

REPUBLIC OF SOUTH AFRICA

NONPROFIT ORGANISATIONS AMENDMENT BILL, 2018

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*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*
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(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Nonprofit Organisations Act, 1997, so as to amend and insert certain definitions; to provide for the office of the Registrar of nonprofit Organisations, to provide for the registration of nonprofit organisations and compulsory registration of foreign organisations, to provide for the Arbitration Tribunal for the disputes resolution; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 71 of 1997

1. Section 1 of the Nonprofit Organisations Act, 1997 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1)(iv) for the definition of "constitution" of the following definition:

" 'constitution' includes a trust deed and **[memorandum and articles of association]** Memorandum of Incorporation";

(b) by the deletion of the definition of "Director";

(c) by the deletion of the definition of "Directorate";

(d) by the substitution in subsection (1)(vii) for the definition of "financial year" of the following definition:

" 'financial year', in relation to the **[Directorate]** Office of the Registrar of nonprofit organisations, means "a period which commences on 1 April and ends on 31 March in the following year;"

(e) by the substitution in subsection (1)(viii) for the definition of "Minister" of the following definition:

" 'Minister' means the Minister **[for Welfare and Population Development]** responsible for Social Development;"

(f) by the substitution in subsection (1)(ix) for the definition of "national department" of the following definition:

" 'national department' means the national department responsible for **[welfare]** social development.";

:

(g) by the insertion after the definition of "office bearer" of the following definition:

" 'Office of the Registrar' means the body established in terms of section 4;"

and

(h) by the insertion after the definition of "registered nonprofit organisation" of the following definition:

" 'Registrar' means the person designated in terms of section 8.".

Amendment of section 2 of Act 71 of 1997

2. Section 2 of the principal Act is hereby amended by the insertion of the word “and” at the end of paragraph (e), and the addition of the following paragraph:

“(f) facilitating voluntary registration of nonprofit organisations and compulsory registration for foreign organisations operating within the borders of the Republic of South Africa.”.

Amendment of section 11 of Act 71 of 1997

3. Section 11 of the principal Act is hereby amended by the substitution for section 11 of the following section:

“The Minister may prescribe benefits or allowances applicable to registered nonprofit organisations, after consultation with **[the committees of the two Houses of]** Parliament **[responsible for welfare]** and with the concurrence of every Minister whose department is affected by a particular benefit or allowance.”

Amendment of section 12 of Act 71 of 1997

4. Section 12 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) of the following subsection:

“(1) Any nonprofit organisation that is not an organ of state may apply to the **[director]** Office of the Registrar for registration.”;

- (b) by the substitution in subsection (2) for paragraph (h) of the following paragraph:

"(h) specify the organisational structures and mechanisms for its governance, which shall at a minimum include the office of or designation of the chairperson, secretary and treasurer with their deputies;"

- (c) by the deletion in subsection (2) of the word "and" at the end of paragraph (n) and insertion of the word "and" at the end of paragraph (o) and the addition of the following paragraph:

"(p) disclose whether a member or office bearer has been previously been found guilty of an offence relating to the embezzlement of money of any nonprofit organisations and the status of the conviction."; and

- (d) by the addition of the following subsections:

"(4) No nonprofit organisation that has a similar or identical name to an existing nonprofit organisation or any other organisation and such name is likely to cause confusion with any other organisation or individual person shall be permitted to register, unless there is sufficient proof that the applicant has a legal right to that name or has consent to use that name.

(5) Any nonprofit organisation, including foreign nonprofit organisations that intend to operate business within the Republic must be registered in terms of this Act before operate and shall be subjected to the provisions of this Act and any other laws of the Republic."

Amendment of section 13 of Act 71 of 1997

5. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) of the following subsection:

"(1) A nonprofit organisation may, in the prescribed manner, apply for registration by submitting to the director—

- (a) **[the prescribed]** an application form, properly completed;
- (b) **[two copies]** a copy of its constitution[; **and]** bearing the name of the organisation to be registered;".
- (c) **[such other information as may be required by the director so as to assist the director to determine whether or not the nonprofit organisation meets the requirements for registration;]**".

Amendment of section 17 of Act 71 of 1997

6. Section 17 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

" Every registered nonprofit organisation must, **[to the standards of generally accepted accounting practice]** in the prescribed manner—".

Amendment of section 18 of Act 71 of 1997

7. Section 18 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) Every registered nonprofit organisation must, in writing, in a prescribed manner, provide the director with—"; and

- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) a narrative report of its activities [**in the prescribed manner**] together with its financial statements and the accounting officer's report as contemplated in section 17 (1) and (2) [**,within nine months after the end of its financial year**];".

Amendment of section 23 of Act 71 of 1997

8. Section 23 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) A registered nonprofit organisation may [**reregister**] deregister voluntarily by sending the director—";

- (b) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

“(i) stating its intention to **[reregister]** deregister voluntarily and the reasons therefor;” and

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) cancel the organisation’s certificate of registration, and **[reregister]** deregister it by amending the register; and”.

Amendment of section 24 of Act 71 of 1997 as amended by section 3 of Act 17 of 2000

9. Section 24 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) all nonprofit organisations that have been registered within that financial year;”.

Amendment of section 25 of Act 71 of 1997 as amended by section 4 of Act 17 of 2000

10. Section 25 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) **[All members of the public have the right of access to and to inspect any document that the director is obliged to preserve]** Any person who wishes to access information in terms of subsection (1) must do so in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).”; and

(b) by the deletion of subsection (3).

Amendment of section 29 of Act 71 of 1997

11. Section 29 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) It is an offence to cause a nonprofit organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than in the manner contemplated in section 12(2)~~[(0)](o)~~".

Amendment of section 31 of Act 71 of 1997

12. Section 31 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding subparagraph (i) of the following words:

"(1) Subject to section ~~[15]~~ 10 of the ~~[Exchequer Act, 1975 (Act No.66 of 1975)]~~ Public Finance Management Act, 1999 (Act No.1 of 1999), the Minister may in writing delegate any of his or her functions in terms of this Act ~~[.]~~, except those contemplated in sections 8 and 26 to ~~[---]~~ —";

(b) by the substitution in subsection (1) for subparagraph (iii) of the following subparagraph:

"(iii) any other organ of State responsible for ~~[welfare]~~ social development matters ~~[.]~~ if the head of that organ of State accepts the delegation."; and

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) withdraw or amend [arty] any decision made by a person or body in terms of a delegation contemplated in subsection (1);".

Substitution of section 33 of Act 71 of 1997

13. The principal Act is hereby amended by the substitution for section 33 of the following section:

"Chapters I and [HI] III of the Fund-raising Act, 1978 (Act No. 107 of 1978), are hereby repealed to the extent that they apply to fund-raising organisations [.] branches of such organisations and any other organisation contemplated in Chapter I of that Act."

Amendment of section 34 of Act 71 of 1997, as amended by section 5 of Act 17 of 2000

14. Section 34 of the principal Act is hereby amended—

(a) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:

"(ii) in accordance with the procedure contemplated in sections 13 [.] 14 and 15.";

(b) by the substitution in subsection (2)(e) for the words preceding subparagraph (i) of the following words:

"(e) if the organisation does not submit its application within this period [.] the organisation's registration lapses and the director must—"; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) If an authorised or registered fund-raising organisation, branch of a **[find raising]** fund raising organisation or any other organisation contemplated in subsection (2)(a) fails to comply with the terms and conditions of its authorisation or registration, the procedures contemplated in sections 20, 21 and 22 of this Act apply."

Substitution of certain words and expressions

15. The principal Act is hereby amended—

(a) by the substitution for the expression "Directorate" wherever it occurs, of the expression "Office of the Registrar";

(b) by the substitution for the expression "Director" wherever it occurs, of the expression "the Registrar."

Short title

16. This Act is called the Nonprofit Organisations Amendment Act, 2018.