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Consultation Draft

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF
CHARITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE CHARITIES BILL, 2014

MEMORANDUM OF OBJECTS AND REASONS

The main objects of this Bill are to provide for the establishment of a registration system which will deal with the regulation of the charitable sector.

PART 1 - PRELIMINARY

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

Clause 1 provides the short title and commencement.

Clause 2 is the interpretation clause which sets out the definitions of various words and terms used throughout the Bill. Of particular note are the definitions of “charity”, “charitable purposes” and “public benefit”.

PART 2 - APPOINTMENT OF A REGISTRAR OF CHARITIES

Part 2 deals with the appointment and functions of the Registrar of Charities and contains clauses 3 and 4.

Clause 3 provides for the appointment of a Registrar of Charities.

Clause 4 sets out the functions of the Registrar of Charities, 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 the operations of the registry.

PART 3 – REGISTRATION OF CHARITIES

Part 3 deals with the registration of charities and contains clauses 5 to 14.

Clause 5 provides for the establishment and maintenance of a register of charities into which all the names and addresses of every charity approved by the Registrar is required to be entered. It also imposes a registration obligation on any charity in the Islands desirous of conducting fund raising activities for a charitable purpose.

Clause 6 sets out the matters which the Registrar shall take into consideration in assessing the application of a charity for registration and it also sets out the

procedure to be followed when notifying a charity of the acceptance or rejection of its application to register.

Clause 7 permits a person who is or may be affected by the registration of a charity to indicate to the Registrar his objection to the registration or to apply for the charity to be removed from the register. In circumstances where that person is dissatisfied with the decision of the Registrar, the clause provides for an appeals process.

Clause 8 makes it an offence to solicit property for the benefit of a charity by misrepresenting the registration status of a charity.

Clause 9 provides the Registrar with the authority to give a direction requiring the name of a charity to be changed and it sets out the circumstances which may require a name change.

Clause 10 sets out the procedure to be followed to effect the name change of a charity.

Clause 11 provides for the cancellation of the registration of a charity in circumstances where the Registrar determines that a charity is either in breach of its obligations or has substantially departed from the purpose for which it was registered. The grounds for the cancellation of the registration include-

- (a) failure to maintain accounts containing a statement of all property received for charitable purposes and the expenditure thereof;
- (b) failure to provide an annual financial examination or audit when requested within a time specified;
- (c) failure to comply with requests for information required by the Registrar on the status of the charity;
- (d) failure to maintain adequate accounts and records of contributions and contributors;
- (e) failure of the charitable purpose; and
- (f) engagement in activities that are incompatible with charitable purposes.

Clause 12 provides a charity with the right of appeal to the Cabinet against a decision by the Registrar to refuse its application to register or to cancel its registration.

Clause 13 prohibits an unregistered charity from applying for any statutory exemptions or other privileges available under any other Law on the basis that it is pursuing a charitable purpose.

Clause 14 provides the Cabinet with the power to make the required regulations to facilitate the registration of a charity.

PART 4 - POWER OF ATTORNEY GENERAL TO INSTITUTE INQUIRIES

Part 4 deals with the power of the Attorney General to institute inquiries into charitable activities. It contains clauses 15 and 16.

Clause 15 permits the Attorney General, in relation to a charity, to either independently or pursuant to a referral from the Registrar inquire into-

- (a) its nature, objects, administration, management; and
- (b) its value, condition, management and application of property and income.

The clause also provides for an inquiry to be commenced for the purpose of investigating any charity that is suspected of having committed an offence under the Terrorism Law (2009 Revision) or the Proceeds of Crime Law, 2008 and it requires any person concerned in the management and administration of a charity to provide the Attorney General with any document requested in furtherance of an inquiry.

Clause 16 makes it an offence for a person to knowingly or recklessly provide the Attorney General with information that is false or misleading.

PART 5 - CONDUCT OF FUND-RAISING ACTIVITIES BY CHARITIES

Part 5 deals with the manner in which fund-raising activities are to be conducted by a charity. It consists of clauses 17 to 20.

Clause 17 requires a charity to declare its status as registered by stating its registered number and appending to its name, the words "Cayman Islands Registered Charity" or the letters "CIRC" on-

- (a) all notices, advertisements and other documents issued by or on behalf of the charity soliciting property for a charitable purpose; and
- (b) collection receptacles and identification labels or badges.

Clause 18 provides for the manner in which fund-raising activities are to be conducted.

Clause 19 prohibits an unregistered charity from engaging in any form of fundraising activity and using the registration designation.

Clause 20 provides the Cabinet with the power to make regulations in connection with fund-raising activities by charities.

PART 6 - CONDUCT OF FUND-RAISING ACTIVITIES ON BEHALF OF CHARITIES

Part 6 deals with the manner in which fund-raising activities are to be conducted when acting on behalf of a charity. It consists of clauses 21 to 23.

Clause 21 prohibits any person from soliciting property from the public or Government through fund-raising activities for the benefit of a charity unless he does so in accordance with an agreement with the charity.

Clause 22 requires any solicitation of property from the public or Government for the benefit of a charity to be accompanied by a statement indicating-

- (a) the name or names of the charity or charities concerned; and
- (b) if there is more than one charity concerned, the proportions in which the charities are respectively to benefit.

Clause 23 provides for the making of regulations to control fund-raising on behalf charities.

PART 7 - CHARITY ACCOUNTS AND ANNUAL RETURNS

Part 7 provides for the maintenance of charity accounts and contains clauses 24 to 29.

Clause 24 requires a charity that is registered to keep proper books of account with respect to-

- (a) all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales, purchases and receipt of property by the charity and the assets and liabilities of the charity;
- (c) all donations received; and
- (d) the record of the assets and liabilities of the charity.

Clause 25 requires that a charity receiving property valued in excess of fifty thousand dollars to have its books of account audited in accordance with international auditing standards by a person who is a duly qualified accountant competent to provide auditing services or licensed to provide auditing services.

In the case of a charity earning fifty thousand dollars or less, the Registrar is given a discretion to require an audit.

Clause 26 permits a charity to appeal to the Cabinet against a decision of the Registrar to request an audit of accounts.

Clause 27 provides for the making of regulations to deal with charity accounts.

Clause 28 requires a charity to ensure that within six months of the end of its financial year annual returns are-

- (a) prepared in relation to the charity for its financial year;
- (b) dated and signed by the fiduciary of the charity; and
- (c) submitted to the Registrar.

Clause 29 permits the Cabinet to make regulations in order to provide for-

- (a) the form in which annual returns are to be submitted;
- (b) the particulars to be contained in the annual returns; and
- (c) the directions to be complied with in the preparation of the annual returns.

PART 8 - EXEMPTION OF CHARITIES

Part 8 provides for the exemption of charities. It consists of clauses 30 to 32.

Clause 30 provides for the exemption of certain charities.

Clause 31 deals with the conduct short-term charitable activities.

Clause 32 exempts registered charities from the operations of the Gambling Law (1996 Revision).

PART 9 - MISCELLANEOUS

Part 9 sets out the miscellaneous provisions and comprises clauses 33 to 35.

Clause 33 deals with the making of further regulations in order to facilitate the operation of this Law.

Clause 34 deals with the treatment of expenses incurred from the implementation of the provisions under the legislation.

Clause 35 contains the transitional provisions.

THE CHARITIES BILL, 2014
ARRANGEMENT OF CLAUSES

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2 - APPOINTMENT OF A REGISTRAR OF CHARITIES

3. Appointment of Registrar of Charities
4. Functions of the Registrar

PART 3 - REGISTRATION OF CHARITIES

5. Establishment of a register of charities
6. Registration of charities
7. Objection to entry of a charity in the register
8. False statements misrepresenting status of charities
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10. Effect of direction under section 9 where charity is a company
11. Cancellation of registration
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PART 4 - POWER OF ATTORNEY GENERAL TO INSTITUTE INQUIRIES

15. Inquiries into condition and management of charities
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PART 5 - CONDUCT OF FUND-RAISING ACTIVITIES BY CHARITIES

17. Status of registered charity to appear on official documents etc.
18. Conduct of fund-raising
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PART 6 - CONDUCT OF FUND-RAISING ACTIVITIES ON BEHALF OF CHARITIES

21. Prohibition against raising funds without an agreement
22. Statement of charity to benefit from solicitation
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PART 7 - CHARITY ACCOUNTS AND ANNUAL RETURNS

24. Keeping books of account

- 25. Audit of accounts
- 26. Appeals against an examination or audit request
- 27. Regulations for charity accounts
- 28. Duty to prepare annual returns
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PART 8 - EXEMPTION OF CHARITIES

- 30. Exempt charities
- 31. Short-term charitable activities
- 32. Exemption from provisions of the Gambling Law (1996 Revision)

PART 9 - MISCELLANEOUS

- 33. Regulations
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CAYMAN ISLANDS

**A BILL FOR A LAW TO PROVIDE FOR THE REGULATION OF
CHARITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Charities Law, 2014.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law-

Interpretation

“bank” has the meaning assigned to it under the Banks and Trust Companies Law (2013 Revision);

(2013 Revision)

“charity” “charity” means a person who conducts activities for charitable purposes but does not include a private charity;

“charitable purposes” means purposes which relate to-

- (a) the prevention or relief of poverty;
- (b) the advancement of education, including-
 - (i) the improvement of knowledge and its public dissemination in a way not constituting propaganda;
 - (ii) the provision of schools, colleges, universities and such other institutions;

- (iii) the establishment in institutions specified in subparagraph (ii) of professorships, fellowships, lectureships and other teaching and research posts;
- (iv) the provision in institutions specified in subparagraph (ii) of scholarships, bursaries, prizes and other awards;
- (v) the education of the public generally; and
- (vi) the promotion and publication of research with a view to increasing the common stock of knowledge;
- (c) the advancement of religion including-
 - (i) the organisation and carrying out of religious instruction and pastoral and missionary work in the Islands and overseas;
 - (ii) the provision and maintenance of buildings for worship and other religious uses;
 - (iii) the payment of stipends to and the provision of houses for ministers of religion, their widows and dependent children; and
 - (iv) other purposes which promote the moral or spiritual welfare of the community;
- (d) the advancement of citizenship or community development;
- (e) the advancement of human rights, conflict resolution and reconciliation;
- (f) the promotion of religion, racial harmony, equality and diversity;
- (g) the promotion of the efficiency of the police, fire and rescue services or ambulance services;
- (h) the advancement of health or the saving of lives;
- (i) the advancement of science;
- (j) the advancement of sport and recreation, including the provision of facilities for recreation or other leisure-time occupations with the object of improving the conditions of life for those need such facilities;
- (k) the advancement of environmental protection or improvement;
- (l) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (m) the advancement of animal welfare;
- (n) the relief and prevention of sickness and disability, both physical and mental, including-
 - (i) the provision and staffing of hospitals, nursing and convalescent homes and clinics;
 - (ii) the promotion of medical research;
 - (iii) the provision of advice, treatment or comfort; and
 - (iv) the establishment of homes, workshops or other centres for the disabled or the mentally or physically handicapped or any other disadvantaged or needy persons;

- (o) the relief of distress caused by natural disasters or sudden catastrophes;
- (p) the cultivation of public taste in aesthetic matters, including art, culture, heritage, music, literature and fine craftsmanship and the establishment and development of facilities for their practice;
- (q) the provision and maintenance of museums and art galleries;
- (r) the advancement of ethical and moral teachings and studies;
- (s) the promotion and improvement of the national heritage, whether physical, environmental, artistic, cultural or otherwise;
- (t) the welfare of children, including the prevention of abuse;
- (u) the promotion of the social welfare of the family, including the provision of facilities for family planning;
- (v) the establishment of organisations to assist members of the community with special needs such as one-parent families, single persons with dependents, battered spouses, specially gifted children and minority groups;
- (w) the advancement and improvement of the standards of efficiency of industry, commerce and agriculture; and
- (x) 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 (w),

and are for the public benefit as described in subsections (2) to (4) whether in the Islands or elsewhere;

“company” has the meaning assigned by section 2 of the Companies Law (2013 Revision);

(2013 Revision)

“court” means the Grand Court;

“fiduciary” means-

- (a) a trustee of the trust, where the charity is established as a trust;
- (b) a director of the company, where the charity is established as a company;
- (c) a person responsible for all aspects of the management and administration of the unincorporated association, where the charity is established by an unincorporated association; or
- (d) a person not covered in paragraphs (a), (b) and (c), where the charity is established by that person;

“financial year”-

- (a) in relation to a charity means the financial year of the charity; and
- (b) in relation to the Registrar of Charities, means a year ending on 30 June;

“gross income” in relation to a charity, means its gross recorded income for that charity’s financial year from all sources including donations;

“Know Your Client Compliance” means the submission to the Registrar by the fiduciary of prescribed information that may reasonably be determined concerning their donors so that the person’s suitability to be, or to remain, registered may be properly assessed by the Registrar;

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

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

“private charity” means a trust or company that-

- (a) has objects that include the fulfilment of charitable purposes;
- (b) does not seek to raise funds from the general public or Government in the fulfilment of those objects; and
- (c) has as its fiduciary, management body or other service provider a person that is regulated by the Cayman Islands Monetary Authority under the Banks and Trust Companies Law (2013 Revision), the Companies Management Law (2003 Revision) or any other relevant law;

(2013 Revision)

(2003 Revision)

“property” means property of every kind and includes money;

“register” means the register of charities maintained by the Registrar in accordance with section 5(1);

“Registrar” means the Registrar of Charities appointed under section 3;

“Registrar of Companies” means the Registrar of Companies referred to in section 2 of the Companies Law (2013 Revision);

(2013 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;

“solicit” means to make an appeal in any manner, whether expressly or impliedly and whether done-

- (a) by speaking directly to the person or persons to whom the appeal is addressed whether or not in his or their presence; or
- (b) by means of a statement published in any newspaper, in film or radio or television programme, or any other electronic means or otherwise, and

and the words “solicitation” and “soliciting” shall be construed accordingly; and “working day” means any day excluding Saturday, Sunday and a public general holiday.

(2) A public benefit includes an identifiable benefit comprised within the scope of charitable purposes which is available to the general public or to a section of the public within the Islands or elsewhere.

(3) A charitable purpose produces an identifiable benefit if-

- (a) it is clear what the benefit is;
- (b) the benefit is related to the charitable purpose; and
- (c) the benefit outweighs any detriment or harm to the public interests.

(4) A benefit is available for the public or a section of the public if-

- (a) the beneficiaries are appropriate for the purpose;
- (b) the opportunity to benefit is not unreasonably restricted by geographical or other restrictions or by ability to pay any fees charged;
- (c) people in poverty are not excluded from the opportunity to benefit; and
- (d) any private benefit is incidental.

PART 2 - APPOINTMENT OF A REGISTRAR OF CHARITIES

3. (1) The Governor shall appoint an officer to be known as the Registrar of Charities who shall have such functions as are conferred on him by this Law.

Appointment of
Registrar of Charities

(2) The Governor shall appoint such other officers as he may think necessary to assist the Registrar in the proper discharge of his functions.

4. (1) The functions of the Registrar are to-

Functions of the
Registrar

- (a) promote public trust and confidence in charities;
- (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 the-

- (i) issuance of guidelines or recommendations on the best practice to be observed by charities, fiduciaries and other persons concerned with the management or administration of charities;
- (ii) issuance of model rules; and
- (iii) provision of 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 charities is compiled and maintained;
- (g) receive, consider and process annual returns submitted by charities;
- (h) identify apparent cases of misconduct or mismanagement in the administration of charities;
- (i) monitor charities and their activities to ensure that charities under this Law continue to be qualified for registration as charities;
- (j) receive representations from the public about 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) refer cases of non-compliance with this Law including acts of misconduct or mismanagement to the Attorney General for inquiry or prosecution;
- (l) consider, report and make recommendations on any matter relating to charities-
 - (i) that is referred to him by the Minister; or
 - (ii) on his own motion;
- (m) stimulate and promote research into any matter relating to charities including-
 - (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) enhance the accountability of charities to donors, beneficiaries and the general public;
- (o) promote compliance by charity fiduciaries with their legal obligations in exercising control and management of the administration of their charities;
- (p) determine whether an institution is a charity;
- (q) encourage and facilitate the better administration of charities;

- (r) give information or advice, or make proposals, to the Minister on matters relating to any of the Registrar's functions or meeting any of his objectives; and
- (s) perform any other functions conferred on him by this Law or that the Minister may direct him to perform in accordance with this Law.

(2) It shall be the general duty of the Registrar to promote and facilitate the work of a charity in meeting the needs designated by its trusts, unless it is a matter of altering the purposes of the charity.

(3) The Registrar shall not act in the administration of a charity.

(4) The Registrar shall, within three months after the end of every financial year, submit to the Minister a report on his operations during that year and the Minister shall lay a copy of the report at the next meeting of the Legislative Assembly.

PART 3 – REGISTRATION OF CHARITIES

5. (1) A register of charities shall be established and maintained by the Registrar and he shall enter in such register the name and address of every charity approved by him with any other particulars as may be prescribed.

Establishment of a
register of charities

(2) A charity in the Islands which desires to conduct any activity for a charitable purpose which involves fund-raising by means of soliciting property from the general public or Government shall apply to the Registrar to be registered as a charity in the manner prescribed.

6. (1) Subject to subsection (3), in considering an application submitted by a charity for registration, the Registrar shall have regard to-

Registration of charities

- (a) the declared purposes of the charity;
- (b) a mission statement of the charity;
- (c) the identity of the fiduciary and other members of the charity;
- (d) copies or particulars of the trust, trust deed and any other organisational documents;
- (e) copies of the constitution, memorandum of association and articles of association of the charity;
- (f) annual examination or audits of the charity's operations;
- (g) anticipated source of contributions;
- (h) records of contributions and contributors;
- (i) evidence of how contributions were or are to be applied;
- (j) evidence of "Know Your Client Compliance";
- (k) evidence of board structure and function; and
- (l) any other matter the Registrar considers relevant.

(2) A charity shall be required to maintain a record in the prescribed manner of-

- (a) the names and contact information of all its donors; and
- (b) where the information required under paragraph (a) is not easily ascertainable, the method relied upon in the solicitation of property.

(3) Where the 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.

(4) Where the Registrar is satisfied that a charity is suitable for registration, he shall-

- (a) notify the charity in writing within the prescribed time;
- (b) enter in the register the name, address and any other prescribed particulars of the charity;
- (c) direct that registration be effected by assigning a registered number to the charity; and
- (d) require the charity to use the words "Cayman Islands Registered Charity" or letters "CIRC" in accordance with section 17(1).

(5) Where the Registrar determines that a charity is not suitable to be registered he shall notify that charity in writing of such determination within the prescribed time by providing reasons for his determination.

(6) The registration of a charity shall be indefinite subject to its compliance with the provisions under this Law.

(7) The fiduciary of a charity which is not registered shall apply for it to be registered and supply the documents and information required by subsection (1), within two months' of its establishment or for such longer period as the Registrar, in his discretion, may allow.

(8) The fiduciary, or last fiduciary, of a charity shall notify the Registrar if the charity ceases to exist, or if there is any change in its trusts or other particulars entered in the register; and the fiduciary shall supply the Registrar with particulars of any such change and copies of all relevant documents within thirty days after such cessation or change or such longer period as the Registrar may, in his discretion, allow.

(9) An organisation which no longer appears to the Registrar to be a charity by virtue of change in its purposes or it ceasing to function as a charity shall be removed from the register with effect from the date of the change or the time at which it ceases to function as a charity.

(10) A person who fails to comply with subsection (2) or (7) commits an offence and is liable on conviction to a fine of five thousand dollars or to imprisonment for one year or to both, and in the case of a continuing offence, to a further fine of one hundred dollars for every day or part thereof during which the offence continues after conviction.

(11) The register shall be prepared and kept in such manner as the Registrar thinks fit.

(12) The register, including the entries cancelled when a charity is removed from the register, shall be open to the public for inspection at all reasonable times.

(13) The copies or particulars of the trust, trust deed and any other organisational document of any registered charity supplied to the Registrar under this section shall, so long as it remains on the register, be kept by him and be open to public inspection at all reasonable times on payment of the prescribed fee.

(14) The Registrar shall supply any person, on payment of the prescribed fee, with copies of, or extracts from, any document in his possession which is for the time being open to public inspection in accordance with this Law.

(15) The Minister may give general directions to the Registrar as to the policy relating to the exercise of his functions under this section and the Registrar shall give effect to such directions.

7. (1) A person who is or may be affected by the registration of a charity may, on the ground that it is not a charity, object to its being entered in the register, or apply to the Registrar to have it removed from the register.

Objection to entry of a charity in the register

(2) The Cabinet may prescribe the manner in which any such objection or application is to be made and dealt with.

(3) An appeal against a decision of the Registrar to enter or not to enter a charity in the register of charities, or to remove or not to remove a charity from the register, may be brought in the court by the person who is the fiduciary, or by any person whose objection or application under subsection (1) has been disallowed by the Registrar.

(4) If there is an appeal to the court against a decision of the Registrar to enter a charity in the register, or not to remove a charity from the register, then until a decision is made on the appeal, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) a charity shall be deemed not to be on the register during any period when the entry relating to it is in suspense under this subsection.

False statements
misrepresenting status of
charities

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

(5) Any question affecting the registration or removal from the register of a charity may, notwithstanding that it has been determined by a decision on appeal under subsection (3), be reconsidered by the Registrar and shall not be concluded by that decision if it appears to the Registrar that there has been a change in circumstances of the charity after the decision was made.

8. A person who solicits property for a charity by misrepresenting that the charity is registered commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment of six months or to both.

9. (1) The Registrar may give a direction requiring the name of a charity to be changed, within such period as is specified in the direction, to such other name as the fiduciary may determine.

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

- (a) is the same as or, in the opinion of the Registrar, too closely resembles, the name in use by another charity at the time when the name of the charity was entered in the register;
- (b) is, in the opinion of the Registrar, 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 Cabinet and the inclusion in its name of that word or expression is in the opinion of the Registrar likely to mislead the public in any respect as to the status of the charity;
- (d) is, in the opinion of the Registrar, 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 Registrar, offensive,

and in this subsection a reference to the name of the 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 date 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 fiduciary and on receiving such direction the fiduciary shall give effect to it notwithstanding anything in the trust, trust deed or any other organisational document of the charity.

(5) When the name of a charity is changed under this section, its fiduciary shall, within fourteen working days, notify the Registrar of the new name of the charity 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.

10. (1) Where a direction is given under section 9 with respect to a charity that is a company, that direction shall require that the name of the charity be changed by a special resolution passed by the voting members of the company.

Effect of direction under section 9 where charity is a company

(2) 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 (2013 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,

(2013 Revision)

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

11. (1) Where it appears to the Registrar that a charity is in breach of its obligations as a registered charity or that it has substantially departed from the purpose for which it was registered, he shall give notice to that charity at its registered address, that its registration will be cancelled within thirty days of the date of the notice unless the charity shows cause to the satisfaction of the Registrar 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 and those grounds may include the following-

- (a) failure to maintain accounts containing a statement of all property received for charitable purposes and the expenditure thereof;
- (b) failure to provide an annual financial examination or audit when requested within a time specified;
- (c) failure to comply with requests for information required by the Registrar on the status of the charity;
- (d) failure to maintain adequate accounts and records of contributions and contributors;
- (e) failure to satisfy the criteria set out in section 6(1);
- (f) failure of the charitable purpose;
- (g) engagement in activities that are incompatible with charitable purposes; and
- (h) failure to comply with any direction issued by the Registrar under this Law,

and any other ground that the Registrar considers relevant to the status of the charity as registered under this Law.

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

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

(5) In circumstances where the registration of a charity has been cancelled or action is taken towards the cancellation of registration, the Registrar shall immediately notify the Attorney General of that cancellation or action and the Registrar may make a recommendation to the Attorney General for the property received by the charity for a charitable purpose to be dealt with in accordance with section 15(11) and (12).

(6) The Registrar may, at the same time he notifies the Attorney General in accordance with subsection (5), make an order prohibiting the charity from dealing with any property in its control and which was received for a charitable purpose until the Attorney General makes a determination based on the recommendation of the Registrar.

Appeal against
cancellation or refusal of
registration

12. (1) A charity may appeal to the Cabinet against a decision by the Registrar to refuse its application to register under section 5 or to cancel its registration under section 11.

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

(3) An appeal against any decision of the Registrar or Cabinet to enter or not to enter a charity in the register of charities may be brought in the court by the person who is the fiduciary of the charity or by any person whose objection under section 7 or application under section 5(2) is disallowed by the decision.

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

13. A charity which is not registered in accordance with this Law shall be prohibited from applying for any statutory exemptions or other privileges available under any other Law on the basis that it is pursuing a charitable purpose.

Prohibition against
applying for statutory
exemptions

14. The 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;
- (b) for the time period within which notice of the acceptance or refusal of an application to register should be communicated;
- (c) for the application and other fees to be paid on registration;
- (d) for the notification of a subsequent change in the material particulars contained in an application for registration;
- (e) for the particulars to be entered in the register;
- (f) for any information and particulars to be included in the accounts maintained under section 24; and
- (g) any other matter or thing required or permitted to be prescribed to give effect to this Law.

PART 4 - POWER OF ATTORNEY GENERAL TO INSTITUTE INQUIRIES

15. (1) The Attorney General, in relation to a charity, may either independently or pursuant to a referral from the Registrar inquire into-

Inquiries into condition
and management of
charities

- (a) its nature, objects, administration, management; and
- (b) its value, condition, management and application of property and income.

(2) An inquiry referred to in subsection (1) may also be carried out for the purpose of investigating any charity that is suspected of having committed an offence under the Terrorism Law (2011 Revision) or the Proceeds of Crime Law, 2008 or any other offence.

(2011 Revision)

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

(4) Every fiduciary shall, on a written request by the Attorney General or the person conducting the inquiry-

- (a) 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; return answers in writing to questions addressed to him on such matter, and verify accounts, statements or answers by statutory declaration;

- (b) provide copies of documents in his custody or under his control which relate to a matter in question at the inquiry and verify them by statutory declaration;
- (c) attend at a specified time and place in order to give evidence or produce documents;
- (d) provide all books, papers, writings and documents in relation to the charity or to the administration, management, value, condition and application of the property and income of the charity; and
- (e) answer all questions and give all assistance in connection with the inquiry that he is reasonably able to answer or give.

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

(6) A person who fails to comply with a request under subsection (4) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year, or to both; and, in the case of a continuing offence, to a further fine of fifty dollars for every day or part thereof during which the offence continues after conviction.

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

(8) The Registrar or any other public officer appointed by the Attorney General to conduct the inquiry shall provide a report of the inquiry to the Attorney General who may publish the report in a manner which, in his opinion, will bring it to the attention of persons who may wish to make representations to him about any action to be taken.

(9) A copy of the report shall, if certified by the Attorney General to be a true copy, be admissible as evidence of any fact stated in the report and as evidence of the opinion of that person as to any matter referred to in the report, in any legal proceedings instituted in respect of a charity as a result of an inquiry under this section.

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

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity;
- (b) that a charity may have committed a criminal offence; or

- (c) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing the proper application of the property for the purposes of the charity or protecting property that may be given to the charity,

he may take such action as set out in subsection (11).

(11) The action referred to in subsection (10) may include making an application to the court in respect of any property of the charity for an order to-

- (a) require the fiduciary to carry out the purposes for which the property is held and to comply with the provisions of any scheme relating to the charity;
- (b) establish a scheme for the administration of the charity whether or not a scheme in respect of that property has been approved by the court under the Trusts Law (2011 Revision);
- (c) require any fiduciary to meet his liability for any breach of trust affecting the property as the court may direct;
- (d) remove any fiduciary who has been responsible for, or privy to, any misconduct or mismanagement in the administration of a charity, or has by his conduct contributed to it or facilitated it;
- (e) appoint another person as a fiduciary of the charity;
- (f) exclude any purpose from the purposes for which the property may be used, applied or disposed of;
- (g) give directions in respect of the administration of the trust, or in respect of any inquiry or in respect of any question to be answered or assistance to be given by any person in connection with that inquiry;
- (h) direct that on and after the date of the order or any subsequent date specified in the order, the property subject to the trust shall not be used, applied or disposed of otherwise than in accordance with a scheme that, after the date of the order, is approved by the court and the court may make such order in respect of that application as it thinks fit;
- (i) preclude the employment or engagement of a person in the affairs of the charity;
- (j) direct a bank or person who holds property of the charity 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;
- (k) restrict the transactions which may be entered into or the nature or amount of the payments which may be made, in the administration of the charity, without the approval of the court or the Attorney General, or a person authorised by the Attorney General or of some other person; or

(l) appoint a receiver of the property of the charity.

(12) A person appointed by order of the court under this section as a receiver of the property of a charity-

- (a) may require the fiduciary 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 fiduciary 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.

Supply of false or misleading information to, or withholding of information requested by the Attorney General

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

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

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

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

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

PART 5 - CONDUCT OF FUND-RAISING ACTIVITIES BY CHARITIES

Status of registered charity to appear on official documents etc.

17. (1) A charity shall declare its status as registered by stating its registered number and appending to its name, the words "Cayman Islands Registered Charity" or the letters "CIRC", signifying that it is a charity registered under this Law on-

- (a) all notices, advertisements and other documents issued by or on behalf of the charity soliciting property for a charitable purpose; and
- (b) collection receptacles and identification labels or badges.

(2) A person who signs or issues or authorises the issuance of a document falling within subsection (1) or makes available a collections receptacle or displays any form of identification which does not contain the words “Cayman Islands Registered Charity” or the letters “CIRC”, commits an offence and is liable on summary conviction to a fine of two thousand dollars.

18. A charity shall take all reasonable steps to ensure that its fund-raising is carried out in such a way that it does not-

Conduct of fund-raising

- (a) unreasonably intrude on the privacy of those from whom funds are being solicited;
- (b) involve the making of unreasonably persistent approaches to persons to donate funds;
- (c) result in undue pressure being placed on persons to donate funds; and
- (d) involve the making of any false or misleading representation about-
 - (i) the extent or urgency of any need for funds on the part of any charity or company connected with such a charity;
 - (ii) any use to which funds donated in response to the fund-raising are to be put by such a charity or company; and
 - (iii) the activities, achievements or finances of such a charity or company.

19. (1) An unregistered charity is prohibited from-

Prohibitions against an unregistered charity

- (a) soliciting members of the public or Government for property for a charitable purpose;
- (b) receiving from any member of the public or Government, property for a charitable purpose;
- (c) using the words “Cayman Islands Registered Charity” or the letters “CIRC”, on any document, receptacle or identification falling within section 17(1) and purporting to be a registered charity; and
- (d) in any way misrepresenting the status of the charity.

(2) A person who contravenes subsection (1) 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 or to imprisonment for six months or to both and on conviction on indictment to a fine of ten thousand dollars or to imprisonment for two years or to both.

Regulations to control
fund-raising by charities

20. (1) The Cabinet may make such regulations as appear to be necessary or desirable for or in connection with the regulation of fund-raising activities by charities.

(2) The regulations under this section may also 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 two thousand dollars.

PART 6 - CONDUCT OF FUND-RAISING ACTIVITIES ON BEHALF OF CHARITIES

Prohibition against
raising funds without an
agreement

21. (1) A person shall not solicit property from the public or Government through fund-raising activities for the benefit of a charity unless he does so in accordance with the agreement of the charity.

(2) A charity which enters into an agreement pursuant to subsection (1) shall notify the Registrar in writing of that agreement prior to the conduct of the fund-raising activity.

(3) Where, on the application of a charity or the Registrar, the court is satisfied-

- (a) that any person has contravened or is contravening subsection (1) 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.

(4) An agreement made between a charity and a person which does not satisfy the prescribed requirements 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 person who solicits property for the benefit of a charity without an agreement as required under subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for six months or to both.

(6) Nothing in this section shall render unlawful a person making personal donations of property to a charity.

Statement of charity to
benefit from solicitation

22. (1) Where a person solicits property from the public or Government for the benefit of a charity, the solicitation shall be accompanied by a statement clearly indicating-

- (a) the name or names of the charity or charities concerned; and
- (b) if there is more than one charity concerned, the proportions in which the charities are respectively to benefit.

(2) Where any requirement of subsection (1) is not complied with in relation to any solicitation, the person concerned commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(3) 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.

(4) Where the commission of an offence under subsection (2) 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.

23. The Cabinet may make such regulations as appear to him to be necessary or desirable for or in connection with the regulation of fund-raising activities on behalf of charities.

Regulations to control fund-raising on behalf of charities

PART 7 - CHARITY ACCOUNTS AND ANNUAL RETURNS

24. (1) A charity that is registered under this Law shall cause proper books of account to be kept with respect to-

Keeping books of account

- (a) all sums of money received and expended by the charity and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales, purchases and receipt of property by the charity;
- (c) all donations received; and
- (d) the record of the assets and liabilities of the charity.

(2) A charity shall ensure that the accounting records maintained show and explain all the transactions of the charity and disclose at any time, with reasonable accuracy, the financial position of the charity.

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

25. (1) A charity which holds or receives property valued in excess of fifty thousand dollars shall have its books of account audited in accordance with international auditing standards by an independent-

Audit of accounts

- (a) duly qualified accountant who is competent to provide audit services; or
- (b) accountant licensed to provide audit services.

(2) The Registrar may, where he considers it necessary to do so, require that the books of account of a charity receiving property valued at fifty thousand

dollars or less for the preceding financial year be audited in accordance with international auditing standards and the treasurer or other person having supervision of the accounts of that charity shall comply with those requirements by appointing an independent person who is-

- (a) a duly qualified accountant, competent to provide audit services; or
 - (b) an accountant licensed to provide audit services.
- (3) A person conducting an audit under this section shall-
 - (a) have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity fiduciary or to which the charity fiduciary has access;
 - (b) be entitled to require from any charity fiduciary, past or present officer or employee of the charity such information and explanation as he thinks necessary for the performance of his duties; and
 - (c) at the conclusion or during the progress of the examination or audit make such reports to the Registrar about the examination or audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity fiduciary.
- (4) The expenses of any audit, including the remuneration of the person conducting such examination or audit, shall be paid by the charity.
- (5) Accounts submitted to the Registrar pursuant to subsections (1) and (2) and written reports on or written results of an audit required pursuant to subsection (3) shall be available for inspection by members of the public at prescribed venues during normal working hours.
- (6) The Registrar shall, at the request of the Minister if he deems it necessary, provide the Minister with a copy of an examination or audit report prepared on a charity.
- (7) The books of account relating to any charity shall be preserved for a period of seven years at least from the end of the financial year of the charity in which they are made, unless the charity ceases to exist and the Registrar permits them to be destroyed or otherwise disposed of.
- (8) A person who fails without reasonable cause to comply with the provisions of this section commits an offence and is liable on conviction to a fine of five thousand dollars or to imprisonment for one year or to both, and in the case of a continuing offence, to a further fine of one hundred dollars for every day or part thereof during which the offence continues after conviction.

- (9) Nothing in this section applies to a charity which is a company and is acting in compliance with the accounts and audit requirements provided under the Companies Law (2013 Revision). (2013 Revision)
26. (1) A charity may appeal to the Cabinet against a decision of the Registrar to request an examination or audit in accordance with section 25(2). Appeals against an examination or audit request
- (2) Where the charity is dissatisfied with the decision of the Cabinet under subsection (1), it may appeal to the court against the decision of the Cabinet and the court may allow or dismiss the appeal or make an order remitting the matter for further consideration by the Cabinet or the Registrar.
- (3) An appeal against a decision of the Registrar or Cabinet to require an examination or audit of accounts may be brought in the court by the person who is the fiduciary of the charity or by any person who has supervision of the accounts of the charity.
27. The Cabinet may make regulations for carrying into effect this Part including regulations for determining the financial year of a charity for the purposes of this Law. Regulations for charity accounts
28. (1) A charity shall ensure that within six months of the end of its financial year annual returns are - Duty to prepare annual returns
- (a) prepared in relation to the charity for its financial year;
- (b) dated and signed by the fiduciary of the charity; and
- (c) submitted to the Registrar.
- (2) The annual returns of a charity shall be in such form, contain such particulars and comply with such directions as to their preparation as prescribed under section 29.
- (3) The Registrar may dispense with the requirements of subsection (1) in the case of a particular registered charity or class of registered charities, or in the case of a particular financial year of a registered charity or any class of registered charities.
29. (1) The Cabinet may make regulations in order to provide for- Regulations relating to content of annual returns
- (a) the form in which annual returns are to be submitted;
- (b) the particulars to be contained in the annual returns; and
- (c) the directions to be complied with in the preparation of the annual returns.
- (2) The regulations under this section may also 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 two thousand dollars.

PART 8 - EXEMPTION OF CHARITIES

Exempt charities

30. (1) In this Part-

“exempt charity” means a charity which is not required to register under Part 3 by virtue of it being regulated under a relevant Law or a government entity;

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

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

“relevant Law” means the Law under which the exempt charity is regulated.

(2) The Cabinet may by Order designate a charity as an exempt charity.

(3) An exempt charity shall be required to-

- (a) conduct its fund-raising activities in accordance with sections 17 and 18; and
- (b) keep proper books of accounts in accordance with section 24(1).

(4) A principal regulator shall do all that it reasonably can to ensure or cause to ensure that an exempt charity complies with the provisions specified in subsection (3).

(5) An exempt charity which fails to comply with subsection (3) shall lose its status as an exempt charity and shall be subject to all of the provisions of this Law.

(6) Notwithstanding the exemption of a charity under this section, the Registrar of Charities is required to perform his functions as they relate to the general monitoring of the activities of any charity and the making of referrals to the principal regulator and if necessary, to the Attorney General for inquiry or prosecution.

Short-term charitable activities

31. (1) A person who desires to conduct any activity for a charitable purpose on a short-term basis shall obtain the authorisation of the Registrar by notifying him in the manner prescribed.

(2) An activity conducted for a charitable purpose is of a short-term duration if it does not exceed the prescribed period of time.

(3) A notification to the Registrar shall include-

- (a) the purpose for which the proceeds of the activity are to be applied;
- (b) the intended duration of the activity;
- (c) the date on which the activity is to be conducted;

- (d) the location at which the activity will be conducted; and
- (e) any other matter as may be prescribed.

(4) On receiving a notification, the Registrar shall determine-

- (a) whether a person should be exempted from any of the provisions of this Law; and
- (b) the conditions under which authorisation may be given to conduct the short-term charitable activity.

(5) A person commits an offence and is liable on conviction to a fine of five thousand dollars or to imprisonment for one year or to both, and in the case of a continuing offence, to a further fine of one hundred dollars for every day or part thereof during which the offence continues after conviction if he conducts a short-term activity for a charitable purpose-

- (a) without notifying the Registrar; or
- (b) in breach of the conditions stipulated by the Registrar.

32. 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)

PART 9 - MISCELLANEOUS

33. The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.

Regulations

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

Expenses

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

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.

Passed by the Legislative Assembly the day of , 2014.

Speaker

Clerk of the Legislative Assembly

Consultation Draft