

# Cayman Islands Non- Profit Organisations

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## Preface

This Publication has been prepared for the assistance of those who are considering the formation of a non-profit organisation (“**NPO**”) in the Cayman Islands (“**Cayman**”). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such organisations. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients.

We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

For specific advice on Cayman NPOs, please contact:

**Robert Lindley**

Head of Private Client & Trust, BVI & Cayman

+1 345 814 7360

[robert.lindley@conyers.com](mailto:robert.lindley@conyers.com)

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## 1. INTRODUCTION

Non-profit organisations are regulated pursuant to the Non-Profit Organisations Act and associated regulations (the “**Act**”). The Act is part of Cayman’s ongoing commitment to increased transparency and its contribution to the global fight against corruption, money-laundering, proliferation financing and terrorism. In essence, it provides for the establishment of a registration system to provide for the regulation and monitoring of NPOs operating in Cayman and to provide, where appropriate, for the investigation into the operations of funds flowing through those NPOs. The Registrar of Non-Profit Organisations (the “**Registrar**”) is responsible for supervising the NPO sector and has issued General Guidance and Best Practices for the Non-Profit Organization Sector (the “**Guidance**”).

## 2. DEFINITION OF A NON-PROFIT ORGANISATION

### 2.1. What is an NPO?

An NPO is defined under the Act as including a company or body of persons, whether incorporated or unincorporated, or a trust:

- (a) 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 Cayman or elsewhere; and
- (b) which solicits contributions from the public or a section of the public within Cayman or elsewhere

“Solicitation”<sup>1</sup> includes advertisements which result in cash or in-kind donations, the collection of cash, cheques or other forms of payment from the public in Cayman or elsewhere and the collection of funds generated from fund raising events. Contributions solely from members would not be considered to be solicitation from the public for the purposes of the Act. Accordingly, where an NPO’s only source of income is from its members it would not be defined as an NPO and would not be required to register as such.

The types of organisations that would typically be required to register as an NPO would be charities, sporting associations / organisations, philanthropic organisations, religious organisations, community groups, and professional associations.

### 2.2. Section 80 Companies

Prior to the introduction of the Act, it was (and continues to be) possible to register a charitable organisation under section 80 of the Act. The benefits of registering under section 80 include: (i) limited liability for the senior officers, directors, and members; (ii) no requirement to include “limited” or “Ltd” in the name of the company; (iii) no annual fees or fees for certain filings, search fees, or copy documents.

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<sup>1</sup> See section 3.2 of the Guidance.

Upon the introduction of the Act, most section 80 companies were required to register under the Act unless they did not constitute an NPO on the basis that no funds were solicited from the public. Such section 80 companies are required to:

- file with the Registrar an annual return confirming the objects and activities of the company;
- notify the Registrar of any changes in the objects or activities of the company;
- notify the Registrar of any change in registered office within 30 days;
- maintain proper books of account for a minimum period of five years;
- comply with any conditions imposed by the Registrar on registration;
- establish and maintain internal controls and systems appropriate for the company to identify conduct which may involve terrorist financing;
- notify the ROC of any changes in the persons who own, control or direct the company within thirty days;
- pay a fee for each change.

Section 80 companies are required to include in their constitutional documents the following:

*“the assets, profits, if any and other income of the company shall be applied exclusively in the furtherance of the objectives of the company; and no portion of the assets and income of the company or association shall be distributed as profits or dividends directly or indirectly to the controllers, shareholders, owners or members of the company, unless such distribution is intended for the legitimate purpose of compensating a person for services to further the objects of the company or to pay the liabilities incurred on behalf of the company.”*

The Registrar is responsible for the supervision of section 80 companies and has authority to examine such entities' books of account and other documents.

### **2.3. Exemptions**

Certain NPOs and other entities are not required to register under the Act including one that is:

- (a) a designated non-financial business or profession registered under the Anti-Money Laundering Regulations;
- (b) registered or holding a licence under any of the regulatory acts;
- (c) established as a trust company licensed or registered to carry on a trust business or a controlled subsidiary thereof registered under the Banks and Trust Companies Act;
- (d) a government entity;



- (e) assigned by Cabinet with the responsibility of monitoring compliance with the relevant terrorism and anti-money laundering legislation; and
- (f) exempted by order of Cabinet.

Notwithstanding the above, except in the case of a government entity, the Registrar may request documentation which reflects that the NPO or other entity is acting in compliance with relevant audit, licensing, registration and accounting requirements and relevant terrorism legislation.

### **3. REGISTRATION REQUIREMENTS**

#### **3.1. Registration**

NPOs are prohibited from soliciting or raising contributions from the public within Cayman or elsewhere unless they are registered under the Act. The registration process requires the “controller” of the NPO (which could be, for example, a trustee of a trust, a director of a company, or any other person who has established the NPO) to submit an application to the Registrar in the prescribed form, containing the information specified in the Schedule to the Act. That information includes, among other things, the details of the purposes of the NPO, the identity of the controller, senior officers and management personnel (including certified copies of government issued identification), copies of the organisational documents, an executed acknowledgement form and details of the anticipated source of contributions to the NPO and anticipated application of such contributions.

The Act provides for applications to be processed within thirty days of receipt. An express application process is available which provides for applications to be processed within fifteen days upon payment of an express fee in addition to the general registration fee.

The Registrar may refuse to register an NPO if its activities do not fall within the definition under the Act, if the NPO has been established for illegal purposes or does not have a connection with Cayman or if the information contained in the application is found to be “manifestly incorrect”.

#### **3.2. Bank Account Requirements**

As an additional preventative tool to mitigate the risk of terrorist financing, money laundering and proliferation financing as well as sanctions and reputational risk, all registered NPOs are required to establish a bank account with a retail bank in the Cayman Islands. As newly established entities may not yet have opened a bank account at the time of the registration application, the Registrar will accept applications, barring discrepancies or insufficiencies, after which the controller will have up to 30 days to provide the banking details, failing which the NPOs registration may be suspended.

#### **3.3. Publicly Available Information**

Once formally registered, certain information about the NPO will be recorded on a public register maintained by the Registrar including its date of registration under the Act, the name, Cayman address, telephone number and email address of the NPO, a description of its purposes and activities, the identity of the person who owns, controls or directs the NPO and such other information as the Registrar deems appropriate.

## **4. RECORDS AND ANNUAL RETURNS**

### **4.1. Proper Records**

Once registered, the Act compels the controller of an NPO to keep proper records including copies of Board/ Management Committee minutes and resolutions, invoices, bank statements, receipts, contracts, volunteer agreements and Board/ Management Committee compensation. Records should also be kept in respect of all sums of money received and expended, all sales and purchases of property, all sums of money raised through fundraising and all non-monetary transactions. Such records should be maintained for a minimum of five years or longer until any legal, regulatory or social investigation is completed. If the NPO has a gross annual income in excess of US\$250,000 and remits 30% or more of that income overseas, it must also have its financial statements reviewed by a qualified accountant in accordance with international standards. Such audits should then be submitted to the Registrar within 9 months of the NPO's financial year end.

### **4.2. Annual Returns**

Annual returns, in the form specified in the regulations to the Act must be filed for all NPOs.

## **5. INTERNAL CONTROLS**

### **5.1. Internal Controls**

Internal controls are the policies, processes, tasks, behaviours, attitudes and other aspects of an NPO that, taken together facilitate effective operations by enabling it to respond in an appropriate manner to significant business, financial, operational, compliance and other risks in order to achieve its objectives. This includes safeguarding of assets and ensuring that liabilities are identified and managed.

The degree of sophistication of such internal controls will differ from case to case and will depend on the NPO's activities and purpose as well as its size and complexity of operations. Whatever internal controls are adopted should be communicated to all parties involved in the organisation as well as the consequences for non-compliance. Areas which should be addressed, amongst other things, include the following:

- (a) governance – including self-assessments or independent external reviews of the same;
- (b) risk management and risk assessments – risks will vary depending on the nature of activities and purpose, scale of operations as well as the types of internal controls implemented;
- (c) due diligence – NPOs are required to conduct due diligence on related parties, owners, controllers, employees, volunteers, and business partners;
- (d) compliance with sanctions imposed by the EU, UN, Financial Reporting Authority or Cayman Government

## 5.2. External Reporting

NPOs must create a procedure for filing suspicious activities to the Financial Reporting Authority (“FRA”) in the prescribed format which is available via <http://www.fra.gov.ky/contents/page/4>.

## 5.3. Sanctions

All Caymanian and non-Caymanian individuals as well as Cayman Islands registered businesses and NPOs, carrying out operations in the Cayman Islands or overseas are required to comply with all sanctions imposed on the Cayman Islands. Comprehensive sanctions prohibit all dealings with a particular jurisdiction, whereas targeted sanctions restrict and/ or prohibit dealings with particular individuals, firms, organisations, vessels, goods and services.

If an NPO discovers it is dealing with a sanctioned target (“**Target**”) all reasonable and relevant steps must be taken and documented as soon as possible including but not limited to:

- (a) reviewing all known information about the target including ownership structure;
- (b) verifying whether the Target is on (i) the Consolidated List of Designated persons issued by the UK’s Office of Financial Sanctions Implementation; (ii) any financial sanctions notices issued by the FRA; (iii) the Consolidated List published by the UN; (iv) the Consolidated List published by the EU;
- (c) upon reviewing all relevant information, evaluate the nature of the relationship with the Target, discontinuing as appropriate, and submit a duly completed Compliance Reporting Form to the Sanctions Coordinator at the FRA which is available at <http://www.fra.gov.ky/contents/page/1>.

## 5.4. Supervisory Approach

The Registrar has a risk and principles based approach to supervision of NPOs and will assign each registered NPO with a risk rating; such risk rating will determine the frequency of onsite inspections undertaken by the Registrar.

## 6. INQUIRIES AND PENALTIES

Consistent with the focus on the proper oversight of NPO activities, the Act empowers the Attorney General to institute inquiries into the activities of NPOs including the value and source or application of money received or disbursed. An inquiry may also be commenced for the purpose of investigating any NPO suspected of having committed an offence under the Terrorism Act or the Proceeds of Crime Act.

There are also a number of administrative penalties which will apply to any NPO that contravenes the Act. A controller who fails, without reasonable cause, to comply with the provisions for the registration or the provisions regarding the preparation of financial statements and annual returns or any other lawful request by the Registrar is liable to incur a range of penalties specified in the regulations.



*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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