



# OCTOPUS ACT AND RELATED LAWS

By ngoLAW



## IN A NUTSHELL

Octopus Act

Impact on NPO, NPC and trusts

Tax update

Latest NPO  
Regs just  
dropped!



# CHANGES TO THE LAW: THE OCTOPUS ACT

# THE OCTOPUS BILL (NOW ACT)

The Financial Action Task Force (FATF) –

- Global money laundering and terrorist financing watchdog.
- Inter-governmental body sets international standards to prevent illegal activities.
- Policy-making – to encourage change to combat financial crimes, terrorism, human trafficking and illegal trades.

FATF work:

- Continued assessment of risk areas
- Requires continued compliance
- Regulation of virtual assets
- Holding non-compliant countries to account

Amending **5 Acts** (FICA, NPO, Trusts, Fin Sector and Companies) to:

- **expose the ‘beneficial owners’** (people ultimately in control of) all companies and organisations;
- **First draft of Bill- made NPO registration compulsory for all** non-profit organisations ‘operating’ in South Africa including for foreign non-profits ‘operating’ in South Africa;
- add to the lists of **things which will make it impossible to hold a fiduciary office** in a company or organisation, (incl a range of fraud-related offences) and empowering CIPC, the Master of the High Court and the NPO Directorate to keep a list of those who are so ineligible for office, and order their removal.

Goals:

- Combatting money laundering and terrorist financing
- Stop the effects of grey-listing

# 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



# WE WERE HEARD

Convinced to switch to focused, risk- based approach, using the FATF functional definition of a non-profit instead of mandatory registration for all.

Only non profits that are conducting activities or funding projects outside of South Africa's borders are required to register with the Non-Profit Organisations Directorate. The rest may continue to register with the NPO Directorate voluntarily.





## THE MAIN CHANGES TO THE LANDSCAPE

- NPO registration now compulsory for some
- Updated list of disqualified persons applies across all types of legal entities
- Exposure/notification of ‘beneficial owners’- the people in ultimate control of organisations



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# NPO ACT AND ~~DRAFT~~ REGULATIONS

## The Amended NPO Act:

- NPO registration now **compulsory** for organisations conducting activities /donating outside of SA.

## The ~~draft~~ Regulations (**hot off the press- Final issued 8 May!**)

- For voluntarily registered organisations - list of disclosed info on board members remains as it was (name, ID, position board, postal address). **For compulsory registration, additional organisation info required**
- ~~Organisation must update NPO~~ **directorate must maintain list of** ~~on~~ **disqualified board members** (was out of synch with the Act and all other regulations- submissions made)
- Access to board and activities info may be requested in terms of PAIA.
- Info on the persons who “own, control or direct the activities of **high risk NPOs** including senior officers board members and trustees should be made publicly available”;
- **Register of info** open for physical inspection and Director may give electronic access (unclear on what basis or how). **Needed: a provision specifically enabling waiver of the requirement to register or report in cases where the risk of registration or reporting would place the board, employees or beneficiaries of the organisation in danger.**
- ‘**Sanctions**’ for non-compliance: cannot use deregistration as a threat if registration compulsory- process of caution, reprimand, directive, ‘**restriction or suspension of certain specified activities**’

# DISQUALIFIED!

Court has disqualified the person or declared them delinquent

Unrehabilitated insolvent

Prohibited by any public regulation

Removed from office of trust based on misconduct involving dishonesty

Convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence— involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing, or proliferation financing activities in terms of FICA in connection with the promotion, formation or management of a company.

When a person is declared as a threat to international peace, in terms of a resolution of the Security Council of the United Nations providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution.



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## ~~DRAFT~~ REGS: COMPULSORY REGISTRATION ADDITIONAL INFORMATION

**Collect and be ready to report on the additional information required on the organisation itself:**

- Legal form and registration number (if NPC/trust) of organisation
- Trading name (if different)
- Income tax reference number (**get registered if you are not!**) and/or VAT number;
- Business address and registered address
- Type of **'control structure'**
- Titles of subcommittees of 'control structure' (**form issued with Regs says name and ID of anyone on control structures incl sub-committees**)
- Names of **'affiliate organisations'** and **'fiscal sponsorships'** (**us or them?**);
- Countries worked/donated in for last three years and description of activities outside of SA; and
- Details of audit/auditor, if applicable.





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## SUMMARY: NPO NEXT STEPS

Do we need to register?

Effective date of section 12 of NPO Act is 1 April BUT for existing organisations, Minister still to determine period within which reg is required.

OR:  
deregister?

Registered but behind – what do we do?

File outstanding reports – catch up to escape the clean up

Registered but now in the compulsory category

Collect the required information

Are any Governing Body members disqualified?

Run background checks on governing body members



# DSD: APPROACH TO DE-REGISTRATION

## Phase 1

Planned Date: 1 April 2023

**Phase 1 A: NPOs registered from 1998-2012.**

NPOs that **never submitted** # 56 787

**Phase 1 B: NPOs registered from 1998-2012.**

NPOs that have at least **submitted some reports**, but still have other annual reports outstanding. #27 620

## Phase 2

Planned Date: 1 July 2023

**NPOs registered from 2013-2015**

NPOs that submitted reports, but others are still outstanding. #42 922

## Phase 3

Planned Date: 1 October 2023

**NPOs registered from 2016-2019**

A mix of NPOs that have never submitted reports, and those that have submitted some reports. #22426

Since 1 April only 9 deregistrations!

### Transparently Working for you...

**274 619**

Registered NPOs

**478**

De-Registered NPOs

**4085**

Total Applications In Progress

Section 13 (2) of the NPO Act turnaround time requirement is 2 months.

**108 days**

to register an NPO via the Web

**98 days**

to register an NPO by Post



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# NPO AMENDMENT BILL WITHDRAWN



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**The NPO Amendment Bill was running as a parallel process –  
Withdrawn 25 April 2023**

**Civil society had called for the withdrawal and for a joint development  
plan to be drafted, consulting with stakeholders, before the Act is  
amended.**



4/10

**NPO REGULATIONS ~~NOT YET~~ FINALISED**

## THE OCTOPUS AND NPCCS

- **Changes under the Act:**
- Beneficial 'owner' includes voting rights as members and power to appoint and remove board (the people right at the bottom)
- Quite light (Has been ahead of the curve)
  
- **Draft Companies Act Regulations**
- Membership register kept up to date- 5 days to update with changes (and 10 days to update CIPC on directors and other changes)
- Membership register to be filed with annual returns – must be kept up to date (has always been a matter of public record, but new prescribed information kept). Public can request to view docs filed with AR
- CIPC must keep an updated list of disqualified directors

# TRUSTS

## • Trust Property Control Act

- Expanded disqualified list (fraud/terrorism related convictions) to align with all others. Master notifies trust of disqualified trustee.
- **Beneficial owner includes founders and people who control the founders. Also people who directly or indirectly control trustees (Founders, people with entrenched powers, and beneficiaries named in trust deeds).**
- “Prescribed info” on Beneficial owners must be recorded and registered with Government body (and info updated).

## Draft Regulations

- Updated **list of disqualified trustees** kept in government registration offices
- The list must be in electronic format and the public allowed ‘simple access’

- **Prescribed info of beneficial owners** –
- Full names, date of birth, nationality, ID and PP number (residential address and address) other means of contact and certified copy of ID
- The register of beneficial owners must be electronic
- Registered user and trustee access to only your own docs and data (password protected) {test version seems not secure}
- Electronic updating and uploading docs - but designated officials can search (NPA, Police, intelligence service, SARS etc)

# NEW I8A RECEIPT REQUIREMENTS

In an attempt to reduce fraud, SARS has updated their systems and now requires an I8A receipt to contain **extra details**:

Receipt number: \_\_\_\_\_

Date: / /20..

DONATION DETAILS	
RECEIPT DATE OF DONATION	
AMOUNT OF CASH DONATION	R
VALUE OF IN-KIND-DONATION AND NATURE (specify)	R

DONOR DETAILS (natural person)	
NAME	
SOUTH AFRICAN ID NUMBER	OR Non-SA ID type:      Country of issue:
	Passport or social security number:

DONOR DETAILS (if donor is a company, trust, etc):	
NAME	
TRADING NAME OF DONOR, IF APPLICABLE	
DONOR TYPE OF LEGAL PERSON (company, trust etc)	
DONOR REGISTRATION NUMBER	

Information required for all donors:	
PHYSICAL ADDRESS	
CONTACT NUMBER	
EMAIL ADDRESS	
DONOR INCOME TAX REFERENCE NUMBER (if available)	

# 18A “THIRD PARTY” RETURNS

Hot off the  
press!

SARS Draft Notice for comment 12 April 2023

Reporting transactions to SARS that affect other people’s tax returns (as do medical aids, banks with interest etc)

## **Added to the list:**

- Organisations which have 18A (donor deductibility) status and which have issued 18A receipts within the relevant period; and
- Trusts which are established or managed in South Africa and which ‘vested’ any amount in a beneficiary during the relevant period (18A donor trusts will have to make 2 returns, for in and out)

Testing phase- first only due end Feb 2024(re Aug 23-Feb 24)

- **Connecting the dots and making 18A deductions easier for donors**
- **Specific format that needs to be uploaded in, and best if records kept in the right order, headings etc for ease of conversion and upload. Watch this space for details!**

FOR MORE INFORMATION, PLEASE CONTACT



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