

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018
REVISION) TO ESTABLISH A REGIME BY WHICH COMPANIES
REGISTERED UNDER SECTION 80, THAT ARE NOT REQUIRED TO
BE REGISTERED UNDER THE NON-PROFIT ORGANISATIONS LAW,
2017, LAW 37 OF 2017, MAY BE MONITORED; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE COMPANIES (AMENDMENT) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Companies Law (2018 Revision) so that companies registered pursuant to section 80 may be monitored and for incidental and connected purposes.

Clause 1 of the Bill makes provision for the short title of the legislation and commencement.

Clause 2 of the Bill amends section 80 of the Companies Law (2018 Revision) so that the discretion with which a company is designated is that of the Registrar.

Clause 3 of the Bill inserts sections 80A, 80B, 80C 80D and 80E into the Companies Law (2018 Revision) which make provision for -

- (a) the application for designation under section 80;
- (b) the obligations for a company designated pursuant to section 80;
- (c) examination of financial records and documents of a company registered pursuant to section 80;
- (d) companies designated under section 80 to be exempt from the obligations under Part XVIIIA of the Law; and
- (e) penalties.

Clause 4 of the Bill amends Schedule 5 to prescribe the application fee and the fee to be prescribed for any changes to be notified to the Registrar pursuant to sections 80A and 80B respectively.

THE COMPANIES (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Repeal and substitution of section 80 of the Companies Law (2018 Revision) - circumstances in which the Governor may licence a company to be registered without “limited” in its name
3. Insertion of sections 80A - 80E - application for designation under section 80; obligations for companies designated under section 80; examination by the Registrar; exempt from Part XVIIIA; penalty for breach of 80B
4. Amendment of Schedule 5 - fees

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018 REVISION) TO ESTABLISH A REGIME BY WHICH COMPANIES REGISTERED UNDER SECTION 80, THAT ARE NOT REQUIRED TO BE REGISTERED UNDER THE NON-PROFIT ORGANISATIONS LAW, 2017, LAW 37 OF 2017, MAY BE MONITORED; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Companies (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 and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. The Companies Law (2018 Revision), in this Law referred to as “the principal Law”, is amended by repealing section 80 and substituting the following section - Repeal and substitution of section 80 of the Companies Law (2018 Revision) - circumstances in which the Governor may licence a company to be registered without “limited” in its name

“Circumstances in which a company may be registered without “limited” in its name	80. (1) A company registered under this Law or an association applying to be registered under this Law, may in accordance with section 80A, apply to the Registrar to be designated as a company to which this section applies if the company or
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association -

- (a) was formed or is to be formed primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or objects, including, for the avoidance of doubt, a group of persons sharing a common profession or interest which, to the satisfaction of the Registrar, qualifies the company or association for registration under this section; and
- (b) has applied or intends to apply the profits, if any, or other income of the company or association primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or objects, including, for the avoidance of doubt, a group of persons sharing a common profession or interest which, to the satisfaction of the Registrar, qualifies the company or association for registration under this section.

(2) The Registrar shall only approve an application for designation under this section if the memorandum and articles of association of a company registered under this Law or an association being registered under this Law and applying for designation, contain language to the effect that -

- (a) the assets, profits, if any, and other income of the company or association applying for designation, shall be applied exclusively in the furtherance of

the objects of the company or association; and

- (b) no portion of the assets and income of the company or association shall be distributed as profit or dividend directly or indirectly to the controllers, shareholders, owners or members of the company or association, unless such distribution is intended for the legitimate purpose of compensating a person for services to further the objects of the company or association or to pay the liabilities incurred on behalf of the company or association.

(3) Pursuant to an application made under subsection (1), the Registrar may direct that a company registered under this Law or that an association being registered under this Law, be registered with limited liability without the addition of the word “Limited” or the abbreviation “Ltd.” to the company’s name and that upon registration shall enjoy all the privileges and be subject to all the obligations by this Law imposed on companies, except the obligations under this Law requiring a company -

- (a) to use the word “Limited” or the abbreviation “Ltd.” as any part of its name;
- (b) to send a list of its members to the Registrar;
- (c) to comply with the provisions of sections 51 or 55 or pay any fees pursuant to section 199; or
- (d) to pay the fees prescribed by sections 26, 41 and 169.

(4) The Registrar may impose any

conditions that the Registrar thinks fit to impose on a company designated under this section and shall cause the conditions imposed to be inserted or endorsed on the memorandum or articles of association of the company or association being registered.

(5) Where a company designated under this section is to be dissolved, the person who owns, controls or directs that company shall ensure that any assets of the company remaining after the satisfaction of all debts and liabilities of the company shall be transferred to another company registered under this section or a non-profit organisation registered under the Non-Profit Organisations Law, 2017, Law 37 of 2017 which has similar objects.

(6) For the purpose of this section “non-profit organisation” has the same meaning as that assigned to these words in the Non-Profit Organisations Law, 2017, Law 37 of 2017.”.

Insertion of sections 80A - 80E - application for designation under section 80; obligations for companies designated under section 80; examination by the Registrar; exempt from Part XVIIIA; penalty for breach of section 80B

3. The principal Law is amended by inserting after section 80 the following sections -

“Application for designation under section 80

80A.(1) An application for designation as a company under section 80 may be made to the Registrar by a company or an association to which section 80 refers and shall be -

- (a) made in the form specified by the Registrar; and
- (b) accompanied by the non-refundable application fee prescribed in Part 3A.

(2) A company making an application under subsection (1) shall, at the time of making the application, file with the Registrar a list of the persons who own, control or direct the company.

Obligations for companies designated under

80B. A company designated pursuant to section 80 that is not registered pursuant to the Non-Profit

section 80

Organisations Law , 2017, Law 37 of 2017 shall -

- (a) file with the Registrar, in the form specified by the Registrar, an annual return confirming the objects and activities of the company;
- (b) in the manner specified by the Registrar, notify the Registrar of any change in -
 - (i) the objects or activities of the company; or
 - (ii) the address of the registered office or the location of the company,within thirty days of the date of the change;
- (c) maintain the proper books of account for a minimum period of five years;
- (d) comply with any conditions imposed by the Registrar upon registration;
- (e) establish and maintain internal controls and systems appropriate for the company to identify conduct which may involve the financing of terrorism;
- (f) notify the Registrar, in the manner specified by the Registrar, of any change in the person who owns, controls or directs the company, within thirty days of the date of the change; and
- (g) pay the fee prescribed in Part 3A for any changes for which the Registrar is required to be notified pursuant to this section.

Examination by
the Registrar

80C. To facilitate the monitoring of compliance with section 80B(b) and (c) -

- (a) the Registrar may examine all books of account and documents, for a company designated under section 80;

and

- (b) it shall be the duty of an officer of a company designated under section 80 to produce for examination by the Registrar, all books of account and documents, for the company for which the officer is responsible, that are in the officer's custody or power.”.

Exempt from Part
XVIIA

80D. A company designated under section 80 is exempt from the obligations under Part XVIIA of this Law.”.

Penalty for breach
of section 80B

80E. (1) The Registrar -

- (a) may impose a penalty of five hundred dollars on a company designated under section 80, if the company breaches the provisions of section 80B; and
- (b) shall within ten days of the date of the imposition of the penalty, inform the company upon which the penalty has been imposed, of the reasons for the imposition of the penalty.

(2) A company, upon which a penalty is imposed pursuant to subsection (1), which disputes the imposition of the penalty may appeal to the Court for review of the Registrar's decision to impose the penalty.

(3) A dispute in relation to the penalty imposed pursuant to subsection (1) shall not be in respect of the amount of the penalty imposed and is limited to a dispute in relation to the grounds upon which the penalty is imposed.

(4) Notwithstanding subsection (1), if a company is in breach of section 80B -

- (a) in respect of more than one change in the person who owns, controls or

directs a company and -

- (i) the changes occurred within a sixty day period; and
- (ii) the Registrar is notified of the changes on the same day,

the applicable penalty for the breach shall be that specified in subsection (1), irrespective of the number of changes notified to the Registrar; and

- (b) in respect of a person who owns, controls or directs five or more companies, the applicable aggregate penalty in respect of the companies to which the breach relates shall not exceed the sum of two thousand five hundred dollars, which shall be equally apportioned between and paid by such companies.

(5) In addition to the penalty under subsection (1), where the Registrar is satisfied that a breach of section 80B has been knowingly and wilfully authorised or permitted -

- (a) every company to which the breach relates shall incur a penalty of one thousand dollars; and
- (b) every person who owns, controls or directs the company to which the breach relates shall incur a penalty of one thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.”.

4 The principal Law is amended in Schedule 5 by inserting after Part 3 the following -

Amendment of Schedule
5 - fees

“PART 3A

(sections 80A and 80B)

1. The non-refundable application fee payable under section 80A is \$300.

