

CAYMAN ISLANDS



Supplement No. 12 published with Extraordinary  
Gazette No. 71 dated 9<sup>th</sup> September, 2016.

**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF NON-  
PROFIT ORGANISATIONS; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**



## **THE NON-PROFIT ORGANISATIONS BILL, 2016**

### **MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to provide for the establishment of a registration system which will deal with the regulation and monitoring of non-profit organisations.

#### **PART 1 - PRELIMINARY**

Part 1 contains the preliminary provisions which comprise clauses 1 and 2.

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

Clause 2 is the interpretation clause which sets out the definitions of various words and terms used throughout the Bill. Of particular note are the definitions of “controller”, “non-profit organisation”, “Registrar” and “wrongdoing”.

#### **PART 2 - APPOINTMENT OF A REGISTRAR OF NON-PROFIT ORGANISATIONS**

Part 2 deals with the appointment and functions of the Registrar of Non-Profit Organisations and contains clauses 3 and 4.

Clause 3 provides for the appointment of a Registrar of Non-Profit Organisations.

Clause 4 sets out the functions of the Registrar of Non-Profit Organisations, which include -

- (a) receiving and processing applications for registration as a non-profit organisation;
- (b) receiving annual financial statements; and
- (c) ensuring that all non-profit organisations have appropriate internal controls in place including an appropriate system to identify conduct which may involve the financing of terrorism.

#### **PART 3 – REGISTRATION OF NON-PROFIT ORGANISATIONS**

Part 3 deals with the registration of non-profit organisations and contains clauses 5 to 9.

Clause 5 provides for the establishment and maintenance of a register of non-profit organisations into which the name, address and any other information of every non-profit organisation approved by the Registrar is required to be entered.

Clause 6 prohibits a non-profit organisation from soliciting or raising contributions from the public within the Islands or elsewhere unless it is registered or exempt from the duty to register.

Clause 7 provides that the Registrar shall conclude the registration process as a non-profit organisation within thirty days of its receipt. It also sets out the grounds for refusal of an application. These include –

- (a) the activities of the non-profit organisation do not fall within the definition of non-profit organisation under the legislation;
- (b) the non-profit organisation is established for illegal purposes;
- (c) the non-profit organisation does not have a connection with the Islands; or
- (d) the information represented on the application for registration of the non-profit organisation is manifestly incorrect.

Clause 8 provides the grounds for cancellation or suspension of the registration of a non-profit organisation. These include -

- (a) engaging in wrongdoing;
- (b) failure to maintain proper financial statements reflecting all monies received and expended;
- (c) failure to submit annual returns; and
- (d) failure to pay any prescribed fees required for registration.

Clause 9 provides a non-profit organisation with the right of appeal to the Cabinet against a decision by the Registrar to refuse its registration application or to cancel or suspend its registration.

#### **PART 4 - POWER OF ATTORNEY GENERAL TO INSTITUTE INQUIRIES**

Part 4 deals with the power of the Attorney General to institute inquiries into the activities of non-profit organisations. It contains clauses 10 and 11.

Clause 10 permits the Attorney General, in relation to a non-profit organisation to either independently or pursuant to a referral from the Registrar to inquire into -

- (a) its purposes, administration and management; and
- (b) its value and source or application of money received or disbursed.

The clause also provides for an inquiry to be commenced for the purpose of investigating any non-profit organisation that is suspected of having committed an offence under the Terrorism Law (2015 Revision) or the Proceeds of Crime Law (2016 Revision).

Clause 11 makes it an offence for a person to knowingly or recklessly provide the Attorney General with information that is false or misleading.

#### **PART 5 – FINANCIAL STATEMENTS AND ANNUAL RETURNS**

Part 5 provides for the maintenance of financial statements and contains clauses 12 to 15.

Clause 12 requires a controller of a non-profit organisation to keep proper financial statements with respect to -

- (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure took place;
- (b) all sales and purchases of property;
- (c) all sums of money raised through fundraising; and
- (d) non-monetary transactions.

Clause 13 provides that a non-profit organisation with a gross annual income in excess of two hundred and fifty thousand dollars and which remits thirty per cent or more of that gross annual income overseas shall have its financial statements reviewed in accordance with internationally accepted standards on review engagements or such other review engagement standards as may be prescribed.

It further provides that a review shall be conducted by -

- (a) a duly qualified accountant; or
- (b) a licenced accountant.

Clause 14 permits a non-profit organisation to appeal to the Cabinet against a decision of the Registrar to request a review of its financial statements.

Clause 15 requires a non-profit organisation to ensure that within six months of the end of the financial year, annual returns are prepared in relation to the non-profit organisation.

#### **PART 6 – ADMINISTRATIVE PENALTIES**

Part 6 provides for the imposition of administrative penalties and contains clauses 16 to 20.

Clause 16 permits the Registrar to impose a penalty of a maximum of three thousand dollars on a controller who fails, without reasonable cause, to comply with -

- (a) the provisions for registration;
- (b) the provisions dealing with the preparation of financial statements and annual returns; or
- (c) a request made by the Registrar to prove that an exempted non-profit organisation is acting in compliance with a relevant law.

Clause 17 provides that the penalties imposed under the legislation are administrative penalties which shall not be imposed if the Registrar is satisfied that the controller took all reasonable steps and exercised due diligence to ensure compliance with the provisions of the legislation.

Clause 18 sets out the procedure to be followed by the Registrar before imposing a penalty.

Clause 19 provides that a person who is dissatisfied with a decision of the Registrar in relation to the imposition of a penalty shall have a right of appeal to the Cabinet and the court respectively.

Clause 20 prohibits the Registrar from issuing a penalty notice to a person with respect to a contravention of the legislation after the end of a period of three years commencing on the date that the Registrar first became aware of the contravention.

#### **PART 7 - EXEMPTIONS**

Part 7 provides for the exemption of non-profit organisations. It consists of clause 21.

Clause 21 provides that the legislation shall not apply to non-profit organisations regulated by a government entity or by a relevant law or any entity that Cabinet, by Order, exempts.

#### **PART 8 - MISCELLANEOUS**

Part 8 sets out the miscellaneous provisions and comprises clauses 22 to 24.

Clause 22 deals with the making of regulations in order to facilitate the operation of the legislation.

Clause 23 provides that all expenses incurred by the Registrar in connection with the Registrar's functions shall be defrayed out of moneys voted for the purposes by the Legislative Assembly.

Clause 24 contains transitional provisions.

The Schedule contains the information to be included in an application for registration as a non-profit organisation.

**THE NON-PROFIT ORGANISATIONS BILL, 2016**

**ARRANGEMENT OF CLAUSES**

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2. Interpretation

**PART 2 - APPOINTMENT OF A REGISTRAR OF NON-PROFIT ORGANISATIONS**

3. Appointment of Registrar of Non-Profit Organisations
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**PART 3 - REGISTRATION OF NON-PROFIT ORGANISATIONS**

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**PART 5 – FINANCIAL STATEMENTS AND ANNUAL RETURNS**

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**PART 6 - ADMINISTRATIVE PENALTIES**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF NON-PROFIT ORGANISATIONS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 - PRELIMINARY**

1. (1) This Law may be cited as the Non-Profit Organisations Law, 2016. Short title and commencement  
(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.
2. In this Law - Interpretation  
“company” has the meaning assigned by section 2 of the Companies Law (2016 Revision); (2016 Revision)  
“court” means a court in the Islands of competent jurisdiction;  
“controller” means a person who owns, controls or directs a non-profit organisation and includes -
  - (a) a trustee of a trust, where the non-profit organisation is established as a trust;
  - (b) a director of a company, where the non-profit organisation is established as a company;
  - (c) a general partner of a partnership, where the non-profit organisation is established as a partnership;

(2007 Revision)

- (d) a person responsible for the management and administration of an unincorporated association, where the non-profit organisation is established as an unincorporated association;
- (e) a member of a corporation, where the non-profit organisation is established as an entity incorporated under the Churches Incorporation Law (2007 Revision); or
- (f) a person not specified in paragraphs (a), (b), (c), (d) or (e) where the non-profit organisation is established by that person;

“financial year” means the financial year of a non-profit organisation;

“Minister” means the member of the Cabinet charged with responsibility for non-profit organisations, in accordance with section 54 of the Cayman Islands Constitution Order, 2009;

“non-profit organisation” includes a company or body of persons, whether incorporated or unincorporated, or a trust -

- (a) established or which identifies itself as established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the public benefit or a section of the public within the Islands or elsewhere; and
- (b) which solicits contributions from the public or a section of the public within the Islands or elsewhere;

“public officer” has the meaning assigned to that expression under section 124 of Schedule 2 to the Cayman Islands Constitution Order, 2009;

“register” means the register of non-profit organisations established and maintained by the Registrar in accordance with section 5(1);

“Registrar” means the Registrar of Non-Profit Organisations appointed under section 3; and

“wrongdoing” in relation to a non-profit organisation, means -

- (a) a breach of duty owed to the non-profit organisation or any of its contributors; or
- (b) conduct that constitutes a criminal offence.

## **PART 2 - APPOINTMENT OF A REGISTRAR OF NON-PROFIT ORGANISATIONS**

Appointment of  
Registrar of Non-Profit  
Organisations

3. (1) The Governor shall appoint a public officer to be known as the Registrar of Non-Profit Organisations who shall have such functions as are conferred on the Registrar by this Law.

(2) The Governor shall appoint such other public officers as the Governor thinks may be necessary to assist the Registrar in the proper discharge of the functions of the Registrar.

4. (1) The functions of the Registrar include -

Functions of the Registrar

- (a) receiving and processing applications for registration as a non-profit organisation;
- (b) obtaining annually, through annual returns, information on -
  - (i) the purposes and activities of the non-profit organisation;
  - (ii) the identity of the person who owns, controls or directs the non-profit organisation;
- (c) receiving annual financial statements;
- (d) ensuring that all non-profit organisations have appropriate internal controls in place including an appropriate system to identify conduct which may involve the financing of terrorism;
- (e) ensuring that the financial statements relating to a non-profit organisation are preserved for a minimum of five years;
- (f) investigating or authorising the investigation of a non-profit organisation that is suspected of operating illegally;
- (g) guiding non-profit organisations with regard to best practices; and
- (h) performing any other function conferred by this Law or that the Minister, after consultation with the Cabinet, may direct the Registrar to perform.

(2) The Registrar may, after consultation with the Minister, by instrument in writing, delegate to a public officer appointed under section 3(2) any of the Registrar's functions specified under subsection (1).

(3) The assignment or delegation of any function of the Registrar under this Law shall not prevent the exercise of that function by the Registrar.

### **PART 3 – REGISTRATION OF NON-PROFIT ORGANISATIONS**

5. (1) A register of non-profit organisations shall be established and maintained by the Registrar.

Establishment of a register of non-profit organisations

(2) The register shall include the following information with respect to a non-profit organisation -

- (a) its name, address in the Islands, telephone number and e-mail address, if any;
- (b) its purposes and activities;
- (c) the identity of the person who owns, controls or directs the non-profit organisation;
- (d) the date of its registration under this Law and if applicable, the date on which its registration was cancelled; and

(e) such other information as the Registrar considers appropriate.

(3) The register shall be open for public inspection, on such terms as the Registrar thinks fit, with respect to all information concerning a non-profit organisation.

Registration application

6. (1) An application for registration as a non-profit organisation shall be made in the prescribed form by a controller of the non-profit organisation and contain the information specified in the Schedule.

(2) A non-profit organisation shall not solicit or cause to be solicited contributions from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under this Law.

Registration process and refusal of application

7. (1) Where, pursuant to section 6(1), the Registrar receives an application for registration as a non-profit organisation, the Registrar shall conclude the registration process within thirty days of receiving that application.

(2) The Registrar shall refuse to register a non-profit organisation if -

- (a) the activities of the applicant do not fall within the definition of non-profit organisation under section 2;
- (b) the non-profit organisation is established for illegal purposes;
- (c) the non-profit organisation does not have a connection with the Islands;
- (d) the information represented on the application for registration of the non-profit organisation is manifestly incorrect;
- (e) the name of the non-profit organisation -
  - (i) is identical to a name by which a non-profit organisation in existence is already registered or so nearly resembles such name or translated name so as to be calculated to deceive;
  - (ii) contains the words “royal”, “imperial” or “empire” or, in the opinion of the Registrar suggests, or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;
  - (iii) contains profane language;
  - (iv) contains the words “gaming”, “lottery”, “bank”, “insurance” or any similar word which is restricted in use by the laws of the Islands or in the opinion of the Registrar connotes any of such activities or any derivative of any of such words or of such similar words, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any of such activities; or

- (v) is different from the name in which the entity was established if the entity was established as a company, trust, partnership, foundation, or church established under the Churches Incorporation Law (2007 Revision).

(2007 Revision)

(3) Where no grounds exist under subsection (2) to refuse an application to register a non-profit organisation, the Registrar shall -

- (a) notify the non-profit organisation in writing of the Registrar's decision to register the non-profit organisation;
- (b) enter into the register all particulars provided in section 5(2); and
- (c) issue a certificate of registration to the non-profit organisation.

(4) A certificate of registration issued under subsection (3)(c) shall have effect indefinitely.

(5) It shall be the duty of a controller of a non-profit organisation to ensure that the Registrar is notified of any change in its purposes and activities, constitutional documents or any of the particulars entered in the register within thirty days of such change.

(6) Where a non-profit organisation has ceased to exist, the person who was a controller at the time of the operation of the non-profit organisation is obligated to notify the Registrar of the non-existence of the non-profit organisation.

(7) The Cabinet may give general policy directions to the Registrar relating to the exercise of the Registrar's functions under this section and the Registrar shall comply with such directions.

8. (1) The Registrar shall cancel or suspend the registration of a non-profit organisation if -

Cancellation or suspension of registration

- (a) the non-profit organisation submits a written request to the Registrar for its registration to be cancelled or suspended; or
- (b) after an investigation, it is proven that the non-profit organisation-
  - (i) engaged in or is engaging in wrongdoing;
  - (ii) failed, without reasonable cause, to maintain proper financial statements reflecting all monies received and expended;
  - (iii) failed, without reasonable cause, to submit annual returns; or
  - (iv) failed, without reasonable cause, to pay any prescribed fees required for registration.

(2) Where the Registrar or the Attorney General determines that an inquiry into the operations of a non-profit organisation is required, the Registrar may suspend the registration of the non-profit organisation during the period of that inquiry.

(3) In any case where the registration of a non-profit organisation has been or is liable to be cancelled or suspended the Registrar shall give notice to that non-profit organisation at its registered address stating that its registration has been cancelled or suspended or is liable to be cancelled or suspended at the end of thirty days of the date of the notice or within such other period as the Registrar determines, unless the non-profit organisation shows cause in writing, to the satisfaction of the Registrar, why its registration should not be cancelled or suspended.

(4) In circumstances where the registration of a non-profit organisation has been cancelled or suspended, the Registrar shall, as soon as is practicable, notify the Attorney General of that cancellation or suspension and -

- (i) in the case of a cancellation, the Registrar may make a recommendation to the Attorney General for the money or other property received by the non-profit organisation to be dealt with in accordance with section 10(11) and (12); or
- (ii) in the case of a suspension, the Registrar may make a recommendation to the Attorney General that an order be made prohibiting the non-profit organisation from dealing with any money or other property in its control.

Appeal against refusal, cancellation or suspension of registration

9. (1) A non-profit organisation may appeal to the Cabinet against a decision made under section 7(3) to refuse an application for registration or under section 8 to cancel or suspend its registration.

(2) Where the non-profit organisation is dissatisfied with the decision made by the Cabinet under subsection (1), it may appeal to the court against the decision of the Cabinet and the court may allow or dismiss the appeal or make an order remitting the matter for further consideration by the Cabinet or the Registrar.

(3) The Registrar may revoke the Registrar's decision to refuse, cancel or suspend the registration of a non-profit organisation if it appears to the Registrar that there has been a change in circumstances which justify the revocation.

#### **PART 4 - POWER OF ATTORNEY GENERAL TO INSTITUTE INQUIRIES**

Inquiries into condition and management of non-profit organisations

10. (1) The Attorney General may, either independently or pursuant to a referral from the Registrar, inquire into any issue concerning the operations of a non-profit organisation including -

- (a) its purposes, administration and management; and
- (b) its value and source or application of money or other property received or distributed.

(2) An inquiry referred to in subsection (1) may specifically be carried out for the purpose of investigating any non-profit organisation that is suspected of having committed an offence under the Terrorism Law (2015 Revision), the Proceeds of Crime Law (2016 Revision) or any other law in which a contravention may constitute wrongdoing on the part of the non-profit organisation.

(2015 Revision)

(2016 Revision)

(3) The Attorney General may appoint an officer or any other person to conduct an inquiry in any case for the purposes of subsections (1) and (2).

(4) A controller shall, on a written request by the Attorney General or the Attorney General's appointee -

- (a) furnish financial statements in writing with respect to any matter in question at the inquiry;
- (b) return answers in writing to questions;
- (c) verify statements or answers by statutory declaration;
- (d) provide copies of documents in the controller's custody or under the controller's control which relate to a matter in question at the inquiry and verify them by statutory declaration;
- (e) attend at a specified time and place in order to give evidence or produce documents;
- (f) provide all books, papers, writings and documents in relation to the non-profit organisation or to the administration, management, value, condition and application of the property and income of the non-profit organisation; and
- (g) answer all questions and give all assistance in connection with the inquiry that the controller is reasonably able to answer or give.

(5) The Attorney General shall be entitled, without payment, to inspect and take copies of or extracts from the records or other documents of any court, public registry, public authority or office of records for any purpose connected with the discharge of the functions of the Attorney General with respect to a non-profit organisation.

(6) A person who fails to comply with a request under subsection (4) commits an offence and is liable on summary conviction, to a fine of three thousand dollars or to imprisonment for a term of one year or to both.

(7) For the purposes of an inquiry, evidence may be taken on oath and the person conducting the inquiry may, for that purpose, administer the oath or instead of administering an oath, require the person examined to make and

subscribe a declaration of the truth of the matters about which the second-mentioned person is examined.

(8) A person appointed by the Attorney General to conduct an inquiry shall provide a report of that inquiry to the Attorney General.

(9) A copy of the report shall, if certified by the Attorney General to be a true copy, be admissible as evidence -

- (a) of any fact stated in the report; or
- (b) of the opinion of a person as to any matter referred to in the report,

in any legal proceedings instituted in respect of a non-profit organisation as a result of an inquiry under this section.

(10) Where, at any time after the Attorney General has instituted an inquiry under this section, the Attorney General is satisfied -

- (a) that there has been wrongdoing on the part of the non-profit organisation;
- (b) that there is or has been any misconduct or mismanagement in the administration of the non-profit organisation;
- (c) that a non-profit organisation may have committed a breach of this Law or any other law; or
- (d) that it is necessary or desirable to act for the purpose of –
  - (i) protecting the property of the non-profit organisation;
  - (ii) securing the proper application of the property for the purposes of the non-profit organisation; or
  - (iii) protecting property that may be given to the non-profit organisation,

the Attorney General may refer the matter to the Director of Public Prosecutions for a determination or take such action as set out in subsection (11).

(11) The action referred to in subsection (10) may include making an application to the court in respect of any money or other property of the non-profit organisation for an order to -

- (a) require a controller to carry out the purposes for which the money or other property is held and to comply with the provisions of any scheme relating to the non-profit organisation;
- (b) establish a scheme for the administration of the non-profit organisation;
- (c) require a controller to meet that controller's liability for any breach of trust affecting the money or other property as the court may direct;



- (d) remove a controller who has been responsible for, or privy to, any wrongdoing, misconduct or mismanagement in the administration of a non-profit organisation, or has, by that controller's conduct, contributed to it or facilitated it;
- (e) appoint another person as a controller of the non-profit organisation;
- (f) exclude any purpose from the purposes for which the money or other property may be used, applied or disposed of;
- (g) give directions in respect of the administration of the trust, or in respect of any inquiry or in respect of any question to be answered or assistance to be given by any person in connection with that inquiry;
- (h) direct that, on and after the date of the order or any subsequent date specified in the order, the property subject to the trust shall not be used, applied or disposed of otherwise than in accordance with a scheme that, after the date of the order, is approved by the court;
- (i) preclude the employment or engagement of any named person in the affairs of the non-profit organisation;
- (j) direct a bank which or person who is in control of the money or other property of the non-profit organisation not to distribute the money or other property without the approval of the court or the Attorney General or the Attorney General's appointee;
- (k) restrict the transactions which may be entered into or the nature or amount of the payments which may be made, in the administration of the non-profit organisation, without the approval of the court or the Attorney General, or a person authorised by the Attorney General; and
- (l) appoint a receiver of the money or other property of the non-profit organisation.

(12) A person appointed by order of the court under this section as a receiver of the money or other property of a non-profit organisation -

- (a) may require a controller to deliver to the receiver any money or other property for which the person has been appointed receiver or to give to the receiver all such information concerning that money or other property as may reasonably be required;
- (b) may acquire and take possession of any money or other property for which the person has been appointed receiver;
- (c) may deal with any money or other property that the person has acquired or which the person has taken possession of in any manner in which a controller might lawfully have dealt with the money or other property; and

- (d) has such other powers and duties in respect of the money or other property as the court specifies in the order.

False or misleading information or withholding information requested by the Attorney General

11. (1) A person who knowingly or recklessly provides the Attorney General with information that is false or misleading commits an offence if the information is provided -

- (a) in purported compliance with a requirement imposed by or under this Law; or
- (b) otherwise than is mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Attorney General for the purpose of discharging the Attorney General's functions under this Law.

(2) A person who wilfully alters, suppresses, conceals or destroys a document that that person is liable by or under this Law to produce to the Attorney General, commits an offence.

(3) A person who fails to discharge a duty imposed by or under this Law or wilfully withholds information when requested by the Attorney General to produce such information, commits an offence.

(4) A person who commits an offence under this section is liable, on summary conviction, to a fine of three thousand dollars or to imprisonment for a term of one year or to both.

#### **PART 5 – FINANCIAL STATEMENTS AND ANNUAL RETURNS**

Keeping financial statements

12. (1) A controller of a non-profit organisation shall cause proper financial statements to be kept of -

- (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure relate;
- (b) all sales and purchases of property;
- (c) all sums of money raised through fundraising;
- (d) non-monetary transactions;
- (e) records of assets and liabilities; and
- (f) any other matter that may be prescribed.

(2) A controller of a non-profit organisation shall ensure that the financial statements show and explain all the transactions of the non-profit organisation and disclose at any time, with reasonable accuracy, its financial position.

Review of financial statements

13. (1) A non-profit organisation with a gross annual income in excess of two hundred and fifty thousand dollars and which remits thirty per cent or more of that gross annual income outside of the Islands shall have its financial statements

reviewed in accordance with internationally accepted standards on review engagements or such other review engagement standards as may be prescribed.

(2) A review required under subsection (1) shall be conducted by an independent -

- (a) duly qualified accountant; or
- (b) licenced accountant.

(3) Notwithstanding subsection (1), the Registrar may, where the Registrar considers it necessary to do so, require that the financial statements of a non-profit organisation registered under this Law be reviewed in accordance with subsections (1) and (2).

(4) A person who has been retained to review the financial statements under this section shall -

- (a) have a right of access to all books, financial statements and documents relating to the non-profit organisation which are in the possession or control of a controller or to which a controller has access;
- (b) be entitled to require from a controller of a non-profit organisation, past or present officer or employee of the non-profit organisation such information and explanation as the first-mentioned person thinks necessary for the performance of that person's duties; and
- (c) make an internationally accepted report about the financial statements of the non-profit organisation and submit a copy of that report to the controller of the non-profit organisation.

(5) Where a review of the financial statements of a non-profit organisation is required under this section, a controller of a non-profit organisation shall ensure that the report resulting from a review of the financial statements is submitted to the Registrar within nine months of the end of the financial year.

(6) The Registrar may approve a written request by a controller of a non-profit organisation to extend the period for submitting a report on the review of financial statements by three months where the initial nine month period provided under subsection (5) has expired.

(7) The expenses of a review, including the remuneration of the person conducting the review, shall be paid by the non-profit organisation.

(8) The Registrar shall, at the request of the Attorney General, provide the Attorney General with a copy of a review report prepared on a non-profit organisation.

(9) The financial statements relating to a non-profit organisation shall be preserved by the non-profit organisation for a period of at least five years from the end of the financial year unless the non-profit organisation ceases to exist.

(10) In this section, the “gross annual income” of a non-profit organisation includes -

- (a) income received from the provision of goods and services;
- (b) rental income;
- (c) interest on other income derived from investments;
- (d) receipt of donations and money; and
- (e) the award of grants.

Appeals against a review request

14. (1) A non-profit organisation may appeal to the Cabinet against a decision of the Registrar to request a review in accordance with section 13(2) and (3).

(2) Where a non-profit organisation is dissatisfied with a decision made by the Cabinet pursuant to subsection (1), it may appeal to the court against that decision and the court may allow or dismiss the appeal or make an order remitting the matter for further consideration by the Cabinet or the Registrar.

(3) An appeal to the court against a decision of the Registrar or Cabinet to require a review may be brought by a controller of the non-profit organisation or by any person who has supervision of the financial statements of the non-profit organisation.

Duty to prepare annual returns

15. (1) A controller of a non-profit organisation shall ensure that within six months of the end of the financial year, annual returns -

- (a) are prepared in relation to the non-profit organisation;
- (b) contain such particulars as may be prescribed; and
- (c) are submitted to the Registrar.

(2) The Registrar may approve a written request made by a controller of a non-profit organisation to extend the period for submitting annual returns by two months where the initial six month period provided under subsection (1) has expired.

#### **PART 6 – ADMINISTRATIVE PENALTIES**

Failure to comply with Law

16. A controller who fails, without reasonable cause, to comply with -

- (a) the provisions for registration under section 6(1);
- (b) the provisions under Part 5 dealing respectively with the preparation of financial statements and annual returns; or
- (c) a request under section 21(3),

is liable to a maximum penalty of three thousand dollars and, in the case of a continuing breach, to a further penalty not exceeding one hundred dollars for

every day or part thereof during which the breach continues after the determination by the Registrar.

17. (1) The penalties referred to under section 16 are administrative penalties which may be imposed by the Registrar.

Imposition of administrative penalties

(2) The Registrar shall not impose a penalty on a controller if the Registrar is satisfied that the controller took all reasonable steps and exercised due diligence to ensure compliance with the provisions of this Law.

(3) The Registrar, in deciding whether to impose a penalty on a controller, shall take into account the following matters -

- (a) the nature and seriousness of the contravention;
- (b) whether the controller has previously contravened this Law or any relevant legislation;
- (c) whether the contravention was caused by the negligence of the controller;
- (d) the ability of the controller to pay the penalty;
- (e) any gain resulting to the controller as a result of the contravention; and
- (f) such other matters as the Registrar considers appropriate.

(4) Where a controller fails to comply with more than one provision of this Law and becomes liable to more than one penalty, the Registrar may compound the penalties.

(5) The Registrar may recover a penalty imposed by virtue of this section in civil proceedings as a debt.

(6) A penalty imposed by virtue of this section shall form part of the general revenue of the Islands.

18. (1) The Registrar shall, before imposing a penalty, provide written notice to a controller stating -

Procedure to be followed by the Registrar

- (a) the intention to impose a penalty and the reason for the intention to impose the penalty;
- (b) the amount of the proposed penalty; and
- (c) the entitlement of the person to make representation to the Registrar in accordance with subsection (2).

(2) Where a controller receives a penalty notice, that controller may, within twenty-one days from the date of the notice, make representation to the Registrar indicating why the controller should not be required to pay the penalty or why the proposed penalty should be reduced.

(3) The Registrar may, at any time prior to the issuance of a penalty notice under subsection (1), withdraw the notice and substitute a new notice stating a different penalty.

(4) The Registrar shall notify the controller of the Registrar's decision under subsection (3) and where the Registrar varies the penalty, of the further steps, if any, taken in relation to the controller.

(5) Before imposing an administrative penalty on a controller, the Registrar shall consider any representations received under subsection (2).

(6) Subject to subsections (2) and (7), a controller who receives a penalty notice shall pay the penalty stated in the notice to the Registrar within such period as the Registrar may determine.

(7) The Registrar may agree to the payment of an administrative penalty in instalments over such period of time as the Registrar considers appropriate.

Appeal against administrative penalty

19. (1) A controller who is dissatisfied with a decision of the Registrar in relation to the imposition of a penalty may, within fourteen days of receiving the penalty notice, appeal to the Cabinet.

(2) An appeal of a decision of the Registrar to impose a penalty does not operate as a stay on the obligation of a controller to pay the penalty.

(3) The Cabinet may, after hearing an appeal -

- (a) affirm or vary the decision of the Registrar; or
- (b) set aside the decision appealed against and remit the matter concerned for reconsideration by the Registrar in accordance with such direction as the Cabinet considers fit.

(4) A controller who is dissatisfied with a decision of the Cabinet under subsection (3) may, within twenty-one days of the date on which notice of the written reasons for the decision was received, appeal to the court against the decision.

Limitation period

20. (1) The Registrar shall not issue a penalty notice to a controller with respect to a contravention of this Law after the end of a period of three years commencing on the date that the Registrar first became aware of the contravention.

(2) For the purposes of subsection (1), the Registrar is deemed to have become aware of a contravention if the Registrar has received information from which the contravention can reasonably be inferred.

## PART 7 - EXEMPTIONS

Exemption of organisations

21. (1) In this Part -

“government entity” means any body of Government and includes a ministry, portfolio, statutory authority, company, board, department or office;

“principal regulator” means a government entity or any government entity designated under a relevant Law as being responsible for the administration of that Law; and

“relevant Law” means the Law under which an organisation is regulated.

(2) This Law does not apply to -

- (a) a non-profit organisation which has a government entity as its principal regulator;
- (b) a non-profit organisation established as a trust, the trusteeship of which comprises or includes a trust company licensed or registered to carry on trust business or a controlled subsidiary thereof registered under the Banks and Trust Companies Law (2013 Revision); or
- (c) any other entity that Cabinet may, by Order, exempt.

(3) Notwithstanding the exemption of a non-profit organisation falling under subsection 2(b), the Registrar may request from that non-profit organisation documentation which reflects that it is acting in compliance with the licensing, registration, accounting and audit requirements provided in the relevant law that governs its operations.

#### **PART 8 - MISCELLANEOUS**

22. The Cabinet may make regulations generally for the proper carrying out of this Law, and in particular, but without prejudice to the generality of the foregoing, may make regulations prescribing - Regulations

- (a) the particulars to be submitted by a non-profit organisation applying to be registered;
- (b) the time period within which notice of the acceptance or refusal of an application to register should be communicated;
- (c) the application fees and other fees to be paid on registration;
- (d) the form of a certificate of registration;
- (e) the notification of a subsequent change in the material particulars contained in an application for registration;
- (f) the particulars to be entered in the register and the fees to be paid by a member of the public who wishes to view the register;
- (g) the form in which financial statements and annual returns are to be submitted;
- (h) the particulars to be contained in the financial statements and annual returns; and

- (i) all matters that may be necessary for giving effect to the penalty system under the Law and the quantum of penalties for acting in contravention of this Law.

Expenses

23. All expenses incurred by the Registrar in connection with the Registrar's functions shall be defrayed out of moneys voted for the purposes by the Legislative Assembly.

Transitional provisions

24. (1) A non-profit organisation which, immediately before the date of commencement of this Law, was in operation may continue to carry out its activities without registration under this Law during the period of six months beginning with that date or for such other period as the Registrar may determine provided that the period does not exceed twelve months.

(2) If within the six month period provided under subsection (1) an application is made for registration, the non-profit organisation may continue to carry out its activities without registration under this Law until that application is finally disposed of or withdrawn.

(3) Every matter and proceeding commenced in any court in relation to a non-profit organisation immediately before the date of the commencement of this Law shall be continued, completed and enforced as if this Law was not in force.

## **SCHEDULE**

(Section 6(1) )

### **Information required for application to register as a Non-Profit Organisation**

An application for registration as a non-profit organisation shall include, where applicable, the following -

- (a) the declared purposes of the non-profit organisation;
- (b) the identity, address and other contact information of a controller and other senior officers or members of the management personnel of the non-profit organisation;
- (c) copies or particulars of the trust, trust deed and any other organisational documents;
- (d) copies of the constitution, the memorandum of association and the articles of association of the non-profit organisation;
- (e) information with respect to the location of the money and other property of the non-profit organisation and its banking arrangements;
- (f) the source or anticipated source of contributions;
- (g) how contributions are to be applied; and
- (h) any other evidence which reflects the organisational structure and functions of the non-profit organisation.



Passed by the Legislative Assembly the      day of      , 2016.

Speaker.

Clerk of the Legislative Assembly.