

06 February 2025

For the Attention of:

The National Treasury of the Republic of South Africa.

40 Church Square

Pretoria

0002

Commentdraftlegislation@treasury.gov.za

Dear Sir/Madam,

RE: COMMENTS ON THE DRAFT GENERAL LAWS (AML/CTF) AMENDMENT BILL, 2024

I refer to the invitation for comments on the Draft General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2024, as published by the National Treasury on 19 December 2024, and would like to submit the following comments on behalf of the Foundation for Rights of Equality and Expression (Free SA).

Free SA is an organisation dedicated to upholding true democratic principles and empowering South African citizens to meaningfully participate in decisions that shape their futures. Free SA is a registered non-profit company (registration number: 2024/631561/08).

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1. SUMMARY OF SUBMISSION

While Free SA acknowledges the importance of combatting money laundering and terrorism financing to align with international best practices and remove South Africa from the Financial Action Task Force (FATF) greylist, we caution against excessive regulation that infringes on financial privacy, burdens small businesses, and grants excessive power to state institutions with limited accountability. The principles of economic freedom, property rights, and limited government intervention must be respected to ensure that the fight against financial crime does not come at the cost of individual liberty and economic growth.

2. GENERAL COMMENTS

A. Infringement on Financial Privacy:

The expanded powers granted to financial intelligence and regulatory authorities risk eroding financial privacy protections. Increased government surveillance and reporting requirements should be accompanied by strict safeguards against abuse and overreach.

B. Burden on Businesses:

The additional compliance costs placed on small and medium enterprises (SMEs) could stifle entrepreneurship and job creation. Many regulatory requirements seem tailored for large corporations with extensive compliance infrastructure, leaving smaller entities at a disadvantage.

C. Centralisation of Authority:

The enhanced role of the Companies and Intellectual Property Commission (CIPC) in deregistering non-compliant entities grants excessive power to an unelected body with limited transparency. This opens the door for arbitrary and politically motivated decisions.

D. Ambiguity in Enforcement Measures:

The Bill lacks clarity regarding enforcement mechanisms and the recourse available to individuals and businesses subjected to undue regulatory action. Without clear procedural safeguards, there is a risk of inconsistent and unfair application.

3. SPECIFIC COMMENTS

#	Reference	Title	Relevant text	Comment
1	Clauses 2-4 Pages 3-4	Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008, section 53 of Act 11 of 2013, section 1 of Act 1 of 2017 and section 18 of Act 22 of 2022	(x) a supervisory body; [or] (xi) the investigative division of the Auditor-General[,]; <u>(xii) the Public Procurement Office.</u>	Broadening the definition of an "authorised officer" without clear accountability measures increases the risk of abuse of power and potential government overreach. Safeguards should be introduced to explain how the Public Procurement Office might be prevented from abusing the additional responsibilities given to it by these additions. For Clauses 3, 4 and 9 Free SA fears for the safe transfer of sensitive data, given recent international data leaks, and would propose benchmarking with the newly created AMLA in Frankfurt, Germany, for best practices.
2	Clause 14 (page 10)	Amendment of section 82 of Act 71 of 2008, as amended by section 51 of Act 3 of 2011.	“(aA) the company has failed to submit a securities register or register of beneficial interest, in the prescribed	This provision disproportionately affects small businesses and non-profit entities, potentially leading to unjust deregistrations. A grace period or dispute

			manner and form in terms of section 33 for one year or more in succession; or”.	resolution mechanism should be implemented. Free SA proposes 28 days.
3	Clause 17 (page 11)	“Review of administrative fine”	<u>“Any person on whom an administrative fine has been imposed, as contemplated in section 175(1A), may apply to the Companies Tribunal to review the administrative fine imposed within— (a) 15 business days after receiving notice of the administrative fine”</u> and what follows	Free SA fears that the cost of an appeal might keep small companies from using the allowed processes of this clause. This appeal according to 175A should be free for companies with a turnover of less than R5000 000,00 in the previous financial year.

4. CONCLUSION

Free SA supports reasonable and proportionate efforts to combat financial crime. However, the Draft General Laws (AML/CTF) Amendment Bill, 2024, in its current form, risks overreach by expanding state surveillance powers, imposing excessive compliance burdens on businesses, and lacking proper safeguards against arbitrary enforcement. We urge policymakers to consider a more balanced approach that upholds the principles of individual liberty, economic freedom, and limited government intervention, especially with regard to small and young companies.

Should there be an opportunity for oral submissions, Free SA kindly requests the opportunity to also make oral submissions.

Yours sincerely,

Paul Maritz

Campaigns Director

Free SA - FOUNDATION FOR RIGHTS OF EXPRESSION AND EQUALITY NPC

Registration: 2024/631561/08

www.freesa.org.za