

BILL NO. 34 OF 2020

A BILL

FOR AN ACT TO AMEND THE COMPANIES ACT 2015

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Companies (Amendment) Act 2020.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Section 388A inserted

2. The Companies Act 2015 is amended after section 388 by inserting the following new section—

“Charitable companies to prepare annual financial statements

388A.—(1) Notwithstanding section 388, a charitable company must prepare financial statements for each applicable financial year.

(2) The Registrar may publish and make publically available any information in relation to the non-compliance of a charitable company, including the names of the directors and members of the company, if the company fails to comply with subsection (1).

(3) In this section—

“charitable company” means a company that receives a donation in a financial year, whether in cash or in kind, from any other person whether locally or from abroad, for a charitable purpose; and

“charitable purpose” has the same meaning given in section 2 of the Charitable Trusts Act 1945.”.

Consequential amendment

3. The Charitable Trusts Act 1945 is amended in section 29A after subsection (2) by inserting the following new subsection—

“(3) The Registrar may publish and make publically available any information in relation to the non-compliance of a charitable trust, including the names of the trustees and board members of the charitable trust, if the charitable trust fails to comply with subsection (1).”.

August 2020

COMPANIES (AMENDMENT) BILL 2020

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Companies (Amendment) Bill 2020 (**'Bill'**) seeks to amend the Companies Act 2015 (**'Act'**) to address a lacuna in the law pertaining to charitable organisations.
- 1.2 Though section 29A of the Charitable Trusts Act 1945 (**'CTA1945'**) requires charitable trusts registered under the CTA1945 to prepare audited annual accounts, it is possible for charitable organisations to avoid this requirement by opting to not register as a charitable trust at all, and instead incorporate a small or medium private company under the Act. By doing so, such companies may operate without the need to submit audited accounts or annual financial statements unless their own members require them to do so.
- 1.3 To address this lacuna, the Bill seeks to amend the Act to require all companies that receive a donation, whether in cash or in kind, from any other person or entity, whether locally or from abroad, for a charitable purpose, to prepare their financial statements and to lodge their annual reports with the Registrar of Companies (**'ROC'**) no later than 4 months after the end of their financial year.
- 1.4 The Bill thus seeks to ensure that companies that purport to operate for a charitable purpose and receive donations to achieve that purpose are transparent in their dealings and are held accountable for the use of such donations.
- 1.5 The Bill also seeks to amend the Act to empower the ROC to name and shame those companies that fail to prepare their financial statements and lodge their annual reports with the ROC.
- 1.6 The Bill amends the CTA1945 to empower the Registrar of Titles (**'ROT'**) to name and shame charitable trusts that also fail to submit their audited annual accounts. This is necessary as despite the current requirement for charitable trusts to prepare audited annual accounts, many charitable trusts have not done

so. This amendment is thus intended to improve enforcement, and make these entities more accountable and their dealings more transparent.

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

2.2 Clause 2 of the Bill inserts a new section in the Act to require all companies that receive a donation, whether in cash or in kind, from any other person or entity, whether locally or from abroad, for a charitable purpose, to prepare their financial statements and to lodge their annual reports with the ROC within 4 months after the end of their financial year. The term “charitable purpose” has the same meaning given to the term under the CTA1945.

2.3 Clause 2 of the Bill also empowers the ROC to name and shame those companies that fail to prepare their financial statements and lodge their annual reports with the ROC.

2.4 Clause 3 of the Bill amends the CTA1945 to allow the ROT to publish the names of charitable trusts which do not comply with the requirement to submit their audited annual accounts under section 29A of the CTA1945.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for companies.

A. SAYED-KHAIYUM
Attorney-General