



c/o Inyathelo – The South African Institute for Advancement  
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Reference: Anti-Money Laundering Bill  
Date: 31 October 2022

**Standing Committee on Finance  
National Assembly  
Parliament of the Republic of South Africa  
CAPE TOWN**

**For attention: Hon. Mr MJ Maswanganyi, MP**

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Honourable Chairperson

**RE: FINAL POSITION ON THE GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATTING TERRORISM FINANCING) AMENDMENT BILL [B18-2022]**

We appreciate all the constructive engagement to date with Treasury, the Parliamentary Committee, and the drafting team behind the General Laws Amendment (AML-CTF) Bill. We are particularly pleased that our call for the scope and impact of the mandatory registration be narrowed, to focus on at-risk organisations, has been noted and adjustments made.

As the drafting team does its final work on the Bill, we do not wish to burden it with further detail, but to highlight some **main guiding points** being the following:

**1. We ask for clear thinking on the aim of the Bill as it concerns the non-profit sector:**

The aim of the Bill IS NOT:

- ❖ To improve governance in the NGO sector; or
- ❖ To 'catch' those currently unregistered not-for-profit organisations on a registry.

The aim of the Bill IS:

- ✓ To identify the persons who own or control all companies and organisations (and not for the general public, but for those who need to know); and
- ✓ To create a separate and special place for at-risk not-for-profits to have to register, so that **the failure to register will send an alert, create an initial offence, and prompt and permit investigation.**

## 2. Clarity needed on the role of the NPO Directorate:

We have noted a contradiction in the current position from that taken during previous meetings. Previously, the discussions had made it clear that mandatory registration with the NPO Directorate was *just* a registration. We were assured that the shortcomings of the directorate were realised and that the function of oversight and accountability could be performed by FIC and was not in the ambit of the NPO directorate's responsibilities.

When the suggestion of locating the registration with the FIC was discussed at the latest meeting, the contrary argument was made that the NPO directorate *did* have oversight capacity and would be performing a watch-dog function.

## 3. Practical issues with the register of at-risk organisations located with the NPO Directorate:

There is not only concern that the DSD will be unable to cope with the sheer administrative burden of registering every at-risk non-profit in South Africa and that there will be delays and misunderstandings, but that **the NPO registration is not a purpose-specific registration**. Under the current draft of the Bill, if an organisation already (voluntarily) has an NPO number and transfers funds cross-border, their bank will ask for proof of compliance and be shown the organisation's NPO Certificate. The organisation will have that certificate whether they are, for example, eight years behind in filing reports, or not. There will be no official offence or breach of duty to act on.

Our alternative proposal is that, if existing VAs/NPCs/trusts (with or without NPO numbers) which plan to operate or transfer funds cross-border are required to register as 'reporting institutions' under Schedule 3 of FICA, then those which transfer funds without having so registered can immediately be flagged for this specific offence. The NPO directorate can be left to focus on improving its systems, while this Bill could immediately create an easy way to isolate and check on organisations where risky behaviour patterns have been identified.

We call on the technical drafting team to give due consideration to our suggestions regarding Schedule 3 reporting (not accounting) registration requirements. We realise that immense time and effort have been applied to the NPO option, but this should not mean that the drafting team cannot consider this fresh and simpler approach.

## 4. If the mandatory registration remains with the NPO Directorate :

If the team cannot be persuaded to switch the compulsory registration of 'at risk' NPOs to the FIC, then our pre-requisites for agreeing to limited-ambit compulsory registration as an NPO would be that:

- i. The NPO Directorate is relocated as a structure which is independent of DSD or any government department;
- ii. The NPO Directorate (internally) keeps this list of organisations separate from those of voluntary NPO registrations, so that they can be separately tracked;

- iii. The NPO Directorate systems are substantially upgraded and reinforced for security, stability and to allow data to be readily located and extracted; and
- iv. The staffing and skills at the NPO Directorate are overhauled and upgraded. People with legal, forensic and audit skills should be on the team.

#### **5. The NPO Amendment Bill & Explanatory Memorandum Revisited 19 October 2022**

The recently re-issued NPO Amendment Bill and Explanatory Memorandum is not aligned with the general Laws Bill latest position on restricted mandatory registration. This is a burning issue, and we urge all parties to ensure synchronisation.

Yours sincerely



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