



BERMUDA

CHARITIES REGULATIONS 2014

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SCHEDULE

Form of Application for Registration

The Minister responsible for charities, in exercise of the power conferred by section 48 of the Charities Act 2014, makes the following Regulations:

Citation

- 1 These Regulations may be cited as the Charities Regulations 2014.

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Interpretation

- 2 In these Regulations, unless the context otherwise requires—
- “the Act” means the Charities Act 2014;
 - “audit threshold” has the meaning given in regulation 9(2)(c);
 - “guidance” has the meaning given in section 11 or 13 (as the case may be) of the Act;
 - “public benefit” and “the public benefit requirement” have the meaning given in section 5 of the Act;
 - “SORPS” means the statement of required practices and standards for accounting and reporting by charities, established by or pursuant to regulation 8, to which all registered charities in Bermuda shall have regard;
 - “subsidiary undertaking” in relation to a charity means a company or other business enterprise which is controlled by the charity and carries on business on its behalf.

Form and content of application for registration

- 3 (1) An application to be registered as a charity under section 17(3) of the Act shall be made in accordance with this regulation.
- (2) The applicant charity shall submit to the Registrar—
- (a) an application, in substantially the form set out in the Schedule, containing the particulars required by paragraph (3);
 - (b) the documents required by paragraph (4); and
 - (c) the fees payable under the Government Fees Regulations 1976.
- (3) The particulars of the charity referred to in paragraph (2)(a) are—
- (a) its name;
 - (b) the name of an individual who is nominated by the charity to represent it for the purposes of the application, and who shall be its primary contact with the Registrar;
 - (c) the address that, for the purposes of the Act, is to be its registered address (as described in section 17(2) of the Act);
 - (d) its telephone number and email address (if any);
 - (e) the name, title, physical address, telephone number and email address (if any) of each of its charity trustees and such principal officers as the charity trustees may appoint;
 - (f) its main purposes, as set out in the objects clause of its trusts;
 - (g) the nature of all fund-raising activities, projects and programmes which it proposes to undertake in furtherance of the stated main purposes;

- (h) the purposes for which the proceeds of any such fund-raising activities are intended to be applied;
 - (i) how the stated main purposes meet the public benefit requirement;
 - (j) its proposed main beneficiaries;
 - (k) the date of the end of its financial year;
 - (l) the date of its establishment;
 - (m) if the application relates to a request for re-registration—
 - (i) the latest expiration date of its status as a registered charity; and
 - (ii) its charity registration number; and
 - (n) such other of its particulars as the Registrar may reasonably require for the purposes of an application.
- (4) The required documents referred to in paragraph (2)(b) are—
- (a) a copy of the applicant charity's trusts which is up-to-date as at the time of the application, but such copy is not required to be submitted if the charity is currently registered and its trusts have not changed since its last registration;
 - (b) if the application relates to an initial request for registration, a signed and dated statement by each of the applicant charity's charity trustees consenting to so act;
 - (c) if the application relates to a request for re-registration, the following documents—
 - (i) a copy of the latest statement of accounts submitted under section 37 of the Act;
 - (ii) a copy of the latest report of an audit of any statement of accounts to which the audit relates, where such audit is required under these Regulations; and
 - (iii) a copy of the latest annual report submitted under section 38 of the Act; and
 - (d) such other documents or information as the Registrar may reasonably require for the purposes of the application.
- (5) The application shall be signed by at least two of the charity trustees of the applicant charity, each of whom has been authorised to do so, whether or not any such charity trustee is also the nominee referred to in paragraph 3(b).
- (6) Before registering an applicant charity, the Registrar may request that any changes be made to the application submitted, so long as such request is reasonably made in furtherance of his objectives under section 10 of the Act.

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Trusts: supplementary provisions

4 (1) This regulation provides supplementary provisions governing any trusts submitted—

- (a) pursuant to regulation 3(4)(a) with an application to the Registrar; and
- (b) pursuant to section 51(2) of the Act.

(2) The main purposes of the applicant charity shall be contained within the trusts as a separate objects clause.

(3) The objects clause referred to in paragraph (2) shall have sufficient detail to enable the Registrar to determine what descriptions of purposes under section 4 of the Act might apply to the applicant charity and, once determined, whether these purposes meet the public benefit requirement.

(4) The provisions of the trusts governing the selection of charity trustees shall guarantee that sufficient independence exists amongst the charity trustees, as determined by the Registrar.

(5) The trusts shall contain an appropriate clause which requires the authorisation and disbursement of financial transactions on behalf of the charity by two or more charity trustees.

(6) The trusts shall contain a dissolution clause in accordance with section 17(6) of the Act.

Particulars to be entered in the register

5 (1) Upon the registration of a charity under section 17 of the Act, the Registrar shall enter in the register the following details pertaining to that charity—

- (a) the particulars referred to in subparagraphs (a), (b), (c), (d), (f), (k) and (l) of regulation 3(3);
- (b) the name of each of its charity trustees and principal officers;
- (c) the date of initial registration; and
- (d) the date upon which the registration ceases to be effective, where the charity in question has not been granted an indefinite period of registration,

and shall give written notice of such details to the charity.

(2) Following—

- (a) the receipt of notification of the alteration of any particulars relating to a registered charity submitted under regulation 7 (alteration of particulars or trusts) and the Registrar's consent to the alteration; or
- (b) the Registrar's consent to change the financial year end of a registered charity under regulation 6(6),

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the Registrar shall amend the register as appropriate in respect of any of the particulars specified in paragraph (1) which are affected by the alteration.

Financial year of registered charity

6 (1) The financial year of a registered charity is, for the purposes of the Act and these Regulations, to be determined in accordance with this regulation.

(2) The first financial year of a registered charity ends on such date, not being later than 18 months after the date it is registered as a charity, as its charity trustees with the approval of the Registrar appoint as their financial year end.

(3) Subject to paragraph (4), subsequent financial years of a registered charity end with the date that is 12 months after its previous financial year end.

(4) Subject to paragraph (5), where the charity trustees are satisfied that there are exceptional reasons to do so they may determine a financial year end that is not less than six months and not more than 18 months after the previous financial year end.

(5) The charity trustees may exercise the power in paragraph (4) in respect of a financial year only with the consent of the Registrar.

Alteration of particulars or trusts

7 (1) This regulation applies where a charity has been registered under section 17 of the Act and, subsequent to such registration, any of its particulars furnished (with the exception of its financial year end) or its trusts submitted under these Regulations have since become altered.

(2) The secretary or other person having custody of the records of that registered charity shall notify the alteration referred to in paragraph (1) within thirty days of it having come to his attention, by writing addressed to the Registrar, and submitting to him the documents referred to in paragraphs (3) and (5).

(3) Where a registered charity proposes to alter the composition of its charity trustees—

- (a) in the case of an individual becoming a new charity trustee, that individual shall submit to the Registrar a signed statement, in such form and containing such particulars as the Registrar may determine, consenting to so act;
- (b) in the case of an individual ceasing to act as a charity trustee, the registered charity shall submit a signed statement informing the Registrar of this fact and of the reason for the individual so ceasing to act,

and the alteration shall not take effect unless and until the Registrar has consented to it.

(4) Where a registered charity proposes to alter its trusts—

- (a) in the case of an alteration to its—
 - (i) objects; or

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(ii) dissolution clause referred to in regulation 4; and

- (b) in the case of any other alteration which, in the opinion of the Registrar, would have an adverse impact upon good governance and accountability practices within the charity,

the alteration shall not take effect unless and until the Registrar has consented to it.

(5) Any notification to be made in respect of a registered charity pursuant to this regulation shall be accompanied by—

- (a) a written resolution signed by the required number of the charity's charity trustees agreeing to such an alteration;
- (b) a copy, certified by the appropriate officer of the charity to be a true copy of the original, of the minutes of the relevant meeting in which a decision to seek such an alteration was duly made; or
- (c) such other evidence as to the alteration sought as may be submitted which is consistent with the internal controls provided for by the trusts of the charity.

Statement of Required Practices and Standards

8 (1) Subject to paragraph (2), the Accounting Standards for Not-for-Profit Organizations of the Canadian Institute of Chartered Accountants, as applied to charities by the Institute of Chartered Accountants of Bermuda, shall be the SORPS to which all registered charities in Bermuda shall have regard.

(2) The Registrar, in consultation with the Institute of Chartered Accountants of Bermuda and such other persons as the Registrar may consider appropriate, may from time to time with the approval of the Minister replace or revise the SORPS, and such new or revised SORPS shall be the SORPS to which all registered charities in Bermuda shall have regard.

(3) A SORPS under paragraph (2) shall come into operation on such date as the Minister by notice in the Gazette appoints.

(4) For the avoidance of doubt, a notice under paragraph (3) is not subject to section 6 of the Statutory Instruments Act 1977 (parliamentary scrutiny).

(5) For the further avoidance of doubt, the SORPS issued or revised under this regulation is not a statutory instrument within the meaning of the Statutory Instruments Act 1977.

Form and content of statement of accounts

9 (1) This regulation sets out requirements as to the form and content of a statement of accounts to be prepared by a registered charity's charity trustees pursuant to section 36 of the Act.

- (2) The statement of accounts shall consist of—

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- (a) in the case of a charity with an annual income of \$50,000 or less, financial reports which include a statement of income and expenditure and a balance sheet;
 - (b) in the case of a charity with an annual income of more than \$50,000 but less than \$450,000, unaudited management accounts which include a statement of income and expenditure, a balance sheet, a statement of cash flows, and explanatory notes;
 - (c) in the case of a charity with income or assets equal to or more than the audit threshold, that is to say—
 - (i) an annual income of \$450,000; or
 - (ii) assets of \$1,000,000 (before liabilities) irrespective of income, audited financial statements which include a statement of income and expenditure, a balance sheet, a statement of cash flows, and explanatory notes.
- (3) The statement of accounts shall be prepared in accordance with the following principles—
- (a) the statement of income and expenditure shall give a true and fair view of the incoming revenues and application of the revenues as expenses or other disbursements of the charity in the relevant financial year;
 - (b) the balance sheet shall give a true and fair view of the state of affairs of the charity at the end of the relevant financial year;
 - (c) the statement of cash flows shall give a true and fair view of the cash flows of the charity and of their effect on the cash position of the charity during the relevant financial year;
 - (d) figures provided shall be sufficiently detailed so as to provide an opportunity for meaningful financial analysis of the charity's operations, which would include, but not be limited to, sufficient detail concerning the sources of funds, the destination of expenditures and the charity's beneficiaries;
 - (e) where compliance with paragraphs (5) to (7) would not be sufficient to give a true and fair view as required under subparagraphs (a) to (c), the additional information necessary to give a true and fair view shall be given in the statement of accounts or in notes to the accounts;
 - (f) if in special circumstances compliance with any of the requirements of paragraphs (5) to (7) would be inconsistent with giving a true and fair view, the charity trustees shall depart from the relevant requirement to the extent necessary to give a true and fair view.
- (4) The statement of accounts shall be prepared in accordance with the SORPS.
- (5) Subject to paragraphs (6) to (7), the statement of accounts shall, in relation to any amount required to be shown for an item in the relevant financial year, show the

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corresponding amount for the item in the financial year immediately preceding the relevant financial year.

(6) Where the corresponding amount referred to in paragraph (5) is not comparable with the amount to be shown for the item in question in respect of the relevant financial year, the corresponding item is to be adjusted so that a meaningful year-to-year comparison can be made.

(7) Where—

- (a) the effect of paragraphs (4) and (5) is that there is nothing to be shown in respect of a particular item for the relevant financial year; but
- (b) an amount was required to be shown in respect of that item in the statement of accounts for the financial year immediately preceding the relevant financial year,

paragraphs (4) and (5) have effect as if an amount were required to be shown in the statement of accounts for the relevant financial year, and that amount were nil.

(8) There shall be provided by way of notes to the accounts the information specified in regulation 10.

(9) The statement of accounts shall—

- (a) be signed by at least two of the charity trustees of the charity, each of whom has been duly authorised to do so; and
- (b) specify the date on which it was approved by the charity trustees.

(10) In accordance with section 36 of the Act, the Registrar may exempt a charity, under this regulation that is above the audit threshold established under regulation 9(2)(c) from having to file audited financial statements, provided he—

- (a) is satisfied that submitting audited financial statements would cause severe financial hardship for the charity might undermine its viability as a going concern;
- (b) is of the opinion that receiving unaudited financial statements would not impede his ability to assess whether the charity is fit and proper to be registered under the Charities Act 2014, and whether it is in compliance with all statutory requirements; and
- (c) deems the charity to be at low risk for being used—
 - (i) for money laundering; or
 - (ii) for terrorist financing.

[Regulation 9 paragraph (2) amended and paragraph (10) inserted by 2017 : 35 s. 8 effective 3 November 2017]

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Notes to the accounts

10 (1) In so far as it is not provided in the statement of financial activities or in the balance sheet, the information to be provided by way of notes to the accounts of a registered charity is—

- (a) particulars of any material adjustment made under regulation 9(6);
- (b) a description of—
 - (i) each of the accounting policies which have been adopted by the charity trustees;
 - (ii) each of the accounting policies which are material in the context of the accounts of the charity; and
 - (iii) the estimation techniques adopted by the charity trustees which are material to the presentation of the accounts;
- (c) a description of any material change to policies and techniques referred to in paragraph (b), the reason for such change and its effect (if material) on the accounts, in accordance with the methods and principles set out in the SORPS;
- (d) a description of the nature and purpose of all material funds of the charity in accordance with the methods and principles set out in the SORPS;
- (e) such particulars of transactions of the charity, or of any subsidiary undertaking of the charity, entered into with a related party as may be required by the SORPS to be disclosed;
- (f) such particulars of the cost to the charity of employing and providing pensions for staff as may be required by the SORPS to be disclosed;
- (g) such particulars of the emoluments of staff employed by the charity as may be required by the SORPS to be disclosed;
- (h) a description of any incoming resources which represent capital, according to whether or not that capital is a permanent endowment;
- (i) an itemised analysis of any material movement between any of the restricted funds of the charity, or between a restricted and an unrestricted fund of the charity, together with an explanation of the nature and purpose of each of those funds;
- (j) the name of any subsidiary undertaking of the charity, together with a description of the nature of the charity's relationship with that subsidiary undertaking, and of its activities, and, where material, a statement of the turnover and net profit or loss of the subsidiary undertaking for the corresponding financial year and any qualification expressed in an auditor's report on the accounts of the subsidiary undertaking for that financial year;

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- (k) particulars of any guarantee given by the charity, where any potential liability under the guarantee is outstanding at the date of the balance sheet;
 - (l) particulars of any loan outstanding at the date of the balance sheet—
 - (i) which was made to the charity and which is secured by an express charge on any of the assets of the charity; or
 - (ii) which was made by the charity to any subsidiary undertaking of the charity;
 - (m) an analysis of any entry in the statement of financial activities relating to resources expended on charitable activities as may be required by the SORPS to be disclosed;
 - (n) a statement as to whether or not the accounts have been prepared in accordance with any applicable accounting standards, and particulars of any material departure from those standards and statements of practice, and the reasons for such departure;
 - (o) where the charity trustees have exercised their powers under regulation 6(4) so as to determine a financial year end that is earlier or later than 12 months from the beginning of the previous financial year, a statement of their reasons for doing so;
 - (p) if, in accordance with regulation 9(3)(f), the charity trustees have departed from any requirement of regulation 9, particulars of any such departure, the reasons for it, and its effect; and
 - (q) any additional information which—
 - (i) is required to ensure that the statement of accounts complies with the requirements of regulation 9; or
 - (ii) may reasonably assist the user to understand the statement of accounts.
- (2) In this regulation—
- (a) subject to subparagraph (b), “corresponding financial year” in relation to a subsidiary undertaking means—
 - (i) in the case of a subsidiary undertaking whose financial year ends with that of the parent charity, that year;
 - (ii) in any other case, the financial year of the subsidiary undertaking ending immediately before the end of the financial year of the parent charity;
 - (b) if the figures for the corresponding financial year of a subsidiary undertaking cannot be obtained without disproportionate expense or undue delay, the latest available figures are to be taken.

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Requirement for audit

11 (1) This regulation sets out the requirement for the annual audit of statements of accounts by certain registered charities and is without prejudice to any other power of the Registrar under the Act to separately order an audit.

(2) In respect of any financial year where a registered charity has an annual income or assets (as the case may be) equal to or more than the audit threshold, that charity shall prepare an audit of its statement of accounts for the year in question.

(3) The report of the audit required by paragraph (2) shall be submitted to the Registrar together with a charity's statement of accounts for the financial year to which that audit relates.

Matters of serious concern to be reported to Registrar

12 (1) A registered charity shall report to the Registrar matters of serious concern regarding the finances or good governance of the charity.

(2) The Registrar shall issue guidance on the types of matter to be taken as giving rise to a serious concern referred to in paragraph (1).

Temporary licences under section 43

13 (1) An application for a temporary licence under section 43 of the Act shall be made in accordance with this regulation.

(2) The applicant shall submit to the Registrar an application, in such form as the Registrar may determine, containing the particulars required by paragraph (3).

(3) The particulars referred to in paragraph (2) are—

- (a) the applicant licensee's name, title, physical and mailing addresses, telephone number and email address (if any);
- (b) the main purposes for which the temporary licence is to be granted;
- (c) the nature of all fund-raising activities, projects and programmes which it proposes to undertake in furtherance of the stated main purposes;
- (d) the proposed beneficiaries of the temporary licence; and
- (e) the purposes for which the proceeds of any such fund-raising activities are intended to be applied.

(4) The application shall be countersigned by one other individual who is independent of the applicant licensee and who undertakes to be the responsible custodian for the funds raised pursuant to the temporary licence granted.

(5) The individual referred to in paragraph (4) is also responsible, together with the applicant licensee, for submitting to the Registrar the revenue and expenses report required under section 43(6) of the Act.

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(6) The revenue and expenses report, so far as is reasonably practicable, shall conform with the standards provided for in these Regulations and the SORPS pertaining to the preparation of statements of income and expenditure by a registered charity.

(7) The Registrar shall maintain a publicly available list of all temporary licences granted under section 43 of the Act, together with the corresponding name of each applicant licensee and individual referred to in paragraph (4), and an assigned unique licence number.

(8) Any person who solicits or collects donations from members of the public pursuant to a licence granted under section 43 of the Act shall indicate that he is doing so pursuant to a temporary licence granted under the Act and provide the unique licence number referred to in paragraph (7).

Offences

14 (1) A person who fails to comply with regulation 6(5), 7, 8(1) and (2), 9, 10, 11, 12(1) or 13(6) and (8) of these Regulations commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding \$5,000; or

(b) on conviction on indictment, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) In deciding whether a person has committed an offence under paragraph (1), the court shall consider whether he followed any relevant guidance which was at the time issued by the Registrar.

(3) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Revocation

15 The Registration of Charities Regulations 1980 are revoked.

Commencement

16 These Regulations shall come into operation on the date that the Act comes into operation.

SCHEDULE

(regulation 3)

FORM OF APPLICATION FOR REGISTRATION

Application for Registration as a Charity

To: The Registrar General

We, the undersigned, being duly authorised to do so, hereby make application pursuant to section 17(3) of the Charities Act 2014 for the registration of a charity, particulars of which are as follows:

1. Name of charity: [*specify*]

2. Address of charity: [*The address must be a physical address (not a post office box) and will be the "registered address" of the charity for the purposes of section 17(2) of the Charities Act 2014.*]

3. Title, name, address, email address and telephone numbers of each charity trustee:

[1] [*specify*]

[2] [*specify*]

[3] [*specify*]

[4] [*specify*]

4. Category of charitable purpose that best describes the charity (*tick the appropriate paragraph*):

(a) the prevention or relief of poverty; ()

(b) the advancement of education; ()

(c) the advancement of religion; ()

(d) the advancement of health or the saving of lives; ()

(e) the advancement of citizenship or community development; ()

(f) the advancement of the arts, culture, heritage or science; ()

(g) the advancement of sport; ()

(h) the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity; ()

(i) the advancement of environmental protection or improvement; ()

(j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage; ()

(k) the advancement of animal welfare; ()

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(l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services; ()

(m) any other purpose, that is not mentioned in paragraphs (a) to (l), but which is recognised as a charitable purpose by virtue of section 6 of the Charities Act 2014 (provision of recreational and similar facilities, etc); *(if applicable, specify)*

(n) any other purpose that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (m). *(if applicable, specify and explain how the purposes are analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (m))*

5. Primary objectives of the charity, and its main beneficiaries: *[specify]*

6. Nature of all fund-raising activities proposed: *[specify]*

7. Purposes to which proceeds of fund-raising will be applied: *[specify]*

8. Objectives and aims that are for the public benefit: *[specify]*

9. The financial year of the charity ends on the *[specify the day]* of *[specify the month]*.

10. The initial date on which the charity was established is the *[specify the day]* of *[specify the month]* *[specify the year]*.

11. Have any charity trustees been convicted of an offence involving dishonesty, deception, fraud or violence, or been declared bankrupt? *(Yes/No)* If yes to any, please provide details.

12. Is the charity able to comply with its obligations under the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014? *(Yes/No)*

13. Is the charity able to comply with the reporting obligations of charities? *(Yes/No)* These include, but are not limited to: (a) annual accounts within six months of the financial year end (section 37 of the Charities Act 2014), (b) annual reports within six months of the financial year end (section 38), and (c) notification of any changes to the charity's trustees, address, or other particulars within 30 days (section 17).

14. Is the following supporting documentation included with your application? *(Yes/No)* A copy of the charity's governing documents, which must include: (a) a dissolution clause stating that if the charity is wound up, its net assets will be transferred to another charity having similar purposes (not required if you have submitted current governing documents with an approved dissolution clause within the last five years), and (b) a bank mandate requiring that financial transactions be approved by at least two independent trustees (not required if you have submitted a bank mandate within the last three years and there have been no changes).

Your attention is drawn to section 37 of the Charities Act 2014 which obliges the charity trustees having supervision of the accounts of a registered charity to submit a copy of its statement of accounts to the Registrar General within six months of the end of each financial year, and failure to do so is a ground for the Registrar to cancel the charity's registration. Your attention is also drawn to section 38 of the Act which obliges the charity trustees to submit, at the same time, its annual report.

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We, being two trustees of the applicant charity hereby declare that the particulars contained in this application for registration under the Charities Act 2014 are true and correct to the best of our knowledge and belief.

Date [*date of signature*]

Name [*full names*]

Title [*position held in the charity*]

Signed [*signature*]

Made this 6th day of November 2014

Minister of Home Affairs

[Amended by:

2017 : 35]