

Changes to the Companies Law with regard to Section 80 Companies

Introduction

Recent amendment to the Companies Law (2018 Revision) now provides the Registrar with the authority to accept direct applications for section 80 companies, as well as the power to designate companies and association of persons section 80 status. This designation relates to entities that are established:

1. Primarily for the promotion of charitable
2. Philanthropic
3. Religious
4. Cultural
5. Educational
6. Social
7. Or fraternal purposes or objects including for the avoidance of doubt a group of persons sharing a common profession or interest which to the satisfaction of the Registrar qualifies the company or association for registration under this section.
8. And intends to apply the profit or income of the company or association for the promotion of the aforementioned Non-profit organisation purposes.

What does this designation mean?

Currently there are several NPOs registered as unincorporated associations of persons, ordinary resident companies and companies limited by guarantee. This amendment facilitates a process by which those entities can apply to the registrar for designation as a section 80 company. For Unincorporated Associations of Persons, designation as a section 80 company provides corporate personality insulation, protecting the controllers and senior officers against personal liability. For ordinary companies, this designation negates the need to comply with the current condition as per the Companies Law; those entities will now be required to comply with the conditions under the NPO law only.

New Section 80 Application Process

Applications for section 80 companies will now be made to the General Registry and NOT the Ministry of Finance as previously required. The applicable fee for this designation is CI\$300.00. Ordinary companies as well as unincorporated association of persons will be required to submit copies of memorandum and articles of association which contain as per section 80 (2) of the companies (amendment) law 2018 *“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 dividend 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 in behalf of the company”.

What are the Benefits of being designated a section 80 company

Being designated a section 80 company under the Companies Law provides the entity with the following benefits:

1. Each entity has corporate personality which provides limited liability for the controllers, senior officers, directors and members.
2. The word “Limited” or the abbreviation “Ltd” does not have to be included in the name of the company.
3. No requirements to comply with section 199 of the law which speaks to paying fees associated with:
 1. Filing any resolution , notice, return of any other documents \$75.00
 2. Issuance of any certificate \$125.00
 3. Providing a copy of any document \$125.00
 4. General search fee which in this case would have been \$30.00
- No requirement to pay an annual fee (minimum of \$300)

Obligations of Section 80 companies that are not registered as Non-Profit Organisations

Section 80 companies that are not defined as NPO due to the fact that no funds are solicited from the public or a section of the public are now required to:

1. File with the Registrar an annual return confirming the objects and activities of the company.
2. Notify the Registrar of any changes in the objects or activities of the company.
3. Notify of any change in registered office of the location of the company within 30 days of the changes.
4. Maintain proper books of account for a minimum period of 5 years.
5. Comply with any conditions impose on them by the Registrar on registration.
6. Establish and maintain internal controls and systems appropriate for the company to identify conduct which may involve terrorist financing.
7. Notify the Registrar in the manner specified of any changes in the persons who owns controls or directs the company within thirty days of the date of the change.
8. Pay a fee of CI\$25.00 for the relevant change.

Authority of the Registrar

To facilitate compliance with the amended legislation the Registrar now has the authority to examine all books of accounts and documents for section 80 companies.

It is the duty of an officer of a section 80 company to produce, for examination by the Registrar, all books of accounts and documents for the company for which the officer is responsible that are in the officer's custody or power.

Penalties

The Registrar may impose a \$500.00 penalty on the company for failing to comply with any of the previously outlined obligations.

There is nothing in the Law that precludes the Registrar from posting notification of these sanctions on General Registry's website.

General Registry Operational Obligations/ Implications

1. User friendly smart application system, designed to facilitate the supervision of the section 80 companies which include but not limited to:
 - a. document management
 - b. risk ratings
 - c. alerts
 - d. processing of annual returns
 - e. collection, processing and storage of financial records,
 - f. scrubbing of owners, controllers and directors of the companies..
2. Adjustment to current company registration processes. The memorandum of Association and Articles of Association of ***Section 80 companies have to be vetted SPECIFICALLY*** to ensure that there is full compliance with the requirements of section 80 subsection 2 clause A of the amended Law. with respect to the application of assets and profits. Creation of an application form for section 80 designation, to capture all relevant information and details.
3. Creation of an annual return form
4. Creation of a notification of change form
5. Amendments to Cayman Business Portal (CBP) to capture these processes
6. Examinations- design protocols surrounding compliance with section 80c to include:
 - Examination of the books of accounts – who will conduct examinations in particular if there is a suspicion of fraud or red flags associated with money laundering or financing of terrorism
 - Design of correspondence related to this process, for example letter informing of the need to provide financial records
 - What will be the timeframe to provide the records
 - In what format will the records be provided
 - Storage and processing of said documents

7. Penalty procedures and related documentation