NPO Legal Issues

Keeping an eye on non-profit laws

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The Non-Profit Lawyer

About NPO Legal Issues:

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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'CIPC highlights non-compliance risks for non-profit companies'

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Ricardo Wyngaard Attorneys is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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CIPC highlights non-compliance risks for non-profit companies:

The Companies and Intellectual Property Commission (CIPC) has released a report detailing common areas of non-compliance and risks for Non-Profit Companies (NPCs), particularly within the 'charismatic church' sphere, offering crucial insights for all NPOs.

By Ricardo Wyngaard

The CIPC, as an organ of state, carries a statutory responsibility to monitor compliance with the Companies Act 71 of 2008. To fulfil this mandate, the CIPC developed and formally implemented an Electronic Compliance Checklist Service in 2020. This service has since generated valuable data, which the CIPC has now used to highlight specific areas of non-compliance and associated risks, particularly for Non-Profit Companies (NPCs) operating as churches. We unpack the CIPC's findings and consider the implications for the broader NPO sector.

Understanding the CIPC compliance checklist

The Compliance Checklist is a free, web-based application designed for directors across various company categories, including NPCs, to declare their company's compliance status for a predetermined 'Compliance Year'. Directors remain accountable for accurately completing this checklist. The process begins with confirming whether the company's annual financial statements are audited or independently reviewed. If neither applies, the checklist is not required. However, if the statements are audited or independently reviewed, completion is mandatory.

The checklist covers numerous sections of the Companies Act, including solvency and liquidity, the Memorandum of Incorporation (MOI), access to company records, financial statements, annual returns, and provisions relating to directors and auditors. These sections represent common areas of non-compliance identified by the CIPC since the Companies Act's inception. Responses are typically 'Not Applicable', 'Yes', or 'No', with an optional comment box for explanations. The Compliance Year is aligned with the company's incorporation anniversary, and the checklist must be submitted within 30 business days thereafter.

Key findings on NPC compliance

The CIPC's data reveals a significant growth trajectory for churches registered as NPCs, increasing from 22 in 2010 to 261 by 2024. Despite this growth, the report highlights concerning trends in compliance. For the 2025 Compliance Year, out of 419 churches registered as NPCs and in business, a staggering 68% (283) declared 'Nil turnover' when filing their Annual Return information. This trend of declaring Nil turnover is also upward, particularly for churches registered more recently.

More critically, the CIPC identified specific non-compliance issues. These include NPCs not applying all assets and income to advance their stated objects, as required by Schedule 1, item 2(a) of the Companies Act. Another significant area of non-compliance is the provision of loans, security for debts, or direct/indirect financial assistance to directors or related persons, falling outside the limited exceptions provided in Schedule 1, item 5(4). The report explicitly notes instances where certain members of charismatic churches use the NPC to fund extravagant lifestyles.

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Identified Trends and Risks for NPCs

The CIPC report outlines several concerning trends that pose risks to the integrity and sustainability of NPCs. These include the infiltration of legitimate NPCs, with access gained to assets and financial systems, leading to the siphoning off of funds or unauthorised use of assets like vehicles or premises. The CIPC also notes the misuse of an NPC's name and status without consent for fraudulent fundraising campaigns, often through fake websites, social media, and crowdfunding platforms, preying on an unsuspecting public under the guise of humanitarian or social causes.

Also, the report highlights the misuse of legitimate donor funds, often received during church services, which are then channelled out through fake programmes, fictitious contractors, inflated salaries for non-existent staff, or even cash couriers transporting funds across borders. A lack of sufficient background verification for staff, volunteers, and partner organisations, coupled with a failure to verify the end use of funds, significantly increases the risk of collaboration with criminal elements. These trends underscore the critical need for robust governance and financial controls within the NPO sector.

PRACTICAL GUIDANCE:

In light of the CIPC's findings, we recommend that Non-Profit Companies should take the following concrete steps to strengthen their corporate governance and compliance:

1. **Review MOI and activities**:

   Ensure that all assets and income are consistently applied to advance the stated objectives in your MOI. Regularly review your activities to confirm alignment with your founding purpose.

2. **Strict financial assistance policies**:

   Implement and adhere to policies regarding financial assistance to directors or related parties. Ensure any such transactions fall squarely within the limited exceptions permitted by Schedule 1, item 5(4) of the Companies Act.

3. **Accurate annual return filings**:

   Always declare accurate turnover values when filing your annual returns. A 'Nil turnover' declaration should genuinely reflect the financial activity of the organisation.

4. **Enhance internal controls**:

   Establish strong internal financial controls, conduct thorough due diligence on donors and partners, and implement clear accounting policies that prohibit off-the-books accounts and inadequately identified transactions. Ensure proper management and oversight of all cash donations and report any suspicious activities to the relevant authorities. These measures are crucial for mitigating risks and protecting your NPO's reputation and assets.