



TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

Regulating with Honesty, Integrity and Transparency

Guidance Re: Associations Not for Profit

This serves as a general advisory and guidance on the policy direction with respect to the application of the *Companies (Amendment) Ordinance 2020* with reference to Associations Not for Profit.

The Companies (Amendment) Ordinance 2020¹ provided that all entities registered as Associations Not for Profit (under the old Companies Ordinance) shall be deemed to be registered as a company under the new Companies Ordinance until 30th June 2021. This is an automatic exercise of the law and the entities are not required to do anything to be deemed a company during the period.

The Amendment therefore temporarily created a new type of company and provides the following specific options (only) for these companies: -

1. Register as a non-profit company under the Companies Ordinance 2017, or
2. Apply to be removed from the register and become an unincorporated association.

The amendment to the Companies Ordinance also requires that any association not for profit wishing to register as a non-profit company must first obtain the approval of the NPO Supervisor. Where the NPO Supervisor does not give the required approval, the association not for profit may elect to register as an 'ordinary' company.

An association not for profit may elect to continue as an unincorporated association and may apply to be voluntarily struck off the register of companies or allow automatic strike off on 1st July 2021. ***This, however, does not exempt the unincorporated entity from being registered as a Non-Profit Organisation with the NPO Supervisor as required under the POCO.*** This simply exempts the unincorporated association from Company Registry obligations and ***NOT POCO obligations.***

It has been brought to our attention that there are associations not for profit that have now been registered under the old Companies Ordinance as 'limited by guarantee entities' which may wish to, instead of registering as a non-profit company, register or continue to be registered as an 'ordinary' limited by guarantee company. These entities have made the argument that they did not and would not in the future operate as a typical non-profit organization by soliciting funds

¹ In operation 18th December 2020



from the public...i.e., their funds were strictly from members fees and subscriptions and/or member donations.

The law does not distinguish, and that entity must apply to the NPO Supervisor for approval to register as a non-profit company or take steps to be struck off the register of companies. Such association not for profit (i.e. those intended to be limited by guarantee) may submit a declaration and appropriate evidence to the NPO Supervisor to adequately demonstrate that their funds were not generated from general public solicitation and that the NPO will not in the future be engaging in public solicitation of funds. If the NPO Supervisor is satisfied that the association not for profit's funds were not generated from public solicitation, the application to the NPO supervisor (for approval to register as a non-profit company) may likely fail, following which they can elect to register as a company limited by guarantee.

For more information you can contact the Financial Services Commission at 649-946-5314 or email at aml_supervision@tcifsc.tc

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14th May 2021