

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE BUILDERS LAW, 2007, LAW 4
OF 2007, TO VARY THE COMPOSITION OF THE BUILDERS BOARD;
TO LIMIT THE BUILDING INDUSTRY TO CAYMANIAN
CONTRACTORS; TO MAKE FURTHER PROVISION FOR THE
PROTECTION OF CONSUMERS; AND TO MAKE PROVISION FOR
INCIDENTAL AND CONNECTED MATTERS**

THE BUILDERS (AMENDMENT) BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Builders Law, 2007, Law 4 of 2007.

The amendments sought by the Bill would -

- (a) stop individuals and entities from trading as contractors if they do not have the necessary competency to undertake that work;
- (b) increase competition while leveling the “playing field” between contractors;
- (c) enhance the protection of consumers; and
- (d) limit the building industry to Caymanian contractors, subject to specified exceptions.

Clause 1 of the Bill provides the short title and commencement of the legislation.

Clause 2 amends section 1 of the principal Law to remove the reference to the “Governor” and substitute a reference to the “Cabinet”, thereby giving effect to Constitutional requirements. Similar amendments to the principal Law are effected by clauses 5, 7, 8, 16, 17 and 18.

Clause 3 amends section 2 of the principal Law which is the interpretation section. The amendments insert into the principal Law, definitions for the terms “construction manager”, “project manager” and “trades contractor”. The clause also re-defines the terms “business entity”, “contractor” and “general contractor” and updates references to various Laws.

Clause 4 of the Bill amends section 4 of the principal Law to increase the membership of the Builders Board from ten members to twelve members.

Clause 6 amends section 6 of the principal Law as a consequence of the re-naming of sub-trade contractors and civil contractors as “trades contractors” and “civil engineering contractors”. The references to various Laws have also been updated.

Clauses 9, 12 and 20 amend sections 14 and 19 and repeal Schedule 2 of the principal Law for the purpose of removing from that Schedule the application and licence fees for business entities and qualified individuals. Those fees will be specified in regulations.

Clause 10 of the Bill amends section 15 of the principal Law to update the references to various Laws.

Clause 11 amends section 16 of the principal Law to specify the circumstances in which a non-Caymanian may be registered as a qualified individual.

Clauses 13 and 14 respectively amend sections 20 and 24 of the principal Law to update the references to the Mental Health Law and the Public Service Management Law.

Clause 15 amends section 29 of the principal Law to correct the reference to the Appeal Tribunal established under the Development and Planning Law.

Clause 19 amends Schedule 1 of the principal Law to increase the quorum of the Builders Board from five persons to six persons as a consequence of the increase in Board membership.

THE BUILDERS (AMENDMENT) BILL, 2015

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 1 of the Builders Law, 2007, Law 4 of 2007 - short title and commencement
3. Amendment of section 2 - interpretation
4. Amendment of section 4 - Builders Board
5. Amendment of section 5 - registration of business entities
6. Amendment of section 6 - criteria for registration of a business entity as a contractor
7. Amendment of section 7 - penalty for improper exercise of voting rights, etc.
8. Amendment of section 8 - return of shareholdings to be made before commencing business and annually
9. Amendment of section 14 - fees for business entities
10. Amendment of section 15 - removal, suspension, etc., of business entities from register
11. Amendment of section 16 - registration of qualified individuals
12. Amendment of section 19 - fees for qualified individuals
13. Amendment of section 20 - removal, suspension, etc., of qualified individuals from register
14. Amendment of section 24 - appointment and powers of enforcement officers
15. Amendment of section 29 - appeals
16. Amendment of section 30 - right of public to complain
17. Amendment of section 39 - directives
18. Amendment of section 40 - regulations
19. Amendment of Schedule 1 - the Builders Board
20. Repeal of Schedule 2 - fees for business entities and qualified individuals

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE BUILDERS LAW, 2007, LAW 4 OF 2007, TO VARY THE COMPOSITION OF THE BUILDERS BOARD; TO LIMIT THE BUILDING INDUSTRY TO CAYMANIAN CONTRACTORS; TO MAKE FURTHER PROVISION FOR THE PROTECTION OF CONSUMERS; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Builders (Amendment) Law, 2015. Short title and commencement
(2) This Law comes into force immediately after the Builders Law, 2007, comes into force. Law 4 of 2007

2. The Builders Law, 2007, in this Law referred to as the “principal Law”, is amended in section 1(2) by deleting the word “Governor” and substituting the word “Cabinet”. Amendment of section 1 of the Builders Law, 2007, Law 4 of 2007 - short title and commencement

3. The principal Law is amended in section 2(1) as follows - Amendment of section 2 - interpretation
 - (a) in the definition of the words “ancillary building”, by deleting “(2006 Revision)” and substituting “(2013 Revision)” ;
 - (b) by deleting the definition of the words “Appeals Tribunal” and substituting the following definition -

“ “Appeal Tribunal” means the Appeal Tribunal established under section 46 of the Development and Planning Law (2011 Revision);”;

- (c) in the definition of the word “Board” by deleting the words “by section 3” and substituting the words “by section 4”;
- (d) by deleting the definition of the words “business entity”, and substituting the following definition -

“ “business entity” means an individual, partnership, company or joint venture that carries on business or proposes to lawfully carry on business, and includes a charitable organization or other non-government organization that undertakes the management or supervision of the construction process including the management or supervision of trades contractors;”;

- (e) in the definition of the word “Caymanian” by deleting “(2006 Revision)” and substituting “(2014 Revision)” ;
- (f) in the definition of the words “civil contractor” by inserting after the word “civil” the word “engineering”;
- (g) by inserting, after the definition of the word “construction”, the following definition -

“ “construction manager” means a business entity which performs the management or supervision of onsite construction and the directing of trades contractors whether or not they are paid by the business entity;”;

- (h) by deleting the definition of the word “contractor” and substituting the following definition -

“ “contractor” means a business entity, including a construction manager, referred to in section 6(4);”;

- (i) in the definition of the words “general contractor” by inserting after the word “civil” the word “engineering”;
- (j) by deleting the definition of the word “Governor”;
- (k) by inserting, after the definition of the word “project”, the following definition -

“ “project manager” means a person who is the professional representative of the owner of the project and who directs the design, cost or schedules of the project and selects or is a member of the team selecting the construction entity to build the project;”;

- (l) in the definition of the word “storey”, by deleting “(2006 Revision)” and substituting “(2013 Revision)” ;

(m) by inserting, in the appropriate alphabetical sequence, the following definitions -

“ “sub-trade” means specific elements of a trade performed by a trades contractor; and

“trades contractor” means a business entity which does not fall under the purview of general contractor, residential contractor, building contractor, or civil engineering contractor but which includes other works such as site works contractor, concrete and masonry contractor, metal works contractor, wood, plastic and aluminum works contractor, thermal and moisture works contractor, finishes and specialty contractor, special construction contractor, mechanical contractor, plumbing contractor, electrical contractor, detection or monitoring and security contractor, green technologies installation contractor and such other work as may be determined by the Board under section 6(4); and “trades construction” shall be construed accordingly.”; and

(n) by deleting the definition of the words “sub-trade contractor”.

4. The principal Law is amended in section 4 as follows -

Amendment of section 4
- Builders Board

(a) by repealing subsection (3) and substituting the following subsection -

“ (3) The Board shall consist of -

(a) ten voting members appointed by the Cabinet comprising -

(i) one person who is registered as a building contractor, but in the case of the first Board the Cabinet shall appoint a person who, in its opinion, would qualify for registration as such;

(ii) one person who is registered as a residential contractor, but in the case of the first Board the Cabinet shall appoint a person who, in its opinion, would qualify for registration as such;

(iii) one person who is registered as a general contractor, but in the case of the first Board the Cabinet shall appoint a person who, in its opinion, would qualify for registration as such;

(iv) one person who is registered as a civil engineering contractor, but in the case of the

first Board the Cabinet shall appoint a person who, in its opinion, would qualify for registration as such;

- (v) one person who is registered as a trades contractor, but in the case of the first Board the Cabinet shall appoint a person who, in its opinion, would qualify for registration as such;
- (vi) two persons who are registered by recognized bodies as professionals in architecture, engineering, quantity surveying or any other profession relevant to the work of the Board;
- (vii) two other persons; and
- (viii) one person qualified to practise law,

and no two persons appointed under subparagraph (vi) or (vii) shall be from the same profession; and

- (b) the two members referred to in subsection (4).”;

and

- (b) by repealing subsections (6) and (7) and substituting the following subsections -

“ (6) The Cabinet shall appoint -

- (a) one member to be Chairman and another to be Deputy Chairman; and
- (b) a full-time Secretary of the Builders Board, who shall be nominated by the chief officer of the relevant ministry under the general powers conferred by the Public Service Management Law (2013 Revision), and who shall keep all minutes of the meetings, proceedings and decisions of the Board.

(7) The provisions of the Schedule shall apply to the Board; and the Cabinet may by Order delete from, add to or vary the Schedule.”.

Amendment of section 5
- registration of business
entities

5. The principal Law is amended in section 5(5) by deleting the word “Governor” and substituting the word “Cabinet”.

6. The principal Law is amended in section 6 as follows -
- Amendment of section 6
- criteria for registration
of a business entity as a
contractor
- (a) in subsection (1) -
 - (i) in paragraph (a) by deleting the words “Commission Law, 2003” and substituting the words “Commission Law (2010 Revision)”;
 - (ii) in paragraph (b) by deleting the words “Labour Law (2001 Revision)” and substituting the words “Labour Law (2011 Revision)”;
 - (iii) in paragraph (c) by deleting the words “Pensions Law (2000 Revision)” and substituting the words “Pensions Law (2012 Revision)”;
 - (b) in subsection (3) by deleting the word “Governor” and substituting the word “Cabinet”; and
 - (c) in subsection (4) by repealing paragraphs (d) and (e) and substituting the following paragraphs -
 - “(d) trades contractor; or
 - (e) civil engineering contractor.”;
 - (d) in subsection (6) by deleting the words “(Control) Law (1999 Revision)” and substituting the words “(Control) Law (2007 Revision)”;
 - (e) by inserting after subsection (10) the following subsection -
 - “(11) A project manager who hires or directs any on site labour or any contractor commits an offence and is liable on summary conviction to a fine of five hundred dollars.”.
7. The principal Law is amended in section 7(3) as follows -
- Amendment of section 7
- penalty for improper
exercise of voting rights,
etc.
- (a) by deleting the word “Governor” and substituting the word “Government”; and
 - (b) by deleting the words “Governor in Cabinet” and substituting the word “Cabinet”.
8. The principal Law is amended in section 8(6) by deleting the word “Governor” and substituting the word “Cabinet”.
- Amendment of section 8
- return of shareholdings
to be made before
commencing business
and annually
9. The principal Law is amended in section 14 as follows -
- Amendment of section
14 - fees for business
entities
- (a) by repealing subsection (1) and substituting the following subsection -
 - “(1) An application for the renewal of registration shall be made at least twenty-eight days before the date of expiry of the

registration and an application for registration or for the renewal of registration shall be accompanied by the prescribed application fee and licence fee.”; and

(b) by repealing subsection (4).

Amendment of section 15 - removal, suspension, etc., of business entities from register

10. The principal Law is amended in section 15 as follows -

(a) in subsection (1) -

(i) in paragraph (d) by deleting the words “insurance Commission Law, 2003” and substituting the words “Insurance Commission Law (2010 Revision)”;

(ii) in paragraph (e) by deleting the words “Labour Law (2001 Revision)” and substituting the words “Labour Law (2011 Revision)”;

(iii) in paragraph (f) by deleting the words “Pensions Law (2000 Revision)” and substituting the words “Pensions Law (2012 Revision)”;

(b) by repealing subsection (3)(c) and substituting the following paragraph -

“(c) is a person in respect of whom an order has been made under the Mental Health Law, 2013;”;

(c) in subsection (4) by deleting the words “under section 24” and substituting the words “under section 29”.

Amendment of section 16 - registration of qualified individuals

11. The principal Law is amended in section 16 as follows -

(a) in subsection (4) by deleting the word “Governor ” and substituting the word “Cabinet”;

(b) by inserting after subsection (5) the following subsection -

“(5A) Where -

(a) at the date of commencement of this section, a business entity has in its employment a non-Caymanian who is qualified to be registered as a qualified individual;

(b) the non-Caymanian has been employed with the business entity for a period of not less than three years immediately preceding the date of commencement of this section; and

(c) the business entity does not have in its employment a Caymanian who is qualified to be registered as a qualified individual,

the non-Caymanian may be registered as a qualified individual; but where the non-Caymanian’s employment with the business

entity was for a period of less than three years immediately preceding the date of commencement of this section, the non-Caymanian may be registered as a qualified individual only until the first renewal of the business entity's licence.”.

12. The principal Law is amended in section 19 as follows - Amendment of section 19 - fees for qualified individuals
- (a) by repealing subsection (1) and substituting the following subsection -
“ (1) An application for the renewal of registration shall be made at least twenty-eight days before the date of expiry of the registration and an application for registration or for the renewal of registration shall be accompanied by the prescribed application fee and licence fee.”; and
 - (b) by repealing subsection (4).
13. The principal Law is amended in section 20 as follows - Amendment of section 20 - removal, suspension, etc., of qualified individuals from register
- (a) by repealing subsection (3)(c) and substituting the following paragraph -
“(c) is a person in respect of whom an order has been made under the Mental Health Law, 2013.”; and
 - (b) in subsection (4) by deleting the words “under section 15” and substituting the words “under section 29”.
14. The principal Law is amended in section 24(1) by deleting the words “Management Law, 2005” and substituting the words “Management Law (2013 Revision)”. Amendment of section 24 - appointment and powers of enforcement officers
15. The principal Law is amended in section 29 as follows - Amendment of section 29 - appeals
- (a) by deleting the words “Appeals Tribunal” wherever they appear and substituting the words “Appeal Tribunal”; and
 - (b) in subsection (4)(a) by deleting the words “under section 17” and substituting the words “under section 26”.
16. The principal Law is amended in section 30(5) by deleting the words “Governor in Cabinet” and substituting the word “Cabinet”. Amendment of section 30 - right of public to complain
17. The principal Law is amended in section 39(1) by deleting the word “Governor” and substituting the word “Cabinet”. Amendment of section 39 - directives
18. The principal Law is amended in section 40 by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”. Amendment of section 40 - regulations

The Builders (Amendment) Bill, 2015

Amendment of Schedule
1 - the Builders Board

19. The principal Law is amended in Schedule 1 as follows -

- (a) by deleting the heading "**SCHEDULE 1**" and substituting the heading "**SCHEDULE**";
- (b) by deleting the word "Governor" wherever it appears in paragraphs 2, 5(4), 6, 8 and 10 and substituting the word "Cabinet";
- (c) in paragraph 5(2) by deleting the word "five" and substituting the word "six"; and
- (d) in paragraph 6 by deleting the words "as he may" and substituting the words "as the Cabinet may".

Repeal of Schedule 2 -
fees for business entities
and qualified individuals

20. The principal Law is amended by repealing Schedule 2.

Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.