

**No.10 of 2012**

**VIRGIN ISLANDS**

**NON-PROFIT ORGANISATIONS ACT, 2012**

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**No.10 of 2012**

**Non-Profit Organisations Act, 2012**

**Virgin  
Islands**

**I Assent**

**Governor**

**, 2012**

**VIRGIN ISLANDS**

**No.10 of 2012**

An Act to provide for the registration, supervision and monitoring of non-profit organisations and for other connected matters.

[Gazetted , 2012]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

Short title and  
commencement.

**1.** This Act may be cited as the Non-Profit Organisations Act, 2012 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

**2.** In this Act, unless the context otherwise requires,

No. 19 of 2003

“Agency” means the Financial Investigation Agency established under section 3 of the Financial Investigation Agency Act, 2003;

“accountant” means a person who is professionally certified and has the requisite skills to keep and inspect financial records;

“Board” means the Non-Profit Organisation Registration Board established under section 3;

“document” includes information recorded in writing regardless of form or medium;

“employee” means any person who provides services or labour for an employer for wages or other remuneration, but does not include a volunteer;

“FATF” means the Financial Action Task Force;

“FATF Recommendations” means the revised FATF recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation and such other amendments as may be made;

“gross annual income” of a non-profit organisation includes

- (a) income received from the provision of goods and services;
- (b) rental income;
- (c) interest on other income derived from investments;
- (d) donations of money or other property;
- (e) any grants;

“Minister” means the Minister charged with the responsibility for Voluntary Organisations;

“non-profit organisation” or “organisation” means a body of persons whether incorporated or unincorporated, established solely or primarily for the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the benefit of the public, or a section of the public and which raises or disburses funds in pursuance of its objectives primarily within the Territory;

“records” means recorded information regardless of form or medium created, received and maintained by a non-profit organisation or individual in the pursuance of its or his or her legal obligations;

“register” means the register of non-profit organisations established and kept under section 16;

“Registrar” means the Registrar designated under section 10;

“relevant legislation” includes

- |  |                |
|--|----------------|
| (a) the BVI Business Companies Act 2004;         | No. 16 of 2004 |
| (b) the Financial Services Commission Act 2001;  | No. 12 of 2001 |
| (c) the Financial Investigation Agency Act 2003; | No. 19 of 2003 |
| (d) the Proceeds of Criminal Conduct Act 1997;   | No. 5 of 1997  |

(e) the Anti-money Laundering Regulations 2008;

S.I No. 12 of  
2008

(f) the Anti-money Laundering and Terrorist Financing Code of Practice, 2008; and

S.I. No. 13 of  
2008

(g) any other terrorist financing legislation that are applicable to non-profit organisations in the Virgin Islands.

“remuneration” includes any additional emoluments, except wages, whether payable directly or indirectly, whether in cash or in kind;

“volunteer” means a person who performs services for an organisation for charitable or humanitarian reasons without expectation of, or receipt of wages or other remuneration for services rendered.

## **PART II**

### **ESTABLISHMENT OF REGISTRATION BOARD AND ITS FUNCTIONS**

Non-Profit  
Organisation  
Registration Board  
and membership.

3. (1) There is established by this Act a Non-Profit Organisation Registration Board (in this Act referred to as the “Board”).

(2) The Board shall comprise not more than seven persons appointed by the Minister, with the approval of Cabinet, as follows:

- (a) three representatives from the community who are active members of an existing non-profit organisation, to be chosen by the Minister;
- (b) the Permanent Secretary of the Ministry Responsible for voluntary organisations, *ex officio*;
- (c) a representative from the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee, practicing in the private sector;
- (d) the Registrar, *ex officio*;
- (e) one member nominated by the Leader of the Opposition.

(3) The Minister shall appoint a member to be the Chairman of the Board and another member to be the Deputy Chairman.

(4) The Registrar shall be the Secretary to the Board.

(5) For the purposes of subsection (2)(e), the Leader of the Opposition shall submit the name of his or her nominee within fourteen days after receipt of the request from the Minister.

(6) Where the Leader of the Opposition fails to provide the name of the nominee pursuant to subsection (5), the Minister may appoint any person he or she considers suitable.

4. The functions of the Board are

Functions of the Board.

- (a) to receive and determine applications for registration by non-profit organisations;
- (b) to register non-profit organisations;
- (c) to receive and review financial statements and reports from organisations;
- (d) to facilitate the development of the non-profit sector in the Virgin Islands and to promote an understanding of the role of non-profit organisations in the Virgin Islands;
- (e) to receive and investigate complaints arising out of any matter covered in the Act;
- (f) to discharge such other functions as may be assigned to it by the Minister under this Act.

5. (1) Members of the Board, other than *ex officio* members, shall hold office for a period not exceeding three years, but are eligible for re-appointment.

Tenure of office of members.

(2) Notwithstanding subsection (1), a member who is not an *ex officio* member shall not hold office for more than two consecutive terms, but such member is eligible for re-appointment following the expiration of one year thereafter.

(3) The Minister may, by written notice, remove a member, other than an *ex officio* member, from office if satisfied that the member

- (a) has, without the consent of the Chairman, been absent from three consecutive meetings of the Board;
- (b) has become bankrupt, that his or her estate has been sequestrated or that he or she has made an arrangement with, or granted a trust deed in favour of, his or her creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) is or becomes disqualified from being appointed as a member under section 3;
- (e) has an interest that is likely to prejudicially affect the exercise and performance by him or her of his or her functions as a member;
- (f) is unable or unfit to discharge his or her functions as a member.

(4) If a member dies, resigns, is removed from or otherwise vacates his or her office prior to the expiry of the term for which he or she has been appointed,

the Minister shall appoint a new member to replace him or her and the appointment shall be for the unexpired period of the term of office of the member in whose place he or she is appointed or for a new term not exceeding three years.

(5) Notwithstanding subsection (1) and (2), a member who represents an organisation or institution shall cease to be a member of the Board on ceasing to be a member of or, to be employed by the organisation or institution he or she represents.

Meetings of the Board.

6. (1) The Board shall meet at least once in every quarter at such time and place as determined by the Chairman.

(2) At every meeting of the Board, the Chairman shall preside and in his absence the Deputy Chairman shall preside.

(3) The quorum of the Board shall be four.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present and in the event of a tie the Chairman or Deputy Chairman, as the case may be, shall have a casting vote.

(5) The Chairman, or in his or her absence, the Deputy Chairman, shall at any time convene a special meeting of the Board upon receipt of a requisition signed by at least three members calling upon him or her to do so, and such meeting shall be held not later than fourteen days after receipt of the requisition.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this section, the Chairman may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) In the conduct of its meetings, the Board shall establish its own rules of procedure, subject to the provisions of this section.

Resignation of a member.

7. A member, other than an *ex officio* member, may resign his or her office by giving one month's notice, in writing to the Minister.

8. (1) Where a matter is to be decided by the Board at a meeting, any member present at the meeting who has an interest in the matter shall, at the meeting, disclose the nature of the interest in advance of any consideration of the matter.

Disclosure of interests.

(2) Where a member discloses an interest under this section

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not, unless the Board otherwise determines

- (i) be present during any deliberations by the Board on that matter;
  - or
  - (ii) take part in any decision of the Board relating to the matter.

9. A member who is not a public officer may be paid such stipend as determined by the Minister, acting on the advice of the Minister of Finance.

Fees for  
members.

### **PART III REGISTRATION OF NON-PROFIT ORGANISATIONS**

10. There shall be a Registrar of non-profit organisations who shall be a public officer designated by the Minister.

Registrar.

11. (1) A person shall not operate a non-profit organisation in the Virgin Islands unless the organisation is registered under this Act.

Requirement to  
register.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months, or both.

12. (1) An application for registration shall be submitted to the Board through the Registrar, in the form set out in Schedule 1.

Application for  
registration.  
Schedule 1

(2) An application under subsection (1) shall be

(a) signed by a person acting on behalf of the organisation; and

(b) accompanied by

- (i) a copy of the constitutional documents of the organisation;
  - (ii) a statement of the purpose, objectives and activities of the organisation; and
  - (iii) the fee prescribed in Schedule 2;

Schedule 2

(c) any other document or information pertaining to the registration of the organisation, as the Board may reasonably require.

(3) The constitutional documents of the organisation shall include

- (a) the name of the organisation;
  - (b) the officers of the organisation;
  - (c) the manner of electing the governing body of the



organisation;

- (c) the organisational structure of the organisation;
- (d) the duties and powers of the governing body;
- (e) provisions limiting the objects of the organisation to
  - (i) pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income primarily to promoting those purposes, and
  - (ii) prohibit the organisation from distributing any part of the dividends generated to members or shareholders.

(4) The Board shall, within thirty working days from the date of receipt of an application and upon being satisfied that the application is in order and complies with this Act and any regulations made under the Act, approve the application.

(5) A person who knowingly provides false information on registration commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term not exceeding one year, or both.

Duration of  
registration.

13. (1) A certificate of registration issued under this Act is valid for a period of one year from the date of issue.

(2) An application for the renewal of a certificate of registration shall be made no later than one month after the certificate expires.

Schedule 1  
Schedule 2

(3) A certificate issued under this Act may be renewed upon application in the form prescribed in Schedule 1, and upon payment of the fee prescribed in Schedule 2 and on the Board being satisfied that the applicant complied with the provisions of this Act.

(4) An organisation that submits an application for renewal may continue to operate until a decision is made by the Board.

Power to grant  
or renew  
registration.

14. (1) The Board may, refuse to register or renew the registration of a non-profit organisation

- (a) if the application for registration does not comply with the requirements of this Act or any regulations made under it;
- (b) where the Board determines that

- (i) the organisation does not qualify to be an organisation within the meaning of this Act;

(ii) it is contrary to the public interest for the organisation to be registered;

(c) where on the advice of the Agency it determines that the organisation is used for financing terrorism or money laundering or it is intended or likely to be used for financing terrorism or money laundering; or

(d) where the organisation, having been previously registered under this Act has been deregistered under section 15.

(2) Where the Board approves the registration, or renewal of registration of an organisation pursuant to this Act, the Registrar shall register the organisation in the register and issue a certificate of registration in the prescribed form.

(3) For the purposes of subsection (1)(c), it does not matter whether the organisation is aware that it is being used or has been used, for financing terrorism or money laundering.

(4) An organisation may appeal to the Minister against the decision of the Board under subsection (1) within twenty-one days of receipt of notice of the decision of the Board.

(5) The Minister shall, after hearing the appeal

(a) affirm the decision;

(b) vary the decision; or

(c) set aside the decision appealed against and remit the matter concerned for reconsideration by the Board with such direction as the Minister may consider fit.

Deregistration of  
non-profit  
organisations.

## 15. (1) The Board

(a) shall deregister a non-profit organisation where

(i) the organisation has contravened any provision of this Act or the relevant legislation;

(ii) subject to subsection (2), a person authorised on behalf of the organisation requests in writing that the organisation be deregistered;

(iii) the organisation no longer exists or is not carrying out and is not likely to carry out, the activities for which it was registered;

- (b) may deregister an organisation where the Board considers it in the public interest, and shall only take into account matters that suggest that the organisation is being used, or may be used, for, or to assist in, the financing of terrorism or money laundering.

(2) An organisation that fails to renew its registration under this Act, for a period of at least two consecutive years, shall be deregistered for the purposes of subsection (1)(a)(iii).

(3) The Board shall not deregister a non-profit organisation at the request of the authorised person referred to under subsection (1)(a)(ii) where the Board considers that deregistration would hinder the Agency in the exercise of its functions.

(4) The Board shall, before deregistering an organisation under this section, issue a written notice to the organisation stating

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

(5) The Registrar shall upon deregistration of an organisation under this Act

- (a) cancel the registration if it is still valid; and
- (b) amend the register accordingly.

16. (1) The Registrar shall maintain a register of all non-profit organisations registered in accordance with this Act.

Register of non-profit organisations.

(2) The Register shall include

- (a) the name, address in the Virgin Islands and telephone number of the organisation;
- (b) the purpose, objectives and activities of the organisation;
- (c) the identity of persons who are in control of or direct the activities of the organisation; and
- (d) such other information as the Board considers appropriate.

(3) The register shall be open to inspection, at the office of the Registrar by the members of the public, during regular working hours.

(4) The Registrar shall forward to the Agency a list of all non-profit

organisations registered or deregistered under this Act and shall notify the Agency of any changes to the list.

17. The Registrar shall publish annually, the names of registered non-profit organisations, in the *Gazette* and in at least one newspaper circulating in the Territory and where applicable a list of organisations which were deregistered.

Publication of non-profit organisations.

#### **PART IV SUPERVISION AND MONITORING OF NON-PROFIT ORGANISATIONS**

18. (1) The Agency shall be responsible for the supervision and monitoring of non-profit organisations in the Virgin Islands and shall

Supervisory role of the Agency.

- (a) ensure compliance by organisations with requirements of this Act and the relevant legislation;
- (b) monitor the effectiveness of the relevant legislation in
  - (i) providing for the protection of organisations from being used for terrorist financing and money laundering; and
  - (ii) ensuring compliance by the Virgin Islands with FATF recommendations as they apply to organisations;
- (c) undertake periodic reviews of the non-profit organisations sector in the Virgin Islands for the purposes of
  - (i) identifying the features and types of organisations that are at risk of being used for terrorist financing or money laundering; and
  - (ii) determining whether an organisation is being used or has been used for terrorist financing or money laundering;
- (d) undertake outreach to non-profit organisations with the objective of protecting the non-profit organisations sector in the Virgin Islands from being used for terrorist financing and money laundering;
- (e) make recommendations to the Board where it determines that an organisation is used for, or is likely to be used for, financing terrorism or money laundering;
- (f) make recommendations to the Minister on any matter relating to non-profit organisations; and

(g) discharge such other functions as may be assigned to it under this Act.

(2) A periodic review carried out under subsection (1)(c) may include an audit of the accounts of an organisation.

(3) The outreach activities referred to in subsection (1)(d) shall include

- (a) raising awareness of organisations concerning the risks of terrorist financing, money laundering and the measures available to protect against such activities; and
- (b) promoting transparency, accountability, integrity and public confidence in the administration and management of organisations.

Power to enter premises and inspect records.

19. For the purposes of monitoring compliance by a non-profit organisation, the Agency may, with or without notice, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by an organisation, have the power to enter the premises of the organisation to inspect records and take copies or extracts of the records relevant to the performance of its functions.

Power to institute inquiry.

20. (1) For purposes of performing its functions under this Act the Agency may, institute an inquiry with respect to any non-profit organisation where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by, or through the organisation.

(2) The Agency may by written notice, direct any person who controls or directs the activities of the organisation to provide

- (a) specified information, or
- (b) the Agency with any or all of the records the organisation is required to keep under section 23,

which relate to the organisation and which are necessary to enable the Agency to discharge its functions under this section.

(3) A notice given under subsection (2) shall, in addition to specifying the records which the organisation is required to produce, specify

- (a) the period within which the records are to be produced;

and  
(b) the place where the records are to be produced.

(4) The Agency may require the person who produced the records or a representative of the organisation to provide an explanation of the records.

(5) The Agency may retain original records of the organisation for a period not exceeding one year or such longer period as the Court may, on the application of the Agency, specify.

(6) A disclosure of records under this section shall not be treated as a breach of any law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

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

(8) A person who

(a) does not comply with a notice issued under subsection (2);

(b) is required to provide an explanation of any records under this section, who without reasonable excuse, fails to provide the explanation,

Schedule 3

commits an offence and is liable to the penalty specified in Schedule 3.

Giving  
inaccurate or  
misleading  
information or  
withholding of  
information.

21. A person who

(a) deliberately provides inaccurate information to the Agency which information is purported to be in compliance with a requirement imposed by or under this Act,

(b) alters, suppresses, conceals or destroys a document that he or she is required under this Act to keep or produce to the Agency,

(c) withholds information when requested by the Agency to produce such information or fails to discharge a duty imposed by or under this Act,

Schedule 3

commits an offence and is liable to the penalty specified in Schedule 3.

## **PART V**

### **OBLIGATIONS OF REGISTERED NON-PROFIT ORGANISATIONS**

Notification of changes.

22. (1) A non-profit organisation shall, where there is any change in information provided to the Board at the time of registration, issue written notification of the change to the Board within fourteen days.

(2) Any change required under this section includes changes to the principal place of business and the purposes, objectives and activities of the organisation.

(3) An organisation that fails to give notice under subsection (1) commits an offence and is liable to the penalty specified in Schedule 3.

Schedule 3

23. (1) A non-profit organisation shall keep at its principal place of operation in the Virgin Islands records that are sufficient

Maintenance of records.

(a) to show

(i) its purposes, objectives and activities; and

(ii) the identity of persons who control or direct its activities including as appropriate, senior officers, board members, directors and trustees;

(b) to show and explain the organisations' transactions, within and outside the Virgin Islands and that are sufficiently detailed to establish that its funds have been used in a manner consistent with its purposes, objectives and activities;

(c) to show the sources of its gross annual income;

to enable its financial position to be determined with reasonable accuracy.

(2) For the purposes of this section, section 24 and paragraphs (d) and (e) of the definition of "gross annual income" in section 2, a non-profit organisation registered pursuant to this Act shall comply with the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

S.I. No 12 of 2008

S.I. No 13 of 2008

(3) Where a non-profit organisation has five or fewer employees, the Board may exempt that organisation from the requirement to appoint a Money Laundering Reporting Officer pursuant to regulation 13 of the Anti-money Laundering Regulations, and the provisions of the Anti-money Laundering and Terrorist Financing Code of Practice in relation to that organisation shall, subject to sub-section (3), be disapplied.

S.I. No 12 of 2008

(4) Any exemption from appointing a Money Laundering Reporting Officer shall not be construed as exempting the non-profit organisation from performing the Money Laundering Reporting Officer functions.

(5) An organisation shall keep the records specified in subsection (1) for a period of at least five years after the completion of the transaction to which they relate.

S.I. No 13 of  
2008

(6) An organisation that contravenes this section commits an offence and is liable to the penalty specified in Schedule 3.

Schedule 3

24. (1) A non-profit organisation shall prepare and submit annually to the Board, financial statements of the organisations' revenue and expenditure.

Accounts.

(2) The organisation shall submit

(a) financial statements, certified by an accountant,  
where the gross annual income of the organisation exceeds  
two hundred fifty thousand dollars;

(b) financial statements, in a form approved by the  
Board, where the gross annual income of the organisation  
does not exceed two hundred fifty thousand dollars,

(3) The financial statements required by subsection (2) shall include

(a) a list of donors who have donated in excess of ten  
thousand dollars as a single donation or cumulatively, during  
the year;

(b) a breakdown of any funds raised, or donations received, and  
disbursed, by any association of persons operating under  
and subject to the control of the organisation.

(4) The statements required by subsection (2)(a) shall be submitted, within six months after the end of the year, unless prior written approval of an extension has been granted by the Board.

(5) A financial statement prepared pursuant to this section shall be prepared in accordance with generally accepted accounting standards or such other accounting standards as may be prescribed.

## **PART VI MISCELLANEOUS**

25. (1) The Agency may, subject to subsection (2), impose an administrative penalty on a person who fails to comply with a requirement imposed by this Act.

Administrative  
penalties.



(2) The Agency shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised due diligence to ensure that the requirement would be complied with.

(3) The Agency, in deciding whether to impose a penalty on a person under subsection (1), shall take into account the matters specified in section 28.

(4) A person who commits the offences outlined in Column 1 of Schedule 3 is liable to the penalties prescribed in Column 3 of Schedule 3. Schedule 3  
Schedule 3

(5) Where a person fails to comply with more than one provision of this Act and becomes liable to more than one penalty, the Agency may compound the penalties.

(6) The Agency may recover a penalty imposed by virtue of this section in civil proceedings as a debt.

(7) A penalty imposed by virtue of this section shall be paid into the Consolidated Fund.

26. (1) The Agency shall, before imposing penalty under section 25, give written notice to the person stating Procedure to be  
followed by  
Agency.

(a) the intention to impose and the reason for the intention to impose the penalty;

(b) the amount of the proposed penalty; and

(c) the entitlement of the person to make representation to the Agency in accordance with subsection (2).

(2) Where a person receives a penalty notice, that person shall, within twenty-one days from the date of the notice, make representation to the Agency as to why he or she should not be required to pay the penalty or as to why the proposed penalty should be reduced.

(3) The Agency may at any time prior to the issuing of a penalty notice under subsection (1), withdraw the notice and substitute a new notice stating a different penalty.

(4) The Agency shall notify the person of its decision under subsection (3) and, where it varies the penalty, of the further steps (if any) it has taken in relation to the person.

(5) Before imposing an administrative penalty on a person, the Agency shall consider any representations received under subsection (2).

(6) Subject to subsection (7), a person that receives a penalty notice shall pay the penalty stated in the notice to the Agency within such period as the Agency may determine.

(7) The Agency may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate.

Determination of appropriate penalty.

27. In determining the administrative penalty to be imposed on a person, the Agency

(a) shall take into account the following matters:

- (i) the nature and seriousness of the contravention;
- (ii) whether the person has previously contravened the Act or any relevant legislation;
- (iii) whether the contravention was caused by the negligence of the person; and
- (iv) the ability of the person to pay the penalty, including any gain resulting to the person as a result of the contravention; and

(b) may take into account such other matters as it considers appropriate.

Appeal against an administrative penalty.

28. (1) A person who is aggrieved by a decision of the Agency imposing a penalty under section 26, may, within fourteen days of receiving the penalty notice, appeal to the Appeal Board.

(2) An appeal of a decision of the Agency to impose a penalty does not operate as a stay on the obligation of the person to pay the penalty.

(3) The Appeal Board shall, after hearing an appeal,

- (a) affirm the decision appealed against;
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and remit the matter concerned for reconsideration by the Agency in accordance with such direction as the Appeal Board may consider fit.

(4) For the purposes of this section, "Appeal Board" means the Board of the Agency established under section 3 (2) of the Financial Investigation Agency Act, 2003.

No.19 2003

<p>29. (1) The Agency shall not issue a penalty notice to a person with respect to a contravention after the end of the period of two years commencing on the date that the Agency first knew of the contravention.</p>	<p>Limitation period.</p>
<p>(2) For the purposes of subsection (1), the Agency is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.</p>	
<p>30. (1) A person shall keep confidential all information relating to a non-profit organisation which he or she has acquired in his or her capacity as an employee of the Agency or as a member of the Board, except as required for an inquiry in respect of any matter under this Act or on the order of a court of competent jurisdiction.</p>	<p>Confidentiality.</p>
<p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to ten thousand dollars.</p>	
<p>31. (1) A non-profit organisation which is in existence at the commencement of this Act shall apply for a certificate of registration in accordance with the provisions of this Act, within ninety days of the coming into force of this Act.</p>	<p>Transitional provisions.</p>
<p>(2) For the avoidance of doubt, a Friendly Society registered under the Friendly Society Act shall be deemed a non-profit organisation for the purposes of this Act.</p>	<p>Cap 268</p>
<p>32. The Minister may, by Order, and after consultation with the Board and with the approval of Cabinet, amend the Schedules to this Act in such manner as he or she considers necessary.</p>	<p>Amendment of Schedules.</p>
<p>33. This Act does not apply to</p> <ul style="list-style-type: none"> <li>(a) an organisation that is licensed under the Banks and Trust Companies Act, 1990;</li> <li>(b) any charitable or non-charitable purpose trust, where the trustee is licensed under the Banks and Trust Companies Act, 1990.</li> </ul>	
<p>34. Where an offence under this Act is committed by a body corporate, and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of that body corporate, or a person purporting to act in that capacity, the person as well as the body corporate each commits the offence and are liable to be proceeded against and punished accordingly.</p>	<p>Offences by bodies corporate.</p>
<p>35. The Minister may, after consultation with the Board and with the approval of Cabinet, make Regulations for</p>	<p>Regulations.</p>

- (a) the format of any reports and financial returns to be submitted by an organisation;
- (b) prescribing anything that is required to be prescribed by this Act;
- (c) generally for the purposes of carrying this Act into effect.

# SCHEDULE 1

[Sections 12 (1)]



## REGISTRATION FORM

### Non-Profit Organisation (NPO) Application for Registration (In Accordance with the NPO Act, 2012)

(Tick One) Is this a...

☐ **New Application** (complete sections 1 through 3 only) (\$50 or \$100)

☐ **Renewal Application** (complete all sections) (\$50 or \$100)

☐ **Change Information Application** (Section 1 and all applicable sections) (\$0)

#### 1. ORGANISATION'S CONTACT DETAILS

DATE:

Name (or Proposed Name) of NPO			
Contact Details for the Organisation	Office Telephone	Cell Phone	Email
	Address		Website (if any)
Contact Person	Name		Position in the Organisation
	Telephone (if different from above)		

#### 2. ORGANISATION'S OPERATING DETAILS

NPO Mission Statement	NPO Vision Statement

In full detail, please describe the <b><u>PURPOSE</u></b> (or <i>intended purpose</i> ) of the NPO:					
In full detail, please describe the <b><u>ACTIVITIES</u></b> (or <i>intended activities</i> ) of the NPO:					
Please provide a copy of the organisation's <b><u>CONSTITUTION</u></b> (or <i>intended constitution</i> ).					
<p>Is your Organisation incorporated? <span style="float: right;">YES/NO</span></p> <p>Does your Organisation have subsidiary Organisation(s)? <span style="float: right;">YES/NO</span>          (Example- Girls' Brigades is a subsidiary organisation of the Methodist Church)</p> <p>Name these Subsidiary Organisations:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">1. _____</td> <td style="width: 50%;">9. _____</td> </tr> <tr> <td>2. _____</td> <td>10. _____</td> </tr> </table>		1. _____	9. _____	2. _____	10. _____
1. _____	9. _____				
2. _____	10. _____				

- |          |           |
|----------|-----------|
| 3. _____ | 11. _____ |
| 4. _____ | 12. _____ |
| 5. _____ | 13. _____ |
| 6. _____ | 14. _____ |
| 7. _____ | 15. _____ |
| 8. _____ | 16. _____ |

**NOTE:** If your organisation has subsidiary organisations, in addition to completing sections 4-6 for your organisation, please copy and complete sections 4-6 for each subsidiary organisation.

What are the criteria (s) for becoming a member?

Total Members \_\_\_\_\_

# of Adults \_\_\_\_\_

# of Children under 16 \_\_\_\_\_ Please attach a sample of your parental consent form.

Sample of proof of Membership (*circle and attach at least one*)

- Membership Certificate/Card
- Official Letter given to Members
- Annual Membership Registration List
- Other \_\_\_\_\_

**Names of Executive Body**

**Date of Election:**

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Secretary: \_\_\_\_\_

Other: \_\_\_\_\_

*Note: Any Changes to the Executive Body must be reported within 14 days of the change to avoid penalty fee.*

How often does the organisation have the following meetings?

Membership Meeting: \_\_\_\_\_

Executive Body: \_\_\_\_\_

Board of Directors: \_\_\_\_\_

### 3. ORGANISATION'S EXPENDITURE REPORT

*Organisations that earn \$250,000 or more are asked to attach a certified copy of their financial statements in addition to completing sections 3-6 of this form.*

A. When is the organisation's Financial Year End? _____		
Is there a first time Membership Fee? _____	YES/NO	Yes, how much?
Is there an Annual Membership Fee? _____	YES/NO	Yes, how much?
Does your organisation have operational Costs? YES/NO If yes, please complete the fields below.		
Name of Operational Cost (All non-income payments, ex. Rent, gas, electricity etc),	Total Annual Cost Incurred	
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		



9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	

*Please attach a separate sheet of paper if additional space is required.*

**3B. Are any wages, salaries, and/or personal emoluments paid by the organisation?  
YES/NO**

**If yes, please complete the fields below.**

Name	Position	Hourly Wage/Annual Salary/Personal emolument
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
What percentage % of funds raised is used towards wages, salaries, and/or personal emoluments? _____		
<i>Please attach a separate sheet of paper if additional space is required</i>		

#### 4. REPORT ON FUNDS RAISED ANNUALLY

**NOTE:** If an activity, for example a bake sale is held more than once in the period under review; indicate the total funds collected from all sales instead of listing individually.

Total funds raised in your last calendar year?	Total Amount	Total amount raised from <b>within</b> the BVI	Total amount raised from <b>outside</b> the BVI
Details of Fundraising			
Date	Event(s)	Purpose of Event	Amount Raised
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

5. FUNDS RECEIVED THROUGH DONATIONS

If \$10,000 is donated by one individual at one time or collectively throughout the year, the name of the donor(s) should be listed in this section.

Total funds received through donation in your last calendar year?	Total Amount	Total amount received through donations <b>within</b> the BVI	Total amount received through donations <b>outside</b> the BVI
Details of Donations			
Date	Reason for donation	Name of Donor	Amount Donated
1.			
2.			
3.			
4.			
5.			
6.			
7.			

8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

## 6. REPORT ON FUNDS DISTRIBUTED ANNUALLY

Total funds distributed in your last calendar year?	Total Amount	Total amount distributed <b>within</b> the BVI	Total amount distributed <b>outside</b> the BVI
Details of Distributions			
Date	Event	Purpose	Amount Distributed
1.			
2.			
3.			
4.			
5.			
6.			
7.			

8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

### Annual Earning - United States Dollar

**NOTE:**

**“Funds”** means assets of every kind, whether tangible or intangible, movable or immovable. Example, money, property, vehicles, furniture, artwork, etc.

**“Raised”** , in respect to the funds of an NPO, includes funds given to the NPO but does not include-

- a. income earned on the funds of the NPO, i.e. bank interest etc; or
- b. new or remaining members fees.

**“Distributed”**, in respect of the funds of an NPO, does not include the disbursement of funds paid to the NPO by person to become or remain members of the NPO if those funds only benefits members of the NPO

Summary of Annual Financial Report	
Total Funds Raised (section 4)	_____
Plus	+
Total Funds by Donation (section 5)	_____
Equals	_____
<b>TOTAL ANNUAL INCOME</b>	_____

Total Operational Cost (section 3A)	_____	
Plus	+	
Total Emoluments (section 3B)	_____	
Plus	+	
Total Funds Distributed (section 6)	_____	
Equals _____		
<b>TOTAL ANNUAL EXPENDITURE</b> _____		
<hr/>		
<b>TOTAL ANNUAL INCOME</b>	_____	
Minus	-	
<b>TOTAL ANNUAL EXPENDITURE</b>	_____	
Equals _____		
<b>TOTAL YEAR END BALANCE</b> _____		

Please use this area to provide any additional information you think might help the Board when reviewing your application.

I \_\_\_\_\_ certify that the information provided in this application is true. I understand that false or incomplete statements are grounds for refusal of registration. I also understand that knowingly providing false information on this registration form is an offence under section 12(5) of the Non-profit

Organisation Act 2012 and if convicted, I may be liable to a fine \$5,000 dollars or to imprisonment for a term not exceeding one year, or both.

Signature

Name in BLOCK Letters

Position Held in NPO

Date

OFFICE USE ONLY

## **SCHEDULE 2**

**[Sections 12 (2),  
13 (2)]**

### **FEEES**

(1) Application for registration	
(a) for newly formed organisations	\$100.00
(b) for existing organisations	
(i) where gross annual income does not exceed two hundred and fifty thousand dollars	\$50.00
(ii) where gross annual income exceeds two hundred and fifty thousand dollars	\$100.00
(2) Application for renewal of registration	
(a) where gross annual income does not exceed two hundred and fifty dollars	\$50.00
(b) where gross annual income exceeds two hundred and fifty thousand dollars	\$100.00
(3) to replace a certificate of registration or for an additional certificate of registration	\$25.00
(4) for a certified copy of a document	\$25.00
(5) for an uncertified copy of a document	\$10.00



### **SCHEDULE 3**

**[Sections 20(8),  
21(3), 22(3), 23(3),  
26(4)(5)(6)]**

#### **ADMINISTRATIVE PENALTIES**

<b>Section of Act Breached</b>	<b>Type of Breach</b>	<b>Penalty Range</b>
Section 20	(a) Failure to comply with Notice as required by the Act where the Agency decides to institute an inquiry	\$3,000 up to \$20,000
	(b) Failure to provide explanation of records produced, where required to do so	\$3,000 up to \$20,000
Section 21	Supplying inaccurate or misleading information or withholding of information	\$3,000 up to \$20,000
Section 22	Failure to notify the Board of changes to registration information	\$1,000 up to \$10,000
Section 23	Failure to maintain any records required to be maintained	\$1,000 up to \$10,000

Passed by the House of Assembly this 11<sup>th</sup> day of October, 2012.

Ingrid Moses-Scatliffe,  
Speaker.

Phyllis Evans,  
Clerk of the House of Assembly.

## **LEGAL REPORT**

Non-profit organisations play an essential and complementary role in the social and economic development of society. Their efforts complement the activity of the government and business sectors in providing essential services, comfort and hope to those in need. The ongoing international campaign against terrorist financing has demonstrated that terrorist organisations exploit the non-profit sector to raise funds, among other things.

The Government of the Virgin Islands recognises this fact and seeks to facilitate the work and contribution of non-profit organisations through enactment of an appropriate legal and regulatory framework that provides stability and certainty for non-profit organisations and increases public confidence in the work and programmes of such organisations. The Government of the Virgin Islands will support initiatives that increase public understanding of the role and contributions of non-profit organisations.

By creating an environment in which nonprofit organisations can flourish, and freely and independently engage in activities for the benefit of the general public the Government of the Virgin Islands seeks to increase the understanding of philanthropy in the Virgin Islands, thereby promoting the betterment of Virgin Islands society, while protecting the non-profit sector from terrorist abuse.

In 2012, the FATF published its revised International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. The FATF Recommendations are used by more than 180 governments around the world to guide their efforts to combat terrorist financing and money laundering and provide a benchmark to assess each country's terrorist financing and anti-money laundering regime through a process of mutual evaluations.

Recommendations 8 of the FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation concerns non-profit organisations. It requires countries to review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism.

It is against this background that the proposed Non-Profit Organisations Act, 2012 is premised. The Act seeks to register and monitor the operations of non-profit organisations in the Virgin Islands.

This Act consists of six Parts.

Part I provides for preliminary provisions. Section 1 provides for the short title and commencement of the legislation. Section 2 deals with the definitions of various terms for the purposes of the legislation.

Part II provides for the establishment of the non-profit organisation Registration Board and the functions of the Board.

Section 3 provides for the establishment of a Non-profit Organisation Registration Board and the membership of the Board which shall comprise seven persons appointed by the Minister.

Section 4 provides for the functions of the Non-Profit Organisation Registration Board.

Section 5 provides for the tenure of office of the members of the Board.

Section 6 provides for the meetings, quorum and conduct of meetings the Board.

Section 7 provides for the resignation of members of the Board other than *ex officio* members.

Section 8 provides for a member of the Board to disclose any interest in a matter to be decided by the Board in advance of any consideration of the matter.

Section 9 provides that members who are not public officers may be paid a stipend as determined by the Minister, acting on the advice of the Minister of Finance.

Part III of the Act provides for the registration of non-profit organisations.

Section 10 provides for a public officer to be designated the Registrar of non-profit organisations in the Virgin Islands.

Section 11 requires non-profit organisations to register before they commence operations in the Virgin Islands.

Section 12 provides non-profit organisations to apply to the Board, through the Registrar, for registration. It would also provide for the documents to be lodged with the application.

Section 13 provides for the duration and renewal of the certificate of registration.

Section 14 authorises the Board to refuse to register or renew the registration of a non-profit organisation where the applicant does not comply with requirements of the Act or where the organisation is being used, or likely to be used for financing terrorism or money laundering. It also provides for an organisation to appeal to the Minister, within twenty-one days, decisions of the Board.

Section 15 provides for deregistration of non-profit organisations by the Agency where the non-profit organisation has contravened any provision of the law or

where a person authorised by the non-profit organisation requests the Agency to deregister it.

Section 16 requires the Registrar to maintain a register of non-profit organisations registered in accordance with the Act and to forward a list of all registered and deregistered organisations to the Agency.

Section 17 provides for the Registrar to publish annually, the names of all registered non-profit organisations as well as, the organisations which were deregistered.

Part IV of the Act provides for the supervision and monitoring of non-profit organisations.

Section 18 provides for the Financial Investigation Agency to be responsible for the supervision and monitoring of non-profit organisations in the Territory, in so doing Agency would monitor compliance by non-profit organisations with registration requirements and the relevant legislation, as well as monitor the effectiveness of the relevant legislation in protecting non-profit organisations against use for terrorist financing.

Section 19 gives the Agency the power, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by an organisation to enter the premises of a non-profit organisation to inspect records and to take copies or extracts of the records which are relevant to the performance of its functions.

Section 20 gives power to the Agency to institute an inquiry, for purposes of carrying out its functions, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by the organisation.

The Agency is authorised to require a person who directs or controls the activities of a non-profit organisation to furnish specific information including the records required to be kept under the Act, for the purpose of assessing the extent to which a non-profit organisation is used or may be used in the future for terrorist financing or money laundering.

Section 21 provides that a person who gives the Agency information that is false or misleading or withholds relevant information from the Agency commits an offence and is liable to pay a penalty.

Part V of the Act provides for the obligations of registered non-profit organisations.

Section 22 requires organisations to notify the Board of any changes in information provided to the Board at the time of registration.

Section 23 requires non-profit organisations to maintain records of its purposes, objectives and activities, as well as financial records explaining its transactions within and outside the Virgin Islands.

Section 24 provides for non-profit organisations to submit annual financial statements to the Board and where the gross annual income of the organisation exceeds two hundred-fifty thousand dollars the statements must be certified by a qualified accountant.

Part VI of the Act deals with miscellaneous provisions.

Section 25 gives the Agency the power to impose administrative penalties for failure to comply with the requirements of this Act.

Section 26 provides for the procedure to be followed by the Agency before imposing administrative penalties.

Section 27 provides for the matters to be taken into account in determining the appropriate administrative penalty.

Section 28 provides for an appeal to be made to the Minister where a person is aggrieved by a decision of the Agency to impose an administrative penalty.

Section 29 provides for a limitation period within which a penalty notice may be issued.

Section 30 provides for employees of the Agency and members of the Board to keep confidential any information relating to a non-profit organisation, except as required by a court or for the purposes of an inquiry under this Act.

Section 31 deals with transitional provisions. It would provide for existing non-profit organisations to register within ninety days of the Act coming into force. It would also provide for registered Friendly Societies to be treated as non-profit organisations for the purposes of this Act.

Section 32 provides for the Minister, after consultation with the Board, and on the approval of Cabinet to amend the schedules to the Act by Order.

Section 33 provides for the non-applicability of this Act to organisations licensed under the Banks and Trust Companies Act.

Section 34 provides a body corporate as well as officers of a body corporate to be liable for offence committed under the Act.

Section 35 gives the Minister power to make regulations for the better carrying into effect the provisions of the Act.

This Act was introduced in the House of Assembly on the 13<sup>th</sup> day of September, 2012, taken through its remaining stages and passed on the 11<sup>th</sup> day of October, 2012.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Dr. Christopher P. Malcolm  
Attorney General

Date: October, 2012