



THE COMPANIES ACT OF 2008

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.

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

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To subscribe free of charge send an email with NEWSLETTER typed in the subject-line to:
meagon@nonprofitlawyer.co.za

DETAILS:

Postal:

P.O. Box 214, Eerste River, 7103

Physical:

2137, Somerset Links, Reese Road, Somerset West, 7130

Tel: +27 21 852 7800

Fax: +27 86 538 8435

ricardo@nonprofitlawyer.co.za

www.nonprofitlawyer.co.za

Article Six: The Company Secretary

This sixth article deals with the issue of the non-profit company (NPC) and the company secretary.

Voluntary appointment:

NPCs are not required, in terms of the Companies Act of 2008, to appoint a company secretary, unless required by its Memorandum of Incorporation.

Every company should decide whether or not it will voluntarily appoint a company secretary to comply with the Companies Act. If a decision is made to appoint a company secretary voluntarily, the requirements of the Companies Act pertaining to the company secretary must be complied with.

Who can serve as Company Secretary?

Every person appointed as a company secretary must:

- Be knowledgeable or experienced in relevant laws as a company secretary,
- Not be disqualified to act a director of a company,
- Be a permanent resident in South Africa, and
- Not be the company's auditor.

A juristic person or partnership may also be appointed as a company secretary, provided that:

- Every employee (or partner, where applicable) providing the company secretarial services, are not disqualified to act as a director of a company, and
- At least one employee (or partner, where applicable) is permanently resident in South Africa.

Every company must keep an updated record of its company secretaries, including: name, date of appointment, and, where applicable, registration number and registered office address.

Duties of the Company Secretary:

The company secretary is directly accountable to the board of directors to, amongst other:

- Provide them with guidance on their duties, responsibilities and powers,
- Make them aware of any law relevant to or affecting the company,
- Report to them non-compliance with the Act, Memorandum of Incorporation and the Company Rules,
- Ensure proper recording of all board, committee and members' meetings.
- Certify in the company's annual financial statement whether the NPC has correctly and timeously filed all required returns and notices, and
- Ensure that the annual financial statements are sent to every person entitled to it.



Risk Management: Legal Issues - Part 3

Volunteers are almost synonymous with the non-profit sector. It was estimated in the study entitled: *Size and Scope of the Non-Profit Sector in South Africa* that, 'nearly 1.5 million volunteers actively contributed their time and energy to South African NPOs in 1999.' The contribution of volunteers is enormous and they can add significant value to the activities of NPOs. However, the use of volunteers also poses a number of important risks. If not properly managed, these risks may negatively impact on the activities and reputation of a NPO. NPOs should therefore have a proper risk management process in place when making use the services of volunteers.

A volunteer risk management process should be appropriate and complete and should make provision for the recruitment, screening, induction and supervision of all volunteers. A volunteer policy should be in place before a NPO starts to recruit volunteers. Volunteers may be exposed to; sensitive and confidential information, conflicts of interests, and potential harm.

Some questions to keep in mind in this regard:

1. *Has the NPO got a volunteer policy?*
2. *Are reference checks done on potential volunteers?*
3. *Are volunteers provided with job descriptions?*
4. *Are all volunteers properly inducted and required to sign volunteer contracts?*
5. *Does the volunteer contract deal with intellectual property rights?*
6. *Are volunteers properly supervised and evaluated?*
7. *Is the NPO's confidential information suitably protected?*
8. *Are volunteers required to disclose any actual or potential conflicts of interests?*

Resignation and Removal of Company Secretary:

The company secretary must give one month's written notice of resignation. He/she can only give less than a month's written notice with the approval of the board. The board may also remove the company secretary from his or her position. If so, the NPC must, upon the company secretary's written request, set out in its annual financial statements, the secretary's contention as to the circumstances that gave rise to the removal.

King III on the Company Secretary:

Principle 2.21 of King III states: "*The board should be assisted by competent, suitable qualified and experienced company secretary.*"

King III further elaborates under this principle that: "*The company secretary has a pivotal role to play in the corporate governance of a company, and it is advisable that companies delegate or outsource this responsibility to an appropriate person, or organisation if a company secretary is not employed.*" King III also recommends that the company secretary should '*assist with the proper induction, orientation, ongoing training and education of directors.*' The company secretary should also assist with the annual evaluation of the board, its directors and senior management.

Conclusion:

The appointment of a company secretary, as envisaged by King III, is not a feasible option for all NPOs. It would however be prudent for NPCs to consider voluntarily appointing a company secretary when the new Companies Act comes into operation.

The voluntary appointment of a company secretary by the board of the NPC will depend on a number of factors, including, amongst other:

- The board's own ability to comply with the provisions of the Companies Act,
- The potential exposure to risk,
- The cost implications, and
- The available funds.

Skills Development Workshop for NPOs

2 – 6 August 2010 in Somerset West, Western Cape

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ONE YEAR ANNIVERSARY!

We celebrated our first year of operation during June 2010.
Thank you to all our clients, friends and partners for your wonderful support during this year.

The year was filled with the following exciting **highlights**:

COUNTRY VISITS and CLIENTELE

Visiting three different countries to do work with non-profit organisations:



Zimbabwe



Kenya



The Netherlands

Attracting clients both nationally and internationally – USA and Switzerland.

STUDY TOUR

Co-managing a study tour on non-profit law for delegates from **Kenya, Tanzania** and **Uganda** in Pretoria during July 2009.



Visiting the Tax Exemption Unit at SARS.

WORKSHOPS

Facilitating and co-facilitating a number of workshops on **Professional Fundraising** and **Governance**.



Delegates at Professional Fundraising Workshop hosted during June 2010.

PUBLICATIONS

Co-authoring articles for the *International Journal for Civil Society Law* and the *International Journal of Not-for-Profit Law*.

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