

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

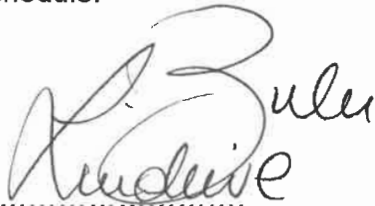
DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. 3391

8 May 2023

REGULATIONS IN RESPECT OF AMENDMENTS TO THE NON-PROFIT ORGANISATION ACT, 1997 (ACT NO. 71 of 1997) AS CONTAINED IN THE GENERAL LAWS AMENDMENT ACT, 2022 (ACT NO. 22 of 2022)

I, **Lindiwe Zulu**, Minister responsible for the Department of Social Development, with the concurrence of the Minister of Finance and Financial Intelligence Centre (FIC) made Regulations, in respect of amendments to the Non-Profit Organisation Act, 1997 as contained in the General Laws Amendment Act, 2022 (Act No. 22 of 2022), in the Schedule.



Ms Lindiwe Zulu, MP
Minister of Social Development
Date: 30/03/2023

SCHEDULE

Definitions

1. In these Regulations, unless the context indicates otherwise-
“**FATF**” means Financial Action Task Force which is an international policy-making body that sets international anti-money laundering standards and counter-terrorist financing measures; and
“**NPO**” means a nonprofit organisation registered as such in terms of the Nonprofit Organisation Act, 1997 (Act 71 of 1997).

Objects of Regulations

2. The objectives of these Regulations are to-
- (a) combat money laundering;
 - (b) provide for powers of the Directorate;
 - (c) prevent funding of terrorist organisations;
 - (d) prevent funding of terrorist activities;
 - (e) protect NPOs from terrorist abuse;
 - (f) establish a register of persons disqualified as office bearers;
 - (g) provide clarity on fiscal sponsorship;
 - (h) provide for administrative penalties.

Powers of Directorate

3. The Directorate must-
- (1) for purposes of section 25A(9) of the Act, establish and maintain a register of persons who are disqualified from serving as office-bearers in terms of an order of a court pursuant to the Act or any other law;
 - (2) allow any person to inspect the register referred to in subregulation (1), at the office of the Director of Nonprofit Organisations between the hours of 08:30 and 12:00, and 13:30 and 15:30, from Monday to Friday.

(3) ensure that the register referred to in subregulation (1), includes, to the extent that the information is available to the Directorate, the following details regarding the persons listed therein:

- (a) full forenames and surname;
- (b) thirteen digit identity number in the case of a South African, or passport number and date of birth in the case of a foreign national;
- (c) case number of the court proceedings pursuant to which the person became disqualified;
- (d) date on which the court order resulting in disqualification takes effect;
- (e) date on which the disqualification expires; and
- (f) reason for disqualification.

(4) within (30) days after a court order is granted the consequence of which is that an office-bearer of an NPO becomes disqualified to serve as an office-bearer, compel the nonprofit organisation to provide the information listed in subregulation (3) to the director in writing, in relation to that person.

(5) ensure that upon the expiry of any period of disqualification, the person concerned, notifies the director in writing, with supporting information and documentation, of the expiry of the person's period of disqualification;

(6) ensure that within (30) days of receipt of the information and documentation referred to in subregulation (5), the director removes the person's forenames and details from the public register of a person disqualified from serving as an office-bearer, unless it is established that the period of disqualification has not expired.

Fiscal sponsorship

4. For purposes of this regulation and the register referred to in section 24(1) of the Act- "fiscal sponsorship" means an agreement between a registered NPO and an unregistered NPO in terms of which the registered NPO provides fiduciary oversight, financial management, administrative or operational services to support the capacity of the unregistered NPO. Fiscal sponsorships are often used by a newly formed nonprofit organisation before it is registered or becomes tax-exempt by the South African Revenue Service, to facilitate its fundraising and to maintain controls over the expenditure before it has independent capacity to maintain oversight over its financial management, administrative or operational services in its start-up phase of development.

Obligations of certain registered nonprofit organisations

5.(1) For purposes of section 18(1)(bA) of the Act, an NPO which makes donations to persons, provides services, and conducts activities, exclusively in the Republic, must provide the director with the following information in respect of each office-bearer of the NPO —

- (a) full forenames and surname;
- (b) identity number, or passport number if non-South African;
- (c) position or portfolio in the nonprofit organisation;
- (d) postal and physical address; and
- (e) contact details.

(2) For purposes of section 18(1)(bA) of the Act, a nonprofit organisation referred to in section 12(1)(b) of the Act must provide the director with the following information —

(a) in respect of each office bearer of the NPO –

- i. full forenames and surname;
- ii. thirteen-digit identity number in the case of a South African citizen, or passport number and date of birth in the case of a non-South African;
- iii. position or portfolio in the NPO;
- iv. postal and physical address; and
- v. contact details.

(b) in respect of the control structure of the NPO –

- i. legal form of the organisation;
- ii. registration number, if applicable;
- iii. income tax or value added tax number, whichever is applicable;
- iv. type of control structure;
- v. titles of any sub-committees, where applicable, of the control structure; and
- vi. names of affiliate organisations and fiscal sponsorships.

(c) in respect of the administration and operations of the NPO –

- i. the business address, contact details and, if applicable, registered address of the NPO;
- ii. the trading name of NPO, if different from the name under which it is incorporated;

- iii. the countries or territories in which the NPO has donated funds, provided services or conducted activities in each of the previous three financial years;
- iv. a description of the activities or services provided in each country or territory outside the borders of the Republic in each of the previous three financial years; and
- v. confirmation as to whether the annual financial statements of the nonprofit organisation were audited in each of the previous three financial years, and if so the name of the auditing firm.

(3) The Republic of South Africa must apply a risk-based approach to ensure that measures are introduced to prevent or mitigate money laundering and terrorist financing which are commensurate with the risks identified by the FATF Recommendation.

(4) The Minister must, in relation to NPOs, provide for measures to protect NPOs from potential terrorist financing abuse and should apply in line with the risk-based approach and focused measures in dealing with identified threats of terrorist financing abuse to NPOs.

(5) The approach contemplated in sub-regulation (3) must take into account-

- (a) the diversity within individual national sectors;
- (b) the differing degrees to which parts of each sector may be vulnerable to terrorist financing abuse;
- (c) the need to ensure that legitimate charitable activity continues to flourish; and
- (d) the limited resources and authorities available to combat terrorist financing in each country.

(6) The risk-based approach as contemplated by FATF should justify differential treatment as between NPOs which elect to be registered in terms of the Act and those which are required to register.

(7) In relation to NPOs which are required to register, additional and more detailed information should be provided to the director.

(8) The information recorded for NPOs which elect to register must consist of information currently provided to the Directorate under the Act.

Access to information

6.(1) Access to the information referred to in section 18(1)(bA) may be requested from the registered NPO in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(2) Any person may inspect the register referred to in section 24(1)(d) of the Act, at the office of the Director of NPOs between the hours of 08:30 and 12:00, and 13:30 and 15:30, from Monday to Friday.

(3) The director may provide electronic access to the information in the register referred to in section 24(1)(d) of the Act.

(4) Information relating to the identity of the person(s) who own, control or direct the activities of high risk NPOs, including senior officers, board members and trustees, should be made publicly available.

(5) Additional information that is sought may be accessed under the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) which give effect to the right to privacy.

Administrative sanctions

7.(1) The director may impose an administrative sanction on any registered NPO or a NPO which is required to register, when satisfied on available facts and information that the NPO has failed to –

- (a) perform any duty imposed by, or has failed to comply with the requirements of, section 12 or 18(1)(bA) of the Act; or
- (b) register as required in terms of section 12(1)(b) of the Act, within the period determined by the Minister by notice in the Gazette in accordance with section 12(1)(c) of the Act.

(2) No administrative sanction may be imposed until the director has issued a compliance notice to the nonprofit organisation in accordance with section 20 of the Act, and the time-period during which compliance must be effected has expired without the NPO having rectified the non-compliance.

(3) When determining an appropriate administrative sanction, the director must consider the following factors:

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
 - (b) whether the nonprofit organisation has previously failed to comply with any compliance notice;
 - (c) any remedial steps taken by the nonprofit organisation to prevent a recurrence of the non-compliance; or
 - (d) any other relevant factor, including mitigating factors.
- (4) The director may impose any one or more of the following administrative sanctions:
- (a) a caution not to repeat the conduct which led to the non-compliance referred to in sub-regulation (1);
 - (b) a reprimand;
 - (c) a directive to take remedial action or to make specific arrangements; or
 - (d) the restriction or suspension of certain specified activities of the nonprofit organisation.
- (5) The director may—
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant NPO in respect of compliance with this Act or any compliance notice issued in terms of this Act;
 - (b) suspend any part of an administrative sanction on any condition the director deems appropriate for a period not exceeding five years.
- (6) Before imposing an administrative sanction, the director must give the NPO reasonable notice in writing—
- (a) of the nature of the alleged non-compliance;
 - (b) of the intention to impose an administrative sanction;
 - (c) of particulars of the intended administrative sanction; and
 - (d) that the NPO may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.
- (7) After considering any representations and the factors referred to in sub-regulation (3), the director may impose such administrative sanction as the director considers appropriate.
- (8) Regulation 9A provides for administrative sanctions, for non-compliance with the registration requirement applicable to nonprofit organisations contemplated in section 12(1)(b), and the reporting requirements applicable to registered NPO, in terms of the Act.
- (9) The administrative sanctions are not punitive in nature, but rather, are meant to encourage compliance with the Act.

(10) Section 20 of the Act also provides for sanctions for noncompliance with the constitutions and obligations of nonprofit organisations (including criminal sanctions, where appropriate), and section 21 of the Act provides for cancellation of registration of nonprofit organisations.

Short title and commencement

8. These Regulations are called Regulations in Respect of Amendments to the Nonprofit Organisation Act, 1997 as contained in the General Laws Amendment Act, 2022 (Act No. 22 of 2022) and come into force on publication thereof in the Gazette.

FORM 4
REGISTER OF NONPROFIT ORGANISATIONS
PART A

NAME AND ADDRESS OF NONPROFIT ORGANISATION		REGISTRATION NUMBER	DATE OF REGISTRATION	DATE OF CANCELLATION	INDICATE WHETHER	DATE WHEN	LEGAL FORM OF THE CONTROL STRUCTURE OF THE NPO	FULL NAME AND IDENTITY NUMBER OF EVERY ACTIVE MEMBER OF THE CONTROL STRUCTURE	INDICATE WHETHER FINANCIAL STATEMENTS ARE AUDITED AND BY WHICH AUDITING FIRM
NONPROFIT ORGANISATION					VOLUNTARILY DE-REGISTERED, WOUNDUP OR DISSOLVED	VOLUNTARILY DE-REGISTERED, WOUNDUP OR DISSOLVED			

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 Section 24
 Form 4
 Page 1 of 1

REGISTER OF NONPROFIT ORGANISATIONS OPERATING EXCLUSIVELY WITHIN THE REPUBLIC OF SOUTH AFRICA

PART B

Nonprofit Organisations Act, 1997/Section 24 Form 4 PART B Page 1 of 1											
REGISTER OF NONPROFIT ORGANISATIONS IN SOUTH AFRICA WHICH MAKE DONATIONS TO INDIVIDUALS OR ORGANISATIONS OUTSIDE OF SOUTH AFRICA OR WHICH CONDUCT ACTIVITIES OR PROVIDE SERVICES OUTSIDE OF SOUTH AFRICA											
NAME AND ADDRESS OF NONPROFIT ORGANISATION	REGISTRATION NUMBER	DATE OF REGISTRATION	INDICATE WHETHER VOLUNTARILY DE-REGISTERED, WOUND UP OR DISSOLVED	DATE WHEN VOLUNTARILY DE-REGISTERED, WOUND UP OR DISSOLVED	LEGAL FORM OF THE CONTROL STRUCTURE OF THE NPO	LIST OF SUB-COMMITTEES OF THE CONTROL STRUCTURE	LIST OF AFFILIATE ORGANISATIONS AND FISCAL SPONSORSHIPS	FULL NAME AND IDENTITY NUMBER OR PASSPORT NUMBER OF EVERY CURRENT MEMBER OF THE CONTROL STRUCTURE, INCLUDING SUB-COMMITTEES	FULL NAME AND JOB TITLE OF EVERY CURRENT MEMBER OF THE SENIOR MANAGEMENT STRUCTURE OF THE NPO	JURISDICTIONS IN WHICH THE NPO DONATES MONEY TO INDIVIDUALS OR INSTITUTIONS OUTSIDE OF SOUTH AFRICA, AND THE VALUE OF THE DONATION IN RESPECT OF EACH JURISDICTION DURING THE LAST THREE FINANCIAL YEARS	JURISDICTIONS IN WHICH THE NPO CONDUCTS ACTIVITIES OR PROVIDES SERVICES OUTSIDE OF SOUTH AFRICA, AND THE ACTIVITIES OR SERVICES PROVIDED