

Ernst & Young
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COMPANIES (AMENDMENT) BILL, 2017

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COMPANIES (AMENDMENT) BILL, 2017

A BILL FOR AN ACT TO AMEND THE COMPANIES ACT TO PROVIDE FOR THE REGISTRATION OF NON-PROFIT ORGANISATIONS

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the Companies Act (*Ch. 308*) may be cited as the Companies (Amendment) Act, 2017.
- (2) This Act shall come into operation on such day as the Minister may appoint, by notice in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following new definition—

““**non-profit organisation**” means—

- (a) a non-profit company for the purposes mentioned in section 14 and incorporated in accordance with Part VI of the Act;
- (b) any body of persons formed and incorporated by statute for purposes stated under section 14 of the Act; or
- (c) a non-profit unincorporated body of persons or a non-government organisation formed and established—
 - (i) for the purpose of promoting public policies or objects that are religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic, and its profits (if any) and other income are to be applied to the promotion of those objects, or that there is a prohibition of any dividend or refund of contributions to its members; or

- (ii) under section 27 of the Friendly Societies Act (*Ch. 313*).”.

3. Amendment of section 5 of the principal Act.

The principal Act is amended in section 5(b) by deleting the words “the location in” and inserting the words “the street address and postal address”.

4. Amendment of section 14 of the principal Act.

The principal Act is amended in section 14(5) by deleting the words “and publishing its name and sending lists of members and directors and of other officers to the Registrar”.

5. Insertion of new section 14A into the principal Act.

The principal Act is amended by inserting immediately after section 14 the following new section—

“14A. Registration of non-profit organisations.

- (1) Every non-profit organisation shall apply for registration in the manner prescribed.
- (2) A non-profit organisation shall not carry on operations unless registered in accordance with subsection (1).
- (3) Every non-profit organisation that carries on operations contrary to this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.”.

6. Insertion of new section 117B into the principal Act.

The principal Act is amended by inserting immediately after section 117A the following new section—

“117B. Declaration of availability of accounting records.

- (1) Subject of section 117A(4), a company shall maintain at its registered office a declaration stating that—
 - (a) the company is maintaining reliable accounting records; and
 - (b) the accounting records shall be made available through its registered agent, accountant or auditor.
- (2) Every company shall submit an original copy of the declaration to the Registrar in a form prescribed by the Registrar.

- (3) A company on the Register at the time of the coming into force of this Act shall submit its declaration within sixty days of the coming into force of this Act.
- (4) A company registered subsequent to the coming into force of this Act shall submit its declaration within ninety days of the registration of the company.”.

7. Amendment of section 297 of the principal Act.

Section 297 of the principal Act is amended by the deletion of the words “section of this Act” and the substitution of the words “any provision of this Act and any regulation made thereunder”.

OBJECTS AND REASONS

The Companies (Amendment) Bill, 2017 seeks to amend the Companies Act to provide for the regulation of “non-profit organisations” pursuant to The Bahamas' international obligations to ensure that non-profit organisations are not misused for terrorist financing or money laundering.

Clause 2 of the Bill expands the meaning of a non-profit organisation as follows:

- “(a) a non-profit company for the purposes stated under section 14 and incorporated in accordance with Part VI of the Act;
- (b) any body of persons formed and incorporated by statute for purposes stated under section 14 of the Act; and
- (c) a non-profit association which includes an unincorporated body of persons or non-government organisation formed—
 - (i) for similar purposes stated under section 14 of the Act; or
 - (ii) for any of the purposes set out in section 27 of the Friendly Societies Act (*Ch. 313*).”

Clause 3 of the Bill seeks amend section 5 of the Act to make it clear that a company's memorandum must provide the full address of the company's registered office.

Clause 4 of the Bill seeks to amend section 14(5) by providing that a section 14 company will not be exempt from publishing its name and sending lists of names and its directors and of other officers to the Registrar.

Clause 5 of the Bill prohibits a non-profit organisation from conducting operations unless registered in the prescribed manner.

Clause 6 of the Bill seeks to impose a duty on companies (with the exception of those which have an annual turnover of less than \$50,000.00) to file, with the Registrar, a declaration stating that they are maintaining reliable financial records.

Clause 7 of the Bill seeks to amend section 297 of the Companies Act to provide that any person who contravenes any regulations for which no penalty is provided, shall be liable on summary conviction to a fine of ten thousand dollars or to two years imprisonment.