



## **NPO WORKING GROUP**

Collaborating to create a vibrant civil society

### **THE ANTI MONEY LAUNDRY AND COUNTER-TERRORISM FINANCING AMENDMENT BILL**



# THE URGENCY

The sector has not been consulted on this process, but understands the risks associated with the threat of grey-listing.

+/-R17 billion per annum in international donor funding will pause or be diverted to other regions in need.

**NOW:** Amend only the required parts to avoid being grey-listed so that the non-profit sector does not collapse entirely when foreign donor funding is cut off.

Long term and broader improvements to the mechanisms that encourage transparency, accountability and good governance within the non-profit sector are a good idea. However, these cannot happen in a short time and without consultation- protests from the sector will also increase likelihood of grey-listing.

# FATF RECOMMENDATION 8

Focus on risk:

FATF functional definition of non-profit:

1. *Legal person or organisation* **AND**
2. *primarily engages in raising or disbursing funds* **AND**
3. *for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”*

This does not apply to the non-profit sector as a whole. A targeted approach to oversight and regulation recommended:

**Only so far unregulated type of organisation that fits the FATF functional definition = unregistered donor/conduit voluntary associations**

# THE NON-PROFIT SECTOR

Voluntary Association

Members and committee

Constitution

No registration needed

Established under Common law

Charitable trust

Trustees

Trust deed

Registered at Master of the High Court

Governed by the Trust Property Control Act 57 of 1988

Non-profit company (NPC)

Directors

Can have members or no members

Registered with CIPC

Foreign organisation conducting non-profit activities in South Africa required to register as an External Non-Profit Company with CIPC

Governed by the Companies Act 71 of 2008 (Replacing old Section 21 Companies)

All

Cannot be owned

Exist for a purpose

Can apply for NPO status with DSD

Can apply for tax-exempt status with SARS







# THE NPO DIRECTORATE CURRENTLY

An NPO is not a **type** of organisation or legal entity! It is a status that any of kind of non-profit can acquire.

Voluntary registration of any kind of the three types of non-profits

- Under-capacitated for processing the current level of applications and administration.
- NPO register is 10 years out of date
- Systems not designed to capture data needed



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# DISRUPTIVE EFFECT OF BILL IN ITS PRESENT FORM

Amendments to five Acts will impact all organisations in the NPO sector immediately, whether they be registered or unregistered.

The NPO Directorate is not equipped to handle an onslaught of registrations (over 250 000 are currently registered) without additional resources and budget- major systems upgrade required.

Masters Office (trusts) remains largely a paper-based system – Upgrades needed.

Banks will overreact and request excessive information and documentation from organisations.  
Accounts will be frozen for non-compliance with the new provisions  
– Non-profits (needlessly) unable to function.

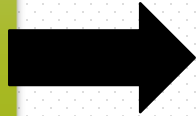
Increased anxiety and burden, decreased funding - the non-profit sector already struggling to survive and comply.

The most vulnerable will become more at risk; women, children, the aged and the homeless. **Note – privacy issues**

Religious institutions, churches, mosques, choirs, sewing clubs, old age homes, schools, sports clubs, community clubs who are under-equipped will be forced to register and even if they do not register, be burdened with the possibility of criminal liability despite limited funds

IF THE BILL PASSES UNCHANGED

Trusts




Master of the High Court

NPCs



CIPC

Voluntary Associations



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# FATF REQUIRES: EFFECTIVENESS

One of the criteria that FATF is going to assess

Ongoing assessment requires ongoing compliance – Don't build something we can't maintain.

If NPO registration is made compulsory:

Irrelevant excess data will hide the information being sought, slow the system even further, with negative impact on even non-profits which are already NPO registered and compliant

NPO directorate systems will not be able to keep track of every organisation

Will not be possible for NPO directorate to identify and report criminal activities

Warping of the intended function and powers of the NPO directorate

If universal mandatory NPO registration is required the non-profit sector will reject it, **AND** SA will fail the effectiveness test

# FOREIGN ORGANISATIONS

## Section 23 of the Companies Act

A foreign company (entity incorporated outside of SA) must register with the Commission within 20 business days after it first begins to conduct ... non-profit activities ... within the Republic

- a) as an external non-profit company if, within the jurisdiction in which it was incorporated, it meets the legislative or defined requirements that are comparable to the legislative or definitional requirements of a non-profit company incorporated under this act...

a foreign company is "conducting... non-profit activities... within the Republic" if that foreign company—

- a) is a party to one or more employment contracts within the Republic; or
- b) subject to subsection (2A), is engaging in a course of conduct, or has engaged in a course or pattern of activities within the Republic over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in ... non-profit activities within the Republic.

## Section 8 of Trust Property Control Act

*"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 the Master may authorise such trustee under section 6 to act as trustee in respect of that property."*

## New Bill:

For "incorporated entities" CIPC registration already a requirement (double requirement that will be too burdensome on the NPO directorate and not provide any new information. CIPC greater capacity and systems in place)

**'Operate'** not defined clearly – would once off donors have to register with the NPO directorate? State sovereignty means cannot force foreign donor orgs to register in SA

Only one group left out- Suggest:

- Unincorporated foreign associations which carry on non profits activities in SA to register as NPCs with CIPC (Companies Act Amend)

# RECOMMENDATIONS

## Remove

Compulsory registration with the NPO directorate for all non-profits

Compulsory registration of all foreign organisations who 'operate' in South Africa with the NPO directorate

Requirement of voluntary association "executives" to report (replace with committee or governing body)

Founders reporting for charitable trusts where the initial donor is deceased or no identifiable individuals.

## Include

Require registration of conduit (on-donating) voluntary associations as Non-Profit Companies

Make foreign voluntary associations register with CIPC as NPCs

Member detail disclosure only where there is **financial benefit** to members

(Change the definition of 'constitution' to founding document in NPO Act)







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