

BRIEFING MEMO

Non-Profit Organisation Registration

Overview

The new Non-Profit Organisation Law 2017 and the Non-Profit Organisations (Registration Application) Regulations 2017 (collectively the **Law**) came into effect 1 August 2017 and is designed to reduce registration costs for non-profit organisations (the **NPOs**), streamline the processing and to ensure transparency for the public. As a Caribbean Financial Action Task Force (**FATF**) member, the introduction of this Law is consistent in the overall aim of reducing the risk of NPOs being used as vehicles for terrorism financing.

Prior to the adoption of this law NPOs could register under Section 80 of the Companies Law or not register and there was no coordination method to monitor NPO activities. It is expected that this Law will help legitimize NPOs for more access to administrative benefits, volunteers and more donations.

The Nature of the NPO Registration

Under the Law, a NPO is defined as, *“a company or body of persons, whether incorporated or unincorporated, or a trust 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 within the Cayman Islands or elsewhere; and which solicits contributions from the public within the Cayman Islands or elsewhere.”* Under this Law, organisations falling within this definition are required to register on the NPO Register. For example, NPOs that raise money solely internally from their members fall outside the scope of registration under the NPO Law. NPOs that fall outside the scope may register but it is optional.

This Law does not apply to the following organisations:

- An organisation which has a government entity as its principal regulator e.g. CIMA. This is intended to apply to entities which are regulated for the purpose of Terrorist Financing to be exempted;
- An organisation established as a trust, the trusteeship of which comprises or includes a trust company licensed or registered to carry on trust business or a controlled subsidiary thereof registered under the Banks and Trust Companies Law (2013 Revision); or
- Any other entity that Cabinet may, by Order, exempt.

KEY FEATURES

The NPO Register

The Law requires establishment of a register of non-profit organisations that includes the name, address in the Cayman Islands, contact information, the NPO's purpose and activities, the controlling persons, and the registration information. This information is made publically available on terms the Registrar thinks fit.

The Controller

Each NPO is required to authorise a person to act as the controller(s) of the NPO. The controller can either be one or more persons who owns, controls or directs a non-profit organization (i.e. a director, general partner or manager) and their role will be to act as the primary contact with the Registrar of the Non-Profit Organisation (the **Registrar**). This person will be responsible for all communications that must be shared with the Registrar, including the reporting of changes to the NPO to the Registrar. The NPO is responsible for ensuring the financial records are maintained and ready for disclosure when required under the Law.

The Benefits of NPO Status

The Law allows NPOs to claim the following exemptions:

- The Immigration Regulations (2015 Revision) exempts NPOs from work permit fees.
- The Trade and Business Licensing Law (2014) does not apply to NPOs.

However, please consult Jacob Law for further information and guidance on how to proceed in these circumstances.

ONGOING OBLIGATIONS

Notification Requirements

A controller of a NPO shall notify the Registrar of any change in its purposes, activities, constitutional documents or any other particular entered in the register in the form specified in Schedule 4 of the Regulation within thirty (30) days of such change.

Financial Reporting and Records

The NPO control must maintain proper accurate financial statements for disclosure to the Registrar when required or requested. The financial statements will include all sums of money received and expended and the matters in respect of which the receipt and expenditure relate, all sales and purchases of property, non-monetary transactions, assets and liabilities and any other matters that the Registrar may prescribe.

The law requires NPOs to submit financial statements annually to the Registrar within nine months of the end of the financial year. The controller shall ensure that within six months of the end of the financial year annual returns are submitted. The Registrar may approve a written request made by a controller of a NPO to extend the period for submitting annual returns by two months. Where the NPO's gross annual income is in excess of two hundred and fifty thousand dollars(CI\$250,000) and it remits thirty per cent or more of that gross annual income outside of the Islands it will have its financial statements reviewed in accordance with internationally accepted standards of review.

NON-COMPLIANCE OUTCOMES

If a controller fails, without cause, to register, prepare financial statements and/or annual return, or a request an exemption, they are liable to a maximum penalty of three thousand dollars (CI\$3,000). Where there is a continuous breach an additional penalty of a hundred dollars a day for every day the NPO is in breach. If the controller took all reasonable steps and exercised due diligence to ensure compliance with the provisions of this Law, and the Registrar is satisfied, the Registrar will not apply the penalty.

Where a controller receives a penalty notice, that controller may, within twenty-one (21) days from the date of the notice, make representation to the Registrar indicating why the controller should not be required to pay the penalty or why the proposed penalty should be reduced.

NPO Application and Process

APPLICATION REQUIREMENTS

NPOs must submit an application to the Registrar online or in-person. The application requires completing a registration form and providing copies of the constitutional documents, certified copies of government issued identification of each of the NPO's controllers and senior officers, and any other supporting organisational requirements. The complete application shall be processed within 30 days of being received. (following the receipt of all required documents and information.)

In determining whether an NPO has a connection with the Cayman Islands, the Registrar will have regards for whether the organisation maintains physical presence at a physical address within the Cayman Islands, solicits funds or other property from the public or is distributing money or other property within the Cayman Islands.

REFUSALS

The Registrar has the power to refuse to register a NPO. The reasons can include:

- The NPOs activities do not fall within the definition of an NPO under the law.
- The NPO is established for illegal purposes.
- The NPO does not have a connection with the Islands.
- The information represented on the application for registration of the non-profit organisation is manifestly incorrect.

Where no grounds for refusal exist under the Law the Registrar will notify the NPO in writing of the Registrar's decision to register, register all particulars and issue a certificate of registration to the NPO, within thirty (30) days.

Jacob Law Services

JACOB LAW can assist with the formation of your NPO and its registration under the new Law. For already formed non-profit organisations, we are able to assist with the registration process and regularize such

status and advise on ongoing obligations. For further information on NPOs our team is ready to assist, please contact us on:

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