

## FIRST NON-PROFIT ORGANISATION REGISTRATIONS APPROVED

On 1<sup>st</sup> August the Cayman Islands saw the Non-Profit Organisations Law 2017 come into force. This law modernises the old scheme relating to charitable organisations which was found under section 80 of the Companies Law. Under the old requirements, a section 80 company could be registered for the purposes of promoting commerce, art, science, religion, charity or any other useful object, by making an application to the Governor. This license cost CI\$1000 and had multiple benefits including exemptions from; annual company fees, Trade and Business Licenses and work permit fees. The process was protracted, extremely restrictive and amendments to company documentation was prohibitively expensive at \$500 per change. This resulted in many non-profit organisations (NPOs) registering as ordinary limited liability companies and being burdened with annual fees. It also left the Cayman Islands without a comprehensive register of all of the NPOs operating nationally. Therefore, while this old process is still available as an option for NPO's it is unlikely to be utilised in the future. Any new NPO, whether registered under s.80 or not, will still be required to register under the new law, rendering the old process obsolete.

The intention of the new law is three-fold;

- To ensure that NPOs are operating in the public interest of the Cayman Islands.
- To allow NPOs the same benefits of afforded to s.80 companies, already discussed, but with a modern, stream-lined process of registration. The registration fee is significantly cheaper at CI\$300 and will be waived if an entity registers before July 31<sup>st</sup> 2018. Subsequent changes or amendments to the register will now cost just \$25 per change, making the new regime much more administratively workable.
- Dubious charitable organisations can be used to disguise money with illegitimate provinces, or alternatively unwitting charitable organisations could be lured into sending money abroad which can be used to finance terrorism. Therefore, to comply with international standards in relation to terrorist financing and anti-money laundering, NPOs require heightened scrutiny. It is essential for Cayman's international reputation as an offshore jurisdiction that appropriate safeguards and systems of monitoring are in place.

### **Who must register?**

A NPO is:

*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 objective, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and*

*Which solicits contributions from the public or a section of the public within the Islands or elsewhere*

This means that all entities or bodies that raise funds from the public for public benefit are required to register, including those currently registered as s.80 companies. The requirement covers sports and church clubs, associations, companies and trusts, which solicit funds or accept donations for a broad range of publically beneficial purposes.

The definition does not encompass an organisation raising money to cover a one-off fundraising event for extraordinary means nor those who raise money solely internally from their members. Further exceptions from registration are those charitable organisations which are; directly regulated by a Government entity like the Cayman Islands Monetary Authority (this would not apply to those entities which merely receive government funding); a licensed trust company; or any organisation exempted by an Order of Cabinet.

### **What are the requirements prescribed by the new law?**

The requirements are intended to be as unrestrictive as possible, while still achieving the required objectives. Organisations must;

- Complete a one time application to the Registrar of Companies providing the requisite information to process registration,
- Subsequently notify the Registrar of any changes, for example those relating to the Register of Members or Directors, within 30 days of the change,
- Maintain accurate financial records and statements for at least 5 years,

- File an annual return to the Registrar within six months of the NPO's financial year end,
- If applicable, file a report of audited financial statements within 9 months of the NPO's financial year end. This requirement only applies to NPO's who raise over CI\$250,000 per year and send thirty per cent or more of this amount overseas.

The new law provides for fines of up to CI\$3,000 to be levied against 'controllers' of entities who do not register, or who fail to comply with the above requirements.

A controller is defined as, *a person who owns, controls or directs a non-profit organisation and includes-*

- *A trustee of a trust, where the NPO is established as a trust;*
- *A director of a company, where the NPO is established as a company;*
- *A general partner of a partnership, where the NPO is established as a partnership;*
- *A person responsible for the management and administration of an unincorporated association, where the NPO is established as an unincorporated organisation;*
- *A member of a corporation, where the NPO is established an entity incorporated under the Churches Incorporation Law (2007 Revision); or*
- *A person not specified in paragraphs (a) (b) (c) (d) or (e) where the NPO is established by that person.*

A controller must provide the organisation's contact details, the purpose and activities of the organisation, details of senior officials within the organisation (e.g. president, vice-president, secretary, treasurer), anticipated source(s) of contributions, banking details, and any other documentary evidence which reflects the organisational structure and functions of the non-profit organisation. It is intended that the required information will be able to be submitted electronically, once the new computer system is up and running.

**I am a controller of an NPO, what do I need to do now?**

NPO's have been required to register since the start of August and the first NPO applications are now being granted by the General Registry. Therefore, you should familiarise yourself with the requirements of the law and begin the process of registration in order to avoid potential fines and take full advantage of the fee waivers. Registration needs to be completed before the end of July 2018.

Overall, it is not the intention of the new law to be overly restrictive and onerous. It should provide NPO entities with much easier operational requirements than before, while allowing government oversight of this important area. In addition, once registered, Government are able to offer support and guidance on internal best practices for compliance and how to avoid any unintentional mis-steps under associated money laundering or terrorist financing legislation.

Broadhurst already has a number of NPO clients and would be pleased to assist you in the registration of your entity, compliance with the Non-Profit Organisations Law, general corporate services and any other questions that you may have. Please contact us at [info@broadhurstllc.com](mailto:info@broadhurstllc.com).

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