

A BILL

entitled

CHARITIES ACT 2014

TABLE OF CONTENTS

PART 1  
PRELIMINARY

1	Citation
2	Interpretation
3	Meaning of “charitable purpose”
4	Descriptions of purposes
5	Public benefit requirement
6	Provision of recreational and similar facilities, etc.

PART 2  
FUNCTIONS OF REGISTRAR AND COMMITTEE

7	Committee
8	Functions of Registrar
9	Delegation of Registrar’s functions to Committee
10	Objectives of Registrar and Committee
11	Registrar’s general functions
12	General duties of Registrar and Committee
13	Guidance as to operation of public benefit requirement
14	Supply by Registrar of copies of documents
15	Fees and other amounts payable to Registrar
16	Incidental powers

PART 3  
REGISTRATION OF CHARITIES AND APPEALS

17	Registration of charity
18	Charities required to be registered unless exempted
19	Directions as to what is (or is not) a separate charity
20	Effect of registration
21	Right to inspect register, statements of accounts and annual reports
22	Annual publication of particulars
23	Remedial or protective action and cancellation of registration
24	Appeals

## CHARITIES ACT 2014

---

### PART 4 INFORMATION GATHERING AND INVESTIGATIONS

- 25 General power to call for information and documents
- 26 General power to institute investigations
- 27 Obtaining evidence etc. for purposes of investigation
- 28 Power to obtain search warrant for purposes of investigation
- 29 Execution of search warrant
- 30 Power to search records
- 31 Restricted disclosure
- 32 Permitted disclosure
- 33 Failure to comply with request for information or evidence

### PART 5 ACCOUNTS AND REPORTING

- 34 Accounting records
- 35 Preservation of accounting records
- 36 Preparation of statement of accounts
- 37 Submission of statement of accounts
- 38 Charity trustees to prepare annual reports
- 39 Preservation of statement of accounts and annual report

### PART 6 APPLICATION OF PROPERTY CY-PRES

- 40 Occasions for applying property cy-pres
- 41 Application cy-pres of gifts of donors unknown or disclaiming

### PART 7 MISCELLANEOUS

- 42 Restrictions on fund-raising activities
- 43 Temporary licence to solicit and collect donations
- 44 Charitable status to be disclosed in publications
- 45 Supply of false or misleading information to Registrar or Committee, etc.
- 46 Other offences
- 47 Regulations for detecting and preventing money laundering and terrorism financing
- 48 Regulations: general
- 49 Repeal
- 50 Savings
- 51 Transitional
- 52 General amendments of references in other legislation to Charities Act 1978, charitable organization, etc
- 53 Consequential amendment to Financial Intelligence Agency Act 2007
- 54 Commencement

WHEREAS it is expedient to repeal and re-enact, with substantial amendment, the Charities Act 1978;

## CHARITIES ACT 2014

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

### PART 1 PRELIMINARY

#### Citation

1 This Act may be cited as the Charities Act 2014.

#### Interpretation

2 In this Act, unless the context otherwise requires—

“AML/ATF regulated financial institution” has the meaning given in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

“charity” means an entity which is established in Bermuda for charitable purposes only;

“charitable purposes” means purposes which are exclusively charitable purposes (as defined in section 3);

“charity trustees” means the persons having the general control and management of the administration of a charity;

“Committee” means the committee known as the Charity Commissioners for Bermuda referred to in section 7;

“entity” means a person other than an individual natural person;

“exempted charity” means a charity which under section 18 is not required to be registered;

“FIA” means the Financial Intelligence Agency established under section 3 of the Financial Intelligence Agency Act 2007;

“Minister” means the Minister responsible for charities;

“NAMLC” means the National Anti-Money Laundering Committee established under section 49 of the Proceeds of Crime Act 1997;

“person” includes—

- (a) an individual natural person; and
- (b) a body of persons, organization, association, company, trust, undertaking or any other entity, whether incorporated or unincorporated;

“prescribed” means prescribed by the Minister by regulations made under this Act;

## CHARITIES ACT 2014

---

“registered address” in relation to a registered charity, means the address for the time being entered under section 17, in respect of that charity, in the register;

“registered charity” means a charity registered under section 17;

“Registrar” means the Registrar-General;

“Registry staff” means every public officer, or other person, employed in the Registry General;

“the last charity trustees” means every person who is a charity trustee of a charity during the last twelve months of the charity’s existence;

“the register” means the register of charities maintained by the Registrar in accordance with section 17;

“trusts” in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not.

### Meaning of “charitable purpose”

3 A charitable purpose is a purpose which—

- (a) falls within section 4(1); and
- (b) is for the public benefit (see section 5).

### Descriptions of purposes

4 (1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of sport;
- (h) the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;

- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- (m) any other purposes—
  - (i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 6 (provision of recreational and similar facilities, etc.); or
  - (ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or subparagraph (i).
- (2) In subsection (1)—
  - (a) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
  - (b) paragraph (e) includes—
    - (i) rural or urban regeneration; and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
  - (c) in paragraph (g), “sport” means sports, games or other activities which promote health by involving physical or mental skill or exertion;
  - (d) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph; and
  - (e) in paragraph (l), “fire and rescue services” means services provided by fire and rescue authorities under the Bermuda Fire and Rescue Service Act 1982.

(3) Where any of the terms used in any of paragraphs (a) to (l) of subsection (1), or in paragraphs (a) to (d) of subsection (2), has a particular meaning under the law relating to charities in England and Wales, the term is to be taken as having the same meaning where it appears in that provision.

#### Public benefit requirement

5 (1) In this Act “the public benefit requirement” means the requirement in section 3(b) that a purpose falling within section 4(1) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 4(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

(3) Subject to subsection (2), in this Act, any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.

## CHARITIES ACT 2014

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Provision of recreational and similar facilities, etc.

6 (1) It is charitable to provide, or assist in the provision of, facilities for—

- (a) recreation; or
- (b) other leisure-time occupation,

if the facilities are provided in the interests of social welfare.

(2) The requirement that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.

(3) The basic conditions are—

- (a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended, and
- (b) that—
  - (i) those persons have need of the facilities because of their youth, age, infirmity or disability, poverty, or social and economic circumstances; or
  - (ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.

(4) Subsection (1) applies in particular to—

- (a) the provision of facilities at community centres and halls; and
- (b) the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation,

and extends to the provision of facilities for those purposes by the organising of any activity, but this is subject to the requirement that the facilities are provided in the interests of social welfare.

(5) Nothing in this section is to be treated as derogating from the public benefit requirement.

## PART 2

### FUNCTIONS OF REGISTRAR AND COMMITTEE

Committee

7 (1) There shall continue to be a committee to be called the Charity Commissioners for Bermuda (“the Committee”), which shall—

- (a) have the functions given or delegated to it under this Act; and
- (b) if requested by the Registrar or the Minister, or as it thinks necessary, advise the Registrar or the Minister (as the case may be) on any matter which under this Act relates to—

## CHARITIES ACT 2014

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- (i) its functions or the functions of the Registrar under this Act; or
  - (ii) meeting the objectives under section 10.
- (2) There shall be not fewer than five and not more than seven Commissioners, who shall be appointed by the Minister, of whom one shall be so appointed as the Chairman, and another as the Deputy Chairman, of the Committee.
- (3) The Minister is to exercise the power in subsection (2) so as to secure that—
- (a) at least one Commissioner is an accountant;
  - (b) at least one Commissioner is a lawyer; and
  - (c) the knowledge and experience of the Commissioners (taken together) includes, in his opinion, knowledge and experience of the matters mentioned in subsection (4).
- (4) The matters referred to in subsection (3)(c) are—
- (a) the law relating to charities;
  - (b) charity accounts and the financing of charities; and
  - (c) the operation and regulation in Bermuda of charities of different sizes and descriptions.
- (5) The Chairman shall preside at every meeting of the Committee at which he is present but—
- (a) in the absence of the Chairman, the Deputy Chairman shall preside at a meeting; and
  - (b) in the absence of both the Chairman and the Deputy Chairman, the Commissioners present may elect one of their number to preside at a meeting.
- (6) The Chairman, Deputy Chairman or other Commissioner (as the case may be) who is presiding at a meeting shall have a casting vote in the event of an equality of votes upon any question before the meeting.
- (7) Three Commissioners shall constitute a quorum for a meeting.
- (8) The Commissioners shall hold office during the pleasure of the Minister and, subject thereto, for a term of three years, and shall be eligible for re-appointment from time to time.
- (9) Subject to this section, the Committee may regulate its own proceedings.
- (10) In this section—
- (a) “accountant” means a person who in the opinion of the Minister is qualified to practise, in Bermuda or in any other jurisdiction, as an accountant or as an auditor; and

## CHARITIES ACT 2014

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- (b) “lawyer” means a person who in the opinion of the Minister is qualified to practise, in Bermuda or in any other jurisdiction, as an attorney, as a barrister, or as a solicitor.

### Functions of Registrar

- 8 (1) The Registrar shall have the functions given to him under this Act.
- (2) Unless a function of the Registrar has been delegated to the Committee, the Registrar shall where practicable exercise his functions after consultation with the Committee.

### Delegation of Registrar’s functions to Committee

- 9 (1) The Registrar may, by instrument in writing, delegate any of his functions under this Act (except the power of delegation conferred by this subsection) to the Committee.
- (2) A delegation under subsection (1) may—
- (a) be made subject to such conditions, qualifications and exceptions as the Registrar may stipulate in the instrument of delegation; and
  - (b) be revoked or varied by any subsequent instrument.
- (3) In exercising any functions delegated to it under this section the Committee—
- (a) shall be deemed to be the Registrar; and
  - (b) shall have the powers and duties of the Registrar.
- (4) Any instrument made under this section is not subject to the Statutory Instruments Act 1977.

### Objectives of Registrar and Committee

- 10 In exercising their functions under this Act, the Registrar and the Committee have the following objectives—
- (a) to increase public trust and confidence in charities (“the public confidence objective”);
  - (b) to promote awareness and understanding of the operation of the public benefit requirement (“the public benefit objective”);
  - (c) to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities (“the compliance objective”);
  - (d) to promote the effective use of charitable resources (“the charitable resources objective”); and
  - (e) to enhance the accountability of charities to donors, beneficiaries and the general public (“the accountability objective”).



Registrar's general functions

- 11 (1) The Registrar has the following general functions—
- (a) determining whether an entity is or is not a charity;
  - (b) encouraging and facilitating the better administration of charities;
  - (c) identifying and investigating apparent misconduct or mismanagement in the administration of charities, and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities;
  - (d) obtaining, evaluating and disseminating information in connection with the performance of any of his functions under this Act or meeting any of the objectives under section 10; and
  - (e) giving information or advice, or making proposals, to the Minister on matters relating to any of his functions under this Act or meeting any of the objectives under section 10.

(2) The Registrar may, in connection with the general function referred to in subsection (1)(b), give such advice or guidance with respect to the administration of charities as he considers appropriate.

- (3) Any advice or guidance given under subsection (2) may relate to—
- (a) charities generally;
  - (b) any class of charities; or
  - (c) any particular charity,

and may take such form, and be given in such manner, as the Registrar considers appropriate.

(4) The Registrar's general function referred to in subsection (1)(d) includes (among other things) the maintenance of an accurate and up-to-date register of charities pursuant to sections 17 (registration of charity) and 23 (remedial or protective action and cancellation of registration).

(5) The Registrar's general function referred to in subsection (1)(e) includes (among other things) complying, so far as is reasonably practicable, with any request made by the Minister for information or advice on any matter relating to any of the Registrar's functions under this Act.

General duties of Registrar and Committee

12 (1) The Registrar and the Committee have the general duties set out in the following subsections.

- (2) So far as is reasonably practicable they shall, in performing their functions, act in a way—
- (a) which is compatible with the objectives under section 10; and

## CHARITIES ACT 2014

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(b) which they consider most appropriate for the purpose of meeting those objectives.

(3) So far as is reasonably practicable they shall, in performing their functions, act in a way which is compatible with the encouragement of—

- (a) all forms of charitable giving; and
- (b) voluntary participation in charity work.

(4) In performing their functions they shall have regard to the need to use their resources in the most efficient, effective and economic way.

(5) In performing their functions they shall, so far as relevant, have regard to the principles of best regulatory practice, including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed.

(6) In performing their functions they shall, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.

(7) In managing their affairs they shall have regard to such generally accepted principles of good governance as it is reasonable to regard as applicable to their office.

### Guidance as to operation of public benefit requirement

13 (1) The Registrar shall issue guidance in pursuance of the public benefit objective (referred to in section 10(b)).

(2) The Registrar may from time to time revise any guidance issued under this section.

(3) The Registrar shall carry out such public and other consultation as he considers appropriate—

- (a) before issuing any guidance under this section; or
- (b) (unless he considers that it is unnecessary to do so) before revising any guidance under this section.

(4) The Registrar shall publish any guidance issued or revised under this section in such manner as he considers appropriate.

(5) The charity trustees of a charity shall have regard to any such guidance when exercising any powers or duties to which the guidance is relevant.

(6) For the avoidance of doubt, any guidance issued or revised under this section is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

### Supply by Registrar of copies of documents

14 The Registrar shall, at the reasonable request of any person, provide that person with copies of, or extracts from, any document in the Registrar's possession which is for the time being open to or available for inspection under any provision of this Act.

## CHARITIES ACT 2014

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### Fees and other amounts payable to Registrar

15 (1) Such fees as may be prescribed in the Government Fees Regulations 1976 shall be paid in respect of—

- (a) the discharge by the Registrar of his functions under this Act, including but not limited to the annual fee on registered charities referred to in subsection (2); and
- (b) the inspection of the register of charities or of other material kept by the Registrar under this Act, or the provision of copies of or extracts from documents so kept.

(2) Regulations prescribing annual fees pursuant to subsection (1)(a) may prescribe different annual fees in respect of different classes of registered charities (based on their annual incomes, so that charities in higher annual income classes pay higher annual fees).

(3) The Registrar may impose charges of such amounts as he considers reasonable in respect of the supply of any publications produced by him, and any such amounts received shall be paid into the Consolidated Fund.

(4) If a registered charity, despite demand, neglects or refuses to pay its annual fee, such non-payment is a ground for suspension or cancellation of the charity's registration under section 23.

### Incidental powers

16 (1) The Registrar or the Committee may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of their functions or general duties under this Act.

(2) But, subject to subsection (3), nothing in this Act authorises the Registrar or the Committee—

- (a) to exercise functions corresponding to those of a charity trustee in relation to a charity; or
- (b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not—

- (a) affect the power of the Registrar to direct specified action to be taken under section 23; or
- (b) prohibit a member of the Committee from being a charity trustee of a charity.

PART 3

REGISTRATION OF CHARITIES AND APPEALS

Registration of charity

17 (1) The Registrar shall continue to maintain a register in which shall be entered the name and address (the “registered address”) of every registered charity together with such other particulars as may be prescribed.

(2) The registered address of a registered charity shall be—

- (a) a physical address (which shall not be a post office box) in Bermuda; and
- (b) the address at which anything required under, or pursuant to, this Act may be served on the charity,

and anything served on the charity at its registered address shall be deemed to be received by the charity at the time of such service.

(3) Every charity, unless exempted under section 18, shall apply to the Registrar to be registered as a charity.

(4) An application under subsection (3) shall be in such form, contain such particulars, and meet such other requirements as may be prescribed.

(5) In considering any application for registration submitted by a charity, the Registrar shall have regard to—

- (a) the declared purposes of the charity;
- (b) the character and reputation of the persons connected with such charity; and
- (c) any other matter which the Registrar may consider relevant.

(6) The Registrar shall satisfy himself, in considering any application for registration submitted by a charity—

- (a) that the trusts of the charity contain a dissolution clause describing how the charity’s assets, particularly contributions received from donors, will be applied in the event that the charity ceases to exist; and
- (b) that the dissolution clause is consistent with the declared purposes of the charity.

(7) If the Registrar is satisfied that any applicant for registration meets the requirements under subsections (5) and (6), and is accordingly a fit and proper charity, he shall enter in the register the charity’s name and address and any other prescribed particulars thereof and, in any other case, he shall refuse to register the charity.

(8) The Registrar may direct that the registration of a charity shall have effect either—

- (a) indefinitely; or

- (b) for a period of—
  - (i) one year at a time;
  - (ii) three years at a time; or
  - (iii) five years at a time,

but may direct that the registration shall have effect for a longer period, not exceeding an additional eleven months, if the registration would otherwise cease to have effect before the deadline for the submission of the charity's statement of accounts and annual report under sections 37 and 38.

(9) A charity that is registered for a definite period under subsection (8)(b), which makes application to the Registrar to renew its registration (under subsection (3)) at least one month before the expiration of its registration shall, if its registration expires before the application is decided by the Registrar, nevertheless be deemed to be a registered charity until the application is decided by the Registrar.

(10) If a charity is for the time being registered, the charity trustees (or the last charity trustees) shall—

- (a) no later than 30 days after the charity changes its registered address, or any other of its particulars entered in the register, notify the Registrar of such change;
- (b) as soon as practicable, notify the Registrar—
  - (i) if there is any change in the charity's trusts; or
  - (ii) if the charity ceases to exist; and
- (c) as soon as practicable, supply the Registrar with particulars of any such change and copies of any new trusts or alterations of the trusts.

(11) The Minister may give general directions of a policy nature to the Registrar or the Committee (as the case may be), relating to the exercise of their functions under this section, and the Registrar and the Committee shall give effect to any such directions.

Charities required to be registered unless exempted

18 (1) Every charity shall be registered under section 17 unless subsection (2) applies to it.

- (2) The following are not required to be registered—
  - (a) a charity exempted from registration under subsection (4);
  - (b) a charity which for the time being—
    - (i) is, or is of a description, permanently or temporarily exempted by regulations made by the Minister subject to the affirmative resolution procedure; and
    - (ii) complies with any conditions of the exemption.

## CHARITIES ACT 2014

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(3) Regulations made under subsection (2)(b) may include provisions allowing the Registrar to exempt a charity from registration in accordance with criteria set out in such Regulations.

(4) A charity is exempted from registration if it is privately funded, does not solicit funds from the Bermuda public, does not receive funding from the Bermuda Government or from Bermuda public sources, and—

(a) in the case of a trust—

(i) the trustee is licensed under the Trusts (Regulation of Trust Business) Act 2001; or

(ii) the trustee is exempted, under paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002 (which provides for exemptions in connection with private trust business), from section 9 of the Trusts (Regulation of Trust Business) Act 2001 (which restricts the carrying on of trust business without a licence); or

(b) has a registered office with, and is subject to compliance by, an institution that is licensed by a supervisory authority within the meaning of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

(5) If a charity is required to be registered by virtue of subsection (1) but is not so registered, the charity trustees shall, as soon as practicable—

(a) apply to the Registrar under section 17 for the charity to be registered; and

(b) supply the Registrar with the required documents and information.

Directions as to what is (or is not) a separate charity

19 (1) The Registrar may direct that for all or any of the purposes of this Act an entity established for any special purposes of, or in connection with, a charity (being charitable purposes) is to be treated—

(a) as forming part of that charity; or

(b) as forming a distinct charity.

(2) The Registrar may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees are to be treated as a single charity.

Effect of registration

20 (1) An entity is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a registered charity at any time when it is or was on the register.

(2) For the purposes of subsection (1) an entity is to be treated as not being on the register during any period when the entry relating to it is suspended under section 23.

Right to inspect register, statements of accounts and annual reports

- 21 (1) The following are to be open to public inspection at all reasonable times—
- (a) the register (including the entries cancelled when entities are removed from the register);
  - (b) statements of accounts submitted under section 37; and
  - (c) annual reports submitted under section 38.
- (2) If any information contained in the register, statements of accounts or annual reports is not in documentary form, subsection (1) is to be read as requiring the information to be available for public inspection in legible form at all reasonable times.
- (3) If the Registrar so determines, subsection (1) does not apply to any particular information contained in the register that is specified in the determination.

Annual publication of particulars

- 22 (1) As soon as may be after 1 January in every year the Registrar shall publish, in such manner as he considers appropriate, the names and such other particulars as he considers appropriate, entered in the register on that date.
- (2) The Registrar may from time to time, in such manner as he considers appropriate, publish—
- (a) amendments to the register published under subsection (1), including particulars of which charities have been suspended or removed from the register; and
  - (b) such details of applications for registration as he considers appropriate.

Remedial or protective action and cancellation of registration

- 23 (1) Where the Registrar is satisfied that there is reasonable evidence of misconduct or mismanagement in the administration of a charity, he may give notice to that charity at its registered address that, unless the charity shows cause to the satisfaction of the Registrar within 15 days of receiving the notice (or such longer period as he may specify in the notice), the action specified in the notice will be taken against the charity unless the charity shows cause to the satisfaction of the Registrar why the action specified in the notice should not be taken.
- (2) The action specified in the notice under subsection (1) may include, but is not limited to—
- (a) restricting the transactions that the charity may enter into;
  - (b) appointing a receiver or manager to administer the property and affairs of the charity;
  - (c) freezing payments to and from the charity;
  - (d) directing the charity to implement the recommendations of an auditor's report;

- (e) where the Registrar is satisfied that there have been irregularities in an election of officers of the charity, requiring a new election to be held; or
  - (f) suspending the registration of the charity and imposing such conditions that shall be complied with during the period of suspension, and for the restoration of the charity's registration, as may be specified in the notice.
- (3) Where the Registrar is satisfied that the registered charity—
- (a) has refused, neglected or otherwise failed to take any action specified in a notice under subsection (1) within the time specified in the notice;
  - (b) or a charity trustee of the charity, has been convicted of an offence under this Act;
  - (c) has refused, neglected or otherwise failed to meet any of its obligations under Part 5 (Accounts and Reporting); or
  - (d) may no longer be a fit and proper charity,

he may give notice to that charity at its registered address that its registration will be cancelled within 15 days of receiving the notice (or such longer period as he may specify in the notice) unless the charity shows cause to the satisfaction of the Registrar why its registration should not be cancelled.

(4) Every notice of the kind specified in subsections (1) or (3) shall set out the grounds upon which the Registrar relies for the action proposed to be taken under subsection (1) or the cancellation of registration under subsection (3), as the case may be.

(5) In determining the question raised by any notice given under subsections (1) or (3), the Registrar shall take into consideration any written representation made by or on behalf of the charity and received by the Registrar within the period specified in the notice (or such further period as the Registrar may allow) and may make such other enquiries and receive such evidence as to the Registrar appears necessary for the proper determination of the question.

(6) Once the question raised by any notice under subsection (1) has been determined by the Registrar, he shall notify the charity of his decision and the action to be taken and, subject to an appeal under section 24, the charity shall comply with the decision.

(7) If the charity fails to satisfy the Registrar that it remains a fit and proper charity, then the Registrar shall cancel the registration and notify the charity of his decision, without prejudice to the right of the charity to submit a new application for registration at a later date.

#### Appeals

24 (1) Where the Registrar has—

- (a) refused to register a charity under section 17;
- (b) directed specific action to be taken under section 23; or
- (c) directed the cancellation of its registration under section 23,



the charity concerned may, within 21 days of the notification of the decision of the Registrar, appeal to the Minister against such refusal, direction or cancellation and, subject to subsection (3), the Minister's decision thereon shall be final.

(2) Where the Minister decides an appeal to him under subsection (1), he shall give the charity and the Registrar written reasons for his decision.

(3) Where a party is dissatisfied with the decision of the Minister under subsection (1), the party may appeal to the Supreme Court against the decision of the Minister and the Court may allow or dismiss the appeal or may make an order remitting the matter for further consideration by the Minister or the Registrar as the Court may consider appropriate.

(4) Any appeal under subsection (3) shall be commenced by notice of motion filed within 21 days of the notification of the decision of the Minister; and the Minister shall be made respondent to every such appeal and the Attorney-General shall be served with a copy of the notice.

(5) The rules of court governing the conduct of appeals from administrative tribunals generally, made under the Supreme Court Act 1905, shall apply to appeals under subsection (3).

#### PART 4

#### INFORMATION GATHERING AND INVESTIGATIONS

General power to call for information and documents

25 (1) The Registrar may by written order require—

- (a) any person to provide the Registrar with any information which is in that person's possession and which—
  - (i) relates to any charity; and
  - (ii) is relevant to the discharge of the functions of the Registrar under this Act;
- (b) any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the functions of the Registrar under this Act—
  - (i) to provide the Registrar with a copy of or extract from the document; or
  - (ii) to transmit the document itself to the Registrar for inspection.

(2) A person is not required under subsection (1) to provide or produce any information or document which the person would be entitled to refuse to provide or produce on grounds of legal professional privilege.

(3) The Registrar is entitled without payment to keep any copy or extract provided to him under subsection (1).

## CHARITIES ACT 2014

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### General power to institute investigations

- 26 (1) The Registrar may from time to time institute investigations—
- (a) with regard to registered charities or a particular registered charity or class of registered charities, either generally or for particular purposes; and
  - (b) with regard to any exempted charity, only if he has a reasonable suspicion that a particular exempted charity is engaging in illegal activities.
- (2) The Registrar may—
- (a) conduct such investigation himself; or
  - (b) appoint a person to conduct it and make a report to him.

### Obtaining evidence etc. for purposes of investigation

- 27 (1) In this section “investigation” means an investigation under section 26.
- (2) For the purposes of an investigation, the Registrar, or a person appointed by the Registrar to conduct it, may by written order direct any person—
- (a) if a matter in question at the investigation is one on which the person has obtained, or can reasonably obtain, information—
    - (i) to provide accounts and statements in writing with respect to the matter, or to return answers in writing to any questions or investigations addressed to the person on the matter; and
    - (ii) to verify any such accounts, statements or answers by statutory declaration;
  - (b) to provide copies of documents which are in the custody or under the control of the person and which relate to any matter in question at the investigation, and to verify any such copies by statutory declaration;
  - (c) to attend at a specified time and place and give evidence or produce any such documents.
- (3) For the purposes of an investigation—
- (a) evidence may be taken on oath, and the person conducting the investigation may for that purpose administer oaths; or
  - (b) the person conducting the investigation may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which that person is examined.
- (4) A person is not required under this section to provide or produce information, or to give evidence or answer questions, which the person or entity would be entitled to refuse to provide, produce, give or answer on grounds of legal professional privilege in proceedings in the Supreme Court.
- (5) Section 41E of the Proceeds of Crime Act 1997 (statements made in response to customer information orders may not be used in criminal proceedings except in certain

circumstances) applies with appropriate modifications to statements made by a person in compliance with a requirement imposed on him under this section as it applies to statements made by a relevant institution in response to a customer information order under that Act.

Power to obtain search warrant for purposes of investigation

28 (1) A magistrate may issue a warrant under this section if satisfied, on information given on oath by a member of the Registry staff who is authorised by the Registrar to do so, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.

(2) The conditions are—

- (a) that an investigation has been instituted under section 26;
- (b) that there is on the premises to be specified in the warrant any document or information relevant to that investigation which the Registrar could require to be produced or provided under section 25(1); and
- (c) that, if the Registrar were to make an order requiring the document or information to be so produced or provided—
  - (i) the order would not be complied with; or
  - (ii) the document or information would be removed, tampered with, concealed or destroyed.

(3) A warrant under this section is a warrant authorising the member of the Registry staff who is named in it (“the staff member”), accompanied by a police officer not below the rank of inspector—

- (a) to enter and search the premises specified in it;
- (b) to take such other persons with the staff member as the Registrar considers are needed to assist the staff member in doing anything that the staff member is authorised to do under the warrant;
- (c) to take possession of any documents which appear to fall within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
- (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;
- (e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);
- (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;

- (g) to require any such person to give the staff member such assistance as the staff member may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

Execution of search warrant

29 (1) Entry and search under a warrant issued under section 28 shall be at a reasonable hour and within one month of the date of its issue.

(2) The member of the Registry staff who is authorised under such a warrant (“the staff member”) shall be accompanied by a police officer not below the rank of inspector and, if required to do so, produce—

- (a) the warrant; and
- (b) documentary evidence that the staff member is a member of the Registry staff,

for inspection by the occupier of the premises or anyone acting on the occupier’s behalf.

(3) The staff member shall make a written record of—

- (a) the date and time of the staff member’s entry on the premises;
- (b) the number of persons (if any) who accompanied the staff member on to the premises and the names of any such persons;
- (c) the period for which the staff member (and any such persons) remained on the premises;
- (d) what the staff member (and any such persons) did while on the premises; and
- (e) any document or device of which the staff member took possession while there.

(4) If required to do so, the staff member shall give a copy of the record to the occupier of the premises or someone acting on the occupier’s behalf.

(5) Unless it is not reasonably practicable to do so, the staff member shall before leaving the premises comply with—

- (a) the requirements of subsection (3); and
- (b) any requirement made under subsection (4) before the staff member leaves the premises.

(6) Where possession of any document or device is taken under a warrant issued under section 28—

- (a) the document may be retained for so long as the Registrar considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant investigation under section 26; or
- (b) the device may be retained for so long as the Registrar considers that it is necessary to retain it for the purposes of that investigation,

as the case may be.

(7) Once it appears to the Registrar that the retention of any document or device has ceased to be so necessary, he shall arrange for the document or device to be returned as soon as is reasonably practicable—

- (a) to the person from whose possession it was taken; or
- (b) to any of the charity trustees of the charity to which it belonged or related.

(8) It is an offence for a person intentionally to obstruct the exercise of any rights conferred by a warrant issued under section 28.

(9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding \$10,000, to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

#### Power to search records

30 (1) Any member of the Registry staff, if so authorised by the Registrar, is entitled without payment to inspect and take copies of or extracts from the records or other documents of—

- (a) any court; or
- (b) any public registry or office of records,

for any purpose connected with the discharge of the functions of the Registrar under this Act.

(2) The rights conferred by subsection (1), in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form—

- (a) for inspection; or
- (b) for a copy or extract to be made of or from it.

#### Restricted disclosure

31 (1) Except as provided by section 32—

- (a) no person who under, or for the purposes of, this Part of the Act (Information Gathering and Investigations) receives information relating to the business or other affairs of any person; and
- (b) no person who obtains such information directly or indirectly from a person who has received it as mentioned in paragraph (a),

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received.

(2) This section does not apply to information which at the time of the disclosure is, or has already been made, available to the public from other sources, or to information

in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

Permitted disclosure

32 (1) A public authority may disclose information to the Registrar if the disclosure is made for the purpose of enabling or assisting the Registrar to discharge any of his functions under this Act.

(2) Subject to subsections (3) and (4), section 31(1) does not preclude the Registrar from disclosing to any public authority any information received by the Registrar in connection with any of his functions if—

- (a) the disclosure is made for the purpose of enabling or assisting the public authority to discharge any of its functions; or
- (b) the information so disclosed is otherwise relevant to the discharge of any of the functions of the public authority.

(3) Information disclosed by the Registrar under subsection (2) shall not be further disclosed except—

- (a) for a purpose connected with any function of that public authority for the purposes of which the information was disclosed by the Registrar; and
- (b) with the consent of the Registrar, which may be given—
  - (i) in relation to a particular disclosure; or
  - (ii) in relation to disclosures made in circumstances specified or described in the consent.

(4) In the case of information disclosed to the Registrar under subsection (1), the Registrar's power to disclose the information under subsection (2) is exercisable subject to any express restriction subject to which the information was disclosed to the Registrar.

(5) Notwithstanding subsection (4), the Registrar shall disclose to the FIA any information that comes to his attention in respect of which he has a reasonable suspicion that a charity is, or has been, involved in money laundering or the financing of terrorism.

(6) Section 31(1) does not preclude the disclosure of information—

- (a) to a police officer not below the rank of inspector, or to the Director of Public Prosecutions, in relation to any criminal proceedings; or
- (b) for the purpose of enabling or assisting an authority in a country or territory outside Bermuda (a "foreign authority") to exercise functions corresponding to those of a competent authority under the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 if, but only if, the Registrar is satisfied that the foreign authority is subject to restrictions on further disclosure at least equivalent to section 31 and this section.

(7) A disclosure under this section does not breach—

- (a) any obligation of confidence owed by the person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(8) But nothing in this section authorises disclosure of information which is subject to legal professional privilege.

#### Failure to comply with request for information or evidence

33 (1) If, on application made by the Registrar, it appears to the Supreme Court that a person (the “information defaulter”) has failed to—

- (a) provide any information or document to the Registrar or the Committee under section 25; or
- (b) provide or do something that the information defaulter is required by the Registrar, or a person appointed by him to conduct an investigation, to provide or do under section 27,

the court may make an order under this section.

- (2) An order under this section may require the information defaulter—
  - (a) to provide or do what he has failed to provide or do within such period as may be specified in the document;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.

## PART 5

### ACCOUNTS AND REPORTING

#### Accounting records

34 (1) The charity trustees of a registered charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity’s transactions, and which are such as to—

- (a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time; and
- (b) enable the trustees to ensure that, where any statement of accounts is prepared by them under section 36(1), those accounts comply with the requirements of regulations under section 36(1).

(2) The accounting records shall in particular contain—

- (a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of the assets and liabilities of the charity.

Preservation of accounting records

35 (1) The charity trustees of a registered charity shall preserve any accounting records made for the purposes of section 34 in respect of the charity for at least seven years from the end of the financial year of the charity in which they are made.

(2) Subsection (3) applies if a charity ceases to exist within the period of seven years mentioned in subsection (1) as it applies to any accounting records.

(3) The obligation to preserve the accounting records in accordance with subsection (1) shall continue to be discharged by the last charity trustees of the charity, unless the Registrar consents in writing to the records being destroyed or otherwise disposed of.

Preparation of statement of accounts

36 (1) The charity trustees of every registered charity shall prepare, in respect of the financial year of the charity, a statement of accounts complying with such requirements as to its form as may be determined by the Registrar, and to its contents as may be prescribed.

(2) Regulations under subsection (1) may in particular make—

- (a) different provision for different classes of charity, and the classes shall be determined by the level of annual income of charities falling within a particular class;
- (b) provision for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
- (c) provision as to any information to be provided by way of notes to the accounts.

(3) Regulations under subsection (1) may also make provision for the Registrar to determine the financial year of a charity for the purposes of this Act and any regulations made under it.

Submission of statement of accounts

37 (1) The charity trustees of a registered charity shall submit a copy of the statement of accounts prepared under section 36 to the Registrar within six months of the end of each financial year of the charity.

(2) The Registrar may, if he is satisfied that there are compelling reasons to do so, extend the six-month period referred to in subsection (1).

(3) The Registrar may, where he considers it desirable to do so, require that the accounts of any charity for the preceding financial year, or for a specified number of preceding years, shall be audited by a person approved by the Minister and the charity trustees of that charity shall comply with any such requirement.

(4) Any neglect or failure of any registered charity to comply with any provision of this section or with any requirement made thereunder shall be an additional ground upon which the Registrar may proceed to cancel the registration of that charity under section 23.



(5) Any accounts submitted to the Registrar under subsection (1) and any written report on, or any written results of, any audit required pursuant to subsection (3) shall be available for inspection by members of the public during normal working hours.

Charity trustees to prepare annual reports

38 (1) The charity trustees of a registered charity shall prepare in respect of each financial year of the charity an annual report containing—

- (a) a report by the charity trustees—
  - (i) on the activities of the charity during the relevant financial year, in particular the significant activities undertaken by the charity during the financial year to further its charitable purposes for the public benefit or to generate resources to be used to further its purposes;
  - (ii) on any changes during the year to its trusts;
  - (iii) giving the current composition of its trustees and officers; and
  - (iv) giving information on the charity's anti-money laundering and anti-terrorist financing systems and controls;
- (b) details of planned activities for the following financial year; and
- (c) such other information relating to the charity or to its trustees or officers, as may be prescribed.

(2) Regulations under subsection (1)(c) may in particular make provision—

- (a) for any such report as is mentioned in subsection (1)(a) to be prepared in accordance with such principles as are specified or referred to in the regulations;
- (b) enabling the Registrar to dispense with any requirement prescribed by the regulations—
  - (i) in the case of a particular charity or a particular class of charities; or
  - (ii) in the case of a particular financial year of a charity or of any class of charities.

(3) Regulations under subsection (1)(c) are subject to the affirmative resolution procedure.

(4) Any copy of an annual report prepared under subsection (1) shall be submitted to the Registrar at the same time as the statement of accounts prepared for the charity's financial year in question under section 36(1) and, where applicable, shall have attached to it a copy of the relevant auditor's or examiner's report.

Preservation of statement of accounts and annual report

39 (1) The charity trustees of a registered charity shall preserve any statement of accounts prepared by them under section 36(1), and any annual report prepared by them

under section 38(1), for at least seven years from the end of the financial year to which any such statement or report relates.

(2) Subsection (3) applies if a charity ceases to exist within the period of seven years mentioned in subsection (1) as it applies to any statement of accounts or annual report.

(3) The obligation to preserve the statement or accounts and annual report in accordance with subsection (1) shall continue to be discharged by the last charity trustees of the charity, unless the Registrar consents in writing to the statement of accounts or annual report (as the case may be) being destroyed or otherwise disposed of.

## PART 6

### APPLICATION OF PROPERTY CY-PRES

Occasions for applying property cy-pres

40 (1) Subject to subsection (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-pres shall be as follows—

- (a) where the original purposes, in whole or in part—
  - (i) have been as far as may be fulfilled; or
  - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift;
- (b) where the original purposes provide a use for part only of the property available by virtue of the gift;
- (c) where—
  - (i) the property available by virtue of the gift; and
  - (ii) other property applicable for similar purposes, can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes;
- (d) where the original purposes were laid down by reference to—
  - (i) an area which was then but has since ceased to be a unit for some other purpose; or
  - (ii) a class of persons or an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or
- (e) where the original purposes, in whole or in part, have since they were laid down—

- (i) been adequately provided for by other means;
- (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
- (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.

(2) Subsection (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-pres, except in so far as those conditions require a failure of the original purposes.

(3) References in subsections (1) and (2) to the charitable purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(4) A trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-pres, to secure its effective use for charity by taking steps to enable it to be so applied.

#### Application cy-pres of gifts of donors unknown or disclaiming

41 (1) Property given for specific charitable purposes which fail shall be applicable cy-pres as if given for charitable purposes generally, where it belongs—

- (a) to a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
- (b) to a donor who has executed a written disclaimer of his right to have the property returned.

(2) For the purposes of this section, property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists—

- (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
- (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(3) The court may by order direct that property not falling within subsection (2) shall for the purposes of this section be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the court either—

- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or

- (b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(4) Where property is applied cy-pres by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or subsection (3)—

- (a) the scheme shall specify the total amount of that property;
- (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than twelve months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
- (c) the scheme may include directions as to the provision to be made for meeting any such claim.

(5) For the purposes of this section, charitable purposes shall be deemed to fail where any difficulty in applying property to those purposes makes that property or the part not applicable cy-pres available to be returned to the donors.

(6) In this section, unless the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

(7) In this section, “the court” means, in respect of money or property exceeding in value ten thousand dollars, the Supreme Court and, in any other case, a court of summary jurisdiction.

(8) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the coming into operation of this Act.

## PART 7

### MISCELLANEOUS

#### Restrictions on fund-raising activities

42 (1) Subject to subsection (2) and to section 43, it is an offence for a person, other than a charity registered under section 17 (or a person acting on behalf of such charity), to—

- (a) solicit members of the public for; or
- (b) receive from any member of the public in any public place,

a donation for any charitable purpose or for any professed purpose which is otherwise benevolent.

(2) Nothing in subsection (1) shall render unlawful the collection of donations from members of the congregation attending a religious service or prohibit or restrict the money-raising activities of an association of parents and teachers, or of pupils or former pupils, of any school in Bermuda conducted upon the premises of that school or upon other premises specifically approved for that purpose by the Registrar.

(3) Any person who contravenes any provision of subsection (1) and any person (other than a donor) who aids and abets any other person in any such contravention commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

#### Temporary licence to solicit and collect donations

43 (1) Nothing in section 42(1) shall render unlawful the solicitation and collection of donations from members of the public in accordance with a temporary licence granted by the Registrar under this section.

(2) A person, not being a registered charity, who wishes to solicit and collect donations from the public may apply to the Registrar for a temporary licence to do so.

(3) An application under subsection (2)—

- (a) shall be in such form as the Registrar shall determine; and
- (b) contain such particulars, and meet such other requirements as may be prescribed.

(4) The Registrar shall not grant an application under subsection (2) unless he is satisfied that the applicant will solicit and collect donations for a purpose which falls within section 4(1), but the purpose need not be for the public benefit.

(5) A temporary licence granted by the Registrar pursuant to an application under subsection (2) shall be granted for a period not exceeding three months but may, on further application, be extended for a further period not exceeding three months.

(6) A person who is granted a temporary licence shall, within two months of the expiration of the licence (or the expiration of an extension, if any, thereof) submit to the Registrar, a revenue and expenses report in such form, and containing such details, as may be prescribed.

#### Charitable status to be disclosed in publications

44 (1) The charity trustees of a registered charity shall ensure that all published printed materials and published electronic communications of the charity clearly state—

- (a) the name of the charity;
- (b) that it is a registered charity; and
- (c) its registration number.

- (2) In subsection (1)—
- (a) “published printed materials” include brochures, flyers, advertisements, posters, letterheads and other similar documents that are made available to members of the public;
  - (b) “published electronic communications” include email messages, Internet, radio, television and similar communications that are made available to members of the public.

Supply of false or misleading information to Registrar or Committee, etc.

45 (1) It is an offence for a person knowingly or recklessly to provide the Registrar or the Committee with information which is false or misleading in a material particular if the information is provided—

- (a) in purported compliance with a requirement imposed under this Act; or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information—
  - (i) intends; or
  - (ii) could reasonably be expected to know,  
that it would be used by the Registrar or the Committee for the purpose of discharging any of their functions under this Act.

(2) It is an offence for a person wilfully to alter, suppress, conceal or destroy any document which the person is or is liable to be required, under this Act, to produce to the Registrar or the Committee.

- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000; or
  - (b) on conviction on indictment, to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Other offences

- 46 (1) A person commits an offence if the person—
- (a) represents that an entity is a registered charity or an exempted charity when it is not so registered or exempted;
  - (b) fails to apply for the registration as a charity where required by this Act to do so;
  - (c) being any of the last charity trustees of a registered charity, fails to notify the Registrar when the charity ceases to exist;
  - (d) fails to provide information which the person is required under this Act to provide to the Registrar;

- (e) fails to disclose in a statement of accounts funds received from the public or from government or private sources;
  - (f) misuses donations received for charitable purposes, including the failure to use donations for their intended purposes;
  - (g) publicly solicits donations for a charity without the consent of the charity;
  - (h) fails to comply with the requirements of section 17(10);
  - (i) fails to comply with a decision of the Registrar under section 23(6);
  - (j) discloses information in contravention of section 31;
  - (k) fails to keep accounting records in accordance with section 34;
  - (l) fails to preserve accounting records in accordance with section 35;
  - (m) fails to submit a statement of accounts or annual report as required under section 37(1) or section 38(4), as the case may be;
  - (n) fails to preserve a statement of accounts or annual report as required by section 39; or
  - (o) fails to comply with the requirements of section 43(6).
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000;
  - (b) on conviction on indictment, to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Regulations for detecting and preventing money laundering and terrorism financing

47 (1) The Minister may, after consulting the NAMLC, make such regulations as he thinks appropriate in respect of charities for the purposes of detecting and preventing money laundering and the financing of terrorism.

- (2) Without prejudice to the generality of subsection (1), such regulations may—
- (a) require charities to establish and maintain procedures relating to the identification of donors and beneficiaries, the keeping of records, the making of reports, the vetting of employees, the verification of the effective design and operation of anti-money laundering and anti-terrorist financing systems and the training of employees; and
  - (b) provide for a contravention of such regulations to be an offence, subject to the limitation that no such offence shall be punishable with more than—
    - (i) on summary conviction, a fine of \$50,000; or
    - (ii) on conviction on indictment, a fine of \$750,000, or imprisonment for a term of two years, or both such fine and imprisonment.

## CHARITIES ACT 2014

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(3) Regulations made under subsection (1) are subject to the affirmative resolution procedure.

### Regulations: general

48 (1) The Minister may, after consultation with the Registrar and the Committee, make regulations for carrying into effect this Act, and without prejudice to the generality of the foregoing, such regulations may provide—

- (a) for the particulars to be submitted by a charity applying to be registered under section 17;
- (b) for the notification of any subsequent change in any of the material particulars contained in an application for registration;
- (c) for the particulars to be entered in the register and for the rectification thereof;
- (d) for the information and particulars to be included in the statement of accounts prepared under section 36;
- (e) for reporting by charities, including due diligence requirements in relation to beneficiaries, donors and affiliates;
- (f) for any other matter which is under this Act to be prescribed; and
- (g) for a contravention of such regulations to be an offence, subject to the limitation that no such offence shall be punishable with more than—
  - (i) on summary conviction, a fine of \$5,000;
  - (ii) on conviction on indictment, a fine of \$10,000, or imprisonment for a term of two years, or both such fine and imprisonment.

(2) Unless this Act expressly otherwise provides, any regulations made by the Minister under this Act shall be subject to the negative resolution procedure.

### Repeal

49 The Charities Act 1978 is hereby repealed.

### Savings

50 (1) Parts 3 and 5 shall not apply to any entity established under any other public Act, other than a company established under the Companies Act 1981, nor to any school for the time being established in Bermuda.

(2) Nothing in this Act shall be construed so as to abridge or derogate from the Social Welfare Act 1971.

### Transitional

51 (1) The registration of any charitable organization already registered under the Act hereby repealed shall continue in force notwithstanding such repeal, but shall for all



## CHARITIES ACT 2014

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purposes hereafter be deemed to have been a charity registered under section 17 of this Act and this Act shall apply to such charity accordingly.

(2) The trustees of an entity deemed to be a charity under subsection (1) shall as soon as practicable, but—

- (a) in respect of a registration that has effect indefinitely, not later than a period of twelve months after the coming into operation of this Act; and
- (b) in respect of a registration that has effect for a period of twelve months at a time, no later than the expiration of that period of registration,

submit the charity's trusts to the Registrar for his approval.

(3) The charity's trusts submitted for approval under subsection (2) shall include—

- (a) a dissolution clause (which is consistent with the declared purposes of the charity) describing how the charity's assets, particularly contributions received from donors, will be applied in the event that the charity ceases to exist; and
- (b) such other particulars as may be prescribed.

(4) The requirement that the charity's trusts, submitted for approval under subsection (2), shall include a dissolution clause may be waived by the Registrar in the case of a charity that is established under a private Act in order to give it sufficient time to amend that Act so as to include a dissolution clause, but if the dissolution clause is not submitted to the Registrar for approval within such period as the Registrar shall in writing require, the charity's registration shall be taken to be cancelled immediately after the expiration of that period.

(5) If a charity's trusts are not submitted to the Registrar within the period applicable to that charity under subsection (2), the charity's registration shall be taken to be cancelled immediately after the expiration of that period.

(6) The Registrar may, where a charity has submitted its trusts within the period applicable to that charity under subsection (2) but the Registrar is not satisfied that the requirements of subsection (3) have been satisfied, in writing require further particulars of the charity's trusts within a specified period.

(7) Where the Registrar requires further particulars of a charity's trusts under subsection (6), and the further particulars are not submitted within the period required by the Registrar, the charity's registration shall be taken to be cancelled immediately after the expiration of that period.

General amendments of references in other legislation to Charities Act 1978, charitable organization, etc

52 Wherever in any other public Act of the Legislature of Bermuda or in any statutory instrument made, given or issued in Bermuda—

- (a) "Charities Act 1978" appears, it shall be read as a reference to this Act; or

## CHARITIES ACT 2014

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- (b) “charitable organization” (or a variation of that expression) appears, it shall be read as a reference to a charity registered, or deemed to be registered, under this Act,

and the Minister may make regulations amending the legislation accordingly.

### Consequential amendment to Financial Intelligence Agency Act 2007

53 Section 18 of the Financial Intelligence Agency Act 2007 is amended—

- (a) by deleting “or” at the end of paragraph (b) thereof;
- (b) deleting the full stop at the end of paragraph (c) thereof, and substituting “; or”; and
- (c) after paragraph (c) thereof, inserting—
  - “(d) the Registrar-General to discharge his functions under the Charities Act 2014.”.

### Commencement

54 This Act shall come into operation on such date as the Minister may by notice in the Gazette appoint.

## CHARITIES BILL 2014

### EXPLANATORY MEMORANDUM

This Bill (“the Act”) would repeal and re-enact, with substantial amendment, the Charities Act 1978 (“the repealed Act”). The Act is largely based on the Charities Act 2011 of the United Kingdom.

Clause 1 is self-explanatory.

Clause 2 defines certain terms used in the Act.

Clause 3 provides that a “charitable purpose” is any purpose described in the list of purposes set out in clause 4(1), if the purpose is also for the public benefit.

Clause 4(1) gives the list of such purposes, and clause 4(2) further describes certain of those purposes. Clause 4(3) states that, if a term used in clause 4(1) or clause 4(2) has a particular meaning under the law relating to charities in England and Wales, the term is to be taken (with the necessary changes having been made) as having the same meaning where it appears in that provision.

Clause 5 requires a purpose listed in clause 4(1) to be for the public benefit in order to be a charitable purpose. Clause 5(3) states that a reference in the Act to the public benefit is a reference to that term as it is understood for the purposes of the law relating to charities in England and Wales.

Clause 6 states that, if recreational or other leisure-time facilities are provided in the interests of social welfare and are for the public benefit, they are provided for a charitable purpose. Clause 6(3) sets out the basic conditions that must be met for the facilities to be provided in the interests of social welfare.

Clause 7 provides for the continuation of the committee known as the Charity Commissioners for Bermuda (“the Committee”).

Clause 8 provides for the functions given to the Registrar-General (“the Registrar”) under the Act to be exercised, where practicable, after consultation with the Committee.

Clause 9 provides for the delegation of the Registrar’s functions under the Act to the Committee.

Clause 10 sets out the objectives of the Registrar and the Committee under the Act.

Clause 11 sets out the Registrar’s general functions under the Act.

Clause 12 sets out the Registrar and the Committee’s general duties under the Act.

Clause 13 provides that the Registrar must issue and publish guidance as to the operation of the public benefit requirement, and that the charity trustees of a charity must have regard to the guidance when exercising any powers or duties to which the guidance is relevant.

Clause 14 provides that the Registrar must, at the request of any person, provide that person with copies of, or extracts from, any documents in the Registrar's possession that are available for inspection under the Act.

Clause 15 provides that fees may be prescribed under the Government Fees Regulations 1976 in respect of: (a) the discharge by the Registrar of any of his functions including, but not limited to, an annual fee on registered charities, and (b) the inspection of the register of charities, or the provision of copies or extracts from documents.

Clause 16 provides that the Registrar and the Committee may do anything that is calculated to facilitate the performance of any of their functions or general duties.

Clause 17 provides for the registration of charities and the maintenance of a register of all charities so registered.

Clause 18 requires any charity to be registered unless they are exempted from registration under clauses 18(2) or (4).

Clause 19 provides that the Registrar may direct that a charity is (or is not) a separate charity.

Clause 20 provides that an entity is conclusively presumed to be, or to have been, a registered charity at any time when it is, or was, on the register.

Clause 21 requires the register and certain other information to be open to public inspection at all reasonable times.

Clause 22 provides for the publishing of the names, and such other particulars as the Registrar considers appropriate, entered in the register. The Registrar may, in order to keep the notice current, during the year publish amendments to the notice.

Clause 23 provides that where there is reasonable evidence of misconduct or mismanagement in the administration of a charity, remedial or protective action may be taken by the Registrar, or the charity's registration may be cancelled.

Clause 24 provides for appeals against decisions of the Registrar to be made to the Minister in the first instance and thereafter to the Supreme Court.

Clause 25 gives the Registrar a general power to call for information and documents that relate to a charity and are relevant to the discharge of the functions of the Registrar under the Act.

Clause 26 gives the Registrar a general power to institute investigations with regard to registered charities but, with regard to exempted charities, he may do so only if he has a reasonable suspicion that the charity is engaging in illegal activities.

Clause 27 provides for the manner in which the Registrar may obtain evidence for the purposes of an investigation.

Clause 28 provides the power to obtain a search warrant for the purposes of an investigation.

Clause 29 provides the manner of executing a search warrant issued to a member of the Registry staff.

Clause 30 entitles any authorised member of the Registry staff to take copies or extracts from the records and documents of any court, public registry or office of records for any purpose connected with the discharge of the Registrar's functions under the Act.

Clause 31 provides that, except as permitted under clause 32 (permitted disclosure), a person who under this Part of the Act (Information Gathering and Investigations) receives information relating to the business or affairs of another person shall not disclose the information without the consent of the person to whom it relates and the person from whom it was received (unless it is already available to the public from other sources, etc).

Clause 32 states by whom, and the circumstances in which, information that would otherwise be restricted under clause 31 can be disclosed.

Clause 33 provides for the Registrar to apply to the Supreme Court for an order compelling compliance with a request for information or documents.

Clause 34 requires accounting records to be kept by the charity trustees of a registered charity.

Clause 35 requires accounting records to be preserved for at least seven years from the end of the financial year in which they were made.

Clause 36 requires charity trustees of a registered charity to prepare, in respect of each financial year of the charity, a statement of accounts in such form as may be determined by the Registrar. The Minister may prescribe the contents of the statement of accounts.

Clause 37 requires the charity trustees of a registered charity to submit a copy of the statement of accounts to the Registrar within six months of the end of each financial year of the charity but, if there are compelling reasons in a particular case, the Registrar may extend the six-month period.

Clause 38 requires the charity trustees of a registered charity to prepare annual reports on the activities and other pertinent information of the charity.

Clause 39 requires the charity trustees of a registered charity to preserve any statement of accounts and annual report for at least seven years from the end of the financial year to which it relates.

Clause 40 sets out the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-pres. Clause 40 is substantially the same as section 10 of the repealed Act.

Clause 41 provides that property given for specific charitable purposes which fail shall be applicable cy-pres as if given for charitable purposes generally where it belongs to a donor: (a) who, after such advertisements and inquiries as are reasonable, cannot be identified or found, or (b) who has executed a written disclaimer of his right to have the property returned. Clause 41 is substantially the same as section 11 of the repealed Act.

Clause 42 restricts fund-raising activities. Apart from the exceptions set out in clause 42(2), only registered charities (or a person who has a temporary licence under clause 43) may solicit members of the public for, or receive from any member of the public in any public place, a donation for any charitable purpose or for any professed purpose which is otherwise benevolent. The provisions of clause 42 are similar to those of section 7 of the repealed Act.

Clause 43 allows a person (not being a charity) to apply to the Registrar for a temporary licence to solicit and collect donations from the public. The Registrar shall not grant an application for a temporary licence unless he is satisfied that the applicant will solicit and collect donations for a purpose which falls within the description of purposes listed in clause 4(1).

Clause 44 provides that the charity trustees of a registered charity must ensure that the name of the charity, the fact that it is a registered charity, and its registration number appear on all its publications.

Clause 45 makes it an offence to supply false or misleading information to the Registrar, or to alter, suppress, conceal or destroy any document which the person is or is liable to be required to produce to the Registrar.

Clause 46 sets out certain other offences.

Clause 47 provides that the Minister may, after consulting the National Anti-Money Laundering Committee, make regulations in respect of charities for the purposes of detecting and preventing money laundering and the financing of terrorism. Subsection (3) makes such regulations subject to the affirmative resolution procedure.

Clause 48(1) provides for the Minister, after consultation with the Registrar and the Committee, to make Regulations for carrying the Act into effect or for any other matter that under the Act is to be prescribed. Subsection (2) states that, except where the Act expressly otherwise provides, Regulations made under the Act are subject to the negative resolution procedure.

Clause 49 repeals the Charities Act 1978 (“the repealed Act”).

Clause 50 carries over certain savings from the repealed Act.

Clause 51 deals with transitional matters. The registration of any charitable organization already registered under the repealed Act will continue in force and will be deemed to have been a charity registered under clause 17, and the provisions of the Act will apply to such charity. The trustees of an entity deemed to be a charity under this clause must, as soon as practicable, submit the charity’s trusts to the Registrar for approval. The charity’s trusts must be so submitted by no later than: (a) in the case of a charitable organization the registration of which had effect indefinitely, by no later than twelve months after the coming into operation of the Act, and (b) in the case of a charitable organization the registration of which had effect for a period of twelve months at a time, by no later than the expiration of that period of registration.

Clause 52 makes general amendments regarding references in other legislation to the repealed Act or to a charitable organization.

Clause 53 makes a consequential amendment to section 18 (permitted disclosure) of the Financial Intelligence Agency Act 2007.

Clause 54 provides for the Minister to bring the Act into operation by notice in the Official Gazette.