

BULLETIN

Companies (Non-Profit Organisation) Regulations, 2014

The Companies (Non-Profit Organisation) Regulations, 2014 (the “Regulations”) came into effect on 6 August, 2014. The Regulations were specifically designed to address the risks faced by non-profit organisations (“NPOs”) relating to money laundering and terrorist financing. They impose a number of obligations on NPOs and on the Registrar General with the ultimate aim of protecting NPOs from being used for money laundering and terrorist financing.

The Regulations define an NPO as “an organisation that primarily engages in raising or disbursing funds for purposes such as religious, charitable, educational, scientific, historical, fraternal, literary, sporting, artistic or athletic purposes not for profit”.

Registration

All NPOs must be registered with the Registrar General under the provisions of the Companies Act (Ch. 308) and in accordance with the Regulations. In order to register, a NPO must submit to the Registrar General’s Department an Application for Registration of Non-Profit Organisation along with the NPO’s Memorandum and Articles of Association. If all of the requirements are met, the Minister responsible for Companies may authorize by licence the incorporation of the NPO as a limited liability company (without the word “Limited” in its name)

and the Registrar will subsequently register the NPO. Once registered, the NPO will be issued a certificate of incorporation which shall be conclusive proof of the NPO’s incorporation and registration.

NPOs that are not registered with the Registrar General are prohibited from operating as such. However, the Regulations as drafted do not impose a sanction on NPOs that operate without having been registered.

Registered NPOs are entered on the “Non-Profit Organisations Register” (the “Register”) which must contain the following information on all registered NPOs:

- the name, address in The Bahamas and contact details of the NPO;
- the purpose, objectives and activities of the NPO;
- the identity of the persons who own, control or direct the NPO; and
- the date of registration and, if applicable, de-registration of the NPO.

The information contained on the Register is available to be examined by members of the public during normal business hours and upon payment of a fee of \$10.

Any changes to the NPO’s purposes, objectives and activities must be notified

to the Registrar General in writing as soon as reasonably practicable.

Records to be Kept by Registered Non-Profit Organisations

A registered NPO must keep records of its purposes, objectives, activities and the identity of persons who control or direct its activities, such as senior officers, directors and trustees.

Financial records must also be kept by a registered NPO. Financial records must be sufficiently detailed to show and explain: (i) financial transactions within and outside The Bahamas, (ii) that funds have been used in a manner consistent with the NPO's purposes, objectives and activities and, (iii) the sources of the NPO's gross annual income.

The records mentioned above must be kept by registered NPOs for a minimum period of 5 years. Failure of the NPO to keep such records, or failure to keep such records for the minimum prescribed period, is an offence under the Regulations and the NPO may be fined up to \$10,000.

Functions of the Registrar General

In addition to maintaining the Non-Profit Organisations Register, the Registrar General (the "Registrar") also has supervisory and enforcement functions. Accordingly, the Registrar has the power to refuse to register NPOs, revoke the current registration of NPOs, and it must take proactive measures to protect NPOs from being used for money laundering and terrorist financing.

Refusal of Registration

The Regulations provide for a number of circumstances in which the Registrar may refuse an application for registration. Notably, the Registrar may refuse to register a NPO if it is of the opinion that (i) the NPO does not fall within the meaning of 'non-profit organisation', (ii) the NPO is being used, or is

intended or likely to be used, for money laundering or terrorist financing; or (iii) it is contrary to the public interest for the NPO to be registered.

Revocation of Registration

Registered NPOs may also be subject to having their registration revoked by the Registrar in the following circumstances:

- the NPO is convicted of an offence under the Companies Act, the Proceeds of Crime Act (Ch. 93), the Anti-Terrorism Act (Ch. 107) or the Regulations;
- a cash forfeiture order is made against it under the Companies Act;
- a forfeiture order is made against it under the Proceeds of Crime Act or the Anti-Terrorism Act;
- if, in the opinion of the Registrar, the NPO has breached the Regulations or any of the provisions of the Companies Act;
- the NPO no longer exists or is not carrying out , and is not likely to carry out, its activities as specified on the Register; or
- if, in the opinion of the Registrar, the NPO is being used, or may in the future be used, for, or to assist in, money laundering or terrorist financing.

Protection of Non-Profit Organisations

The functions of the Registrar also include, among other things, monitoring the effectiveness of the Regulations in protecting NPOs from being used for terrorist financing and undertaking periodic reviews of NPOs for the purposes of identifying the features and types of NPOs that are at risk of being used for terrorist financing. Additionally, the Registrar must engage in activities for the purposes of raising awareness with NPOs concerning the risks of terrorism and terrorist financing abuse and the measures available to protect against such abuse. It must also

undertake activities or measures to promote transparency, accountability, integrity and public confidence in the administration and management of NPOs.

On written request, the Registrar may require a registered NPO to produce any records that the NPO must keep under the Regulations. However, the Registrar may only request such records that it reasonably requires to assess the extent, if any, to which the registered NPO is being used to assist terrorist financing. A registered NPO that fails to comply with the Registrar's request to produce records commits an offence and may be fined up to \$10,000.

The Registrar may also require the person who produced the records or any person who

appears to be an officer or employee or otherwise associated with the NPO to provide an explanation of the records produced. A person who is required to provide an explanation of the records and who, without reasonable excuse, fails to provide the explanation, commits an offence and may be fined up to \$10,000.

Transitional Period for Existing Non-Profit Organisations

NPOs that were in existence prior to 6 August, 2014, must within ninety (90) days of 6 August, 2014 (*i.e.* by 4 November, 2014) comply with the provisions of the Regulations. Registered NPOs that fail to comply with the Regulations within the prescribed time period may be subject to revocation of their registration.