



Changes to Bermuda's Charities Act affect privately funded charities

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The *Charities Amendment Act, 2018* (the "Amendment Act"), which amends the *Charities Act, 2014* (the "Act"), was passed in Bermuda's House of Assembly on 27 July 2018. The purpose of the Amendment Act is to enhance Bermuda's AML/ATF regulatory framework relating to charities that are privately funded. The operative date of the Amendment Act is 10 August 2018 ("Commencement Date").

The changes were undertaken in response to the international efforts of the Organisation for Economic Co-operation and Development ("OECD") through the Financial Action Task Force ("FATF") which has requested all members to adopt certain regulatory measures relating to charities. There is some concern that charity structures in countries other than Bermuda have been involved in financing terrorist activities. While there have been no known cases involving Bermuda charities and terrorist activities, Bermuda has agreed to augment its laws to assist in tightening the oversight of certain charitable structures created under Bermuda law.

What does privately funded mean?

The changes introduced by the Amendment Act apply to privately funded charities. A privately funded charity is defined as a charity that does not solicit funds from the Bermuda public, and does not receive funding from the Bermuda Government or from Bermuda public sources.

What are the criteria for exemption from full registration?

The scope of the exemption from full registration under the Act in Section 18(4) has been limited. Previously, a privately funded charity with a private trust company acting as trustee would be exempt from the general registration requirements. However, Section 18 of the Act has been amended so that the only charities that are now exempt from full registration are:

- i. trusts which are privately funded and where at least one of the trustees is licensed under the *Trust (Regulation of Trusts) Business Act* or;
- ii. a company or other legal entity which is privately funded and which has a registered office with, and is subject to compliance by, a licensed Corporate Service Provider.

Which charities will be impacted by the changes?

All exempted charities which meet the criteria set out above must complete the limited registration under the new Section 17A for exempted charities.

Charities which do not meet the exemption criteria set out above must comply with the full registration requirements and on-going accounting and reporting requirements contained in Parts 3 and 5 of the Act.

Privately funded charities that are established after the Commencement Date must, within one month of establishment:

- i. notify the Registrar General of such establishment, and;
- ii. provide the name, date of establishment, and statement of whether or not the charity trustees believe that the charity is an exempted charity. It does not appear that exempted charities will need to file accounts or other pertinent or sensitive information.

Where, by virtue of section 18(4), it is believed a charity is exempted, the charity trustees shall provide to the Registrar General:

- i. reasons why the charity trustees believe it should be an exempted charity, and;
- ii. copies of documentation to support the claim for exemption.

Introduction of a separate register of exempted charities

A key change introduced by the Amendment Act is the register of exempted charities. Section 17 of the Act has been amended to require the Registrar General to keep a separate part in the register for charities that are privately funded and either have a licensed trustee or registered office with a licensed corporate service provider, in accordance with the exemption criteria set out above. The Registrar General can enter such information as he may determine in relation to such charities.

Will information on the separate register for exempted charities be available to the public?

The Act states that information on exempted charities will not be available to the public even under the *Public Access to Information Act*. Section 17A of the Act has been amended and states as follows:

- “(3) Notwithstanding any provision of the *Public Access to Information Act, 2010*, no person who—
- a) obtains, receives or otherwise becomes aware of information or documents relating to a charity that is privately funded; or
 - b) receives a request under the *Public Access to Information Act, 2010* for such information or documents, shall disclose the request or such information or documents so requested.”

Action to be taken

Charities that were exempted prior to the Amendment Act, but now cease to be, must contact the Registrar General within three months from the Commencement Date. Such charities are required to:

- i. apply to the Registrar General under Section 17 of the Act for the charity to be registered, and;
- ii. supply the Registrar General with the required documents and information.

Charities that are currently exempted, and believe they continue to qualify as such, have one month from the Commencement Date to contact the Registrar General. Such charities are required to:

- i. write to the Registrar General specifying which condition under Section 18(4) applies to exempt the charity from registration, and;
- ii. supply the required documents and information that confirm the charity's compliance with such condition.

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