

NON-PROFIT ORGANISATIONS REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

REGULATION

1. Short title
2. Interpretation

PART II

NON-PROFIT SUPERVISOR

3. Prescribed supervisory authority
4. Functions and duties of NPO Supervisor

PART III

REGISTRATION OF NON-PROFIT ORGANISATIONS

5. Register to be kept
6. Requirement to register
7. Application to register
8. Registration
9. Refusal of application to register
10. De-registration
- 10A. Controllers

PART IV

OBLIGATIONS OF NON-PROFIT ORGANISATIONS

11. Changes of information to be provided to NPO Supervisor
12. Records
13. Provision of records to the NPO Supervisor
14. Accounts
15. Power to require an audit

PART V

ENFORCEMENT ACTION

16. NPO Supervisor may take disciplinary action
17. Notice of intention to take disciplinary action
18. Disciplinary action

19. Recovery of administrative penalty

PART VI

MISCELLANEOUS

20. Confidentiality
21. Offence, false and misleading information
22. Non-applicability

NON-PROFIT ORGANISATIONS REGULATIONS
– SECTIONS 174 AND 175

(Legal Notices 12/2013, 50 /2014 and 40/2018)

Commencement

[21 November 2014]

PART I

PRELIMINARY

Short title

1. (1) These Regulations may be cited as the Non-Profit Organisations Regulations 2014 and shall, except for Part V, come into operation on publication.

(2) Part V shall come into operation on such date as the Governor may appoint by notice published in the *Gazette*.

Interpretation

2. (1) In these Regulations—

“controller” means a person who owns, controls or directs a non-profit organisation and includes—

- (a) a trustee of a trust, where the non-profit organisation is established as a trust;
- (b) a director of a company, where the non-profit organisation is established as a company;
- (c) a general partner of a partnership, where the non-profit organisation is established as a partnership;
- (d) a person responsible for the management and administration of an unincorporated association, where the non-profit organisation is established as an unincorporated association;
- (e) a person not specified in paragraphs (a), (b), (c), or (d) where the non-profit organisation is established by that person;
- (f) a person deemed a controller by the NPO Supervisor; *(Inserted by L. N. 40 of 2018)*

“FATF” means the international body known as the Financial Action Task Force on Money Laundering;

“FATF Recommendations” means the FATF Recommendations, February 2012 and such amendments as may from time to time be made to them;

“fiduciary” means—

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

“gross annual income” during any period, means the total income of the non-profit organisation from any source during the twelve months immediately preceding the first day of that period, including, but not limited to—

- (a) income received from the provision of goods or services;
- (b) rental income;
- (c) interest and other income derived from its investments;
- (d) donations of money or other property made to the organisation;

“non-profit organisation” has the meaning specified in section 2(1) of the Proceeds of Crime Ordinance; (*Inserted by L. N. 40 of 2018*)

“NPO legislation” means—

- (a) the Proceeds of Crime Ordinance;
- (b) terrorist financing legislation and any Ordinances, regulations and other laws relating to terrorism and terrorist financing that are applicable to non-profit organisations;
- (c) these Regulations; and
- (d) an Anti-money Laundering and Terrorist Financing Code issued under section 175(b) of the Ordinance that is applicable to non-profit organisations;

“NPO Register” means the register of non-profit organisations established and kept under regulation 5;

“NPO Supervisor” means the supervisory authority specified under regulation 3;

“Ordinance” means the Proceeds of Crime Ordinance.

(2) Unless otherwise provided terms used in these Regulations shall have the same meaning as defined in the Ordinance.

PART II

NPO SUPERVISOR

Prescribed supervisory authority

3. The Financial Services Commission is prescribed as the NPO Supervisor.

Functions and duties of NPO Supervisor

4. The functions of the NPO Supervisor are—

- (a) to act as the registration, supervision and enforcement authority for non-profit organisations operating in the Islands;
- (b) to monitor compliance—
 - (i) by non-profit organisations with the registration requirements of these Regulations; and
 - (ii) by registered non-profit organisations with the NPO legislation;
- (c) to monitor the effectiveness of the NPO legislation in—
 - (i) protecting non-profit organisations from being used for terrorist financing or money laundering; and
 - (ii) ensuring the compliance of the Government with the FATF Recommendations, as they apply to non-profit organisations;
- (d) to undertake periodic reviews of the non-profit sector in the Islands for the purpose of identifying the features and types of non-profit organisations that are at risk of being used for terrorist financing or money laundering;
- (e) to undertake outreach to non-profit organisations with the objective of protecting the non-profit sector in the Islands from being used for terrorist financing or money laundering; and
- (f) to discharge such other functions as may be assigned to the NPO Supervisor under the Ordinance, these Regulations or any other Ordinance.

- (2) The outreach activities undertaken by the NPO Supervisor shall include—

- (a) raising awareness of non-profit organisations concerning the risks of their being used for terrorist financing or money-laundering and the measures available to protect against such abuse; and
- (b) promoting transparency, accountability, integrity and public confidence in the administration and management of non-profit organisations.

- (3) Where the NPO Supervisor forms the view that the NPO legislation is not effective in protecting non-profit organisations from being used for

terrorist financing or money laundering, the NPO Supervisor shall make a report to the Governor in Cabinet recommending appropriate changes to the NPO legislation.

PART III

REGISTRATION OF NON-PROFIT ORGANISATIONS

Register to be kept

5. (1) The NPO Supervisor shall establish and keep a Register of non-profit organisations.

(2) The NPO Register shall contain the following information in respect of each non-profit organisation that has been registered—

- (a) its full name, address in the Islands, telephone number and e-mail address (if any);
- (b) a summary of its purpose, objectives and activities;
- (c) the names of the persons who own, control or direct the non-profit organisation;
- (d) the date of its registration and, if applicable, de-registration;
- (e) whether it is incorporated or unincorporated and, if incorporated, the number with which it is registered under the Companies Ordinance;
- (f) if the non-profit organisation is not incorporated—
 - (i) the address in the Islands that it has given as its address for the service of notices and other document; and
 - (ii) the address where it keeps its records; and
- (g) such other information as the NPO Supervisor considers appropriate.

(3) The NPO Supervisor shall maintain a file in respect of each registered non-profit organisation (whether currently registered or not) in which shall be kept the following—

- (a) originals or notarised copies of the non-profit organisation's constitutional documents and by-laws, as amended from time to time, and, if incorporated, the official document certifying its incorporation; and
- (b) other documents, correspondence and material relevant to the non-profit organisation as the NPO Supervisor considers appropriate.

(4) The NPO Register and the information contained in any document filed with the NPO Supervisor may be kept in such manner as the NPO Supervisor considers appropriate, by means of a device or facility that—

- (a) records or stores information magnetically, electronically or by other means; and
- (b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

(5) A person may, during normal business hours on payment of a fee of \$50, require the NPO Supervisor to provide details of the information entered on the NPO Register in respect of a registered non-profit organisation.

Requirement to register

6. (1) Subject to subregulation (2), a non-profit organisation shall be registered in the NPO Register if it is—

- (a) incorporated, formed or otherwise established in the Islands; or
- (b) administered in or from within the Islands.

(2) A non-profit organisation is exempted from the requirement to be registered under this Regulation if the non-profit organisation—

- (a) has a gross annual income not exceeding \$10,000 and assets not exceeding \$20,000 in value; and
- (b) has been issued with a certificate of exemption pursuant to subregulation (4).

(3) A non-profit organisation can at any time apply in writing to the NPO Supervisor for a certificate of exemption from the requirement for registration by submitting an application in the form specified by the NPO Supervisor and such documents as the NPO Supervisor may specify.

(4) The NPO Supervisor shall issue a certificate of exemption to a non-profit organisation which makes an application under subregulation (3) if the NPO Supervisor is satisfied that the requirements under subregulation (2)(a) are met and if the NPO Supervisor is satisfied that the non-profit organisation poses no risk of facilitating terrorist-financing or money-laundering, having regard to one or more of the following matters—

- (a) the length of time it has operated as a non-profit organisation without indication of having facilitated terrorist-financing or money-laundering;
- (b) the nature of its activity or its manner of functioning;
- (c) the identity or type of its members;
- (d) its affiliation with organisations outside the Islands or lack thereof.

(5) Where an unregistered non-profit organisation—

- (a) is found not to qualify under subregulation (2)(a); or
- (b) qualifies under subparagraph (2)(a), but is unable to demonstrate to the satisfaction of the NPO Supervisor that it poses no risk of facilitating terrorist-financing or money laundering,

the NPO Supervisor shall give written notice to the non-profit organisation that it does not qualify for exemption from the requirement to be registered and unless the non-profit organisation, within thirty days after the date of the notice, shows good reason to the satisfaction of the NPO Supervisor why it should be exempted, it shall be required to be registered.

(6) Where the NPO Supervisor reasonably determines—

- (a) that an exempted non-profit organisation poses a risk of facilitating terrorist-financing or money-laundering; or
- (b) that an exempted non-profit organisation has a gross annual income and assets that exceed the amounts specified in subregulation (2)(a),

the NPO Supervisor shall give written notice to the non-profit organisation stating that it will no longer be exempted from the requirement to be registered and unless the non-profit organisation, within fourteen days after the date of the notice, shows good reason to the satisfaction of the NPO Supervisor why it should continue to be exempted, the non-profit organisation shall no longer be exempted from the provisions of these Regulations and, where it is in possession of a certificate of exemption, shall immediately return the certificate to the NPO Supervisor.

(7) An application for a certificate of exemption shall be accompanied by an application fee of \$150.

(7A) A non-profit organisation shall not solicit or cause to be solicited contributions from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under these Regulations. (*Inserted by L. N. 40/2018*)

(8) A non-profit organisation that operates when not registered or exempted under this regulation commits an offence and is liable on summary conviction to a fine of \$50,000. (*Amended by L. N. 40 of 2018*)

Application to register

7. (1) Application may be made to the NPO Supervisor to register a non-profit organisation or a proposed non-profit organisation.

(2) The application shall be—

- (a) in writing and in the form specified by the NPO Supervisor;
- (b) signed by a controller of the non-profit organisation: (*Substituted by L. N. 40 of 2018*)
- (c) accompanied by—
 - (i) a copy of the governing document of the organisation;
 - (ii) such other documents or information as may be specified by these Regulations or as the NPO Supervisor may reasonably require; and
 - (iii) a non-refundable fee of \$150. (*Substituted by L. N. 40 of 2018*)

(2A) The governing document of the organisation shall include—

- (a) the name of the organisation;
 - (b) the officers of the organisation;
 - (c) a declaration that the organisation is a non-profit organisation;
 - (d) a statement of the organisation's purpose, objectives and activities;
 - (e) a statement of the manner of electing the governing body of the organisation;
 - (f) the organisational structure of the organisation;
 - (g) the duties and powers of the governing body including procedures for financial decisions of the organisation;
 - (h) provisions limiting the objects of the organisation to—
 - (i) pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income solely to promoting those purposes, and
 - (ii) prohibit the organisation from distributing any part of the profits generated to members, shareholders or office-bearers except for the payment in cash or in specie to any member or office-bearer in reimbursement of any expense or in consideration of any property made available or services provided by the member or office-bearer for the benefit of the company in furthering its purposes.
 - (i) state the procedure for changing the governing instrument;
 - (j) require that, on the closing of the organisation, any surplus assets are not to be paid or transferred to its members or office-bearers but must be transferred to another non-profit organisation, whether in the Islands or elsewhere—
 - (i) specified in the governing instrument; or
 - (ii) designated by resolution of the members at a meeting of the organisation called for the purpose of making such a designation or for purposes that include the making of such a designation.
(Inserted by L. N. 40 of 2018)
- (3) The NPO Supervisor may require an applicant to—
- (a) submit such additional documents and information, in addition to what is specified in subregulation (2)(c)(i), as the NPO Supervisor may reasonably require to determine the application, and such documents and information shall be in such form as the NPO Supervisor may require; and
 - (b) verify any document or information provided in support of an application in such manner as the NPO Supervisor may specify.
- (4) If, before the determination by the NPO Supervisor of an application or before the registration of a non-profit organisation—

- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the NPO Supervisor in connection with the application; or
- (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall, as soon as reasonably practicable, give the NPO Supervisor written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

(5) Where an application is made to register a non-profit company, the NPO Supervisor shall satisfy himself that the applicant is duly registered under Part V of the Companies Ordinance.

Registration

8. (1) Following the receipt of an application and registration fee under regulation 7 and any additional documents or information that it has required under regulation 7(3)(a), unless the NPO Supervisor refuses the application under regulation 9(1), the NPO Supervisor shall—

- (a) if the application is for the registration of an established non-profit organisation, register the non-profit organisation in the NPO Register and provide the applicant and the non-profit organisation with a certificate of registration; or
- (b) if the application relates to a proposed non-profit organisation, provide the applicant with written notice of its intention to register the proposed non-profit organisation, provided that the non-profit organisation is established within a period of twenty-one days from the date of the notice.

(2) Subject to subregulation (3), if—

- (a) the NPO Supervisor provides notice of its intention to register a proposed non-profit organisation; and
- (b) within twenty-one days of the date of the notice, the NPO Supervisor is provided with satisfactory evidence that the proposed non-profit organisation has been established,

the NPO Supervisor shall register the non-profit organisation, and provide the applicant and the non-profit organisation with a certificate of registration.

(3) Every non-profit organisation registered under these Regulations shall keep—

- (a) its certificate of registration at the address listed in the NPO Register; and
- (b) in the case of a non-profit organisation that is not incorporated, the address specified in regulation 5(2)(ii),

and produce it for inspection, without charge, at the request of any person.

(4) Notwithstanding subregulation (2), the NPO Supervisor may refuse to register a non-profit organisation if, following the provision of a notice under subregulation (1)(b), the NPO Supervisor forms the opinion that there are grounds under regulation 9(1) for refusing the application for registration.

Refusal of application to register

9. (1) The NPO Supervisor may refuse an application for registration if—
- (a) the application does not comply with regulation 7(2);
 - (b) the applicant fails to provide any information or documents required by the NPO Supervisor under regulation 7(3);
 - (c) the NPO Supervisor is of the opinion that—
 - (i) the non-profit organisation is not, or the proposed non-profit organisation will not be a non-profit organisation within the meaning of the Ordinance;
 - (ii) the non-profit organisation or proposed non-profit organisation is being used for terrorist financing or money-laundering or it is intended or likely that it will be used for such purpose;
 - (iii) it is contrary to the public interest for the non-profit organisation to be registered; or
 - (iv) any of the persons involved in the establishment or operation of the non-profit organisation has been convicted of an offence involving dishonesty;
 - (d) the non-profit organisation, having previously been registered under these Regulations, has been de-registered under regulation 10.
- (1A) The NPO Supervisor may refuse an application for registration if—
- (a) the non-profit organisation is established for illegal purposes;
 - (b) the non-profit organisation does not have a connection with the Islands;
 - (c) the information represented on the application for registration of the non-profit organisation is manifestly incorrect;
 - (d) the name of the non-profit organisation—
 - (i) is identical to a name by which a non-profit organisation in existence is already registered or so nearly resembles such name or translated name so as to be calculated to deceive;
 - (ii) contains the words “royal”, “imperial” or “empire” or, in the opinion of the NPO Supervisor suggests, or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;

- (iii) contains the words “gaming”, “lottery”, “bank”, “insurance” or any similar word which is restricted in use by the laws of the Islands or in the opinion of the NPO Supervisor connotes any of such activities or any derivative of any of such words or of such similar words, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any of such activities; or
- (iv) is different from the name in which the entity was established if the entity was established as a company, trust, partnership, or foundation. (*Inserted by L. N. 40 of 2018*)

(2) If the NPO Supervisor refuses an application for registration, it shall send the applicant a written notice of refusal, stating the grounds for its refusal.

De-registration

10. (1) The NPO Supervisor shall de-register a registered non-profit organisation if—

- (a) the non-profit organisation is convicted of an offence under the Ordinance, the terrorist financing legislation or these Regulations;
- (b) a civil forfeiture order is made against the non-profit organisation under the Ordinance or the terrorist financing legislation;
- (c) a forfeiture order is made against the NPO under article 15 or 16 of the Anti-terrorist Financing Order;
- (d) subject to subregulation (3), a person authorised on behalf of the non-profit organisation requests that the non-profit organisation be de-registered; or
- (e) the non-profit organisation has been struck off the Companies Register.

(2) The NPO Supervisor may de-register a registered non-profit organisation if, in the opinion of the NPO Supervisor the non-profit organisation—

- (a) has breached these Regulations or an Anti-money Laundering and Terrorist Financing Code made under section 175(b) of the Ordinance, that applies to it;
- (b) no longer exists or is not carrying out, and is not likely to carry out, the activities specified for the non-profit organisation in the NPO Register; or
- (c) is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering.

(3) The NPO Supervisor shall not de-register a non-profit organisation under subregulation (1)(d) if the NPO Supervisor is of the opinion that the de-

registration of the NPO would hinder the NPO Supervisor in the exercise of its functions.

(4) Subject to subregulation (5), before de-registering a non-profit organisation under any provision of this regulation other than subregulation (1)(d), the NPO Supervisor shall give written notice to the non-profit organisation stating—

- (a) the grounds upon which it intends to de-register the non-profit organisation; and
- (b) that unless the non-profit organisation, by written notice, shows good reason why it should not be de-registered, it will be de-registered on a date not less than fourteen days after the date of the notice.

(5) If it is not practicable for the NPO Supervisor to give notice to the non-profit organisation under subregulation (4) or where there has been no response from the non-profit organization within the time specified in subregulation (4), the NPO Supervisor shall publish a notice in the *Gazette* to the effect that it intends to de-register the non-profit organisation.

(6) Where the NPO Supervisor de-registers a non-profit organisation, the NPO Supervisor shall mark the name of the non-profit organisation in the NPO Register as de-registered, showing the date of its de-registration.

Controllers

10A. A non-profit organisation shall have at least two persons as its controller.
(*Inserted by L. N. 40 of 2018*)

PART IV

OBLIGATIONS OF NON-PROFIT ORGANISATIONS

Changes of information to be provided to NPO Supervisor

11. (1) A non-profit organisation shall, where there is any change in information which have been provided to the NPO Supervisor, issue written notification of the change to the NPO Supervisor within fourteen days of such change occurring.

(2) If there has been any change in information of a non-profit organisation which has not been notified to the NPO Supervisor, the purported change will not take effect legally and shall be treated as if no change had occurred.

(3) Changes required to be provided under this regulation include—

- (a) changes to the non-profit organisation's purposes, objectives and activities;
- (b) changes of office-bearers and their addresses and other contact details;
- (c) changes of the non-profit organisation's address and other contact details; and

- (d) changes to the governing instrument (before making any changes to a governing instrument, it is advisable to ensure that these changes will not affect the NPO's non-profit status).

(4) It shall be the duty of a controller of a non-profit organisation to ensure that the NPO Supervisor is notified of any change in information within fourteen days of such change. (*Substituted by L. N. 40 of 2018*)

Records

12. (1) Every non-profit organisation, whether registered or exempted, shall keep—

- (a) records of—
 - (i) its purpose, objectives and activities;
 - (ii) the identity of the persons who control or direct its activities, including, as appropriate, senior officers, directors and trustees;
 - (iii) the identity, credentials and good standing of its beneficiaries and associate non-profit organisations; and
- (b) financial records that—
 - (i) show and explain its transactions, within and outside the Islands, and that are sufficiently detailed to show that its funds have been used in a manner consistent with its purposes, objectives and activities; and
 - (ii) show the source of its gross annual income.

(2) A non-profit organisation shall keep the records specified under subregulation (1) for a period of at least five years.

(3) A non-profit organisation that contravenes this regulation commits an offence and is liable on summary conviction to a fine of \$20,000.

Provision of records to the NPO Supervisor

13. (1) The NPO Supervisor may, on the grounds specified in subregulation (2), by written notice to a non-profit organisation, require it to produce any record that the non-profit organisation is required to keep under regulation 12.

(2) The NPO Supervisor may give notice under sub-regulation (1) only where it has reasonable cause to suspect that the non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering.

- (3) A notice given under subregulation (1)—
 - (a) shall specify—
 - (i) the records which the NPO Supervisor requires to be produced;

- (ii) the place where the records specified in the notice shall be produced to the NPO Supervisor, which may be by inspection at the premises of the non-profit organisation; and
 - (iii) the period within which the records shall be produced; and
- (b) may require the documents to be produced to a person or persons specified in the notice.
- (4) The NPO Supervisor may require the person who produced the records or any person who appears to be an officer or employee of the non-profit organisation or otherwise associated with it, to provide an explanation of the records.
- (5) The NPO Supervisor may take copies or extracts of the records produced under this regulation or may retain the original records for a period not exceeding—
- (a) a period of one year; or
 - (b) such longer period as the Court, on the application of the NPO Supervisor, may specify.
- (6) Disclosure of records under this regulation shall not be treated as a breach of any enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.
- (7) A non-profit organisation that fails to comply with a notice issued under subregulation (1) commits an offence and is liable on summary conviction to a fine of \$50,000.
- (8) A person required to provide an explanation of any records produced under this regulation who, without reasonable excuse, fails to provide the explanation, commits an offence and is liable on summary conviction to a fine of \$50,000.

Accounts

14. (1) A controller of a non-profit organisation shall cause proper financial statements to be kept of—

- (a) all sums of money received and expended and the matters in respect of which the receipt and expenditure relate;
- (b) all sales and purchases of property;
- (c) all sums of money raised through fundraising;
- (d) non-monetary transactions;
- (e) records of assets and liabilities; and
- (f) any other matter that may be prescribed. (*Substituted by L. N. 40 of 2018*)

(1A) A controller of a non-profit organisation shall prepare and submit annually to the NPO Supervisor, financial statements of the organisation's revenue and

expenditure and shall ensure that the financial statements show and explain all the transactions of the non-profit organisation and disclose at any time its financial position.
(*Inserted by L. N. 40 of 2018*)

(2) The registered non-profit organisation shall submit—

- (a) financial statements, certified by an accountant, where the gross annual income of the non-profit organisation exceeds \$500,000; or
- (b) financial statements, in a form approved by the NPO Supervisor, where the gross annual income of the non-profit organisation does not exceed \$500,000.

(3) The financial statements required by subregulation (2) shall include—

- (a) a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year; and
- (b) a breakdown of any funds raised, or donations received, and disbursed, by any association of person operating under and subject to the control of the non-profit organisation.

(4) The statements required by subregulation (2) shall be submitted, within six months after the end of the year or its financial year, unless prior written approval of an extension has been granted by the NPO Supervisor.

(5) A registered non-profit organisation shall pay to the NPO Supervisor a fee of \$100 upon submitting its financial statements.

Power to require an audit

15. (1) Where the NPO Supervisor has reasonable cause to suspect that a non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing or money laundering, it may, by written notice to the non-profit organisation, require an audit of its accounts to be investigated and audited by an independent auditor appointed by the non-profit organisation with the approval of the NPO Supervisor.

(2) An auditor appointed in accordance with subregulation (1) shall—

- (a) have the right of access to all books, accounts and documents relating to the non-profit organisation that are in the possession or under the control of the directors and persons acting or having concern in the management and administration of the non-profit organisation or of the property or income of the non-profit organisation or to which the directors and such persons have access;
- (b) be entitled to require from any person referred to in paragraph (a) or any past or present member, officer or servant of the non-profit organisation, such information and explanation as he thinks necessary for the performance of his duties; and
- (c) at the conclusion of, or during the progress of, the audit make such reports to the NPO Supervisor on the audit or the accounts

or affairs of the non-profit organisation as the auditor thinks the case requires, and send a copy of the report to the persons referred to in paragraph (a).

(3) The expenses of an audit under subregulation (1), including the remuneration of the auditor, shall be paid by the non-profit organisation.

(4) A person commits an offence if he—

- (a) fails to afford an auditor any facility to which he is entitled under subregulation (2);
- (b) fails to make full disclosure to the NPO Supervisor of all material facts required to be disclosed under this Ordinance in respect of a non-profit organisation; or
- (c) knowingly makes—
 - (i) a false statement of a material fact; or
 - (ii) a statement containing information that is misleading in light of the circumstances in which it was made.

(5) A person who is convicted of an offence under subregulation (4) is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment for six months, or to both.

PART V

ENFORCEMENT ACTION

NPO Supervisor may take disciplinary action

16. (1) For the purposes of this Part—

- (a) “disciplinary violation” means a contravention of—
 - (a) the requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees;
 - (b) the requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations;
 - (c) the requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year;
 - (d) the requirement to keep financial records in accordance with regulation 14(1). (*Substituted by L. N. 40 of 2018*)
- (b) the imposition of an administrative penalty becomes final on the earliest of—
 - (i) the payment by the non-profit organisation of the penalty;

- (ii) the date when, in accordance with regulation 17(5), the non-profit organisation is considered to have committed the disciplinary violation; or
- (iii) the dismissal of any appeal of the non-profit organisation, provided that the time for any further appeal has expired.

(2) The NPO Supervisor may take disciplinary action against a non-profit organisation if it is satisfied that the non-profit organisation has committed a disciplinary violation.

(3) The NPO Supervisor takes disciplinary action against a non-profit organisation by imposing an administrative penalty on it.

(3A) The NPO Supervisor in deciding whether to impose an administrative penalty on a non-profit organisation, shall take into account the following matters—

- (a) the nature and seriousness of the contravention;
- (b) whether the non-profit organisation has previously contravened these Regulations or any relevant legislation;
- (c) whether the contravention was caused by the negligence of the non-profit organisation;
- (d) the ability of the non-profit organisation to pay the penalty;
- (e) any gain resulting to the non-profit organisation as a result of the contravention; and
- (f) such other matters as the NPO Supervisor considers appropriate. *(Inserted by L. N. 40 of 2018)*

(3B) An administrative penalty imposed on a non-profit organisation shall be a penalty imposed on the controllers of the non-profit organisation. *(Inserted by L. N. 40 of 2018)*

(4) The administrative penalty imposed on a non-profit organisation in respect of a disciplinary violation shall be a sum no greater than the maximum sum specified below—

The requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees	A maximum of \$50,000
The requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations	A maximum of \$50,000
The requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or	A maximum of \$50,000

cumulatively, during the year	
The requirement to keep financial records in accordance with regulation 14(1)	A maximum of \$50,000

(Substituted by L. N. 40 of 2018)

(5) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

(6) The NPO Supervisor shall not take disciplinary action against a non-profit organisation in respect of a disciplinary violation committed more than two years prior to the date upon which it sends a notice to the non-profit organisation under regulation 17.

(7) If the conduct or omission that constitutes a disciplinary violation also constitutes an offence, the taking of disciplinary action against a non-profit organisation does not prevent the non-profit organisation being also prosecuted for the offence.

Notice of intention to take disciplinary action

17. (1) If the NPO Supervisor intends to take disciplinary action against a non-profit organisation, it shall send a notice of its intention to the non-profit organisation which—

- (a) sets out the alleged disciplinary violation and the relevant facts surrounding the violation;
- (b) sets out the penalty it intends to impose for the violation; and
- (c) advises the non-profit organisation of its right to make written representations to the NPO Supervisor in accordance with subregulation (2).

(2) A non-profit organisation that receives a notice under subregulation (1) may, within twenty-eight days of the date upon which it receives the notice, send written representations to the NPO Supervisor disputing the facts of the alleged disciplinary violation or the administrative penalty or both.

Disciplinary action

18. (1) After the expiration of twenty-eight days from the date that the NPO Supervisor sent a notice under regulation 17 to a non-profit organisation, the NPO Supervisor may take disciplinary action against that non-profit organisation by sending it a penalty notice stating—

- (a) the disciplinary violation in respect of which the notice is issued;
- (b) the date on which notice of intention to take disciplinary action in respect of that violation was sent to the non-profit organisation;
- (c) the amount of the administrative penalty for the violation;

- (d) a date, not less than twenty-eight days after the date of the penalty notice, by which the non-profit organisation shall pay the penalty to the NPO Supervisor; and
- (e) that if the non-profit organisation does not pay the penalty or exercise its rights of appeal under section 176 of the Proceeds of Crime Ordinance, it will be considered to have committed the violation and that it is liable for the penalty set out in the notice.

(2) Before taking disciplinary action against a non-profit organisation under subregulation (1), the NPO Supervisor shall consider any written representations that it has received from the non-profit organisation and, where it receives such representations, it must provide reasons for the action that it takes.

(3) A non-profit organisation that receives a penalty notice under subregulation (1) shall pay the penalty stated to the NPO Supervisor on or before the date specified in the notice or appeal the notice under section 176 of the Proceeds of Crime Ordinance.

(4) If the non-profit organisation pays the administrative penalty, it is considered to have committed the violation and the disciplinary action is over.

(5) A non-profit organisation that neither pays the administrative penalty nor appeals the notice within twenty-eight days is considered to have committed the disciplinary violation and is liable for the penalty.

(6) If the NPO Supervisor imposes an administrative penalty on a non-profit organisation, the NPO Supervisor shall, after the imposition of the penalty has become final, advertise the imposition of the penalty by publication in the *Gazette*.

Recovery of administrative penalty

19. (1) An administrative penalty constitutes a debt to the NPO Supervisor and may be recovered in the court.

(2) The NPO Supervisor may, after the imposition of a penalty has become final, issue a certificate certifying the unpaid amount of any debt referred to in subregulation (1) and the registration of the certificate in the court has the same effect as a judgment of the court for a debt of the amount specified in the certificate together with the costs of registration.

PART VI

MISCELLANEOUS

Confidentiality

20. (1) A person shall keep confidential all information relating to a non-profit organisation which he has acquired in his capacity as an employee of the Financial Services Commission, except as required for an inquiry in respect of

any matter under these Regulations or the Ordinance or on the order of a court of competent jurisdiction.

(2) A person who contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

Offence, false and misleading information

21. A person who, with intent to deceive or for any purpose of these Regulations—

- (a) provides any information, makes any representation or submits any document or return that he or she knows to be false or materially misleading or does not believe to be true; or
- (b) recklessly provides any information, makes any representation or submits any document or return that is false or materially misleading,

commits an offence and is liable on summary conviction to a fine of \$50,000.

Non-applicability

22. These Regulations do not apply to a non-profit organisation that—

- (a) does not solicit funds from the general public or receive concession from the Government or any statutory body in the pursuit of its objects; and
 - (b) has as its fiduciary, management body or other service provider a person that is regulated by the Financial Services Commission under the Trustees Licensing Ordinance, the Company Management (Licensing) Ordinance or any other relevant law.
-