

Reference#776338

31 January 2025

Email: [CommentDraftLegislation@treasury.gov.za](mailto:CommentDraftLegislation@treasury.gov.za)

Dear Sir/Madam,

**Comments on General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill (the Bill)**

The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make submissions to the Department on the Bill.

SAICA is South Africa's pre-eminent accountancy body and is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 60 000 members who are chartered accountants [CAs(SA)], associate general accountants [AGAs(SA)] and accounting technicians [ATs(SA)] who hold positions as chief executive officers, managing directors, board members, entrepreneurs, chief financial officers, auditors, and leaders in their respective spheres of operation.

We strive to ensure that our members are aware of laws they must abide by and assist them in ensuring they have the necessary tools to comply. We also play an advocacy role to identify areas that make it difficult to comply with laws and bringing it to the attention of legislative owners and regulators. Such practical insights have assisted many legislative owners and regulators to put in place processes that make it simpler for businesses to comply. The cost of compliance and its consequent burdens, is one that has a massive impact on small businesses. Greylisting is a status that the South African economy can ill-afford and SAICA has spent the last two years working with its members and regulators to ensure that the collective goal to exit the greylist is fulfilled.

Please find our comments below which have been divided into two sections, Section A: General Comments and Section B: Specific comments.



Thank you for considering SAICA's comments. We look forward to the opportunity for further dialogue on these important issues. Please reach out via email at [walterb@saica.co.za](mailto:walterb@saica.co.za).

Sincerely,



Walter Bhengu

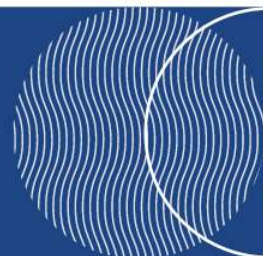
Project Director: Legislation and Governance

South African Institute of Chartered Accountants



## A. General comments

1. Firstly, the comment period provided for this Bill notably includes the holiday period when most stakeholders are not available to review it. It is acknowledged that draft legislation ordinarily has a 30 day comment period and the 6 February deadline is to cater for the holiday period.
2. It is also acknowledged that there are pressures from the Financial Action Task Force (FATF) to have Anti-Money Laundering (AML) measures in place as soon as possible. Given the complexity and far-reaching implications of the AML regulatory framework, stakeholders require adequate time to thoroughly review and analyse the Bill.
3. A longer comment period would ensure that all relevant parties can provide comprehensive and thoughtful feedback, ultimately leading to more effective and balanced piece of legislation. As such we request that the comment period be extended to 28 February 2025, we believe that this is still a reasonable request. SAICA is submitting comments as below (Specific comments) within the current allotted time but we believe that other stakeholders may struggle to do so. Additionally, the proposed changes, when read with the previous amendments made to the affected laws, appear to be quite onerous as they do not address some of the practical challenges picked up in the last two years. The AML requirements may impose significant compliance burdens on businesses, particularly smaller entities that may lack the resources to swiftly adapt to these changes. It is crucial that the government considers the operational realities and capacities of all affected parties to avoid unintended negative consequences.
4. It is important to make an assessment of the last two years in terms of the systems that have been built to support the new AML regime. The technological systems for example were not only a burden on the regulators who had to roll them out but to businesses who found it difficult to comply as the systems were either down or not functioning correctly. This reality has left many businesses anxious as the spectre of sanctions and penalties looms large.
5. The regulators have not been able to consider mitigation of sanctions in such circumstances and this needs to be looked at. More robust training programmes for regulators and businesses on a frequent basis will be key as opposed to pushing ahead with changes without adequate change management in the environment. South Africa needs to start looking into a hybrid approach to AML measures. While the focus should still be on deterring money laundering, we should equally be looking at ways to incentivise those businesses that



develop robust AML systems. This is in line with recent B20 recommendations that lean on the United Nations stance:

*"The "Resource Guide on State Measures for Strengthening Business Integrity," developed by the United Nations Office on Drugs and Crime (UNODC), the United Nations Global Compact (UNGC), and the Organization for Economic Co-operation and Development (OECD), provides States a framework for encouraging business integrity through a balanced mix of sanctions for misconduct and incentives for good practice. The guide emphasizes a collective approach involving public and private sectors to prevent and counter corruption, reflecting recent advances in private sector corruption prevention."*<sup>1</sup>

6. In light of these concerns, I strongly urge the government to extend the comment period and engage in further consultation with stakeholders. This will allow for a more inclusive and informed legislative process, ensuring that the final legislation is both effective in combating financial crimes and fair to all parties involved.

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<sup>1</sup> Resource Guide on State Measures for Strengthening Business Integrity. OECD/UN, 2024. Available on : <<https://www.oecd.org/publications/resource-guide-on-state-measures-for-strengthening-business-integrity-c76d7513-en.htm>>. Accessed on: January 11, 2024.



## B. Specific comments

### FINANCIAL INTELLIGENCE CENTER ACT

Section	Comment
<b>Authorized officer definition</b>	In relation to the Public Procurement Office being included as an organ of state that will have an individual designated as an authorized officer, we recommend that it reads as the <i>“investigative division of the Public Procurement Office.”</i> This aligns with other organs of state mentioned who do not necessarily have a mandate to investigate. Due to the nature of the information being sourced from the Financial Intelligence Center, it is important to not have a wide scope for individuals in that office to have access to such sensitive information.
<b>26A</b>	The additions of subsection (d) and (e) under section 26A (3) do not seem to stem from a United Nations resolution which is the basis of the entire section. Rather the additions are in relation to a court order sought by the prosecuting authority to freeze assets of an entity. On that basis we recommend that these additions be in a standalone section 26D.
<b>26C</b>	The addition of extraordinary expenses makes practical sense. We recommend that further guidance on examples of extraordinary expenses be given so as to ensure the wide interpretation is still within the ambit of the Act. This can be in a Public Compliance Communication.
<b>28A</b>	Notices published by the Director of Public Prosecutions are not ordinarily notices that businesses in general are constantly researching. It is acknowledged that as an accountable institution, the level of due diligence that is required is of an enhanced level. Where a small to medium sized entity has multiple clients, it becomes an onerous burden to constantly search for National Prosecuting Authority notices and a more streamlined approach with the assistance of the regulator may be required in this regard. This could include having a list of sanctioned entities on the website of the Financial Intelligence Center and such list being updated each time there is a new NPA notice. This lessens the compliance burden on businesses and ensures stronger system collaboration between the NPA and FIC.
<b>30</b>	The removal of ‘without delay’ is welcomed and stating that there will be a prescribed period rather will be more practical for entities. We recommend that such prescribed period should not be shorter than 30 days as accountable institutions may have multiple sanctioned entities they need to report on.
<b>42 (2) (q) (iv)</b>	In relation to informing the FIC and the supervisory body concerned of the additional measures applied to a risk assessment on foreign entities, this addition is not clear if such communication must be sent immediately or within a reasonable time. This clarity



	will help ensure that entities are not found to be non-compliant when they do not immediately alert FIC and the supervisory body.
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## COMPANIES ACT

Section	Comment
<b>82</b>	Deregistration by the Commissioner of the CIPC for failure to submit a securities register for a one year cycle is an extreme step and does not consider some of the practical issues faced by entities to submit such registers timeously. We recommend a two year cycle as minimum rather until the process is fully embedded in the South African legal ecosystem then reversion to one year cycle can be implemented. The one year registration cycle can commence from 2027. Collation of securities register information (including foreign information) and uploading it on the system has proven to be a challenge in the last year.
<b>175</b>	<p>Amend section 175(2) to – “When determining the amount of an appropriate administrative fine <u>as contemplated in subsection 175 (1) and 175 (1A)</u>, the following factors must be considered”. This will align with the addition of (1A) and ensure that it is clear that the Commissioner is bound by the same considerations as a court.</p> <p>We emphasize that when meting out an administrative fine, the quantum of the fine should not be to the extent that it cripples the future of the offending entity. The jump from a maximum R1 million fine to R10 million fine is a significant one. The maximum fines would be higher than those in developed countries such as USA and UK.<sup>2</sup></p>
<b>171 (8)</b>	<p>Section 171(8) proposes that the if a company fails to submit a beneficial interest register or a securities register the CIPC can / will issue a compliance notice and the Commission may impose an admin fine as set out in section 175(1A).</p> <p>However, the proposed section 82(3) (aA) says that the CIPC may remove the company from the register if a company has failed to submit a securities register or register of</p>

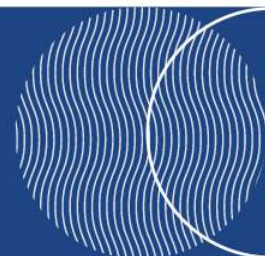
<sup>2</sup> The maximum administrative fines for non-compliance with statutory requirements in the UK imposed by Companies House can vary based on the severity of the offence:

1. Minor Offences: Fines range from £250 to £1,000.
2. Serious Offences: Fines range from £500 to £1,500.
3. Very Serious Offences: Fines range from £750 to £2,000.

For repeat offences within a five-year period, the penalties can escalate, potentially leading to prosecution.

The Federal Trade Commission (FTC) in the USA can impose administrative fines for various violations. As of 2025, the maximum civil penalty amounts include:

1. General Violations: Up to \$53,088 per violation for knowing violations of rules regarding unfair or deceptive acts or practices.
2. Failure to File Required Reports: Up to \$698 per violation.



beneficial interest, in the prescribed manner and form in terms of section 33 for one year or more in succession.

As such there will be an overlap between deregistering or firstly just providing a compliance notice and following that with an administrative fine.

Clarity is sought on when will CIPC decide to first issue a compliance notice and administrative fine before deregistering as per S82(3)(aA)

