



Guide to the General Laws Amendment Act changes for South African entities

Issue 1 - March 2023

ciba

CHARTERED INSTITUTE FOR
BUSINESS ACCOUNTANTS

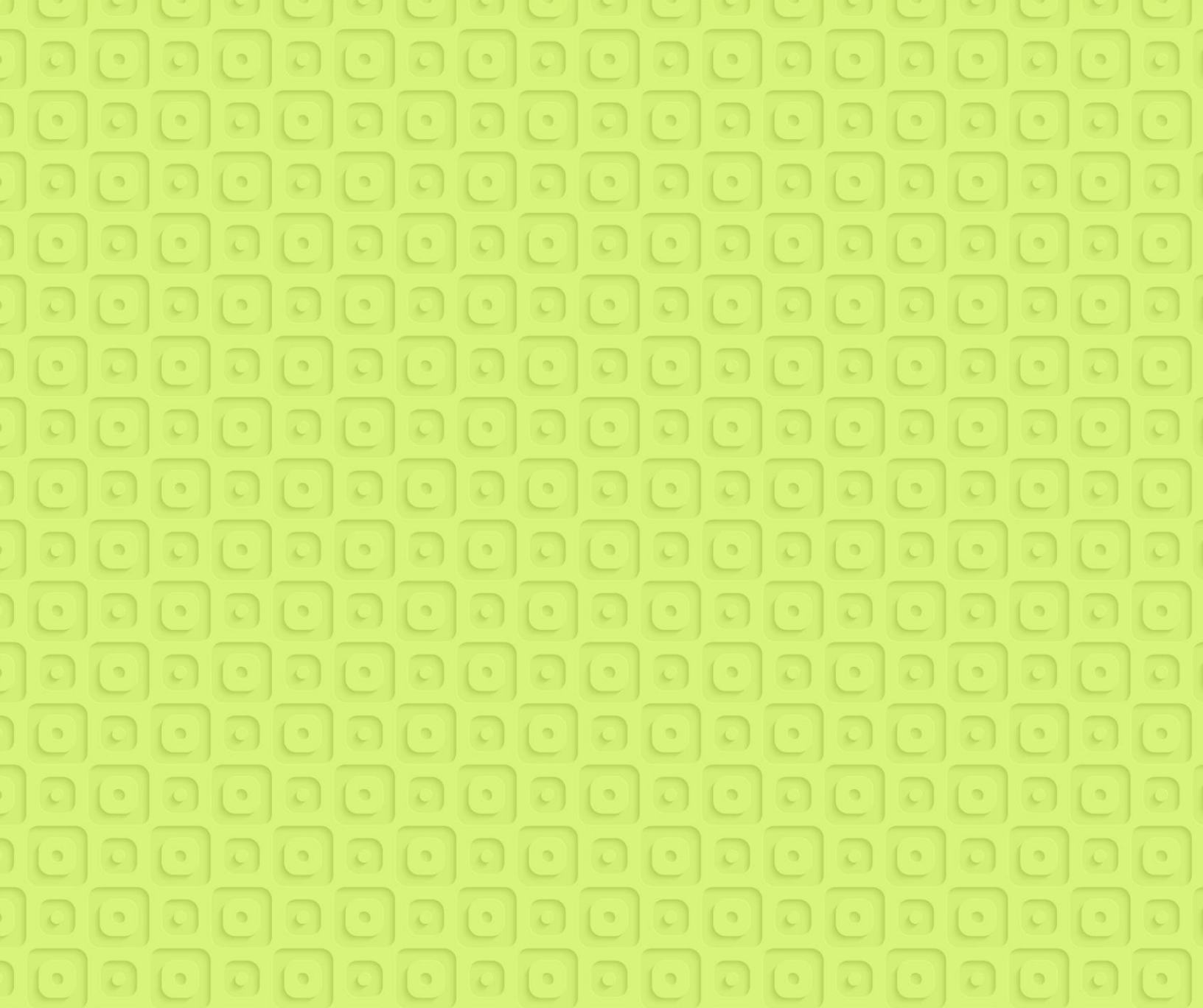


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1. Introduction



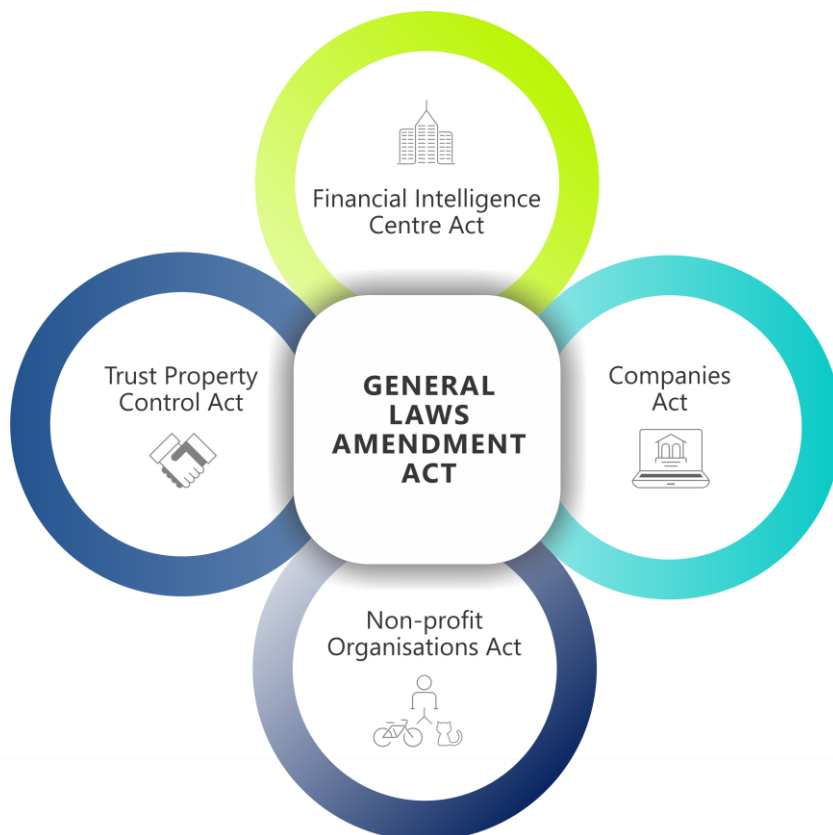
1. Introduction

The [General Laws Amendment Act](#) was signed into law on 6 January 2023. It is a significant step forward in addressing the deficiencies identified by the FATF relating to South Africa's anti-money laundering (AML) and combating financial terrorism (CFT) measures.

The FATF evaluated South Africa's AML/CFT measures and issued a Mutual Evaluation Report in October 2021. Part of the remedial efforts to address the deficiencies identified in the report was the amending of laws that are key to the effectiveness of South Africa's AML/CFT measures. The General Laws Amendment Act was fast-tracked to show South Africa's commitment to addressing the deficiencies and brought in amendments to different Acts, including:

- Financial Intelligence Centre Act, 2001 (FIC Act)
- Trust Property Control Act, 1988 (Trust Act)
- Companies Act, 2008 and
- Nonprofit Organisations Act, 1997 (NPO Act).

The amended requirements aim to develop a comprehensive mechanism to bring transparency to the beneficial ownership of corporate vehicles such as trusts and companies. This will mean additional reporting and record-keeping requirements relating to beneficial ownership.



2. Glossary and Definitions



2. Glossary

AML/CFT	Anti-Money Laundering/Counter-Terrorist Financing
CASP	Crypto Asset Service Provider
CIBA	Chartered Institute for Business Accountants, formerly known as the Southern African Institute for Business Accountants
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
IFAC	International Federation of Accountants
IRBA	Independent Regulatory Board for Auditors
MER	Mutual Evaluation Report
NPO	Nonprofit Organisation
POCDATARA	Protection of Constitutional Democracy Against Terrorism and Related Activities Amendment Act, 23 of 2022
PCC	Public Compliance Communications
SAIBA	Southern African Institute for Business Accountants (The name was officially changed to Chartered Institute for Business Accountants)
TCSP	Trust and company service providers
VDR	voluntary disclosure report

3. Amendments to the Financial Intelligence Centre Act



3. Amendments to the Financial Intelligence Act

The Financial Intelligence Centre Act, 2001 was amended by:

- Amending the definitions of “beneficial owner”, “domestic prominent influential person” and “foreign prominent public official”, and inserting a definition of “prominent influential person”
- Amending the objectives of the Financial Intelligence Centre (“Centre”)
- The functions of the Centre to include the provision of forensic information; by empowering the Centre to request information held by other organs of the state
- Providing for additional and ongoing due diligence measures and amending the process followed when there are doubts about the truthfulness of information
- The powers of access by authorised representatives to records of accountable institutions
- Providing for the safeguarding of information
- Provisions on the disclosure of information to the Centre and access to information by the Centre
- Empowering the Minister to prescribe appropriate requirements relating to access to personal information to ensure that adequate safeguards are in place as required by section 6(1)(c) of the protection of personal information act, 2013
- Amending specific provisions relating to the risk management and compliance programme
- Amending the offenses provisions to empower the imposition of an administrative sanction

3.1 Amendment to Schedules of the FIC Act

Schedule 1. Accountable institutions

[Schedule 1](#), effective 19 December 2022, significantly increased the number of sectors listed as accountable institutions. This improves the FIC's ability to obtain information from a broader range of financial and non-financial institutions and crypto asset service providers (CASPs). Schedule 1 now includes:

- Co-operative banks
- Legal practitioners
- Credit providers
- Crypto asset service providers (CASPS)
- The South African Mint Company
- Trust and company services providers (TCSP)* and
- Payment clearing service operators.
- High-value goods dealers (moved from schedule 3)

* Who is a TCSP?

The draft [Public Compliance Communication No. 6A](#) issued by FIC defines a TCSP as a person who carries on the business of:

1. Preparing for or carrying out transactions for a client, where the client is assisted in the planning or execution of:
 - The organisation of contributions necessary for the creation, operation, or management of a company, an external company, or a foreign company
 - The creation, operation, or management of a company, of an external company, or of a foreign company, or
 - The operation or management of a close corporation.
2. A person who carries on the business of:
 - acting for a client as a nominee as defined in the Companies Act, or
 - arranging for another person to act for a client, such as a nominee.

TCSP Example: Where a person meets the definition of more than one schedule item

Attorney X provides TCSP services, as defined in item 2 to Schedule 1 of the FIC Act as part of their normal business operations. Attorney X must register as a TCSP in terms of the FIC Act.

Attorney X is also considered to be an accountable institution in terms of item 1 of Schedule 1 of the FIC Act and must additionally register as a legal practitioner.

Requirements for accountable institutions

New as well as existing categories of institutions and businesses listed as accountable institutions are required to fulfill certain FIC Act regulatory obligations, including:

- Register with the FIC as accountable institutions
- Submit regulatory reports to the FIC relating to suspicious and unusual transactions, cash transactions exceeding the prescribed threshold, and property that is linked to sanctioned persons, terrorist activity, or terrorist organisations
- Implementing a risk-based approach to customer due diligence, customer identification, and verification
- Evaluating customer information and identifying clients that are foreign prominent public official, domestic prominent influential persons or listed on the Targeted financial sanctions list
- Develop a risk management and compliance programme (RMCP)
- Adhere to record-keeping rules
- Implement a compliance function and appoint a person responsible for compliance
- Train employees on how to comply with the FIC Act.

All Schedule 1 institutions should implement a [risk-based approach](#)¹ to customer due diligence in combating money laundering and terrorist financing. FIC and supervisory bodies during the next 18 months will focus on entrenching the FIC Act risk and compliance provisions and implementation among the new sectors in Schedule 1 without issuing financial penalties in case of non-compliance.

Schedule 2. list of supervisory bodies

[Schedule 2](#), the list of supervisory bodies was amended by deleting law societies, the Independent Regulatory Board for Auditors (IRBA), and the National Gambling Board.

Schedule 3.

In **Schedule 3A**, the definition of a 'prominent influential person' was changed to a 'politically exposed person.' A politically exposed person is an individual who "holds, including in an acting position for a period exceeding six months, or has held a prominent public function in the Republic.

In **Schedule 3B**, the definition of a foreign 'prominent public official' was replaced by a foreign 'politically exposed person.

New Schedule 3C: Prominent, influential person was inserted, defining a prominent, influential person is an individual who holds, or has held at any time in the preceding 12 months, the position of:

- chairperson of the board of directors
- chairperson of the audit committee
- executive officer, or
- chief financial officer

of a company that provides goods or services to an organ of state, and the annual transactional value exceeds an amount determined by the Minister.

¹ [Pages - IMPLEMENTING A RISK-BASED APPROACH \(fic.gov.za\)](#)

Guidance available

Title	Where to find it
FIC Draft Public Compliance Communication(PCC) No 6A on Trust and Company Service providers for the purpose of Schedule 1 of the FIC Act, 2001 (Act 38 of 2001)	https://www.fic.gov.za/Documents/21213%20Draft%20PCC%206A%20CSP%20final.pdf
FIC Draft Directive 7 of 2022 on submission of risk and compliance returns	https://www.fic.gov.za/Documents/21125%20Draft%20Directive%207%20RCR_.pdf
FIC draft Public Compliance Communications – included draft PCC 47A, draft PCC 6A, draft PCC 23A, draft PCC 118, draft PCC 119 and draft PCC 120.	https://www.fic.gov.za/Compliance/Pages/Compliance%20Guidance.aspx
Reference Guide for all Accountable Institutions: This guide sets out all the requirements and where the accountable institution can obtain FIC guidance to assist in meeting the requirements.	https://www.fic.gov.za/Documents/21213%20Reference%20guide%20clean.pdf
Public Compliance Communication No. 53 on the Risk Management and Compliance Programme in terms of section 42 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) for Designated Non-Financial Business and Professionals.	https://www.fic.gov.za/Documents/20830%20PCC%2053%20RMCP%20Final.pdf
Guidance Note 7 on implementing various aspects of the Financial Intelligence Centre Act.	https://www.fic.gov.za/Documents/171002_FIC%20Guidance%20Note%2007.pdf

4. Amendments to the Trust Property Control Act



4. Amendments to the Trust Property Control Act

The following amendments were made to the Trust Property Control Act:

- Definitions inserted for “accountable institution” and “beneficial owner”
- Imposing certain requirements on trustees
- Specifying matters that would disqualify a person from being appointed or continuing to act as a trustee
- Providing for the removal of a trustee who becomes disqualified to continue to act as a trustee
- Specifying information that trustees must keep concerning beneficial owners
- Foreign persons appointed as a trustee to administer a South African trust shall only be allowed to act in the capacity after authorisation is obtained in writing from the Master
- Trustees are required to disclose their position as trustees to any accountable institution and they must make it known that the relevant transaction relates to trust property
- Requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and
- Providing access to information regarding beneficial ownership and
- Specifying certain offenses when a trustee fails to comply with the obligations set out.

The beneficial owner(s) of a trust include(s):

- The natural person who directly or indirectly owns the trust property
- The natural person who exercises control of the administration of the trust arrangements
- The founder of the trust or if the founder is a legal person, a person acting on behalf of the partnership, or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- Each trustee of the trust and if the trustee is a legal person, a person acting on behalf of the partnership, or the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership
- Each beneficiary referred to by name in the trust instrument or founding statement or if a beneficiary is referred to by name is a legal person, a partnership or a person acting on behalf of the partnership, or a person acting in pursuance of the provisions of the trust instrument, the natural person who directly or indirectly exercises effective control of the legal person or partnership of relevant trust property.

Regulations issued relating to Beneficial Ownership Registers and Records of Details of Accountable Institutions

[New regulations](#) on Beneficial Ownership Registers and Records of Details of Accountable Institutions was issued by the Department of Justice and Constitutional Development in January 2023. The regulations deal with new reporting requirements on beneficial ownership information for trusts.

Paragraph 4 of the Regulations states the following:

- (1) A trustee must keep a record of the following information relating to each identified beneficial owner of the trust:
 - (a) The full names
 - (b) date of birth
 - (c) nationality
 - (d) an official identification document number, indicating the type of document and the country of issue;
 - (e) residential address
 - (f) if different from the residential address, the beneficial owner's address for service of notices
 - (g) other means of contact
 - (h) the grounds on which the person is a beneficial owner of the trust
 - (i) the date on which the person became a beneficial owner of the trust and
 - (j) where applicable, the date on which the person ceased to be a beneficial owner of the trust.

- (2) A trustee must keep a certified copy of the official identification document of each identified beneficial owner of the trust, and the information recorded in terms of sub-regulation (1) (a) to (e) must appear the same way as it appears on the certified copy of the identification document.

5. Amendment to the Companies Act



5. Amendments to the Companies Act

The Companies Act was amended by:

- Inserting a definition of “**beneficial owner**”
- providing for a comprehensive mechanism through which the CIPC can keep accurate and updated **beneficial ownership information**
- 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 specified timelines within which the company must record any changes in this information
- requiring a company to file a record of any natural person who owns or controls the company in terms of the definition of “beneficial owner” with the Commission; and by specifying that persons who are convicted of offenses relating to money laundering, terrorist financing, or proliferation financing activities are prohibited from registering as company directors.

Beneficial ownership reporting

Companies should report beneficial ownership information to CIPC from 1 April 2023. In addition, new regulations should be issued to provide details relating to the processes and format of the information.

The GLA Act identifies two types of companies, namely ‘affected companies’ and ‘companies which are not affected’. An affected company is a regulated company as set out in section 117(1)(i)² 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).

- Affected companies are required to maintain a register of beneficial owners.
- Not affected companies should provide the information to the Commissioner in a specified format.

What is beneficial ownership?

“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

1. The holding of beneficial interests in the securities of that company
2. The exercise of, or control of the exercise of the voting rights associated with securities of that company
3. The exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company”.

References “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 owners or beneficiaries under a life or other investment-linked insurance policy.

NOTE: Legal owners of an entity may not be the same beneficial owners.

² Regulated companies include public companies, and state-owned companies, except to the extent that any such company has been exempted in terms of section 9 and a limited number of private companies

6. Amendments to the Nonprofit
Organisations Act, 1997



6. Amendments to the the Nonprofit Organisations Act, 1997

The NPO Act was amended by:

- Requiring certain NPOs to register with the Directorate. NPOs will now be required to register if they make donations to individuals or organisations outside South Africa or if they provide humanitarian, charitable, educational, or cultural services outside South Africa.
- Enabling the Nonprofit Organisations Directorate to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state
- Requiring NPOs to submit prescribed information about the office-bearers, control structure, governance, management, administration, and operations of nonprofit organisations to the Directorate
- Requiring that the Directorate must keep a register including the prescribed information relating to the office-bearers, control structure, governance, management, administration, and operations of nonprofit organisations, and providing access to that information
- Providing grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a nonprofit organisation
- Providing for removing an office-bearer and
- providing for certain offenses.

Although NPOs are not among the listed institutions in the FIC Act, they have the option to submit a voluntary disclosure report (VDR) to the FIC on suspicious activity or transactions related to money laundering and terrorist financing.

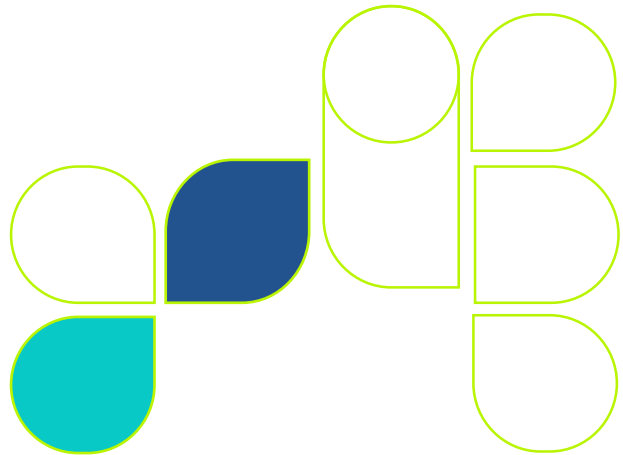
NPOs are advised to file VDRs where they know or suspect they have received or are about to receive the proceeds of unlawful activities or are about to be used to facilitate terrorist financing or any other offense.

7. Protection of Constitutional
Democracy Against Terrorism and
Related Activities Amendment Act, 23
of 2022 Amendments (POCDATARA)



7. Protection of Constitutional Democracy Against Terrorism and Related Activities Amendment Act, 23 of 2022 Amendments (POCDATARA)

The POCDATARA Amendment Act aims at strengthening the provisions of the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004, by expanding it to include aspects such as cyber-terrorism. Further amendments refine the offense of terrorist financing and provide improved processes for the implementation of financial sanctions against supporters of terrorist organisations.



8. Summary of Effective Dates



8. Summary of Effective Dates

Legislation	Description	Effective Date
GLA Act	<ul style="list-style-type: none">Sections 9,10,16,18 to 55,59 and 62 to 65	31 December 2022
GLA Act	<ul style="list-style-type: none">Sections 1,3,4,5,8,11 to 15,17,56,57,58,60 and 61, section 2, except for subsection (1H) and section 6, except for section 11A(1)(c),(2) and (3)	1 April 2023
Schedule 1,2 and 3 to the FIC Act	<ul style="list-style-type: none">New categories included in the list of accountable institutions.List of supervisory bodies was amended.List of reporting institutions was deleted.	19 December 2022
POCDATARA	<ul style="list-style-type: none">Amendments strengthen the provisions of the act and expanded it to include aspects such as cyber-terrorism.	4 January 2023



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