BOTANICAL SOCIETY
OF SOUTH AFRICA

# BOT SOC NPO vs NPC Organisational Structure Comparison

## March 2025.

This document was prepared for the Botanical Society of South Africa's Council, in preparation for Branch engagements in order to consider the transition from the current Non-Profit Organisation (NPO) legal status to the Non-Profit Company NPC legal status. Branch engagements were facilitated to inform Council's approach to preparing resolutions for the Annual General Meeting planned for the 28th June 2025 and further action following the 2025 AGM over the next year.

**Comparative Criteria to be considered:**

| Criteria | Voluntary Association (Section 21 Not-for-Gain) | Charitable Trust | Non-Profit Company (NPC) |
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| **Legal structure** | Informal and simple; requires only a constitution | Governed by a trust deed and the Master of the High Court | Governed by the Companies Act, requires a Memorandum of Incorporation (MoI) |
| **Formation and governance** | Easy to establish; governance is based on a member-adopted constitution as a resolution at an AGM | Trustees appointed per deed; regulated by the High Court. The trust must be created by a written trust deed, lodged with and approved by the Master of the High Court, who issues Letters of Authority to trustees. | Formally structured; minimum of three directors appointed; allows for both member- and non-member-based governance. It is adopted at an annual general meeting (AGM) or a specially convened special general meeting (SGM), depending on the provisions in the organisation's constitution. |
| **Liability protection** | No separation between organisation and members; office bearers or committee members may be held personally liable for debts or mismanagement, particularly where there is no clear legal distinction between the organisation's obligations and those of its leaders. | Trustees can be personally liable under certain conditions. | Directors and members typically have limited liability, meaning their personal assets are protected. However, directors may be held personally liable in cases of gross negligence, fraud, breach of fiduciary duty, or failure to comply with legal obligations under the Companies Act. |

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| **Perpetual succession (the legal principle that a registered organisation continues to exist as a separate legal entity, regardless of changes in its leadership, membership, or internal structure)** | Perpetual succession is *not guaranteed*. The organisation's existence is closely tied to its members. If the membership ceases or dissolves the association, the legal existence of the organisation ends. This can create continuity challenges, especially if leadership is unstable. | May have *some elements* of perpetual succession, depending on the terms of the trust deed and the continued appointment of trustees. However, it can become difficult to manage succession if the deed does not clearly provide for it. | Enjoys *full perpetual succession*. It is a distinct legal entity that continues to exist even if directors or members change. This makes it easier to manage long-term projects, sign contracts, hold assets and maintain organisational identity over time. |
| **Public perception and donor confidence** | Often viewed as informal; credibility depends heavily on the organisation's financial and operational reputation, transparency, and track record of delivery. | Increasingly viewed with suspicion due to international misuse in money laundering | High credibility; widely accepted by corporate and institutional donors; perceived as accountable and transparent. |
| **Compliance and reporting** | Minimal statutory compliance (reports to the NPO Directorate annually only) with the Department of Social Development | Subject to High Court supervision; not fully integrated into the Companies and Intellectual Property Commission (CIPC) system | Strong regulatory framework; required to submit annual returns and financials to the CIPC and NPO Directorate of the Department of Social Development |
| **Record-keeping and reputational risks** | The NPO Directorate is known to manage its records poorly, which can affect public confidence and hinder due diligence by donors | Charitable trusts have fallen out of favour due to global scrutiny and are increasingly seen as potential vehicles for money laundering | Maintains up-to-date records with CIPC; considered the most reputable and transparent structure, especially for funders |
| **Flexibility in operations** | Governance structures can be tailored but often lack robustness | Rigid; bound by terms of trust deed and oversight requirements | Highly flexible/ adaptable governance and operational frameworks; can evolve with organisational growth |
| **Cost of establishment and maintenance** | Low start-up and compliance costs | Moderate costs; legal fees for deed and trustee registration | Slightly higher start-up and annual compliance costs, but balanced by advantages in governance and credibility |
| **Tax exemption and PBO status** | Eligible for SARS tax exemption and Section 18A status (if registered with SARS) | Eligible, but registration may be slower and more complex | Fully eligible; frequently used for PBO registration and seen as compliant by SARS. Includes Section 18A status |
| **Branch integration and national scope** | Difficult to integrate multiple branches under one legal entity, as voluntary associations lack a formal corporate structure and | Challenging to manage multiple branches due to rigid governance | Easier to incorporate branches under one national NPC structure because it provides a clear legal framework that allows for central governance, |

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| | statutory authority over semi-autonomous branches, making unified governance and financial oversight complex | | standardised policies, and financial control, while still enabling regional representation and operational autonomy |
| **Risks** | Informality may result in poor governance and liability exposure across the organisation; limited scalability | Reputational risk due to international misuse; complexity in trustee succession | Regulatory oversight ensures governance; risk is mainly around compliance, but mitigated through internal controls through policy and strategic alignment |
| **Overall suitability for BOT SOC** | Historically adequate, but no longer aligned with modern governance expectations or fundraising ambitions and urgent requirements | Not suitable due to reputational concerns, legal rigidity, and lack of adaptability | Strongly recommended due to credibility, governance, donor confidence, and ability to incorporate branches within one structure * |
| **Additional considerations** | Risks of weak integration and duplication of effort; administrative burden on volunteer-led branches | Lack of flexibility; limited stakeholder engagement in decision-making | Requires increased administrative compliance under the Companies Act, but offers long-term sustainability. Governance will include formal member voting rights, a Branch Advisory Committee, and operational autonomy at regional level. |

**<u>A Partnership Approach: Strengthening Governance and Sustainability</u>**

The proposed transition to a non-profit company (NPC) structure is not intended to be a centralisation of power or a hostile takeover of branches. Rather, it is a partnership approach designed to strengthen the entire organisation – including its branches – through a modern, accountable, and sustainable governance model. Importantly, the NPC model does not remove branch autonomy to operate but formalizes the working arrangements with national organization for improved cohesion. It is intended to secure the long-term financial and operational stability of BOT SOC, allowing branches to focus on their vital conservation work, free from the growing administrative and compliance pressures associated with managing a separate legal entity, if branches opt to remain internal branches, as they still have the option to become external branches.

We recognise the concerns that some branches may hold, and we will approach this process with sensitivity, inclusivity, and respect for the proud histories and contributions of every branch. A phased approach will be considered, including a grace period to allow branches that are undecided to fully engage with the process and determine how best to transition.

To further allay concerns, it is worth noting that other respected South African organisations have undertaken similar transitions in recent years, including the South African Music Rights Organisation (SAMRO), Birdlife SA, etc. which successfully consolidated its operations under an NPC structure to enhance transparency and governance.

**<u>Anticipated Governance Structure under the NPC Model</u>**

The proposed NPC structure would take the following form:

- **A single NPC registered under the Companies Act, with members.**
- **Each branch will become a formal member of the NPC**, retaining its identity and continuing to deliver programmes at regional level.
- Branch members will **retain voting rights** at the NPC's Annual General Meeting and will be able to influence strategic direction and appointments to the NPC Board.
- A **Membership Advisory Committee** to Council will be established to ensure that branch voices are represented in governance decisions.
- Additional standing committees may include a **Finance and Risk Committee**, a **Governance and Nominations Committee**, and a **Conservation and Programmes Committee**, to provide oversight and support in key operational areas.
- Operational autonomy will be protected at branch level, but all financial, governance, and compliance obligations will reside with the central NPC entity to ensure transparency, accountability, and funder confidence.

**<u>Risks and considerations</u>**

While the NPC model presents numerous advantages, certain risks and implications will require careful management:

- **Administrative compliance:** The NPC will be required to meet all compliance obligations under the Companies Act, which may necessitate additional administrative resources.
- **Financial risks:** The transfer of assets and liabilities from separately registered branches to the NPC may trigger tax or SARS compliance implications. Legal and tax advice will be sought to manage this risk appropriately.

**<u>Benefits to branches</u>**

By adopting the NPC structure, branches will benefit from a simplified, efficient administrative environment and strengthened financial governance. They will gain access to shared administrative systems and donor opportunities, while retaining their local identity and ability to deliver conservation programmes. This structure also ensures that branches are freed from the legal, compliance, and financial risks associated with managing a separate legal entity.

* **Implications for Legally Separate Branches**

1. **Voluntary dissolution and absorption**: Each branch that is currently registered as a separate legal entity (e.g., its own voluntary association or NPO) would need to formally dissolve its existing legal status. This usually requires a resolution passed at a general meeting of that branch, in line with its constitution. Following dissolution, the branch would be absorbed into

the national NPC structure, becoming an internal branch of the central entity rather than an independent body.

2. **Asset and liability transfer**: Any assets (such as bank accounts, property, or equipment) held in the name of the separate branch entity would need to be legally transferred to the NPC. Likewise, any liabilities would need to be addressed – either settled or formally transferred, with consent, to the NPC.

3. **Greater oversight and professionalisation**: This shift would allow BOT SOC to implement standardised financial controls, monitoring systems, and policies across all regions, reducing legal and reputational risk and strengthening its ability to demonstrate good governance and impact to funders.

4. **Donor appeal and operational efficiency**: Funders, especially corporate and institutional donors, and even partners, often prefer to work with a single, legally recognised entity rather than negotiating or contracting with multiple affiliated bodies. A consolidated structure enhances credibility, transparency, and reporting efficiency, making BOT SOC more competitive for funding and other support.

5. **Legal support and change management**: This kind of restructuring would need to be managed carefully, with legal guidance, change management, and strong internal communication. Branches have been consulted and it has been made clear that integration does not mean erasure – but rather improved governance, sustainability, and shared purpose.

The current voluntary association model, while once fit for purpose, now presents limitations in governance and credibility – both critical in a modern fundraising context. The charitable trust model, although historically respected, is increasingly viewed as outdated and potentially high-risk from a regulatory standpoint with low external confidence in the governance structure.

Conversely, a non-profit company offers a forward-looking, accountable, and strategically sound structure for the Botanical Society of South Africa. It supports governance best practice, aligns with donor expectations, and allows for scalable national organisational operations through aligned branch activities – all while safeguarding the organisation's reputation, its brand, and ensuring long-term sustainability.

**Donors and Funders Increasingly Expect the Following:**

- **A single, unified legal entity** that can enter into funding agreements and be held accountable for delivery
- **Clear governance and decision-making structures** that demonstrate transparency, oversight, and risk management
- **Consolidated financial reporting** across the organisation, with a single set of audited financial statements

- **Standardised monitoring and evaluation frameworks** to measure and report on impact across all regions
- **Centralised compliance and policy adherence**, particularly with regard to tax, employment, data protection, and anti-corruption legislation
- **Reduced administrative complexity**, allowing funders to avoid multiple agreements with separate branches or regions
- **Confidence that funds will be used efficiently and according to purpose**, without duplication, fragmentation, or reputational risk

Transitioning to a non-profit company structure positions BOT SOC to meet these expectations fully, enabling stronger fundraising outcomes and more enduring partnerships in the years ahead.