

# 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.



# CORPORATE & COMMERCIAL ALERT

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 <u>Understanding SA's FATF</u>
<u>Greylisting</u> and <u>CIPC implements</u>
<u>a beneficial ownership register</u>.
The amendments to the TPCA have
been analysed in <u>Trusts: Now an</u>
<u>administrative nightmare?</u>

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.



# CORPORATE & COMMERCIAL ALERT

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

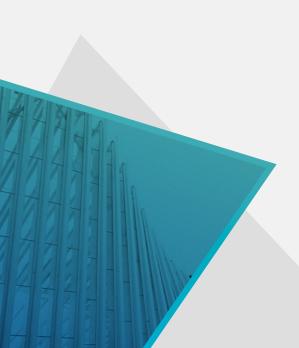
# **Penalties**

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



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### **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.

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