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Reg No.: 2022 / 239589 / 08
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Monarkhia Academy

MONARKHIA ACADEMY (NPC)

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Legislative and Policy Mandates

1. Companies Act of 2008 and Companies Amendment Act of 2011

Monarkhia Academy NPC is framed by the South African Companies Act of 2008 which provides for the incorporation of a non-profit company, which is recognized as a separate category of companies. The non-profit company can be established with or without members, but it must have at least three directors (as per Section 3(1) of the Companies Act of 2008). The non-profit company (Monarkhia Academy) is incorporated and registered with the Companies Commission; it can be incorporated for a public benefit objective, or an objective relating to one or more cultural or social activities or communal or group interests (Companies Act Schedule 1 para 1). The non-profit company (Monarkhia Academy NPC) is subject to the non-distribution constraint requirement. Non-profit companies have legal personality and therefore offer limited liability to their members and directors. Monarkhia Academy NPC can enter into contracts and sue and be sued in their own name.

Paragraph 3 of Schedule 1 to the Companies Act prohibits a non-profit company from directly or indirectly paying any portion of its income or transferring any of its assets, regardless of how the income or asset was derived, to any incorporator, director or member of the company. This prohibition has the following exceptions: reasonable remuneration for goods delivered or services rendered; reimbursement for expenses incurred to advance the company’s objectives; payment payable in terms of a bona fide agreement; payment in respect of any rights of that person to advance a stated objective of the company; and payment in respect of any legal obligation binding the company.

2. The Promotion of Equality and Prevention of Unfair Discrimination, Act No. 4 of 2000

Monarkhia Academy NPC is guided by the provisions of The Promotion of Equality and Prevention of Unfair Discrimination, Act No. 4 of 2000. This Act provides that no person may unfairly discriminate against any person on the ground of race, including a number of activities defined thereunder, such as the engagement in any activity which is intended to promote, or has the effect of promoting exclusivity based upon race. The Act also provides an illustrative list of unfair practices in certain sectors. With reference to clubs, sports, and associations, it provides that refusing to consider a person's application for membership of the association or club on any of the prohibited grounds, including race, constitutes an unfair practice.

3. Income Tax Act 58 of 1962 (as amended)

To qualify as a public benefit organisation (PBO), this organisation (Monarkhia Academy NPC) must comply with all of the following requirements of Section 30 of the Income Tax Act:

- It must be a non-profit company formed and incorporated under the Companies Act, that is exempt from tax on income in that other country" (i.e., the definition of PBO under Income Tax Act Section 30(1)).
- Its sole or principal objective must be to carry out one or more public benefit activities as listed in the Ninth Schedule of the Act; it cannot pursue any other principal objectives.
- The activities must be carried out in a non-profit manner and with altruistic or philanthropic intent. No activity can promote the economic self-interest of any fiduciary or employee, other than reasonable remuneration to employees or officers.
- Each of the organisation's activities must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- Public benefit organisations without donor-deductible status may carry out public benefit activities beyond the borders of South Africa, provided that donor-deductible contributions are only used for the public benefit activities carried on in South Africa. The qualifying public benefit activities for partial tax exemption appear in Part I of the Ninth Schedule to the Income Tax Act, and those for donor deductible status appear in Part II. The Minister of Finance may, however, determine additional activities from time to time. At present, more than 60 activities qualify (Income Tax Act Schedule Nine Sections 1-11).

4. Value Added Tax Act 89 of 1991 ("VAT Act")

The Value Added Tax Act imposes a 15 percent tax on the value of goods or services supplied by a vendor, imported goods, or services provided by a resident supplier or one carrying out business outside of South Africa to a resident of South Africa who uses the services in South Africa (VAT Act Section 7(1)).

The VAT Act confers certain benefits on organisations that qualify as "associations not for gain," "welfare organisations," or both (VAT Act Section 1). Qualifying organisations can claim the VAT they incur as input tax and, generally speaking, must pay output tax only when they charge for goods or services.

Monarkhia Academy as an "association not for gain" is defined as an institution or other society, association, or organisation (including an educational institution of a public character), which is not established for profit and which is required to use any property or income solely to further its aims and objectives. An association not for gain is treated much like any other business if it makes taxable supplies, but the following special provisions apply:

No output tax is payable on any "unconditional gifts" received, such as a club member's donation of money to cover the costs of new equipment for the organisation. A VAT exemption applies to the sale of any donated goods or services, and to the sale of manufactured goods where donated goods and services constitute at least 80 percent of the value thereof. Certain subsidies and grants received from National or Provincial Governments (public authority) are zero-rated, meaning that the recipient can claim a credit from the South African Revenue Service for the VAT levied on those grants.

5. Financial Intelligence Centre Act 38 of 2001 ("FICA") and Financial Intelligence Centre Amendment Act, 2017 (Act 1 of 2017)

Monarkhia is committed to the provisions of Act 38 of 2001 known as FICA. FICA is a legal framework which exists to help identify the proceeds of unlawful activities and to combat activities related to money laundering, terrorist funding and tax evasion. Various control measures within FICA aim to ensure the detection and investigation of money laundering. Monarkhia will always have policies of Internal Control in order to prevent unlawful money laundering by its board, managers, members and beneficiaries.

The Financial Intelligence Act (FICA) came into effect in July 2003 along with the establishment of the Financial Intelligence Centre (FIC) who are essentially responsible for overseeing compliance with the Act.

According to the FIC Act, the responsibility as an Accountable Institution includes identifying and verifying your clients and ensuring that their information is correct and up to date. Since its introduction in 2003, FICA has been amended and has become known as the Financial Intelligence Centre Amendment Act 1 of 2017 (FICAA). The Amendment Act brings South Africa closer to international anti-money laundering standards and the best practices recommended by the Financial Action Task Force (FATF). During the State of the nation 2021 address, in an attempt to further enhance the country's fight against corruption and financial crime, President Cyril Ramaphosa went further and announced the formation of the National Anti-Corruption Advisory Council.

FICA complements other South African legislation such as the Prevention of Organised Crime Act (POCA), the Protection of Constitutional Democracy Against Terrorism Related Activities Act (PoCDATRAA), and the Prevention and Combating of Corrupt Activities Act (PRECCA).

Together these legislations introduce measures to combat and prosecute crimes such as organised gangs, racketeering, terrorist-related activities and money laundering. Since the establishment of the Financial Intelligence Centre (FIC) and the onset of FICA, impressive strides have been made to combat money laundering and other financial crimes in South Africa. In partnership with law enforcement, intelligence services and other supervisory bodies, the FIC has assisted in many financial crime investigations, including bringing an estimated R12 billion* Ponzi scheme to a halt, exposing an import/export ring and exposing a case of theft and money laundering to the value of about R21 million.

6. Fund-Raising Act, 1978

The Fund-Raising Act was promulgated in 1978 to provide for control over collections of contributions from the public. A number of challenges have been experienced in implementation of the Fund-Raising Act No.107 of 1978. The Act has become dysfunctional over the years, with many parts being repealed owing to the introduction of the Non-Profit Organization Act No. 71 of 1997. Only Chapter 2 of the Fund Raising Act remains.

7. Children's Act 38 of 2005 (as amended)

The Children's Act has many chapters and sections; a chapter gives the main headings in the Act and under each heading there are lots of sections, each of them numbered. The introduction to the Children's Act was to give effect to certain rights of children as contained in the Constitution and to set out principles relating to the care and protection of children; The Child Protection Register consists of Part A and Part B. "Part A is used to record all reports of abuse or deliberate neglect of a child while Part B keeps details of persons declared unsuitable to work with children. Monarkhia Academy shall abide by the provisions of this Act in order to screen all staff members on their eligibility of working with children. Form 30 of the Children's Act Regulations will be utilized in order to protect children from any form of harm.

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8. Tax Exemption Guide for Public Benefit Organisations in South Africa

The law explicitly limits the extent to which the economic activities of organisations approved as a PBO under Section 10(1) (cN) of the Income Tax Act will be tax exempt. The receipts and accruals from such undertakings or activities shall be exempt from normal tax only if one of the following criteria applies:

A) The undertaking or activity meets all of the following requirements:

- It is integral and directly related to the sole objective of the public benefit organisation;
- Substantially the whole of its revenues are directed toward the recovery of its costs; and
- It does not result in unfair competition in relation to taxable entities.

B) The undertaking or activity is of an occasional nature and substantially performed by uncompensated volunteers.

C) The undertaking or activity is approved by the Minister of Finance by notice in the Gazette, taking into account the following factors:

- The scope and benevolent nature of the undertaking or activity;
- The direct connection between the undertaking or activity and the sole purpose of the public benefit organisation;
- The profitability of the undertaking or activity; and
- The economic distortion that may result from allowing a tax-exempt organisation to carry out the undertaking or activity.

D) The undertaking or activity does not qualify under any of the above criteria, and the revenues it generates do not exceed the greater of the following:

- 5 percent of the public benefit organisation's total receipts and accruals during the relevant year of assessment; or
- 200,000 South African Rand (Income Tax Act, section 10(1)(cN), as amended).
- PBOs are allowed to invest their funds, subject only to restrictions that may exist in the common law.