

New Legislation for Non-Profit Organisations in the Cayman Islands

Author:

Bernadette Carey, Counsel

Following a lengthy period of consultation, both with members of the public and industry stakeholders, the Cayman Islands Government recently passed the *Non-Profit Organisations Law, 2017* (“the Law”). The Law is an entirely new development for the Cayman Islands (“Cayman”): up until this point, the jurisdiction did not have any charities legislation or any laws otherwise governing the formal registration and record-keeping of non-profit organisations (“NPOs”).

The introduction of the Law, which will come into force on 1 August 2017, is part of Cayman’s ongoing commitment to increased transparency and its contribution to the global fight against corruption, money-laundering and terrorism. In essence, it provides for the establishment of a registration system to deal with 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.

NPOs

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

- 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
- which solicits contributions from the public or a section of the public within Cayman or elsewhere.

This definition has a very wide scope, and it is obvious that it will capture a very significant number of NPOs throughout Cayman, regardless of their size and regardless of whether they have been established for minor short-term fundraising purposes or with a more wide-reaching and long-term charitable intent. Importantly, the only NPOs that are exempt from coverage under the Law are those which have a government entity as their principal regulator, or are established as a trust where the trusteeship of the trust includes a trust company licensed under the *Banks and Trust Companies Law (2013 Revision)*.

Registration

The key part of the Law is Part 2, which provides for the appointment and functions of a “Registrar of Non-Profit Organisations” (“Registrar”), who will oversee the establishment and maintenance of a register of NPOs (“the Register”). The role of the Registrar is generally to receive and process applications by NPOs for registration, and to ensure that all NPOs have appropriate internal controls in place including systems to identify criminal conduct.

The Law requires all NPOs covered by it to apply to the Registrar for registration as an NPO: NPOs are prohibited from soliciting or raising contributions from the public within Cayman or elsewhere unless they are so registered. 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 a prescribed form, containing the information specified in the Schedule to the Law. That information includes, among other things, the details of the purposes of the NPO, the identity of the controller, copies of the organisational documents (such as the trust deed or constitution of the NPO) and details of the anticipated source of contributions to the NPO.

The Law provides for applications to be processed within 30 days of receipt. Transitional provisions are in place, so that NPOs currently operating in Cayman have six months to submit an application for registration. Once formally registered, certain information about the NPO will be recorded on the Register including the name, Cayman address, and telephone number 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”. The Register will be open for public inspection “on such terms as the Registrar thinks fit”: given this broad statement, we anticipate that further guidance as to public inspection of the Register will be given in due course.

The Registrar may refuse to register an NPO if its activities do not fall within the definition of “non-profit organisation” under the Law, 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 was found by the Registrar to be “manifestly incorrect”. An NPO may also have its registration cancelled if it engages in wrongdoing or contravenes the Law.

The *Non-Profit Organisations (Registration Application) Regulations, 2017*, which were published on 26 May 2017, (the “Regulations”) include the requisite template registration forms, a schedule of fees, an annual return form and a notification of change of details form.

Proper records

Once registered, the Law compels the controller of an NPO to keep proper financial statements with respect to 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. 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. Annual returns, in the form specified in the Regulations, must be filed for all NPOs.

Inquiries and Penalties

Consistent with the focus on the proper oversight of NPO activities, Part 4 of the Law empowers the Attorney General to institute inquiries into the activities of non-profit organisations, 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 Law (2017 Revision)* or the *Proceeds of Crime Law (2017 Revision)*.

There are a number of administrative penalties which will apply to any NPO that contravenes the Law. A controller who fails, without reasonable cause, to comply with the provisions for 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.

Cayman NPOs

As Cayman does not operate a state funded welfare system, voluntary fund raising and the efficient operation of NPOs is of fundamental importance to local society. Also of great importance is the establishment in the jurisdiction of suitable protections against criminal conduct. In practice, the Law will apply to a substantial number of local charities and fund-raising bodies of all sizes, and its implementation will likely increase the administrative burden on such entities and impact the day-to-day operations of smaller local NPOs in particular. However the introduction of these new reporting obligations should be considered a positive development for the jurisdiction on the whole. The intent of the Law, after all, is good, and its implementation is necessary for Cayman to keep pace with, and its commitments to, the ongoing global initiatives against money laundering and terrorist financing.

AUTHOR:

BERNADETTE CAREY
COUNSEL

bernadette.carey@conyersdill.com
+1 345 814 7371

OTHER CONTACTS:

ROBERT LINDLEY
COUNSEL

robert.lindley@conyersdill.com
+1 345 814 7360

PAUL SMITH
PARTNER

paul.smith@conyersdill.com
+1 345 814 7777

GLOBAL CONTACTS:

FAWAZ ELMALKI
HEAD OF DUBAI OFFICE

fawaz.elmalki@conyersdill.com
+9714 428 2900

CHRISTOPHER W.H. BICKLEY
HEAD OF HONG KONG OFFICE

christopher.bickley@conyersdill.com
+852 2842 9556

LINDA MARTIN
HEAD OF LONDON OFFICE

linda.martin@conyersdill.com
+44(0)20 7562 0353

ALAN DICKSON
HEAD OF SINGAPORE OFFICE

alan.dickson@conyersdill.com
+65 6603 0712

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

ABOUT CONYERS DILL & PEARMAN

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

For further information please contact: media@conyersdill.com