



## Non-Profit Organisation Law, 2017, comes into force

The Non-Profit Organisations Law, 2017 (the Law) was enacted by the Cayman Islands Legislature on 5 May 2017 following many years of political discussion and industry consultation over its form. An Order of Cabinet was gazetted recently to bring the Law into force effective 1 August 2017.

The Law provides for the establishment of a new system of registration to deal with the regulation and monitoring of all non-profit organisations (NPOs) which solicit contributions from the general public in the Cayman Islands. It represents the Cayman Islands' government's response to Recommendation 8 of the Financial Action Task Force (FATF) which requires that laws and regulations governing NPOs be reviewed in order to combat abuse of these organisations for the purposes of financing terrorist activities.

### Register of Non-Profit Organisations

Under the Law, a register of NPOs is to be established under the management and oversight of a newly appointed Registrar of Non-Profit Organisations (the Registrar). Subject to limited exceptions, all organisations which fall within the wide definition of an NPO contained in the Law must apply to the Registrar to have their details placed on the new register. For these purposes, an NPO includes:

"a company or body of persons, whether incorporated or unincorporated, or a trust –

- (a) established or which identifies itself as established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and
- (b) which solicits contributions from the public or a section of the public within the Islands or elsewhere".

The register, which will be open for public inspection, will show:

- (a) the name, address and contact details of the NPO;
- (b) its purposes and activities;
- (c) the identity of the controllers of the NPO (see below)
- (d) the date of registration under the Law and, if applicable, the date on which its registration was cancelled; and
- (e) such other information as the Registrar considers appropriate.

The Law prohibits NPOs from soliciting contributions from the public, or any section of the public, within the Cayman Islands or elsewhere, unless they are duly registered under the Law (or exempt from the requirement to register).

### Exceptions

Two important exceptions apply. The Law has no application to NPOs which are regulated by government bodies or to trusts which have as their trustee a Cayman Islands trust company licensed or registered to carry on trust business, or a controlled subsidiary thereof.

## **Controllers**

The obligation to apply for registration falls on the “controller” of an NPO – broadly, this will be a person who owns, controls or directs the organisation, including a trustee of a trust, director of a company, general partner of a partnership, or any other person responsible for the establishment, management and administration of the NPO. The application (the form of which is attached as a schedule to the Non-Profit Organisations (Registration Application) Regulations, 2017) must be made to the Registrar and accompanied by the information and documents listed in the schedule to the Law. Controllers are under an ongoing duty to notify the Registrar of any material changes to the information and documents provided.

Controllers of existing NPOs will have a grace period of six months (or such other period not exceeding 12 months as the Registrar may approve) from the date of commencement of the Law in which to apply for registration.

## **Registration**

The Registrar must deal with an application for registration within thirty days of receipt. If an application is approved, the Registrar will issue to the NPO a certificate of registration. An application may be refused for a number of reasons, including the submission of incorrect information, having purposes which are illegal, or a lack of connection to the Cayman Islands. A registration may be cancelled or suspended either at the request of the NPO itself, or following an investigation into an NPO’s activities which establishes wrongdoing.

### **Financial statements and reporting**

A controller of an NPO is required to maintain proper financial records detailing the organisation’s receipts and expenditures and to prepare statements showing the organisation’s financial position. An NPO with a gross annual income exceeding \$250,000 and which remits thirty per cent or more of that income overseas must have its financial statements reviewed by an accountant. An NPO will also be required to submit to the Registrar an annual return within six months of its financial year end.

## **Administrative penalties**

A series of administrative penalties is imposed on controllers of NPOs who fail to (a) apply for registration, (b) comply with the requirements relating to financial statements and annual returns, or (c) respond to requests for information from the Registrar.

## **The Role of the Attorney-General**

The Law grants the Attorney-General wide powers to inquire into the administration and financial activities of NPOs, with specific reference made to the investigation of suspected offences committed under anti-money laundering or financing of terrorism laws. Failure to comply with a request for information from the Attorney-General is an offence punishable by a fine of \$3,000 or a one-year jail sentence (or both).

## **Conclusion**

The Law provides certainty, enables greater potential for charitable and philanthropic activities and also exempts those trusts which have as a trustee a Cayman Islands licensed trust company.

For additional information or specific advice, please communicate with our key contacts named below.

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