Revised Regulations of Anguilla: P98-2

PROCEEDS OF CRIME ACT (R.S.A. c. P98)

NON-PROFIT ORGANISATIONS REGULATIONS

NOTE: These Regulations are enabled under section 155 of the Proceeds of Crime Act, R.S.A. c. P98.

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PART 1

PRELIMINARY PROVISIONS

Interpretation

1. (1) In these Regulations—

"exempted non-profit organisation" means a non-profit organisation—

(a) the gross annual income of which does not exceed $5,000; and

(b) the assets of which do not exceed $10,000 in value;

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

"FATF Recommendations" means—

(a) the Forty Recommendations; and

(b) the 9 Special Recommendations;

issued by the FATF, incorporating the amendments made on 22 October 2004 and such other amendments as may, from time-to-time be made;

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

(a) income received from the provision of goods or services;

(b) rental income;

(c) interest and other income derived from its investments;

(d) donations of money or other property made to the organisation; and

(e) any grants made to the organisation;

"NPO legislation" means—

(a) the Proceeds of Crime Act;

(b) terrorist financing legislation and any Acts, regulations and other laws relating to terrorism and terrorist financing that are applicable to non-profit organisations;

(c) these Regulations; and

(d) any Code issued under section 163 of the Act that is applicable to non-profit organisations.

"NPO Register" means the register of non-profit organisations established and kept under section 4;

"NPO Supervisor" means the supervisory authority for non-profit organisations prescribed under section 2;

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"terrorist financing legislation" means—

(a) the Anti-terrorist Financing Order;

(b) the Terrorism (United Nations Measures) (Overseas Territories) Order 2001; and

(c) the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002.

PART 2

NPO SUPERVISOR

Prescribed supervisory authority

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

Functions and duties of NPO Supervisor

3. (1) The functions of the NPO Supervisor are—

(a) to act as the registration, supervision and enforcement authority for non-profit organisations;

(b) to monitor compliance—

(i) by non-profit organisations with the registration requirements of these Regulations, and

(ii) by registered non-profit organisations with the NPO legislation;

(c) to monitor the effectiveness of the NPO legislation in—

(i) protecting non-profit organisations from being used for terrorist financing, and

(ii) ensuring the compliance of Anguilla with the FATF Recommendations, as they apply to non-profit organisations;

(d) to undertake periodic reviews of the non-profit sector in Anguilla for the purpose of identifying the features and types of non-profit organisations that are at risk of being used for terrorist financing;

(e) to undertake outreach to non-profit organisations with the objective of protecting the non-profit sector in Anguilla from being used for terrorist financing; and

(f) to discharge such other functions as may be assigned to it under the Act, these Regulations or any other Act.

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

(a) raising awareness of non-profit organisations concerning the risks of terrorism and terrorist financing abuse and the measures available to protect against such abuse; and

(b) promoting transparency, accountability, integrity and public confidence in the administration and management of non-profit organisations.

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(3) Where it forms the view that the NPO legislation is not effective in protecting non-profit organisations from being used for terrorist financing, the NPO Supervisor shall make a report to the Governor in Council and provide the Governor in Council with its recommendations for appropriate changes in the NPO legislation.

PART 3

REGISTRATION OF NON-PROFIT ORGANISATIONS

Register of non-profit organisations

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

(2) The NPO Register shall contain the following information in respect of each non-profit organisation that has been registered in accordance with section 7—

(a) the name, address in Anguilla and the telephone number and e-mail address, if any, of the non-profit organisation;

(b) the purpose, objectives and activities of the non-profit organisation;

(c) the identity of the persons who own, control or direct the non-profit organisation;

(d) the date of registration and, if applicable, de-registration of the non-profit organisation;

(e) such other information as the NPO Supervisor considers appropriate.

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

(a) records or stores information magnetically, electronically or by other means; and

(b) permits the information recorded or stored to be inspected and reproduced in legible and usable form.

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

Requirement to register

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

(a) incorporated, formed or otherwise established in Anguilla; or

(b) administered in or from within Anguilla.

(2) An exempted non-profit organisation is not required to be registered under this section.

(3) A non-profit organisation that contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding $50,000.

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Application to register

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

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

(a) be in writing and in the form specified by the NPO Supervisor;

(b) be signed by a person acting on behalf of the non-profit organisation; and

(c) be accompanied by—

(i) such documents or information as may be specified by these Regulations or on the application form, and

(ii) a non-refundable registration fee of $150.

(R.A. 23/2010, s. 2)

(3) The NPO Supervisor may require an applicant to—

(a) provide it with such documents and information, in addition to what is specified in subparagraph (2)(c)(i), as it reasonably requires to determine the application and any such documents and information shall be in such form as the NPO Supervisor may require; and

(R.A. 23/2010, s. 2)

(b) verify any document and information provided in support of an application in such manner as the NPO Supervisor may specify.

(4) If, before the determination by the NPO Supervisor of an application, or the registration of a non-profit organisation—

(a) there is a material change in any information or documentation provided by or on behalf of the applicant to the NPO Supervisor in connection with the application; or

(b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading;

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

Registration

7. (1) Following the receipt of an application and registration fee under section 6 and any additional documents or information that it has required under section 6(3)(a), unless the NPO Supervisor refuses the application under section 8(1), the NPO Supervisor shall—

(a) if the application is for the registration of an established non-profit organisation, register the non-profit organisation in the NPO Register and provide the applicant and the non-profit organisation with written notice of its registration; or

(b) if the application relates to a proposed non-profit organisation, provide the applicant with written notice of its intention to register the proposed non-profit organisation, provided that the non-profit organisation is established within a period of 10 days from the date of the notice.

(R.A. 23/2010, s. 3)

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(2) Subject to subsection (3), if—

(a) the NPO Supervisor provides notice of its intention to register a proposed non-profit organisation; and

(b) within 10 days of the date of the notice, the NPO Supervisor is provided with satisfactory evidence that the proposed non-profit organisation has been established;

the NPO Supervisor shall register the NPO with effect from the date of its establishment.

(3) Notwithstanding subsection (2), the NPO Supervisor may refuse to register a non-profit organisation if, following the provision of a notice under paragraph (1)(b), the Supervisor forms the opinion that there are grounds under section 8(1) for refusing the application for registration.

Refusal of application to register

8. (1) The NPO Supervisor may refuse an application for registration if—

(a) the application does not comply with section 6(1) and (2);

(b) the applicant fails to provide any information or documents required by the NPO Supervisor under section 6(3);

(c) the NPO Supervisor is of the opinion that—

(i) the organisation is not, or the proposed organisation will not be, a non-profit organisation within the meaning of the Act,

(ii) the non-profit organisation or proposed non-profit organisation is being used for terrorist financing or it is intended or likely that it will be used for terrorist financing, or

(iii) it is contrary to the public interest for the non-profit organisation to be registered; or

(d) the non-profit organisation, having previously been registered under these Regulations, has been de-registered under section 10.

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

De-registration

9. (1) The NPO Supervisor—

(a) shall de-register a registered non-profit organisation if—

(i) the non-profit organisation is convicted of an offence under the Act, the terrorist financing legislation or these Regulations,

(ii) a civil forfeiture order or a cash forfeiture order is made against the non-profit organisation under the Act,

(iii) a forfeiture order is made against the non-profit organisation under article 15 or 16 of the Anti-terrorist Financing Order, or

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(iv) subject to subsection (2), a person authorised on behalf of the non-profit organisation requests that the non-profit organisation be de-registered,

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

(i) has breached these Regulations or any Code made under section 163 of the Act that applies to it, or

(ii) no longer exists or is not carrying out, and is not likely to carry out, the activities specified for the non-profit organisation in the NPO Register; and

(c) may de-register a registered non-profit organisation if, in the opinion of the NPO Supervisor, it is in the public interest for the non-profit organisation to be de-registered.

(2) The NPO Supervisor shall not de-register a non-profit organisation under subparagraph (1)(a)(iv) if the NPO Supervisor is of the opinion that the de-registration of the non-profit organisation would hinder the NPO Supervisor in the exercise of their functions.

(R.A. 23/2010, s. 4(a))

(3) In determining whether it is in the public interest for a registered non-profit organisation to be de-registered, the NPO Supervisor may only take account of matters that suggest that the non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing.

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

(a) the grounds upon which it intends to de-register the non-profit organisation; and

(b) that unless the non-profit organisation, by written notice, shows good reason why it should not be de-registered, it will be de-registered on a date not less than 14 days after the date of the notice.

(R.A. 23/2010, s. 4(b))

(5) If it is not practicable for the NPO Supervisor to give notice to the non-profit organisation under subsection (4), the Supervisor may de-register the non-profit organisation without giving such notice.

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

PART 4

OBLIGATIONS OF REGISTERED NON-PROFIT ORGANISATIONS

Change of information to be provided to NPO Supervisor

10. (1) If there is a change in any information provided to the NPO Supervisor, whether the information was provided before or after its registration, a registered non-profit organisation shall give the NPO Supervisor written notice of the change, as soon as reasonably practicable.

(2) Changes required to be provided under this section include changes to its purposes, objectives and activities.

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Records

11. (1) A registered non-profit organisation shall keep—

(a) records of—

(i) its purposes, objectives and activities, and

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

(b) financial records that—

(i) show and explain its transactions, within and outside Anguilla, and that are sufficiently detailed to show that its funds have been used in a manner consistent with its purposes, objectives and activities, and

(ii) show the sources of its gross income.

(2) A registered non-profit organisation shall keep the records specified in subsection (1) for a period of at least 5 years.

(3) A registered non-profit organisation that contravenes this section is guilty of an offence and is liable on summary conviction, to a fine not exceeding $20,000.

Provision of records to the NPO Supervisor

12. (1) The NPO Supervisor may, on the grounds specified in subsection (2), by written notice to a registered non-profit organisation, require it to produce any record that the non-profit organisation is required to keep under section 11.

(2) The NPO Supervisor may give notice under subsection (1) only where it reasonably requires the records specified in the notice to assess the extent, if any, to which the registered non-profit organisation is being used, or may in the future be used, for, or to assist in, terrorist financing.

(3) A notice given under subsection (1)—

(a) shall specify—

(i) the records which the NPO Supervisor requires to be produced,

(ii) the place where the records specified in the notice shall be produced to the NPO Supervisor, which may be by inspection at the premises of the non-profit organisation, and

(iii) the period within which the records shall be produced; and

(b) may require the documents to be produced to a person or persons specified in the notice.

(4) The NPO Supervisor may require the person who produced the records or any person who appears to be an officer or employee of the non-profit organisation or otherwise associated with it, to provide an explanation of the records.

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(5) The NPO Supervisor may take copies or extracts of the records produced under this section or may retain the original records for a period not exceeding—

(a) a period of one year; or

(b) such longer period as the Court may, on the application of the NPO Supervisor, specify.

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

(7) A registered non-profit organisation that fails to comply with a notice issued under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding $50,000.

(8) A person required to provide an explanation of any records produced under this section who, without reasonable excuse, fails to provide the explanation, is guilty of an offence and is liable on summary conviction, to a fine not exceeding $50,000.

PART 5

MISCELLANEOUS

Offence, false and misleading information

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

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

(b) recklessly provides any information, makes any representation or submits any document or return that is false or materially misleading;

is guilty of an offence and is liable on summary conviction to a fine not exceeding $50,000.

Citation

14. These Regulations may be cited as the Non-Profit Organisations Regulations, Revised Regulations of Anguilla, P98-2.

Transitional provision

15. A non-profit organisation to which section 5 applies which is in existence at the commencement of these Regulations, does not contravene section 5 if, on or before 31 October 2010, it—

(a) is registered;

(b) makes an application in compliance with section 6; or

(c) becomes an exempted non-profit organisation.

(R.A. 23/2010, s. 5)

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