

TURKS AND CAICOS ISLANDS
PROCEEDS OF CRIME ORDINANCE
NON-PROFIT ORGANISATIONS (AMENDMENT)
REGULATIONS 2018

(Legal Notice 40 of 2018)

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MADE by the Governor under sections 174 and 175 of the Proceeds of Crime Ordinance.

Citation and commencement

1. These Regulations may be cited as the Non-Profit Organisations (Amendment) Regulations 2018 and shall come into operation on 15 August 2018.

Interpretation

2. In these Regulations “principal Regulations” means the Non-Profit Organisations Regulations.

Regulation 2 amended

3. The principal Regulations are amended in regulation 2(1) by inserting in the appropriate alphabetical positions the following definitions—

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

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

“non-profit organisation” has the meaning specified in section 2(1) of the Proceeds of Crime Ordinance;”.

Regulation 6 amended

4. The principal Regulations are amended in regulation 6—

(a) by inserting after subregulation (7) the following—

“(7A) A non-profit organisation shall not solicit or cause to be solicited contributions from the public, or any section of the public, within the Islands or elsewhere, unless the non-profit organisation is registered or exempt from the obligation to register under these Regulations.”;

(b) in subregulation (8) by deleting “\$30,000” and substituting “\$50,000”.

Regulation 7 amended

5. The principal Regulations are amended in regulation 7(2)—

(a) by deleting paragraph (b) and substituting the following—

“(b) signed by a controller of the non-profit organisation.”;

(b) by deleting paragraph (c) and substituting the following—

(c) accompanied by—

(i) a copy of the governing document of the organisation;

(ii) such other documents or information as may be specified by these Regulations or as the NPO Supervisor may reasonably require; and

(iii) a non-refundable fee of \$150.”;

(c) by inserting after subregulation (2) the following—

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

(a) the name of the organisation;

(b) the officers of the organisation;

(c) a declaration that the organisation is a non-profit organisation;

(d) a statement of the organisation’s purpose, objectives and activities;

(e) a statement of the manner of electing the governing body of the organisation;

(f) the organisational structure of the organisation;

(g) the duties and powers of the governing body including procedures for financial decisions of the organisation;

(h) provisions limiting the objects of the organisation to—

(i) pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income solely to promoting those purposes, and

- (ii) prohibit the organisation from distributing any part of the profits generated to members, shareholders or office-bearers except for the payment in cash or in specie to any member or office-bearer in reimbursement of any expense or in consideration of any property made available or services provided by the member or office-bearer for the benefit of the company in furthering its purposes.
- (i) state the procedure for changing the governing instrument;
- (j) require that, on the closing of the organisation, any surplus assets are not to be paid or transferred to its members or office-bearers but must be transferred to another non-profit organisation, whether in the Islands or elsewhere—
 - (i) specified in the governing instrument; or
 - (ii) designated by resolution of the members at a meeting of the organisation called for the purpose of making such a designation or for purposes that include the making of such a designation.”.

Regulation 9 amended

6. The principal Regulations are amended in regulation 9 by inserting after subregulation (1) the following—

“(1A) The NPO Supervisor may refuse an application for registration if—

- (a) the non-profit organisation is established for illegal purposes;
- (b) the non-profit organisation does not have a connection with the Islands;
- (c) the information represented on the application for registration of the non-profit organisation is manifestly incorrect;
- (d) the name of the non-profit organisation—
 - (i) is identical to a name by which a non-profit organisation in existence is already registered or so nearly resembles such name or translated name so as to be calculated to deceive;
 - (ii) contains the words “royal”, “imperial” or “empire” or, in the opinion of the NPO Supervisor suggests, or is calculated to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;

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

Regulation 10A inserted

7. The principal Regulations are amended by inserting after regulation 10 the following—

“Controllers

“10A. A non-profit organisation shall have at least two persons as its controller.”.

Regulation 11 substituted

8. The principal Regulations are amended by deleting regulation 11 and substituting the following—

“Changes of information to be provided to NPO Supervisor

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

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

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

- (a) changes to the non-profit organisation’s purposes, objectives and activities;
- (b) changes of office-bearers and their addresses and other contact details;
- (c) changes of the non-profit organisation’s address and other contact details; and
- (d) changes to the governing instrument (before making any changes to a governing instrument, it is advisable to ensure that these changes will not affect the NPO’s non-profit status).

(4) It shall be the duty of a controller of a non-profit organisation to ensure that the NPO Supervisor is notified of any change in information within fourteen days of such change.”.

Regulation 14 amended

9. The principal Regulations are amended in regulation 14 by deleting subregulation (1) and substituting the following—

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

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

(1A) A controller of a non-profit organisation shall prepare and submit annually to the NPO Supervisor, financial statements of the organisation’s revenue and expenditure and shall ensure that the financial statements show and explain all the transactions of the non-profit organisation and disclose at any time its financial position.”.

Regulation 16 amended

10. The principal Regulations are amended in regulation 16—

- (a) in subregulation (1) by deleting paragraph (a) and substituting the following—

““disciplinary violation” means a contravention of—

- (a) the requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees;
 - (b) the requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations;
 - (c) the requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year;
 - (d) the requirement to keep financial records in accordance with regulation 14(1).”;
- (b) by inserting after subregulation (3) the following—

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

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

(3B) An administrative penalty imposed on a non-profit organisation shall be a penalty imposed on the controllers of the non-profit organisation.”;

- (c) by deleting subregulation (4) and substituting the following—

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

The requirement to keep records of the identity of the persons who control or direct the activities of the organisation, including as appropriate, senior officers, directors and trustees	A maximum of \$50,000
The requirement to keep records of identity, credentials and good standing of beneficiaries and associate non-profit organisations	A maximum of \$50,000
The requirement to keep a list of donors who have donated in excess of \$10,000 as a single donation or cumulatively, during the year	A maximum of \$50,000
The requirement to keep financial records in accordance with regulation 14(1)	A maximum of \$50,000

Made this 27th day of July 2018.

DR. JOHN FREEMAN
GOVERNOR

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations make amendments to the principal Regulations to ensure compliance with FATF AML/CFT requirements.