



The Law Reform Commission

REPORT OF THE LAW REFORM COMMISSION

**REVIEW OF THE LAW REGULATING CHARITABLE
ORGANISATIONS IN THE CAYMAN ISLANDS**

Final Report

31st March, 2010

The Law Reform Commission

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The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contribution leading up to the conclusion of this Final Report on the regulation of charitable organisations in the Cayman Islands.

EXECUTIVE SUMMARY

1. This project was first referred for the attention of the Law Reform Commission in 2006. The genesis of the project was a recommendation that legislation be formulated to regulate charities. In contemplation is the introduction of provisions relating to the establishment of a permanent charities register into which the names of all charitable associations should be entered. The intention of the registration process is to facilitate accountability for funds and donations received by charitable organisations.
2. The Law Reform Commission in seeking the views of stakeholders and the wider public on reform of the law relating to the conduct of charitable activities in the Cayman Islands initially prepared a discussion paper on the regulation of charitable organisations in the Cayman Islands.¹ This paper was supported by a draft Charities Bill, 2009. Both documents were published² for public consultation and directed to stakeholders in the charitable sector and the general public.
3. As part of the process in formulating the necessary legislation to deal with the regulation of charitable organisations, the Law Reform Commission has taken into account several considerations, including the Financial Action Task Force (FATF) recommendations which relate to the establishment and implementation of a comprehensive legislative framework to combat money laundering and terrorist financing activities.
4. The object behind the FATF recommendations and, in particular Special Recommendation VIII, is to ensure that non-profit organisations such as charities are not used by terrorists as a cover for, or a means of, furthering the financing of terrorist activities. This is to be achieved through the implementation of suggested practices that would best assist jurisdictions in the prevention of terrorist exploitation of legitimate charitable non-profit organisations. Such practices include the establishment of an oversight authority for charitable organisations, a register, maintenance of financial records and mechanisms to investigate abuses of charities.
5. The legislation proposed by the Law Reform Commission seeks to bring under one regulatory regime all organisations seeking to conduct charitable activities within the Cayman Islands in order to ensure that charities are able to operate in an environment which remains secure and independent.
6. In the Cayman Islands, charities are established either as non-profit organisations under section 80 of the Companies Law (2009 Revision) or as a charitable trusts. In this regard, the report first places focus on the non-profit organisation (NPO) which is defined as a legally constituted organisation whose primary objective is to support or engage in activities of a public or private interest without the expectation of any commercial or monetary profit. It was pointed out that NPOs are most commonly associated with activities involving the environment, humanitarian aid, animal protection, education, social issues and more critically, charities.

¹ Dated 23rd January, 2009

² Dated 26th January, 2009

7. Section 80 of the Companies Law (2009 Revision)³ and Cabinet policy directives stipulated by the Portfolio of Finance and Economics (now referred to as the Ministry of Finance pursuant to the Cayman Islands Constitution Order, 2009) for an organisation to attain not-for-profit status are currently recognised as the regulatory measures which govern the operations of charities. The Caribbean Financial Action Task Force (CFATF) in reporting on the status of the Cayman Islands made reference to the current licensing and registration systems and indicated that such systems did facilitate initial due diligence checks of applicants. The CFATF was however of the opinion that such systems required strengthening in a manner suggested under SR VIII in order to effectively prevent or detect conduct of the type contemplated.
8. The Commission, in assessing the regulatory measures in place to deal with the charitable sector, is of the view that the current regulation process could benefit from-
 - (a) a requirement that charitable organisations publish their names and forward a list of their members, directors or managers to an appropriate registrar dealing with charities;
 - (b) an indication of what is the charitable purpose of the organisation;
 - (c) maintenance of a register of charitable registrations; and
 - (d) the vesting of authority in a particular authority to monitor charitable organisations.
9. Essentially the Commission believes that procedures which deal with proper registration, oversight responsibility, review and compliance would facilitate greater clarity, certainty, transparency and accountability in the entire regulation process.
10. The Commission, in informing itself, examined some key features of the legal framework established to regulate charitable organisations in other jurisdictions. In this regard primary focus was placed on-
 - (a) the New Zealand Charities Act, 2005;
 - (b) the United Kingdom Charities Act, 2006;
 - (c) the New South Wales Charitable Trusts Act, 1993;
 - (d) the Bermuda Charities Act 1978 (1989 Revision), and
 - (e) the Barbados Charities Act, 1985.
11. It was found that the laws examined contained several similar features including provisions for the establishment of a commission or a similar authority to monitor charitable organisations, defining what are charitable purposes, specifying the factors to determine whether a charitable purpose is for a public benefit, establishing registration procedures and requiring the maintenance of proper accounts.
12. Further to the research conducted by the Commission, the views emerging from the consultation process and drawing from the legislative models adopted by other jurisdictions, the Commission recommends a legislative framework which primarily makes provision for the following-
 - (a) A definition of charity to capture any person who conducts activities for charitable purposes. The definition will not include a private charity which in this context means a trust or company which fulfils charitable purposes without reliance on public or

³ At the time of our research the Companies Law (2007 Revision) was the current Law. The section 80 provision has not however been altered by the 2009 revision

governmental funding and whose trustees or directors are regulated by the Cayman Islands Monetary Authority.

- (b) A definition of charitable purpose to cover several categories of charitable purposes including those relating to poverty; education; religion; citizenship; human rights; conflict resolution; equality; prevention of abuse; family planning; and special needs.
- (c) A definition of public benefit which covers any activity which is available to the general public or to a section of the public.
- (d) The appointment of a Registrar of Charities. It is proposed that the functions of the Registrar of Charities will include- (i) pursuing measures to increase public trust and confidence in charities; (ii) promoting awareness and understanding of the operation of the public benefit requirement; (iii) promoting compliance by charity trustees or directors with their legal obligations; (iv) promoting the effective use of charitable resources; (v) enhancing the accountability of charities to donors, beneficiaries and the general public; (vi) identifying and investigating apparent cases of misconduct or mismanagement in the administration of charities; and (vii) referral of cases of non-compliance with this Law, including acts of misconduct or mismanagement, to the Attorney General for inquiry or prosecution.
- (e) Establishing a registration process for charities. A charity in the Cayman Islands desirous of conducting any activity for a charitable purpose which involves fund-raising by means of soliciting property from the public or Government will be required to apply to the Registrar to be registered as a charity. On registration, the charity will be issued a registration number and will be obliged to affix the words “Registered Charitable Organisation” to any of its documents or promotional material. This advises the public that a particular charity has complied with the legal requirements for registration.
- (f) Regulation of Fundraising Activities by or on behalf of a Charity. Usually the primary source of funding of charitable organisations is through the conduct of public collection drives and fund raising activities. Fund-raising and collection methods used by charities, if abused, could undermine the public confidence in the charities sector. Therefore a scheme of regulation will focus on regulating the manner in which charities conduct their activities by requiring that a charity shall declare its status as registered in the stipulated manner.
- (g) The power of the Attorney General to institute inquiries. The Commission recommends that the Attorney General be given authority either independently or by virtue of a referral by the Registrar to investigate or supervise organisations and individuals that administer or solicit charitable funds or other charitable assets. In light of the *parens patriae* power of the State to protect the interest of the public in assets pledged to public purposes, it is the view of the Commission that the Attorney General should be given power to protect donors to charity, charities and the beneficiaries of charities.
- (h) Maintenance of charity accounts and the conduct of audits. The Commission recommends mechanisms which allow for proper accounting. The Commission believes that efficient and accurate fiscal management is critical to the existence of all charitable organisations. The goal in establishing internal controls over the fiscal management of a charity is to prevent error, fraud, theft, or mismanagement. Good internal controls safeguard charitable assets and ensure the reliability of financial records.

- (i) Creation of a category of exempt of charities. The intention is to remove certain charities from within the registration regime of the legislation if they are already being regulated under another law or are supervised by other regulators such as government departments, public authorities or agencies. In addition, there is provision for the relaxation of some of the requirements attached to the registration process in the case of charitable activities for a short duration.
- (j) Exclusion of charitable trusts proceedings from these proposals. The Commission accepts the view that any modern comprehensive reform of charities law should extend to charitable trust proceedings. However, given the impact that any amendment in this area may have on the trusts law regime, the Commission thought it appropriate to exclude charitable trust issues from our current proposals and leave it to be dealt with as part of more substantive reforms relating to trusts law.

13. The Commission is of the view that these proposals will streamline the overall regulation of charities in the Cayman Islands and satisfy the recommendations for reform.

BACKGROUND

1. The issues identified in this Final Report first arose in relation to proposals which were made by way of a Private Member's Motion (No. 25 of 1994,) ⁴ moved in the Legislative Assembly to amend the 1958 Gambling Law. At that time, the issue was whether the Gambling Law should be amended to allow the conduct of raffles for the purpose of fund-raising by charitable and non-profit organisations, associations, clubs and fraternities which were registered with the Government.
2. A Select Committee of the Legislative Assembly ⁵ was established to review the Private Members Motion. Among the areas targeted for deliberation was the need to define a charitable organisation, the creation of a register identifying charitable organisations, the establishment of mechanisms to hold charitable organisations accountable for donations received and distributed and to facilitate the oversight of the operations of charities.
3. In its final report, ⁶ the Committee determined that in order to deal with the issues attached to the regulation of charitable organisations, it was more appropriate for a charities law to be formulated as opposed to an approach which relied on amending the Gambling Law.
4. The introduction of a new law was recommended to include provisions for the establishment of a permanent charities register in which all charitable and non-profit organisations, associations, clubs and fraternities should be registered. In relation to accountability for funds and donations, the charitable organisations would be liable to maintain and present to the Registrar an account of the funds raised.
5. It was pointed out that the legislation should be formulated to regulate and register charities as opposed to not-for-profit companies. ⁷ This statement seems to have been made in light of the fact that a range of companies could register under section 79 of the Companies Law (1995 Revision) and benefit from the not-for-profit status. ⁸
6. However, it was observed that not all companies registered under the then section 79 can be construed as having a charitable purpose. In other words, while not-for-profit associations are traditionally established for charitable purposes, not all not-for-profit associations can be classified as charitable organisations since there are many of those organisations which may be formed for the exclusive benefit of their members. The view held was that these are two separate issues and that the focus should be placed on regulating charitable organisations in keeping with their traditional meaning.

⁴ The motion was moved by the then Second Elected Member for Cayman Brac and Little Cayman, Mr. Gilbert A McLean. The motion read as follows:

"WHEREAS large numbers of charitable and non-profit organisations, associations, clubs and fraternities engage in raffles as a means of fund raising;

AND WHEREAS the Gambling Law, Law 6 of 1958, makes a raffle for any purpose illegal;

BE IT NOW RESOLVED THAT the Gambling Law be amended to allow charitable and non-profit organisations, associations, clubs and fraternities, registered as such with Government, to raffle for the purpose of fund-raising."

⁵ The Committee was chaired by the then Honourable Second Official Member of the Legislative Assembly, Richard H. Coles, Attorney General

⁶9th May, 1996

⁷ Richard H. Coles, Attorney General, memo dated 20th October, 1998

⁸ This is now Section 80 of the Companies Law (2009 Revision)

7. The Law Reform Commission (“the Commission”) is therefore seeking to formulate legislation which will bring under a regulatory regime all organisations seeking to conduct charitable activities within the Cayman Islands. The ultimate desire is to recognize that the work of charitable organisations are essential to the development of any society and to ensure that charities are able to operate in an environment which remains free and independent.
8. Against this background, the Commission commenced work towards the formulation of a modern legislative regime intended to facilitate a vibrant and diverse charitable sector. It is to be pointed out that this effort was not in response to any adverse reports concerning the operation of charitable organisations in the Cayman Islands but rather to guard against any opportunity for future abuse of charitable organisations.
9. The Commission has proposed the introduction of a legal framework which would ensure that charities meet the legal requirements of existing as a charity and are equipped to operate lawfully. Mechanisms which determine whether charities are operated for public benefit as opposed to private advantage comprise an essential part of the regime. Preservation of the independence of charities and their trustees is also an important element in detecting and remedying serious mismanagement or deliberate abuse by or within charitable organisations. The implementation of these measures is intended to increase public confidence in charities, help new and existing charities to work effectively, ensure that donations are applied for legitimate purposes and deal with abuses in an expeditious and effective manner.
10. In formulating the necessary legislation to deal with the regulation of charitable organisations, the Commission took into account several considerations including the Financial Action Task Force⁹ (FATF) recommendations.¹⁰ The FATF recommendations relate to the establishment and implementation of a comprehensive legislative framework to combat money laundering and terrorist financing activities. Our legislation must provide measures designed to prevent the use of charitable organisations as a conduit through which terrorism and money laundering may be facilitated.
11. In preparing this report cognisance was also taken of the Cayman Islands National Strategic Plan 1999-2008 (Vision 2008) which, as one of its actions,¹¹ calls for the international exposure of Cayman Islands culture. The overall policy suggests that one of the measures to facilitate this effort is to create appropriate laws and regulations to govern non-profit organisations in a manner which strengthens their existence, promotes their ability to raise funds overseas¹² and solidifies the legitimacy of their operations.
12. Accordingly, the recommendations for reform contained in this report are the culmination of in-depth legal research and extensive consultation with all critical stakeholders.

⁹ The Financial Action Task Force (FATF) is an inter-governmental body, founded by the G7, whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a "policy-making body" created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective.

¹⁰ See *post at p .18*

¹¹ Strategy V, Action Plan 10

¹² Paper by the Hon. Roy Bodden, Minister for Education, Human Resources and Culture, Copy No 15. Exp No. 1509/02, May 29, 2002

RESEARCH AND CONSULTATION PROCESS

13. The Law Reform Commission, in furthering its objectives, commenced research into the workings of the charitable sector in the Cayman Islands and extended that research to the charitable legislative framework existing in other jurisdictions. The objective was to identify the features that were common in legislation dealing with the regulation of charities.
14. The primary legislation which informed the basis of the Commission's research were the-
 - Cayman Islands Companies Law (2009 Revision);
 - Cayman Islands Trusts Law (2009 Revision);
 - Bermuda Charities Act, 1978 (1989 Revision);
 - Barbados Charities Act, 1985;
 - New Zealand Charities Act, 2005;
 - New South Wales Charitable Trusts Act, 1993; and
 - United Kingdom Charities Act, 2006.
15. The findings of the Commission were relied upon in the identification of several issues that required consideration in the formulation of appropriate recommendations to protect the existence of an effective charitable sector while complying with international obligations.
16. The issues identified were subsequently incorporated into a draft Discussion Paper entitled "Regulation of Charitable Non-Profit Organisations in the Cayman Islands."¹³ This paper was supported by a draft Charities Bill, 2009. Both documents were published¹⁴ for public consultation and directed to several stakeholders in the charitable sector and to the general public.
17. On conclusion of the consultation period,¹⁵ the Commission received written submissions from the following stakeholders-
 - Assistant Financial Secretary (Financial Services) Portfolio of Finance and Economics;
 - Assistant Director of Legal Studies Cayman Islands Law School;
 - Cayman Islands Crisis Centre (CICC);
 - Cayman Islands Human Rights Committee (CIHRC);
 - Cayman Islands Humane Society (CIHS);
 - Cayman Islands Bar Association (CIBA);
 - Cayman Islands Law Society (CILS);
 - Estella Scott-Roberts Foundation;
 - Melanie Whittaker of Maples Finance;
 - National Council of Voluntary Organisations (NCVO);
 - Society of Trust and Estate Practitioners (Cayman Islands) (STEP); and
 - United World Colleges (Cayman Islands) National Foundation Limited (CIUWC)

¹³ Dated 23rd January, 2009

¹⁴ Dated 26th January, 2009

¹⁵ Dated 13th March, 2009

18. The Commission, during its deliberations, considered all responses from the above-mentioned organisations and persons. Attached to this report is a table which reflects the provisions of the draft consultation Charities Bill, 2009, the comments made by respective stakeholders on the Bill and the Commission's responses to those comments.¹⁶
19. Generally, the comments of stakeholders ranged from those of support for the proposals¹⁷, to questions concerning the need for legislation of this nature having regard to our current anti-money laundering and anti-terrorism regime¹⁸. Perhaps the comments which stand out most were the reference to the proposals as one of "a sledgehammer to crack a nut"¹⁹ and sentiments that the proposals were too complex and could serve to inhibit charitable activities²⁰.
20. After considering the relevant comments, the Commission prepared a revised draft Charities Bill, 2009 along with a companion draft Trusts (Amendment) Bill, 2009. These Bills sought to reflect those comments of stakeholders which were accepted by the Commission. On the issue of the companion Trusts (Amendment) Bill the Commission felt that the issues relating to charitable trusts warranted treatment in separate legislation. This represents a change in the initial approach of the Commission to include charitable trusts provisions in the substantive Charities Bill.
21. On conclusion of the second consultative period,²¹ the Commission received written and oral submissions from the following stakeholders-
 - Assistant Director of Legal Studies Cayman Islands Law School;
 - Cayman Islands Humane Society (CIHS);
 - Cayman Islands Cancer Society (CICS)
 - Cayman Islands Law Society (CILS);
 - National Council of Voluntary Organisations (NCVO);
 - Rotary Club of Grand Cayman;
 - Rotary Club Central; and
 - Society of Trust and Estate Practitioners (Cayman Islands) (STEP).
22. Attached is a table which sets out the provisions of the second consultation Charities Bill, 2009, the comments made by respective stakeholders on the Bill and the Commission's responses to those comments.²²
23. After taking into consideration the comments arising from the revised Charities Bill, 2009 and Trusts (Amendment) Bill, 2009 which were overall supportive, the appropriate amendments were made by the Commission.
24. Accordingly, attached as Appendix III is the final Charities Bill, 2010 which reflects the research and the results of the broad consultation of the Commission.

¹⁶ See Appendix I

¹⁷ Melanie Whittaker of Maples Finance, CICC, CIHRC

¹⁸ CILS and STEP

¹⁹ NCVO

²⁰ CIHS

²¹ Initially 7th August, 2009. This period was however extended to 31st August at the request of the CILS and STEP, who wished to submit their version of a charities bill for the consideration of the Commission

²² See Appendix II

25. In responding to the consultation, the CILS²³ proposed, among other things, the abolition of section 80 of the Companies Law aforementioned and the establishment of a corporate structure referred to as a Charitable Incorporated Organisation (CIO). A CIO was described as being similar to a company limited by guarantee but without the one dollar member's guarantee. It was proposed that it maintain a limited liability status and should register with the proposed Registrar of Charities and not with the Registrar of Companies.
26. The Commission considered this recommendation but was of the view that the reform of section 80 was outside its remit. The Commission further felt that the proposal relating to the CIO was overly complex for the purpose of the Islands.

ISSUES EXAMINED

The Non-Profit Organisation Concept

27. The charities discussion paper prepared by the Commission set out several proposals to reform the regulation of charities in the Cayman Islands which are established in the Islands to provide a benefit to the general public and which solicit funds from the general public in order to fulfill specific charitable purposes.
28. The discussion paper pointed to the fact that in the Cayman Islands charities are established either as non-profit organisations under section 80 of the Companies Law (2009 Revision)²⁴ or as charitable trusts. A non-profit organisation (NPO) is defined as a legally constituted organisation whose primary objective is to support or engage in activities of a public or private interest without the expectation of any commercial or monetary profit. It was noted that NPOs are most commonly associated with activities involving the environment, humanitarian aid, animal protection, education, social issues and more central to our discussion, charities.²⁵
29. The Commission noted that the Interpretative Note²⁶ to the FATF recommendations defines the term non-profit organisation as a legal entity or organisation that primarily engages in raising or disbursing funds for charitable purposes *inter alia*.
30. Attention was drawn to the fact that at times the term "not-for-profit" is interchanged with "non-profit". There seems to be no consensus however as to whether a distinction does exist between the two terms. Recognising that the goal of these organisations is not to make money but rather to provide a benefit to social stakeholders, commentators²⁷ have gone as far as suggesting that "non-profit" organisations be renamed "social profits" organisations.
31. NPOs are primarily funded by donations from the private sector, public sector or from the generation of service fees. They may accept, hold and disburse money and trade at a profit or hold investments, which are restricted solely to attaining the organisation's objectives and for the purpose of supporting its existence.

²³ The CILS had responded with a Charities Bill which is not recommended by the Commission

²⁴ At the time our research the Companies Law (2007 Revision) was the current Law. The section 80 provision has not however been altered by the 2009 revision

²⁵ Non-Profit Organisation, (accessed June 24, 2008); available from <http://en.wikipedia.org/wiki/Non-profit-organisation>

²⁶ Note no. 4

²⁷ Alvarado, Elliott I.: "Nonprofit or Not-for-profit-Which Are You?", page 6-7. Nonprofit World, Volume 18, Number 6, November/December 2000

Regulation of Charities in the Cayman Islands

32. In examining the charitable sector in the Cayman Islands the Commission found that the sector comprises approximately two hundred and forty-four associations²⁸ and those associations may be regarded as a subset of the wider voluntary or not-for-profit sector which encompasses non-profit organisations that benefit only their members and not the general public. Also included are organisations which are not eligible for charitable status because their primary purpose is to achieve a change in the law or public policy.
33. The research of the Commission determined that the regulation of the charitable sector in the Cayman Islands is based on a two-tiered framework consisting of legislation and Cabinet Policy.

Legislative Regulation:

34. In the Cayman Islands, the regulation of charitable organisations falls within the scope of section 80²⁹ of the Companies Law (2009 Revision). The terminology used is: “Association Not For Profit”.
35. The provision confers on the Governor the power, on application by an association, to direct that the association not-for-profit be registered as a limited liability company without the addition of the word “limited” to its name if it is proven that the association-
- (a) is formed for the purposes of promoting commerce, art, science, religion, charity or any other useful object;
 - (b) intends to apply its profits or other income to promoting its objectives; and
 - (c) intends to prohibit the payment of any dividend to the members of the association.
36. On fulfilling those conditions, the association benefits in that it is not required to-
- (a) use the word “limited” as any part of its name;
 - (b) publish its name;
 - (c) send a list of its members, directors or managers to the Registrar; or
 - (d) pay the fees prescribed by sections 41 and 188.
37. Additional conditions may also be imposed by the Governor before granting a licence to an Association wishing to be registered as not for profit.

²⁸ Figures obtained from the Cabinet Office

²⁹ Section 80 provides:

(1) *Where any association is about to be formed as a limited company, if it is proved to the satisfaction of the Governor that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Governor may, by licence under his hand and the Public Seal, direct such association to be registered with limited liability without the addition of the word “limited” to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to all the obligations by this Law imposed on companies, except that none of the provisions of this Law that require a company to use the word “limited” as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar or to pay the fees prescribed by sections 41 and 188, shall apply to an association so registered.*

(2) *The licence aforesaid may be granted upon such conditions and subject to such regulations as the Governor may think fit to impose, and such conditions and regulations shall be binding on the association, and shall be inserted or endorsed on the memorandum or articles of association.*

38. The Trusts Law (2009 Revision), provides³⁰ for the vesting in a trustee of any freehold, leasehold or other land or property which has been acquired *inter alia* for any charitable purpose or for any purpose concerned with, or dependant on a charity as a hospital, poorhouse, asylum or other institution. It also recognises a trust as one which qualifies for a charitable purpose even though that charitable purpose may in part benefit the public or a section of the public outside the Islands.³¹
39. Taking these provisions and juxtaposing them against the broader need to establish a holistic legislative framework to regulate charities, the Commission sought to determine whether the provisions do in fact offer the type of regulation and safeguards contemplated and indeed whether they create the proper environment within which charities can function without any negative exposure.

Cabinet Policy Regulation:

40. Cabinet, in an effort to guard against any negative exposure of charitable organisations, introduced measures designed to supplement the legislative framework provided under the Companies Law.
41. Generally, the current process for registering a “Section 80” company is set out by the Cabinet and is in two stages.³² The first is to obtain a licence from the Governor. The second is to register the company with the General Registry.
42. In terms of the actual specifics the following apply-

Application requirements:

- (a) a processing fee of CI\$1,000.00 (one thousand dollars) for registration under section 80;
- (b) copies of the proposed memorandum and articles of association of the organisation (to include the names, addresses and description of subscribers and founding members);
- (c) list of the names, dates of birth, occupation, nationality, immigration status (if non Caymanian) and addresses of the members of the board of directors/executive committee;³³
- (d) a letter addressed to the Hon. Financial Secretary (now Minister of Finance) on the source of funds for the association; and
- (e) application letter to specify reasons why the association wishes to be registered as a non profit organisation under section 80 of the Companies Law (2009 Revision).

Memorandum or Articles of Association requirements

- (a) the association is to maintain records of contributions and contributors and how the contributions are to be applied;

³⁰ Section 70

³¹ Section 71

³² Advice coming from the office of the Assistant Financial Secretary, Portfolio of Finance & Economics, 20th October, 2008

³³ In May 2006 the Government, directed that all future s.80 applications contain information on all executive members relating to their occupation, nationality and immigration status (where not in Cayman). The objective was to ensure that s.80 companies have a sufficient nexus with the Cayman Islands.

- (b) when the association has a gross income of CI\$50,000 per annum or more, the books of accounts are to be the subject of an annual audit review;
- (c) the records required to be maintained by all forms of companies under the Companies Law (2009 Revision) that is to say-
 - (i) registers of members and directors;
 - (ii) proper books of accounts;
 - (iii) minutes of all resolutions and proceedings; and
 - (iv) a register of mortgages and charges,
 are to be subject to inspection by the Governor in Cabinet;
- (d) The association is to maintain its primary bank account with a licensed Cayman Islands bank and maintain its registered office in the Cayman Islands; and
- (e) The association is to obtain the prior approval of the Governor in Cabinet for any changes in its board/executive committee and changes to the name of the association, its Memorandum and Articles of Association. An application fee of \$500.00 (five hundred dollars) is required to give effect to any requested change.

The Commission was also advised of the following:

- Applications are generally made through attorneys-at-law.
- The application is sent to the Portfolio of Finance & Economics (now Ministry of Finance). If there are errors in the application, or questions that require answers these are directed to the applicants.
- At times applicants tend to take long periods of time to address issues, possibly due to the fact of their volunteer nature and the lack of adequate staff to respond. Some applications have been “on hold” for several months awaiting responses from applicants or their attorneys.
- The Memorandum and Articles of Association for each application are referred to the Legal Department for scrutiny.
- Background checks on suitability of directors are referred to the Cayman Islands Joint Intelligence Unit (JIU) of the Royal Cayman Islands Police Service.
- On the Legal Department, JIU and the General Registry being satisfied of the positive background of the applicant and submission of a complete application, the request for a licence is set out in a Cabinet Paper and sent to the Governor in Cabinet for approval.
- On approval and issuance of the licence, the organisation must then apply to the General Registry for registration.

Assessing the Regulation of Charities in the Cayman Islands

43. The Commission accepted that the current position is that section 80 of the Companies Law (2009 Revision)³⁴ coupled with the Cabinet policy directives stipulated by the then Portfolio of Finance and Economics for an organisation to attain not-for-profit status, are the official measures in place at this time to deal with the regulation of charitable organisations. In fact, in

³⁴ At the time our research was based on the 2007 Revision. However, this provision was revised in 2009 without amendment to section 80

2007 the Caribbean Financial Action Task Force (CFATF)³⁵ made reference to the current licensing and registration systems of the Cayman Islands and indicated that such systems facilitated initial due diligence checks of applicants.

44. However, in critically assessing the regulatory measures in place to deal with the charitable sector, the Commission is of the view that the current regulation process could benefit from a requirement that charitable organisations publish their names and forward a list of their members, directors or managers to an appropriate registry dealing with charities.
45. Further, the Commission proposed that the uncertainties surrounding what is regarded as “charitable” could be removed if the provisions define or give a specific indication of what is to be regarded as a “charitable purpose”. Though the inference to be drawn from the articulation of some of the activities identified in the Law³⁶ is that those activities are to be treated as falling within a charitable purpose, without a specific definition in place, it is viewed that uncertainties could arise.
46. The establishment of procedures which facilitate the production of an updated list identifying the number of not-for-profit associations registered in the Cayman Islands³⁷ could enhance the identification process by distinguishing not-for-profit associations from charities. Additionally, it was proposed that a register be maintained of charitable registrations. The Commission proffered the view that such a requirement could foster continued overall confidence in the charitable sector which can be strengthened if an authority is charged with the responsibility of disseminating information on charitable associations and monitoring the operational activities of these associations.
47. Essentially, the Commission believes that procedures which deal with proper registration, oversight responsibility, review and compliance would facilitate greater clarity, certainty, transparency and accountability in the entire regulation process.

International Considerations

48. In formulating the legislation to regulate charities, the Commission took into consideration the FATF recommendations on anti-money laundering measures and thwarting terrorist activities relating to charitable organisations.
49. A typical case³⁸ reported by the FATF³⁹ involved a situation in which a non-profit organisation solicited donations by falsely asserting that the funds collected were destined for orphans and widows. In fact, the finance chief of the organisation served as the head of organised

³⁵ See the Cayman Islands Ministerial Report on the CFATF Mutual Evaluation/Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism, November 23, 2007 at p. 129 -132. Note the CFATF is the regional affiliate of the Financial Action Task Force (FATF)

³⁶ See section 80, Companies Law (2009 Revision) - “commerce, art, science, religion”.

³⁷ The Government Information Services (GIS) Department has indicated that it is unaware of any official body that maintains an up to date list of all charitable organisations. It was pointed out that the Women’s Resource Centre seems to be the only group which has a complete list of charities in Cayman. Under the list, as of July 2005, there were 135 Charities. The information recorded includes the mission statement of the charitable organisation, the title of the contact person, whether the post is an elected post, physical address, mailing address, telephone numbers, fax numbers, hours of operation, email address, website, clientele serviced and services provided.

³⁸ We have no evidence that this reported case involves the Cayman Islands; Note the CFATF Mutual Evaluation/Detailed Assessment Report, *supra* at paragraph 639 which states that there has been no knowledge or suspicion that any person or entity in the Cayman Islands has been or is involved in terrorism or terrorism financing.

³⁹ FATF, Combating The Abuse of Non-Profit Organisations, International Best Practices, *supra*.

fundraising for a terrorist group and rather than provide support for the purpose represented, the funds collected by the non-profit organisation were used to further terrorist activities.

50. The Commission made reference to the formulation of the Eight Special Recommendations on terrorist financing. The Special Recommendations broadly extend the application of the initial Forty Recommendations,⁴⁰ to terrorist financing and introduce new requirements relating *inter alia*⁴¹ to non-profit organisations. These requirements are articulated in Special Recommendation VIII (SR VIII) and essentially set out the basic framework to detect, prevent and suppress the financing of terrorism through the use of non-profit organisations.

51. The FATF Special Recommendation VIII (SR VIII) provides that:

“Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable and countries should ensure that they cannot be misused:

- (i) by terrorists organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”⁴²

52. The objective behind SR VIII therefore is to ensure that non-profit organisations are not used by terrorists as a cover for or as a means of furthering the financing of terrorist activities. To facilitate the implementation of this recommendation, the FATF has developed suggested practices that would assist jurisdictions in the prevention of terrorist exploitation of legitimate charitable non-profit organisations. Some of these practices include a requirement that an oversight authority for charitable organisations be established, charitable non-profit organisations register with a designated authority, financial and personnel records be maintained and mechanisms to investigate abuses of charitable organisations be introduced.⁴³

53. The CFATF in evaluating the compliance of the Cayman Islands with SR VIII,⁴⁴ pointed to the absence of an authority to monitor the operations of non-profit organisations.

⁴⁰ Developed in 1990 in an initiative to combat the criminal misuse of financial systems. The Forty Recommendations require states, among other things, to:

- (i) implement relevant international conventions;
- (ii) criminalise money laundering and enable authorities to confiscate the proceeds of money laundering;
- (iii) implement customer due diligence (e.g. identity verification), record keeping and suspicious transaction reporting requirements for financial institutions and designated non-financial businesses and professions;
- (iv) establish a financial intelligence unit to disseminate suspicious transaction reports;

cooperate internationally in investigating and prosecuting money laundering.

⁴¹ The Eight Special Recommendations relate to:

- (i) Ratification and implementation of UN instruments;
- (ii) Criminalising the financing of terrorism and associated money laundering;
- (iii) Freezing and confiscating terrorist assets;
- (iv) Reporting suspicious transactions related to terrorism;
- (v) International co-operation;
- (vi) Alternative remittance;
- (vii) Wire transfers;
- (viii) Non-profit organisations

⁴² FATF on Money Laundering, Special Recommendations on Terrorist Financing, 22 October 2004.

⁴³ See Appendix for additional practices

⁴⁴ See the Cayman Islands Ministerial Report on the CFATF Mutual Evaluation/Detailed Assessment Report on Money Laundering and Combating the Financing of Terrorism, November 23, 2007 at p. 129 -132

54. Accordingly, several measures⁴⁵ were recommended by the CFATF to protect and enhance the efficiencies of the charitable non-profit sector. These include-
- (a) developing a supervisory programme for NPOs in order to identify non-compliance and violations;
 - (b) establishing systems and procedures to allow information on NPOs to be publicly available;
 - (c) putting in place points of contact or procedures to respond to international inquiries regarding terrorism related activity of NPOs should be put in place; and
 - (d) facilitating outreach programmes to the NPO sector with a view to protecting the sector from terrorist financing abuse.
55. The Commission expressed an intention to formulate proposals which will give effect to these practices and recommendations, as it is believed that adoption of the measures stipulated will facilitate the preservation of the positive international standing of the Cayman Islands in its efforts to counteract terrorist and money laundering activities.

Legislative Models on Charities

56. The Commission, in informing itself as to the legislative models that exist elsewhere, examined some key features of the legal framework established to regulate charitable organisations in other jurisdictions. In this regard, primary focus was placed on:
- (a) the New Zealand Charities Act, 2005,
 - (b) the United Kingdom Charities Act, 2006,
 - (c) the New South Wales Charitable Trusts Act, 1993,
 - (d) the Bermuda Charities Act 1978 (1989 Revision), and
 - (e) the Barbados Charities Act, 1985.
57. Generally, the laws examined identified several similar features in legislation of this nature including provisions for the establishment of a commission or a similar authority to monitor charitable organisations, stipulating what are charitable purposes, specifying the factors to determine whether a charitable purpose is for a public benefit, establishing registration procedures, requiring the maintenance of proper accounts and dealing with the treatment of property cy-pres.

The New Zealand Charities Act, 2005

58. The New Zealand Charities Act, 2005 establishes a Charities Commission which provides for a registration and monitoring system for charitable organisations. The Commission facilitates the education of the charitable sector on good governance and management.
59. A Board is appointed by the Minister and the Chief Executive and other staff members are responsible for the day-to-day work of the Commission. The Commission is independent of Government but must act in accordance with government policy when directed by the responsible Minister.

⁴⁵ *Ibid* at p. 131

60. The key functions of the New Zealand Commission include-
- deciding whether to accept applications for registration as a charitable organisation;
 - monitoring annual returns submitted by charitable organisations;
 - reporting and making recommendations to Government about charitable sector matters;
 - promoting public trust and confidence in the charitable sector;
 - encouraging the effective use of charitable resources;
 - educating charitable organisations about matters of good governance and management; and
 - stimulating and promoting research about the charitable sector.
61. Though registration as a charity is voluntary, there are benefits to be obtained if a charitable organisation is registered by the Commission such as various tax and duty exemptions.
62. Under the Act, even if an organisation is already a charitable trust, it will still need to register with the Commission if it wishes to receive or maintain tax-exempt status and be deemed a 'registered charity'.
63. An organisation can register as a charitable entity if-
- it is established and maintained exclusively for charitable purposes;
 - it is not for the private profit of any individual or group; and
 - all the officers of the charitable organisation are qualified to be officers.
64. In determining whether the purpose of a charity is charitable, the Commission will examine whether the purpose is to-
- advance education;
 - advance religion;
 - relieve poverty; or
 - provide some other community benefit.
65. Also, the charitable organisation's object must be of benefit to the public. A charitable organisation is not however disqualified from registering if it also has a secondary non-charitable function as part of its charitable purpose.
66. The procedure to register as a charity requires the organisation to-
- submit a copy of its rules to the Commission;
 - provide information about its current and proposed charitable activities; and
 - register the officers of the organisation.
67. After registration, the organisation is required to file an annual return and notify the Commission of any changes to the organisation.
68. If a registered charitable organisation does not comply with the Act, the Commission has the authority to-
- impose administrative penalties;
 - issue warning notices;

- publicise instances of non-compliance;
- undertake further investigations; and
- deregister charities that have failed to comply with the Act.

69. The Commission also has the overarching authority to check whether registered charitable organisations are fulfilling their described purpose and operating in compliance with the Act.

The United Kingdom Charities Act, 2006

70. The Charities Act, 2006 sets out a wide range of purposes which may be charitable and helps give greater clarity about what is charitable and seeks to reflect the diversity of the charitable sector. Charitable purposes under the Act include-

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability; and
- the advancement of animal welfare.

71. Organisations are required to pass two tests in order to qualify as a charity. The first is that their objects are, in fact, charitable and secondly that they operate for the public benefit.

72. Those charities which advance education, religion or relief of poverty are required to demonstrate that they are providing a public benefit. The determination of whether the activity is for the public benefit is left within the purview of the Commission which is established under the Act. Among the functions of the Commission are-

- to increase public trust and confidence in charities;
- to promote awareness and understanding of the operation of the public benefit requirement;
- to promote compliance by charity trustees with their legal obligations;
- to promote the effective use of charitable resources;
- to enhance the accountability of charities to donors, beneficiaries and the general public.

73. The Act creates a Charity Tribunal to deal with appeals and reviews of the Commission's decisions. It also deals with referrals from the Commission or Attorney General involving the operation or application of charity law.

74. The Act provides for the "small charities" category, that is charities with an annual income of less than £5,000. These charities are not required to register with the Commission. Additionally, charities which are exempted by order of the Commission and whose gross income does not exceed £100,000 are also not required to register with the Commission.

75. The licensing regime provides inter alia for-
- a definition of what is regarded as a public space;
 - public collections certificates;
 - the issuance of permits for public place;
 - the regulation of door-to-door collectors;
 - the regulation of short-term collections; and
 - the power of the Commission to suspend or withdraw a certificate.

The New South Wales Charitable Trusts Act, 1993

76. The Charitable Trusts Act 1993 makes provision for the protection of charitable trusts which are defined as “any trust established for charitable purposes and subject to the control of the Court in the exercise of the Court’s general jurisdiction with respect to charitable trusts”. It gives the Attorney General powers to bring charitable trust proceedings, in addition to the power to establish, by order, schemes for the administration of any charitable trust.
77. Charitable trust proceedings are defined as “proceedings in the Court brought, whether by a trustee or other person with respect to any breach or supposed breach of a charitable trust or with respect to the administration of a charitable trust”.
78. If, following charitable trust proceedings, the Court is satisfied that it is necessary to act for the purpose of protecting trust property, it may make several orders including-
- an order removing any or all trustees of the charitable trust;
 - an order appointing a person as a trustee of the charitable trust; and
 - an order precluding the employment or engagement of a person in the affairs of the charitable trust.
79. Under the Act, provision is made for the application of the cy-pres principle. This allows the original purposes of a charitable trust to be altered in circumstances in which the original purposes, wholly or in part, have, since they were laid down, ceased to provide a suitable and effective method of using the trust property, having regard to the initial spirit of the trust.

The Bermuda Charities Act, 1978 (1989 Revision)

80. Similar to other legislation, the Bermuda Charities Act defines charitable purpose to mean purposes which are beneficial to the public in general or to a certain section of the public irrespective of location.
81. The Act establishes a committee called the Charity Commissioners for Bermuda which has as its general function the oversight of the operation of charitable organisations. The Minister is authorised to appoint persons to serve as Charity Commissioners for the Committee.
82. Every charitable organisation in Bermuda wishing to undertake any money-raising activity is required to apply to the Registrar-General to be registered as a charitable organisation. The Registrar-General in turn is required to cause every application to be placed before the Commissioners for their consideration. On approval, the names of each organisation shall be maintained in a register to be maintained by the Registrar-General.

83. A registered charitable organisation is obligated to maintain accounts containing a statement of all moneys received for charitable purposes and the expenditures undertaken.
84. The Act further provides for the application of property cy-pres in circumstances where-
- the original purposes of a trust, in whole or in part, cannot be carried out in accordance with the directions given by the donor;
 - the original purposes provide a use for only part of the property available by virtue of the gift; or
 - or where the original purposes, in whole or in part, have since they were laid down been adequately provided for by other means.

The Barbados Charities Act, 1985

85. Some of the salient features of the Barbados Charities Act are that it provides for a public benefit test similar to other legislative models and a registration process for charitable organisations.
86. The Act expands upon other legislation by specifically identifying the activities that fall within the broader charitable purposes. For example-
- (a) the charitable purpose of relieving and preventing sickness and disability includes-
 - (i) the provision and staffing of hospitals, nursing and convalescent homes and clinics;
 - (ii) the promotion of medical research; and
 - (iii) the provision of advice, treatment or comfort;
 - (b) the charitable purpose of advancing education includes-
 - (i) the improvement of knowledge and its public dissemination in a way not constituting propaganda;
 - (ii) the provision ,of schools, colleges, universities and other like institutions; and
 - (iii) the establishment in such institutions of professorships, fellowships, lectureships and other teaching and research posts; and
 - (c) the charitable purpose of the advancement of religion includes-
 - (i) the organisation and carrying out of religious instruction and pastoral and missionary work;
 - (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.
87. The Act defines a “public benefit” as one which is directed to members of the public at large or to a section of the public ascertained by reference to some specified geographical area. It does not however include a benefit to a person who is identified by reference to his relationship with some body or other person.
88. As far as the monitoring of the operations of charities is concerned, the Attorney General is authorised to conduct full examinations and inquiries into any trusts established for charitable purposes and the Registrar of Corporate Affairs and Intellectual Property is authorised to determine whether a charitable organisation is operating in compliance with the law.

89. After examining the various legislative models, the Commission is of the view that collectively, they offer a comprehensive regulation of the operation of charitable sector organisations by providing safeguards to uphold public trust in the charitable sector, facilitating more flexibility and less bureaucracy, particularly in the case of smaller charities and allowing for easy changes in purposes, structures, administration and objects.

RECOMMENDATIONS

90. Further to the views emerging from the consultation process and drawing from the modern legislative models adopted by other jurisdictions, the Commission recommends a legislative framework which primarily makes provision for the following matters-

Primary Definitions

Charity

91. The Commission recommends the introduction of a definition of “charity”. In this regard, it is proposed to define a charity as any person who conducts activities for charitable purposes; but does not include a private charity.⁴⁶ Private charity in this context would mean a trust or company which fulfils charitable purposes without reliance on public or governmental funding and whose trustees or administrators are regulated by the Cayman Islands Monetary Authority.
92. It is intended that this definition will bring within the ambit of the legislation an organisation that conducts any activity designed for a charitable purpose. However, in circumstances where that organisation is established for strictly private or special purposes in the Cayman Islands and does not solicit funds from the public or Government in order to execute such purposes, though a charity, it is proposed to exclude that organisation from the regulatory framework of the legislation but it would nevertheless fall with the ambit of the Cayman Islands Monetary Authority regime.⁴⁷
93. The Commission accepts that though some of these entities provide a benefit to the public, their funding originates from private sources and as such should be appropriately removed from within the scope of the legislative provisions. At the same time while the Commission is mindful of the view⁴⁸ that all charities should be captured within the legislation irrespective of classification, it is nevertheless believed that charities falling with this category can be dealt with effectively under the current legislative regime comprising the Monetary Authority Law (2008 Revision), Companies Management Law (2003 Revision), the Banks and Trust Companies Law (2009 Revision), the Proceeds of Crime Law, 2008 and the Terrorism Law (2009 Revision) all of which already offer comprehensive regulation of these entities.

Charitable Purpose

94. The Commission recommends the introduction of a comprehensive definition of charitable purpose. In the first draft Charities Bill, 2009⁴⁹ several commentators⁵⁰ expressed concerns

⁴⁶Charities Bill, 2010, clause 2

⁴⁷It should be noted that this was matter in which the CILS expressed concern and the Commission accepted the recommendation to include a provision which seeks to exclude private or special purpose trusts or organisations

⁴⁸ This point was made by the Assistant Financial Secretary (Financial Services) Jacqueline Jefferson-Ziemniak – Email June 3, 2009

⁴⁹ 23rd January, 2009

⁵⁰ Assistant Director of Legal Studies Cayman Islands Law School, the Estella Scott-Roberts Foundation, Society of Trust and Estate Practitioners (Cayman Islands) and CIHRC

about certain exclusions from the list of charitable purposes identified by the Commission. In particular those relating to the advancement of human rights were identified. This position has been remedied by providing for an extensive list of purposes which may be construed as charitable.

95. While it holds true that there is no comprehensive statutory definition of charitable purposes,⁵¹ it is usual to identify in legislation a list of activities which might be construed as charitable. This tends to provide greater clarity about what is charitable and better reflects the diversity of the charitable sector. Accordingly, recommended are several categories⁵² of charitable purposes which have been placed under various headings including those relating to poverty; education; religion; citizenship; human rights; conflict resolution; equality; prevention of abuse; family planning and special needs.
96. The objective is to clarify the scope of charitable purposes for a modern society while providing for flexibility to keep up with future developments and changes through case law which may have an impact upon the society.

Public Benefit

97. The Commission recommends that before attaining charitable status via the registration process, an entity should fulfil the requirement of satisfying a public benefit as a condition precedent to acquiring charitable status. Though a charity might fall within one of the heads of charitable purposes earlier identified, that charity, under the proposals, would not achieve charitable status unless it satisfies the requirement of a benefit to the public or a section of the public. If its object is designed to benefit certain private individuals, however numerous, that will not be considered to be charitable.⁵³
98. The Commission is aware that what constitutes a benefit to the public is often subjective. A purpose is beneficial to the public if it goes towards achieving a universal common good and is not harmful to the public. While the provision of benefits is not limited to material benefits, the purpose must have some practical utility.⁵⁴
99. The test⁵⁵ of who should be regarded as “the public” indicates that “public” refers to the general community or a sufficient section of it in which the numbers of potential beneficiaries of the charity are not numerically negligible and there is no personal relationship between the beneficiaries and any named person or persons.
100. Therefore, under the proposed law, to be regarded as a charity, an organisation is required to demonstrate that it is established for aims that are capable of being charitable and will be conducted for the public benefit. Public in this context would mean any person within or outside of the Cayman Islands and public benefit is defined as a benefit comprised within the scope of charitable purposes which is available to the general public or to a section of the public.⁵⁶

⁵¹ Gilbert Kodilinye, *Commonwealth Caribbean Trusts Law*, 2002, p. 160

⁵² Charities Bill, clause 2 *supra*

⁵³ Gilbert Kodilinye, *supra* at p. 173

⁵⁴ H Picarda, *The Law and Practice Relating to Charities* (Butterworths, 3rd ed, 1999) 19-29

⁵⁵ *Re Compton* [1945] 1 Ch 123 and *Oppenheim v Tobacco Securities Trust Co Ltd* [1950] UKHL 2; [1951] AC 297

⁵⁶ Charities Bill clause 2, *supra*.

101. Further, it is proposed that decisions on how the public benefit test operates would fall within the purview of a Registrar of Charities who would be guided by case law and modern trends in the charities sector in arriving at a decision. Additionally, the function of the Registrar would be to ensure that all organisations with charitable status are able to demonstrate that they are providing a public benefit on an on-going basis and not just at the initial registration stage.⁵⁷

Appointment of a Registrar of Charities

102. The Commission recommends the appointment of a Registrar of Charities to monitor the charitable sector.⁵⁸ Initial legislative proposals suggested as a viable option the establishment of a Charities Commission. However based on comments regarding the costing⁵⁹ and composition⁶⁰ of such an office, the Commission thought it more prudent to propose the appointment of a Registrar of Charities who would be a public officer appointed by the Governor in Cabinet.
103. It is proposed that the functions⁶¹ of the Registrar of Charities would include- (i) pursuing measures to increase public trust and confidence in charities; (ii) promoting awareness and understanding of the operation of the public benefit requirement; (iii) promoting compliance by charity trustees with their legal obligations; (iv) promoting the effective use of charitable resources; (v) enhancing the accountability of charities to donors, beneficiaries and the general public; (vi) identifying apparent cases of misconduct or mismanagement in the administration of charities; and (vii) referral of cases of non-compliance with this Law including acts of misconduct or mismanagement to the Attorney General for inquiry or prosecution.
104. While the proposals envisage that the Registrar would exercise his functions independently of the Government, he would be required to have regard to government policy when directed by the responsible Minister. It is proposed to hold the Registrar accountable to the Minister and to impose an obligation on him to publish within three months after the end of every financial year a report on his operations during that year.
105. Further, the proposals seek to impose an obligation on the Registrar to investigate complaints against charities. The proposals would require that he be given the power to request information and documents where concerns are expressed about serious mismanagement in circumstances where there is a failure to observe the requirements of the Law.
106. In cases where there is dissatisfaction with the decision of the Registrar, provision is made for an appeals procedure which reviews the decisions and referrals of the Registrar in relation to the operation or application of the legislation. Where the Registrar refuses to register a charity or has directed the cancellation of its registration, the charity concerned may appeal to the Governor in Cabinet against such refusal, withdrawal or cancellation⁶² and, if deemed necessary, a further right of appeal lies with the court.

⁵⁷ Joint Committee on the Draft Charities Bill, Volume I HL Paper 167 –I HC 660 -I

⁵⁸ Charities Bill, clause 3, *supra*.

⁵⁹ STEP raised questions on the cost of establishing and administering the Charities Commission and is concerned about the efficiency of the operations of such a Commission in terms of possible delays in executing functions.

⁶⁰ The Assistant Director of Legal Studies Cayman Islands Law School questioned the need for up to seven Charity Commissioners plus a Registrar.

⁶¹ Charities Bill, clause 4, *supra*.

⁶² Clause 12, *ibid*.

Registration of a Charity

107. The Commission recommends the introduction of a registration regime for charities. The regime would require that a register of charities be established and maintained by the Registrar. In the register should be entered the name and address of every charity approved by the Registrar among other things.⁶³
108. As a consequence of a provision of this nature, a charity in the Cayman Islands desirous of conducting any activity for a charitable purpose which involves fund-raising by means of soliciting property from the public or Government would be required to apply to the Registrar to be registered as a charity. Applications⁶⁴ for registration should include matters such as the purpose of the charity, a mission statement of the charity, records of the amounts contributed, evidence of how contributions are usually applied, evidence of client familiarity and evidence of board structure and function.
109. It is recommended that on registration the charity be issued a unique registration number and be required to affix the words “Registered Charitable Organisation” or letters “RCO”⁶⁵ to its documents or promotional material. This would advise the public that a particular charity has complied with the legal requirements for registration.
110. Charities which comply with registration obligations would thereafter be required to conduct their charitable activities in accordance with the law⁶⁶ and keep books of accounts containing a statement of all monies received for charitable purposes and the expenditures undertaken.⁶⁷
111. The Commission believes that a registration regime of this nature would allow the public to easily search the Register to ascertain information about a registered charity. Further, registration would provide the Registrar with information about the charitable sector in the Cayman Islands and this will help the Commission fulfil its education and support function of the sector and the public.
112. In addition to the penalties attached to conducting charitable activities without being registered, a charity which is not registered in accordance with the legislation would 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.⁶⁸

Regulation of Fundraising Activities by or on Behalf of a Charity

113. The Commission recommends provisions which regulate the conduct of fund raising activities by and on behalf of charities. The primary source of funding of charitable organisations is through the conduct of public collection drives and fund-raising activities. Our proposals focus on fund-raising and collection methods used by charities which, if abused, could undermine the public confidence in the charities sector. Often times fundraising collections may pose a public

⁶³ Charities Bill, *supra*. at clause 5

⁶⁴ Charities Bill, clause 6, *supra*.

⁶⁵ The initial recommendation was for the letters RCO to be affixed. However, the Cayman Islands Rotary Club and the Cayman Islands Humane Society expressed the concern that the RCO letters could potentially be confusing with other abbreviations used by a charity. The Commission accepted the recommendation that the meaning of RCO should be specified as opposed to the abbreviation.

⁶⁶ Charities Bill, Part V and VI, *supra*.

⁶⁷ Charities Bill, *supra*. at Part VII

⁶⁸ This was a point raised by the CILS which the Commission felt was appropriate.

nuisance if not managed properly since there is always the risk of individuals fraudulently claiming to be collecting donations on behalf of a charity as one commentator⁶⁹ pointed out.

114. The proposals seek to establish a scheme of regulation in which focus would be placed on regulating the manner in which charities conduct their activities. In this regard, a charity would be required to declare its status as registered by appending its registered number and the words “Registered Charitable Organisation” or letters “RCO” to all notices, advertisements collection receptacles and identification labels or badges used to facilitate the solicitation of property for a charitable purpose.⁷⁰
115. Further, a charity would be required to take all reasonable steps to ensure that fundraising is carried out in such a way that it does not, among other things, unreasonably intrude on the privacy of those from whom funds are being solicited, involve the making of unreasonably persistent approaches to persons to donate funds or result in undue pressure being placed on persons to donate funds.⁷¹
116. The Commission recognises that charities themselves may be in need of protection from unscrupulous persons purporting to fraudulently represent that collections are on behalf of a charity. In an effort to protect charities from fraudulent abuse, it is proposed to prohibit a 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.⁷² Additionally, the proposals include a prohibition against representations which indicate that charitable contributions are to be given to, or applied for, the benefit of a charity unless it is done in accordance with an agreement of the charity.
117. In light of the fact that persons may wish to conduct an immediate activity in response to a specific charitable need, provision is made for short-term charitable collections. Accordingly, a person who is desirous of conducting any activity for a charitable purpose on a short-term basis would be required to obtain the authorisation of the Registrar by notifying him of that intention, the purpose for which the proceeds of the activity are to be applied, the intended duration of the activity, the date on which the activity is to be conducted and the location at which the activity will be conducted.⁷³

Power of Attorney General to Institute Inquiries

118. The Commission recommends that the Attorney General be given authority either independently or by virtue of a referral by the Registrar, to investigate or supervise organisations and individuals that administer or solicit charitable funds or other charitable assets.⁷⁴ It is the view of the Commission that the Attorney General should be given power to protect charities, donors to charity and the beneficiaries of charities. The rationale behind such a proposal is rooted in the common law of charitable trusts and corporations, as well as the *parens patriae* power⁷⁵ of the State to protect the interest of the public in assets pledged to public purposes.

⁶⁹ NCVO

⁷⁰ Charities Bill, clause 17, *supra*.

⁷¹ Clause 18, *ibid*.

⁷² Clause 21, *supra*. at note 71

⁷³ Clause 29, *supra*.

⁷⁴ Clause 15, *supra*.

⁷⁵ The Hon. Chief Justice by Memo dated 18th June 2004, recommended that the Attorney General be given charity oversight

119. The matters falling within the jurisdiction of the Attorney General would include the nature of the charity; its objects, administration, management; its value, condition, management and application of property and income. Such a power of inquiry and investigation was thought critical where the charity is suspected of having committed an offence under the Terrorism Law (2009 Revision) or the Proceeds of Crime Law, 2008 or any other offence.
120. In circumstances where an investigation has commenced, a fiduciary and every person acting or having any concern in the management and administration of a charity, or of the property or income, into which an inquiry is being conducted, would be required on a written request by the Attorney General or the person conducting the inquiry to furnish any requested accounts and statements in writing with respect to any matter in question at the inquiry, provide copies of documents and answer all questions pertaining to an investigation.

Maintenance of Charity Accounts and Conduct of Audits

121. The Commission recommends mechanisms which allow for proper accounting. The Commission believes that efficient and accurate fiscal management is critical to the existence of all charitable organisations. The trustees or directors are responsible for organising and documenting the financial affairs of the charity and it may be useful for the charity to hire an accountant or fiscal manager. The goal in establishing internal controls over the fiscal management of a charity is to prevent error, fraud, theft, or mismanagement. Good internal controls safeguard charitable assets and ensure the reliability of financial records.
122. In this regard, the proposals⁷⁶ require a charity that is registered to keep proper books of account with respect to all sums of money received and expended by the charity and the matters in respect of which the receipt and expenditure takes place; all sales, purchases and receipt of property by the charity and the assets and liabilities of the charity. Persons having supervision of the books of account of a charity would be obliged to submit to the Registrar a true copy of those accounts relating to a period of twelve months within six months of the end of each financial year. Audits of accounts would be required for charities receiving property to the value of twenty thousand dollars or more per annum.
123. The implication of the auditing threshold is that charities receiving less than twenty thousand dollars in property value are not required to register. However, the Registrar may, where he considers it necessary to do so, require that the books of account of a charity for the preceding financial year be audited by a reputable accounting firm. In an effort to facilitate transparency, the accounts submitted to the Registrar and written reports on or written results of an audit would be available for inspection by members of the public.
124. A charity, under the proposals, is permitted a right of appeal to the Governor in Cabinet against a decision of the Registrar to request an audit and to the Court, if dissatisfied with the decision of the Governor in Cabinet. The Court may allow or dismiss the appeal or make an order remitting the matter for further consideration by the Governor in Cabinet or the Registrar.

Exemption of Charities

125. The Commission recommends the introduction of a category referred to as exempt charities.⁷⁷ These are charities which are not registered by the Registrar of Charities as they are already

⁷⁶Charities Bill, clause 24, *supra*.

⁷⁷ Charities Bill, 2010, *supra*, Part VIII

being regulated under some other law or are supervised by other regulators such as a government department, public authority or government agency. This category was thought important in order to avoid a dual system of regulation.

126. The proposal requires the principal regulator to do all that can reasonably be done to ensure that exempt charities comply with the Charities Law. The matters for which the principal regulator is required to ensure compliance include those relating to keeping books of account and conducting charitable activities in accordance with the legislation.
127. Notwithstanding the exemption of a charity, the Registrar of Charities is obligated 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.
128. The Commission believes that the holistic implementation of these recommendations will streamline the overall regulations relating to charities and satisfy the FATF/CFATF recommendations for reform.

CONDUCT OF CHARITABLE TRUSTS PROCEEDINGS

129. Charitable trusts are referred to as public trusts because they are considered to be of value and importance to the community at large⁷⁸ and not any specific individual. They are enforceable by the Attorney General on behalf of the state. Charitable trusts are not subject to the rule against perpetual trusts. This rule prohibits a grant from being vested outside a specified period. If there is a possibility of the estate vesting outside of the period, regardless of how remote that chance may be, the whole interest is void and is removed from the grant.
130. The rule is concerned with the utility of property and tries to prevent the control of assets by the testator for an unduly long period. In circumstances where property is granted for a charitable purpose which cannot be carried out in the way intended, the court would be given the power to order a scheme whereby the property can be applied for other charitable purposes as close as possible to that originally designated. This is referred to as the cy-pres rule⁷⁹ and will also apply where it is impractical to follow through on the intent behind the trust. These are areas which have a potential to become contentious and lend themselves to charitable trust proceedings.
131. The Commission accepts the view⁸⁰ that any modern comprehensive reform of charities law should extend to charitable trust court proceedings. The Commission initially sought therefore to include as a companion measure a Trusts (Amendment) Bill to address the issue of charitable trusts proceedings. However, after reconsideration and given the impact that any amendment in this area may have on the trusts law regime, the Commission thought it appropriate to exclude charitable trust proceedings from our current proposals and defer its examination until such time as a decision is taken to deal with this area as part of more substantive reforms dealing with trusts.⁸¹

⁷⁸ Gilbert Kodilinye, *Commonwealth Caribbean Trusts Law*, 2002, p. 157

⁷⁹ *ibid* at p.189

⁸⁰ This is an area that the Hon. Chief Justice, Anthony Smellie has recommended for inclusion in a law dealing with charities, memo dated 18th June, 2004

⁸¹ Contrary to the view of the LRC, the CILS is of the view that provisions dealing with charitable trust should be incorporated in the charities legislation. Whereas the LRC felt that such provisions should feature as an amendment to the Trusts Law (2007 Revision)

CONCLUSION

132. Though regulations are required to bring into operation certain aspects of the recommended legislative proposals, the Commission is of the view that a Charities Law formulated in accordance with its recommendations will facilitate a clearer and more modern legal framework for charities. The legal framework would operate to empower the charitable sector and allow charities to operate with greater protection, certainty and flexibility in responding to changes in society while allowing charities to continue to feature prominently in the Cayman Islands. Institutions tend to flourish in any environment which comprises a strong regulatory framework supported by the independent oversight of a regulator. This in turn inspires a high level of public trust and confidence, all ingredients necessary in attaining the desired successes.
133. Accordingly, and against the background of the current legal framework in place to regulate charities, the legislative models of other jurisdictions, the FATF Special Recommendation VIII on non-profit organisations, the welcomed contribution of all stakeholders, including the general public and the recommendations of the Law Reform Commission, our final Report including a draft Bill entitled the Charities Bill, 2010⁸² is commended for consideration.

Chairman
31st March, 2010

⁸² See Appendix III

APPENDIX I

THE LAW REFORM COMMISSION RESPONSES TO CHARITIES DISCUSSION PAPER 2009 AND CHARITIES BILL, 2009

**CONSULTATION
26th January, 2009 – 13th March, 2009**

SUMMARY OF RESPONSES
DRAFT CHARITIES DISCUSSION PAPER AND CHARITIES BILL, 2009

A draft Discussion Charities Paper and Charities Bill, 2009, was forwarded for public consultation on the 26th January, 2009 to the following stakeholders-

- **The Hon. Attorney General;**
- **The Hon. Financial Secretary;**
- **The Deputy Financial Secretary;**
- **The Hon. Chief Justice;**
- **Director of Legal Studies, Cayman Islands Law School;**
- **Assistant Director of Legal Studies, Cayman Islands Law School;**
- **Cayman Islands Law Society;**
- **Cayman Islands Bar Association;**
- **Cayman Islands Society of Professional Accountants;**
- **Society of Trust & Estate Practitioners;**
- **Cayman Islands Chamber of Commerce;**
- **Cayman Islands Bankers' Association;**
- **Cayman Islands Compliance Association;**
- **Cayman Islands Financial Services Association;**
- **Cayman Hospice Care;**
- **Cayman Islands National Recovery Fund;**
- **Mr. Huw Moses;**
- **Cayman Islands Ministers Association;**
- **Cayman Drama Society;**
- **Cayman Islands Red Cross;**
- **Cayman Islands Humane Society;**
- **The National Council of Voluntary Organisations;**
- **The Rotary Club of Grand Cayman;**
- **Kiwanis Club of Grand Cayman**
- **Lions Club of Grand Cayman;**
- **Cayman Aids Foundation;**
- **Cayman Wildlife Rescue; and**
- **National Trust for the Cayman Islands.**

Both documents were also published on the Government's website and brought to public attention through the various media houses. The public consultation period concluded on 13th March, 2009 by which time written submissions were received from the following stakeholders:

- **Society of Trust and Estate Practitioners (Cayman Islands) (STEP);**
- **National Council of Voluntary Organisations (NCVO);**
- **Cayman Islands Law Society (CILS);**
- **Melanie Whittaker of Maples Finance**
- **Assistant Director of Legal Studies, Cayman Islands Law School;**
- **Estella Scott-Roberts Foundation;**
- **United World Colleges (Cayman Islands) National Foundation Limited (CIUWC);**
- **Cayman Islands Crisis Centre;**
- **Cayman Islands Human Rights Committee (CIHRC);**
- **Cayman Islands Humane Society; and**
- **Assistant Financial Secretary (Financial Services).**

<p align="center">DRAFT CHARITIES BILL, 2009 26th January, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
<p align="center">PART I PRELIMINARY</p>		
<p>2. (1) In this Law- “charity” means any person who conducts activities for charitable purposes and relies on the public or Government for a majority of the funding for such activities, but does not include a person who, by promoting or conducting any lawful activity including entertainment, a sale or an exhibition, directly or indirectly, solicits or makes an appeal to the public for donations or subscriptions in money or in kind to facilitate private purposes;</p> <p>“charitable purposes”</p>	<p align="center">Assistant Director of Legal Studies</p> <p>‘Charity’: does this exclude charities set up by a single donor; would it be helpful to define ‘the public’?</p> <p>Is it correct that ‘private’ charitable trusts and all charities, the majority (more than 50%?) of whose funding does not come from the public or government, are intended to be excluded from the definition of ‘charity’ and therefore from the ambit of Parts II to VI of the Bill?</p> <p>Is it correct that the Act will only regulate fund-raising charities?</p> <p>STEP</p> <p>Has it been made sufficiently clear that the Bill is not intended to apply to charities which obtain their funding other than from government or the public?</p> <p>Questions what “private purposes” is intended to mean.</p> <p>CILS</p> <p>In order to satisfy the Charity Commissioner that an entity’s activity is charitable the CILS recommends that the definition of “charitable purpose” broadly follows that of the UK statute. Historically there is little Cayman Islands case law and the UK tests are followed to determine charitable status in the Cayman Islands To prevent the Islands getting out of step with such UK tests the charitable activities listed in the UK statute that have been removed from the Draft Bill should be replaced.</p>	<p>A charity set up by a single donor will fall within the ambit of the proposed law if that charity relies on the public for funds in furtherance of a charitable purpose.</p> <p>A definition of public may be useful.</p> <p>In circumstances where a trust or charity solicits funds from the public or government by representing that those funds are intended to satisfy a charitable purpose for the benefit of the public, that entity will fall within the ambit of the proposed law.</p> <p>The Law is intended to regulate any charity that is seeking funds to satisfy a charitable purpose that will benefit the public.</p> <p>The Commission accepts the view that there is need for clarity.</p> <p>Private purpose is intended to capture any activity which is for the benefit of an identifiable group and to facilitate a private benefit e.g. funds to refurbish a church or to plan a school trip.</p> <p>The Commission agrees and will include the charitable purposes of the advancement of citizenship; the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity; 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.</p> <p>The exclusion was against the background that we were seeking to</p>

<p align="center">DRAFT CHARITIES BILL, 2009 26th January, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
	<p>STEP</p> <p>Questions why the “advancement of human rights...” and “promotion of the efficiency of the armed forces...” contained in the UK statute have been removed from the Bill.</p> <p>Assistant Director of Legal Studies</p> <p>‘charitable purposes’: these are lifted entirely from the new English Charities Act 2006, s.2 with the exception of two purposes which are included in the English law:</p> <p>‘the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity’ and</p> <p>‘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;’</p> <p>Is it intended that the presumption of public benefit, found in the case law, in relation to some of the stated statutory charitable purposes, is to be removed (as in the English Charities Act 2006)? If the answer is yes, it might be best to state that explicitly.</p> <p>In para. 62 of the Discussion Paper, when describing English law, it is suggested that the arbiter of satisfying the public benefit test is the Charity Commission. In fact, the Charity Commission must simply apply existing law as to what or is not for the public benefit and must provide guidance to charities (to which their trustees must have regard). The public benefit test is therefore laid down in the case law. The reference in para. 90 of the Discussion Paper to public benefit being a matter of personal opinion is incorrect in law.</p>	<p>recognise the traditional purposes and indeed those purposes that we thought were evident in the Cayman and which are usually found in regional legislation e.g. Barbados. The Commission has no objection to the inclusion of those purposes.</p> <p>The Commission agrees with these recommendations.</p> <p>The presumption will not apply. There is a need for the charity to demonstrate that the charitable activity is in furtherance of a public benefit.</p> <p>Comment accepted.</p>

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	<p>CIHRC</p> <p>Recommended the inclusion of the following “charitable purposes” namely: ‘the advancement of human rights, conflict resolution; reconciliation; the promotion of religious or racial harmony, equality and diversity; the promotion of the efficiency of the armed forces of the Crown,,or the of efficiency of the police, fire and rescue services or ambulance services; and the ‘advancement of citizenship’ from clause</p> <p>Estella Scott-Roberts Foundation</p> <p>Recommended the inclusion of human rights, equality etc. purposes.</p> <p>CIUWC</p> <p>The advancement of citizenship should be reinstated in clause 291)(e).</p> <p>Cayman Islands Crisis Centre</p> <p>Suggests matter of human rights and advancement of citizenship be included.</p> <p>Assistant Director of Legal Studies</p> <p>‘serious wrongdoing’: the reference to ‘discriminatory’ – on what grounds? Presumably, only unlawful grounds? Most charities will choose between different categories of persons to determine their beneficiaries in accordance with their objects.</p> <p>Assistant Director of Legal Studies</p> <p>‘special purpose vehicle’ is defined but then appears nowhere in the Bill itself.</p>	<p>Recommendation accepted.</p> <p>Recommendation accepted.</p> <p>Recommendation accepted.</p> <p>Recommendation accepted.</p> <p>The Commission agrees to remove the word discriminatory.</p> <p>The Commission accepts the observation and will make the appropriate adjustments.</p>
<p>PART II ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION</p>		
<p>3. (1) There is established a Commission called the Charities Commission for the Cayman Islands which shall have powers and duties conferred upon it by this Law.</p>	<p>STEP</p> <p>Questions if the cost of establishing and administering the Charities Commission has been established.</p> <p>Asks how the Commission is to be funded given that there is no provision</p>	<p>Costing has not been determined. The Commission intends to research budgets in similar jurisdictions.</p> <p>All expenses incurred by the Commission in connection with its</p>

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	<p>for registration or annual fees. They are concerned that the commission will either be a further drain on government resources or the fees will be set at inappropriately high levels.</p> <p>Is it known how many charities will be required to register?</p> <p>Has any weight been given to the cost implications to charities due to audits and registration?</p> <p>Assistant Director of Legal Studies</p> <p>Is there a need for up to seven Charity Commissioners plus a Registrar? Are they all intended to act full-time? Might it be better to say that there can be part-time appointments? In England and Wales, where there are around 170,000 registered main charities, a Chair and up to eight members of the Charity Commission are appointed by the Minister for the Third Sector.</p>	<p>functions will be defrayed out of moneys voted for the purposes by the Legislative Assembly. Matters concerning registration fees will be dealt with by way of regulations.</p> <p>No, but there are approximately 240 not for profit associations. The problem has been identifying how many of these are operating for charitable purposes in accordance with the proposals.</p> <p>The Commission intends to reconsider the viability of the type and forms of Commission contemplated and determine whether in fact we need a Commission or just one officer to preside over the regime.</p> <p>The Commission has determined that a Charities Commissioner may not be appropriate for our purposes and will recommend the appointment of a Registrar of Charities.</p>
<p>5. (1) For the purposes of this Part-</p> <p>(2) "Public charitable collection" means, subject to section 6, a charitable appeal which is made-</p> <p>(a) in any public place; or</p> <p>(b) by means of visits to houses or business premises or both.</p> <p>(3) "Charitable appeal" means an appeal to members of the public to give money or other property which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable purposes.</p> <p>(4) A "collection in a public place" is a public charitable collection that is made in a public place, as mentioned in subsection (2)(a).</p>	<p>Assistant Director of Legal Studies</p> <p>Public charitable collections have proved difficult to regulate effectively and efficiently in England. For example, provisions in the Charities Act 1992 were never brought into force due to problems in implementation, and have recently been replaced by provisions in the Charities Act 2006, which themselves have not yet been brought into force.</p>	<p>The Commission is of the view that the need to regulate public collections stems from the need to ensure accountability. However, the Commission intends to introduce a much simpler regime as far as collections are concerned.</p>

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<p>6. (1) A charitable appeal is not a public charitable collection if the appeal-</p> <p>(a) is made in the course of a public meeting;</p> <p>(b) is made-</p> <p>(i) on land within a churchyard or ground contiguous or adjacent to a place of public worship;</p>	<p>Assistant Director of Legal Studies</p> <p>Is it intended that the selling of charity dinner tickets, for example, by visiting work places, would require a public collections certificate?</p> <p>Or would this fall within the terms of a 'short-term collection' (the duration of which is not yet defined)</p> <p>What about the collection of donated goods from businesses which are to be auctioned for charity (a common way of fund-raising in Cayman). Will this need a certificate?</p> <p>What about fund-raising in schools for schools, which is common here? Will it be regulated or not?</p>	<p>Selling of tickets would require a public collections certificate if the collection is represented as being for a charitable purpose.</p> <p>Short-term collections will be defined in the regulations.</p> <p>An appeal for goods will require a certificate.</p> <p>Fund-raising in schools will not require a certificate. However, if that school purports to describe itself as a charity and seeks to solicit donations for a charitable purpose as defined in the proposals then a certificate will be required. The Commission however intends, to introduce a provision which exempts charities which are regulated under another Law. In this instance schools will be exempt from the regime given that they are regulated under the Education Modernisation Law, 2009.</p>
<p>7. (1) A collection in a public place shall not be conducted unless the promoters of the collection hold a valid public collections certificate in respect of the collection.</p>	<p>NCVO</p> <p>Concerned that the cost implications and administrative burden of the requirement to obtain certificates and identity cards for public collections and volunteers will hamper fund raising efforts unnecessarily.</p> <p>STEP</p> <p>The requirement to have audits and the complexity of registration and fund-raising requirements may impact on charities.</p>	<p>The Commission accepts this point of concern; the Bill will be revised accordingly.</p> <p>The Commission agrees with this concern and will introduce provisions which require audits of charities earning above a specified threshold.</p>
<p>9. (1) A public charitable collection is exempt from the provisions of this Law if it is a short term collection.</p> <p>(2) For the purposes of this section the term "short-term collection" means a charitable appeal whose duration does not exceed the prescribed period of time.</p>	<p>NCVO</p> <p>Unclear as to the definition of certain exemptions such as "short term collection".</p> <p>Suggests that collection and disbursement of monies under \$10,000 US to be disbursed in the Cayman Islands should not fall under the regime.</p>	<p>The length of time that required to be considered a sort-term collection will be prescribed by regulations.</p> <p>The Commission believes that any charity collecting funds from the public should fall within the ambit of the regime.</p>

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<p>10. (4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Part, in the context of such certificates, to public charitable collections are to be read accordingly.</p>	<p>Assistant Director of Legal Studies</p> <p>Clause 10(4) suggests that even a single collection might fall within regulation, so what would fall within the exemption of a ‘short-term collection’?</p>	<p>The Commission agrees that clarity is needed. The length of time necessary to be considered a short-term collection will be prescribed by regulations.</p>
	<p>CILS</p> <p>Recommends that, to preserve independence and impartiality, any appeal against the decision of the Charities Commission should be decided by the Grand Court and not a politically appointed minister.</p> <p>Assistant Director of Legal Studies</p> <p>Appeal to the relevant Minister takes away from the independence of the Charities Commission. Might it be better to have a designated appeals body, independent of government?</p>	<p>The Commission intends to recommend a Registrar of Charities rather than a Charities Commission.</p>
<p align="center">PART IV FUND-RAISING BY CHARITIES</p>		
	<p>CILS</p> <p>Registered charities should be required to verify the identity of all donors who contribute more than C\$10,000 in any calendar year.</p>	<p>The Commission recommends that a requirement for disclosing the identity of donors not be included in the Bill for fear that such a provision may deter donors.</p>
<p>27. The Governor in Cabinet shall appoint a suitable person to be the Registrar of Charities who, for the purposes of this Law, shall maintain a record of every charity operating in the Islands, together with such other details as the Commission may specify.</p>	<p>CILS</p> <p>Entities that are charities as a matter of law may elect for themselves whether to register. The regime should offer significant privileges for those which register.</p> <p>Suggested privileges and exemptions:</p> <ul style="list-style-type: none"> • Exempt from most if not all forms of local taxation, including import duties, stamp duty, company registration fees etc. • Exemption from the statutory prohibition on raising funds by lotteries. 	<p>It needs to be noted that if you are not registered as a charity you cannot conduct charitable activities within the context of the proposals.</p> <p>The Commission accepts this recommendation.</p> <p>It is proposed to exempt registered charities from the application of the Gambling Law (1996 Revision)</p>

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	<p>Assistant Director of Legal Studies</p> <p>Is it the intention to register all charities operating in the Cayman Islands? Would this include overseas branches of international charities? Might it be better to say ‘established in the Cayman Islands’?</p> <p>Does the Registrar have any decision-making powers, or is it simply an administrative role?</p> <p>Might it be preferable to have a registration exemption for ‘small charities’?</p>	<p>The intention is to register all charities operating in the Cayman Islands and soliciting funds in the Cayman Islands.</p> <p>The Registrar performs an administrative role of maintaining the charities register. The decision making power falls within the purview of the Commission.</p> <p>The intention is for all charities to register irrespective of size.</p>
<p>28. (1) Subject to subsection (2), in considering any application submitted by a charity for registration or renewal of registration, the Commission shall have regard to-</p> <ul style="list-style-type: none"> (a) the declared purposes of the charity; (b) a mission statement of the charity; (c) annual audits of the charity’s operations; (d) records of contributions and contributors; (e) evidence of how contributions were used; (f) evidence of Know Your Client compliance; (g) evidence of board structure and function; and (h) any other business-related matter the Commission considers relevant. <p>(2) Where the applicant charity was in existence prior to the date of commencement of this Law, the criteria set out in subsection (1) shall apply to the extent that the information required is ascertainable.</p>	<p>Assistant Director of Legal Studies</p> <p>Despite the recognition in clause 28(2) of the possibility of new charities coming into being and seeking registration, the clause does seem to be aimed at charities in existence when the Register becomes operative. What about new charities? How much of this information do they have to have in place before being registered? Might these sort of requirements in clause 28(1) be better placed in regulations or simply in guidance from the Charities Commission?</p> <p>NCVO</p> <p>Suggest a “grandfathering provision” to allow currently registered charities to be given charitable status under the new provisions. (Request confirmation of any intention of such from the Commission).</p>	<p>New charities will have to provide the information that is available at the time having regard to its circumstances. It will be left to the Registrar to determine whether the information provided is sufficient to satisfy the obligations under the legislation.</p> <p>The Bill contains transitional provisions allowing charities time to comply. The fact that charities may be currently registered under section 80 does not exempt them from having to register under the proposed regime. To the extent that the information provided under section 80 is relevant to the proposed registration process, that will be relied upon.</p>

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<p>(4) The Commission shall, upon being satisfied that an applicant is suitable to be registered, direct that registration be effected by assigning a registered number to the applicant organisation and such registration may be renewable every two years, upon review by the Commission.</p>	<p>Assistant Director of Legal Studies</p> <p>The requirement for bi-annual renewal of registration under clause 28(4) seems onerous. Other requirements for annual accounts to be returned to the Registrar under clause 36(3) would appear to provide sufficient opportunity for overview. Could there not be a presumption of continuing registration, subject to something untoward coming to light as a result of the Charity Commission's receipt of accounts etc?</p> <p>Clause 36(5) states that registered charities' accounts will be available for public inspection, but will the Register itself be open to the public (as in England)? This is advisable.</p> <p>Is there an obligation on charities to register? What happens if charities do not register, other than that they cannot fund-raise, unless on a short term collection basis?(clause 35)</p>	<p>The Commission accepts this recommendation.</p> <p>It is intended that the register be available to the public.</p> <p>There is no obligation to register a charity. However failure to register prevents an entity from fundraising for charitable purposes as defined in the Bill. The intention is that charities conducting short-term collections do not need a certificate but are required to register such intentions with the relevant authority.</p>
<p>29. (3) An appeal against a decision of the Commission to enter or not to enter an institution or body of persons in the register, or to remove an institution or body of persons from the register, may be brought in the Court-</p> <p style="padding-left: 40px;">[(a) by the Attorney General];</p> <p style="padding-left: 40px;">(b) subject to section 34, by the persons who are or claim to be the trustees of the institution or body of persons; or</p> <p style="padding-left: 40px;">(c) by a person whose objection or application under subsection (2) is disallowed by the decision.</p>	<p>Assistant Director of Legal Studies</p> <p>Appeal to court on status – English experience is that many start-up organisations will give up at this point if they are denied recognition as a charity, as it is too expensive to bring court proceedings.</p>	<p>The Commission is of the view that an appeals process is necessary as this gives an aggrieved party an opportunity to contest a decision.</p>
<p>33. (1) Where it appears to the Commission that a registered charity is in significant breach of its obligations as a registered charity or that it has substantially departed from the purpose for which it was registered, it shall instruct the Registrar to give notice to that organisation at its registered address,</p>	<p>Assistant Director of Legal Studies</p> <p>Is cancellation of registration the best option for some of the circumstances in cl.33(2)? Might that not lead to lack of accountability? What about cy-près, for example, as a solution?</p>	<p>If a breach of the legislation occurs, it is appropriate cancellation of registration follows. As is proposed, it is left to the charity to show cause why its registration should not be cancelled.</p>

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<p>that its registration will be cancelled within thirty days of the date of notice unless the charity shows cause to the satisfaction of the Commission why its registration should not be cancelled.</p> <p>(2) Every notice of the kind specified in subsection (1) shall set out the grounds for the cancellation of the registration, which grounds may include, but which are not limited to-</p> <p>(a) failure to provide annual financial audits within the time specified in the regulations;</p> <p>(b) failure to comply with requests for information required by the Commission on a bi-annual review of the status of the charity;</p>		
<p>34. (1) Where the Commission has refused to register a charity under section 28 or has directed the cancellation of its registration under section 33, the charity concerned may appeal to the Minister against such refusal or cancellation.</p>	<p>Assistant Director of Legal Studies</p> <p>Appeal to Minister takes away from the independence of the Charities Commission. Might be better to have a designated appeals body, again, independent of government.</p>	<p>The Commission accepts this point.</p>
<p>36. (1) Every registered charity, except a charity involved in a short term collection or a small charity, shall maintain audited accounts containing a statement of all monies received for charitable purposes and the expenditure thereof and shall keep such other records as may be prescribed.</p> <p>(2) Every small charity and every charity involved in a short term collection shall maintain accounts of all monies received for charitable purposes and the expenditure thereof and shall keep such other records as may be prescribed.</p>	<p>STEP</p> <p>The cost of the requirement to maintain audited accounts and the cost of legal advice with regard to the complexity of registration and fund-raising requirements may impact on charities disproportionately unless a cost benefit analysis, as outlined in comment next to Clause 3, has been carried out. Has any weight been given to the cost implications to charities?</p> <p>They question whether the rise in such requests by charitable organisations could be covered by the pro-bono work of legal and audit firms, but point out there is a limit to the amount of pro-bono work which can reasonably be expected from the professions.</p> <p>Assistant Director of Legal Studies</p> <p>Might it be appropriate to consider a graded system of accounting requirements according to size? Under</p>	<p>The Commission accepts the point and will recommend a provision which exempts charities falling below a certain threshold from having to provide audited accounts.</p> <p>The Commission takes note of the suggestion that pro bono work could be used to assist charities in the conduct of audits.</p> <p>The Commission accepts this point.</p>

<p align="center">DRAFT CHARITIES BILL, 2009 26th January, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
	<p>the current proposal, every charity with income over \$50,000 is subject to the same accounting requirements. In England, the Charities Act 2006 and Regulations provided thereunder impose more rigorous requirements on larger charities than on smaller charities.</p>	
<p align="center">PART VI POWER TO OBTAIN INFORMATION</p>		
<p>38. (1) The Commission may from time to time institute inquiries with regard to charities or a particular charity or class of charities of whatever description, either generally or for particular purposes.</p> <p>(2) The Commission may either conduct an inquiry itself or evidence or produce documents for the purpose of an inquiry under this section.</p> <p>(6) Where an inquiry has been held under this section, the Commission shall-</p> <p>(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as it thinks fit to be printed and published; or</p> <p>(b) publish such report or statement in some other way that is calculated in its opinion to bring it to the attention of persons who may wish to make representations to it about the action to be taken.</p>	<p>Assistant Director of Legal Studies</p> <p>Are there any grounds that must be proven before an inquiry can be instituted?</p>	<p>The proposals are formulated to allow the Commissioner to make inquiries at any time during the execution of his functions or when information comes to the attention of the Commission.</p>
<p>39. (1) The Commission may by written notice require a person-</p> <p>(a) to furnish it with information in his possession that relates to a charity and is relevant to the discharge of its functions; and</p> <p>(b) who has in his custody or under his control a document that relates to a charity and is relevant to the discharge of its functions-</p>	<p>Assistant Director of Legal Studies</p> <p>Do these powers only come into operation once an inquiry has been instituted, or can they be exercised at any time?</p>	<p>These powers are exercisable at anytime in keeping with the functions of the Commission.</p>

<p align="center">DRAFT CHARITIES BILL, 2009 26th January, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
<p>18. The Commission shall review charities registered under this Law every two years to ensure continued eligibility, continuation of charitable purpose and any other business-related matter the Commission sees fit to review.</p>	<p>Assistant Director of Legal Studies</p> <p>Is the intention for there to be review on the second anniversary of each charity's registration? If this is intended, it is not very clear and also might be too prescriptive and overly burdensome. (Is there overlap with Para 18 of Schedule 1 and clause 4(1)(i) which sets out a more flexible duty to review?)</p>	<p>The Commission will re-examine the Charities Commission proposal.</p>

APPENDIX II

**THE LAW REFORM COMMISSION
RESPONSES TO CHARITIES BILL, 2009
AND
TRUSTS (AMENDMENT) BILL, 2009**

**CONSULTATION
26th June, 2009 – 7th August, 2009**

SUMMARY OF RESPONSES
CHARITIES BILL, 2009 AND TRUSTS (AMENDMENT) BILL, 2009

Following upon the comments emerging from our initial consultations on the Charities Bill, 2009, a revised draft Charities Bill, 2009 and new Trusts (Amendment) Bill, 2009 were prepared and forwarded for public consultation on the 26th June, 2009 to the following stakeholders-

- **The Hon. Attorney General;**
- **The Deputy Financial Secretary;**
- **The Hon. Chief Justice;**
- **The Assistant Director of Legal Studies, Cayman Islands Law School;**
- **Cayman Islands Law Society;**
- **The Cayman Islands Bar Association;**
- **Cayman Islands Society of Professional Accountants;**
- **Society of Trust & Estate Practitioners;**
- **Cayman Islands Chamber of Commerce;**
- **Cayman Islands Bankers' Association;**
- **Cayman Islands Compliance Association;**
- **Cayman Islands Financial Services Association;**
- **Cayman Hospice Care;**
- **Cayman Islands National Recovery Fund;**
- **Mr. Huw Moses;**
- **Cayman Islands Ministers Association;**
- **Cayman Drama Society;**
- **Cayman Islands Red Cross;**
- **Cayman Island Humane Society;**
- **The National Council of Voluntary Organisations;**
- **The Rotary Club of Grand Cayman;**
- **Kiwanis Club of Grand Cayman;**
- **Lions Club of Grand Cayman;**
- **Cayman Aids Foundation;**
- **Cayman Wildlife Rescue;**
- **National Trust for the Cayman Islands;**
- **The Cayman Islands Crisis Centre;**
- **Cayman Islands Human Rights Committee; and**
- **The Estella Scott-Roberts Foundation.**

Both documents were also published on the Government's website and brought to public attention through the various media houses. The public consultation period concluded on 7th August, 2009 by which time written submissions were received from the following stakeholders:

- **The Assistant Director of Legal Studies, Cayman Islands Law School; and**
- **The Cayman Islands Cancer Society.**

Oral submissions supporting the proposals were received from-

- **Cayman Islands Humane Society;**
- **National Council of Voluntary Organisations (NCVO);**
- **Rotary Club of Grand Cayman; and**
- **Rotary Club Central.**

<p align="center">DRAFT CHARITIES BILL, 2009 26th June, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
<p align="center">PART I – PRELIMINARY</p>		
<p>Interpretation</p> <p>“charity” means any person who conducts activities for charitable purposes;</p> <p>“charitable purposes” means purposes which relate to- and are for the public benefit whether in the Islands or elsewhere;</p>	<p>Assistant Director of Legal Studies</p> <p>‘charity’: is this intended to include government entities which are not exempt? (hospitals, care centres, library, sports facilities, etc)</p> <p>What if a person only ‘partly’ conducted activities for charitable purposes. Would a person who conducts <i>any</i> charitable purposes be a charity for the purposes of the Law?</p> <p>‘charitable purposes’: whilst the definition is now incredibly long, might it be prudent to nevertheless state that any existing recognised charitable purposes, which do not fall within the specific purposes listed, together with purposes analogous to such purposes (in line with the English Charities Act 2006, s.2(4)(a)(b)) are charitable?</p> <p>There is much overlap within the current definition of charitable purposes, e.g. (d) and (w), (j) and (q), (j) and (r), (j) and (t). (d) the advancement of citizenship or community development; (w) the promotion and encouragement of projects for community development; (j) the advancement of the arts, culture, heritage or science; (q) the cultivation of public taste in aesthetic matters, including art, music, literature and fine craftsmanship and the establishment and development of facilities for their practice; (j) the advancement of the arts, culture, heritage or science; (r) the provision and maintenance of museums and art galleries; (j) the advancement of the arts, culture, heritage or science; (t) the promotion and improvement of the national heritage, whether physical, environmental, artistic, cultural or otherwise;</p>	<p>Government entities which do not fall within the exemptions will be included in the definition.</p> <p>The point is that once your activity can be properly described as being conducted for a charitable purpose, you will fall within the ambit of the law.</p> <p>It is felt that the list is broad enough to cover all the common activities which are of a charitable nature.</p> <p>The Commission accepts this point and the appropriate adjustments will be made.</p>

<p align="center">DRAFT CHARITIES BILL, 2009 26th June, 2009</p>	<p align="center">STAKEHOLDER RESPONSES</p>	<p align="center">LAW REFORM COMMISSION COMMENTS</p>
<p>“financial year” means a year ending on 30 June;</p> <p>“Know Your Client” compliance means the submission to the Registrar by the trustees, 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;</p>	<p>Cayman Islands Cancer Society</p> <p>Section 24(2) refers to a “...<i>true copy of those accounts relating to a period of twelve months, to the Registrar within nine months of the end of each financial year.</i>”</p> <p>Within section 2 a “<i>financial year</i>” is defined as, “<i>a year ending on 30th June</i>”.</p> <p>The implication is that all non-profit organisations/charities will have to change the end of their financial year to 30th June – is this the intention of this section?</p> <p>Cayman Islands Cancer Society</p> <p>It is unclear from the draft if the intent of the proposed legislation is that KYC Compliance will be required for all donations received by a non-profit organisation regardless of the size of the donation. Depending on the prescribed information required, this will be difficult in practical terms for non-profit organisations, which often receive small donations under \$100, to enforce and may detract potential donors.</p> <ul style="list-style-type: none"> • The Society therefore suggests that donations under \$10,000 not be subject to KYC Compliance • An additional suggestion on the matter of KYC requirements is to include an exemption from the obligation to collect KYC for any donation from a company or individual already subjected to Money Laundering Regulations and regulated by a government or statutory authority (e.g. the Society of professional Accountants). This would allow banks, law and accountancy firms to make donations without the charity having to obtain KYC from the donor. 	<p>The Commission accepts this point. Amendments will be made to allow the charity to submit the accounts within its own financial year. However, there may need to be some requirement that on registration the charity indicates when its financial year begins so as to facilitate monitoring by the Registrar.</p> <p>By including the words “reasonably determined”, the intention is to allow for situations in which the information may not be easily ascertainable based on the form in which the collections are made.</p> <p>The Commission is of the view that all donations should fall within the ambit of the legislation.</p>

DRAFT CHARITIES BILL, 2009 26th June, 2009	STAKEHOLDER RESPONSES	LAW REFORM COMMISSION COMMENTS
	<ul style="list-style-type: none"> • Additionally, will KYC Compliance be required for members of non-profit organisations and clubs who pay annual membership dues. 	Dues are different from donations by persons other than members. The nature of charitable operations is that the property is sought from the general public. It is that property we are seeking to bring within the regulation.
PART III - REGISTRATION OF CHARITIES		
<p>Establishment of a register of charities</p> <p>5. (1) A register of charities shall be established and maintained by the Registrar and entered in such register shall be the name and address of every charity approved by the Registrar with any other particulars as may be prescribed.</p> <p>(2) A charity in the Cayman Islands desirous of conducting any activity for a charitable purpose which involves-</p> <p>(a) fund-raising by means of soliciting property from the public or Government; or</p> <p>(b) disbursing property,</p> <p>shall apply to the Registrar to be registered as a charity in the manner</p>	<p>Assistant Director of Legal Studies</p> <p>Would a charity 'in the Cayman Islands' that either fundraises or disburses property overseas only need to be registered? (What does 'in the Cayman Islands' mean?)</p>	The issue is whether the body has been set up for a charitable purpose. If that is the case and it is operating from within the Islands then it must be registered.
<p>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 by the Registrar in the register, or apply to the Registrar to have it removed from the register.</p>	<p>Assistant Director of Legal Studies</p> <p>Does this envisage that the Registrar would publish a list of applicant charities so that a person may be able to object <i>before</i> it is entered in the register?</p>	The provisions contemplate the publication of a list of applicants.
<p>14.</p> <p>(c) for the procedures and conditions for the renewal of registration of a charity;</p>	<p>Assistant Director of Legal Studies</p> <p>14(c) talks about renewal of registration, but clause 6(5) says registration is indefinite.</p>	The Commission accepts this point.
PART VI - CONDUCT OF FUND-RAISING ACTIVITIES ON BEHALF OF CHARITIES		
<p>Prohibition against raising funds without an agreement</p> <p>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 an agreement with the charity satisfying the prescribed requirements.</p> <p>(2) Where, on the application</p>	<p>Cayman Islands Cancer Society</p> <p>This section refers to "an agreement with the charity" if someone is soliciting property through fund raising activities for a charity.</p> <p>We suggest that it be clarified if this agreement shall be in writing or if a verbal agreement will suffice.</p>	<p>The object of this provision is to protect the interest of the charity against the fraudulent use of its name in the solicitation of funds from the public.</p> <p>Writing is contemplated or any other form of agreement which reflects a permanent record of consent.</p>

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<p>of a charity, the Court is satisfied-</p> <p>(a) that any person has contravened or is contravening subsection (1) in relation to the charity; and</p> <p>(b) that, unless restrained, any such contravention is likely to continue or be repeated,</p> <p>the Court may grant an injunction restraining the contravention.</p> <p>(3) 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.</p> <p>(4) 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 and to imprisonment of six months.</p>	<p>It is difficult to comment further on the impact of needing an agreement without knowledge of the “prescribed requirements”.</p> <p>In practical terms, charities are not always aware when people are asking the public to donate to the organisation such as when donations are made in lieu of flowers at a funeral or in lieu of gifts for birthdays and weddings or persons are doing a sponsored event and have designated an organisation as the beneficiary. Depending on the prescribed requirements, this could impact the source of donation/fundraising for charities.</p>	
<p>Statement of charity to benefit from solicitation</p> <p>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-</p> <p>(a) the name or names of the charity or charities concerned; and</p> <p>(b) if there is more than one charity concerned, the proportions in which the charities are respectively to benefit.</p>	<p>Cayman Islands Cancer Society</p> <p>This section refers to solicitation being accompanied by a “statement”... We suggest that it be clarified if this statement shall be in writing or if an oral statement will suffice.</p>	<p>The provisions contemplate a statement in writing.</p>
<p align="center">PART VII - CHARITY ACCOUNTS</p>		
<p>Keeping books of account</p> <p>24. (1) A charity that is registered under this Law shall cause proper books of account to be kept with respect to-</p> <p>(a) all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and</p>	<p>Cayman Islands Cancer Society</p> <p>This section refers to a “...true copy of those accounts relating to a period of twelve months, to the Registrar within nine months of the end of each financial year.”</p> <p>Within section 2 a “financial year” is defined as, “a year ending on 30th June”.</p>	<p>The Commission agrees with a formulation which permits a charity to submit accounts in accordance with its financial year.</p>

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<p>(b) all sales, purchases and receipt of property by the charity and the assets and liabilities of the charity.</p> <p>(2) 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 nine months of the end of each financial year.</p> <p>(6) Accounts submitted to the Registrar pursuant to subsection (2) and written reports on or written results of an audit required pursuant to subsection (4) shall be available for inspection by members of the public at prescribed venues during normal working hours.</p>	<p>The implication is that all non-profit organisations/charities will have to change the end of their financial year to 30th June – is this the intention of this section?</p> <p>This section allows for a charity’s accounts to be available for inspection by members of the public. This may be detrimental to a charity in practical terms. Potential donors may inspect the books of a charity and decide that the organisation does not “need” the funds as they are currently in a sound financial position. Charities and non-profit organisations need to ensure they have funds for short, medium and long-term development of their operations, programs and services and evidence of being in a solid financial position now is not reflective of the organisation’s future needs.</p>	<p>The objective is to put in place a mechanism which protects the public by allowing them to confirm that the funds are being applied for the purpose for which they were donated. So any mechanism which achieves that objective would be required.</p>
	<p>Cayman Islands Cancer Society</p> <p>There are charities which are established in the United States for the purpose of raising donations for a specific charity in the Cayman Islands. These overseas charities are often established by the local charity. Will these overseas charities be required to register in the Cayman Islands? This issue will need to be clarified.</p>	<p>The overseas charity will be regulated under the laws of the jurisdiction in which it is operating. The obligation on the local charity is to disclose the origin of the proceeds it receives from that overseas based charity.</p>