



‘ENTITIES SUSCEPTIBLE TO ABUSE’

By Ricardo Wyngaard

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.

IN THIS EDITION:

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By: Ricardo Wyngaard

RICARDO WYNGAARD ATTORNEYS is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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meagon@nonprofitlawyer.co.za

DETAILS:

Postal:
P.O. Box 35131, Menlo Park, 0102

Tel: +27 21 859 1111
Fax: +27 86 538 8435
ricardo@nonprofitlawyer.co.za

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During December 2019 the Financial Intelligence Centre published its Public Compliance Communication No 41 (PCC) entitled: *Guidance on Combating the Financing of Terrorism and Anti-Money Laundering Measures relating to Non-Profit Organisations*.

The objective of the PCC is: “to provide guidance to NPOs, NPO Regulators and third parties dealing with NPOs, regarding the measures that may be implemented to combat terrorist financing and money laundering”. The PCC specifically states that NPOs have been identified by the Financial Action Task Force as entities, which are *susceptible to abuse by criminals for terrorist financing and money laundering*.

The PCC contains several recommendations with reference to the collection of personal information, including:

- NPOs are advised to document the control structures and measures of the NPO, indicating all founders and members etc. in the NPO’s organogram, policies and procedures. (para 7.5)
- NPOs should obtain and review major donor information with in order to understand whether the donors are lawful and donating lawful funds. (para 7.6)
- In addition, NPOs should obtain and review beneficiary information in order to determine whether the beneficiaries are lawful and would make use of the NPO donations in a lawful manner. (para 7.6) Information envisaged includes the:
 - a) donor & beneficiary identification information
 - b) nature & objectives of beneficiary and donor activities
 - c) financial capability of the donor to provide the donation
 - d) source of funds of the donor
 - e) maintain records of all information obtained from their donors and beneficiaries, as well as transaction records.
 - f) adequately document their operational processes including fundraising and beneficiary distribution processes
 - g) conduct inspections on beneficiaries where reasonable to evidence whether funding has been used for the intended purposes

The above recommendations were made by a credible statutory body and NPOs should review and seriously consider implementing applicable recommendations.

The recommendations pertain to the collection of personal information and NPOs must ensure that, when collecting such information, it is processed in terms of the provisions of the Protection of Personal Information Act.

Important Note: The information contained in this newsletter is general in nature and should not be interpreted or relied upon as legal advice. The information may not be applicable to specific circumstances. Professional assistance should be obtained before acting on any of the information provided in this newsletter.