

THE CHARITIES ACT

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THE CHARITIES ACT

Acts
32 of 2013,
6 of 2014
11th Sch.,
10 of 2014
S. 39.

[29th November, 2013.]

PART I. *Preliminary*

1. This Act may be cited as the Charities Act. Short title.
2. In this Act, unless the context otherwise requires— Inter-
pretation.
- “advancement”, in relation to a charitable purpose, includes protection, maintenance, support, research and improvement;
- “authorized officer” means—
- (a) any member of the Jamaica Constabulary Force, the Island Special Constabulary Force or the Rural Police;
- (b) an inspector,
- and any other person acting in aid of such person acting in the execution of his office or duty shall be deemed to be an officer of the Authority acting in the execution of his duty;
- “Authority” means the person or body designated as the Charities Authority under section 6;
- “charitable organization” means—
- (a) a charitable trust; or
- (b) any institution, whether incorporated or not, which—
- (i) is established for a charitable purpose exclusively;
- (ii) is intended to and does operate for the public benefit; and
- (iii) has no part of its net income or

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assets enuring to the personal benefit of any governing board but shall not include an excluded body;

“charitable purpose” has the meaning assigned to it in section 3;

“charitable trust” means a trust that—

- (a) is established for a charitable purpose exclusively;
- (b) is established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust; and
- (c) has no part of its net income or assets enuring to the personal benefit of any governing board member or settlor of the organization, or of any other private individual;

“commencement date” means the day appointed under section 1 for the coming into operation of this Act;

“Commissioner General” means the Commissioner General appointed under section 10 of the Tax Administration Jamaica Act;

“constitution”, in relation to a charitable organization—

- (a) means the rules made, in writing, governing the management of the charitable organization; and
- (b) includes—
 - (i) in the case of a charitable organization that is a charitable trust, the deed of trust establishing the charitable trust;

- (ii) in the case of a charitable organization that is a company, the memorandum and articles of association or the articles of incorporation, as originally framed or as altered by special resolution; and
- (iii) in the case of a charitable organization that is a body corporate other than a company, the charter, statute or other like instrument by which it is established,

but does not include any enactment or rule of law applicable to the carrying on of the activities of the organization;

“Court” means the Supreme Court of Judicature of Jamaica;

“document” means anything in which information of any description is recorded, whether on paper, tape, film or other physical medium, or by electronic means, or otherwise;

“excluded body” means—

- (a) a political party or a body that promotes a political party or a candidate of a political party;
- (b) a trade union;
- (c) a representative body of employers;
- (d) a chamber of commerce or other body that promotes the interests of commercial entities; or
- (e) a body that promotes purposes that are—
 - (i) unlawful;

- (ii) prejudicial to public order or public safety;
- (iii) in support of terrorism or terrorist activities, whether those activities occur in Jamaica or outside of Jamaica; or
- (iv) for the benefit of an organization, being a member of which is unlawful;

6/2014
11th Sch.

“financial institution” means—

- (a) a bank as defined in the *Banking Services Act*;
- (b) a merchant bank as defined in the *Banking Services Act*;
- (c) a building society as defined in the *Banking Services Act*;
- (d) a society registered under the *Co-operative Societies Act* and which carries on credit union business;
- (e) an insurance company registered under the *Insurance Act*;
- (f) a person licensed under the *Bank of Jamaica Act* to operate an exchange bureau;
- (g) a person licensed under the *Securities Act* as a dealer or investment adviser;
- (h) money transfer or remittance agents and agencies;
- (i) any other person declared by the Minister by order published in the *Gazette*, subject to affirmative resolution, to be a financial institution for the purposes of this Act;

“functions” includes powers and duties;

“governing board member”, in relation to a charitable organization, means—

(a) a trustee, director or other person who is a member of the governing body (by whatever name called) which is responsible for the management of the charitable organization, whether or not he is an employee of the charitable organization; and

(b) the secretary of the charitable organization;

“government company” means a company registered under the *Companies Act*, being a company in which the Government or an agency of the Government, is in a position to direct the policy of that company;

“inspector” means a person appointed as such under section 34;

“management”, in relation to a charitable organization, includes the exercise of general control and administration;

“public benefit” has the meaning assigned to it in section 4;

“public body” means—

(a) a Ministry, Department, Executive Agency or other agency of Government;

(b) a local authority;

(c) a statutory body or authority; or

(d) a government company;

“registered charitable organization” means a charitable organization that is registered under section 24(4);

“Register” means the Register of Charitable Organizations kept under section 24(1);

“Registrar” or “Registrar of Charitable Organizations” means the person designated as such under section 23;

“revenue laws” means laws relating to revenue;

“statutory body or authority” means a body corporate established by an Act of Parliament over which the Government or an agency of the Government exercises control;

“Tribunal” means the Charities Appeal Tribunal established by section 36.

Meaning of
“charitable
purpose”.
First
Schedule.

3.—(1) For the purposes of this Act, a charitable purpose is a purpose specified in the First Schedule that is for the public benefit.

(2) If the purposes of an organization that is or seeks to be registered as a charitable organization include a purpose that is not a charitable purpose but that is, in the opinion of the Commissioner General, merely ancillary to a charitable purpose of the organization, the presence of that non-charitable purpose does not, without more, prevent the organization from being regarded as, or qualifying to be, so registered.

(3) For the purposes of subsection (2), a purpose is ancillary to a charitable purpose of the organization if the non-charitable purpose is—

- (a) ancillary, secondary, subordinate or incidental to a charitable purpose of the organization; and
- (b) not an independent purpose of the organization.

4. In this Act, “public benefit”—

Meaning of “public benefit”.

- (a) includes a benefit which—
 - (i) is available to members of the public at large; or
 - (ii) is available to a section of the public ascertained by reference to some specified geographical area; but
- (b) does not include a benefit, as described in paragraph (a), if the persons for whom it is intended to be available are to be ascertained primarily by reference to their relationship with a particular person or body of persons, whether that relationship is one of blood, status, contract or otherwise.

5. The objects of this Act are to—

Objects of Act.

- (a) maintain, protect and enhance public trust and confidence in charitable organizations in Jamaica;
- (b) promote compliance by governing board members with their legal obligations in relation to the management of charitable organizations; and
- (c) enhance the accountability of charitable organizations to donors, beneficiaries and the general public.

PART II. *The Authority*

Designation and Functions

6. For the purposes of this Act, the Minister may, by order published in the *Gazette*, designate a person or body as the Charities Authority.

Designation of Authority.

7.—(1) The functions of the Authority shall be to—

Functions of Authority.

- (a) receive, process and determine applications for registration under this Act;
- (b) make appropriate information available to assist persons to make applications for registration under this Act;
- (c) provide the Registrar with the necessary information to facilitate the keeping of the Register;
- (d) carry on such activities or publish such information (including statistical information) concerning charitable organizations as it considers appropriate;
- (e) provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Authority;
- (f) monitor charitable organizations and their activities to ensure that organizations that are registered as charitable organizations continue to be qualified to be so registered;
- (g) monitor and promote compliance with this Act and any regulations made hereunder;
- (h) enquire into or, appoint any person who in its opinion is qualified to do so to enquire into the operations or activities of any charitable organization;
- (i) take such steps as may be required to ensure that registered charitable organizations are not misused for criminal purposes or controlled by persons engaged in criminal activities; and
- (j) perform such other functions as may be assigned to the Authority by the Minister by or under this Act or any other enactment.

(2) The Authority may audit and examine, or cause to be audited and examined, the books, records, and documents of any registered charitable organization.

(3) If the Authority is satisfied that a registered charitable organization is not operating in compliance with the

provisions of this Act, the Authority may take remedial or protective action in connection with the administration of the registered charitable organization, including, where appropriate, the actions set out in the Second Schedule.

Second
Schedule.

8. In performing the functions set out in section 7, the Authority shall have regard to the following—

Authority to
have regard
to certain
matters in
exercising
functions.

- (a) the maintenance, protection and enhancement of public trust and confidence in charitable organizations;
- (b) the need for transparency and accountability in the management of charitable organizations;
- (c) the need for the Authority—
 - (i) to cooperate with other public bodies; and
 - (ii) to administer effectively the laws that confer functions on the Authority (including by the minimization of procedural requirements and procedural duplication);
- (d) the benefits gained from assisting registered charitable organizations in complying with and understanding this Act, by providing them with guidance; and
- (e) the nature and diversity of charitable organizations.

9.—(1) Subject to subsection (2), the conferral of powers of investigation upon the Authority by this Act shall not be construed as affecting the exercise of any functions relating to the investigation or prosecution of offences conferred upon any other authority (hereinafter called an “investigative authority”), whether the functions are similar to these functions or not.

Cooperation
between
Authority and
other
authorities.

(2) Every investigative authority shall, in the exercise of its functions, cooperate with the Authority.

(3) The Authority shall cooperate with an investigative authority in the exercise of any functions conferred on the investigative authority under this Act or any other enactment.

(4) The Authority may, in pursuance of the performance of its functions under this Act—

- (a) provide copies of any documents to an investigative authority; and
- (b) share any other information which it receives with any investigative authority.

(5) The Authority may cooperate, and its cooperation may include the provision of documents and the sharing of other information referred to in subsection (4), with any law enforcement agency or regulatory authority in a jurisdiction outside Jamaica which has responsibilities in that jurisdiction for investigating or taking enforcement action against money laundering, the financing of terrorism or other financial crimes, where the Authority is satisfied that the law enforcement agency or regulatory authority has requested cooperation, and will use documents provided or other information shared, in furtherance of those responsibilities and for no other purpose.

Ministerial
directions.

10.—(1) The Minister may, after consultation with the Authority, give to the Authority directions of a general character as to the policy to be followed by the Authority in the exercise and performance of its functions as appear to the Minister to be necessary in the public interest.

(2) The Authority shall give effect to the directions given by the Minister under subsection (1).

Obligation for
secrecy.

11.—(1) Subject to section 9(3), every person having an official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential, all information, books, records or documents relating to the functions of the Authority.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the secrecy and confidentiality of all information, books, records or

other documents relating to the functions of the Authority.

(3) Any person to whom information is communicated pursuant to this Act shall regard and deal with such information as secret and confidential, except in the case of an investigative authority referred to in section 9 to the extent otherwise provided in any other law.

(4) Every person referred to in subsection (1), (2) or (3) having possession of or control over any information, book, record or other document, who at any time communicates or attempts to communicate any such information or anything contained in such book, record or document to any person, otherwise than for the purposes of this Act or—

(a) to any person, other than—

- (i) an authorized officer of the Authority;
- (ii) the Registrar of Companies;
- (iii) the Commissioner General; or
- (iv) an investigate authority, or a law enforcement agency or regulatory authority in a jurisdiction outside Jamaica which has responsibility in that jurisdiction for investigating or taking enforcement action against money laundering, the financing of terrorism or other financial crimes, pursuant to section 9; or

(b) otherwise than pursuant to a court order,

commits an offence.

(5) A person who commits an offence under subsection (4) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(6) No obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise shall prevent the Authority, or the Registrar, or any officer of the Authority duly authorized for the purpose, from disclosing information to the Commissioner General for the purpose of assisting the Commissioner General or his officers in the performance of his or their duties under law in assessing a charitable organization for tax purposes or otherwise.

(7) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise shall prevent the Authority, or the Registrar, or any officer of the Authority duly authorized for the purpose, from disclosing information to any law enforcement agency or regulatory authority in a jurisdiction outside Jamaica which has responsibility in that jurisdiction for investigating or taking enforcement action against money laundering, the financing of terrorism or other financial crimes.

Protection of persons exercising functions under the Act.

12.—(1) No civil or criminal action, suit or other proceedings for breach of confidentiality (including confidentiality arising from legal professional privilege) may be brought, nor any professional sanction for such breach may be taken, against any person, who in good faith (under this Act or any other enactment) provides or transmits to the Authority information requested by the Authority or submits a report to the Authority.

(2) No suit or other proceedings may be brought or instituted personally against any officer of the Authority in respect of any lawful act done or omission made in good faith, in the course of carrying out the provisions of this Act.

Reports and Returns

Reports and returns.

13.—(1) The Authority shall, within six months after the end of each financial year, or within such longer period as the Minister may in special circumstances approve, cause to be made and transmitted to the Minister an annual report

dealing generally with the activities of the Authority in relation to registered charitable organizations during the preceding financial year.

(2) The Minister shall cause a copy of the report mentioned in subsection (1) to be tabled in the House of Representatives and the Senate.

(3) The Authority shall not disclose in the report any information pursuant to this section that would directly or indirectly identify any charitable organization that provided a report to the Authority, or any charitable organization about whom a report was provided under this Act.

(4) The Authority shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Authority, and shall afford him facilities for verifying such information in such manner and at such times as he may reasonably require.

PART III. *Registration of Charitable Organizations*

14. Registration as a charitable organization under this Act shall be required in order to obtain relief applicable to registered charitable organizations under the Acts specified in the Third Schedule.

Registration requirement for tax relief Third Schedule

14A. Notwithstanding section 14, the Minister responsible for finance may, by order published in the *Gazette*, specify certain public bodies or categories of public bodies in respect of which the requirement to register as a charitable organization under this Act in order to obtain relief applicable to a registered charitable organization under the Acts specified in the Third Schedule shall not apply.

Specified public bodies may be treated as registered charitable organization 10/2014 S 39

15.—(1) Every person who is desirous of obtaining relief under the Acts specified in the Third Schedule by qualifying therefor as a registered charitable organization shall apply in the prescribed form and manner to the Authority for registration of the charitable organization.

Application for registration of charitable organization

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

(3) The Authority may require an applicant for registration to furnish such additional information or document as it may specify.

Grant or
refusal of
approval for
registration

16.—(1) Upon receipt of an application under section 15(1), the Authority—

- (a) may cause an inspector to verify that the information furnished in the application is accurate;
- (b) shall forward a copy of the application to the Commissioner General (except where Tax Administration Jamaica has been designated as the Authority under section 6); and
- (c) may invite, within such period as the Authority may specify, the written comments or recommendations of such public body as the Authority thinks appropriate.

(2) On receipt of the application pursuant to subsection (1)(b), the Commissioner General shall review the application and indicate, within fourteen days from the date of receipt of the application, whether he objects to registration of the charitable organization.

(3) The Authority shall not approve the application unless the Commissioner General has indicated that he does not object to registration of the charitable organization.

(4) If the Commissioner General objects to registration of the charitable organization he shall state the reasons for the objection.

(5) The Authority may—

- (a) subject to subsections (1) and (2)—
 - (i) approve the charitable organization to which the application relates for registration as a charitable organization; and
 - (ii) direct the Registrar to act in accordance with section 24; or
- (b) refuse to approve the organization for registration as a charitable organization.

(6) An approval for registration as a charitable organization granted under this section may be subject to such terms and conditions, as are specified therein.

(7) Where the Authority grants approval for registration as a charitable organization under this section it shall issue a certificate of approval to the charitable organization.

(8) Where the Authority refuses to grant an approval for registration as a charitable organization, it shall so inform the applicant, in writing, stating the reasons therefor.

17. Subject to the provisions of this Act, where an application for registration of an organization as a charitable organization is made to the Authority, the Authority shall satisfy itself that—

Matters to be taken into consideration by authority.

- (a) each governing board member is a fit and proper person within the meaning of section 18;
- (b) the organization—
 - (i) is established for a charitable purpose exclusively;
 - (ii) is intended to and, if it is already operating, does operate for the public benefit; and
 - (iii) has no part of its net income or assets enuring to the personal benefit of any governing board member or settlor thereof, or of any other private individual.

18.—(1) For the purposes of section 17, a governing board member is a fit and proper person if the governing board member is a person—

Meaning of fit and proper person.

- (a) who, whether in Jamaica or elsewhere—
 - (i) has not been convicted of an offence involving dishonesty; and

(ii) is not an undischarged bankrupt; and

(b) who, in the opinion of the Authority, is a person of sound probity, and is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to a charitable organization.

(2) For the purposes of subsection (1)(a), the Authority shall have regard to any evidence that a governing board member—

- (a) has engaged in any business practice appearing to the Authority to be deceitful or oppressive or otherwise improper;
- (b) has contravened any provision of any enactment for the protection of the public against financial loss; or
- (c) is incapacitated by reason of a mental disorder.

(3) In subsection (2)(c), “mental disorder” means—

- (a) a substantial disorder of thought, perception, orientation or memory which grossly impairs a person’s behaviour, judgment, capacity to recognize reality or ability to meet the demands of life which renders a person to be of unsound mind; or
- (b) mental retardation where such a condition is associated with abnormally aggressive or seriously irresponsible behaviour.

Grounds for refusal to grant approval.

19.—(1) The Authority may refuse to approve the registration of an organization as a charitable organization under this Act where, in the opinion of the Authority, registration would not be in the public interest, having regard to such factors as the Authority considers relevant, including the factors set out in sections 17 and 18.

(2) In addition to the ground of refusal mentioned in subsection (1), the Authority may refuse to approve the registration of an organization, that is a body corporate, as a charitable organization under this Act, if—

- (a) a resolution has been passed for the voluntary winding up of the body corporate or an order has been made by a court of competent jurisdiction for its winding up; or
- (b) a receiver has been appointed to manage any of its assets.

20. An approval for the registration of an organization as a charitable organization granted under this Act—

Non-transferability and validity of approval.

- (a) shall not be transferable; and
- (b) shall be valid for such period as is specified therein.

21.—(1) Subject to subsection (2), the Authority may, suspend the approval for the registration of an organization as a charitable organization granted under this Act, if—

Suspension of approval.

- (a) the registered charitable organization has failed to pay any fees or other charges required by this Act or any regulations made hereunder;
- (b) the registered charitable organization is in breach of—
 - (i) any provision of this Act or any regulations made hereunder;
 - (ii) any term or condition subject to which the approval is granted; or
 - (iii) an undertaking given pursuant to sections 32, and the circumstances set out in section 33(1) apply;
- (c) the charitable organization notifies the Authority in writing that it intends to cease operations for the period stated in the notice;
- (d) the charitable organization, or any governing board member who is an employee of the charitable organization, has been charged with an offence under the Proceeds of Crime Act or the Terrorism Prevention Act or an offence involving fraud or dishonesty; or

- (e) the charitable organization is conducting its affairs in a way that is harming or jeopardising, or is likely to harm or jeopardise, the public trust and confidence in charitable organizations.

(2) Before suspending an approval under subsection (1)(a) or (b), the Authority shall—

- (a) notify the registered charitable organization in writing of its intention to suspend the approval—

- (i) stating the reason therefor; and

- (ii) requiring the registered charitable organization, in the case of a breach, to remedy the breach within the time specified in the notice; and

- (b) forward a copy of the notice of its intention to suspend the approval to—

- (i) the Commissioner General (except where Tax Administration Jamaica has been designated as the Authority under section 6); and

- (ii) the Registrar.

(3) Where the Authority suspends the approval, the Authority shall—

- (a) notify the registered charitable organization in writing of the suspension; and

- (b) forward a copy of the notice of suspension to—

- (i) the Commissioner General (except where Tax Administration Jamaica has been designated as the Authority under section 6); and

- (ii) the Registrar.

- (c) direct the Registrar to note the suspension in the Register.

(4) A registered charitable organization that is served with a notice under subsection (2) shall, after remedying the breach which gave rise to the notice of its intention to suspend the approval, notify the Authority in writing that the breach has been remedied, specifying the actions taken to remedy the breach.

(5) The Authority shall, upon receipt of a notice referred to in subsection (3) and if, consequent upon such inspection or other action, if any, as the Authority may consider appropriate, it is satisfied that—

- (a) the breach has been remedied, withdraw the notice of suspension; or
- (b) the breach has not been remedied, revoke the approval pursuant to section 22 or take such other action as it thinks appropriate.

22.—(1) The Authority may revoke the approval for registration of a charitable organization granted under this Act if the Authority reasonably believes that any of the following conditions is met—

Revocation of approval.

- (a) at any time after the date of effect of the approval, the charitable organization is or was not entitled to approval or is no longer entitled;
- (b) the charitable organization provided, in connection with its application for approval, information that is false or misleading in a material particular;
- (c) at any time after the date of effect of the approval the charitable organization contravened a provision of this Act;
- (d) a resolution has been passed for the voluntary winding up of the charitable organization or an order has been made by a court of competent jurisdiction for the winding up of the charitable organization;
- (e) the charitable organization has made a request to the Authority, in writing, that the Authority revoke the approval;

- (f) the charitable organization has given an undertaking pursuant to section 32 and the circumstances set out in section 33(1) apply;
- (g) the charitable organization, or any governing board member who is an employee of the charitable organization, has been convicted of an offence under the Proceeds of Crime Act or the Terrorism Prevention Act or an offence involving fraud or dishonesty; or
- (h) the charitable organization is conducting its affairs in a way that is harming or jeopardising, or is likely to harm or jeopardise, the public trust and confidence in charitable organizations.

(2) In deciding whether to revoke the approval of a charitable organization, the Authority shall take account of the following matters—

- (a) the nature, significance and persistence of any contravention of this Act, the Proceeds of Crime Act, the Terrorism Prevention Act or any law relating to fraud or dishonesty, by the charitable organization;
- (b) what action the Authority or the charitable organization, could take or has taken—
 - (i) to address any such contravention or non-compliance; or
 - (ii) to prevent any similar contravention or non-compliance;
- (c) the desirability or ensuring that contributions to the charitable organization are applied consistently with the charitable purpose of the charitable organization;
- (d) the extent (if any) to which the charitable organization is conducting its affairs in a way that may cause harm to, or jeopardise, the public trust and confidence in charitable organizations;

- (e) the welfare of members of the public (if any) that receive direct benefits from the charitable organization; and
- (f) any other matter that the Authority considers relevant.

(3) The revocation shall specify the day on which the organization's approval is taken to be revoked, and the registration of the charitable organization under this Act shall cease with effect as of that date.

(4) The Authority shall give the charitable organization written notice of revocation within fourteen days of the Authority revoking its approval.

(5) Where the Authority revokes the approval of a charitable organization, the Authority shall—

- (a) forward a copy of the notice of revocation to the Commissioner General (except where Tax Administration Jamaica has been designated as the Authority under section 6) and the Registrar; and
- (b) direct the Registrar to remove the name and particulars of the charitable organization from the Register.

(6) An entry by the Registrar pursuant to subsection (5)(b) shall specify the day on which the organization's approval is taken to be revoked.

23. For the purpose of this Act, the Minister may, by order published in the *Gazette*, designate a person or body as the Registrar of Charitable Organizations.

Designation
of Registrar of
Charitable
Organizations.

24.—(1) The Registrar shall keep and maintain an up-to-date register to be known as the Register of Charitable Organizations in which shall be entered the particulars set out in subsection (2).

Register of
Charitable
Organizations.

(2) There shall be included in the Register in respect of each registered charitable organization—

- (a) the registered name of the charitable organization;
- (b) the date of registration of charitable organization;

- (c) the registered address of the charitable organization;
- (d) a summary of the objectives and purposes of the charitable organization;
- (e) the names of the governing board members, and the dates of their appointment; and
- (f) such other particulars as the Registrar thinks necessary.

(3) The Register may be kept in any way the Registrar thinks appropriate, including by electronic means.

(4) Subject to the provisions of this Act, a charitable organization is a registered charitable organization if the name of the charitable organization appears in the Register.

Inspection of Register.

25.—(1) Information on the Register shall be made available for inspection in accordance with this section in any way the Registrar thinks appropriate, including on a website maintained by the Registrar.

(2) The register shall be open to inspection, at all reasonable times by—

- (a) the Authority;
- (b) a public body; and
- (c) the public, on payment of the prescribed fee, if any.

(3) A list of registered charitable organizations shall be published—

- (a) annually in the *Gazette*; and
- (b) on a website maintained or caused to be maintained by the Registrar.

Correction of Register.

26.—(1) It shall be the duty of the Registrar, in accordance with the direction of the Authority, to—

- (a) remove any entry from the Register;
- (b) restore to the Register any entry which the Authority directs him to restore;

- (c) correct any entry in the Register which the Authority directs him to correct as being, in the opinion of the Authority, an entry which was incorrectly made; and
- (d) make, from time to time, any necessary alterations in any of the particulars set out in section 24(2).

(2) If the Authority—

- (a) sends by post to any registered charitable organization, a registered letter addressed to it at the address appearing in the Register, enquiring whether it has ceased to operate or has changed its address and receives no reply to that letter within three months from the date of posting it; and
- (b) upon the expiration of that period, sends in like manner to that charitable organization a second similar letter and receives no reply to that letter within three months from the date of posting it,

the Authority may direct the Registrar to remove from the Register the name of that charitable organization.

(3) The Authority may, at any time, direct the Registrar to restore to the Register any name removed therefrom pursuant to subsection (2).

(4) Where the Authority takes any action under subsection (1), it shall, within fourteen days, after taking that action, or at such time thereafter as is reasonably practicable, by notice in writing, inform the charitable organization.

(5) A governing board member shall, as soon, as is reasonably practicable, inform the Authority by notice in writing of—

- (a) any errors in the Register of which he is aware; and
- (b) any change in the information entered in the Register as it relates to the charitable organization.

PART IV. DUTIES OF REGISTERED CHARITABLE ORGANIZATIONS

Duty to keep records, etc.

27.—(1) A registered charitable organization shall keep written financial records that—

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited,

so as to enable any recognised assessment activity to be carried out in relation to the charitable organization.

(2) A registered charitable organization shall keep and maintain its books, documents and other records in the manner and for the period required of taxpayers under the Revenue Administration Act, and the provisions of that Act shall apply in relation thereto.

(3) A registered charitable organization shall furnish to the Authority such particulars with regard to its accounts and other records as the Authority may require.

(4) The books, records or documents of every charitable organization shall be open at all times for inspection by an inspector or any person duly authorized by the Authority.

(5) In this section “recognised assessment activity”, in relation to a charitable organization, means—

- (a) an activity carried out by the Authority involving assessment of the charitable organization’s entitlement to registration;
- (b) an activity carried out by the Authority involving assessment of the charitable organization’s compliance with this Act and any regulations made under this Act; or
- (c) an activity carried out by the Commissioner General involving assessment of the charitable organization’s compliance with the revenue laws.

28.—(1) A registered charitable organization shall notify the Authority in the prescribed form if any of the following circumstances exists—

Duty to notify the Authority of certain matters.

- (a) its name has changed;
- (b) the address of its registered office has changed;
- (c) a person has been appointed as, or has ceased to be, a governing board member or a body has ceased to be, or has become, a subsidiary of the registered charitable organization;
- (d) its constitution has changed; or
- (e) it has contravened a provision of this Act.

(2) The notification shall be given no later than twenty-eight days after the registered charitable organization first becomes aware of the circumstances mentioned in subsection (1).

(3) Where the Authority receives a notification under this section the Authority shall act in the manner it deems appropriate, including directing the Registrar to correct the Register pursuant to section 26.

29.—(1) Every registered charitable organization shall keep minutes of each meeting of its governing board members in which shall be recorded the names of the governing board members attending the meeting.

Duties of charitable organizations re management.

(2) The fact that a charitable organization is registered shall be stated in legible characters—

- (a) in all notices, advertisements and other documents issued by or on behalf of the charitable organization and soliciting money or other property for the benefit of the charitable organization; and
- (b) in all bills rendered by it and in all its invoices and receipts.

(3) Subsection (2)(a) has effect whether the solicitation is express or implied, and whether or not the money or other property is to be given for any consideration.

(4) The governing board members shall ensure that—

- (a) the charitable organization operates for the public benefit;
- (b) no part of the net income or assets of the charitable organization enures to the personal benefit of any governing board member or settlor of the organization, or of any other private individual;
- (c) contributions to the charitable organization are applied consistently with the charitable purpose of the charitable organization; and
- (d) it conducts its affairs in a way such as not to cause harm to, or jeopardize, the public trust and confidence in charitable organizations.

Restriction on alteration of charitable purpose of registered charitable organization.

30.—(1) Except with the written approval of the Authority, a registered charitable organization shall not alter its charitable purpose.

(2) A registered charitable organization that proposes to alter its charitable purpose shall give notice to the Authority in writing.

(3) Upon receipt of the notice under subsection (2), the Authority may—

- (a) give its written approval of the proposed alteration; or
- (b) give its written disapproval of the proposed alteration.

(4) Where the Authority gives its written disapproval of the proposed alteration, the Authority shall state its reasons therefor, within thirty days of receipt of the notice.

(5) Where a registered charitable organization alters its charitable purpose without having obtained the written approval of the Authority, the Authority may, as it thinks appropriate, act in accordance with sections 21 or 22 or take such other action as it thinks appropriate.

Investment of the funds of a charitable organization.

31. A charitable organization shall manage and invest its funds in accordance with the terms of its constitution.

32.—(1) The Authority may accept any of the following undertakings, provided it is made in a form acceptable to the Authority—

Acceptance of undertakings.

- (a) a written undertaking given by a charitable organization that the charitable organization will, in order to comply with a provision of this Act, take specific action;
- (b) a written undertaking given by a charitable organization that the organization will, in order to comply with a provision of this Act, refrain from taking specific action;
- (c) a written undertaking given by a charitable organization that the organization will take specific action directed towards ensuring that the charitable organization does not contravene a provision enforceable under this Act in the future.

(2) The undertaking shall be expressed to be an undertaking under this section.

(3) The charitable organization may withdraw or vary the undertaking at any time, with the written consent of the Authority.

(4) The Authority may, by written notice given to the charitable organization, withdraw its acceptance of the undertakings.

33.—(1) If—

- (a) the Authority has been given an undertaking under section 32;
- (b) the undertaking has not been withdrawn; and
- (c) the Authority considers that the charitable organization that gave the undertaking has breached the undertaking,

Enforcement of undertakings.

the Authority may apply to the court for an order under subsection (2).

(2) On an application under subsection (1), the court

may make any or all of the orders mentioned in subsection (3) if it is satisfied that—

- (a) the charitable organization has breached the undertaking; and
 - (b) the charitable organization is still a registered charitable organization.
- (3) The orders are as follows—
- (a) an order directing the charitable organization to comply with the undertaking;
 - (b) an order directing the charitable organization to pay to the Accountant-General an amount, up to the amount of any financial benefit that the charitable organization has obtained directly or indirectly, that is reasonably attributable to the breach of the undertaking;
 - (c) any other order that the court considers appropriate.

PART V. INSPECTION

Appointment
of inspectors.

34.—(1) The Authority may appoint as inspectors, for the purpose of this Act, public officers or other persons who, by training and experience, are, in its opinion, qualified to be so appointed.

(2) The Authority shall issue each inspector with an identification card and the inspector shall, on entering any place for the purpose of carrying out any of the functions specified in section 35, produce the identification card to the operator or other person in charge of the place.

(3) Notice of the appointment of an inspector, and of any revocation of such appointment, shall be published in the *Gazette*.

Functions of
inspectors.

35.—(1) The functions of an inspector shall be to—

- (a) inspect the books, records and documents of charitable organizations in order to ensure compliance with—
 - (i) the provisions of this Act or any regulations made hereunder;

- (ii) any condition subject to which approval is granted; or
 - (iii) the requirements of the revenue laws and any other law pertaining to the regulation of charitable organizations;
- (b) keep such records, as may be specified by the Authority, in respect of charitable organizations that are inspected;
 - (c) report generally to the Authority at such times and in such manner as the Authority may determine; and
 - (d) perform such other functions as may be prescribed or as may be authorized by the Authority for the purposes of this Act.

(2) An inspector may require a charitable organization to supply, in writing, such information as relates to the charitable organization's affairs as that inspector may reasonably require or as may be prescribed and the inspector shall be entitled, at all reasonable times, to—

- (a) have access to all books, records and documents of the charitable organization that are in the possession or control of any governing board member or employee of the charitable organization; or
- (b) require any governing board member, auditor or employee of the charitable organization to furnish such information or to produce such books, records or documents of the charitable organization as are in his possession or control, and as relate to the operations of the charitable organization and which may reasonably be required for the performance of the duties of the inspector.

(3) Where an inspector requests information or access to books records or documents in accordance with subsection (1), he may specify a date before which such information, books, records or documents shall be supplied, allowing for a reasonable period of time, having regard to the scope and nature of the information to be supplied.

PART VI. APPEAL

Establishment
of Charities.
Appeal
Tribunal.

36.—(1) There is hereby established, for the purpose of hearing appeals from the decisions of the Authority, a tribunal to be called the Charities Appeal Tribunal (hereinafter referred to as “the Tribunal”).

Fourth
Schedule.

(2) The provisions of the Fourth Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

Appeals to
Tribunal.

37.—(1) A person who is aggrieved by a decision of the Authority in respect of a matter under this Act may appeal to the Tribunal by way of a notice of appeal within twenty-eight days of the date of the decision or within such longer period as the Tribunal may, in any special circumstance, allow.

(2) The notice of appeal shall set out clearly the grounds of the appeal and shall be accompanied by copies of any correspondence, document or statement relevant to the appeal.

(3) A copy of the notice of appeal together with copies of any correspondence, document or statement shall be served on the Authority.

(4) The Tribunal shall, within seven days of the receipt of a notice of appeal under subsection (1), request the Authority to furnish, within seven days, a statement in writing setting out the reasons for its decision.

(5) The Tribunal may order that any book, paper, document or statement, relating to the appeal which is in the possession of the Authority or the appellant be produced at the hearing of the appeal.

(6) The Tribunal shall cause all parties to the appeal to be informed—

- (a) of the date of the hearing of the appeal;
- (b) that they may appear themselves or be represented by their attorney-at-law; and
- (c) that they may summon witnesses in their cause.

(7) On hearing an appeal under this section, the Tribunal may—

- (a) dismiss the appeal and confirm the decision of the Authority;
- (b) allow the appeal and set aside the decision;
- (c) vary the decision;
- (d) direct that the matter be referred to the Authority; or
- (e) make such order as to costs and fees as it deems necessary.

(8) Nothing in this section shall be construed as conferring a right on any person to appeal a decision or action arising under any revenue law.

PART VII. MISCELLANEOUS

38.—(1) The Minister may, after consultation with the Authority, make regulations for the better carrying out of the objects and purposes of this Act and, in particular, but without prejudice to the generality of the foregoing, may make regulations— Regulations.

- (a) concerning the keeping of the Register;
- (b) concerning applications for the approval and registration of, charitable organizations;
- (c) specifying fees payable under this Act;
- (d) concerning appeals under this Act;
- (e) setting out guidelines for the proper operation of charitable organizations;
- (f) concerning the investment of charity property;
- (g) specifying the forms to be used in connection with any application, notice, certificate or other writing under this Act;
- (h) relating to the application of the *cy pres* doctrine;

- (i) to protect charitable organizations from being used for money laundering, the financing of terrorism or other financial crimes; or
- (j) requiring registered charitable organizations to use their best efforts to confirm the identity, credentials and good standing of persons who provide them with financial contributions and other donations (including documenting the identity of their significant donors, while respecting donor confidentiality), persons to which registered charitable organizations provide financial support or other benefits, and persons with which registered charitable organizations collaborate in carrying out their charitable purposes.

(2) Notwithstanding section 29(b) of the Interpretation Act, regulations made under subsection (1) may provide in respect of a breach of any provision thereof for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or of imprisonment for a term not exceeding one year or of both such fine and imprisonment.

(3) Regulations made pursuant to subsection (1) shall be subject to affirmative resolution.

Minister may amend monetary penalties and Schedules.

39. The Minister may by order, subject to affirmative resolution, amend—

- (a) any monetary penalty imposed in this Act; or
- (b) the Schedules to this Act.

Review of Act by Parliamentary Committee.

40.—(1) This Act shall be reviewed, from time to time, by a committee of both Houses of Parliament appointed for the purpose.

(2) This first review of this Act shall be conducted not later than three years after the commencement date.

41.—(1) Subject to the provisions of this section, an organization that immediately before the commencement date, had, for the purposes of the revenue laws (including any of the enactments specified in the Third Schedule) been entitled to be treated as having been organized and operated for a charitable purpose—

Transitional.

- (a) shall be treated as a registered charitable organization for the purpose of this Act and any enactment specified in the Third Schedule; and
- (b) may apply, within six months of the commencement date, for approval for registration as a charitable organization under this Act.

(2) If an application is made pursuant to subsection (1)(b), subsection (1)(a) shall apply to the charitable organization until the application is determined.

(3) If an application is not made pursuant to subsection (1)(b), subsection (1)(a) shall cease to apply to the charitable organization at the end of the period referred to in subsection 1(b).

(4) The Authority shall determine an application under subsection (1)(b) within thirty days of the date that the application is complete (and the application shall not be complete until all information required by the Authority in connection with the application has been provided to the Authority).

FIRST SCHEDULE

(Section 3)

Charitable Purposes

1. The prevention or relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health or saving of lives.
5. The advancement of good citizenship or community development.
6. The advancement of the arts, culture, heritage, or science.
7. The advancement of amateur sport.
8. The advancement of human rights, conflict resolution, or reconciliation.
9. The promotion of religious or racial harmony or equality and diversity.
10. The advancement of environmental protection or improvement.
11. The relief of those in need because of youth, advanced age, ill-health, disability, financial hardship or other disadvantage (including temporary disadvantages such as the effects of a public disaster or public emergency).
12. The promotion of the efficiency of the armed forces or the efficiency of the police forces.
13. The advancement of animal welfare.
14. A purpose specified by the Minister, by order, subject to negative resolution of the House of Representatives, as being analogous to a purpose mentioned in paragraphs 1 to 13.

SECOND SCHEDULE

(Section 7(3))

Action to Protect Charity Property

1.—(1) In this Schedule—

Interpretation.

- (a) a reference to the exercise of any function by the Authority shall be deemed to include a reference to the exercise of that function by an agent of the Authority duly authorized to act in that behalf;
- (b) “charity property” means any money or other property entrusted to, given to, or in the possession or control of a registered charitable organization.

(2) In this Schedule, “banking account” means an account held at—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act; or
- (c) a building society registered and licensed under the Building Societies Act.

2. This Schedule applies where the Authority is satisfied that a registered charitable organization is not operating in compliance with the provisions of this Act and that the public interest requires remedial or protective action to be taken in relation to charity property or otherwise in connection with the administration of the registered charitable organization.

Application of Schedule.

3.—(1) Where this Schedule applies in accordance with paragraph 2, the Authority may apply to the Court for an order to take action as the Authority deems appropriate in accordance with this Schedule.

Intervention by Authority.

(2) An order under sub-paragraph (1) shall—

- (a) be granted only where the Judge determines that no satisfactory arrangements are in place for protecting the public interest;
- (b) expire after a period specified in the order, not being more than twenty-eight days, unless its duration is extended under sub-paragraph 4(b); and
- (c) direct that the registered charitable organization concerned and the Authority attend, or be represented by a legal representative, before a Judge in Chambers on a date specified in the order, being a date before the expiration of the order, at a hearing for the purpose of determining whether the order should be varied or discharged or its duration extended.

SECOND SCHEDULE, *contd.*

(3) The actions which the Authority may take pursuant to an order under sub-paragraph (1) shall, subject to the terms and conditions of the order, be any one or more of the actions specified in paragraph 4, 5 or 6, as the circumstances require.

(4) Upon conducting a hearing under sub-paragraph (2)(c), the Judge may—

- (a) discharge the order; or
- (b) vary the order or extend its duration for such further period as may be specified.

(5) Where it is impossible or impracticable to serve any application under this paragraph on a registered charitable organization, the Authority may, in lieu of such service, publish the notice on at least two separate occasions in a daily newspaper circulated in Jamaica.

Notice *re*:
payment or
delivery of
charity
property.

4.—(1) The Authority may serve on any person or entity in possession or control of any charity property, a notice in writing, requiring that person or entity to pay to the Authority the money so held (to the extent that such charity property comprises money) or to deliver such charity property to the Authority or as the Authority may direct.

(2) A person who is served with a notice pursuant to sub-paragraph (1), shall pay or deliver the charity property in accordance with the notice, and shall incur no liability from having made the payment or delivery in accordance with the notice.

Authority to
pay money
into separate
bank account.

5.—(1) Where the Authority receives any money pursuant to paragraph 4, the Authority shall pay the money into a separate banking account in the name of the Authority or of a person nominated on behalf of the Authority.

(2) The Authority shall hold sums of money to which this paragraph applies, and all other charity property delivered pursuant to a notice under paragraph 4, on trust and shall, subject to the rights of those beneficially entitled thereto, exercise in relation to such sums the powers conferred by this Schedule.

Possession of
records or
documents of
charitable
organization.

6.—(1) The Authority may take possession of any records or documents belonging to or in the possession, or under the control, of the registered charitable organization and may for that purpose enter and search premises pursuant to a warrant issued under sub-paragraph (2).

(2) The Court, on the application of the Authority, may issue a warrant authorizing the Authority to enter premises specified in the warrant in order to search for, and seize, any records or documents to which sub-paragraph (1) relates.

SECOND SCHEDULE, *contd.*

7.—(1) The Authority, on receiving or otherwise taking possession of any money or other charity property, record or document, under paragraph 4, 5 or 6, shall serve upon the persons specified in sub-paragraph (2) a notice—

Notice of possession to be given charitable organization or personal representative.

- (a) stating that possession has been taken on the date specified in the notice; and
- (b) identifying the money or other charity property, records or documents taken.

(2) The persons referred to in sub-paragraph (1) are—

- (a) the registered charitable organization concerned;
- (b) any other person from whom, or from whose premises, the possession was taken; and
- (c) any other person to whom the Court directs that a notice under sub-paragraph (1) should be given, in any order for directions made under paragraph 8.

8.—(1) The Authority may apply to the Court for an order for directions in relation to any matter in which the Authority may exercise functions under this Schedule.

Application to Court for directions.

(2) Without prejudice to the generality of sub-paragraph (1), an order for directions under that sub-paragraph may do any one or more of the following—

- (a) give the Authority, or any other person concerned in the matter, directions as to the powers exercisable by the Authority in relation to the practice of the charitable organization concerned in the matter;
- (b) prohibit any person (whether or not named in the order) from dealing with any charity property concerned in the matter, without the leave of the Court;
- (c) where there are reasonable grounds to believe that a person holds charity property concerned in the matter, direct that person to give to the Authority, within a specified time, information as to the type of property and the places at which they are held;
- (d) direct the Authority, or any other person concerned in the matter, to restore the charity property to the registered charitable organization concerned in the matter;

SECOND SCHEDULE, *contd.*

- (e) direct the Authority to apply the charity property concerned in accordance with the *cy pres* doctrine (in conformity with regulations made under section 38(1)(h), if any).

Application to Court for return of records and documents.

9.—(1) Any person adversely affected by the removal of records or documents pursuant to paragraph 6 may, within twenty-one days after the service of a notice under paragraph 7 or such longer period as the Court may allow, apply to the Court for an order directing the Authority to return, or deliver (as the case may require), to the applicant records or documents referred to in the notice.

(2) Upon an application under sub-paragraph (1) the Court may, if it thinks fit—

- (a) order that the records or documents be returned or delivered, or that only such parts of the records or documents as it may specify in the order be returned or delivered; and
- (b) authorize the Authority to make and retain copies of any such records or documents, or parts thereof, before their return or delivery pursuant to sub-subparagraph (a).

Application to Court for repayment of money under paragraph 4.

10.—(1) Any person or entity in possession or control of any charitable property who is, or may be, adversely affected by any payment made pursuant to paragraph 4 may apply to the Court for—

- (a) an order directing the Authority to repay the money, or any part of it, into the account from which it was paid; or
- (b) such other order as the Court thinks fit.

(2) The Court may, on hearing an application under sub-paragraph (1) and upon hearing submissions thereon on behalf of the Authority, make an order directing the Authority to repay the money into the account from which it was paid, or make such other order as the Court thinks fit.

Rules of Court.

11.—(1) Rules of Court may make provision—

- (a) governing the procedure in respect of applications made to the Court under this Schedule; and
- (b) specifying the modes of service of notices and other documents required to be given in respect of applications made pursuant to this Schedule.

(2) The Authority may, with the approval of the Minister, make regulations governing the procedures to be followed in respect of actions to protect charity property under this Schedule.

THIRD SCHEDULE

(Sections 14, 15
and 42)

*Enactments Requiring Registration under
this Act as Prerequisite for Relief*

1. The Customs Act.
2. The General Consumption Tax Act.
3. The Income Tax Act.
4. The Property Tax Act.
5. The Stamp Duty Act.
6. The Transfer Tax Act.

FOURTH SCHEDULE

(Section 36)

*Constitution and Procedure of Charities
Appeal Tribunal*

1.—(1) Subject to sub-paragraph (2), the Tribunal shall consist of a panel of five members (comprising a chairman and four other members) appointed by the Minister, being persons appearing to the Minister to be qualified for appointment to the Tribunal. Appointment of members.

(2) For the hearing of an appeal under this Act, the Tribunal may consist of three members sitting together or, if the parties to the appeal agree, one member sitting alone.

2. If the chairman or other member of the Tribunal is absent or unable to act the Minister may appoint another person to act temporarily as chairman or in place of such other member. Temporary appointment.

3.—(1) The appointment of every member of the Tribunal shall be evidenced by instrument in writing and shall be for a period not exceeding two years. Tenure of office.

(2) Every member of the Tribunal shall be eligible for re-appointment.

(3) The Minister may, at any time, revoke the appointment of the chairman or any other member of the Tribunal.

4.—(1) Any member of the Tribunal other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Tribunal. Resignation.

FOURTH SCHEDULE, *contd.*

- (2) The chairman may, at any time, resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.
- Publication of membership.** **5.** The names of the members of the Tribunal as first constituted and every change in membership thereof shall be published in the *Gazette*.
- Authentication of documents.** **6.** All documents made by, and all decisions of, the Tribunal may be signed under the hand of the chairman or any member of the Tribunal authorized to act in that behalf.
- Procedure of Tribunal.** **7.—(1)** The Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and the meetings shall be held at the places and times and on the days as the Tribunal may determine.
- (2) The chairman or any other person appointed to act temporarily as the chairman shall preside at the meetings of the Tribunal.
- (3) Subject to paragraph 1(2), the decisions of the Tribunal shall be by a majority of votes of the members hearing the appeal; and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.
- (4) The Tribunal, with the approval of the Minister, may make rules to regulate its proceedings.
- (5) Proper records of all proceedings of the Tribunal shall be kept.
- Remuneration of members.** **8.** There shall be paid to the chairman and other members of the Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Financial Secretary may determine in accordance with the Public Bodies Management and Accountability Act and any relevant Financial Instructions issued by the Financial Secretary.
- Protection of members.** **9.** No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of an act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.
- Disclosure of interest.** **10.** Any member of the Tribunal who has any interest, directly or indirectly, in any matter brought before the Tribunal—
- (a) shall disclose the nature of the interest to the Tribunal; and

FOURTH SCHEDULE, *contd.*

(b) shall not take part in any deliberations or decisions of the Tribunal with respect to that matter.

11. The office of the chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution.

Office of member not a public office.