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NON-PROFIT ORGANISATIONS (AMENDMENT) ACT, 2019

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No. 28 of 2019

NON-PROFIT ORGANISATIONS (AMENDMENT) ACT, 2019

AN ACT TO AMEND THE NON-PROFIT ORGANISATIONS ACT, 2019

[Date of Assent - 2nd August, 2019]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Non-Profit Organisations Act, 2019, may be cited as the Non-Profit Organisations (Amendment) Act, 2019.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended as follows —

- (a) by the deletion of the term “**financial statements**” and its definition;
- (b) by the insertion immediately after the term “**controller**” and its corresponding definition, of the new definition “**financial records**” and its corresponding definition as follows —
“**financial records**” means records that show —
 - (a) and explain a non-profit organisation's transactions in sufficient detail to demonstrate that its funds have been used in a manner consistent with its purposes, objectives and activities; and
 - (b) the sources of its gross annual income, so that its financial position can be determined with reasonable accuracy.”;
- (c) in the definition of the term “**non-profit organisation**”, by the insertion immediately after the words “refund of contributions to its members” of the words “, but excludes a religious or charitably founded school registered with the Ministry of Education, and any organisation with political objectives”; and

- (d) in the definition of the term “**Registrar**”, by the deletion of the words “of Non-Profit Organisations established under section 3” and by the insertion of the word “General”.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended by the —

- (a) deletion of subsections (1) and (2);
- (b) re-numbering of subsections (3) and (4) as subsections (1) and (2).

4. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended by the renumbering of the section as subsection (1) and by the insertion immediately after subsection (1) of the following new subsection (2) —

- “(2) The Minister may from time to time, after consultation with the Registrar, issue guidance notes to be published in the Gazette for the better management of non-profit organisations registered under this Act.”.

5. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended as follows —

- (a) in subsection (2), by the deletion of the word “A” and the substitution of the words “Subject to section 34(3), a”;
- (b) by the deletion of subsections (3) and (4) and the substitution of the following —

“(3) Subject to subsection (4), the Registrar shall register the non-profit organisation and issue to the non-profit organisation a certificate of registration upon —

- (a) being satisfied that the non-profit organisation is suitable for registration; and
- (b) payment of the fee set out in the *Third Schedule*.

(4) In considering an application for registration, the Registrar shall have regard to —

- (a) the declared purposes of the non-profit organisation;
- (b) the identity of the controller and other members of the non-profit organisation;
- (c) copies or particulars of the organisational documents; and
- (d) evidence of the board structure.”; and

(c) by the deletion of subsection (7) and the substitution of the following —

“(7) A certificate of registration is valid for a period of two years from the date of issue.”.

6. Repeal and replacement of section 8 of the principal Act.

Section 8 of the principal Act is repealed and replaced as follows —

“8. Renewal of registration.

The Registrar shall renew a certificate of registration upon an application being made in the form set out in the *First Schedule* and the payment of the fee set out in the *Third Schedule*.”.

7. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended by the insertion immediately after subsection (3) of the following new subsection —

“(4) For the purposes of paragraph (a) of subsection (2), “a change in its purpose” does not include the receipt of tuition fees or sale of items for fund-raising purposes.”

8. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended by the deletion of subsection (1) and the substitution as follows —

“(1) The Registrar may impose an administrative fine not exceeding five thousand dollars, if after an investigation it is proven that a non-profit organisation has failed, without reasonable cause to produce financial records reflecting all monies received and expended.”.

9. Amendment of section 16 of the principal Act.

Section 16 of the principal Act is amended in subsection (1) by the deletion of the words “and at the expense of any non-profit organisation,”.

10. Amendment of section 17 of the principal Act.

Section 17 of the principal Act is amended —

- (a) in subsection (2), by the deletion of the words “19(4)” and the substitution of the words “19(3)”; and
- (b) by the deletion of subsection (3).

11. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended by the deletion of subsection (1) and the substitution as follows —

- “(1) Subject to subsection (3), a controller of a non-profit organisation shall cause reliable financial records to be kept at its registered office address.”.

12. Amendment of section 20 of the principal Act.

Section 20 of the principal Act is amended —

- (a) in subsection (1) —

(i) by the insertion immediately after the words “address a declaration”, of the words “, in the form set out in the *Second Schedule*.”;

(ii) by the deletion of paragraph (b) and the substitution of the following —

“(b) its financial records shall be made available through its office administrator, registered agent, registered office or person who as the non-profit organisation's fiduciary, management body or other service provider, is regulated by the Banks and Trust Companies Regulation Act (*Ch. 316*) or the Financial and Corporate Service Providers Act (*Ch. 369*).”;

- (b) in subsection (2), by the deletion of the words “section 117B of”.

13. Repeal and replacement of section 24 of the principal Act.

Section 24 of the principal Act is repealed and replaced by the following —

“24. Reportable donations.

(1) A non-profit organisation shall in the form set out in the *Second Schedule*, submit to the Registrar a declaration that specifies that the non-profit organisation is maintaining records at its registered office address in respect of any donation that is one hundred thousand dollars and above, whether the donation is made as one lump sum or as aggregate sums.

(2) The declaration made pursuant to subsection (1), shall be kept confidential by the Registrar and may only be disclosed to a lawful authority for analysis or investigation.

(3) A non-profit organisation shall —

- (a) keep records with respect to reportable donations for a minimum of five years from the date of the transaction to which the record relates; and
 - (b) make those records available for verification purposes.
- (4) A non-profit organisation that —
- (a) is registered, shall submit its declaration of availability of reportable donations to the Registrar within ninety days of its registration;
 - (b) was registered prior to the coming into force of this Act shall, submit its declaration within sixty days of the coming into force of this Act.”.

14. Amendment of section 30 of the principal Act.

Section 30 of the principal Act is amended by the deletion of the word “*Second*” and the substitution of the word “*Third*”.

15. Amendment of section 34 of the principal Act.

Section 34 of the principal Act is amended —

- (a) by the deletion of subsection (2);
- (b) by the renumbering of subsection (3) as subsection (2);
- (c) by the insertion immediately after subsection (2) of the following new subsection (3) —

“(3) A non-profit organisation that has a physical presence in The Bahamas and is in existence immediately before the date of the commencement of this Act, shall be deemed registered if it submits —

- (a) a registration form as set out in the *Second Schedule*; and
- (b) a completed declaration as set out in the *Second Schedule* within ninety days of the coming into force of this Act and such non-profit organisation shall be exempt from the payment of the registration fee set out in the *Third Schedule*.”.

16. Insertion of new section 26A into the principal Act.

The principal Act is amended by the insertion immediately after section 26, of the following new section 26A —

“26A. Non-application of Part V of the Act.

- (1) With the exception of sections 18,19, 20, 21 and 25, Part V of this Act does not apply to a non-profit organisation that —
 - (a) does not solicit funds from the general public or receive concessions from the Government or any statutory body in the pursuit of its objects;
 - (b) has as its fiduciary, management or other service provider, a person that is registered pursuant to the Banks and Trust Companies Regulation Act (*Ch. 316*) or the Financial and Corporate Service Providers Act (*Ch. 369*);
 - (c) is a non-denominational or stand-alone religious entity or congregation which certifies, in writing, that it maintains its annual financial records and that its membership reviews and votes to approve or reject such records in its annual general meeting;
 - (d) is an internationally recognised or accredited charitable, medical, providential or relief organization;
 - (e) is a constituent unit whose members are mandated by its constitution, by-laws or documents of incorporation to have its annual financial records reviewed and voted on to approve or reject, each calendar year in an annual general meeting of its members.
- (2) An umbrella organisation shall register on behalf of its constituent units.
- (3) An umbrella organisation shall certify, in writing, that its constituent units have complied with its obligations to —
 - (a) maintain annual financial records; and
 - (b) cause the said records to be reviewed and voted upon each calendar year in its annual general meeting.
- (4) Where the Registrar has reasonable grounds to believe or has information that any constituent unit is engaged in activities that are identified risks, the Registrar shall, by written order —
 - (a) require that the respective constituent unit or, where applicable, the umbrella organisation submit any financial records or other information that show the financial status of the constituent unit;

- (b) require a bank or financial institution, where the constituent unit or the umbrella organisation has an account, to submit any financial records; or
- (c) exercise such powers under Part IV as the circumstances require and refer all information to the Commissioner of Police, the Attorney-General and the Director of Public Prosecutions, where it is found to the satisfaction of the Registrar that a non-profit organisation under subsection (1) or a constituent unit of an umbrella organisation has engaged in any identified risk activity.

(5) For the purposes of this section —

- (a) **“constituent unit”** means a subsidiary, branch, affiliate or any other such unit of an umbrella organisation;
- (b) **“umbrella organisation”** means a civic, social, fraternal or religious non-profit organisation that governs and regulates its constituent units, for example, an arch-diocese, a diocese, national convention, national assembly, council or a grand or district grand lodge or chapter, local society or club district or local organisation, and any entity which is internationally recognised or accredited.

17. Amendment to the principal Act.

The principal Act is amended by the deletion of the words **“financial statement”** and **“financial statements”** wherever they occur and the substitution of the words **“financial record”** and **“financial records”** respectively.

18. Repeal and replacement of First Schedule of the principal Act.

The First Schedule to the principal Act is repealed and replaced by the following

“FIRST SCHEDULE

(Section 8 (2) & (5))

REGISTRATION FORM FOR NON-PROFIT ORGANISATIONS

Please note: Unincorporated non-profit organisations must attach to its completed form a copy of its Constitution or intended Constitution. It is IMPORTANT that you ACCURATELY complete and confirm all information provided before submitting this Form. The Registrar of Non-Profit Companies accepts no responsibility for the information provided in this Form.

Tick the appropriate box:

- New application Umbrella Organisation
- Renewal of registration
- Change of information
- Projected or annual turnover of \$75,000 or more: Yes No

Note: In the case of an application to change of information, ONLY the relevant sections must be completed.

Please attach a separate sheet of paper if additional space is required.

1. ORGANISATION CONTACT DETAILS

Name (or proposed name) of Non -profit Organisation (“NPO”):			
Contact details for NPO	Office Telephone:	Cell Phone:	Email:
	Address:		Website (if any):

2. CONTROLLER(S) CONTACT INFORMATION

Name:	Address:

Telephone (if different from above):	Position in NPO:
Email:	

3. ORGANISATION OPERATING DETAILS

- a. In full detail, please describe the **PURPOSE** (or *intended purpose*) of the NPO:

- b. Does your organisation have subsidiary organisation(s)? YES NO

- c. If yes, please list the subsidiary organisation(s):

1. _____
2. _____
3. _____

- d. Please provide the information below for the *President, Vice President, Secretary* and *Treasurer* of the non-profit organisation:

PRESIDENT	Name:	
	Telephone:	Email:
	Address:	
VICE PRESIDENT	Name:	
	Telephone:	Email:
	Address:	
SECRETARY	Name:	
	Telephone:	Email:
	Address:	
TREASURER	Name:	

	Telephone:	Email:
	Address:	

If an umbrella organisation, please attach a list of the full name and physical or street address of every constituent unit.

CONTROLLER DECLARATION

I, _____, controller of _____
(Name of Controller) (NPO Name)

certify that the information provided is true to the best of my knowledge.

Signature: _____ **Date:** _____

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”.

19. Repeal and replacement of Second Schedule of the principal Act.

The Second Schedule to the principal Act is repealed and replaced by the following—

“SECOND SCHEDULE
 (Sections 20(1), 24(1) and 34(3))

DECLARATION FORM FOR NON-PROFIT ORGANISATIONS

Please note that this form must be filled out by the Controller of the non-profit or umbrella organisation.

 I, _____ controller of _____

hereby declare that:

- (a) reliable financial records are being maintained and are available through the office administrator/registered agent/registered office or person who as the non-profit organisation's fiduciary, management body or other service provider is regulated by the Banks and Trust Companies Regulation Act (*Ch. 316*) or the Financial and Corporate Service Providers Act (*Ch. 369*); and
- (b) in respect of any donation that is one hundred thousand dollars and above, records are being maintained at the registered office address of the non-profit organisation, whether the donation is made as one lump sum or as aggregate sums.

Signature: _____

Date: _____”.

20. Insertion of new Third Schedule into the principal Act.

The principal Act is amended by the insertion immediately after the Second Schedule, of the following new Third Schedule —

“THIRD SCHEDULE

(Sections 26A and 30)

FEES

- | | | |
|----|---|-----------|
| 1. | Application for registration | |
| | (a) for newly formed organisations | \$100.00 |
| | (b) for existing organisations | Nil |
| 2. | Application for renewal of registration | \$50.00 |
| 3. | Certificate of good standing | \$50.00”. |