

The Cayman Islands Non-Profit Organisation Law: key considerations for charities

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The Cayman Islands recently implemented legislation which will have serious implications for charities operating in the Islands.

The Non-Profit Organisations Law, 2016 (the Law) is part of the Cayman Islands implementation of Financial Action Task Force recommendations to facilitate the investigation and enforcement of anti-money laundering and terrorism financing. The Law will also give the public access to certain information about charities through the establishment of a new register, the Non-Profit Organisations Register.

Although the Law will have an administrative impact on the entities that come within its scope, the changes are to be welcomed as bringing a robust governance structure to an important sector in the Cayman Islands' life and economy.

Who does the Law affect?

The Law impacts any company, trust or other body of persons that:

1. seeks financial contributions from the public (whether from within the Cayman Islands or from overseas); and
2. is established primarily for the promotion of charitable purposes or activities;

(an NPO).

This basically means that if you have a charity that operates in the Cayman Islands by raising money from the public, it is likely that your organisation will be caught by the new rules. It would be fair to replace the acronym "NPO" with the word "charity". Many religious organisations may also be considered to be NPOs for the purposes of the Law.

How does the Law affect NPOs?

Firstly, and most importantly, an NPO cannot solicit contributions from the public unless it is registered with the Registrar of Non-Profit Organisations (the Registrar). This means that information about the NPO and its management team will become publically available and available to law enforcement agencies.

Secondly, the NPO must make annual returns and keep financial statements. This may therefore increase the administrative burden on some charities or religious organisations.

Finally, for some organisations, it may mean making changes to their constitutional documents in order to comply with the minimum requirements for NPOs under the Law.

Registration

In order to register, the NPO must complete a form which is available by contacting the General Registry. The following information must be included on the form or provided in the application:

- the NPO's declared purposes;

- the identity and address of the Controller and other senior management personnel (including proof of identity);
- copies of the NPO's organisational documents;
- information on the location of the NPO's money and other assets, including details on its banking arrangements;
- the source or anticipated source of contributions; and
- how those contributions have been applied.

Controllers of NPOs are trustees, directors, partners or the persons responsible for the management of unincorporated associations.

Applications for registration are submitted to the Registrar who, as a matter of law, must accept or reject it within 30 days. This is therefore intended to be much quicker than the previous system under s80 of the Companies Law (2013 Revision) (As Amended) which meant that application had to be made for Cabinet approval.

Financial statements and annual returns

NPOs must file annual returns within six months of the end of their financial years. The annual return is a statutory form which again is available from the General Registry.

All NPOs must now keep financial statements that record, among other things, all sums raised through fundraising, all money received and expended, records of assets and liabilities and various non-monetary transactions. Where an NPO has an annual income of over KY \$250,000 and it remits more than 30% of that income outside of the Cayman Islands, it must have its financial statements reviewed in accordance with international standards.

Constitutional requirements

As a minimum, the Law requires that the NPO's constitutional documents indicate (i) that its assets and income will be applied exclusively in the furtherance of its purposes, and (ii) prohibit the distribution of assets or income to the NPO's Controllers unless such a distribution is to compensate that person for services rendered. If the NPO's constitution does not already meet these requirements, it will have to be changed before it can be registered.

Other points to note

There are administrative penalties for failing to comply with the Law and these are levied against the NPO's Controllers.

Existing NPOs have until 31 January 2018 to register and the registration fee of KY \$300 will be waived until 31 July 2018.

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