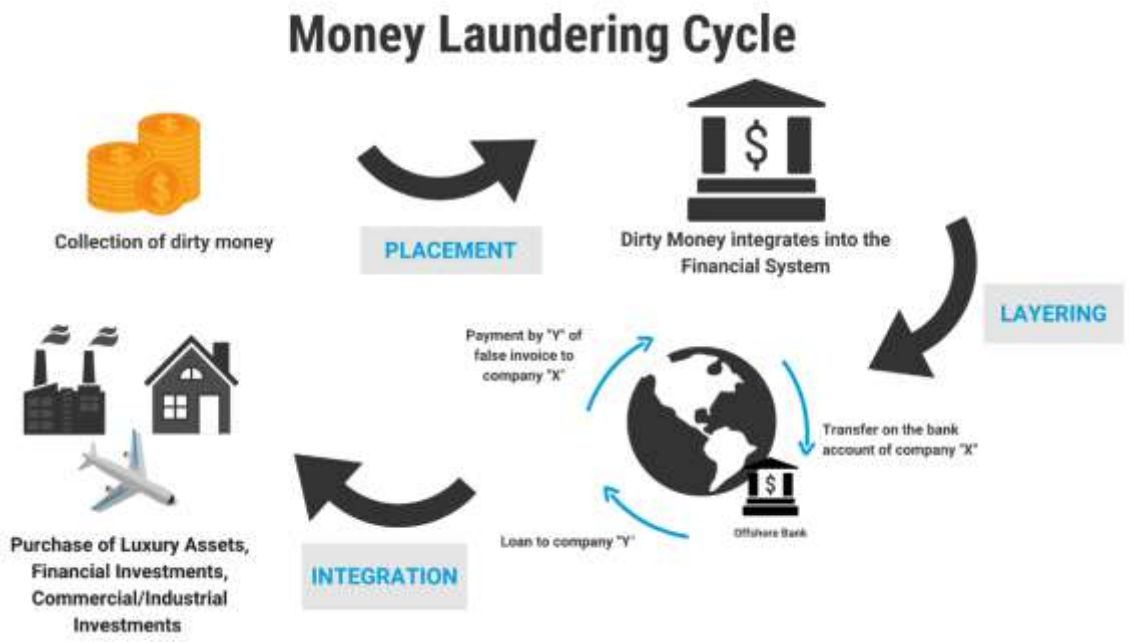
2. Understanding the basics

2.1 What is Money Laundering?

Criminal activities, such as drug trafficking, illegal arms sales, smuggling, human trafficking, corruption and others, tend to generate large amounts of profits for the individuals or groups carrying out the criminal act. However, by using funds from such illicit sources, criminals risk drawing the authorities' attention to the underlying criminal activity and exposing themselves to criminal prosecution. To benefit freely from the proceeds of their crime, they must therefore conceal the illicit origin of these funds.

Briefly described, "money laundering" is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin. The money from the criminal activity is considered dirty, and the process “launders” it to make it look clean.

Diagram 1. How does money laundering happen?



Source: https://www.unodc.org/romena/en/money-laundering.html

Money laundering is a process that typically follows three stages to finally release laundered funds into the legal financial system.

3 Stages of Money Laundering:

- **Placement** (i.e. moving the funds from direct association with the crime)
- **Layering** (i.e. disguising the trail to foil pursuit)
- **Integration** (i.e. making the money available to the criminal from what seem to be legitimate sources)

In reality, money laundering cases may not have all three stages, some stages could be combined, or several stages repeat several times. For instance, Cash from drug sales is divided into small amounts then they are deposited by "money mules" and afterward transferred as payment for services to a shell company. In this case, the placement and layering are done in one stage.

Stage 1. launderer introduces his illegal profits into the financial system

Stage 2. layering stage where the launderer channels funds through purchases or sales transactions, or wires funds through various banks across the globe. This is done to move the funds away from the source. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations.

Stage 3 – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

2.2 What is terrorist Financing

Terrorist financing involves the solicitation, collection, or provision of funds with the intention that they may be used to support terrorist acts or organizations. Funds may stem from both legal and illicit sources. The primary goal of individuals or entities involved in the financing of terrorism is therefore not necessarily to conceal the sources of the money but to conceal both the funding activity and the nature of the funded activity.

Sources: https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering

The terrorism financing process typically involves four stages: raising, moving, storing or using funds and other assets, the stages are not necessarily sequential or linked to a specific terrorism related activity.

- **Raising funds** via numerous methods including legitimate means, donations, self-funding, and criminal activity.
- **Moving funds** to an individual terrorist or a terrorist group, network, or cell through a series of witting or unwitting facilitators and/or intermediaries by means of banking and remittance sectors, informal value transfer systems, bulk cash smuggling and crypto assets, and smuggling high value commodities such as oil, art, antiquities, agricultural products, precious metals, and gems, as well as used vehicles.
- **Storing funds** intended for an individual terrorist or a terrorist group, network or cell by similar means used in moving funds while planning for their use.
- **Using funds** for payment when needed to further the terrorist organisation, group, network, or cell's goals, including living expenses, to purchase weapons or bomb making equipment and/or to finance terrorism operations.

2.3 Risks making South Africa vulnerable to terrorist financing

In March 2022 the FIC published its report on South African National Terrorist Financing Risk Assessment identifying current terrorism financing risks and vulnerabilities.

- Cash remains a high risk for use in terrorism financing due to it being easily accessible, largely untraceable and anonymous.
- Border integrity remains under pressure as international terrorists have managed to travel in and out of the country abusing South African travel and identity document. Long, porous borders in the SADC region with relatively poor controls at numerous land and sea entry points

- Charities and non-profit organisations (NPOs) channeling funds raised across boarders could potentially be intercepted and siphoned off by terrorist groups.
- Support for the Islamic State in South Africa
- Foreign terrorist fighters (FTFs) are globally used by terrorist groups as combatants and to carry physical cash and other material supplies to and between conflict zones
- Links between terrorist and organised crime groups and syndicates are wide-ranging and manifest in various forms ranging from tolerant coexistence to collaboration

You can read more about the South African National Terrorism Financing Risk Assessment here:

https://www.fic.gov.za/Documents/TF%20NRA%2031%20March%202022.pdf

In Southern Africa, the attacks carried out by Al Sunnah Wa Jama'ah (ASWJ) in northern Mozambique, many of which having been claimed by the Islamic State Central Africa Province (ISCAP), is of growing security concern.

South Africa needs to consider the possibility that its territory may be used as a logistical hub, transit country (channeling terrorists, resources, and funds) and recruitment base by terrorist groups, including the Al Sunnah Wa Jama'ah (ASWJ).

2.4 The role of FATF - the global watchdog

The Financial Action Task Force (FATF) is the international money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. More than 200 countries and jurisdictions, including South Africa, are members of FATF. SA has been a member of FATF since 2003.

FATF is an international body that promotes policies and standards for combating money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction. South Africa became a member of the FATF in 2003. The members of the FATF have collectively set international standards for measures which countries should implement to combat money laundering and terrorist financing.

When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the "**grey list**".

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing and

other related threats to the integrity of the international financial system. Starting with its own members, the FATF monitors countries' progress in implementing the FATF Recommendations; reviews money laundering and terrorist financing techniques and counter-measures; and, promotes the adoption and implementation of the FATF Recommendations globally.

2.5 The Financial Intelligence Centre (FIC)

The objectives of the FIC

The FIC was established to identify proceeds of crime, combat money laundering, and the financing of terrorism.

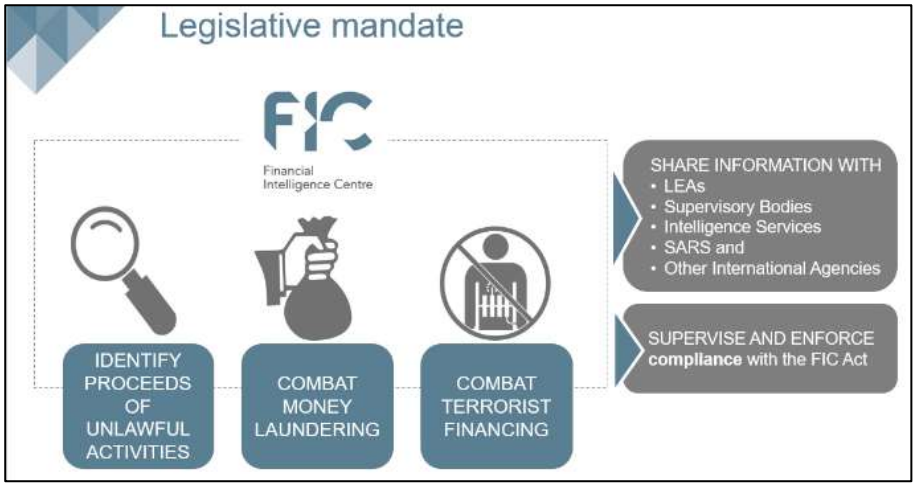
The Financial Intelligence Centre (FIC) exists to apply measures outlined in the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), which are intended to make the financial system intolerant to abuse. The FIC does this by working towards fulfilling its mandate of assisting in identifying the proceeds of crime, combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction.

What the FIC does

As the country's financial intelligence unit, the FIC implements its part of the country's framework for anti-money laundering and combating of terrorist financing by:

- Receiving transaction and other data from accountable and reporting institutions and other business, and conducting analysis on this data
- Producing financial intelligence from this data, for the use of competent authorities in their investigations and applications for forfeiture of assets
- In this way, the FIC contributes to the achievements in the criminal justice system.

Diagram: Legislative mandate of FIC



You can click here to watch a short introductory video on the FIC: https://www.youtube.com/watch?v=U1v7RkfZdI0&t=5s

For more about the FIC visit www.fic.gov.za

Some interesting facts about the FIC are included in the table below:

ITEM	2021/22
Total institutions registered	45 555
Regulatory reports received	>5.12 million
Cash threshold reports received	>4.5 million
Suspicious and unusual transaction reports received	533 277
Inspection reports issued by FIC and supervisory bodies	404 FIC and 739 supervisory bodies
Value of sanctions imposed	>R41 million
Financial intelligence reports disseminated	3 114
Responses to requests for financial intelligence	2 300
Proactive financial intelligence reports disseminated	782 of which 131 related to high-priority matters
Financial intelligence reports on illicit financial flows	32
Value of suspected criminal proceeds frozen	R204 million
Proceeds preserved and recovered through Fusion Centre over two years since the inception of the Fusion Centre	>R1.75 billion
Value of proceeds of crime recovered, in which the FIC's financial intelligence was used	>R5.1 billion
Collaboration between SAMLIT and the Fusion Centre over the last two years led to the preservation and directives to freeze accounts to this amount	R86 million

How does it fulfil its role?

The FIC does this by, among other measures:

- Providing for customer due diligence measures including regarding beneficial ownership
- Providing for a risk-based approach to client identification and verification
- Providing for implementation of financial sanctions and administering resolutions of the United Nations Security Council
- Sharing FIC and supervisory body information with competent authorities
- Providing for risk management and compliance programmes, governance and training on combating money laundering and terrorist financing
- Issuing FIC and supervisory body directives
- Along with supervisory bodies, applying administrative sanctions where there is non-compliance
- Registering accountable and reporting institutions.

2.6 The National Treasury

The National Treasury is responsible for managing South Africa's national government finances. The Constitution mandates the National Treasury to ensure transparency, accountability, and sound financial controls in the management of public finances.

National Treasury is responsible to:

- Coordinate macroeconomic policy and intergovernmental financial relations
- Manage the budget preparation process
- Facilitate the Division of Revenue Act, which provides for an equitable distribution of nationally raised revenue between national, provincial, and local government; and
- Monitor the implementation of provincial budgets.

National Treasury chairs an interdepartmental committee of AML/CFT/CPF that is overseeing and coordinating a comprehensive response and the follow-up actions to be taken, based on the recommendations contained in the report. National Treasury will report regularly to Cabinet on the country's progress. The continuous strengthening of the country's AML/CFT/CPF system is central to protecting and helping to make the financial system intolerant to abuse.

National Treasury is also responsible for publishing the GLA Bill.

2.7 Mutual Evaluation Report Findings by FATF

The FATF has developed 40 Recommendations, or FATF Standards, which promotes a co-ordinated global response to prevent organized crime, corruption and terrorism. It reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets. The FATF conducts periodic reviews with member countries to ensure that they implement the FATF Standards fully and effectively.

FATF evaluation rates technical compliance and comments on effectiveness measures taken.

The technical compliance component of the Methodology refers to the implementation of the specific requirements of the FATF Recommendations, including the framework of laws and enforceable means; and the existence, powers and procedures of competent authorities. For the most part, it does not include the specific requirements of the standards that relate principally to effectiveness. These are assessed separately, through the effectiveness component of the Methodology.

Technical ratings are defined in the diagram below.

Technical compliance ratings

Compliant	C	There are no shortcomings.
Largely compliant	LC	There are only minor shortcomings.
Partially compliant	PC	There are moderate shortcomings.
Non-compliant	NC	There are major shortcomings.
Not applicable	NA	A requirement does not apply, due to the structural, legal or institutional features of a country.

Effectiveness focuses on outcomes relating to the extent to which financial systems and economies mitigate the risks and threats of money laundering, and financing of terrorism and proliferation. This could be in relation to the intended result of a given (a) policy, law, or enforceable means; (b) programme of law enforcement, supervision, or intelligence activity; or (c) implementation of a specific set of measures to mitigate the money laundering and financing of terrorism risks and combat the financing of proliferation. Effectiveness is defined as "The extent to which the defined outcomes are achieved".

In October 2021, a FATF evaluation of South Africa found deficiencies, particularly related to the lack of availability of data for law enforcement attempting to tackle state capture cases. FATF will therefore now follow an enhanced follow-up process and South Africa must show progress by October 2022. If the deficiencies aren't remedied by February 2023, the country risks joining the 'greylist' of other countries such as the United Arab Emirates. The consequences of this are serious: an IMF study found that a country can lose over 7% of total capital inflows following greylisting. A risk South Africa the country can ill-afford.[1]

Some of the key findings included in the report are:

- South Africa has made good progress in developing its system for combating money laundering (ML) and the financing of terrorism (FT) since its last FATF mutual evaluation in 2003
- The Financial Intelligence Centre (FIC) effectively produces operational financial intelligence that Law Enforcement Agencies (LEAs) use to help investigate predicate crimes and trace criminal assets, but the LEAs lack the skills and resources to proactively investigate ML or TF
- Use of cash is prevalent in South Africa, and it has been assessed as high risk for ML and TF, including cross-border movement. Detecting and recovering cash proceeds of crime remains challenging and efforts to detect and confiscate falsely or undeclared cross-border movement of currency needs substantial improvement

[1] https://www.openownership.org/en/blog/New-company-ownership-regulation-in-South-Africa-is-step-in-right-direction/

- A reasonable number of ML convictions is being achieved but only partly consistent with South Africa's risk profile. Cases largely concern self-laundering and few cases of third-party ML and foreign predicate offenses are prosecuted
- South Africa has convicted one person for TF since the last ME and was prosecuting one case as of the onsite which is inconsistent with its significant TF risks
- Law enforcement faces challenges to readily obtain accurate and updated beneficial ownership (BO) information about companies and trusts adequate to enable effective investigation of ML and TF
- Smaller Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs), for example real estate agents, dealers of precious metals and stones, Legal professionals, are focused on compliance, not on identifying and understanding risks. TF risk is understood by the private sector to some extent. Overall, the risk-based approach (RBA) is inadequately implemented.
- Risk-based AML/CFT regulation and supervision is relatively new and not properly used.
- The FIC Act imposes customer due diligence, record keeping, and suspicious transaction reporting and internal control requirements. It should be noted that, after the FIC Act came into force, South Africa implemented a program to re-identify all existing customers. The issue of beneficial ownership has not yet been addressed, however, and South Africa also needs to adopt measures dealing with politically exposed persons (PEPs) and correspondent banking.
- The FIC Act covers some designated non-financial businesses and professions (DNFBPs); however, South Africa needs to broaden the legislation to cover dealers in precious metals and stones, company service providers, and more broadly cover accountants.
- At the time of the on-site visit, there were not adequate powers to supervise and enforce compliance with AML/CFT provisions; however, amendments to FIC Act have been enacted, and when they enter into force this year they will significantly enhance the compliance regime.
- South African authorities have established effective mechanisms to co-operate on operational matters to combat ML and FT. South Africa can also provide a wide range of mutual legal assistance, including the possibility to extradite its own nationals.

2.8 What is beneficial ownership?

The beneficial owner has a right to the income or a share in it, even though the person may not be the legal owner. The beneficial owner is the natural person (not an organization) who is really behind the company.

The FATF **defined 'beneficial owner'** as: the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to "**ultimately owns or controls**" and "**ultimate effective control**" refer to situations in which ownership/control is exercised through a chain of ownership or by

means of control other than direct control. This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

Legal owners of an entity may not be the same as beneficial owners

'***The legal owner of a property is the person who owns the legal title of the land, whereas the beneficial owner is the person who is entitled to the benefits of the property***.'

Why is beneficial ownership important?

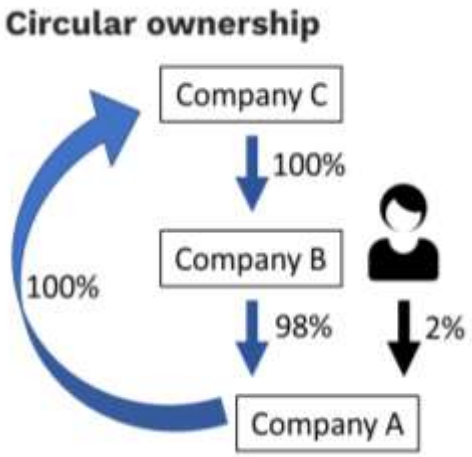
The COVID-19 pandemic has exposed a global financial system in need of its own vaccine. A recent Special Investigation Unit report revealed a staggering R7.8bn worth of cases of fraud and corruption related to COVID-19 public procurement. Investigations are ongoing. Evidence from the Zondo Commission inquiry into state capture points to the systemic vulnerabilities in the way in which money flows through the state, and the urgent need of an antidote. The common thread is the lack of transparency on the true owners of entities doing business with the state. This creates serious risk of corruption, money-laundering and illicit financial flows.

How can a beneficial interest be set up?

The most common way to create a beneficial interest is **through an express trust**. This is where the legal owner signs a trust deed or written agreement declaring that the legal owner holds the property 'on trust' for someone else, the beneficial owner.

While it is understood that beneficial ownership must be obtained at time of account opening or at loan renewal, if the loan was underwritten, a triggering event is a change in ownership structure, account type, transaction activity, or responsibility (control prong) that may require verifying and updating previously identified information.

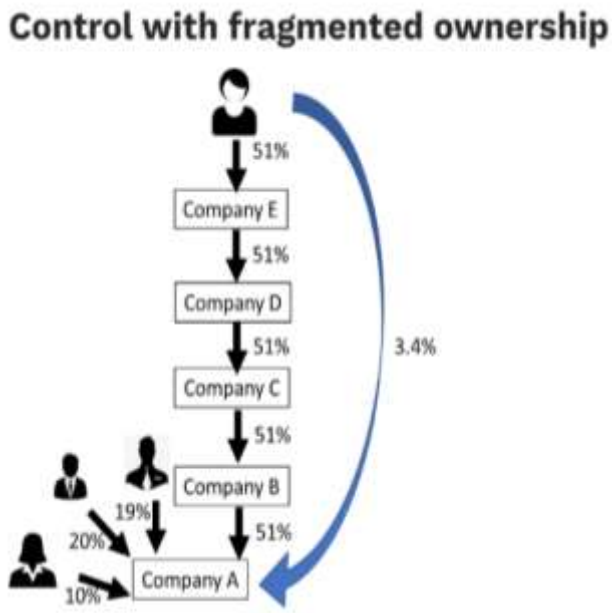
Example 1.



Who is the beneficial owner?

In this case the lady in the picture has ultimate control of company A because there is no other owner. The rest is just a circular ownership structure (company C owns company B. Company B owns company A, and company A owns company C).

Example 2.



Every party to the trust should be identified as a beneficial owner: the founders of the trust; trustee(s), beneficiaries, and any other person with significant control over the trust.

If any of the above parties are legal entities, the beneficial owner will be 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 arrangement.

Source: https://taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/

Why is it important to have beneficial ownership information disclosed?

Legal and beneficial ownership information can assist competent authorities, in particular law enforcement authorities and financial intelligence units to identify those natural persons who may be responsible for the underlying activity of concern, or who may have relevant information to further an investigation. This allows the authorities to "follow the money" in financial investigations and financial intelligence involving suspect or potentially suspect accounts/assets held by legal entities.

According to the Companies Act 2008, legal entities are required to keep an up-to-date register of its issued securities, including shares. The register should contain, among other things, the names, and addresses of persons to whom the securities were issued.

For public companies, the register should contain information on whether the shares are held by a nominee and the identity of the real owner disclosed. In the case of other legal entities, nominee shareholders are not obliged to proactively disclose that they are acting as nominees, but if the company has reasonable cause to believe that any of the shares are held by a nominee it may require the nominee to disclose the identity of the real owners within 10 days. These

securities registries can be a good source of ownership information, but they do not offer definitive information on the actual beneficial owners.

Example: Public procurement

Public procurement is a high-risk corruption activity, and the risks were considerably heightened during the pandemic and vaccine roll-out, which included relaxation of procurement regulations as the government accelerated the purchasing of goods and services to meet the urgent health and livelihood crisis.

The relaxation of these safeguards and controls led to corruption in the form of conflicts of interest, bid-rigging, and even bribes.

Additionally, as illustrated in Special Investigation Unit report, 33% of companies awarded contracts during the pandemic were labelled as multipurpose – meaning one day the company is building a hospital and the next day, providing online education services, without due diligence as to whether the company has expertise or capacity to provide both services.

3. Understand the implications for your clients

3.1 New requirements proposed in the GLA Bill

GLA Bill provides a definition of **beneficial ownership** bringing in **additional reporting requirements** in the following Acts:

- Trust Property Control Act 57, 1988
- Nonprofit Organisations Act, 1997
- Companies Act 71 of 2008
- Financial Intelligence Act

Following are extracts from the Bill for each of the acts. Proposed changes are underlined for the acts, with the exception of the Financial Intelligence Act for which there is a summary of the key changes included below. Wording that is proposed to be deleted is displayed in **[square brackets].**

3.1.1 Trust Property Control Act, 57 of 1988 (including Nov 2022 proposals) and Regulations

1. Definitions

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.

6. Authorization of trustee and security

(1A) A person is disqualified from being authorized as a trustee if the person:

(a) is an unrehabilitated insolvent;

(b) has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act 69 of 1984);

(c) is prohibited in terms of any law to be a director of a company;

(d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;

(e) 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:

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

(ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or

(iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act 19 of 2012), 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

(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

(g) is an unemancipated minor, or is under a similar legal disability.

(1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of:

(a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or

(b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C).

(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.

(1D) At any time before the expiry of a person's disqualification in terms of subsection (1A)(d) or (e):

(a) the Master may apply to a court for an extension contemplated in subsection (1B)(b); and

(b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.

(1E) A court may exempt a person from the application of any provision of subsection (1A)(a), (c), (d) or (e).

(1F) The Registrar of the Court must, upon:

(a) the issue of a sequestration order;

(b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or

(c) a conviction for an offence referred to in subsection (1A)(e),

send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.

(1G) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.

(1H)

(a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law.

(b) The prescribed requirements referred to in paragraph (a) 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 38 of 2001).

8. Foreign trustees

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].

10. Trust account

(1) Whenever a person receives money in his capacity as trustee, he shall deposit such money in a separate trust account at a banking institution or building society.

(2) A trustee must disclose their position as trustee to any accountable institution with which the trustee engages in that capacity and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.

11. Registration and identification of trust property

(1) Subject to the provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), section 40 of the Administration of Estates Act, 1965 (Act 66 of 1965), and the provisions of the trust instrument concerned, a trustee shall:

(a) indicate clearly in his bookkeeping the property which he holds in his capacity as trustee;

(b) if applicable, register trust property or keep it registered in such manner as to make it clear from the registration that it is trust property;

(c) make any account or investment at a financial institution identifiable as a trust account or trust investment;

(d) in the case of trust property other than property referred to in paragraphs (b) or (c), make such property identifiable as trust property in the best possible manner;

(e) record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions relating to trust property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property.

(1A) The prescribed requirements referred to in paragraph (e) 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 38 of 2001).

11A. Beneficial ownership

(1) A trustee must:

(a) establish and record the beneficial ownership of the trust;

(b) keep a record of the prescribed information relating to the beneficial owners of the trust;

(c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and

(d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.

(2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.

(3) A trustee must make the information contained in the register referred to in subsection (1)(c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed.

(4) The prescribed requirements referred to in this section 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 38 of 2001).

19. Failure by trustee to account or perform duties

(1) If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon **[him by]** the trustee by this Act, the trust instrument or by any other law,

- the Master or any person having an interest in the trust property
- may apply to the court for an order directing the trustee to comply with **[such]** the Master's request or to perform **[such]** the duty.

(2) A trustee who fails to comply with an obligation referred to in section 10(2), 11(1)(e) or 11A(1), commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

20. Removal of trustee

(1) A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his office by the court if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries.

(2) A trustee may at any time be removed from his office by the Master:

(a) if **[he has been convicted in the Republic or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine]** the person becomes disqualified to be a trustee in terms of section 6(1A); or

(b) if he fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested **[thereto or within such further period as]** to do so by the master, or within a further period that is allowed by the Master; or

(c) if **[his]** the trustee's estate is sequestrated or liquidated or placed under judicial management; or

(d) if **[he]** the trustee has been declared by a competent court to be mentally ill or incapable of managing **[his]** their own affairs or if **[he]** the trustee is by virtue of the [Mental Health Act, 1973 (Act 18 of 1973)] Mental Health Care Act, 2002 (Act 17 of 2002), detained as a patient in an institution or as a State patient; or

(e) if **[he]** the trustee fails to perform satisfactorily any duty imposed upon [him] the trustee by or under this Act or to comply with the requirements of this Act or any lawful request of the Master.

3.1.2 Non-profit Organisations Act, 71 of 1997 (including Oct/Nov 2022 proposals)

1. Definitions

Constitution

Includes a trust deed and memorandum **[and articles of association]** of incorporation.

Financial year

In relation to the **[Directorate]** office of the registrar of nonprofit organisations, means a period which commences on 1 April and ends on 31 March in the following year.

Minister

The Minister **[for Welfare and Population Development]** responsible for social development.

National department

The national department responsible for **[welfare]** social development.

Office of the registrar

The body established in terms of section 4.

Registrar

The person designated in terms of section 8.

2. Objects of Act

The objects of this Act are to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by:

(a) creating an environment in which nonprofit organisations can flourish;

(b) establishing an administrative and regulatory framework within which 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;

(d) creating an environment within which the public may have access to information concerning registered nonprofit organisations; and

(e) promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organisations;

(f) facilitating voluntary registration of nonprofit organisations and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa.

4. Establishment of Directorate for Nonprofit Organisations

The Minister must establish within the national department **[a Directorate]** the Office of the Registrar for Nonprofit Organisations.

5. Functions of Directorate

(2) In order to promote the achievement of the objects of this Act and to perform its functions and duties, the Directorate may collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state, which may include:

(a) measures to co-ordinate their approach to performing their functions in terms of legislation;

(b) entering into a memorandum of understanding, which, among other matters, may provide for:

(i) the sharing of information between the parties, including:

(aa) the types of information to be furnished by each party; or

(bb) measures to protect the confidentiality of the information, including limiting access to specified persons or incumbents of specified positions, subject to the provisions of applicable legislation;

(ii) collaboration, co-operation between the parties, and assisting each other in the performance of their respective duties in terms of legislation, including through the provision of advice and support; and

(iii) the delegation by the Directorate to another organ of state of specified administrative functions.

8. Designation of Director of Nonprofit Organisations

The Minister must designate an employee of the national department as the **[Director]** Registrar of Nonprofit Organisations to be in charge of the **[Directorate]** Office of the Registrar and to perform the other functions conferred on the **[director]** Registrar by or in terms of this Act or any other law.

12. Requirements for registration

(1) Any nonprofit organisation that is not an organ of state may apply to the **[director]** office of the Registrar for registration.

(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;

(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 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.

(2) 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:

(a) state the organisation's name;

(b) state the organisation's main and ancillary objectives;

(c) state that the organisation's income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered;

(d) make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers;

(e) make provision for the organisation's continued existence notwithstanding changes in the composition of its membership or office-bearers;

(f) ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office-bearers;

(g) specify the powers of the organisation;

(h) specify the organisational structures and mechanisms for its governance, which shall at a minimum include the office of or designation of the chairperson, secretary and treasurer with their deputies;

(i) set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;

(j) determine the manner in which decisions are to be made;

(k) provide that the organisation's financial transactions must be conducted by means of a banking account;

(l) determine a date for the end of the organisation's financial year;

(m) set out a procedure for changing the constitution;

(n) set out a procedure by which the organisation may be wound up or dissolved; [and]

(o) provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another nonprofit organisation having similar objectives;

(p) disclose whether a member or office bearer has been previously been found guilty of an offence relating to the embezzlement of money of any nonprofit organisations and the status of the conviction.

(3) The constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or intends to register, may make provision for matters relevant to conducting its affairs, including matters that:

(a) specify qualifications for and admission to membership of the organisation;

(b) determine the circumstances in which a member will no longer be entitled to the benefits of membership;

(c) provide for termination of membership;

(d) provide for appeals against loss of the benefits of membership or against termination of membership and specify the procedure for those appeals and determine the body to which those appeals may be made;

(e) provide for membership fees and matters determining membership fees and other payments by members;

(f) provide that members or office-bearers do not become liable for any of the obligations and liabilities of the organisation solely by virtue of their status as members or office-bearers of the organisation;

(g) provide for the appointment of office-bearers and define their respective functions;

(h) set out a procedure for nominating, electing or appointing office-bearers;

(i) determine the circumstances and manner in which office-bearers may be removed from office and provide for appeals against such removal and specify procedures for those appeals and determine a body to which those appeals can be made;

(j) provide that its office-bearers are not personally liable for any loss suffered by any person as a result of an act or omission which occurs in good faith while the office-bearer is performing functions for or on behalf of the organisation;

(k) provide for making investments;

(l) determine the purposes for which the funds of the organisation may be used; and

(m) provide for acquiring and controlling assets.

(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).

(4) No nonprofit organisation that has a similar or identical name to an existing nonprofit organisation or any other organisation and such name is likely to cause confusion with any other organisation or individual person shall be permitted to register, unless there is sufficient proof that the applicant has a legal right to that name or has consent to use that name.

(5) Any nonprofit organisation, including foreign nonprofit organisations that intend to operate business within the Republic must be registered in terms of this Act before operate and shall be subjected to the provisions of this Act and any other laws of the Republic.

13. Application for registration

(1) A nonprofit organisation **[may apply]** applies for registration by submitting to the director:

- the prescribed form, properly completed;
- two copies of its constitution; and;
- such other information as may be required by the director so as to assist the director to determine whether or not the nonprofit organisation meets the requirements for registration.

(2) Within two months after receiving an application which complies fully with subsection (1) the director:

(a) must consider the application and any further information provided by the applicant; and

(b) if satisfied that the applicant complies with the requirements for registration, must register the applicant by entering the applicant's name in the register.

(3) If, after considering an application, the director is not satisfied that the application complies with the requirements for registration, the director must send the applicant a written notice, giving reasons for the decision and informing the applicant that it has one month from the date of the notice to comply with those requirements.

(4) The period within which compliance must be effected may be extended by the director on good cause shown by the applicant.

(5) If an applicant who has received a notice in terms of subsection (3) complies with the requirements for registration timeously, the director must register the applicant by entering the applicant's name in the register.

(6) If an applicant who has received a notice in terms of subsection (3) has not complied timeously with the requirements set out in that notice, the director must:

(a) refuse to register the applicant; and

(b) notify the applicant in writing of the refusal and the reasons for it.

(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.

17. Accounting records and reports

(1) Every registered nonprofit organisation must, **[to the standards of generally accepted accounting practice]** in the prescribed manner:

(a) keep accounting records of its income, expenditure, assets and liabilities; and

(b) within six months after the end of its financial year, draw up financial statements, which must include at least:

(i) a statement of income and expenditure for that financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of that financial year.

18. Duty to provide reports and information

(1) Every registered nonprofit organisation must, in writing, in a prescribed manner, provide the director with:

(a) a narrative report of its activities [in the prescribed manner] together with its financial statements and the accounting officer's report as contemplated in section 17(1) and (2)[, within nine months after the end of its financial year];

(b) the names and physical, business and residential addresses of its office-bearers within one month after any appointment or election of its office-bearers even if their appointment or election did not result in any changes to its office-bearers;

(bA) prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations;

(c) a physical address in the Republic for the service of documents as contemplated in section 16(2);

(d) notice of any change of address within one month before a new address for service of documents will take effect; and

(e) such other information as may be prescribed.

(1A) The prescribed requirements referred to in paragraph (bA) of subsection (1) must be prescribed after having consulted the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001).

(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.

21. Cancellation of registration

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

24. Register of nonprofit organisations

(1) The director must keep a register in the prescribed form of:

- all nonprofit organisations that have been registered within that financial year;
- all nonprofit organisations whose registrations have been cancelled; [**and**]
- all nonprofit organisations that have voluntarily deregistered or have been wound up or dissolved.

(d) prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations.

(4) A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to any person as prescribed.

(5) The prescribed requirements referred to in subsections (1)(d) and (4) 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 38 of 2001).

25. Access by public to documents submitted to director

(2) **[All members of the public have the right of access to and to inspect any document that the director is obliged to preserve]** Any person who wishes to access information in terms of subsection (1) must do so in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

[(3) The Minister must prescribe the circumstances and manner in which the public may have access to or inspect such documents.]

25. Access by public to documents submitted to director

(2) [All members of the public have the right of access to and to inspect any document that the director is obliged to preserve] Any person who wishes to access information in terms of subsection (1) must do so in terms of the Promotion of Access to Information Act, 2000 (Act 2 of 2000)**.**

[(3) The Minister must prescribe the circumstances and manner in which the public may have access to or inspect such documents.]

3.1.3 Companies Act, 71 of 2008 (including Oct 2021 and Nov 2022 proposals) and Regulations

1. Definitions

Affected company

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).

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.

True owner

A natural person, who would in all the circumstances be considered to be the ultimate and true owner of the relevant securities, whether by reason of being capable either directly or indirectly (via the intermediation of others in the chain of holders of beneficial interest in the relevant securities) of directing the registered holder with regard to the securities or because of being a person for whose benefit the securities enure or for any other reason, not limited ejusdem generis, which could be the registered holder itself, or if the registered holder is not the true owner or the only true owner, would be the last person in the chain of any holders of beneficial interest in the relevant securities.

3.1.4 The Financial Intelligence Centre Act

Summary of changes:

The Bill proposes, amongst others:

Suspicious and unusual transactions duties that apply to all business (Section 29 reporting)

(i) Section 52 and 57 administrative sanctions for failure to make a section 29 report or section 32 additional report timeously, or for section 64 conducting transactions to avoid reporting duties

Note: These sanctions will apply in addition to the existing offences triggered by each of the above actions.

Prominent influential person

(ii) That a prominent influential person, as referenced in sections 21G, 21H, 42, and 79C, is an individual who holds, or held at any time in the preceding 12 months, the position of chairperson of the board; chairperson of the audit committee; executive officer; or chief financial officer, of a threshold company;

Note: A company will be a threshold company if it provides goods or services to an organ of state and the annual transactional value of the goods and/or services exceeds an amount to be determined by Gazette.

Final note: References to domestic and foreign politically exposed persons, will also be updated in sections 1; 21F; 21G; 21H; 42; 79A and 79B and schedules 3A and 3B.

Accountable institutions information and compliance management

(iii) Prescribed personal information protection to facilitate sharing of information between accountable institutions when needed to meet section 29 reporting requirements; and additional proliferation financing, group wide approach, host country, and doubts about section 29 reporting considerations in programmes.

Note: When considering the Bill also consider the proposed expanded list of accountable institutions.

Accountable institutions ongoing due diligence

(iv) That if an accountable institution suspects a suspicious or unusual transaction or activity, and reasonably believes customer due diligence will disclose to the client that a section 29 report will be made, it may discontinue the due diligence and consider making a section 29 report.

Note: An accountable institution that fails to comply with a monitoring order will be subject to and administrative sanction, in addition to committing an offence.

Proliferation financing

(v) Defining proliferation financing as an activity likely to have the effect of providing property, a financial or other service or economic support to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery - also see section 3 and section 27A.

Note: Includes an activity that contravenes a UN Security Council identified person or entity prohibition.

Beneficial owner

(vi) Redefining beneficial owner as a natural person who directly or indirectly ultimately owns or exercises effective control of a client of an accountable institution or of a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or

Note: The definition will also include a natural person who directly or indirectly exercises control of a client of an accountable institution on whose behalf a transaction is being conducted.

Final note: This definition will also include, in respect of legal persons, partnerships and trusts, each natural person as contemplated in section 21B.

Access to information

(vii) The FIC may, for the purposes of this Act and to perform its functions effectively, request info from any organ of state; request access to a database held by an organ of state; or have access to information in a register kept by an organ of state in the execution of a statutory function of that organ of state.

Note: Also see section 36 information held by supervisory bodies and South African Revenue Service.

Financial sanction

(viii) Immediate effect for the purposes of the Act to an adopted UN Security Council financial sanction,

and expanded prohibition referencing a person acting on behalf of or at the direction of an identified person or entity.

Note: Also see the proposed administrative sanction, in addition to committing a criminal offence, for noncompliance.

4. Offer new services to clients

4.1 Responsibilities of accountants

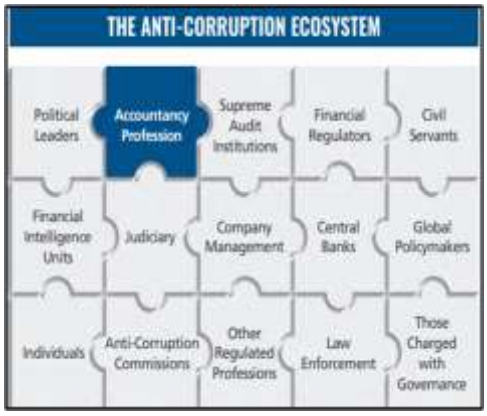
- Ethical responsibilities to avoid assisting criminals or facilitating criminal activity - consider their ethical obligations as set out under the Code of Ethics.
- Risks considerations when accepting clients – What is the nature of services provided (e.g., assurance services or providing financial advice or company secretarial services) will determine the scope and depth of due diligence and risk assessment.

4.2 IFAC'S Action Plan for Fighting Corruption and Economic Crime

Accountants have a unique insight and understanding about financial transactions of our clients. It is pertinent that accountants should be part of the fight against corruption. IFAC, recognizing the need to mobilise accountants issued an Action Plan.

IFAC's Action Plan for Fighting Corruption and Economic Crime provides a framework urging all accountants to continue to engage on how to maximise the professions contribution. The Plan provides for five pillars which are broad enough to provide a consistent framework for actions to support the plan as it evolves over time.

1. Harnessing the full potential of education and professional development
2. Supporting global standards (ISQM1, ISAs, IFRS, IPSAS and others)
3. Promoting evidence-based policymaking is the process of using high-quality information to inform policy decisions
4. Strengthening impact through engagement and creating partnerships
5. Contributing our expertise through advocacy and thought leadership



You can download the Action Plan here: https://www.ifac.org/knowledge-gateway/contributing-global-economy/discussion/ifacs-action-plan-fighting-corruption-and-economic-crime.

4.3 Potential new services regarding the beneficial ownership register

According to the new requirements of the GLA Bill Companies, NPOs and trusts should maintain beneficial interest registers and submit registers to relevant regulatory bodies.

New services which can be offered

The following services may be applicable to your clients. Offer to perform these services for your clients as part of company secretarial duties which will be governed by Agreed upon Procedure standard. Follow the process described below to identify the possible services you may be able to provide.

- Consider the new requirements your client is required to comply with.
  - Obtaining information via declarations on beneficial ownership information
  - Setting up and maintaining registers in the correct format
  - Submitting statutory reports to relevant regulatory bodies
  - Assisting with the risk identification and assessment processes
  - Assisting with customer diligence checks
- Include the new tasks in an engagement letter.
- Include new services on your website and in emails to clients.

Obtaining beneficial ownership information

Identifying beneficial owner information may not be straight forward. To ensure that the information you follow due processes consider the following:

- Liaise with shareholders/directors to inform them regarding the new requirements and obtain information regarding beneficial owners. It is important that all parties are aware of what is meant by beneficial ownership and that they have a responsibility to disclose appropriate information.
- Obtain formal, signed declaration(s) from the board of directors stating that they disclosed all beneficial owners is a good practice.
- Populate and update the register
- Submit register with the relevant authorities – implementation processes to follow
- Set up systems for risk-based customer diligence checks
- How to ensure international transactions do not support illegal activities

Establishing the beneficial owners of the client

This can be done by reviewing ownership documents for the entity. For small entities this can be a simple exercise, but for companies with complex structures identifying beneficial owners may

require additional research and time. It may be easy to assess existing clients as you may know them. The potential complexity should be considered when preparing a quote for these services.

NOTE: If the beneficial owners are not known, entities need to take "all reasonable steps" to ensure the beneficial ownership information is obtained and entered on the beneficial ownership register.

If no beneficial owners can be identified, enter the names of the senior managers (including the directors and CEO) of the relevant entity on the beneficial ownership register as the "beneficial owners".

Verify beneficial owners through obtaining declarations

One way of confirming the authenticity of beneficial owner ownership is to request the relevant shareholders / directors to sign a declaration. Information to be included in the declaration:

- Names of beneficial owner
- Identify number
- Address
- Place of birth

Compile the register on beneficial owners

Compile a register of beneficial owners.

Information to be included in the register subject to further regulations:

- Name of beneficial owners
- Date of birth
- Identity number
- Nationality
- Date shareholding acquired
- % shareholding
- Political affiliation (if necessary).

Submit required information via the established channel

- Companies should submit an updated register with CIPC
- NPO's submit an updated register with Department of Social Development
- Trusts should submit an updated register with the Masters of the Court.

4.4 Know your customer (KYC) checks[2]

Which entities should apply customer verification processes?

Section 21 of the FIC Act requires all accountable institutions states that:

(1) When an **accountable institution engages with a prospective client** to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—

(a) **establish and verify the identity of a customer**

(b) if the client is acting on behalf of another person, establish and verify—

(i) the identity of that other person; and

(ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and

(c) if another person is acting on behalf of the client, establish and verify—

(i) the identity of that other person; and

(ii) that other person's authority to act on behalf of the client.

Section 21(2) of the FIC Act requires that accountable institutions should also perform verifications for client that existed at the time the legislation became effective.

Know Your Customer is a process of verifying the identity of customer, beneficial owners and third-party businesses during onboarding and throughout doing business. It typically involves identify verification practices used by banks to assess and monitor customer risk. It identifies the legitimacy of the customer—and ensure they're not tarnished by political or criminal connections and don't have a history that would be too risky to deal with.

Do you know your customer? At any rate, you ought to. If you're a financial institution (FI), you could face possible fines, sanctions and reputational damage if you help enable money laundering or terrorist financing. More importantly, KYC is a fundamental practice to protect your organization from fraud and losses resulting from illegal funds and transactions.

"KYC" refers to the steps taken by a financial institution (or business) to:

---

[2] https://www.oracle.com/za/a/ocom/docs/industries/financial-services/fs-dynamic-customer-due-diligence-kyc-br.pdf

1. Establish customer identity
2. Understand the nature of the customer's activities (primary goal is to satisfy that the source of the customer's funds is legitimate)
3. Assess money laundering risks associated with that customer for purposes of monitoring the customer's activities

To create and run an effective KYC program requires the following elements[3]:

1. **Customer Identification Program (CIP)**

How do you know someone is who they say they are?

2. **Customer Due Diligence**

Can you trust your client?

There are three levels of due diligence:

- **Simplified Due Diligence ("SDD")** are situations where the risk for money laundering or terrorist funding is low and a full CDD is not necessary. For example, low value accounts or accounts.
- **Basic Customer Due Diligence ("CDD")** is information obtained for all customers to verify the identity of a customer and asses the risks associated with that customer.
- **Enhanced Due Diligence ("EDD")** is additional information collected for higher-risk customers to provide a deeper understanding of customer activity to mitigate associated risks. In the end, while some EDD factors are specifically enshrined in a country's legislations, it's up to a financial institution to determine their risk and take measures to ensure that their customers are not bad actors.

3. **Ongoing monitoring and due diligence**

It's not enough to just check a customer once. You need to do monitoring on an ongoing basis. The ongoing monitoring function includes oversight of financial transactions and accounts based on thresholds developed as part of a customer's risk profile.

Depending on the customer and your risk mitigation strategy, some other factors to monitor may include:

- Spikes in activities
- Out of area or unusual cross-border activities

[3] https://www.trulioo.com/blog/business-verification/know-your-business

- Inclusion of people on sanction lists
- Adverse media mentions

There may be a requirement to file a Suspicious Activity Report (SAR) if the account activity is deemed unusual.

Periodical reviews of the account and the associated risk are also considered best practices:

- Is the account record up-to-date?
- Do the type and amount of transactions match the stated purpose of the account?
- Is the risk-level appropriate for the type and amount of transactions?

In general, the level of transaction monitoring relies on a risk-based assessment.

4. Corporate KYC - Know Your Business

4.5 How does KYC work?

KYC is the means of identifying and verifying the identity of the customer through independent and reliance source of documents, data, or information. To verify the identity of:

- Individual customers, bank will obtain the customer's identity information, address, and recent photograph. Similar information will also have to be provided for joint holders and mandate holders.
- Non-Individual customers banks will obtain identification data to verify the legal status of the entity, operating address, the authorized signatories, and beneficial owners. Information is also required on the nature of employment/business that the customer does or expects to undertake and the purpose of opening of the account with the bank.

5. Conclusion

The next steps in the process will be as follows:

- The GLA Bill is currently in Parliament, this is an ongoing process planned to be finalized latest early January. Once the process is finalized, we can expect further regulations relating to the implementation of the new measures.
- Government will provide evidence on the progress made towards achieving the objectives of recommendations to FATF early 2023.
- Final decision will be made by FATF on South Africa's status by the end of February 2023.