



Companies and Intellectual  
Property Commission  
a member of **the dtic** group

# COMPLIANCE CHECKLIST REPORT

## NON-PROFIT COMPANIES

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## 1. INTRODUCTION

- 1.1 The Companies and Intellectual Property Commission (CIPC) is a juristic person and organ of state established in terms of section 185(1) of the Companies Act 71 of 2008 (as amended) (Companies Act).
- 1.2 The CIPC has a statutory responsibility in terms of section 187(2) (b) to monitor proper compliance with the Companies Act.
- 1.3 Towards achieving this mandate, the CIPC developed, tested and formally implemented in 2020 an Electronic Compliance Checklist Service on its E - Services website (Compliance Checklist).
- 1.4 Compliance Checklist data has identified churches, specifically those that operate within the “charismatic church” sphere and which are registered as Non Profit Companies (NPCs) with the CIPC as being susceptible to mismanagement due to the public trust they command and dependence on financial contributions.
- 1.5 The aim of this Report is to highlight:
  - 1.5.1 The growth trajectory of churches registered as NPCs.
  - 1.5.2 The specific provisions of the Companies Act that relate to NPCs
  - 1.5.3 The Compliance Checklist data linking to this specific type of NPC.
  - 1.5.4 The areas of noncompliance with the Companies Act.
  - 1.5.5 Trends identified.
  - 1.5.6 Measures that this specific type of NPC as well as NPCs in general, can take to mitigate the risks identified and thereby strengthen the level of corporate governance and compliance.

## **2. HOW DOES THE COMPLIANCE CHECKLIST WORK**

- 2.1 The Compliance Checklist is a web-based application designed for directors of a specific category of company, i.e. Incorporated – Inc. (21); Proprietary Limited – (Pty) Ltd (07); Limited – Ltd (06); State Owned Company – SOC (30) and Non Profit Company – NPC (08) to declare the compliance status of the company for a predetermined compliance period, known as a Compliance Year.
- 2.2 The Compliance Checklist is a free standalone service. The director(s) of the company remain(s) accountable for accurately completing the Compliance Checklist for the designated compliance period.
- 2.3 The Compliance Checklist can be accessed by logging on to the CIPC's E- Services, Clicking on the Other/More Services icon, Business Maintenance and then on the Compliance Checklist Link.
- 2.4 The director of the specific category of company, i.e. Incorporated – Inc. (21); Proprietary Limited – (Pty) Ltd (07); Limited – Ltd (06); State Owned Company – SOC (30) or Non Profit Company – NPC (08) would first need to confirm if the company's annual financial statements are audited or independently reviewed.

### **SCENARIO ONE**

- 2.5 If one has confirmed that the company's annual financial statements are neither audited nor independently reviewed, one will not be required to complete the Compliance Checklist.
- 2.6 An automatic CIPC generated email message confirming this will be sent to all active directors of the company and to the person who submitted this information.

### **SCENARIO TWO**

- 2.7 If one has confirmed that the company's annual financial statements are either audited or independently reviewed, one must complete the Compliance Checklist.

2.8 The sections that constitute the Compliance Checklist are:

Section 4 – Solvency and liquidity test.

Section 15 – Memorandum of Incorporation, shareholder agreements and rules of company.

Section 26 – Access to company records.

Section 27 – Financial year of company.

Section 28 – Accounting records.

Section 29 – Financial statements.

Section 30 – Annual financial statements.

Section 32 – Use of company name and registration number.

Section 33 – Annual return.

Section 44 – Financial assistance for subscription of securities.

Section 45 – Loans or other financial assistance to directors.

Section 50 – Securities register and numbering.

Section 61 – Shareholders meetings.

Section 66 – Board, directors and prescribed officers.

Section 69 – Ineligibility and disqualification of persons to be director or prescribed officer.

Section 70 – Vacancies on board.

Section 71 – Removal of directors.

Section 86 – Mandatory appointment of company secretary.

Section 90 – Appointment of auditor.

Section 92 – Rotation of auditors.

Section 94 – Audit committees.

Regulation 21 – Registered office of company.

Regulation 43 – Social and Ethics committee.

Schedule 1 – Provisions concerning Non –Profit Companies.

**2.9** The sections listed in 2.8 above form the common areas of non –compliance that the CIPC has identified since the inception of the Companies Act in May 2011.

2.10 The Compliance Checklist must be answered on a Not Applicable; Yes or No basis and contains a comment box for each question, should a company wish to explain the specific answer given.

- 2.11 Upon submitting the Compliance Checklist, an automatic CIPC generated email message will be sent to all active directors of the company and to the person who submitted the Compliance Checklist confirming the information sent on behalf of the company.
- 2.12 Reference to Compliance Year in the Compliance Checklist is aligned to the **anniversary date** of a company's incorporation. If for example, the company's date of incorporation (anniversary date) is 5 May, the **2024 Compliance Year** will run from 5 May 2024 until 4 May 2025. The 2024 Compliance Checklist must, therefore, be submitted by a company to the CIPC within 30 business days **after** the anniversary of the company's date of incorporation.
- 2.13 As the Compliance Checklist became mandatory from 05 March 2020 (as it was in a test phase to the market between September 2019 – December 2019), it has been designed to default to two preceding years and will automatically default as each year is completed.
- 2.14 Therefore, in 2025, the Compliance Year defaulted to 2023 and 2024, in 2026, the Compliance Year defaulted to 2024 and 2025 etc.

### 3. NON - PROFIT COMPANIES

#### 3.1 Growth Trajectory of Churches within the NPC category of company

3.1.1 Between 2010 and 2024, the number of churches specifically those that operate within the “charismatic church” sphere and are registered as NPCs with the CIPC grew from 22 churches to 261.

#### 3.2 The Companies Act

##### 3.2.1 The Companies Act, defines a non - profit company to mean 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.

##### 3.2.2 Section 10 of the Companies Act sets out the modified application with respect to non-profit companies and states:

(1) Every provision of the Companies Act applies to a non-profit company, subject to the provisions, limitations, alterations or extensions set out in this section, and in [Schedule 1](#).

(2) The following provisions of the Companies Act, and any regulations made in respect of any such provisions, do not apply to a non-profit company:

- (a) Part D of [Chapter 2](#) - Capitalisation of profit companies.
- (b) Part E of [Chapter 2](#) - Securities registration and transfer.
- (c) [Section 66 \(8\)](#) and [\(9\)](#) and [section 68](#) - Remuneration and election of directors.
- (d) Parts B and D of [Chapter 3](#) - Company secretaries, and audit committees, except to the extent that an obligation to appoint a company secretary, auditor or audit committee arises in terms of-
  - (i) a requirement in the company's Memorandum of Incorporation, as contemplated in [section 34 \(2\)](#); or
  - (ii) regulations contemplated in [section 30 \(7\)](#).
- (e) [Chapter 4](#) - Public offerings of company securities.
- (f) [Chapter 5](#) - Takeovers, offers and fundamental transactions, except to the extent contemplated in [item 2](#) of [Schedule 1](#).
- (g) [Sections 146 \(d\)](#), and 152 (3) (c) - Rights of shareholders to approve a business rescue plan, except to the extent that the non-profit company is itself a shareholder of a profit company that is engaged in business rescue proceedings.
- (h) [Section 164](#) - Dissenting shareholders' appraisal rights, except to the extent that the non-profit company is itself a shareholder of a profit company.

[[Sub-s. \(2\)](#) substituted by [s. 5](#) of [Act No. 3 of 2011](#).]

(3) [Sections 58](#) to [65](#), read with the changes required by the context-

- (a) apply to a non-profit company only if the company has voting members; and

(b) when applied to a non-profit company, are subject to the provisions of [item 4](#) of [Schedule 1](#).

(4) With respect to a non-profit company that has voting members, a reference in this Act to "a shareholder", "the holders of a company's securities", "holders of issued securities of that company" or "a holder of voting rights entitled to be voted" is a reference to the voting members of the non-profit company.

### 3.2.3 Schedule 1 of the Companies Act deals with Provisions concerning Non-Profit Companies

#### **SCHEDULE 1** PROVISIONS CONCERNING NON-PROFIT COMPANIES [Sch. 1 amended by [s. 122](#) of [Act No. 3 of 2011](#).]

**1. Objects and policies.**-(1) The Memorandum of Incorporation of a non-profit company must-

- (a) set out at least one object of the company, and each such object must be either-
  - (i) a public benefit object; or
  - (ii) an object relating to one or more cultural or social activities, or communal or group interests; and
- (b) be consistent with the principles set out in sub-items (2) to (9).  
[Item. (b) amended by [s. 122 \(a\)](#) of [Act No. 3 of 2011](#) (English only).]

(2) A non-profit company-

- (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in its Memorandum of Incorporation; and
- (b) subject to paragraph (a), may-
  - (i) acquire and hold securities issued by a profit company; or
  - (ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

(3) A non-profit company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a member or director, or person appointing a director, of the company, except-

- (a) as reasonable-
  - (i) remuneration for goods delivered or services rendered to, or at the direction of, the company; or
  - (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the company;
- (b) as a payment of an amount due and payable by the company in terms of a *bona fide* agreement between the company and that person or another;
- (c) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or
- (d) in respect of any legal obligation binding on the company.

[Para. (3) amended by [s. 122 \(b\)](#) of [Act No. 3 of 2011](#).]

(4) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of a non-profit company-

- (a) no past or present member or director of that company, or person appointing a director of that company, is entitled to any part of the net value of the company after its obligations and liabilities have been satisfied; and
- (b) the entire net value of the company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts-
  - (i) having objects similar to its main object; and

- (ii) as determined-
  - (aa) in terms of the company's Memorandum of Incorporation;
  - (bb) by its members, if any, or its directors, at or immediately before the time of its dissolution; or
  - (cc) by the court, if the Memorandum of Incorporation, or the members or directors fail to make such a determination.

[[Item \(b\)](#) amended by [s. 122 \(c\)](#) of [Act No. 3 of 2011](#).]

(5) The Commission may apply to the court, on behalf of a non-profit company, for a determination contemplated in [sub-item \(4\) \(b\) \(ii\) \(cc\)](#) if the non-profit company has-

- (a) no remaining members or directors; and
- (b) failed to-
  - (i) make a determination contemplated in [sub-item \(4\) \(b\) \(ii\) \(bb\)](#); or  
[[Sub-item \(i\)](#) amended by [s. 122 \(a\)](#) of [Act No. 3 of 2011](#) (English only).]
  - (ii) apply to the court for such a determination.  
[Para. (5) amended by [s. 122 \(a\)](#) of [Act No. 3 of 2011](#) (English only).]

(6) Incorporation as a non-profit company in terms of this Act, or registration as an external non-profit company in terms of this Act, and compliance by either with the provisions of this Act does not necessarily qualify that non-profit company, or external non-profit company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 ([Act No. 58 of 1962](#)), or any other legislation, except to the extent that any such legislation provides otherwise.

(7) Each voting member of a non-profit company has at least one vote.

(8) The vote of each member of a non-profit company is of equal value to the vote of each other voting member on any matter to be determined by vote of the members, except to the extent that the company's Memorandum of Incorporation provides otherwise.

(9) If a non-profit company has members, the requirement in [section 24 \(4\)](#) to maintain a securities register must be read as requiring the company to maintain a membership register.

**2. Fundamental transactions.**-(1) A non-profit company may not-

- (a) amalgamate or merge with, or convert to, a profit company; or
- (b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company.

(2) If a non-profit company has voting members, any proposal to-

- (a) dispose of all or the greater party of its assets or undertaking; or
- (b) amalgamate or merge with another non-profit company,

must be submitted to the voting members for approval, in a manner comparable to that required of profit companies in accordance with [sections 112](#) and [113](#), respectively.

(3) [Sections 115](#) and [116](#), read with the changes required by the context, apply with respect to the approval of a proposal contemplated in sub-item (2).

[Para. (3) amended by [s. 122 \(a\)](#) of [Act No. 3 of 2011](#) (English only).]

**3. Incorporators of non-profit company.**-The incorporators of a non-profit company are its-

- (a) first directors; and
- (b) its first members, if its Memorandum of Incorporation provides for it to have members.

**4. Members.**-(1) A non-profit company is not required to have members, but its Memorandum of Incorporation may provide for it to do so.

(2) If the Memorandum of Incorporation of a non-profit company provides for the company to have members, it-

- (a) must not restrict or regulate, or provide for any restriction or regulation of, that membership in any **9** manner that amounts to unfair discrimination in terms of [section 9](#) of [the Constitution](#);

- (b) must not presume the membership of any person, regard a person to be a member, or provide for the automatic or *ex officio* membership of any person, on any basis other than life-time membership awarded to a person-
  - (i) for service to the company or to the public benefit objects set out in the company's Memorandum of Incorporation; and
  - (ii) with that person's consent;
- (c) may allow for membership to be held by juristic persons, including profit companies;
- (d) may provide for no more than two classes of members, that is voting and non-voting members, respectively; and
- (e) must set out-
  - (i) the qualifications for membership;
  - (ii) the process for applying for membership;
  - (iii) any initial or periodic cost of membership in any class;
  - (iv) the rights and obligations, if any, of membership in any class; and
  - (v) the grounds on which membership may, or will, be suspended or lost.

**5. Directors.**-(1) If a non-profit company has members, the Memorandum of Incorporation must-

- (a) set out the basis on which the members choose the directors of the company; and
- (b) if any directors are to be elected by the voting members, provide for the election each year of at least one-third of those elected directors.

(2) If a non-profit company has no members, the Memorandum of Incorporation must set out the basis on which directors are to be appointed by its board, or other persons.

(3) A non-profit company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the company or of a related or inter-related company, or to a person related to any such director.

(4) Sub-item (3) does not prohibit a transaction if it-

- (a) is in the ordinary course of the company's business and for fair value;
- (b) constitutes an accountable advance to meet-
  - (i) legal expenses in relation to a matter concerning the company; or
  - (ii) anticipated expenses to be incurred by the person on behalf of the company;
- (c) is to defray the person's expenses for removal at the company's request; or
- (d) is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

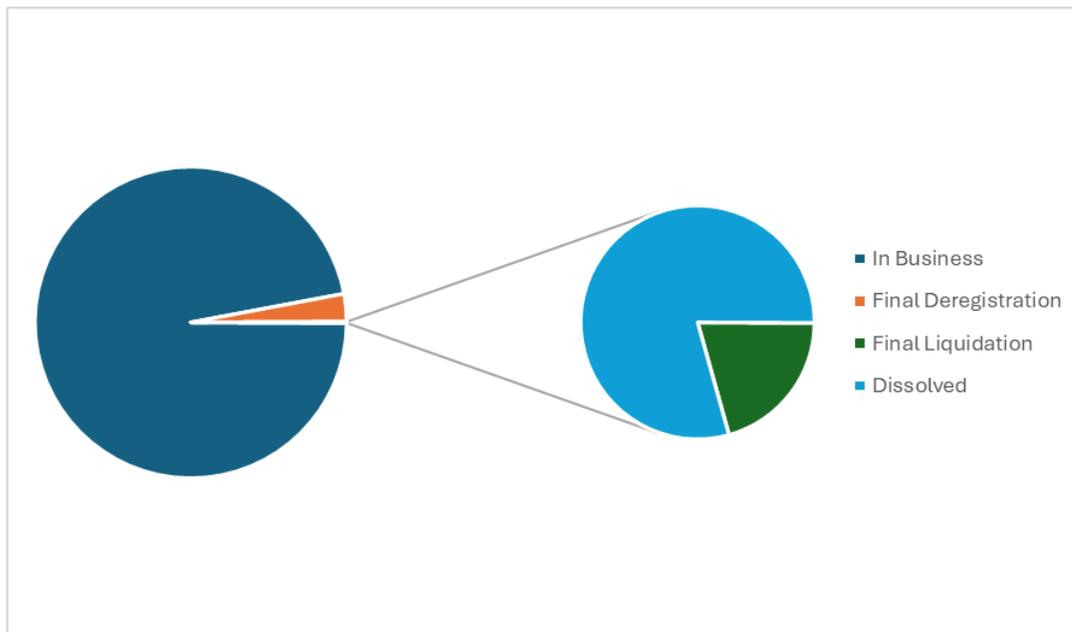
[Para. (4) amended by [s. 122 \(a\) of Act No. 3 of 2011](#) (English only).]

#### 4. The Compliance Checklist Data

4.1 As per Graph 1 below, the Compliance Checklist Data indicates that for the 2025 Compliance Year the total number of NPCs:

- **In Business = 137 977**
- **Final deregistration = 4107**
- **Final liquidation =41**
- **Dissolved = 158**

**Graph 1:**

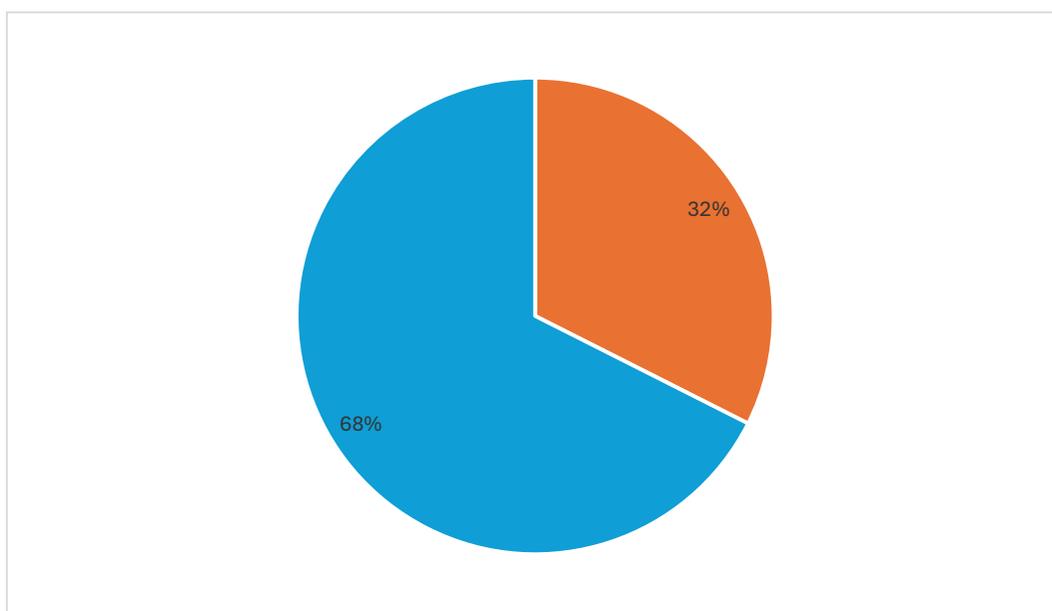


## 4.2 Declaration of Turnover Values

4.2.1 For the Compliance Year 2025, the total number of churches registered as NPCs and that were in business, equaled to 419.

4.2.2 Graph 2 below illustrates that a staggering 283 or 68% of these churches declared Nil turnover when filing their Annual Return information with the CIPC.

**Graph 2**



4.2.3 Further, the data indicates an upward trend of churches still in business with registration dates clustered according to decade declaring Nil turnover, as per:

- **Between 1990 – 2000 = 3.**
- **Between 2001 - 2010 = 19.**
- **Between 2011 - 2020 = 114.**
- **Between 2021 - 2024 = 147.**

### **4.3 Noncompliance with the Companies Act**

- 4.3.1 Schedule 1, item (2) (a) – NPCs are not applying all of its assets and income, however derived, to advance its stated objects as set out in its MOI.
- 4.3.2 Schedule 1, item (5) (3) - Providing loans to secure debts or obligations and providing direct and indirect financial assistance to a director of the company or of a related or inter-related company or to a person related to such a director which falls outside the exceptions as per Schedule 1, item (5) (4).
- 4.3.3 For example, certain members of these charismatic churches use the NPC to fund their extravagant lifestyles.

### **4.4 Trends Identified**

- 4.4.1 Legitimate NPCs are infiltrated, access is gained to their assets and financial systems, funds are siphoned off or assets such as vehicles or premises are utilized without the company's knowledge.
- 4.4.2 The use of a legitimate NPC's Name and Status without its consent or knowledge for fundraising campaigns from an unsuspecting public, for example through fake websites, social media appeals, online crowdfunding platforms and messaging apps to quickly raise funds often under the guise of a humanitarian or social cause.
- 4.4.3 The misuse of legitimate donor funds usually received during a Sunday Church Service which are channeled out by creating fake programs, paying fictitious contractors, using inflated salaries for non-existent staff or the transportation of this cash across porous borders via bus using individuals as cash couriers.
- 4.4.4 Insufficient background verification on staff, volunteers and partner organizations, or a failure to verify the end use of funds, increases the risk of collaboration with criminal elements.

### **5. Measures to mitigate the risks identified and strengthen the level of corporate governance and compliance.**

- 5.1 The consistent application of Schedule 1 – Provisions concerning NPCs read with section 10 of the Companies Act.
- 5.2 The correct declaration of turnover values for Annual Return Filings.
- 5.3 Strong internal financial controls, due diligence on donors and partners and the reporting of suspicious activities to relevant authorities.
- 5.4 A clear and concise accounting policy that prohibits off-the-books accounts or inadequately identified transactions and the proper management of cash donations. The company must monitor its accounts for inaccuracies and for ambiguous or deceptive bookkeeping entries that may disguise illegal payments made by or on behalf of the company.

## **6. CONCLUSION**

- 6.1 A lack of robust internal controls, poor financial management and inadequate record-keeping procedures place NPCs, specifically those that operate as “charismatic churches” at risk.
- 6.2 To mitigate these risks NPCs should adhere to the statutory requirements as set out in the Companies Act, implement strong internal controls, due diligence procedures and reporting mechanisms as discussed above.