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29 December 2022

No. 47815

Correction Notice, General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, No. 22 of 2022, Gazette No. 47815, Notice 1535 is replacing the notice that was published on 29th of December 2022, General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, No. 22 of 2022, Gazette No. 47802, Notice 1532

## THE PRESIDENCY

**No. 1535**                      **29 December 2022**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 22 of 2022: General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022**

## DIE PRESIDENSIE

**No. 1535**                      **29 Desember 2022**

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**Wet No. 22 van 2022: Wysigingswet op Algemene Wette (Teengeldwassery en Bekamping van Terrorismefinansiering, 2022**



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## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)  
(Assented to 22 December 2022)

# ACT

## To amend—

- the **Trust Property Control Act, 1988**, by inserting definitions of “accountable institution” and “beneficial owner”; by imposing certain requirements on trustees; by specifying matters that would disqualify a person from being appointed or continuing to act as a trustee; by clarifying that a person who was appointed outside the Republic as trustee must be authorised by the Master to act as trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and by specifying certain offences;
- the **Nonprofit Organisations Act, 1997**, by requiring registration of specified nonprofit organisations in terms of the Act; by enabling the Nonprofit Organisations Directorate, in order to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state; by clarifying the scope of powers of the director in relation to the registration and cancellation of registration of nonprofit organisations, and in respect of the power to require amendments to be effected to the constitution of a nonprofit organisation; by requiring registered nonprofit organisations to submit prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to the director; to require prescribed information relating to the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations to be included in the register that the director must keep, and by providing for access to that information; by providing for grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a registered nonprofit organisation; by providing for the removal of an office-bearer; and by providing for certain contraventions;
- the **Financial Intelligence Centre Act, 2001**, by amending the definitions of “beneficial owner”, “domestic prominent influential person” and “foreign prominent public official”, and inserting a definition of “prominent influential person”; by amending the objectives of the Financial Intelligence Centre (“Centre”); by amending the functions of the Centre to include the provision of forensic information; by empowering the Centre to request information held by other organs of state; by providing for additional and ongoing due diligence measures, and by amending the process followed when there are doubts about the veracity of information; by aligning certain provisions and Schedules 3A and 3B to appropriately refer to domestic and foreign

“politically exposed persons”, as distinct from “politically influential persons”, who will be dealt with in a new Schedule 3C; by amending certain provisions relating to resolutions of the Security Council of the United Nations; by amending the powers of access by authorised representatives to records of accountable institutions; by enabling the Centre to renew a direction not to proceed with a transaction; by providing for the safeguarding of information; by amending the provisions relating to the disclosure of information to the Centre and access to information by the Centre; by empowering the Minister to prescribe appropriate requirements relating to the 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; by amending certain provisions relating to the risk management and compliance programme; by amending the offences provisions to empower the imposition of an administrative sanction; by amending the provision relating to the amendment by the Minister of Schedule 2; by amending Schedules 2, 3A and 3B, and by inserting a new Schedule 3C; and by substituting the index for an arrangement of sections;

- the Companies Act, 2008, by inserting definitions of “affected company” and “beneficial owner”; by providing for a comprehensive mechanism through which the Companies and Intellectual Property Commission can keep accurate and updated beneficial ownership information; by requiring a company to keep a record of a natural person who owns or controls the company in terms of the definition of “beneficial owner”, and by providing for specified timelines within which the company must record any changes in this information; by requiring a company to file a record of any natural person who owns or controls the company in terms the definition of “beneficial owner”, with the Commission; and by specifying that persons who are convicted of offences relating to money laundering, terrorist financing, or proliferation financing activities or are subject to a resolution of the UN Security Council are prohibited from registering as company directors; and
- the Financial Sector Regulation Act, 2017, by providing that a financial institution, key person, representative or contractor to which a regulator’s directive in terms of Part 2 of Chapter 10 has been issued must comply with the directive; by inserting a new Chapter dealing with beneficial owners into the Act, which provides a definition of “beneficial owner”, and empowers standards and regulator’s directives to be made in relation to beneficial owners;

and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

#### Amendment of section 1 of Act 57 of 1988

1. Section 1 of the Trust Property Control Act, 1988, is hereby amended—
- (a) by the insertion before the definition of “banking institution” of the following definition: 5
- “**‘accountable institution’** has the meaning defined in section 1(1) of and Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);”;
- (b) by the insertion after the definition of “banking institution” of the following definition: 10
- “**‘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; 15
- (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; 5
- (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 10
- (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;” 15 20

#### Amendment of section 6 of Act 57 of 1988

2. Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) A person is disqualified from being authorized as a trustee if the person— 25
- (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 No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); 30
  - (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 in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence— 35
    - (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); 40
    - (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 45 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011); 50
  - (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 55
  - (g) is an unemancipated minor, or is under a similar legal disability. 60
- (1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of—

**Amendment of section 11 of Act 57 of 1988**

5. Section 11 of the Trust Property Control Act, 1988, is hereby amended in subsection (1)—

- (a) by the substitution in paragraph (d) for the full stop of “; and”; and  
 (b) by the insertion after paragraph (d) of the following paragraph and subsection:

“(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. 10

(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 No. 38 of 2001).” 15

**Insertion of section 11A in Act 57 of 1988**

6. The following section is hereby inserted after section 11 of the Trust Property Control Act, 1988:

**“Beneficial ownership**

**11A. (1) A trustee must—** 20

- (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 25  
 (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. 30

(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 No. 38 of 2001).” 35

**Amendment of section 19 of Act 57 of 1988**

7. The following section is hereby substituted for section 19 of the Trust Property Control Act, 1988:

**“Failure by trustee to account or perform duties** 40

**19. (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 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. 45

(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.” 50

- (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. 5

(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 10  
 (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. 15

(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; 20  
 (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. 25

(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 No. 38 of 2001).” 30

#### Amendment of section 8 of Act 57 of 1998

3. The following section is hereby substituted for section 8 of the Trust Property Control Act, 1998: 35

##### “Foreign trustees

8. When a person who was appointed outside the Republic as trustee has to administer or dispose of trust property in the Republic, the provisions of this Act shall apply to such trustee in respect of such trust property and such person shall act in that capacity only if authorized thereto in writing by the Master [may authorize such trustee] under section 6 [to act as trustee in respect of that property].” 40

#### Amendment of section 10 of Act 57 of 1988

4. Section 10 of the Trust Property Control Act, 1988, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): 45

“(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.” 50

**Amendment of section 20 of Act 57 of 1988**

8. Section 20 of the Trust Property Control Act, 1988, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) A trustee may at any time be removed from 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 authorised as a trustee in terms of section 6(1A); or
  - (b) if the trustee 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]** to do so by the Master, or within **[such]** a further period **[as]** 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 No. 18 of 1973)]** Mental Health Care Act, 2002 (Act No. 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.”.

**Amendment of section 2 of Act 71 of 1997**

9. Section 2 of the Nonprofit Organisations Act, 1997, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs:

- “(b) establishing an administrative and regulatory framework within which registered nonprofit organisations **[can]** must conduct their affairs;
- (c) **[encouraging]** requiring registered nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards.”.

**Amendment of section 5 of Act 71 of 1997**

10. Section 5 of the Nonprofit Organisations Act, 1997, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):

- “(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.”.