

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CHARITIES AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Charities Act 2014;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### Citation

1 This Act, which amends the Charities Act 2014 (the "principal Act"), may be cited as the Charities Amendment Act 2018.

### Amends section 2

2 The principal Act is amended in section 2—

- (a) in the definition of "the register", by inserting after the word "charities" the words "and any separate part thereof";
- (b) by inserting in the appropriate alphabetical order the following—

" "charity that is privately funded" means a charity that does not solicit funds from the Bermuda public, does not receive funding from the Bermuda Government or from Bermuda public sources; "

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Amends section 17

3 The principal Act is amended in section 17, by inserting after subsection (1) the following—

“(1A) There shall be a separate part of the register in respect of charities that are privately funded in which the Registrar shall enter such information as he may determine in relation to such charities.”.

Inserts section 17A

4 The principal Act is amended by inserting after section 17 the following—

“Notification of establishment of certain charities

17A (1) When a charity that is privately funded is established the charity trustees, within one month of the establishment thereof, shall in writing—

- (a) notify the Registrar of the establishment of such charity; and
- (b) provide the name of the charity, the date of its establishment and whether or not the charity trustees believe that the charity is an exempted charity,

and where the charity trustees of a charity that is privately funded believe that it is, by virtue of section 18(4), an exempted charity, the charity trustees shall—

- (c) specify the condition in section 18(4) pursuant to which the charity is exempted from registration; and
- (d) supply the Registrar with the required documents and information confirming compliance with that condition.

(2) Where the charity trustees of a charity notify the Registrar in accordance with this section, and apply or write to the Registrar within the time period specified in subsection (1) supplying the documents and information required by the Registrar, the charity trustees may continue to operate the charity until the earlier of the—

- (a) approval of the application for registration or refusal thereof; or
- (b) confirmation by the Registrar of its exemption from registration.

(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.”

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### Amends section 18

5 The principal Act is amended in section 18(4)—

- (a) by deleting the words “, does not solicit funds from the Bermuda public, does not receive funding from the Bermuda Government or from Bermuda public sources,”;
- (b) by repealing paragraphs (a) and (b) and substituting the following—
  - “(a) in the case of a trust, at least one of the trustees is licensed under the Trusts (Regulation of Trust Business) Act 2001;
  - (b) in the case of a company or other legal person, it has a registered office with and is subject to compliance by a person licensed under the Corporate Service Provider Business Act 2012 with respect to applicable laws, regulations or other requirements.”.

### Amends section 21

6 The principal Act is amended in section 21(1)(a) by inserting after the words “the register” where they appear the second time the words “but not including any entry relating to a charity that is privately funded”.

### Transitional

7 (1) Where on the commencement date a charity (as defined in subsection (6)) ceases to be an exempted charity by virtue of section 18(4) of the Act as amended by section 5 of this Act and is required to be registered, the charity trustees, within the period of three months after the commencement date, shall—

- (a) apply to the Registrar under section 17 of the Act for the charity to be registered; and
- (b) supply the Registrar with the required documents and information.

(2) Where on the commencement date charity trustees believe that the charity with respect to which they are charity trustees should be, or continue to be, an exempted charity by virtue of section 18(4) of the Act as amended by section 5 of this Act, the charity trustees thereof, within one month after the commencement date, shall—

- (a) write to the Registrar specifying the condition in section 18(4) as so amended pursuant to which the charity should be, or continue to be, exempted from registration; and
- (b) supply the required documents and information that confirm the charity’s compliance with such condition.

(3) Where charity trustees of a charity apply or write to the Registrar within the time period specified in subsection (1) or (2), as the case may be, supplying the required documents and information, the charity trustees may continue to operate the charity until the earlier of the—

- (a) approval of the application for registration or refusal thereof; or

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(b) confirmation by the Registrar of its exemption from registration or revocation thereof.

(4) A person that is aggrieved by a decision of the Registrar pursuant to this section may make an appeal under section 24.

(5) Section 45 applies with any necessary modifications for the purpose of this section.

(6) In this section—

“Act” means the Charities Act 2014;

“charity” means a charity that is privately funded;

“commencement date” means the date of the coming into operation of this Act;

“exempted charity” has the meaning given in section 2 of the Act.

## CHARITIES AMENDMENT BILL 2018

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Charities Act 2014 (the “Act”) to enhance Bermuda’s AML/ATF legislative framework relating to charities that are privately funded.

Clause 1 provides a title for the Bill.

Clause 2 amends section 2 of the Act to insert a definition with respect to charities that are privately funded, and in respect of the definition of register.

Clause 3 amends section 17 of the Act to require the Registrar to keep a separate part in the register for charities that are privately funded.

Clause 4 inserts section 17A in the Act to require the charity trustees of any charity that is privately funded to notify the Registrar of the establishment of the charity and certain information concerning the charity.

Clause 5 amends section 18(4) of the Act to bring certain charities that are privately funded within the scope of the Act.

Clause 6 amends section 21 of the Act with a view to protect the confidentiality of entries in the register relating to charities that are privately funded.

Clause 7 provides for transitional matters in relation to charities that are privately funded that were hitherto exempted from, but will now be subject to, registration under the Act. This clause also provides for transitional matters in relation to charities that are privately funded and whose status as an exempted charity is expected to continue.