



NPCs and BENEFICIAL OWNERSHIP FILING

By Ricardo Wyngaard

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This is an electronic newsletter published by: **RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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In *Volume 64* of NPO Legal Issues we reported that the Companies Amendment Regulations 2023 (the Regulations) were published on 24 May 2023. At that stage, the CIPC published its Guidance Note, No. 2 of 2023 entitled Beneficial Owner Filing Requirements dated 29 May 2023.

With reference to Non-Profit Companies, the Guidance Note stated: *Non-profit Companies with members will have to file a register containing details of their members. In line with the definition of 'beneficial owner', persons who exercise effective control of a no-profit company have to be included with the filing.'*

In its [Media Release dated 28 June 2024](#), the CIPC stated that it will enforce stricter rules requiring all companies to include Beneficial Ownership Declarations when filing their Annual Returns. This measure stemmed from amendments to the Companies Act, introduced by the General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Act of 2022.

Importantly, the CIPC stated that Beneficial Ownership Registers, along with members' registers, must be submitted within 30 business days following a company's anniversary date. Also, to ensure compliance, CIPC will implement a "hard-stop" functionality across its electronic filing platforms. From July 2024, companies will be unable to file their Annual Returns unless their Beneficial Ownership Declaration is up-to-date.

In its [Step by Step Guide: Beneficial Ownership Filing](#) (Non - Affected Company With Beneficial Ownership To Declare), the CIPC states that:

The following entity types are required to file Beneficial Ownership Information, if applicable: - a. Profit companies; b. Non-profit companies; c. External companies; and d. Close Corporations.

With reference to non-profit companies, the CIPC also provided the following:

What is meant with a members register with regards non-profit companies? A non-profit company does not have shareholders but has members. Therefore, NPC's with members must file its member's register. Non-profit companies with no members, must still declare beneficial owners, i.e. effective control, etc.

The CIPC has published a [Beneficial Ownership Non-Compliance entities List](#).

Important Note: The information contained in this newsletter is general in nature and should not be interpreted or relied upon as legal advice. The information may not be applicable to specific circumstances. Professional assistance should be obtained before acting on any of the information provided in this newsletter.



'NPOs in South Africa – Changes to the NPO Act/...

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Making prescribed information available to prescribed persons

The new section 24(4) of the NPO Act provides that the registered NPO must make the prescribed information, about (1) the office-bearers, (2) control structure, (3) governance, (4) management, (5) administration and (6) operations, available to any person as prescribed.

Disqualification and removal of office-bearers

Chapter 3A comes into effect on 1 April 2023, which will disqualify certain persons from becoming office-bearers of registered NPOs or to continue to serve in that capacity. Section 25A (11) specifically provides that: “A person who becomes ineligible or disqualified while serving as an office-bearer of a registered nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately.”

The NPO Director may also, at any time, remove an office-bearer if the office-bearer fails to perform satisfactorily any duty imposed upon him or her by or under the NPO Act or to comply with the requirements of the NPO Act or any lawful request of the NPO director.

The NPO Act defines an office-bearer as a director, trustee or person holding an executive position. Arguably, the reference to ‘a person holding an executive position’ also includes paid staff members.

It must be noted that the Panel of Arbitrators, as appointed by the Minister in terms of section 9 of the NPO Act, has no legislative mandate to review the above decision by the NPO Director to remove an office-bearer.

New Contraventions

The new section 29(4) introduces the following contraventions that are subject to a prescribed administrative sanction:

- a) failure to perform any duty imposed or comply with a requirement in terms of section 12 or 18(1)(bA) (dealing with the new prescribed reporting requirement); and
- b) failure to register to register in terms of the NPO Act when required to do so.

What to do?

In anticipation of 1 April 2023, NPOs should, amongst other:

1. If not already registered in terms of the NPO Act, determine if they will be required to do so;
2. If required to be registered:
 - a. Consider whether the NPO’s founding document requires amendment; and
 - b. Submit an application to register (Check out: [NPO Registration Online](#)).
3. Determine if existing office-bearers are eligible to continue to serve in that capacity on 1 April 2023;
4. Consider if other changes, introduced by the Amendment Act, are applicable to the Organisation.

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SAMPLE NPO COMPLIANCE QUESTIONNAIRE

This sample NPO COMPLIANCE QUESTIONNAIRE contains over 200 compliance-related questions aimed at providing nonprofits with a bird's-eye view of some of the key compliance obligations. Include it in the next Board meeting. [Click here](#).

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