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CAYMAN ISLANDS



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**A BILL FOR A LAW TO ESTABLISH A COMMISSION TO REGULATE
CHARITIES; TO GIVE EFFECT TO THE FINANCIAL ACTION TASK
FORCE SPECIAL RECOMMENDATION VIII ON NON-PROFIT
ORGANISATIONS; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

MEMORANDUM OF OBJECTS AND REASONS

This main objects of this Bill are to establish a Commission to regulate charities and to give effect to the Financial Action Task Force (FATF) Special Recommendation VIII on Non-Profit Organisations.

PART I

PRELIMINARY

Part I of the Bill contains the preliminary provisions which are clauses 1 and 2.

Clause 1 provides the short title.

Clause 2 is the interpretation clause which sets out the definitions of various words and terms used throughout the Bill. Of particular note are the definitions of “charity”, “charitable purposes”, and “small charity”. The clause also empowers the Governor in Cabinet to amend the definition of a “small charity”.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION

Part II of the Bill contains clauses 3 and 4 and deals with the establishment of the Charities Commission.

Clause 3 establishes the Charities Commission for the Cayman Islands, the constitution and procedures of which are set out in the Schedule.

Clause 4 sets out the functions of the Commission, which include-

- (a) the promotion of public trust and confidence in the charitable sector;
- (b) the encouragement and promotion of the effective use of charitable resources;
- (c) the dissemination of information regarding registration procedures;
- (d) the processing of applications;
- (e) the monitoring of charities and their activities;
- (f) the monitoring and promotion of compliance; and
- (g) the making of annual reports to the Minister on its operations.

PART III

CONTROL OF CHARITABLE PUBLIC COLLECTIONS

Part III of the Bill contains clauses 5 to 18 and deals with the regulation of public charitable collections.

Clause 5 sets out the definitions of various words and terms used throughout Part III. In particular, the definition of “public charitable collection” means a charitable appeal which is made-

- (a) in any public place; or
- (b) by means of visits to houses or business premises or both.

Clause 6 stipulates the circumstances in which a charitable appeal would not be regarded as a public charitable collection. These include circumstances in which the appeal-

- (a) is made in the course of a public meeting;
- (b) is made on land within a churchyard or on land designated for purposes of worship;
- (c) is made on land to which members of the public have access; or
- (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.

Clause 7 prohibits collections in a public place unless the promoter of the collection is the holder of a valid public collections certificate. A promoter who contravenes this provision commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Clause 8 prohibits door to door collections unless the promoter of the collection is the holder of a valid public collections certificate and provides the Commission with information relating to-

- (a) the purpose for which the proceeds of the appeal are to be applied;
- (b) the date or dates on which the collection is to be conducted;
- (c) the place at which, or the locality within which, the collection is to be conducted; and
- (d) such other matters as may be prescribed.

Clause 9 exempts a public charitable collection from the application process relating to obtaining a collections certificate if the charitable collection is a short term collection.

Clause 10 requires a person or persons proposing to promote public charitable collections to make an application to the Commission for a public collections certificate within a specified time and in a prescribed manner.

Clause 11 permits the Commission to make the necessary due diligence inquiries into an application for a public collections certificate and it provides the Commission with the power on making a determination to-

- (a) issue a public collections certificate in respect of the collections;
or
- (b) refuse the application on one or more specific grounds.

The Commission is also empowered to issue a public collections certificate with specific conditions and in circumstances where conditions are imposed or the application refused, the Commission is required to serve on the applicant, written notice of its decision and the reasons for that decision.

Clause 12 empowers the Commission to request any information or document from a person who has applied for or been issued a public collections certificate, if that information or document is necessary for the Commission to perform its duties.

Clause 13 allows for an application to be made to the Commission, in the prescribed manner, for permission to transfer a public collections certificate between individuals. The Commission is required to serve written notice of its decision and provide reasons where a transfer is refused.

Clause 14 deals with the power of the Commission to-

- (a) withdraw a public collections certificate;
- (b) suspend such a certificate;
- (c) attach any condition (or further condition) to such a certificate; or
- (d) vary any existing condition of such a certificate.

Where there is a withdrawal, suspension, attachment or variation of a collections certificate, the clause requires the Commission to serve on the holder written notice of its decision, the reasons and the option to appeal.

Clause 15 provides an applicant for a public collections certificate or the Attorney-General with a right of appeal to the Minister responsible for charities in circumstances where the Commission makes a decision to-

- (a) withdraw a public collections certificate;
- (b) suspend such a certificate;
- (c) attach any condition to such a certificate; or
- (d) vary any existing condition of such a certificate.

Clause 16 provides the Governor in Cabinet with the power to make regulations to facilitate the control of charitable public collections.

Clause 17 makes it an offence to misuse a prescribed badge or certificate in connection with any charitable appeal.

Clause 18 sets out the manner in which a notice may be served on person or body corporate in connection with a public collections certificate.

PART IV

FUND RAISING BY CHARITIES

Part IV of the Bill regulates the fund-raising activities of charities.

Clause 19 sets out the definitions of various terms and words used throughout Part IV.

Clause 20 makes it unlawful for a professional fund-raiser to solicit money or other property for the benefit of a charity or to represent that charitable contributions are to be given to or applied for the benefit of a charity without the agreement of the charity.

Clause 21 deals with the matters to be included in a statement where a professional fund-raiser or commercial participator solicits or makes representations for money or other property for the benefit of one or more particular charities.

Additionally, it specifies the methods of payments of donations by identifying the use of debit and credit cards and makes it an offence not to comply with the requirements of professional fund-raising or commercial participation.

The clause also requires an officer, employee or trustee of the charity or company to provide a statement setting out his position within the charity or company and the remuneration being received by him.

Clause 22 confers a power on the Governor in Cabinet to make the necessary regulations to control charity fund-raising.

Clause 23 allows a donor who makes a contribution of one hundred dollars or more following an appeal, to be refunded his contribution if he notifies the fund-raiser within seven days of his desire to be refunded. Within this procedure, the

fund-raiser will be permitted to deduct any administrative costs incurred by him in connection with the refund.

Clause 24 empowers a charity, after the charity has given the fund-raiser notice, to seek an injunction in the Grand Court to stop any person who is fund-raising on its behalf if in the opinion of the charity-

- (a) the person in question is using methods of fund-raising to which the charity objects;
- (b) the person is not a fit and proper person to raise funds for the charity; and
- (c) the conduct complained of is the making of a representation that charitable contributions are to be given to the charity and that the charity does not wish to be associated with the particular promotional or other fund-raising venture in which that person is engaged.

Clause 25 makes it an offence for a person to solicit money or other property for the benefit of a charity by misrepresenting that the charity is a registered charity.

Clause 26 confers power on the Governor in Cabinet to make the regulations to regulate fund raising activities.

PART V

REGISTRATION OF CHARITIES

Part V deals with the registration of charities.

Clause 27 deals with the appointment of a Registrar of Charities and describes his duties, including the maintenance of a register of those charitable organisations that have been approved by the Commission.

Clause 28 specifies the criteria to be observed by the Commission in determining suitability for registration of charities and brings Not for Profit associations under the jurisdiction of the Commission.

Clause 29 provides guidelines for persons who may be adversely affected by the grant of, or the refusal to grant, registration to a charitable organisation, and sets out the procedure to be followed by persons who may be aggrieved by the Commission's decisions and are seeking redress.

Clause 30 requires that all registered charitable organisations properly identify themselves by appending to their names appearing on official documents the

letters RCO, signifying that they enjoy the status of registered charitable organisations. The clause also creates offences for failure to comply with such requirements and sets out the attached penalties.

Clause 31 authorises the Commission to require a registered charitable organisation to change its name where that name fails to meet specified criteria. The clause also sets out the duties of a trustee upon being instructed by the Commission to effect a name change.

Clause 32 deals with a change of name directive when it applies to a charity that is a corporation.

Clause 33 gives the Commission power to order the cancellation of the registration of a charity where the charity is considered unfit to pursue the original purpose for which it was established.

Clause 34 provides that a charity may appeal the decision of the Commission to the Minister and if dissatisfied, a further appeal may be made to the Grand Court.

Clause 35 restricts engagement in fund raising activities by unregistered charities, prohibits the unauthorised use of the letters RCO and creates the offence of failing to comply with these directions. A person who contravenes this clause will be liable on summary conviction to fine of two thousand dollars and to imprisonment for six months.

Clause 36 requires registered charities to maintain audited accounts of receipts and expenditure and imposes on the treasurer of the charity or other person having responsibility for its accounts, the obligation to periodically submit financial statements to the Registrar.

Clause 37 empowers the Governor in Cabinet to make regulations to facilitate the registration of charities.

PART VI

POWER TO OBTAIN INFORMATION

Part VI deals with the power of the Commission to request information on charities.

Clause 38 empowers the Commission, or its delegate, to hold an inquiry into the operations of any charity, to request the production of documents and to require the attendance of persons affiliated to the charity to give evidence.

Clause 39 requires a person who has access to information or documentation that relates to a charity and which is also relevant to the discharge of the Commission's functions, to supply that information or document to the Commission upon written request.

Clause 40 authorises the disclosure of information to other bodies if such disclosure is connected to the discharge of the duties of the Commission or the body to which the information is disclosed.

Clause 41 creates the offences of intentionally supplying false or misleading information to the Commission; failing to discharge a duty imposed by the legislation and wilfully withholding information when requested by the Commission to produce it.

PART VII

CHARITABLE TRUSTS

Part VII contains provisions for the protection of the property of a charitable trust.

Clause 42 provides that Part VII applies to charitable trusts-

- (a) established outside the Islands;
- (b) whose trust property is not situated in the Islands;
- (c) whose trustees are not domiciled or resident in the Islands; or
- (d) created before or after the commencement of this legislation except as otherwise provided by this Law.

Clause 43 sets out the conditions under which charitable trust proceedings may be commenced.

Clause 44 deals with the power of the court to impose a range of orders to protect charitable property if, in charitable trust proceedings, the Court is satisfied that-

- (a) there has been any misconduct or mismanagement in the administration of a charitable trust; and
- (b) it is necessary or desirable to act for the purpose of protecting existing or future trust property or securing a proper application, for the purpose of the charitable trust, of existing or future trust property.

Clause 45 expands on the powers of the Court to remove a trustee and provides that the Court may do so on grounds of misconduct, mismanagement, conviction, mental incapacitation or bankruptcy.

Clause 46 describes the circumstances in which property, the subject of a charitable gift, may be applied cy-pres, that is, to a purpose different from, though not to dissimilar to, the original purpose.

Clause 47 sets out the procedure for dealing with a charitable gift where the purposes have failed and the donor of such property cannot be identified or has disclaimed his right to recover the property.

Clause 48 gives the power to the Attorney-General to establish different types of schemes for the administration of charities.

Clause 49 identifies the circumstances that would trigger the establishment by the Attorney-General of a scheme.

Clause 50 restricts the Attorney-General from establishing a scheme where-

- (a) the value of the trust property affected by the scheme exceeds five hundred thousand dollars or other prescribed amount; or
- (b) he is satisfied that the subject matter is, because of its contentious character or any special question of law or fact or for other reasons, more fit to be dealt with by the Court.

Clause 51 provides for-

- (a) publication of any proposal to establish a scheme;
- (b) a period of time to be allocated for the making of representations in respect of the scheme; and
- (c) adequate consideration to be given to any such representations received.

PART VIII

MISCELLANEOUS

Clause 52 exempts registered charities from the operations of the Gambling Law (1996 Revision).

[Clause 53 contains transitional provisions.]

ARRANGEMENT OF CLAUSES

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SCHEDULE - Constitution and Procedure of Commission

CAYMAN ISLANDS

A BILL FOR A LAW TO ESTABLISH A COMMISSION TO REGULATE CHARITIES; TO GIVE EFFECT TO THE FINANCIAL ACTION TASK FORCE SPECIAL RECOMMENDATION VIII ON NON-PROFIT ORGANISATIONS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

**PART I
PRELIMINARY**

1. This Law may be cited as the Charities Law, 2009.

Short title

2. (1) In this Law-

Interpretation

“bank” has the same meaning assigned to it under the Banks and Trusts Companies Law (2007 Revision);

“charity” means any person who conducts activities for charitable purposes and relies on the public or Government for a majority of the funding for such activities, but does not include a person who, by promoting or conducting any lawful activity including entertainment, a sale or an exhibition, directly or

indirectly, solicits or makes an appeal to the public for donations or subscriptions in money or in kind to facilitate private purposes;

“charitable purposes” means purposes which relate to-

- (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 community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of environmental protection or improvement;
- (i) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (j) the advancement of animal welfare; and
- (k) any purposes that may reasonably be regarded as analogous to or within the spirit of, any of the purposes falling within any of those purposes in paragraphs (a) to (j),

and are for the public benefit whether in the Islands or elsewhere;

“charitable trust” means any trust established for charitable purposes;

“charitable trust proceedings” means proceedings in the Court brought, whether by a trustee of a charitable trust or by any other person with respect to any breach or supposed breach of charitable trust, or with respect to the administration of a charitable trust; but does not include-

- (a) proceedings for the bringing of an appeal; or
- (b) proceedings relating merely to the construction of a trust instrument;

“Commission” means the Charities Commission for the Cayman Islands established by section 3;

“company” has the meaning assigned by section 2 of the Companies Law (2007 Revision);

“Court” means the Grand Court;

“Know Your Client compliance” means the submission to the Commission by the trustees, of prescribed data concerning themselves and their donors so that the organisation’s suitability to be, or to remain, registered may be properly assessed by the Commission;

“Minister” means the member of the Cabinet for the time being charged with responsibility for charities, in accordance with section 9 of the Constitution;

“person” includes a corporation, either corporate or sole, and a club, society, association or other body of one or more persons;

“prescribed” means prescribed by regulations made under this Law;

“public benefit” includes a benefit comprised within the scope of charitable purposes which is available to the general public or to a section of the public identified by reference to a specified geographical area but does not include a benefit which is to be provided to a person who is identified by reference to his relationship with another person, whether that relationship is one of blood, association, status, contract or otherwise;

“register” means the register of charities maintained by the Registrar in accordance with section 27;

“registered charity” means a charity falling under this Law and registered by the Commission;

“Registrar” means the Registrar of Charities appointed under section 27;

“Registrar of Companies” means the Registrar of Companies referred to in section 2 of the Companies Law (2007 Revision);

“serious wrongdoing” in relation to a charity, includes serious wrongdoing which is-

- (a) an unlawful or a corrupt use of the funds or resources of the charity;
- (b) an act, omission, or course of conduct that constitutes a risk to the public interest in the orderly and appropriate conduct of the affairs of the charity;
- (c) an act, omission, or course of conduct that constitutes an offence under any other law; or
- (d) an act, omission, or course of conduct by a person that is oppressive, discriminatory, negligent or that constitutes gross mismanagement;

“small charity” means a charity having a gross annual income of fifty thousand dollars or less;

“special purpose vehicle” means a legal entity created by a company to fulfill narrow, specific or temporary objectives of the company such as isolating the company from financial risk;

“trustee” means a person who is in control, whether fully or partially, of the management and administration of a charity and includes a director where the charity is a corporation; and

“trust property” means property subject to a charitable trust.

(2) The Governor in Cabinet may, by order, amend the definition of “small charity” by altering the level of required gross annual income.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION

Establishment of
Charities Commission

3. (1) There is established a Commission called the Charities Commission for the Cayman Islands which shall have powers and duties conferred upon it by this Law.

(2) The Constitution and procedures of the Commission are set out in the Schedule.

General functions of the
Commission

4. (1) The functions of the Commission are to-
- (a) promote public trust and confidence in the charitable sector;
 - (b) encourage and promote the effective use of charitable resources;
 - (c) educate and assist charities in relation to matters of good governance and management including by-
 - (i) issuing guidelines or recommendations on the best practice to be observed by charities and by persons concerned with the management or administration of charities;
 - (ii) issuing model rules;
 - (iii) providing information to charities about their rights, duties and obligations under this Law;
 - (d) make appropriate information available to assist persons to make registration applications under this Law;
 - (e) receive, consider and process applications for registration as charities;
 - (f) ensure that the register of charitable is compiled and maintained;
 - (g) receive, consider, and process annual returns submitted by charities;
 - (h) supply information and documents in appropriate circumstances in accordance with section 40;
 - (i) monitor charities and their activities to ensure that charities that are under this Law continue to be qualified for registration as charities;

- (j) inquire into charities and into persons who have engaged in, or are engaging in conduct that constitutes, or may constitute, a breach of this Law or serious wrongdoing in connection with a charity;
- (k) monitor and promote compliance with this Law, including the referral of cases to the Attorney-General for prosecution;
- (l) consider, report and make recommendations on, any matter (including, a proposed government policy) relating to charities-
 - (i) that is referred to it by the Minister; or
 - (ii) on its own motion;
- (m) stimulate and promote research into any matter relating to charities, by, amongst other things-
 - (i) collecting and disseminating information or research about charities;
 - (ii) advising on areas where further research or information about charities should be undertaken or collected; and
 - (iii) entering into contracts or arrangements for research or information about charities to be undertaken or collected;
- (n) receive, consider and process applications for public collections certificates; and
- (o) carry out any other functions conferred on it by this Law or that the Minister may direct the Commission to perform in accordance with this Law.

(2) Without limiting subsection (1), the Commission may perform its functions under subsection (1)(a) to (c), (l), and (m) in relation to any charity regardless of whether or not the charity is registered as a charity under this Law.

(3) It shall be the general object of the Commission so to act in the case of a charity (unless it is a matter of altering its purposes) as best to promote and make effective the work of the charity in meeting the needs designated by its trusts; but the Commission shall not itself have the power to act in the administration of the charity.

(4) The Commission shall, as soon as possible after the end of every year, submit to the Minister a report on its operations during that year and the Minister shall lay a copy of the report at the next meeting of the Legislative Assembly.

PART III

CONTROL OF PUBLIC CHARITABLE COLLECTIONS

Interpretation for
purposes of this Part

5. (1) For the purposes of this Part-

“business premises” means any premises used for business or other commercial purposes;

“collector”, in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made by him alone or with others and whether made by him for remuneration or otherwise);

“house” includes any part of a building constituting a separate dwelling;

“public place” means any highway and any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access but does not include-

- (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or
- (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question;

“proceeds”, in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to a charitable appeal;

“promoter”, in relation to a public charitable collection, means-

- (a) a person who, whether alone or with others and whether for remuneration or otherwise, organises or controls the conduct of a charitable appeal; or
- (b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection;

“public collections certificate” means a certificate issued by the Commission under section 11.

(2) “Public charitable collection” means, subject to section 6, a charitable appeal which is made-

- (a) in any public place; or

(b) by means of visits to houses or business premises or both.

(3) “Charitable appeal” means an appeal to members of the public to give money or other property which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable purposes.

(4) A “collection in a public place” is a public charitable collection that is made in a public place, as mentioned in subsection (2)(a).

(5) A “door to door collection” is a public charitable collection that is made by means of visits to houses or business premises or both, as mentioned in subsection (2)(b).

(6) For the purposes of subsection (3)-

- (a) the reference to the giving of money is to doing so by whatever means; and
- (b) it does not matter whether the giving of money or other property is for consideration or otherwise.

(7) Subject to subsections (3) and (6), an appeal to members of the public other than one falling within section 6(1) is a public charitable collection for the purposes of this Part if-

- (a) it consists in or includes the making of an offer to sell goods or to supply services, or the exposing of goods for sale, to members of the public; and
- (b) it is made as mentioned in subsection (2) and in association with a representation that the whole or any part of its proceeds is to be applied for charitable purposes.

6. (1) A charitable appeal is not a public charitable collection if the appeal-

- (a) is made in the course of a public meeting;
- (b) is made-
 - (i) on land within a churchyard or ground contiguous or adjacent to a place of public worship;
 - (ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed whether by any wall or building or otherwise; or
- (c) is made on land to which members of the public have access only-
 - (i) by virtue of the express or implied permission of the occupier of the land; or

Charitable appeals that are not public charitable collections

- (ii) by virtue of any enactment and the occupier is the promoter of the collection; or
- (d) is an appeal to members of the public to place money or other property in an unattended receptacle.

(2) For the purposes of subsection (1)(c), “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.

(3) For the purposes of subsection (1)(d), a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.

Restrictions on
conducting collections in
a public place

7. (1) A collection in a public place shall not be conducted unless the promoters of the collection hold a valid public collections certificate in respect of the collection.

(2) Subsection (1) does not apply to a public charitable collection which is an exempt collection by virtue of section 9.

(3) Where a collection in a public place is conducted in contravention of subsection (1), every promoter of the collection commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Restrictions on
conducting door to door
collections

8. (1) A door to door collection shall not be conducted unless the promoters of the collection hold a valid public collections certificate in respect of the collection and have provided the Commission with the following information-

- (a) the purpose for which the proceeds of the appeal are to be applied;
- (b) the date or dates on which the collection is to be conducted;
- (c) the place at which, or the locality within which, the collection is to be conducted; and
- (d) such other matters as may be prescribed.

(2) Subsection (1) does not apply to a door to door collection which is an exempt collection by virtue of section 9.

(3) Where a door to door collection is conducted in contravention of subsection (1) every promoter of the collection commits an offence and liable on summary conviction to a fine of five thousand dollars.

Exemption for short-
term collections

9. (1) A public charitable collection is exempt from the provisions of this Law if it is a short term collection.

(2) For the purposes of this section the term “short-term collection” means a charitable appeal whose duration does not exceed the prescribed period of time.

10. (1) A person who proposes to promote public charitable collections, other than a short term collection, shall apply to the Commission for a public collections certificate in respect of those collections.

Application for public
collections certificate

(2) The application shall be made-

- (a) within the specified period falling before the commencement of the collections; or
- (b) before any later date as the Commission may allow in the case of that application.

(3) The application shall-

- (a) be made in such form as may be prescribed;
- (b) specify the period for which the certificate is sought (which must be no more than five years); and
- (c) contain such other information as may be prescribed.

(4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Part, in the context of such certificates, to public charitable collections are to be read accordingly.

11. (1) On receiving an application for a public collections certificate made in accordance with section 10, the Commission may make such inquiries as it thinks fit.

Determination of
applications and issue of
certificates

(2) The Commission shall, after making an inquiry, determine the application by either-

- (a) issuing a public collections certificate in respect of the collections; or
- (b) refusing the application on one or more of the following grounds-
 - (i) that the applicant has been convicted of an offence involving dishonesty;
 - (ii) where the applicant is a person other than a charity for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised, whether by any such charity or by any person acting on behalf of any such charity, to promote the collections;
 - (iii) that it appears to the Commission that the applicant, in promoting any other collection authorised under this Law, failed to exercise the required due diligence;

- (iv) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections;
- (v) that it appears to the Commission that the amount likely to be applied for charitable purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds of the collections;
- (vi) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances;
- (vii) that the applicant has failed to provide information required for the purposes of the application for the certificate or a previous application, or in response to a request under section 12;
- (viii) that it appears to the Commission that information provided to it by the applicant is false or misleading in a material particular;
- (ix) that it appears to the Commission that the applicant or any person authorised by him has breached any conditions attached to a previous public collections certificate; or
- (x) that it appears to the Commission that the applicant or any person authorised by him has on any occasion breached any provision of this Law.

(3) A public collections certificate shall specify such matters as may be prescribed, and the period specified in the application in accordance with section 10(3)(b), or such shorter period as the Commission thinks fit.

(4) The Commission may, at the time of issuing a public collections certificate, attach to it such conditions as it thinks fit.

(5) The Commission shall ensure that the terms of any conditions attached under subsection (4) are consistent with the provisions of any regulations under section 16.

(6) Where the Commission-

- (a) refuses to issue a certificate; or
- (b) attaches any condition to it,

it shall serve on the applicant written notice of its decision and the reasons for that decision.

(7) The notice under subsection (6) shall also state the right of appeal conferred by section 15(1) and the time within which such an appeal must be brought.

(8) For purposes of this section the “required due diligence” is due diligence-

- (a) to ensure that persons authorised by the applicant to act as collectors for the purposes of the collection were, or will be fit and proper persons;
- (b) to ensure that such persons complied or will comply with the provisions of regulations made under this Law; and
- (c) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised.

(9) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (2)(b) is to be construed as a reference to any of the applicants.

12. The Commission may request-

- (a) any applicant for a public collections certificate; or
- (b) any person to whom such a certificate has been issued,

Power to call for
information and
documents

to provide it with any information in his possession, or document in his custody or under his control, which is relevant to the exercise of any of its functions under this Law.

13. (1) One or more individuals to whom a public collections certificate has been issued (“the holders”) may apply to the Commission for approval for the transfer of the certificate to one or more other individuals (“the recipients”).

Transfer of certificate
between trustees of
unincorporated charity

(2) An application under subsection (1) shall be in such form and contain such information as may be prescribed.

(3) The Commission may approve the transfer of a certificate if it is satisfied that-

- (a) each of the holders is or was a trustee of a charity which is not a body corporate;
- (b) each of the recipients is a trustee of that charity and consents to the transfer; and
- (c) the charity trustees consent to the transfer.

(4) Where the Commission refuses to approve the transfer of a certificate direct that a certificate be transferred, it shall serve on the holders written notice

of its decision and the reasons for it and the notice shall also inform the applicant of the right of appeal conferred by section 15(2) and the time within which such an appeal must be brought.

(5) Except as provided by this section, a public collections certificate is not transferable.

Withdrawal or variation
etc. of certificates

14. (1) Where subsection (2), (3) or (4) applies, the Commission may-

- (a) withdraw a public collections certificate;
- (b) suspend such a certificate;
- (c) attach any condition (or further condition) to such a certificate; or
- (d) vary any existing condition of such a certificate.

(2) This subsection applies where the Commission-

- (a) has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate; and
- (b) is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions.

(3) This subsection applies where-

- (a) the holder of a certificate has unreasonably refused to provide any information or document in response to a request under section 12; or
- (b) the Commission has reason to believe that information provided to it by the holder of a certificate, or where there is more than one holder, by any of them, for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular.

(4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing.

(5) Any condition imposed at any time by the Commission under subsection (1), whether by attaching a new condition to the certificate or by varying an existing condition, shall be one that it would be appropriate for the Commission to attach to the certificate under section 11(4) if the holder was applying for it in the circumstances prevailing at that time.

(6) Where the Commission-

- (a) withdraws or suspends a certificate;
- (b) attaches a condition to a certificate; or
- (c) varies an existing condition of a certificate,

it shall serve on the holder written notice of and reasons for its decision and the notice shall also advise of the right of appeal conferred by section 15(3) and the time within which such an appeal must be brought.

(7) If the Commission-

- (a) considers that the interests of the public require a decision by it under this section to have immediate effect; and
- (b) includes a statement to that effect and the reasons for it in the notice served under subsection (6),

the decision takes effect when that notice is served on the holder.

(8) In any other case, the certificate shall continue to have effect as if it had not been withdrawn or suspended or if the condition had not been attached or varied-

- (a) until the time for bringing an appeal under section 15(3) has expired; or
- (b) if such an appeal is brought, until the determination or abandonment of the appeal.

(9) A certificate suspended under this section shall, subject to any appeal and any withdrawal of the certificate, remain suspended until-

- (a) such time as the Commission may by notice direct that the certificate is again in force; or
- (b) the end of the period of six months beginning with the date on which the suspension takes effect,

whichever is the sooner.

15. (1) A person who has applied to the Commission for a public collections certificate may appeal to the Minister against a decision of the Commission under section 11-

Appeals against
decisions of the
Commission

- (a) to refuse to issue the certificate; or
- (b) to attach any condition to it.

(2) A person to whom a public collections certificate has been issued may appeal to the Minister against a decision of the Commission not to approve the transfer under section 13.

(3) A person to whom a public collections certificate has been issued may appeal to the Minister against a decision of the Commission under section 14-

- (a) to withdraw or suspend the certificate;
- (b) to attach a condition to the certificate; or
- (c) to vary an existing condition of the certificate.

(4) In determining an appeal under this section, the Minister-

- (a) shall consider afresh the decision appealed against; and
- (b) may take into account evidence which was not available to the Commission.

(5) On an appeal under this section, the Minister may-

- (a) dismiss the appeal;
- (b) quash the decision; or
- (c) substitute for the decision of the Commission,

and, in any case, the Minister may give such directions as he thinks fit, having regard to the provisions of this Part and of regulations made under this Part.

(6) If the Minister quashes the decision, he may remit the matter to the Commission either generally or for determination in accordance with his findings or directions.

Regulations

16. (1) The Governor in Cabinet may make regulations-

- (a) for the purpose of regulating the conduct of public charitable collections;
- (b) prescribing the manner of keeping and publication of accounts;
- (c) with respect to the use by collectors of badges and certificates of authority, or badges incorporating such certificates, including provision-
 - (i) prescribing the form of such badges and certificates;
 - (ii) requiring a collector, on request, to permit his badge, or any certificate of authority held by him for the purposes of the collection, to be inspected by a police officer or by an occupier of any premises visited by him in the course of the collection;
- (d) for prohibiting persons under a prescribed age from acting as collectors, and prohibiting others from causing them so to act; and
- (e) prescribing anything falling to be prescribed by virtue of any provision of this Part.

17. (1) A person commits an offence if, in connection with any charitable appeal, he displays or uses-

Offences

- (a) a prescribed badge or prescribed certificate of authority which is not for the time being held by him for the purposes of the appeal pursuant to regulations made under this Part; or
- (b) any badge or article, or any certificate or other document resembling a prescribed badge or a prescribed certificate of authority which is likely to deceive a member of the public.

(2) A person commits an offence if-

- (a) for the purposes of an application made under section 10; or
- (b) for the purposes of section 8 or section 9,

he knowingly or recklessly furnishes any information which is false or misleading in a material particular.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine of two thousand dollars.

(4) Where any offence under this Part-

- (a) is committed by a body corporate; and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) In subsection (4) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

18. (1) This section applies to any notice required to be served under this Part.

Service of documents

(2) A notice to which this section applies may be served on a person other than a body corporate-

- (a) by delivering it to that person;
- (b) by leaving it at his last known address in the Islands; or
- (c) by sending it by post to him at that address.

(3) A notice to which this section applies may be served on a body corporate by delivering it or sending it by post-

- (a) to the registered or principal office of the body in the Islands; or

- (b) if it has no such office in the Islands, to any place in the Islands where it carries on business or conducts its activities.

(4) A notice to which this section applies may also be served on a person including a body corporate by sending it by post to that person at an address notified by that person for the purposes of this subsection to the person or persons by whom it is required to be served.

PART IV

FUND-RAISING BY CHARITIES

Interpretation for
purposes of this Part

19. (1) In this Part-

“charitable contributions”, in relation to any representation made by any commercial participator or other person, means-

- (a) the whole or part of-
 - (i) the consideration given for goods or services sold or supplied by him;
 - (ii) any proceeds, other than consideration of a promotional venture undertaken by him; or
- (b) sums given by him by way of a donation in connection with the sale or supply of goods or services, whether the amount of such sums is determined by reference to the value of any such goods or services or otherwise;

“commercial participator”, in relation to any charity, means a person who-

- (a) carries on for gain a business other than a fund-raising business; and
- (b) in the course of that business, engages in any promotional venture in which it is represented that charitable contributions are to be given to or applied for the benefit of the charity;

“credit card” means a card or other document or thing given to an individual by a person carrying on banking services, who undertakes-

- (a) that on the production of it, whether or not some other action is also required, he will supply cash, goods and services or any of them, on credit; or
- (b) that where, on the production of it to a third party, whether or not some other action is also required, the third party supplies cash, goods and services or any of them, he will pay the third party for them, whether or not deducting any discount or commission, in return for payment to him by the individual;

“debit card” means a card which is used by its holder to make a payment and results in his account at a bank or at any other institution providing banking services, being debited with the payment;

“fund-raising business” means any business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable purposes;

“person carrying on banking services” means a person licensed under the Banks and Trust Companies Law (2007 Revision);

“professional fund-raiser” means-

- (a) any person apart from a charity who carries on a fund-raising business; or
- (b) any other person who, for reward, solicits money or other property for the benefit of a charity, if he does so otherwise than in the course of any fund-raising venture undertaken by a person falling within paragraph (a) above;

“promotional venture” means any advertising or sales campaign or any other venture undertaken for promotional purposes;

(2) The definition of “professional fund-raiser” in subsection (1) (b) does not apply to any of the following-

- (a) any charity or any company connected with any such charity;
- (b) any officer or employee of any such charity or company, or any trustee of any such charity, acting in each case in his capacity as such;
- (c) any person acting as a collector in respect of a public charitable collection, apart from a person who is to be treated as a promoter of such a collection by virtue of section 5;
- (d) any person who in the course of a radio or television programme in which a fund-raising venture is undertaken by-
 - (i) a charity; or
 - (ii) a company connected with such charity, makes any solicitation at the instance of that charity or company;or
- (e) any commercial participator,

and for this purpose “collector” and “public charitable collection” have the same meaning as in Part III.

(3) Paragraph (b) of the definition of “professional fund-raiser” does not apply to a person if he does not receive-

- (a) more than-
 - (i) ten dollars per day; or
 - (ii) one thousand dollars per year, by way of remuneration in connection with soliciting money or other property for the benefit of the charity referred to in that paragraph; or
- (b) more than one thousand dollars by way of remuneration in connection with any fund-raising venture in the course of which he solicits money or other property for the benefit of that charity.

(4) For the purposes of this Part, a company is connected with a charity if-

- (a) the charity; or
- (b) the charity and one or more other charities, taken together,

is or are entitled, whether directly or through one or more nominees to exercise, or control the exercise of, the whole of the voting power at any general meeting of the company.

(5) In this Part-

- (a) “represent” and “solicit” mean respectively represent and solicit in any manner whatever, whether expressly or impliedly and whether done-
 - (i) by speaking directly to the person or persons to whom the representation or solicitation is addressed whether or not in his or their presence; or
 - (ii) by means of a statement published in any newspaper, film or radio or television programme,

or otherwise, and references to a representation or solicitation shall be construed accordingly; and

- (b) any reference to soliciting or otherwise procuring money or other property is a reference to soliciting or otherwise procuring money or other property whether any consideration is, or is to be, given in return for the money or other property or not.

(6) Where-

- (a) any solicitation of money or other property for the benefit of a charity is made in accordance with arrangements between any person and that charity; and

- (b) under those arrangements that person will be responsible for receiving on behalf of the charity money or other property given in response to the solicitation,

then if he would not be so regarded apart from this subsection, that person shall be regarded for the purposes of this Part as soliciting money or other property for the benefit of the charity.

(7) Where any fund-raising venture is undertaken by a professional fund-raiser in the course of a radio or television programme, any solicitation which is made by a person in the course of the programme at the instance of the fund-raiser shall be regarded for the purposes of this Part as made by the fund-raiser and not by that person and shall be so regarded whether or not the solicitation is made by that person for any reward.

(8) In this Part “services” includes facilities and in particular-

- (a) access to any premises or event;
- (b) membership of any organisation;
- (c) the provision of advertising space; and
- (d) the provision of any financial facilities,

and references to the supply of services shall be construed accordingly.

(9) The Governor in Cabinet may, by order, amend subsection (3) by substituting a different sum for any sum for the time being specified there.

20. (1) A professional fund-raiser shall not solicit money or other property for the benefit of a charity unless he does so in accordance with an agreement with the charity satisfying the prescribed requirements.

Prohibition on professional fund-raiser etc. raising funds for a charity without an agreement in prescribed form

(2) A commercial participator shall not represent that charitable contributions are to be given to or applied for the benefit of a charity unless he does so in accordance with a prescribed agreement with the charity.

(3) Where, on the application of a charity, the Court is satisfied-

- (a) that any person has contravened or is contravening subsection (1) or (2) in relation to the charity; and
- (b) that, unless restrained, any such contravention is likely to continue or be repeated,

the Court may grant an injunction restraining the contravention; and compliance with subsection (1) or (2) shall not be enforceable otherwise than in accordance with this subsection.

(4) Where a charity makes an agreement with a professional fund-raiser or a commercial participator by virtue of which-

- (a) the professional fund-raiser is authorised to solicit money or other property for the benefit of the charity; or
- (b) the commercial participator is authorised to represent that charitable contributions are to be given to or applied for the benefit of the charity,

and the agreement does not satisfy the prescribed requirements in any respect, the agreement shall not be enforceable against the charity except to such extent, if any, as may be provided by an order of the Court.

(5) A professional fund-raiser or commercial participator who is a party to an agreement as is mentioned in subsection (4) shall not be entitled to receive any amount by way of remuneration or expenses in respect of anything done by him in pursuance of the agreement unless-

- (a) he is entitled under any provision of the agreement; and
- (b) either-
 - (i) the agreement satisfies the prescribed requirements; or
 - (ii) any such provision has effect by virtue of an order of the Court under subsection (4).

Professional fund-raisers etc. required to indicate charities benefiting and arrangements for remuneration

21. (1) Where a professional fund-raiser solicits money or other property for the benefit of one or more particular charities, the solicitation shall be accompanied by a statement clearly indicating-

- (a) the name or names of the charity or charities concerned;
- (b) if there is more than one charity concerned, the proportions in which the charities are respectively to benefit; and
- (c) the method by which the fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(2) Where a professional fund-raiser solicits money or other property for charitable purposes of any description rather than for the benefit of one or more particular charities, the solicitation shall be accompanied by a statement clearly indicating-

- (a) the fact that he is soliciting money or other property for those purposes and not for the benefit of any particular charity or charities;
- (b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charities; and

- (c) the method by which the fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(3) Where any representation is made by a commercial participator to the effect that charitable contributions are to be given to or applied for the benefit of one or more particular charities, the representation shall be accompanied by a statement clearly indicating-

- (a) the name or names of the charity or charities concerned;
- (b) if there is more than one charity concerned, the proportions in which the charities are respectively to benefit; and
- (c) the notifiable amount of whichever of the following sums is applicable in the circumstances-
 - (i) the sum representing so much of the consideration given for goods or services sold or supplied by him as is to be given to or applied for the benefit of the charity or charities concerned;
 - (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by him as is to be so given or applied; or
 - (iii) the sum of the donations by him in connection with the sale or supply of any such goods or services which are to be so given or supplied.

(4) In subsections (1) to (3) a reference to the "notifiable amount" of any remuneration or other sum is a reference-

- (a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; or
- (b) to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.

(5) If any solicitation or representation as is mentioned in subsections (1) to (3) is made orally but is not made-

- (a) by speaking directly to the particular person or persons to whom it is addressed and in his or their presence; or
- (b) in the course of any radio or television programme,

the professional fund-raiser or commercial participator concerned shall, within seven days of any payment of one hundred dollars or more being made to him in response to the solicitation or representation, give to the person making the payment a written statement-

- (i) of the matters specified in paragraphs (a) to (c) of the relevant subsection; and

- (ii) including full details of the right to cancel under section 23(2) an agreement made in response to the solicitation or representation, and the right to have refunded under section 23(2) or (3) any payment of one hundred dollars or more made in response thereto.

(6) In subsection (5), the reference to the making of a payment is a reference to the making of a payment of whatever nature and by whatever means, including a payment made by means of a credit card or a debit card; and for the purposes of that subsection-

- (a) where the person making any such payment makes it in person, it shall be regarded as made at the time when it is so made;
- (b) where the person making any such payment sends it by post, it shall be regarded as made at the time when it is posted; and
- (c) where the person making any such payment makes it by giving, by telephone or by means of any other telecommunication apparatus, authority for an account to be debited with the payment, it shall be regarded as made at the time when any such authority is given.

(7) Where any requirement of subsections (1) to (5) is not complied with in relation to any solicitation or representation, the professional fund-raiser or commercial participator concerned commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(8) It shall be a defence for a person charged with any such offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9) Where the commission by any person of an offence under subsection (7) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(10) Where a professional fund raiser acting in accordance with subsection (1)-

- (a) is an officer or employee of a charitable institution or a company connected with any such institution, or a trustee of any such institution;
- (b) is acting as a collector in that capacity; and
- (c) receives remuneration either in his capacity as officer, employee or trustee or for acting as a collector,

then he shall, in addition to the information required under that subsection, provide a statement showing the fact that he is an officer, employee or trustee of the charity or company mentioned in subsection (1); and the fact that he is receiving remuneration as an officer, employee or trustee or for acting as a collector.

(11) In this section, “the appeal”, in relation to any solicitation by a professional fund-raiser, means the campaign or other fund-raising venture in the course of which the solicitation is made.

22. (1) The Governor in Cabinet may make such regulations as appear to him to be necessary or desirable for or in connection with regulating charity fund-raising.

Reserve power to
control fund-raising by
charities

(2) In this section “charity fund-raising” means activities not being primary trading activities which are carried on by-

- (a) charities;
- (b) persons managing charities; or
- (c) persons or companies connected with such charities,

and involve soliciting or otherwise procuring funds for the benefit of such charities or companies connected with them, or for general charitable purposes.

(3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charities in circumstances where-

- (a) those charities;
- (b) the persons managing them; or
- (c) persons or companies connected with such charities,

are engaged in charity fund-raising.

(4) A “good practice requirement” is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that-

- (a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;
- (b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;
- (c) it does not result in undue pressure being placed on persons to donate funds; and
- (d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).

(5) The matters referred to in subsection 4(d) are-

- (a) the extent or urgency of any need for funds on the part of any charity or company connected with such a charity;
- (b) any use to which funds donated in response to the fund-raising are to be put by such a charity or company; and
- (c) the activities, achievements or finances of such a charity or company.

(6) Regulations under this section may provide that a person who fails, without reasonable excuse, to comply with any prescribed requirement of the regulations commits an offence and is liable on summary conviction to a fine of five hundred dollars.

(7) For the purposes of this section-

- (a) “funds” means money or other property;
- (b) “general charitable purposes” means charitable purposes other than those associated with one or more particular charities;
- (c) the persons “managing” a charity are the charity trustees or other persons having the general control and management of the administration of the charity; and
- (d) a person is “connected” with a charity if-
 - (i) he is an employee or agent of the charity;
 - (ii) he is an employee or agent of the persons managing it;
 - (iii) he is an employee or agent of a company connected with it; or
 - (iv) he is a volunteer acting on behalf of the charity or such a company.

(8) In this section “primary purpose trading”, in relation to a charity, means any trade carried on by the charity or a company connected with it where-

- (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the charity; or
- (b) the work in connection with the trade is mainly carried out by beneficiaries of the charity.

Cancellation of
payments and
agreements made in
response to appeals

23. (1) Where-

- (a) a person (“the donor”), in response to any solicitation or representation mentioned in any of subsections (1) to (3) of section 21 which is made in the course of a radio or television programme, makes any payment of one hundred dollars or more to the relevant fund-raiser by means of a credit card or a debit card; and

- (b) before the end of the period of seven days beginning with the date of the solicitation or representation, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment,

the donor shall, subject to subsection (4), be entitled to have the payment refunded to him forthwith by the relevant fund-raiser.

(2) Where-

- (a) a person ("the donor"), in response to any solicitation or representation falling within subsection (5) of section 21, enters into an agreement with the relevant fund-raiser under which the donor is, or may be liable to make any payment or payments to the relevant fund-raiser, and the amount or aggregate amount which the donor is, or may be liable to pay to him under the agreement is one hundred dollars or more; and
- (b) before the end of the period of seven days beginning with the date when he is given any such written statement as is referred to in that subsection, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the agreement,

the notice shall operate, as from the time when it is so served, to cancel the agreement and any liability of any person other than the donor in connection with the making of any such payment or payments, and the donor shall, subject to subsection (4), be entitled to have any payment of one hundred dollars or more made by him under the agreement refunded to him forthwith by the relevant fund-raiser.

(3) Where, in response to any solicitation or representation falling within subsection (5) of section 21, a person ("the donor")-

- (a) makes any payment of one hundred dollars or more to the relevant fund-raiser; and
- (b) does not enter into any such agreement as is mentioned in subsection (2),

then, if before the end of the period of seven days beginning with the date when the donor is given any written statement referred to in subsection (5) of that section, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment, the donor shall, subject to subsection (4), be entitled to have the payment refunded to him forthwith by the relevant fund-raiser.

(4) The right of any person to have a payment refunded to him under subsections (1) to (3)-

- (a) is a right to have refunded to him the amount of the payment less any administrative expenses reasonably incurred by the relevant fund-raiser in connection with the making of the refund; or
- (b) shall, in the case of a payment for goods already received, be conditional upon restitution being made by him of the goods in question.

(5) Nothing in subsections (1) to (3) has effect in relation to any payment made or to be made in respect of services which have been supplied at the time when the relevant notice is served.

(6) In this section any reference to the making of a payment is a reference to the making of a payment of whatever nature and, in the case of subsection (2) or (3), a payment made by whatever means, including a payment made by means of a credit card or a debit card; and subsection (6) of section 21 shall have effect for determining when a payment is made for the purposes of this section as it has effect for determining when a payment is made for the purposes of subsection (5) of that section.

(7) In this section “the relevant fund-raiser”, in relation to any solicitation or representation, means the professional fund-raiser or commercial participator by whom it is made.

(8) The Governor in Cabinet may by order-

- (a) amend any provision of this section by substituting a different sum for the sum for the time being specified there; and
- (b) make such consequential amendments in section 21 as he considers appropriate.

Right of charity to prevent unauthorised fund-raising

24. (1) Where on the application of a charity, the Court is satisfied that any person has done or is doing either of the following, namely-

- (a) soliciting money or other property for the benefit of the charity; or
- (b) representing that charitable contributions are to be given to or applied for the benefit of the charity,

and that, unless restrained, he is likely to do further acts of that nature, and the Court is also satisfied as to one or more of the matters specified in subsection (2), then, subject to subsection (3), the Court may grant an injunction restraining the doing of any such acts.

(2) The matters referred to in subsection (1) are-

- (a) that the person in question is using methods of fund-raising to which the charity objects;
- (b) that that person is not a fit and proper person to raise funds for the charity; and
- (c) where the conduct complained of is the making of such representations as are mentioned in subsection (1)(b), that the institution does not wish to be associated with the particular promotional or other fund-raising venture in which that person is engaged.

(3) The power to grant an injunction under subsection (1) shall not be exercisable on the application of a charity unless the charity has, not less than twenty-eight days before making the application, served on the person in question a notice in writing requesting him to cease forthwith-

- (a) soliciting money or other property for the benefit of the charity; or
- (b) representing that charitable contributions are to be given to or applied for the benefit of the charity,

and, stating that, if he does not comply with the notice, the charity will make an application under this section for an injunction.

(4) Where-

- (a) a charity has served on any person a notice under subsection (3) ("the relevant notice") and that person has complied with the notice; but
- (b) that person has subsequently begun to carry on activities which are the same, or substantially the same, as those in respect of which the relevant notice was served,

the charity shall not, in connection with an application made by it under this section in respect of the activities carried on by that person, be required by virtue of that subsection to serve a further notice on him, if the application is made not more than twelve months after the date of service of the relevant notice.

(5) This section shall not have the effect of authorising a charity to make an application under this section in respect of anything done by a professional fund-raiser or commercial participator in relation to the charity.

25. Where-

False statements relating
to charities which are
not registered charities

- (a) a person solicits money or other property for the benefit of a charity in association with a representation that the charity is a registered charity; and
- (b) the charity is not such a charity,

he commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Regulations relating to
fund-raising

26. (1) The Governor in Cabinet may make such regulations as appear to him to be necessary or desirable for any purposes connected with any of the preceding provisions of this Part.

(2) Without prejudice to the generality of subsection (1), any such regulations may-

- (a) prescribe the form and content of-
 - (i) agreements made for the purposes of section 20; and
 - (ii) notices served under section 24(3);
- (b) require professional fund-raisers or commercial participators who are parties to such agreements with charities to make available to the charities books, documents or other records, however kept, which relate to the charities;
- (c) specify the manner in which money or other property acquired by professional fund-raisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charities is to be transmitted to such charities;
- (d) provide for any provisions of section 21 or 23 having effect in relation to solicitations or representations made in the course of radio or television programmes to have effect, subject to any modifications specified in the regulations, in relation to solicitations or representations made in the course of such programmes-
 - (i) by charities; or
 - (ii) by companies connected with such charities,and in that connection, provide for any other provisions of this Part to have effect for the purposes of the regulations subject to any modifications so specified; and
- (e) make other provision regulating the raising of funds for charitable purposes, whether by professional fund-raisers or commercial participators or otherwise.

(3) In subsection (2)(c) the reference to such money or other property as is there mentioned includes a reference to money or other property which, in the case of a professional fund-raiser or commercial participator-

- (a) has been acquired by him otherwise than in accordance with an agreement with a charity; but
- (b) by reason of any solicitation or representation in consequence of which it has been acquired, is held by him on trust for such a charity.

(4) Regulations under this section may provide that any failure to comply with a specified provision of the regulations shall be an offence punishable on summary conviction by a fine of two thousand dollars.

PART V

REGISTRATION OF CHARITIES

27. The Governor in Cabinet shall appoint a suitable person to be the Registrar of Charities who, for the purposes of this Law, shall maintain a record of every charity operating in the Islands, together with such other details as the Commission may specify.

Appointment and duties
of Registrar

28. (1) Subject to subsection (2), in considering any application submitted by a charity for registration or renewal of registration, the Commission shall have regard to-

Registration of charities

- (a) the declared purposes of the charity;
- (b) a mission statement of the charity;
- (c) annual audits of the charity's operations;
- (d) records of contributions and contributors;
- (e) evidence of how contributions were used;
- (f) evidence of Know Your Client compliance;
- (g) evidence of board structure and function; and
- (h) any other business-related matter the Commission considers relevant.

(2) Where the applicant charity was in existence prior to the date of commencement of this Law, the criteria set out in subsection (1) shall apply to the extent that the information required is ascertainable.

(3) Where the Commission is satisfied that an applicant is a suitable candidate for registration, it shall direct the Registrar to enter in the register its name and address and any other prescribed particulars thereof; and in any other case, it shall refuse to register the charity.

(4) The Commission shall, upon being satisfied that an applicant is suitable to be registered, direct that registration be effected by assigning a

registered number to the applicant organisation and such registration may be renewable every two years, upon review by the Commission.

(5) The trustees, or last trustees, of a registered charitable trust shall notify the Commission if the charity ceases to exist, or if there is any change in its trusts or other particulars entered in the register, and to supply the Commission with particulars of any such change and copies of all relevant documents.

(6) The Minister may give to the Commission general directions as to the policy relating to the exercise of its functions under this section, and the Commission shall give effect to such directions.

Presumption of
registration and redress
against Commission's
decisions

29. (1) A charity shall for all purposes other than rectification of the register be conclusively presumed to be or to have been a registered charity during the time its name was on the register, unless it was subject to suspension under subsection (4).

(2) A person who is or may be affected by the registration of an institution or body of persons as a charity, may, on the ground that it is not a charity, object to its being entered by the Commission in the register, or apply to the Commission for it to be removed from the register; and the Governor in Cabinet may prescribe the manner in which any such objection or application is to be made or dealt with.

(3) An appeal against a decision of the Commission to enter or not to enter an institution or body of persons in the register, or to remove an institution or body of persons from the register, may be brought in the Court-

- [(a) by the Attorney-General];
- (b) subject to section 34, by the persons who are or claim to be the trustees of the institution or body of persons; or
- (c) by a person whose objection or application under subsection (2) is disallowed by the decision.

(4) Where there is an appeal to the Court against any decision of the Commission to enter an institution or body of persons in the register, or not to remove an institution or body of persons from the register, then until the Commission is satisfied whether the decision is or is not to stand, the entry in the register shall be maintained, and shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) an institution or body of persons shall be considered not to be on the register during any period when the entry relating to it is in suspense under this section.

(5) Any question affecting the registration or removal from the register of an institution or body of persons, notwithstanding that it has been determined by a decision on appeal under subsection (3), may be reconsidered by the Commission and shall not be concluded by that decision, if it appears to the Commission that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such appeal or not.

30. (1) Every registered charity shall declare its status as such by stating its registered number and appending to its name, the letters RCO, signifying that it is a registered charitable organisation on-

Status of registered charity to appear on official documents

- (a) all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;
- (b) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and
- (c) all bills rendered by it and on all invoices, receipts and letters of credit.

(2) Subsection (1)(a) has effect whether the solicitation is expressed or implied and whether the money or other property is to be given for consideration or not.

(3) Where in the case of a registered charity, a person signs or issues or authorises the issuance of a document falling within subsection (1) which does not contain the letters RCO as required by that subsection, he commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(4) Where in the case of an unregistered charity a person-

- (a) uses the letters RCO on stationery purporting to be a registered charity; or
- (b) in any way misrepresents the status of the organisation,

he commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months and on conviction on indictment to a fine of ten thousand dollars and to imprisonment for two years.

31. (1) The Commission may give a direction requiring the name of a registered charity to be changed, within such period as is specified in the direction, to such other name as the trustees may determine with the approval of the Commission.

Power of Commission to require name of registered charity to be changed

(2) Subsection (1) applies to a registered charity the name of which-

- (a) is the same as or, in the opinion of the Commission, too closely resembles, the name in use by another charity at the time when the name of the registered charity was entered in the register;
- (b) is, in the opinion of the Commission, likely to mislead the public as to the true nature of the purposes of the charity as set out in the trusts, or of the activities which the charity carries on under its trusts in pursuit of those purposes;
- (c) includes a word or expression specified in regulations made by the Governor in Cabinet and the inclusion in its name of that word or expression is in the opinion of the Commission likely to mislead the public in any respect as to the status of the charity;
- (d) is, in the opinion of the Commission, likely to give the impression that the charity is connected in some way with the Government, or with any other body or persons or any other individual, when it is not so connected; or
- (e) is, in the opinion of the Commission, offensive,

and in this subsection a reference to the name of the registered charity is a reference to the name by which it is registered.

(3) Any direction given by virtue of subsection (2)(a) shall be given within twelve months of the time when the registered name was entered in the register in respect of the charity.

(4) Any direction given under this section with respect to a charity shall be given to the trustees and on receiving such direction the trustees shall give effect to it notwithstanding anything in the trusts of the charitable organisation.

(5) When the name of a charity is changed under this section, its trustees, shall within fourteen working days, notify the Commission of the charity's new name and of the date on which the change occurred.

(6) A change in the name of a charity under this section does not affect the rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

Effect of direction under section 31 where charity is a company

32. (1) Where a direction is given under section 31 with respect to a charity that is a company, the direction shall be taken to require the name of the charity to be changed by resolution of the directors of the company.

(2) Section 62 of the Companies Law (2007 Revision) shall apply to a resolution passed by the directors in compliance with such direction.

(3) Where the name of a charity is changed in compliance with any such direction, the Registrar of Companies shall-

- (a) subject to section 30 of the Companies Law (2007 Revision), enter the new name on the register of companies in place of the former name; and
- (b) issue a certificate of incorporation altered to meet the circumstances of the case,

and the change of name has effect from the date on which the altered certificate is issued.

33. (1) Where it appears to the Commission that a registered charity is in significant breach of its obligations as a registered charity or that it has substantially departed from the purpose for which it was registered, it shall instruct the Registrar to give notice to that organisation at its registered address, that its registration will be cancelled within thirty days of the date of notice unless the charity shows cause to the satisfaction of the Commission why its registration should not be cancelled.

Cancellation of
registration

(2) Every notice of the kind specified in subsection (1) shall set out the grounds for the cancellation of the registration, which grounds may include, but which are not limited to-

- (a) failure to provide annual financial audits within the time specified in the regulations;
- (b) failure to comply with requests for information required by the Commission on a bi-annual review of the status of the charity;
- (c) failure to maintain adequate accounts and records of contributions and contributors;
- (d) failure to satisfy the criteria set out in section 28(1);
- (e) failure of the charitable purpose; and
- (f) engagement in activities that are incompatible with charitable purposes,

and any other ground that the Commission considers relevant to the charitable organisation's status as a registered charity.

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

(4) Where the charity fails to satisfy the Commission that it remains a fit and proper charity, the Commission shall direct the Registrar to cancel the registration without prejudice to the right of the charity to submit a new application for registration at a later date.

Appeals by charities

34. (1) Where the Commission has refused to register a charity under section 28 or has directed the cancellation of its registration under section 33, the charity concerned may appeal to the Minister against such refusal or cancellation.

(2) Where the charity is dissatisfied with the decision of the Minister under subsection (1), it may appeal to the Court against the decision of the Minister and the Court may allow or dismiss the appeal or make an order remitting the matter for further consideration by the Minister or the Commission as the Court may think fit.

Restrictions on fund-raising activities and use of letters RCO

35. (1) Subject to subsection (3), no charity, other than one registered under this Law, shall-

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

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

(2) No charity may use the letters RCO without having been registered under this Law.

(3) Nothing in subsection (1) shall render unlawful the solicitation or collection of donations by a person involved in a short term collection or a small charity.

(4) A person who contravenes subsection (1) or (2) and a person, other than a donor, who aids and abets any other person in that contravention commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

Records of accounts

36. (1) Every registered charity, except a charity involved in a short term collection or a small charity, shall maintain audited accounts containing a statement of all monies received for charitable purposes and the expenditure thereof and shall keep such other records as may be prescribed.

(2) Every small charity and every charity involved in a short term collection shall maintain accounts of all monies received for charitable purposes

and the expenditure thereof and shall keep such other records as may be prescribed.

(3) The treasurer or other person having supervision of the accounts of a registered charity shall submit a true copy of those accounts to the Registrar within six months of the end of each financial year.

(4) The Commission may, where it considers it necessary to do so, require that the accounts of a registered charity for the preceding financial year be audited by a reputable accounting firm and the treasurer or other person having supervision of the accounts of that charity shall comply with those requirements.

(5) Accounts submitted to the Registrar pursuant to subsection (3) and written reports on or written results of an audit required pursuant to subsection (4) shall be available for inspection by members of the public at prescribed venues during normal working hours.

37. The Governor in Cabinet may make regulations for carrying into effect this Part, and without prejudice to the generality of the foregoing, the regulations may provide-

Regulations

- (a) for the particulars to be submitted by a charity applying to be registered under section 28;
- (b) for the notification of a subsequent change in the material particulars contained in an application for registration;
- (c) for the particulars to be entered in the register and for the rectification thereof; and
- (d) for any information and particulars to be included in the records kept under section 36.

PART VI

POWER TO OBTAIN INFORMATION

38. (1) The Commission may from time to time institute inquiries with regard to charities or a particular charity or class of charities of whatever description, either generally or for particular purposes.

General power to
institute inquiries

(2) The Commission may either conduct an inquiry itself or appoint a person to conduct the inquiry and make a report to it.

(3) For the purposes of an inquiry, the Commission, or a person appointed to conduct the inquiry may, subject to this section, direct any person within thirty days-

- (a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to questions or inquiries addressed to him on such matter, and to verify those accounts, statements or answers by statutory declaration;
- (b) to furnish copies of documents in his custody or under his control which relate to a matter in question at the inquiry, and to verify them by statutory declaration; and
- (c) to attend at a specified time and place and give evidence or produce documents.

(4) For the purposes of an inquiry, evidence may be taken on oath and the person conducting the inquiry may for that purpose administer oaths, or instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) The Commission may pay to a person the necessary expenses of his attendance to give evidence or produce documents for the purpose of an inquiry under this section.

(6) Where an inquiry has been held under this section, the Commission shall-

- (a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as it thinks fit to be printed and published; or
- (b) publish such report or statement in some other way that is calculated in its opinion to bring it to the attention of persons who may wish to make representations to it about the action to be taken.

Power to call for documents and search records

39. (1) The Commission may by written notice require a person-

- (a) to furnish it with information in his possession that relates to a charity and is relevant to the discharge of its functions; and
- (b) who has in his custody or under his control a document that relates to a charity and is relevant to the discharge of its functions-
 - (i) to furnish it with a copy of an extract from the document; or
 - (ii) to transmit the document to it for its inspection, unless the document forms part of the records or other documents of a Court.

(2) A Commissioner who is authorised by the Commission shall be entitled, without payment, to inspect and take copies of or extracts from the

records or other documents of a Court or of a public registry or office of records, for any purpose connected with the discharge of the functions of the Commission.

(3) The Commission is entitled without payment to keep a copy or extract furnished to it under subsection (1), and where a document transmitted to it under that subsection for inspection relates only to one or more charities and is not held by a person entitled as trustee or otherwise to the custody of it, the Commission may keep it or may deliver it to the trustees or the charity or to any other person who may be so entitled.

(4) The rights conferred by subsection (2) shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

40. (1) Subject to any express restriction imposed by or under another law, a body or person to whom this section applies may disclose to the Commission information received by that body or person under or for the purposes of any law, where the disclosure is made by the body or person for the purpose of enabling or assisting the Commission to discharge its functions.

Disclosure of
information to and by
the Commission

(2) Subject to subsection (3), the Commission may disclose to a body or person to whom this section applies information received by it under or for the purposes of any enactment, where the disclosure is made-

- (a) for a purpose connected with the discharge of its functions; and
- (b) for the purpose of enabling or assisting that body or person to discharge its or his functions.

(3) Where information disclosed to the Commission under this section is disclosed subject to express restrictions on the disclosure of the information by the Commission, the Commission's power of disclosure under subsection (2) shall, in relation to the information, be exercisable by it subject to those restrictions.

(4) This section applies to the following bodies and persons-

- (a) Government departments;
- (b) constables; and
- (c) other bodies or persons discharging functions of a public nature, including bodies or persons discharging regulatory functions in relation to a description of activities.

(5) In subsection (4) the reference to bodies or persons shall, in relation to a disclosure by the Commission under subsection (2), be construed as including a reference to bodies or persons in a country or territory outside the Islands.

(6) Nothing in this section shall be construed as affecting any power of disclosure exercisable apart from this section.

Supply of false or misleading information to, or withholding of information requested by, the Commission, etc.

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

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

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

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

(4) A person who commits an offence under this section is liable on summary conviction, to a fine of four thousand dollars; and on conviction on indictment to a fine of four thousand dollars and to imprisonment for two years.

(5) In this section, a reference to the Commission includes a reference to a person conducting an inquiry under section 38.

PART VII

CHARITABLE TRUSTS

Application of Part VII

42. (1) This Part applies in respect of a charitable trust including a charitable trust-

- (a) established outside the Islands;
- (b) whose trust property is not situated in the Islands; or
- (c) whose trustees are not domiciled or resident in the Islands.

(2) This Part applies to a trust created before or after the commencement of this section, except as otherwise provided by this Law.

43. (1) Charitable trust proceedings shall not to be commenced in the Court unless-

Bringing of charitable trust proceedings to be authorised by Attorney-General or by leave

- (a) the Attorney-General has authorised the bringing of the proceedings; or
- (b) leave to bring the proceedings is obtained from the Court.

(2) The Court shall not give such leave unless satisfied that the Attorney-General has been given an opportunity to consider whether to authorise the proceedings or that the referral of the matter to the Attorney-General is not appropriate because of the urgency of the matter or other good cause.

(3) Any such authority or leave may also be given after charitable trust proceedings have been brought so as to enable the continuation of those proceedings.

(4) A person who does not otherwise have standing may bring charitable trust proceedings if authorised by the Attorney-General to bring those proceedings.

44. (1) If the Court, in charitable trust proceedings, is satisfied that-

Powers of Court to protect charitable property

- (a) there has been any misconduct or mismanagement in the administration of a charitable trust; and
- (b) it is necessary or desirable to act for the purpose of protecting existing or future trust property or securing a proper application, for the purpose of the charitable trust, of existing or future trust property,

the Court may, without limiting any other powers of the Court, make one or more of the orders specified in subsection (2).

(2) The orders which may be made by the Court are as follows-

- (a) an order removing any or all trustees of the charitable trust;
- (b) an order appointing a person as a trustee of the charitable trust;
- (c) an order precluding the employment or engagement of a person in the affairs of the charitable trust;
- (d) an order directing any bank or person who holds property of the charitable trust not to part with the property without the approval of the Court or the Attorney-General (or a person authorised by the Attorney-General) or of some other person;
- (e) an order restricting the transactions which may be entered into or the nature or amount of the payments which may be made, in the administration of the charitable trust, without the approval of the

Court or the Attorney-General, or a person authorised by the Attorney General or of some other person;

- (f) an order appointing a receiver of the property of the charitable trust; or
- (g) an order which is necessary or convenient to be made for giving effect to an order referred to in this subsection.

(3) A person appointed by order of the Court under this section as a receiver of the property of a charitable trust-

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

(4) Nothing in the terms of any charitable trust precludes the Court from making any order it is empowered by this section to make or affects the operation of any such order.

(5) In this section and section 45, “misconduct or mismanagement” includes the remuneration of persons acting in the affairs of the charitable trust concerned, or for other administrative purposes, by payments which are excessive in relation to the duties of the persons so acting.

Provisions relating to
removal of trustees etc.

45. (1) Without limiting the powers of the Court under the Trusts Law (2007 Revision), the Court may, under section 44, remove a trustee of a charitable trust-

- (a) if the trustee has been responsible for or participated in misconduct or mismanagement in the administration of the charitable trust or has by the trustee's conduct contributed to it or facilitated it;
- (b) if the trustee has been convicted, whether in the Islands or elsewhere, of any offence involving fraud or dishonesty;
- (c) if the trustee has become mentally incapacitated;
- (d) if the trustee has become bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his creditors or has made an assignment of his remuneration for their benefit; or
- (e) if the trustee is a corporation-

- (i) which is in the course of being wound up;
- (ii) which is under official management;
- (iii) in respect of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in any instrument or otherwise;
- (iv) which has entered into a compromise or scheme of arrangement with its creditors; or
- (v) in respect of which a writ of execution or other process has been issued on a judgment, decree or order of any court in favour of a creditor of the corporation and has been returned unsatisfied in whole or in part.

46. (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-

Occasions for applying property cy-pres

- (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 cannot be carried out according to the directions given and to the spirit of the gift;
- (b) where the original purposes provide use for part only of the property available by virtue of the gift;
- (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end 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 an area which was then but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to 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 the property given for charitable purposes may be applied cy-pres, except insofar 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 applied.

(4) A charitable trust places a trustee under a duty, where the case permits, to apply trust property or some part of it cy-pres, to ensure its effective use for charitable purposes.

Application cy-pres of
gifts of donors unknown
or disclaiming

47. (1) Property given for specific charitable purposes that fail shall be applicable cy-pres as if given for charitable purposes generally, where it belongs to a donor-

- (a) who, after reasonable advertisements and inquiries, cannot be identified or found; or
- (b) 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 advertisement or inquiry, to belong to donors who cannot be identified, where it consists of the proceeds-

- (a) of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
- (b) 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 advertisement or inquiry, as belonging to donors who cannot be identified, where it appears to the Court that it would be unreasonable, having regard to-

- (a) the amounts likely to be returned to the donors, to incur expense with the view to returning the property; or
- (b) 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 interests at the time when the gift was made and where the property is 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, where he makes a claim not later than twelve months after the date on which the scheme is made, to recover from the charitable organisation for which the property is applied a sum equal to that part, less any expenses properly incurred by the trustees of the charitable organisation after that date in connection with claims relating to his gift; and
- (c) the scheme may include directions as to the provisions to be made for meeting that 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 donor.

(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 two thousand dollars in value, the Grand Court and in any other case, a Court of summary jurisdiction.

(8) This section applies to property given for charitable purposes notwithstanding that it was so given before the commencement of this Law.

48. (1) The Attorney-General may by order establish a scheme for the administration of a charity and in particular may by such order-

Power to establish schemes

- (a) establish a scheme for the alteration of the original purposes of a charity so as to enable the trust property or any part of it to be applied cy-pres if it appears to him that it may be so applied;
- (b) establish a scheme to extend or vary the powers of the trustees to prescribe or vary the manner or mode of administration of a charity either generally or in a particular case, if it appears to him that it is expedient to do so in the interest of the administration of the charity; or
- (c) in the case of multiple charities, establish a scheme to authorise the trustees to use common premises or to employ common staff in the administration of a charity, to pool the trust property for the purpose of investment, or otherwise to combine for any purpose of administration of the charity.

(2) Without limiting the generality of this Part, a scheme under this Part may vest in the trustees who desire to sell, mortgage or lease the trust property or any part of it, but who cannot do so for lack of power vested in them by the instrument creating the trust or by the law, the necessary power for such sale, mortgage or lease.

(3) Where there are no trustees of a charity, a scheme under this Part may appoint trustees for the purposes of this Part.

(4) A scheme for the administration of a charity, established by the Attorney-General under this Part has the same effect as if it had been established by the Court.

Establishment of schemes by the Attorney-General

49. (1) The Attorney-General may establish a scheme under this Part-

- (a) on the application of all or any of the trustees;
- (b) in a special case, on the Attorney-General's own initiative; or
- (c) in accordance with a referral from the Court under subsection (2).

(2) Where the Court directs that a scheme for the administration of a charity be established, the Court may, by order refer the matter to the Attorney-General for him to establish the scheme in accordance with the directions of the Court.

Restrictions on the power of the Attorney-General to establish schemes

50. (1) The Attorney-General may not establish a scheme under this Part where-

- (a) the value of the trust property affected by the scheme exceeds five hundred thousand dollars or other prescribed amount; or
- (b) he is satisfied that the subject matter is, because of its contentious character or any special question of law or fact or for other reasons, more fit to be dealt with by the Court.

(2) This section does not apply to the establishment of a scheme in accordance with a referral from the Court.

Publication of proposed schemes

51. (1) Where the Attorney-General proposes to establish a scheme under this Part he shall-

- (a) not less than one month prior to the establishment of the scheme, publish in the Gazette and in a local newspaper circulated in the Islands, a notice of his intention to do so; and
- (b) consider any representations or suggestions made in respect of the proposed scheme.

(2) The notice referred to in subsection (1) shall-

- (a) give details of the proposed scheme or specify a place at which a copy of the proposed scheme may be inspected; and
 - (b) specify a period during which representations may be made to the Attorney-General in respect of the proposed scheme.
- (3) This section does not apply to the establishment of a scheme where-
- (a) the scheme does not alter the original purposes of the charity and the Attorney-General is satisfied that the scheme should be established as a matter of urgency;
 - (b) the value of the trust property affected by the scheme does not exceed twenty thousand dollars or other prescribed amount; or
 - (c) the scheme is established in accordance with a referral from the Court.

PARTVIII

MISCELLANEOUS

52. Charities registered in accordance with this Law are exempt from the provisions of the Gambling Law (1996 Revision).

Exemption from provisions of the Gambling Law (1996 Revision)

53. (1) A charity which, immediately before the date of commencement of the Law, was in operation may continue to carry out its activities without registration under this Law-

[Transitional provisions

- (a) during the period of six months beginning with that date; and
- (b) if within that period application is made for registration, until that application is finally disposed of or withdrawn and, if the application is refused, for a further period of six months.

(2) Every matter and proceeding commenced in any court in relation to a charity or any charitable trust immediately before the date of the commencement of this Law shall be continued, completed and enforced under this Law.]

SCHEDULE

(Section 3(2))

Constitution and Procedure of Commission

1. The Commission shall consist of no fewer than five and no more than seven Commissioners, including-

- (a) a chairman;
- (b) a deputy chairman;
- (c) an attorney at law of not less than five years standing; and
- (d) a certified accountant of not less than five years standing,

all of whom shall be appointed in accordance with paragraph 2.

2. The Chairman, Deputy Chairman and the other Commissioners shall-

- (a) be appointed by the Governor in Cabinet;
- (b) hold office for a period not exceeding five years; and
- (c) be eligible for re-appointment.

3. A person shall be disqualified for appointment as a member of the Commission if he-

- (a) is a member of the Legislative Assembly;
- (b) was at any time during the seven years immediately preceding appointment, a member of the Legislative Assembly or was a candidate for election to the Legislative Assembly;
- (c) is an undischarged bankrupt; or
- (d) has at any time been convicted of any offence involving dishonesty or moral turpitude.

4. (1) The members of the Commission shall be paid a salary at such annual rate and such other emoluments as the Governor in Cabinet may determine.

(2) An order made under this paragraph may contain such supplementary provisions as the Governor in Cabinet may consider necessary for the purpose of the order.

(3) The salary and emoluments of members of the Commission shall not be altered to their disadvantage during the period of their appointment.

5. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a secretary and such other officers, agents and employees as it thinks necessary for the proper carrying out of its functions under this Law.

(2) The Governor in Cabinet may, subject to such conditions as he may impose, approve of the appointment of any public officer to any office of the Commission and an officer so appointed shall, in relation to pension, gratuity, allowance and other rights as a public officer, be deemed to be in the service of the Government while employed in any such office.

6. The Commission may, by order, charge such fees in connection with its functions in such amounts and subject to such conditions as the Governor in Cabinet may prescribe, and such fees shall be published in the Gazette.

7. All expenses incurred by the Commission in connection with its functions shall be defrayed out of moneys voted for the purposes by the Legislative Assembly.

8. A member of the Commission may, by writing under his hand addressed to the Governor in Cabinet, resign his office.

9. (1) The Governor in Cabinet may at any time revoke the appointment of any person as the chairman or as a member of the Commission if it is satisfied that the person-

- (a) has without reasonable excuse failed to carry out his duties for a continuous period of three months beginning not earlier than six months before that time;
- (b) has been convicted of a criminal offence;
- (c) has been bankrupt;
- (d) is incapacitated by physical or mental illness;
- (e) becomes a person who would be disqualified for appointment pursuant to paragraph 3; or
- (f) is otherwise unable or unfit to perform his duties.

(2) Before taking action pursuant to subparagraph (1)(f), the Governor in Cabinet shall designate not more than three persons to examine the matter and make recommendations to him.

10. (1) Where a member of the Commission resigns or his appointment revoked, the Governor in Cabinet shall appoint another person to replace that member.

(2) Notwithstanding sub-paragraph (1), if the chairman is unable to act, dies, resigns or otherwise vacates his office before expiry of the term for which he has been appointed, the Deputy Chairman may be appointed by the Governor in Cabinet to act temporarily until the Governor in Cabinet either confirms the appointment of the Deputy Chairman or appoints a substantive replacement for the Chairman.

11. The names of all members of the Commission as first constituted and every change in the membership thereof shall be published in the Gazette.

12. (1) The Chairman shall summon meetings of the Commission as often as may be required but not less than four times in any one year.

(2) Meetings of the Commission shall be held at such places, on such days and at such times as the Chairman shall determine, and due notice of such place,

date and time shall be given to each member in writing at least seven days before the time at which the meeting is to be held.

(3) The Chairman may at anytime call a special meeting of the Commission within three days of receipt of request for that purpose addressed to him in writing and signed by any three members

(4) A meeting of the Commission shall be presided over by the-

- (a) Chairman;
- (b) in the absence of the Chairman, the Deputy Chairman; or
- (c) in the absence of the Deputy Chairman, a member chosen by a majority of the members present to act as chairman at that meeting.

(5) The quorum for meetings of the Commission shall be four.

(6) All decisions at meetings of the Commission shall be taken by a majority of the members present and voting and, in the event of an equality of votes, the Chairman shall have a casting vote.

13. Subject to this Law, the Commission may regulate its own proceedings.

14. Where the Chairman or other Commissioner is absent or unable to act, the Governor in Cabinet may appoint another person to act in his place.

15. The Commission shall keep proper accounts of its receipts, payments, assets and liabilities and such accounts shall be audited annually by the Auditor General.

16. The Commission shall, in each year, prepare and submit to the Financial Secretary a report of its proceedings during the twelve months ending on the 30th day of June in that year, including a statement of its accounts audited in accordance with paragraph 15.

17. The Commission shall, on or before the 31st day of October in each year submit to the Financial Secretary for his approval, its estimates of revenue and expenditure in respect of the period commencing on the 1st day of July next following and ending on the 30th day of June of the subsequent year.

18. The Commission shall review charities registered under this Law every two years to ensure continued eligibility, continuation of charitable purpose and any other business-related matter the Commission sees fit to review.

19. The Commission shall meet at such times and places, as the Chairman considers it necessary for the transaction of business.

20. The Chairman may, at any time, call a meeting of the Commission and shall call a special meeting within fourteen days of the receipt of the written requisition for that purpose addressed to him by two Commissioners.

21. The validity of the proceedings of the Commission shall not be affected by a vacancy amongst the members of the Commission or by a defect in the appointment of a member.

22. Neither the Commission, nor any member of the Commission shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

23. The Commission shall indemnify a member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of his functions under this Law, except claims, damages, costs, charges or expenses caused by the dishonesty, fraud, negligence, bad faith or wilful act of that member.

Passed by the Legislative Assembly the day of , 2009.

Speaker

Clerk of the Legislative Assembly