

July 2015

Much confusion surrounds the distinction between Public Benefit Organisations (PBOs), Non-Profit Organisations (NPOs) and Non-Profit Companies (NPCs). While there are similar characteristics between these charity vehicles, and although they are to a certain extent interlinked, each is different from the others as they serve different purposes and are registered with different governmental bodies or departments.

An NPO is defined by the Non-Profit Organisations Act as:

"a trust, company or other association of persons:

(a) established for a public purpose; and

(b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered."

The purpose of registering an organisation as an NPO is to receive grants and donor funding from government (that is the National Lottery Board). An NPO is registered with the Department of Social Development (the DSD).

In addition to the prescribed DSD application form, two copies of the organisation's founding document (a constitution for a volunteer association, a memorandum of incorporation with the company's registration letter for an NPC, and a deed of trust with the trustees' authorisation letter for a trust) must be submitted to the Directorate for Non-Profit Organisations. Despite the many benefits of online submission, it has been found that submitting documents by hand is more reliable. Registration usually takes approximately six weeks from the date the documents are submitted.

An NPC is defined by the Companies Act as:

"a company:

(a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and

(b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1"

An organisation must apply to register as Non-Profit Company with the Companies and Intellectual Properties Commission (CIPC). The organisation will acquire the characteristics and

benefits of a private or public company. An NPC may be registered with or without members.

Registration follows the same process as for a private/public company, and commences by depositing a registration fee into the CIPC's bank account. A company name reservation is usually confirmed five working days after it has been submitted. Reservation is not essential as a company name may be added at a later stage through an amendment once the NPC is registered with an enterprise number. The documentation may be submitted online at the CIPC's webpage or sent to the CIPC via email. The registration process takes approximately six weeks once the documents are submitted and will be confirmed by the CIPC.

The Income Tax Act defines a PBO as:

"any organisation which is:

- (i) a non-profit company as defined in section 1 of the Companies Act or a trust or an association of persons that has been incorporated, formed or established in the Republic; or
- (ii) any branch within the Republic of any company, association or trust incorporated, formed or established in any country other than the Republic that is exempt from tax on income in that other country;

of which the sole or principal object is carrying on one or more public benefit activities, where –

- (i) all such activities are carried on in a non-profit manner and with an altruistic or philanthropic intent; and
- (ii) no such activity is intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee(c)

where:

- (i) each such activity carried on by that organisation is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups)."

When we refer to a PBO, it is, unlike the previous examples, a *status* granted to an organisation rather than the establishment and registration of a charity vehicle. The purpose of PBO status is to allow an organisation exemption from taxation. In order to qualify for PBO status, an organisation must, among others, conduct one or more of the numerous "public benefit activities" in terms of the Income Tax Act.

An application for PBO status is made at the South African Revenue Service (SARS).

Submission of the application must be done by hand at a SARS branch and the registration process takes approximately eight weeks from date of submission.

It is important to note that although the charity vehicles have different characteristics and different purposes, the operation of the one does not preclude the operation of the other. In other words, an organisation may register as a PBO, NPO and an NPC, as long as all the criteria and requirements are satisfied in terms of the relevant legislation.

> [Read the full article online](#)