

M O N T S E R R A T

STATUTORY RULES AND ORDERS

NO. 24 OF 2010

NON-PROFIT ORGANISATIONS REGULATIONS, 2010

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NO. 24 OF 2010

THE PROCEEDS OF CRIME ACT, 2010

NON-PROFIT ORGANISATIONS REGULATIONS, 2010

THE NON-PROFIT ORGANISATIONS REGULATIONS MADE BY THE GOVERNOR IN COUNCIL UNDER SECTIONS 164 AND 175 OF THE PROCEEDS OF CRIME ACT, 2010.

PART I

PRELIMINARY PROVISIONS AND INTERPRETATION

Short title

1. These Regulations may be cited as the Non-Profit Organisations Regulations, 2010.

Interpretation

2. In these Regulations—

“**Act**” means the Proceeds of Crime Act, 2010;

“**exempted non-profit organisation**” means a non-profit organisation—

- (a) the gross annual income of which does not exceed \$27,000; and
- (b) the assets of which do not exceed \$55,000 in value;

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

“**FATF Recommendations**” means—

- (a) the Forty Recommendations, and
- (b) the Nine Special Recommendations,

issued by the FATF, incorporating the amendments made on 22 October 2004 and such other amendments as may 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 it; and
- (e) any grants made to it;

“Non-Profit Organisation legislation” or **“NPO legislation”** means—

- (a) the Act;
- (b) any Acts and regulations relating to terrorism and terrorist financing that are applicable to non-profit organisations;
- (c) these Regulations; and
- (d) any Code issued under section 176 of the Act that is applicable to non-profit organisations;

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

“NPO Supervisor” means the supervisory authority for non-profit organisations prescribed under regulation 3;

“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

3. The Financial Services Commission is the NPO Supervisor.

Functions and duties of NPO Supervisor

4. (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 Non-Profit Organisation legislation;
 - (c) to monitor the effectiveness of the Non-Profit Organisation legislation in—

- (i) protecting non-profit organisations from being used for terrorist financing; and
 - (ii) ensuring the compliance of Montserrat with the FATF Recommendations, to the extent they apply to non-profit organisations;
 - (d) to undertake periodic reviews of the non-profit organisation sector in Montserrat for the purpose of identifying the features and types of non-profit organisation 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 organisation sector in Montserrat from being used for terrorist financing; and
 - (g) to discharge such other functions as may be assigned under the Act, these Regulations or any other legislation.
- (2) The outreach function undertaken by the NPO Supervisor must include activities or measures to—
- (a) raise 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) promote transparency, accountability, integrity and public confidence in the administration and management of non-profit organisations.
- (3) Where the NPO Supervisor forms the view that the Non-Profit Organisation legislation is not effective in protecting non-profit organisations from being used for terrorist financing, the NPO Supervisor must make a report to the Governor in Council and provide the Governor in Council with recommendations for appropriate changes to the Non-Profit Organisation legislation.

PART 3

REGISTRATION OF NON-PROFIT ORGANISATIONS

Register of non-profit organisations

5. (1) The NPO Supervisor must establish and keep a register of non-profit organisations to be known as the “Non-Profit Organisation Register”.
- (2) The Non-Profit Organisation Register shall contain the following information in respect of each non-profit organisation that has been registered in accordance with regulation 8—
- (a) the name, address in Montserrat and contact details 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; and
 - (e) such other information as the NPO Supervisor considers appropriate.
- (3) The Non-Profit Organisation Register and the information contained in any document filed with the NPO Supervisor shall 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 and on payment of a fee of \$10, require the NPO Supervisor to provide details of the information entered on the Non-Profit Organisation Register in respect of a registered non-profit organisation.

Requirement to register

6. (1) A non-profit organisation specified in sub-regulation (2) must be registered in the Non-Profit Organisation Register.

(2) This regulation applies only to a non-profit organisation, other than an exempted non-profit organisation, that is—

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

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

Application to register

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

(2) The application must—

- (a) be in writing and in the form specified by the NPO Supervisor;
- (b) be signed by a person authorised to act on behalf of the non-profit organisation; and
- (c) be accompanied by documents or information as may be specified by these Regulations or on the application form.

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

- (a) provide it with such documents and information, in addition to those specified in sub-regulation (2)(c), as it reasonably requires to determine the application and any such information shall be in such form as the NPO Supervisor may require; or
- (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

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

- (a) if the application is for the registration of an established non-profit organisation, register the non-profit organisation in the Non-Profit Organisation 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.

(2) Subject to sub-regulation (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 must register the Non-Profit Organisation with effect from the date of its establishment.

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

Refusal of application to register

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

- (a) the application does not comply with regulation 7(1) and (2);
- (b) the applicant fails to provide any information or documents required by the NPO Supervisor under regulation 7(3);
- (c) the NPO Supervisor is of the opinion that—
 - (i) the organisation is not, or the proposed organisation will not be, a non-profit organisation within the meaning specified in section 2 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 regulation 10.

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

De-registration

10. (1) The NPO Supervisor—

- (a) must 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;

- (iv) subject to sub-regulation (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 176 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 Non-Profit Organisation Register;
- (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 must not de-register a non-profit organisation at its request 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 its functions.

(3) In determining whether it is in the public interest for a registered non-profit organisation to be de-registered, the NPO Supervisor must 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) Before de-registering a non-profit organisation under this regulation, the NPO Supervisor must give written notice to the non-profit organisation stating—

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

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

(6) Where the NPO Supervisor de-registers a non-profit organisation, it shall mark the name of the non-profit organisation in the Non-Profit Organisation 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

11. (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 regulation include changes to its purposes, objectives and activities.

Records

12. (1) A registered non-profit organisation must 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 Montserrat, 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 sub-regulation (1) for a period of at least five years.
- (3) A registered non-profit organisation that contravenes this regulation commits an offence and is liable on summary conviction, to a fine not exceeding \$20,000.

Provision of records to the NPO Supervisor

13. (1) The NPO Supervisor may, on the ground specified in sub-regulation (2), by written notice to a registered non-profit organisation, require it to produce the records that the non-profit organisation is required to keep under regulation 12, or any of those records.

(2) The NPO Supervisor may give notice under sub-regulation (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 to assist terrorist financing.

(3) A notice given under sub-regulation (1)—

(a) shall specify—

- (i) the records which the NPO Supervisor requires the registered non-profit organisation to produce;
- (ii) the place where the records specified in the notice must 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 must be produced; and

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

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

(5) The NPO Supervisor may take copies or extracts of the records produced under this regulation or may retain the original records for—

(a) a period not exceeding one year; or

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

(6) A registered non-profit organisation that fails to comply with a notice issued under sub-regulation (1) commits an offence and is liable on summary conviction, to a fine not exceeding \$50,000.

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

PART 5**MISCELLANEOUS****Offence, false and misleading information**

14. A person who for any purpose under these Regulations, with intent to deceive, 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 commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.

Transitional provisions

15. A non-profit organisation to which regulation 6 applies which is in existence at the commencement of these Regulations, does not contravene regulation 6 if, within sixty days of the coming into force of these Regulations it—

- (a) is registered; or
- (b) becomes an exempted non-profit organisation.

Made by the Governor-in-Council this 4th day of March, 2010.

Judith Jeffers
CLERK OF COUNCIL

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CLERK OF COUNCIL