

## What is an NPO?

A Nonprofit Organisation is defined as: a trust, company or other association of persons:-

- Established for a public purpose, and
- The income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered.

In civil society, organisations of all kinds can be found. All formed voluntarily by citizens, they fall into three broad categories;

- Formed out of concern to assist the needy or disadvantaged people;
- Formed on the basis of common interest in and/or to take action on a particular subject or issue;
- Organisations through which people engage in a common pursuit.

The key defining characteristics can be used as a checklist and guide to understand which organisations fit into the nonprofit sector.

- Voluntary
  - They are formed voluntarily. There is nothing in the laws of any country that says they must be formed or stops them from being formed. There will be an element of voluntary participation in the organisation. This could be by small numbers of board members, or large numbers of members or beneficiaries giving their time voluntarily.
- Independent
  - So long as they abide within the law, NPO's are controlled by the people who have formed them, or by management boards who have been delegated either by law or members of the organisation to take on the responsibility of controlling and managing them.
- Not for profit
  - NPO's may have employees, like other enterprises, who are paid for what they do. But in NPO's, the employers - boards of management - are not paid for the work they perform on boards, other than being reimbursed for expenses they incur from performing their board duties. NPO's may take on income-generating activities. They do not, however, distribute profits or surpluses to shareholders or members. They use this money to further the aims of their organisations.
- Not self-serving in aims and related values
  - Improve the lives and life-prospects of disadvantaged people who are unable to realize their potential of achieve their full rights in society.
  - Act on concerns and issues that badly affect the well being, circumstances or prospects of people of society as a whole.

## **Other names for nonprofit organisations include:**

- Non Governmental Organisations;
- Community Based Organisations;
- Civil Society Organisations;
- The Voluntary Sector.

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## **NPO's achieve their aims through a wide range of activities**

They care for the welfare of the disadvantaged. Change and develop activities which are detrimental to the well-being of people or society as a whole. This is just the spectrum across which NPO's work. Some NPO's are involved in both and they are connected. An NPO may be involved in all of them.

## **Which organisations can apply for NPO status?**

Any organisation that is not for profit and is not part of government can apply for registration; that is:

- Non-Governmental Organisations (NGO)
- Community Based Organisations (CBO)
- Faith Based Organisations (FBO)
- Organisations that have registered as Section 21 Companies under the Company Act 61 of 1973.
- Trusts that have registered with Master of the Supreme Court under the Trust Property Control Act 57 of 1988.
- Any other Voluntary Association that is not-for-profit.

The Directorate can only register an organisation that has a constitution or any other founding document.

## How long does the registration process take?

It would take about four months to process the entire registration. Immediate on receipt of application, an acknowledgement letter is sent to the organisation; thereafter a registration certificate follows if the application meets the requirement of the NPO Act.

## How much does it cost to register an organisation?

To register a Nonprofit Organisation is free of charge.

## How does an organisation register?

By submitting to the NPO Directorate:

- A complete Application Form (obtainable from the Dept);
- Two copies of the organisation's founding document i.e. a constitution or a deed of Trust or Memorandum and Articles of Association.

## What are the benefits for registering?

There are many benefits to be gained from a system of registering nonprofit organisations. It:

- Improve the credibility of the sector because NPO's can account to a public office.
- Brings organisations into a formal system.
- Help the sector to get organized.
- Help in finding ways of getting benefits like tax incentives and funding opportunities

## How does an NPO get legal?

Before the Directorate of Nonprofit Organisations will register a nonprofit organisation, it needs to know how the organisation is properly set up. It will only register an organisation that has a constitution, amongst other documents that will be dealt with under the NO Act, No 71 of 1997. If an organisation has a constitution it is said to be a legal entity. It is important that every NPO knows what a legal entity it is.

- There are three main kinds of legal entities for NPO's. They are:
  - Section 21 companies
  - Trust
  - Voluntary associations
- Which suits your organisation?
- Your organisation has to decide which kind of legal entity best suits it. A lot depends on what your organisation does.
  - Organisations that deal with a lot of money and that are involved in the buying and selling of goods, should register as a section 21 company.

- Organisations that channel funding to other organisations should register as a trust. Trustees are responsible for seeing that funds are used properly.
- Organisations that do not deal with a lot of money should form voluntary associations. They should have a written constitution.
- You choose the legal entity that suits you, based on what your organisation does and what it needs.
- A section 21 company has to abide by the Government's Companies Act 61 of 1973. But of the legal entities we discussed, it is the most complicated and expensive to run.
- A trust has to abide by the government's Trust property Control Act as well as common law.
- A voluntary association is the simplest and cheapest. It is set up in terms of common law and has to abide by common law.
- Common law is not written down in Acts. It is a law that comes from customs that people have, as well as from judgments that have been made in legal cases. Such judgments set precedents that lawyers and judges take note of in future cases.
- Setting up a section 21 company
  - You have to reserve a name for your company to make sure that no one else has the same company name.
  - You need at least seven members to form a section 21 company.
  - Of the members, at least two must be appointed as directors.
  - You must have a memorandum and articles of association, which sets out how your company will work.
  - Get a lawyer to help you with writing your founding document rather than buying a standard one. Although standard ones are cheaper they do not always suit your organisation and you could have problems later on.
  - You have to appoint an auditor who will check your financial accounts.
  - The registration is with the registrar of companies in Pretoria.
- Setting up a Trust
  - Get the help of a lawyer to write a trust deed. This is like a constitution. If you buy a standard trust deed it may not properly suit your trust and you may well run into problems later.
  - Your organisation has to elect at least one trustee.
  - You have to clearly state the group or groups of people who are going to benefit from the money in your trust
  - You need to decide on one person who will be written down as your trust founder.
  - After your trust deed is written, it has to be given to the Master of the High Court.
  - The Master will give your trust a reference number. They will also give the trustees a document called a letter of authority. This gives the trustees the right to act as trustees of your trust.
  - The trustees may be asked to give security to the Master. The Master usually does away with the need for security if the trust appoints an auditor. However, the trust does not have to appoint an auditor.

- Although a trust does not actually need to get registered before it comes to exist legally, the trustees may not act until they have received the letters of authority from the Master.
- Setting up a voluntary association
  - You need a constitution. This can be done through talking and deciding. But it is much better if it is written down.
  - Members of the voluntary association must adopt the constitution. Although you do not have to appoint auditors, most funders usually want audited financial statements from projects.
- The NPO Directorate will only accept written constitutions that have in them all the information it requires to register them.

## **What does the NPO Act do?**

The Act sets down the framework in South Africa to:

- Create an environment for organisations to grow and develop in.
- Set up an administrative framework for organisations to work in.
- Encourage nonprofit organisations to run efficiently, with openness and accountability - and to encourage them to keep trying to improve this.
- Help the public to get information about registered nonprofit organisations.
- Promote a spirit of co-operation and shared responsibility between government, donors and other people or institutions that are interested in the nonprofit sectors' work.
- Have an appeal process for nonprofit organisations.

## **Why has the government decided to register nonprofit organisations?**

There are many benefits to be gained from a system of registering nonprofit organisations. It will:

- Improve the credibility of the sector because nonprofit organisations can account to a public office.
- Bring organisations onto the system.
- Please many funders who are more positive about funding nonprofit organisations that are registered with a public office.
- Promote better styles of governance within the sector.
- Help the sector to get organised.
- Help in finding ways of getting benefits for the sector.

## **What are offences in terms of the NPO Act?**

It is an offence to:

- Claim to be registered with the Directorate when you are not.

- Use another organisation's registration number and details.
- Give the Directorate false information about the affairs of the organisation.

People found guilty of such offences could end up being fined and/or imprisoned.