

Attention: Mr Allen Wicomb Committee
Secretary Standing Committee on
Finance
Ms Teboho Sepanya Committee
Secretary Standing Committee on
Finance

20 October 2022

By e-mail:
awicomb@parliament.gov.za
tsepanya@parliament.gov.za

Dear Ms Sepanya and Mr Wicomb,

**SUBMISSION ON THE GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING
TERRORISM FINANCING) AMENDMENT BILL (B18-2022)**

BACKGROUND

1. South Africa is a member of Financial Action Task Force (FATF), the global money-laundering and terrorist financing watchdog, responsible to set international standards and assess technical compliance. It also assesses the effectiveness of frameworks put in place in member countries, for instance, whether prosecutions have taken place for money laundering or terrorism financing.
2. South African government is required to have measures in place to prevent the misuse of legal persons for money laundering or terrorist financing. In terms of this there must be adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons.
3. FATF conducted a review in South Africa during 2021 yielding very poor results. It is the responsibility of National Treasury oversee the necessary legislative and technical remediation work that must be undertaken if South Africa is to avoid being greylisted.

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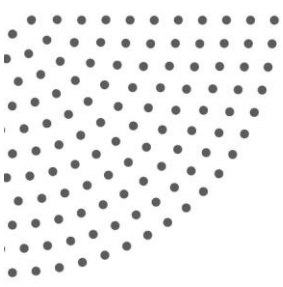
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4. To address 14 out of 20 legislative deficiencies found by the mutual evaluation report and bring South Africa more in line with international measures of combating money laundering and financing of terrorism the Minister of Finance tabled the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill on 29 August. The bill amends the following Acts:
 - Financial Intelligence Centre Act (FIC Act)
 - Nonprofit Organisations Act
 - Trust Property Control Act
 - Companies Act and the
 - Financial Sector Regulations Act.

ROLE OF ACCOUNTANTS

5. The role of the accounting profession in fighting corruption is critical. Grounded in a strong ethical code, professional accountants across the globe play a critical role in the fight against corruption. They bring essential transparency, relevance and integrity to the systems that underpin vibrant economies making corruption less profitable and easier to prevent, detect and remedy.
6. International Federation of Accountants (IFAC) recently issued its Action Plan Fighting Corruption Economic Crime¹ (IFAC Action Plan). The Action Plan explains that the accountancy profession can be an essential driver of strong and sustainable government institutions, financial markets, economies, and society. A strong accountancy profession, comprised of highly trained ethical accountancy professionals, enhance transparency and accountability in the public and private sectors, underpins financial sector and economic development, and contributes to poverty reduction and shared prosperity. The accountancy profession's capacity to address constraints to sustainable growth—including corruption and related economic crimes, but also poor public sector governance and financial management—ready to be a central driver of sustainable development. The Diagram below shows the position of the accountants in the anti-corruption ecosystem.

¹ IFAC, *IFAC's Action Plan Fighting Corruption Economic Crime*, viewed 24 October 2022, <<https://www.ifac.org/knowledge-gateway/building-trust-ethics/publications/ifacs-action-plan-fighting-corruption-and-economic-crime>>

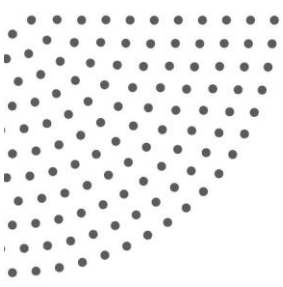
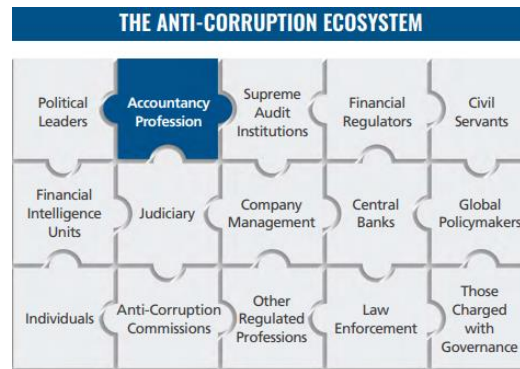
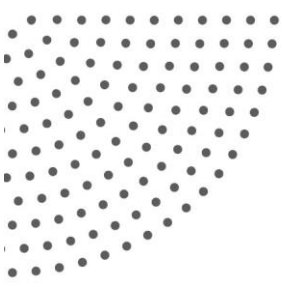


Diagram: the position of accountancy profession in the anti-corruption ecosystem¹



7. The World Bank's South Africa Report² on The Observance of Standards and Codes Accounting and Auditing issued in 2013 recommended that professional bodies should be regulated to ensure consistent quality of services. The report also raises that there are a significant number of people working as accountants who are not members of any of the recognized professional accountancy organizations—this situation can cause reputational risk to the accountancy profession (paragraph 3.29). There is a need for comprehensive arrangement to supervise and regulate PAOs to ensure that all PAOs serve public interest; a move that would also contribute to enlisting all accountants to be members of PAOs.
8. The Southern African Institute of Business Accountants (SAIBA) is a Professional Accountancy Organisation for accountants, tax practitioners, financial managers, and financial directors working in the public and private sector. SAIBA is registered with the South African Qualifications Authority (SAQA) and authorised to issue designations. SAIBA was awarded the status of Recognised Controlling body (RCB) in terms of Section 240A(2) of the Tax Administration Act, and is recognised under section 60 of the Close Corporations Act, 69 of 1984 as a profession whose members may act as accounting officers, and under the Companies Act, 2008, Section 30(7), Companies Regulations, 2011, Regulation 29(4)) as a profession whose members may issue independent review reports.
9. Our designated members are recognised as accounting officers, independent reviewers, and independent accounting professionals deriving mandates from various statutes, including:
 - Close Corporations Act, 69 of 1984
 - Companies Act 71 of 2008
 - Non-Profit Organisations Act
 - Property Practitioners Act 22 of 2019
 - SA Schools Act 84 of 1996
 - Short Term Insurance Act, 1998
 - Financial Advisory and Intermediary Services Act 37 of 2002
 - Co-operatives Amendment Act, Act No.6 of 2013

² SOUTH AFRICA REPORT ON THE OBSERVANCE OF STANDARDS AND CODES ACCOUNTING AND AUDITING, World Bank, 2013, Available at: https://accounts.saiba.org.za/standards/regulation_of_the_profession

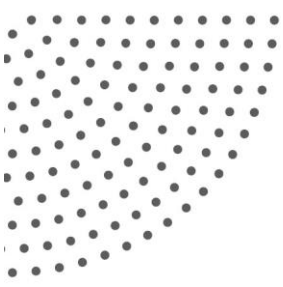


- Fund-Raising Act 107 of 1978
- Sectional Titles Schemes Management Act, No. 8 of 2011
- Immigration act No 13 of 2011.

In line with legislative mandates, SAIBA's members are responsible to perform financial management functions, draft financial statements, perform accounting, book-keeping, and taxation services.

10. As a professional body SAIBA is involved with the NPO sector by promoting volunteer activities. During 2016 SAIBA signed a memorandum of understanding with the Department of Social Development to assist NPOs free of charge in complying with the requirements of the Non-profit Organizations Act (NPO Act). Through this initiative 1,380 volunteers made their resources available to assist in the following areas:
 - Book-keeping activities in line with section 17(1) of the NPO Act
 - Drawing-up annual financial statements as per section 17(2) of the NPO Act
 - Preparing a narrative report within 9 months of year end as per section 18 of the NPO Act.
11. The Independent Regulatory Board for Auditors (IRBA) issued a guide for registered auditors on Combating Money Laundering and Financing of Terrorism³. This guide highlights the responsibilities of registered auditors relating to Anti-money laundering/combating of financing of terrorism, for example to report certain unusual and suspicious transactions to the Financial Intelligence Centre (FIC). Registered auditors do not have a statutory responsibility to perform procedures specifically to detect money laundering and financing of terrorism activities. Furthermore, the auditor's report in line with International Standards on Auditing does not provide any assurance on the adequacy of the entity's systems or on the actual incidence of fraud and error or non-compliance with laws and regulations. The registered auditor's duty is limited to considering the possibility of fraud and non-compliance with laws and regulations when performing audit procedures.
12. To facilitate reporting the FIC Act categorized entities in the following schedules:
 - Schedule 1** - List of accountable institutions that report into supervisory bodies.
 - Schedule 2** - List of supervisory bodies that have been identified for their governance authority over the economic sectors and industries they oversee
 - Schedule 3** - List of reporting institutions are entities that do not have an industry/ sector specific supervisory body that oversees their governance and are required to report directly to the FIC.

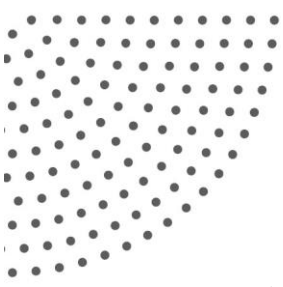
³ IRBA A Guide for Registered Auditors Combating Money Laundering and Financing of Terrorism, 2011, accessed on 24 October 2022, available at: [Microsoft Word - IRBA Guide for RAs-Combating Money Laundering Terrorist Financing and Corrupt Activities JB 1Feb\[1\]](#)



AMENDMENTS PROPOSED IN THE GENERAL LAWS AMENDMENT BILL

13. The Non-Profit Organisations Act 71 Of 1997 (NPO Act)

- 13.1 The NPO Act provides a registration facility for the existing South African legal forms for NPOs, Section 21 Companies, Trusts, and Voluntary and other non-profit Associations, providing that certain minimum establishment and annual reporting requirements.
- 13.2 The NPO Act defines NPOs as: "a trust, company or other association of persons:
- established for a public purpose; and
 - the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered;" (Section 1 (x)).
- 13.3 FATF defines a non-profit organization (NPO) as a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social, or fraternal purposes, or for the carrying out of other types of "good works".
- 13.4 In the Mutual Evaluation Report of FATF South Africa received a rating of Partial Compliance relating to NPOs. Recommendation 8 focuses on the non-profit organisation (NPOs) sector, and the potential use of the NPOs as vehicles for Money Laundering (ML) and Terrorism Financing (TF). The following issues were noted:
- 13.4.1 No assessment of the potential risks of terrorist financing posed within the NPO sector in South Africa has been undertaken yet. – The risk assessment process is undertaken by Greenacre starting now.
- 13.4.2 No outreach programme has been undertaken with the specific aim to protect the sector from terrorist financing abuse.
- 13.4.3 There is no registration requirement under the NPO Act in as much as registration of NPOs is only voluntary.
- 13.4.4 The Director has neither the power to sanction office bearers of defaulting NPOs nor the power to impose fines or to freeze accounts of NPOs for violation of oversight measures.
- 13.4.5 There is no prescribed retention period that applies to the record keeping requirement of NPOs.
- 13.4.6 There is no specific requirement under the NPO Act, for NPOs to maintain for a period of five years information on the identity of person(s) who own, control, or direct their activities, including senior officers, board members and trustees.
- 13.4.7 There are no formal gateways for the Directorate to exchange non-public information.
- 13.5 The GLA Bill proposes the following six changes to the Nonprofit Organisations Act of 1997 (the NPO Act):
- 13.5.1 Introducing compulsory registration of all NPOs in terms of the NPO Act
- 13.5.2 Enabling the NPO Directorate to collaborate and co-operate with other organs of state



- 13.5.3 Requiring NPOs to submit prescribed information about the office-bearers and NPOs to the director of NPOs
- 13.5.4 Requiring such prescribed information to be included in the NPO register and providing for access to such information
- 13.5.5 By providing for grounds for disqualification and removal of office-bearers of NPOs
- 13.5.6 Introducing new offences.

14. Additional Record Keeping and Reporting Requirements

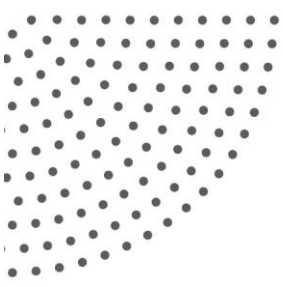
- 14.1 Proposed amendments prescribe record keeping and reporting requirements for Trusts, Companies and Non-Profit Organisations relating to beneficial ownership in the Acts.

15. The Financial Intelligence Centre Act, 38 of 2001

- 15.1 List of accountable institutions in Schedule 1 was amended to include legal practitioners, attorneys, advocates, and commercial juristic entities as contemplated in the Legal Practice Act, 2014, (Act 28 of 2014).

PROBLEMS IDENTIFIED

- 16. The proposed amendments to the NPO Act directly address the recommendations of FATF. However, the amendments do not consider the following:
 - 16.1 FATF's definition utilizes a risk-based approach to identify an NPO. In line with this, organisations do not automatically fall within the scope of an NPO and have requirements placed on them. Only entities that have a risk of attracting terrorist finance are recognized for FATF purposes. The proposed amendments to the NPO Act, however, provide requirements for all NPOs without considering entities that do not meet FATF's definition of an NPO.
 - 16.2 There is a need for further guidance on exactly when does an informal arrangement become eligible for registration when applying the definition of the Act.
 - 16.3 The proposed criminalization of non-compliance refers to mostly volunteer office bearers who will be discouraged to fulfil these roles. There is a risk that this will have a negative impact on the NPO sector. It is also not clear how and when the punitive measures would be applied.
- 17. The GLA Bill proposes additional record keeping and reporting requirements relating to beneficial interest. The amendments, however, do not consider how the completeness and integrity of the information is established. The accountants' role is not prescribed in this regard.
- 18. Schedules of the Financial Intelligence Centre Act do not list accountants and auditors under reporting institutions. Accountants are in a unique position providing an opportunity to get involved in fighting corruption. This was not taken into consideration for the GLA Act.



OUR RECOMMENDATIONS

Establishing the role of accountants

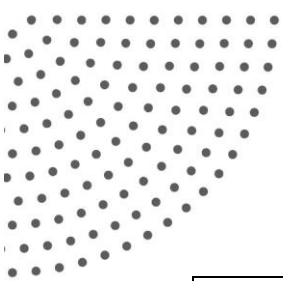
19. FATF notes a lack of awareness and training relating to corruption to protect NPOs. This can be overcome by requiring treasurers of NPOs to be members of a professional organization such as SAIBA and making them professional accountants. Recognised professional bodies have mechanisms in place to ensure that their members possess relevant knowledge and ethical standing.

20. The GLA Bill should require that NPOs and trusts should appoint accountants who are members of professional bodies registered with SAQA and recognised controlling bodies with SARS. It should be required that professional accountants prepare the financial statements and other statutory reports.

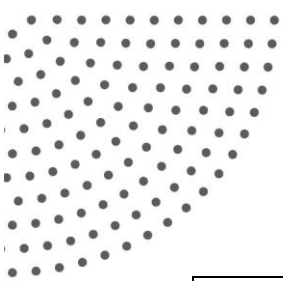
21. The role of accountants in the GLA Bill should be clearly identified. The GLA Bill proposes additional record keeping and reporting requirements on beneficial interest. However, the amendments do not raise provisions to ensure how the integrity of the information is confirmed. The table below indicate our recommendations to require entities to use the services of professional accountant.

Table: proposed amendments

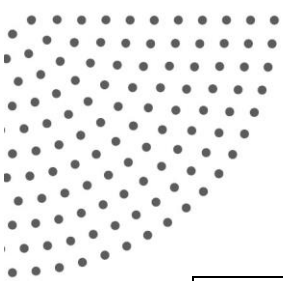
Acts	Current sections as per GLA Bill	Our recommended amendments marked in <i>red</i>
Nonprofit Organisations Act, 1997	17. (1) Every registered nonprofit organisation must, to the standards of generally accepted accounting practice— (a) keep accounting records of its income, expenditure, assets and 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.	Requirements proposed to be inserted in section 17(1): <i><u>17(1)(c) Every registered nonprofit organization must appoint a member of a profession whose members are qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 and the duties of an independent reviewer in terms of the Section 30(7) of the Companies Act, 2008, and that is a member of a registered professional body with SAQA and recognized controlling body by SARS, to compile the statement of</u></i>



Acts	Current sections as per GLA Bill	Our recommended amendments marked in <i>red</i>
	<p>Section 18 of the Act, 1997, titled 'Duty to provide reports and information' was amended by inserting in subsection (1) the following paragraph: “(bA) prescribed information about the office-bearers, control structure, governance, management, administration, and operations of nonprofit organisations”</p>	<p><i><u>income and expenditure and balance sheet</u></i></p> <p>Our proposal is to amend the proposed in subsection 18 (1) to include the following wording:</p> <p>18. (1) Every registered nonprofit organisation may delegate its reporting function to a person as specified under section 17(1)(c)n</p>
Companies Act 71 of 2008	<p>28. (1) A company must keep accurate and complete accounting records in one of the official languages of the Republic— (a) as necessary to enable the company to satisfy its obligations in terms of this Act or any other law with respect to the preparation of financial statements; and (b) including any prescribed accounting records, which must be kept in the prescribed manner and form.</p> <p>Section 50 was amended to include the following subsection: “(3A) (a) A company must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred.</p>	<p>Requirements proposed to be inserted in a new section 28. (2):</p> <p>28. (2) <i><u>Every company must appoint a member of a profession whose members are qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 and the duties of an independent reviewer in terms of the Section 30(7) of the Companies Act, 2008, and that is a member of a registered professional body with SAQA and recognized controlling body by SARS, to compile the financial statements</u></i></p> <p>Requirements proposed to be inserted in section (3A) (a):</p> <p>(3A) (a) A company must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must <i><u>utilize the services of the</u></i></p>



Acts	Current sections as per GLA Bill	Our recommended amendments marked in <i>red</i>
		<p><i>person as appointed under section 28(2) to</i> ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred.</p>
Companies Act 71 of 2008	<p>Section 56 was amended by (a) replacing the heading of the section to: “Beneficial interest in securities and beneficial ownership of company”; and (b) including requirement that “(12) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred.</p>	<p>Requirements proposed to be inserted in section (12):</p> <p>(12) A company must <i>utilize the services of the person as appointed under section 28(2) to</i> file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred.</p>
Trust Property Control Act 57, 1988	<p>The new section 11A in the Trust Property Control Act requires that:</p> <p>(1) A trustee must—</p> <p>(a) establish and record the beneficial ownership of the trust;</p> <p>(b) keep a record of the prescribed information relating to the beneficial owners of the trust;</p> <p>(c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master’s Office; and</p> <p>(d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.</p>	<p>Requirements proposed to be inserted in section (1):</p> <p>(1) Trustees <i>must appoint a member of a profession whose members are qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 and the duties of an independent reviewer in terms of the Section 30(7) of the Companies Act, 2008, and that is a member of a registered professional body with SAQA and recognized</i></p>



Acts	Current sections as per GLA Bill	Our recommended amendments marked in <i>red</i>
		<p><i>controlling body by SARS, to compile the financial statements to</i> —</p> <p>(a) establish and record the beneficial ownership of the trust;</p> <p>(b) keep a record of the prescribed information relating to the beneficial owners of the trust;</p> <p>(c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master’s Office; and</p> <p>(d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.</p>

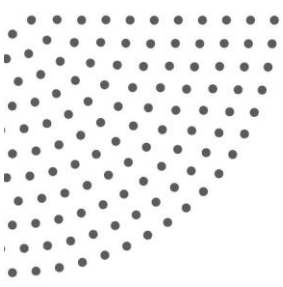
22. Auditors registered with IRBA should be listed in Schedule 1 of the FIC Act in the same way as legal practitioners. The current wording only includes auditors when they provide investment advice. Auditors are not allowed to provide investment advice.

23. Accountants performing functions in line with the Closed Corporation Act, 1984 and the Companies Act, 2008 should be listed in schedule 3 as reporting institutions to be required to report directly to the FIC.

Non-Profit Organisations

24. SAIBA agrees with the initiative to register entities with government agencies to regulate and ensure orderly conduct. However, it is recommended that the Bill considers a risk-based approach when responding to the issues raised by FATF. NPOs with small or negligible risk of terrorist abuse should not be subjected to the same requirements than NPOs with higher risks. Examples of small risk entities are those that have a ‘closed membership’ such as body corporates. Entities that have limited revenues and do not receive external funding should not be subject to requirements and offences to the extent then NPOs with high vulnerability.

25. Limits should be identified based on level of operations, from whom and how the revenue is collected and the nature of their activities. NPOs that do not reach the limits should receive exemptions from requirements of maintaining registers, accounting records and criminalization.



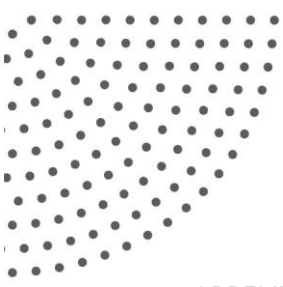
26. Guidance should be given on exactly when does an informal arrangement become eligible for registration when applying the definition of the Act, as this is not clear. This could be linked to the above limits identified.
27. The practical application of the punitive measures should be considered specifically considering the volunteer nature of the work performed.

CONCLUSION

28. While SAIBA fully supports the intention of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, it is important that this is done in a manner that while it provides a strong regulatory environment it also supports the enabling environment for NPOs to continue their work.
29. We appreciate your time and consideration regarding the above recommendations. Please do not hesitate to contact us should the need arise.

Yours sincerely

Eszter Rapanos
SAIBA Technical Manager



APPENDIX 1: BACKGROUND TO SAIBA

SAIBA is a Professional Accountancy Organisation (PAO) and Self-Regulatory Organisation for accountants, tax practitioners, financial managers, and financial directors, in the public and private sector, with offices in South Africa and Namibia. We are associate members of the Pan African Federation of Accountants (PAFA) and full members of the International Association of Finance Executive Institutes (IAFEI). SAIBA is authorised to issue designations as registered with the South African Qualifications Authority (SAQA) and our designated members are recognised as accounting officers, independent reviewers, and independent accounting professionals. SAIBA was awarded the status of Recognised Controlling body (RCB) in terms of Section 240A(2) of the Tax Administration Act.

SAIBA's objectives are to protect the public interest by adopting and enforcing standards of ethics, conduct, quality, and service engagement standards that seek to ensure the delivery of accountable and transparent professional service by SAIBA members.

We do this by offering executive education and continuous professional development (CPD) via our training platform SAIBA academy, technical news updates via accounting weekly and CFO talks, and enforcing ethical conduct thorough monitoring and disciplinary procedures.

www.saiba.org.za

www.cfoclub.co.za

www.accountingweekly.com

www.saiba.academy