

CAYMAN ISLANDS



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**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.

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 “fiduciary”, “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, considering and processing applications for registration as a non-profit organisation;
- (b) obtaining information on the objectives of the non-profit organisation’s activities and the identity of the person who owns, controls or directs the non-profit organisation;
- (c) receiving annual financial statements;
- (d) sharing information with other competent authorities where relevant; and
- (e) ensuring that all non-profit organisations have appropriate internal controls in place.

#### **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 consider an application for registration as a non-profit organisation within thirty days of its receipt and that the factors to be taken into account in considering an application shall include -

- (a) the declared purposes of the non-profit organisation;
- (b) the mission statement of the non-profit organisation;
- (c) whether the non-profit organisation is established for charitable purposes;
- (d) whether the non-profit organisation has a genuine connection with the Islands;
- (e) whether the name of the non-profit organisation is undesirable or misleading;
- (f) the identity of the fiduciary and other members of the non-profit organisation;
- (g) copies or particulars of the trust, trust deed and any other organisational documents;
- (h) information with respect to the location of the money of the non-profit organisation and its banking arrangements;
- (i) the source or anticipated source of contributions;
- (j) whether registration of the non-profit organisation is contrary to public interest; and
- (k) evidence of how contributions are to be applied.

Additionally, clause 7(4) provides that the Registrar may refuse to register a non-profit organisation where -

- (a) the non-profit organisation is not established for charitable purposes;
- (b) the non-profit organisation does not have a genuine connection with the Islands;
- (c) the non-profit organisation's name is undesirable or misleading;
- (d) the non-profit organisation is established for illegal purposes;
- (e) registration of the non-profit organisation is contrary to public interest; or
- (f) the Registrar has found any other reason that the non-profit organisation is unsuitable for registration.

Clause 8 provides for the cancellation of the registration of a non-profit organisation in circumstances where the Registrar determines that a non-profit organisation is either in breach of its obligations or has substantially departed from the purpose for which it was registered. The grounds for the cancellation of the registration of non-profit organisation include -

- (a) engaging in wrongdoing;
- (b) failure to maintain accounts containing a statement of all monies received for charitable purposes and the expenditure thereof;

- (c) failure to provide the findings of an annual financial examination when requested;
- (d) failure to comply with requests for information required by the Registrar on the status of the non-profit organisation;
- (e) failure to maintain adequate accounts and records of contributions and contributors;
- (f) engaging in activities that are incompatible with charitable purposes; and
- (g) failure to comply with any direction issued by the Registrar under this legislation.

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 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 objects, administration and management; or
- (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 (2014 Revision) and it requires any person concerned in the management and administration of a non-profit organisation to provide the Attorney General with any document requested in furtherance of an inquiry.

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 – ACCOUNTS AND ANNUAL RETURNS**

Part 5 provides for the maintenance of books of account and contains clauses 12 to 15.

Clause 12 requires a fiduciary of a non-profit organisation to keep proper books of account 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 shall have its books of account examined in accordance with international accounting standards by -

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

The Registrar may, in his discretion, require that the books of account of a non-profit organisation whose gross annual income is less than two hundred and fifty thousand dollars be examined.

Clause 14 permits a non-profit organisation to appeal to the Cabinet against a decision of the Registrar to request an examination of its accounts.

Clause 15 requires a non-profit organisation to ensure that within three 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.

#### **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 three thousand dollars on a fiduciary who fails, without reasonable cause, to comply with -

- (a) the provisions for registration;
- (b) the provisions dealing with the preparation of books of account 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 fiduciary 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 his functions shall be defrayed out of moneys voted for the purposes by the Legislative Assembly.

Clause 24 contains the transitional provisions.

**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**

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

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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. (1) In this Law - Interpretation  
“company” has the meaning assigned by section 2 of the Companies Law (2013 (2013 Revision)  
Revision);  
“court” means a court in the Islands of competent jurisdiction;  
“fiduciary” 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 person responsible for all aspects of the management and  
administration of an unincorporated association, where the non-  
profit organisation is established by an unincorporated  
association; or

- (d) a person not specified in paragraphs (a), (b) and (c), where the non-profit organisation is established by that person;

“financial year” means a year ending on 31 December;

“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” means 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 objectives, 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;

“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, includes -

- (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 an officer to be known as the Registrar of Non-Profit Organisations who shall have such functions as are conferred on him by this Law.

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

Functions of the  
Registrar

4. The functions of the Registrar include -

- (a) receiving, considering and processing applications for registration as a non-profit organisation;
- (b) obtaining annually, through annual returns, information on -
  - (i) the objectives of the non-profit organisation activities;

- (ii) the identity of the person who owns, controls or directs the non-profit organisation;
- (c) receiving annual financial statements containing a detailed breakdown of income and expenses;
- (d) where legitimately required, sharing information on a non-profit organisation with other competent authorities;
- (e) ensuring that all non-profit organisations have appropriate internal controls in place including an appropriate system to combat money laundering and the financing of terrorism;
- (f) ensuring that non-profit organisations maintain records of domestic and international transactions for a minimum of five years;
- (g) investigating or authorising an investigation of a non-profit organisation that is suspected of operating illegally;
- (h) guiding non-profit organisations with regard to best practices within the charitable sector; and
- (i) performing any other function conferred by this Law or that the Minister, after consultation with the Cabinet, may direct the Registrar to perform.

### **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 purpose, objectives and activities;
- (c) the identity of the persons who own, control or direct the non-profit organisation;
- (d) the date of its registration and, if applicable, de-registration; 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 except for the name of the fiduciary of the non-profit organisation.

6. (1) A non-profit organisation shall submit, in the prescribed manner, an application to the Registrar for its registration.

Registration application

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

Consideration of  
application and  
registration factors

7. (1) The Registrar shall consider an application for registration as a non-profit organisation within thirty days of its receipt.

(2) In considering an application submitted for registration, the Registrar shall, where applicable and practicable, have regard to -

- (a) the declared purposes of the non-profit organisation;
- (b) the mission statement of the non-profit organisation;
- (c) the identity of the fiduciary and other members of the non-profit organisation;
- (d) copies or particulars of the trust, trust deed and any other organisational documents;
- (e) copies of the constitution, memorandum of association and articles of association of the non-profit organisation;
- (f) information with respect to the location of the money of the non-profit organisation and its banking arrangements;
- (g) the source or anticipated source of contributions;
- (h) evidence of how contributions are to be applied;
- (i) any other evidence which reflects the organisational structure and functions of the non-profit organisation; and
- (j) any other matter the Registrar considers relevant.

(3) Where the Registrar is satisfied that a non-profit organisation is suitable for registration, the Registrar shall -

- (a) notify the non-profit organisation in writing of the decision;
- (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) The Registrar may refuse to register a non-profit organisation where -

- (a) the non-profit organisation is not established for charitable purposes;
- (b) the non-profit organisation does not have a genuine connection with the Islands;
- (c) the name of the non-profit organisation is undesirable or misleading;
- (d) the non-profit organisation is established for illegal purposes;
- (e) registration of the non-profit organisation is contrary to public interest; or
- (f) the Registrar has found any other reason that the non-profit organisation is unsuitable for registration.

(5) It shall be the duty of a fiduciary of a non-profit organisation to ensure that the Registrar is notified of any change in its purpose, 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 the fiduciary 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 Minister may, after consultation with the Cabinet, 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) Where it is proven that a non-profit organisation is in breach of its obligations or that it has departed from the purpose for which it was registered, the Registrar shall give notice to that non-profit organisation at its registered address stating that its registration may be cancelled 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.

Cancellation of  
registration

(2) A notice specified in subsection (1) may include that the non-profit organisation has -

- (a) engaged in wrongdoing;
- (b) failed to maintain accounts containing a statement of all monies received for charitable purposes and the expenditure thereof;
- (c) failed to provide the findings of an annual financial examination when requested;
- (d) failed to comply with requests for information required by the Registrar on the status of the non-profit organisation;
- (e) failed to maintain adequate accounts and records of contributions and contributors;
- (f) failure to satisfy the criteria set out in section 7(2);
- (g) engaged in activities that are incompatible with charitable purposes; and
- (h) failure to comply with any direction issued by the Registrar under this Law,

and any other ground that the Registrar considers relevant to the status of the non-profit organisation as registered under this Law.

(3) In determining the question raised by a notice given under subsection (1), the Registrar shall take into consideration written representations made by or on behalf of the non-profit organisation and received within the thirty day period and shall make such other enquiries and receive such evidence as he considers necessary for the proper determination of the question.

(4) A non-profit organisation which fails to satisfy the Registrar that it remains fit and proper to continue its activities as a non-profit organisation shall have its registration cancelled without prejudice to the right of the non-profit organisation to submit a new application for registration.

(5) In circumstances where the registration of a non-profit organisation has been cancelled or action is taken towards the cancellation of registration, the Registrar shall as soon as is practicable, notify the Attorney General of that cancellation or action and the Registrar may make a recommendation to the Attorney General for the money received by the non-profit organisation to be dealt with in accordance with section 10(11) and (12).

(6) The Registrar may, at the same time a notification is given to the Attorney General in accordance with subsection (5), make an order prohibiting the non-profit organisation from dealing with any money in its control until the Attorney General makes a determination based on the recommendation of the Registrar.

Appeal against  
cancellation or refusal of  
registration

9. (1) A non-profit organisation may appeal to the Cabinet against a decision of the Registrar to refuse its application to register under section 6 or to cancel its registration under section 8.

(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) Where the appeal of a non-profit organisation is unsuccessful, the Registrar may reconsider a decision to refuse or cancel the registration of the non-profit organisation if it appears to the Registrar that there has been a change in circumstances which may facilitate the registration of the non-profit organisation or a revocation of the cancellation of registration of the non-profit organization.

#### **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 objects, administration and management; and
- (b) its value and source or application of money received or disbursed.

(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 (2014 Revision) or any other law in which a contravention may constitute wrongdoing on the part of the non-profit organisation. (2015 Revision)  
(2014 Revision)

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

(4) A fiduciary shall, on a written request by the Attorney General or his appointee -

- (a) furnish accounts and statements in writing with respect to any matter in question at the inquiry;
- (b) return answers in writing to questions;
- (c) verify accounts, statements or answers by statutory declaration;
- (d) provide copies of documents in his custody or under his 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 he 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 he 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 of any fact stated in the report and as evidence of the opinion of that 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, he 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 protecting the property of the non-profit organisation or securing the proper application of the property for the purposes of the non-profit organisation or 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 of the non-profit organisation for an order to -

(2011 Revision)

- (a) require a fiduciary to carry out the purposes for which the money 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 whether or not a scheme in respect of that money has been approved by the court under the Trusts Law (2011 Revision);
- (c) require a fiduciary to meet his liability for any breach of trust affecting the money as the court may direct;
- (d) remove a fiduciary who has been responsible for, or privy to, any wrongdoing, misconduct or mismanagement in the administration of a non-profit organisation, or has, by his conduct, contributed to it or facilitated it;
- (e) appoint another person as a fiduciary of the non-profit organisation;
- (f) exclude any purpose from the purposes for which the money 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 or person who holds money of the non-profit organisation not to part with the money without the approval of the court or the Attorney General or his 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 of the non-profit organisation.

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

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

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

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

be used by the Attorney General for the purpose of discharging his functions under this Law.

(2) A person who wilfully alters, suppresses, conceals or destroys a document that he 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 – ACCOUNTS AND ANNUAL RETURNS**

Keeping books of  
accounts

12. (1) Without prejudice to the duties of fiduciaries apart from this Law, it shall be the duty of each fiduciary of a non-profit organisation, unless exempted under this Law, to cause proper books of accounts to be kept in relation 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;
- (d) non-monetary transactions;
- (e) records of assets and liabilities; and
- (f) any other matter that may be prescribed.

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

Examination of  
accounts

13. (1) A non-profit organisation with a gross annual income in excess of two hundred and fifty thousand dollars shall have its books of account examined in accordance with international accounting standards or such other accounting standards as may be prescribed.

(2) An examination required under subsection (1) shall be conducted by an independent -

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

(3) The Registrar may, where he considers it necessary to do so, require that the books of accounts of a non-profit organisation whose gross annual income is two hundred and fifty thousand dollars or less for the preceding financial year be examined in accordance with subsections (1) and (2).

(4) A person who has been retained to examine the books of account under this section shall -

- (a) have a right of access to all books, accounts and documents relating to the non-profit organisation which are in the possession or control of the fiduciary or to which the fiduciary has access;
- (b) be entitled to require from any non-profit organisation fiduciary, past or present officer or employee of the non-profit organisation such information and explanation as he thinks necessary for the performance of his duties; and
- (c) at the conclusion of the examination make such internationally accepted reports to the Registrar about the accounts or affairs of the non-profit organisation, and shall send a copy of such report to the fiduciary of the non-profit organisation.

(5) The expenses of an examination, including the remuneration of the person conducting such examination, shall be paid by the non-profit organisation.

(6) The Registrar shall, at the request of the Minister, provide the Minister with a copy of an examination report prepared on a non-profit organisation.

(7) The books of account relating to a non-profit organisation shall be preserved for a period of at least five years from the end of the financial year of the non-profit organisation in which they are made, unless the non-profit organisation ceases to exist.

(8) 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.

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

Appeals against an examination request

(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 an examination may be brought by the fiduciary of the non-profit organisation or by any person who has supervision of the account of the non-profit organisation.

Duty to prepare annual returns

15. (1) The fiduciary of a non-profit organisation shall ensure that, within three 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 by the fiduciary of a non-profit organisation to extend the period for submitting annual returns by two months where the initial three month period provided under subsection (1) has expired.

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

Failure to comply with Law

16. A fiduciary 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 books of account and annual returns; or
- (c) a request under section 21(3),

is liable to a penalty of three thousand dollars and, in the case of a continuing breach, to a further penalty of one hundred dollars for every day or part thereof during which the breach continues after the determination by the Registrar.

Imposition of administrative penalties

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

(2) The Registrar shall not impose a penalty if he is satisfied that the fiduciary 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 fiduciary, shall take into account the following matters -

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

(4) Where a fiduciary 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 the fiduciary 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 fiduciary receives a penalty notice, that fiduciary may, within twenty-one days from the date of the notice, make representation to the Registrar indicating why he 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 fiduciary of his decision under subsection (3) and where he varies the penalty, of the further steps, if any, he has taken in relation to the fiduciary.

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

(6) Subject to subsections (2) and (7), a fiduciary 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 he considers appropriate.

19. (1) A fiduciary 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.

Appeal against administrative penalty

(2) An appeal of a decision of the Registrar to impose a penalty does not operate as a stay on the obligation of the fiduciary 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 fiduciary 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 fiduciary 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 he 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 or department;

“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 engages in charitable or voluntary activities and 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.

(2013 Revision)

(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 - Regulations

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

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

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. Transitional provisions

(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 and, if the application is refused, for a further period of six months.

(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.

Passed by the Legislative Assembly the      day of      , 2016.

Speaker.

Clerk of the Legislative Assembly.