

Corporate & Commercial ALERT

20 SEPTEMBER 2023



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

Recent amendments to South Africa's non-profit organisation legislation in response to the FATF greylisting

In 2021, the Financial Action Task Force (FATF) released its Mutual Evaluation Report of South Africa, which summarised the effectiveness of South Africa's anti-money laundering and counter-terrorism financing measures.



FOR MORE
INSIGHT INTO
OUR EXPERTISE
AND SERVICES

Recent amendments to South Africa's non-profit organisation legislation in response to the FATF greylisting

In 2021, the Financial Action Task Force (FATF) released its Mutual Evaluation Report of South Africa, which summarised the effectiveness of South Africa's anti-money laundering and counter-terrorism financing measures.

The outcome of the report led to South Africa being greylisted for not fully complying with international anti-money laundering and terrorism financing standards.

In response to the greylisting, the South African Government passed the General Laws (Anti Money Laundering and Combating Terrorism Financing) Amendment Act 23 of 2022 in December 2022, which amended the Companies Act 71 of 2008 (Companies Act), the Financial Intelligence Centre Act 38 of 2002 (FICA), the Trust Property Control Act 57 of 1988 (TPCA), and the Nonprofit Organisations Act 71 of 1997 (NPOA).

The amendments to the Companies Act and FICA have been analysed previously in [Understanding SA's FATF Greylisting](#) and [CIPC implements a beneficial ownership register](#). The amendments to the TPCA have been analysed in [Trusts: Now an administrative nightmare?](#)

In relation to the NPOA (relating to **non-profit organisations** (NPOs) which must be distinguished from **non-profit companies** as defined in the Companies Act), the Legislature passed amendments (effective 1 April 2023) which require certain NPOs to be registered in terms of the NPOA.

Non-profit organisations

As indicated above, the amendments to the NPOA must be distinguished from the provisions which apply to non-profit companies in terms of the Companies Act. The NPOA comprises bespoke legislation which deals with non-profit organisations including **trusts and voluntary organisations** as well as companies.

Before the amendment, the NPOA did not require all NPOs to be registered with the Director of Nonprofit Organisations (Director), with the registration of an NPO being voluntary if the entity did not require funding in terms of the NPOA.

The LEGAL 500
EMEA

Corporate, Commercial/M&A 2023 Rankings

Corporate & Commercial practice is ranked in Tier 1.

CDH Kenya's Corporate & Commercial practice is ranked in Tier 3.

Leading Individuals:
Willem Jacobs | David Pinnock

Recommended Lawyers:
Vivien Chaplin | Peter Hesselting
Justine Krige | Sammy Ndolo
David Thompson | Roxanna Valayathum
Njeri Wagacha

Next Generation Lawyers:
Justine Krige

Hall of Fame:
Ian Hayes

Recent amendments to South Africa's non-profit organisation legislation in response to the FATF greylisting

CONTINUED

Now, however, NPOs that make donations to individuals or organisations outside South Africa, or that provide humanitarian, charitable, educational or cultural services outside South Africa must register in terms of the NPOA. Any other NPO that is not an organ of state, is not required to be registered, but may voluntarily do so. If any NPO which is required to be registered, fails to register, it will be liable to an administrative penalty.

The application for registration (including the prescribed form, two copies of its constitution (the contents of which is prescribed in section 12(2)), and information specifically required by the Director) must be submitted to the Director, who determines whether the NPO meets the requirements for registration, failing which the NPO's application may be refused. The application may also be refused if the NPO fails to comply with a 'non-compliance' notice issued

by the Director stating reasons for non-compliance, which must be rectified within one month.

Importantly, however, the NPOA now deems that a NPO is registered upon submission of its application, unless and until a non-compliance notice has been delivered, meaning that upon submission, an NPO must comply with the NPOA. More specifically, a registered NPO must comply with an administrative and regulatory framework (yet to be established) and maintain adequate standards of governance and transparency.

In terms of the amendments, a registered NPO must now, in addition to providing reports regarding its activities and financial statements, provide information to the Director regarding its office-bearers, control structure, governance, management, administration and operations.

The persons able to be office-bearers of an NPO have also been limited in scope by the amendments which delineate persons disqualified from being office-bearers, including persons prohibited from being directors and unrehabilitated insolvents.

Penalties

An NPO that fails to register despite being required to do so will be liable to an administrative penalty. Additionally, should an NPO fail to comply with its obligations to submit the prescribed information regarding its office-bearers, or fail to comply with the registration requirements in terms of section 12, it will be liable to an administrative penalty.

Conclusion

Existing and future NPOs should analyse their mandates and constitutional documents to ascertain whether or not these amendments are applicable, in order to ensure compliance.

**Vivien Chaplin, Menachem Gudelsky
and Gaby Wesson**

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:



Ian Hayes

Practice Head & Director:
Corporate & Commercial
T +27 (0)11 562 1593
M +27 (0)83 326 4826
E ian.hayes@cdhlegal.com



David Thompson

Deputy Practice Head & Director:
Corporate & Commercial
T +27 (0)21 481 6335
M +27 (0)82 882 5655
E david.thompson@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

Kate Anderson

Director:
Corporate & Commercial
T +27 (0)11 562 1105
M +27 (0)82 418 3784
E kate.anderson@cdhlegal.com

Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
M +27 (0)83 717 9360
E tessa.brewis@cdhlegal.com

Vivien Chaplin

Sector Head: Mining & Minerals
Director: Corporate & Commercial
T +27 (0)11 562 1556
M +27 (0)82 411 1305
E vivien.chaplin@cdhlegal.com

Clem Daniel

Director:
Corporate & Commercial
T +27 (0)11 562 1073
M +27 (0)82 418 5924
E clem.daniel@cdhlegal.com

Johan de Lange

Director:
Corporate & Commercial
T +27 (0)21 481 6468
E johan.delange@cdhlegal.com

Andrew Giliam

Director:
Corporate & Commercial
T +27 (0)21 481 6363
M +27 (0)83 359 7069
E andrew.giliam@cdhlegal.com

John Gillmer

Joint Sector Head: Private Equity
Director: Corporate & Commercial
T +27 (0)21 405 6004
M +27 (0)82 330 4902
E john.gillmer@cdhlegal.com

Allan Hannie

Director:
Corporate & Commercial
T +27 (0)21 405 6010
M +27 (0)82 373 2895
E allan.hannie@cdhlegal.com

Peter Hesselning

Director:
Corporate & Commercial
T +27 (0)21 405 6009
M +27 (0)82 883 3131
E peter.hesselning@cdhlegal.com

Quintin Honey

Director:
Corporate & Commercial
T +27 (0)11 562 1166
M +27 (0)83 652 0151
E quintin.honey@cdhlegal.com

Willem Jacobs

Director:
Corporate & Commercial
T +27 (0)11 562 1555
M +27 (0)83 326 8971
E willem.jacobs@cdhlegal.com

Brian Jennings

Director:
Corporate & Commercial
T +27 (0)11 562 1866
M +27 (0)82 787 9497
E brian.jennings@cdhlegal.com

Rachel Kelly

Director:
Corporate & Commercial
T +27 (0)11 562 1165
M +27 (0)82 788 0367
E rachel.kelly@cdhlegal.com

Yaniv Kleitman

Director:
Corporate & Commercial
T +27 (0)11 562 1219
M +27 (0)72 279 1260
E yaniv.kleitman@cdhlegal.com

Justine Krige

Director:
Corporate & Commercial
T +27 (0)21 481 6379
M +27 (0)82 479 8552
E justine.krige@cdhlegal.com

Dane Kruger

Director:
Corporate & Commercial
T +27 (0)21 481 6362
M +27 (0)74 914 1402
E dane.kruger@cdhlegal.com

André de Lange

Sector Head: Agriculture, Aquaculture
& Fishing Sector
Director: Corporate & Commercial
T +27 (0)21 405 6165
M +27 (0)82 781 5858
E andre.delange@cdhlegal.com

Jaco Meyer

Director:
Corporate & Commercial
T +27 (0)11 562 1749
M +27 (0)83 477 8352
E jaco.meyer@cdhlegal.com

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:

Anita Moolman

Director:
Corporate & Commercial
T +27 (0)11 562 1376
M +27 (0)72 252 1079
E anita.moolman@cdhlegal.com

Wayne Murray

Director:
Corporate & Commercial
T +27 (0)21 405 6018
M +27 (0)79 691 0137
E wayne.murray@cdhlegal.com

Francis Newham

Executive Consultant:
Corporate & Commercial
T +27 (0)21 481 6326
M +27 (0)82 458 7728
E francis.newham@cdhlegal.com

David Pinnock

Joint Sector Head: Private Equity
Director: Corporate & Commercial
T +27 (0)11 562 1400
M +27 (0)83 675 2110
E david.pinnock@cdhlegal.com

Allan Reid

Director:
Corporate & Commercial
T +27 (0)11 562 1222
M +27 (0)82 854 9687
E allan.reid@cdhlegal.com

Jess Reid

Director:
Corporate & Commercial
T +27 (0)11 562 1128
M +27 (0)83 571 6987
E jess.reid@cdhlegal.com

Megan Rodgers

Sector Head: Oil & Gas
Director: Corporate & Commercial
T +27 (0)21 481 6429
M +27 (0)79 877 8870
E megan.rodgers@cdhlegal.com

Ludwig Smith

Director:
Corporate & Commercial
T +27 (0)11 562 1500
M +27 (0)79 877 2891
E ludwig.smith@cdhlegal.com

Tamarin Tosen

Director:
Corporate & Commercial
T +27 (0)11 562 1310
M +27 (0)72 026 3806
E tamarin.tosen@cdhlegal.com

Roxanna Valayathum

Director:
Corporate & Commercial
T +27 (0)11 562 1122
M +27 (0)72 464 0515
E roxanna.valayathum@cdhlegal.com

Roux van der Merwe

Director:
Corporate & Commercial
T +27 (0)11 562 1199
M +27 (0)82 559 6406
E roux.vandermerwe@cdhlegal.com

Andrew van Niekerk

Head: Projects & Infrastructure
Director: Corporate & Commercial
T +27 (0)21 481 6491
M +27 (0)76 371 3462
E andrew.vanniekerk@cdhlegal.com

Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com

Charl Williams

Director:
Corporate & Commercial
T +27 (0)21 405 6037
M +27 (0)82 829 4175
E charl.williams@cdhlegal.com

Christelle Wood

Director:
Corporate & Commercial
T +27 (0)11 562 1372
M +27 (0)83 498 2850
E christelle.wood@cdhlegal.com

Emma Hewitt

Practice Development Director:
Corporate & Commercial
T +27 (0)11 562 1635
M +27 (0)82 896 1332
E emma.hewitt@cdhlegal.com

Alecia Pienaar

Counsel:
Environmental Law
T +27 (0)82 863 6279
M +27 (0)82 863 6272
E alecia.pienaar@cdhlegal.com



BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2023 12674/SEPT