



NPO WORKING GROUP

Collaborating to create a vibrant civil society

**GENERAL LAWS AMENDMENT (ANTI MONEY LAUNDRERY
AND COUNTER-TERRORISM FINANCING) BILL**

SUBMISSION- NATIONAL COUNCIL OF PROVINCES

RESPONSE TO UPDATED (B-VERSION) BILL

No knitting clubs required to register!

Multi-pronged approach supported (data held by relevant institutions) and also tailored approach to beneficial ownership. Consideration given to privacy rights appreciated.

FIC registration suggested as alternative to compulsory NPO registration for **at-risk non-profits**. This option still preferred.

Parallel process to (over the longer term) conduct a full scan of the NGO sector and assess risks is supported (timing could be better).

Support a move of the NPO registry out of DSD to be an independent but public, properly funded, credible and operational structure OR the sector builds a new institution.

SUGGESTION

Amend FICA:

Add definition:
“cross-border non-profit entity”

means a a not for profit legal entity established or registered in the Republic or carrying out non-profit activities in the Republic as described in section 23 of the Companies Act, which

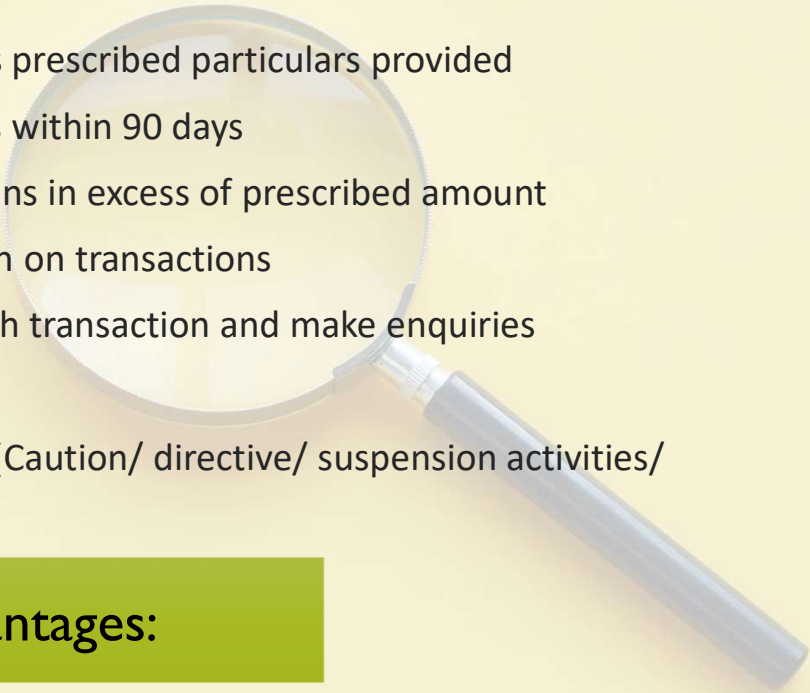
- (i) makes donations to individuals or organisations outside of the Republic’s borders; or
- (ii) provides humanitarian, charitable, religious, educational or cultural services outside of the Republic’s borders.

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Minister by Gazette can add to list of reporting institutions category of persons used or likely to be used for money – laundering **BUT – if not appropriate to make them accountable institutions in terms of schedule 1**

Schedule 3 FICA list of ‘reporting institutions’
(currently Kruger rand and car dealers only)
ADD: cross-border non-profit entity

FIC SUGGESTION

- “Reporting institutions” to FICA:
 - Must register with the FI Centre plus prescribed particulars provided
 - Must notify of changes in particulars within 90 days
 - Must report to the Centre transactions in excess of prescribed amount
 - Centre can request more information on transactions
 - Centre can direct not to proceed with transaction and make enquiries
 - Report or guilty of offence
 - Failure to register – admin sanction (Caution/ directive/ suspension activities/ max R 50 mil penalty)
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Advantages:

1. Targeted and separate list- easy to find and police

2. Does not rely upon or break the NPO Directorate

NB DETAIL I: FOREIGN ASSOCIATIONS

- Foreign non-profit companies and foreign trusts are already required to register in South Africa under s23 of the Companies Act and s8 of the Trust Act.
- We propose **requiring the registration with CIPC also of the foreign equivalents of voluntary associations (unincorporated or unregistered bodies and organisations) which may be carrying out non-profit activities in South Africa.** It's a neat way to do it, and the way it was done under the previous Companies Act.
- This proposed amendment is needed to support the compulsory registration under FICA (or NPO), as one then has a local registration, regardless of type of legal entity.

NB DETAIL 2: LINING UP BOARDS

- Directors of non-profit companies and trustees of trusts are those responsible for governance, with ultimate fiduciary responsibility for the organisation.
- In Voluntary Associations, those who govern and have ultimate fiduciary responsibility are those who are elected by the members to serve on the committee governing body.
- The current reference in the NPO Act definition of 'office bearers' to 'executive' position is to those who manage/administer- the management team employed by the organisation. **A correction to the NPO Act is required to ensure that it is the same 'fiduciaries' being referred to and tracked across all three types of legal entities.** (If the amendment is not made then Voluntary Associations would not have to disclose details of their board, but those of their CEO and senior managerial staff.)

NOT THE NPO DIRECTORATE!

- NPO Register +/-10 years out of date (political interference from successive Ministers). Many non-profits choose not to register with the NPO Directorate because of a lack of confidence in the DSD.
- The work done by many non-profits does not fall within the scope of the DSD. The DSD does not understand or serve the full ambit and scale of the non-profit sector.
- Gearing the DSD up to accommodate what the Bill requires would come at great expense to first address the current inadequate capacity and appropriate data systems before layering the finance monitoring function which also require forensic auditors and lawyers.
- The DSD does not allocate sufficient budget to provide the staff and information systems needed to collect, process and store data to support profiles/subscribers of over 270 000 currently registered organisations.
- The system was designed more than 15 years ago and to our knowledge hasn't been upgraded. The system is not secure, is poorly maintained and often broken.
- The DSD data systems are inefficient, and do not have sufficient granularity of data to monitor NPOs. Even when reports are digitally lodged, data is not able to be retrieved, separated and stored appropriately. In regard to the proposed Bill, there is not currently the ability to monitor where funds are coming in from and how they are being disbursed at an aggregated and individual level.
- The current system only keeps record of registrations and does not have the capacity to monitor compliance and legitimacy of these registrations. For example, the online system to upload the required annual narrative reports and financial statements works so erratically that most organisations still courier hard copies of reports. If an 'Acknowledge Receipt of Annual Reports Letter' is not received NPOs are unable to apply for further grant funding from the DSD to implement their programmes.

IF THE NPO DIRECTORATE THEN...

The pre-requisite for limited-ambit compulsory registration as an NPO would be that:

1. The NPO Directorate (internally) kept this list of organisations separate from those of voluntary NPO registrations, so that they can be separately tracked

2. The NPO Directorate systems are substantially upgraded and reinforced for security, stability and to allow data required to be found and extracted;

3. The NPO Directorate is relocated as structure independent of DSD

4. The staffing and skills at the NPO Directorate are overhauled and upgraded. Legal and audit skills required.

INDEPENDENT NPO REGISTRAR

- An Independent Body to serve non-profit organisations in their contribution to meeting the diverse needs of the population of the Republic.
- A credible and effective Registry or oversight body which serves and enables the full scope and ambit of non-profits should not be housed under a government department but should be established and given the status of an Independent statutory body reporting to Parliament.
- This could be achieved either by shifting and upgrading the current NPO Directorate, or by beginning afresh.
- There is broad support in the sector for an oversight body which is independent of DSD and which has the funding, staffing and systems to effectively serve the sector, and play a responsive and supportive role.
- A wide consultative process would have to be followed in setting up such an independent registry.

DSD has a heart & soul for the betterment of humankind, whilst the NPO Directorate needs a Head & Administrative focus.



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