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Mr Allen Wicomb

We submit that compulsory registration for those entities that are already in compliance with provisions of either the Companies Act, the Trust Property Control Act and the Income Tax Act would be unhelpful, and they should not be required to submit to the NPO directorate.

The reasons for the objection to additional registration are many but include:

1. Compulsory registration of NGO’s is not part of global best practice for non-governmental organisations.

2. Civil Society has held government to account; both during the previous apartheid regime and during the state capture years.

3. Civil Society has highlighted the activities of global criminals, such as the failure of the South African government to arrest international criminals sanctioned by the UN

4. Civil society is not adequately protected from whistle blowing activities and individuals representing social justice interests have been targeted by those who oppose their activities.

5. The provisions of the omnibus bill are neither risk based nor proportional as required by the Best Practice guidance issued by FATF.

6. The definition of “beneficial owner” for the purposes of identifying and reporting those responsible for all types of entities that is to be inserted is extremely broad and includes for example, a founder (who might perhaps have nothing more to do with the trust/NPC). In each reference it says “for the purposes of this Act”. In the non-profit realm there is no ‘ownership’; A trustee does not own the assets and the beneficiaries are a broad category or part of the public, it is therefore not sensible to use the words “beneficial owner” from a trust or non-profit law perspective.

7. Generally: the introduction of severe penalties for individuals that hold office should be reviewed in light of the recommendations and the key persons of interest provisions of the FATF report.

**Submission in response to B18-2022**

The Omnibus Bill should be amended for the following reasons:

• The risk based and proportional guidelines contained in recommendation 8 of the FATF report have not been considered

• Capacity building in both the Masters’ offices and the NPO Directorate should be a priority. Both offices are not functioning as they should and would be unable to comply with the additional burden created by the proposed Bill.

• Criminalising the failure to comply with registration and reporting requirements in legislation such as The Trust Property Control Act, The Companies Act and the NPO Act and imposing fines up to R10M and/or imprisonment for 5 years. will discourage participation in the good work of NGO’s.

• Holding Founders accountable as ‘beneficial owners’ long after their participation in administration of a fund may discourage the good work of non-profit entities. The use of the term Beneficial Owner does not make sense in the non-profit sector.

• Compulsory registration for entities already registered as an NPC and a PBO is redundant and onerous

• Compulsory registration for entities already registered as Trusts and PBO’s is redundant and onerous

• Civil society is not adequately protected from whistleblowing and crime reporting, exposing the identity of those in organisations that are seeking to achieve social justice will put them at risk

• Unregistered entities that receive or transact on values above R1,000,000 should be targeted and identified via existing channels and required to register with the NPO Directorate

• FICA resources should be used to improve cooperation for seizure of the proceeds of crime and not hinder the activities of those engaged in performing public benefit activities.

• Funding from international resources usually requires some form of equivalency determination such as the process by which a U.S. where grantmaker evaluates whether an intended foreign grantee is the equivalent of a U.S. public charity. International transfers are already controlled by the Reserve Bank and the Treasury. Requiring that those who already report to SARS and their funders provide annual reports to the DSD would be an unnecessary burden on PBO’s in South Africa.

Warm regards

Dr Joanne Harding

Executive Director