

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE NON-PROFIT ORGANISATIONS
LAW 2017 IN ORDER TO EXPAND THE FUNCTIONS OF THE
REGISTRAR; TO PROVIDE FOR EXEMPTIONS WITH RESPECT TO
THE DISCLOSURE OF CONFIDENTIAL INFORMATION; TO
IDENTIFY ADDITIONAL ORGANISATIONS TO BE EXEMPTED
UNDER THE LEGISLATION; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE NON-PROFIT ORGANISATIONS (AMENDMENT) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Non-Profit Organisations Law, 2017 (“the principal Law”) to streamline several aspects of the legislation including the functions of the registrar, the instances in which information may be disclosed and the available exemptions.

Clause 1 provides the short title and the commencement provision.

Clause 2 amends section 2 of the principal Law in order to make it clear that the raising of funds by a non-profit organisations will fall within the scope of the legislation.

Clause 3 amends section 4(1) of the principal Law by expanding the functions of the Registrar in order to facilitate periodic assessments of the non-profit organisation sector in the Islands in order to identify vulnerabilities to terrorist financing activities.

Clause 4 amends section 5 of the principal Law in order to make it clear that only information contained in the register shall be accessible to the public.

Clause 5 amends the principal Law by inserting section 5A in order to introduce a non-disclosure provision with respect to information pertaining to a non-profit organisation obtained under the principal Law and it identifies the instances in which any such information may be disclosed. It also provides for the penalties where information is disclosed in contravention of the legislation.

Clause 6 amends section 6 of the principal Law by repealing and substituting subsection (2) in order to make it clear that the raising of funds by a non-profit organisation will fall within the scope of the legislation.

Clause 7 amends section 7 of the principal Law by repealing and substituting subsection (1) in order to facilitate the expedited consideration of an application for registration by requiring that the Registrar conclude the registration process within fifteen business days on receiving payment of the prescribed fee.

Clause 8 amends the principal Law by repealing and substituting section 21 in order to remove the “principal regulator” concept and to expand the exemptions under the legislation. It also permits an exempted non-profit organisation or entity to apply to register under the principal Law notwithstanding an exemption.

Clause 9 amends section 22 of the principal Law in order to provide the Cabinet with the power to make regulations specifying the fees to be paid when a request is made of the Registrar to provide specified documents concerning a non-profit organisation. It also provides the Cabinet with the power to make regulations

with respect to the waiver and reduction of fees and administrative penalties applicable under the legislation.

Clause 10 amends the Schedule to the principal Law in order to clarify that information concerning the source of funds raised from the public and how they are to be applied should be included in an application for registration.

Clause 11 contains the transitional and savings provisions.

THE NON-PROFIT ORGANISATIONS (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Non-Profit Organisations Law, 2017 - interpretation
3. Amendment of section 4 - functions of the Registrar
4. Amendment of section 5 - establishment of a register of non-profit organisations
5. Insertion of section 5A - non-disclosure
6. Amendment of section 6 - registration application
7. Amendment of section 7 - registration process and refusal of application
8. Repeal and substitution of section 21 - exemption of organisations
9. Amendment of section 22 - regulations
10. Amendment of Schedule - information required for application to register as a Non-Profit Organisation
11. Transitional and savings provisions

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A BILL FOR A LAW TO AMEND THE NON-PROFIT ORGANISATIONS LAW 2017 IN ORDER TO EXPAND THE FUNCTIONS OF THE REGISTRAR; PROVIDE FOR EXEMPTIONS WITH RESPECT TO THE DISCLOSURE OF CONFIDENTIAL INFORMATION; TO IDENTIFY ADDITIONAL ORGANISATIONS TO BE EXEMPTED UNDER THE LEGISLATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Non-Profit Organisations (Amendment) Law, 2018. Short title and commencement
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.
2. The Non-Profit Organisations Law, 2017, in this Law referred to as the “principal Law”, is amended in section 2 by, in paragraph (b) of the definition of “non-profit organisation”, inserting after the word “contributions” the words “or raises funds”. Amendment of section 2 of the Non-Profit Organisations Law, 2017 - interpretation
3. The principal Law is amended in section 4(1) as follows - Amendment of section 4 - functions of the Registrar
 - (a) in paragraph (g), by deleting the word “and”; and
 - (b) by repealing paragraph (h) and substituting the following paragraphs -

- “(h) periodically assessing the characteristics and activities of the non-profit organisation sector in the Islands in order to identify vulnerabilities to terrorist financing activities; and
- (i) performing any other function conferred by this Law or that the Minister, after consultation with the Cabinet, may direct the Registrar to perform.”.

Amendment of section 5
– establishment of a
register of non-profit
organisations

4. The principal Law is amended in section 5(3) by deleting the words “, with respect to all information concerning a non-profit organisation”.

Insertion of section 5A
– non-disclosure

5. The principal Law is amended by inserting after section 5, the following section -

“Non-disclosure

5A. (1) Any information received, pursuant to the provisions of this Law, on the affairs of a non-profit organisation, other than information contained in the register shall not be disclosed.

(2) Subsection (1) shall not apply to a disclosure -

- (a) lawfully required or permitted by any court of competent jurisdiction within the Islands;
- (b) for the purpose of assisting the Registrar to exercise any functions conferred on the Registrar by this Law, by any other law or regulations made under this Law or under any other law;
- (c) in respect of the affairs of a non-profit organisation with the voluntary consent of the non-profit organisation;
- (d) for the purpose of enabling or assisting the Cabinet in the exercise of any powers conferred on the Cabinet under this Law or regulations made under this Law;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a

summary or in statistics expressed in a manner that does not enable the identity of a non-profit organisation, its controllers, its officers, its personnel or its donors to be ascertained;

- (g) lawfully made -
 - (i) to the Attorney General, the Director of Public Prosecutions or a law enforcement agency in the Islands, with a view to facilitating the conduct of an inquiry or criminal proceedings; or
 - (ii) pursuant to the Terrorism Law (2018 Revision), the Proceeds of Crime Law (2018 Revision) or any other law in which a contravention may constitute wrong doing on the part of the non-profit organisation; or
- (h) for purposes of the Confidential Information Disclosure Law, 2016.

(3) Subject to subsections (1) and (2), a person who discloses information received on the affairs of a non-profit organisation while acting in the course of that person's duties or in the exercise of that person's functions under this Law or any other law commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of one year or to both."

The Non-Profit Organisations (Amendment) Bill, 2018

Amendment of section 6
- registration application

6. The principal Law is amended in section 6 by repealing subsection (2) and substituting the following subsection -

“(2) A non-profit organisation shall not -

- (a) solicit contributions or cause contributions to be solicited;
or
- (b) raise funds or cause funds to be raised,

from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under this Law.”.

Amendment of section 7
- registration process
and refusal of
application

7. The principal Law is amended in section 7 by repealing subsection (1) and substituting the following subsection -

“(1) Where, pursuant to section 6(1), the Registrar receives an application for registration as a non-profit organisation, the Registrar shall -

- (a) conclude the registration process within thirty days of receiving that application; or
- (b) on payment of the prescribed fee by the applicant, conclude the registration process within fifteen business days of receiving that application.”.

Repeal and substitution
of section 21 -
exemption of
organisations

8. The principal Law is amended by repealing section 21 and substituting the following section -

“21. (1) In this Part -

“government entity” means any body of Government and includes a ministry, portfolio, statutory authority, company, board, department or office; and

(2018 Revision)

“regulatory laws” has the meaning assigned by section 2 of the Monetary Authority Law, (2018 Revision).

(2) Subject to subsection (3), the following are exempted from the requirement to register under this Law -

(2018 Revision)

- (a) a non-profit organisation that is a designated non-financial business or profession registered under the Anti-Money Laundering Regulations (2018 Revision);
- (b) a non-profit organisation registered or holding a licence under any of the regulatory laws, other

than an entity registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision);

- (c) a non-profit organisation established as a trust company licensed or registered to carry on a trust business or a controlled subsidiary thereof registered under the Banks and Trust Companies Law (2018 Revision);
- (d) a government entity;
- (e) an entity assigned by Cabinet with the responsibility of monitoring compliance with the relevant terrorism and anti-money laundering legislation; and
- (f) any other entity that Cabinet may, by order exempt.

(3) Notwithstanding subsection (2), a non-profit organisation or an entity under subsection (2) may apply to be registered under this Law and shall be subject to the provisions of this Law after registration.

(4) The Registrar may request from -

- (a) a non-profit organisation exempted under subsection 2(a), (b) or (c); or
- (b) an entity exempted under subsection 2(e) or (f),

documentation which reflects that the non-profit organisation or entity is acting in compliance with -

- (i) relevant audit, licensing, registration and accounting requirements; and
- (ii) relevant terrorism legislation.

(5) A non-profit organisation or an entity under subsection (4) shall submit to the Registrar any documentation requested within forty-five days of receipt of the request.”.

9. The principal Law is amended in section 22 by repealing paragraphs (c) to (i) and substituting the following paragraphs -

Amendment of section 22 - regulations

- “(c) the application fees and other fees to be paid on registration;
- (d) the fees to be paid for the provision by the Registrar of any relevant document;
- (e) the waiver or reduction of fees and administrative penalties;
- (f) the form of a certificate of registration;
- (g) the notification of a subsequent change in the material particulars contained in an application for registration;

- (h) the particulars to be entered in the register and the fees to be paid by a member of the public who wishes to view the register;
- (i) the form in which financial statements and annual returns are to be submitted;
- (j) the particulars to be contained in the financial statements and annual returns; and
- (k) all matters that may be necessary for giving effect to the penalty system under the Law and the quantum of penalties for acting in contravention of this Law.”.

Amendment of Schedule - information required for application to register as a Non-Profit Organisation

10. The principal Law is amended in the Schedule -

- (a) in paragraph (f), by inserting after the word “contributions” the words “or funds”; and
- (b) in paragraph (g), by inserting after the word “contributions” the words “or funds”.

Transitional and savings provisions

11. (1) A non-profit organisation -

- (a) which was, immediately before the date of commencement of this amending Law, exempted from an obligation to register as a non-profit organisation under the principal Law;
- (b) which is, immediately after the date of commencement of this amending Law, not exempted from an obligation to register as a non-profit organisation; and
- (c) which wishes to continue its solicitation of contributions or the raising of funds from the public,

shall be required to register as a non-profit organisation.

(2) A non-profit organisation which falls under subsection (1) shall -

- (a) register as a non-profit organisation within six months from the date of the commencement of this amending Law;
- (b) be exempt from the payment of any registration fees or penalties during the registration process;
- (c) be permitted to continue its activities until such time as the registration process is concluded; and
- (d) if the registration application is not approved, discontinue any reference to itself as a registered non-profit organisation and further solicitation or raising of funds from the public.

(3) Any benefit received or to be received by a non-profit organisation prior to the commencement of this amending Law or during the registration process of the non-profit organisation shall not be affected by this amending Law.

(4) Every matter and proceeding commenced in any court in relation to a non-profit organisation immediately before the date of the commencement of this

amending Law shall be continued, completed and enforced as if this amending Law was not in force.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.