

Charities (Amendment) Bill

Bill No. 49/2017.

Read the first time on 6 November 2017.

A BILL

intituled

An Act to amend the Charities Act (Chapter 37 of the 2007 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Charities (Amendment) Act 2018 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the Charities Act is amended —

(a) by deleting the definition of “key officer” in subsection (1) and substituting the following definition:

“ “key officer”, in relation to —

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(a) a charity;

(b) a person that is a governing board member of a charity; or

(c) a person that is a member of a charity,

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means an individual who, whether or not an employee of the charity or person (as the case may be) and by whatever name called, and whether acting alone or together with any other person —

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(i) has general control and management of all or any aspect (including the financial aspect) of the administration of the charity or person; or

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(ii) provides advice to the charity or person on the control and management mentioned in paragraph (i), other than as a professional engaged or retained pursuant to a contract for service to provide such advice in that professional capacity;”;

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(b) by inserting, immediately after the definition of “document”, the following definition:

“ “electronic record” has the same meaning as in the Electronic Transactions Act (Cap. 88);”;

(c) by inserting, immediately after the definition of “public accountant”, the following definition: 5

“ “public authority” means —

(a) an Organ of State or a public officer of the Organ of State;

(b) a ministry or department of the Government or a public officer of the ministry or department; or 10

(c) a public authority established by or under any public Act for a public purpose or an officer or an employee of the public authority;”; and 15

(d) by inserting, immediately after subsection (3), the following subsection:

“(4) In this Act, a person’s conviction is treated as spent — 20

(a) if the criminal record under the Registration of Criminals Act (Cap. 268) of the person’s conviction becomes spent under Part IIA of that Act;

(b) if the person has received a free pardon for the offence; or 25

(c) in the case of a conviction by a court of a country or territory outside Singapore, if circumstances in that country or territory similar to paragraph (a) or (b) occur.”. 30

Amendment of section 12

3. Section 12 of the Charities Act is amended —

(a) by deleting the words “statements of accounts” wherever they appear in subsection (1)(b) and substituting in each case the words “financial statements”;

(b) by deleting the word “The” in subsection (3) and substituting the words “Subject to subsection (4), the”;

(c) by deleting the word “from” in subsection (3) and substituting the word “after”; and

(d) by deleting subsection (4) and substituting the following subsections:

“(4) Where a charity ceases to exist before the end of the minimum period in subsection (3) for preserving of accounting records in respect of the charity —

(a) the last governing board members of the charity; or

(b) any one or more of the last governing board members of the charity, as may be agreed by the last governing board members,

must preserve the accounting records to the end of that period, unless the Commissioner allows the accounting records to be earlier destroyed or otherwise disposed of.

(5) Subsection (4) also applies to a charity that ceases to exist before the date of commencement of section 3(d) of the Charities (Amendment) Act 2018, if the minimum period in subsection (3) as it applies to any accounting record of the charity has not ended on that date.”.

Amendment of section 13

4. Section 13 of the Charities Act is amended —

(a) by deleting the words “a statement of accounts” in subsection (1)(a) and substituting the words “financial statements”;

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(b) by deleting subsections (2) and (3) and substituting the following subsections:

“(2) Subject to subsection (3), the governing board members of a charity must preserve any financial statement or other accounts and statements prepared by them for the purposes of regulations made under this section, for at least 5 years after the end of the financial year to which the financial statement or accounts and statements, as the case may be, relate.

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(3) Where a charity ceases to exist before the end of the minimum period in subsection (2) for preserving financial statements or other accounts and statements in respect of the charity —

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(a) the last governing board members of the charity; or

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(b) any one or more of the last governing board members of the charity, as may be agreed by the last governing board members,

must preserve the financial statements or other accounts and statements to the end of that period, unless the Commissioner allows the financial statements or other accounts and statements, as the case may be, to be earlier destroyed or otherwise disposed of.

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(4) Subsection (3) also applies to a charity that ceases to exist before the date of commencement of section 4(b) of the Charities (Amendment) Act 2018, if the minimum period in subsection (2) as it applies to any financial statement or other accounts and statements of the charity has not ended on that date.”; and

(c) by deleting the section heading and substituting the following section heading:

“Financial statements”.

Amendment of section 16

5. Section 16 of the Charities Act is amended —

(a) by inserting, immediately after the word “charity” in subsection (2), the words “that is a registered charity or an exempt charity,”;

(b) by deleting the words “such annual report shall have attached to it the statement of accounts” in subsection (3) and substituting the words “annual report of a registered charity or an exempt charity must have attached to it the financial statements”;

(c) by deleting the words “on that statement of accounts or on that account and statement” in subsection (3)(a) and substituting the words “on the financial statements or account and statement”; and

(d) by inserting, immediately after subsection (5), the following subsections:

“(6) Subject to subsection (7), the governing board members of a charity must preserve every annual report prepared under this section for a financial year that ends on or after the date of commencement of section 5(d) of the Charities (Amendment) Act 2018 in respect of the charity, for at least 5 years after the end of the financial year of the charity to which the report relates.

(7) Where a charity ceases to exist before the end of the minimum period in subsection (6) for preserving annual reports in respect of the charity —

(a) the last governing board members of the charity; or

(b) any one or more of the last governing board members of the charity, as may be agreed by the last governing board members,

must preserve the annual reports to the end of that period, unless the Commissioner allows the annual reports to be earlier destroyed or otherwise disposed of.

(8) Subsection (7) also applies to a charity that ceases to exist before the date of commencement of section 5(d) of the Charities (Amendment) Act 2018, if the minimum period in subsection (6) as it applies to any annual report of the charity has not ended on that date.”.

Amendment of section 17

6. Section 17(3) of the Charities Act is amended by deleting the words “statement of accounts” in paragraph (a) and substituting the words “financial statements”.

Repeal and re-enactment of section 18

7. Section 18 of the Charities Act is repealed and the following section substituted therefor:

“Offences

18. Any person who, without reasonable excuse, is in default in relation to any requirement imposed by section 12(3) or (4), 13(2) or (3), 16(2), (6) or (7) or 17(2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not

exceeding \$100 for every day or part of a day during which the offence continues after conviction.”.

Amendment of section 25

8. Section 25 of the Charities Act is amended —

5 (a) by inserting, immediately after the words “a governing board member or key officer” in subsection (4), the words “of a charity”;

(b) by deleting paragraphs (a) and (b) of subsection (4) and substituting the following paragraphs:

10 “(a) has been convicted, whether in Singapore or in any other country or territory, and whether before, on or after the date of commencement of section 8(b) of the Charities (Amendment) Act 2018, of an offence involving moral turpitude (but not one mentioned in section 27(1)(a)) and the conviction is not spent;

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(b) acts as a governing board member or key officer of the charity despite being disqualified under section 27(1) or (6);”;

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(c) by inserting, immediately after subsection (4), the following subsections:

25 “(4A) Where a person resigns as a trustee, a governing board member, an officer, an agent or an employee of a charity —

(a) after the Commissioner has instituted an inquiry under section 8 with respect to the charity (whether before, on or after the date of commencement of section 8(c) of the Charities (Amendment) Act 2018), but before the Commissioner (with the consent of the Attorney-General) makes an order under subsection (1)(i) removing the person; or

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(b) after the Commissioner has given notice (whether before, on or after the date of commencement of section 8(c) of the Charities (Amendment) Act 2018) under section 29(3) of intention to remove the person under subsection (4), but before the Commissioner makes the order,

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the Commissioner may, if the Commissioner is satisfied that the person is a person against whom the Commissioner would have made an order of removal under subsection (1)(i) or (4) if the person had not resigned, make an order declaring the person as such.

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(4B) Section 29 applies to an order under subsection (4A) as it applies to an order of removal under subsection (1) or (4).

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(4C) Subject to section 42, an order of removal under subsection (1) or (4), and an order under subsection (4A), remains in force despite any ground on which the order was made ceasing to exist or have effect (including a conviction becoming spent).”;

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(d) by deleting subsection (9) and substituting the following subsections:

“(9) An order of suspension under subsection (2)(i) must be for a fixed period, but the Commissioner may make one or more further extensions of that order, each for a fixed period.

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(9A) The total period of suspension under an order of suspension under subsection (2)(i) and every extension under subsection (9) of such an order must not exceed 24 months.

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(9B) Without affecting section 42, any order of suspension under subsection (2)(i) and any extension under subsection (9) may make provision for any matter arising out of the suspension; and if there is any

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inconsistency amongst the provisions made by any of the orders, the latest in time prevails.

(9C) For the purposes of subsection (9B), provision may be made in particular —

5 (a) to enable any person to execute any instrument in the name of the person suspended or to otherwise act for the person suspended; and

10 (b) in the case of a governing board member of a charity, for adjusting any rules governing the proceedings of the governing board members to take account of the reduction in the number capable of acting.”;

15 (e) by inserting, immediately after the words “subsection (2)” in subsection (10), the words “or (4A)”;

 (f) by inserting, immediately after subsection (10), the following subsection:

20 “(10AA) Before exercising any jurisdiction under subsection (4A), the Commissioner must give notice of the Commissioner’s intention to do so to —

25 (a) the person against whom the Commissioner proposes to make the order under that subsection, unless the person cannot be found or has no known address in Singapore; and

 (b) each of the governing board members of the charity from which the person resigned, if the Commissioner thinks it necessary to do so.”;

30 (g) by deleting the words “subsection (10)” in subsection (10A) and substituting the words “subsection (10) or (10AA)”;

 (h) by inserting, immediately after the words “key officer” in subsection (10A), the words “or person”.

Repeal and re-enactment of sections 27 and 28

9. Sections 27 and 28 of the Charities Act are repealed and the following sections substituted therefor:

“Disqualifications and effects of removal

27.—(1) Subject to subsections (3) and (4), a person is disqualified from acting in any capacity specified in subsection (2) on the happening of any of the following, whether before, on or after the date of commencement of section 9 of the Charities (Amendment) Act 2018: 5

(a) the person is convicted, whether in Singapore or in any other country or territory, of any offence involving — 10

(i) dishonesty (including fraud, corruption, bribery and deception); or

(ii) terrorism, terrorism financing or money laundering; 15

(b) the person becomes an undischarged bankrupt;

(c) the person makes a composition or arrangement with, or grants a trust deed for, the person’s creditors and has not been discharged in respect of it; 20

(d) the person becomes subject to any disqualification under section 149, 149A or 154 of the Companies Act (Cap. 50).

(2) The capacities for the purposes of subsection (1) are the following: 25

(a) any member of the governing body or any key officer of —

(i) any charity;

(ii) any person that is a governing board member of any charity; or 30

(iii) any person that is a member of any charity;

(b) any trustee for any charity.

(3) However, a person who is subject to a disqualification in subsection (1)(b) or (d) may act in a capacity specified in subsection (2) in relation to a charity or person (as the case may be) that is a company, if the person subject to the disqualification has leave under section 148, 149 or 154 of the Companies Act to act as a director, or to (directly or indirectly) take part in or be concerned in the management, of that company.

(4) A person ceases to be disqualified under subsection (1) in the following applicable circumstances:

- (a) for disqualification under subsection (1)(a), when the person's conviction is spent;
- (b) for disqualification under subsection (1)(b), when the person is discharged from bankruptcy;
- (c) for disqualification under subsection (1)(c), when the person is discharged from the composition, arrangement or trust deed;
- (d) for disqualification under subsection (1)(d), when the period of disqualification ends.

(5) To avoid doubt, nothing in this section affects section 7E(2)(d) of the Registration of Criminals Act (Cap. 268).

(6) A person is disqualified from acting in any capacity specified in subsection (7) on the happening of all of the following, whether before, on or after the date of commencement of section 9 of the Charities (Amendment) Act 2018:

- (a) the person is removed as a governing board member, an officer, an agent or an employee, of a charity or trustee for a charity by an order made by the Commissioner under section 25(1)(i) or by the High Court, or an order is made under section 25(4A) declaring that the person is one against whom the Commissioner would have made an order of removal under section 25(1)(i); and

(b) the removal is or would have been on the ground of any misconduct or mismanagement in the administration of the charity —

- (i) for which the person was responsible;
- (ii) to which the person was privy; or
- (iii) which the conduct of the person contributed to or facilitated.

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(7) The capacities for the purposes of subsection (6) are the following:

- (a) any capacity specified in subsection (2);
- (b) each of the relevant capacities as follows:
 - (i) if the person was removed as an officer of a charity, any officer of that charity;
 - (ii) if the person was removed as an agent of a charity, any agent of that charity;
 - (iii) if the person was removed as an employee of a charity, any employee of that charity.

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(8) A person who is removed (whether before, on or after the date of commencement of section 9 of the Charities (Amendment) Act 2018) as a governing board member or a key officer of a charity by an order made under section 25(4), is disqualified from acting —

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- (a) as any governing board member of that charity; and
- (b) as any key officer of that charity.

(9) Where an order is made under section 25(4A) declaring that a person is one against whom the Commissioner would have made an order of removal under section 25(4) in respect of a charity, the person is disqualified from acting —

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- (a) as any governing board member of that charity; and
- (b) as any key officer of that charity.

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Persons acting in capacity from which disqualified

28.—(1) Any person who acts in a capacity that the person is by reason of section 27 disqualified from acting in (called in this section a disqualified capacity) shall be guilty of an offence.

5 (2) Any thing done by the person acting in a disqualified capacity is not invalid by reason only of the person's disqualification.

(3) Where the Commissioner is satisfied that any person —

(a) has acted in a disqualified capacity; and

10 (b) has received any money by way of remuneration or for expenses, or any benefit in kind, for acting in that disqualified capacity,

then, the Commissioner may by order direct the person to repay the whole or any part of the money, or benefit (at the monetary value determined by the Commissioner), received.

15 (4) If the person to whom the order of the Commissioner under subsection (3) is given fails without reasonable excuse to comply with the order within the time specified in the order —

(a) the person shall be guilty of an offence; and

20 (b) any amount under the order that is not repaid accrues and is recoverable as a debt due from that person to the person who paid the amount, or provided the benefit represented by the amount, to the firstmentioned person.

25 (5) A person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues after conviction.”.

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Amendment of section 39

10. Section 39(1) of the Charities Act is amended by deleting the definition of “fund-raising appeal” and substituting the following definition:

“ “fund-raising appeal” means —

(a) an appeal by any person, whether made expressly or impliedly, for money or other property (whether as consideration or otherwise) that is made in association with a representation that the whole or any part of the money or property, or proceeds or returns from the money or property, will be applied for any charitable, benevolent or philanthropic purpose; or

(b) the receipt by any person of any money or other property (whether as consideration or otherwise) that is given in whole or in part for any charitable, benevolent or philanthropic purpose;”.

Amendment of section 39B

11. Section 39B of the Charities Act is amended —

(a) by inserting, immediately after subsection (1), the following subsections:

“(1A) Without affecting subsection (1) and despite any exemption or permit granted under section 39A, the Commissioner may by order in the *Gazette* suspend the conduct of any fund-raising appeal if the Commissioner has reason to suspect that the circumstances in paragraph (i), (ii), (iii), (iv) or (v) of subsection (1) apply to the fund-raising appeal.

(1B) An order of suspension under subsection (1A) must be for a fixed period, but the Commissioner may make one or more further extensions of that order, each for a fixed period.

(1C) The total period of suspension under the order of suspension and every extension under subsection (1B) must not exceed 24 months.”;

(b) by inserting, immediately after the words “subsection (1)” in subsection (2), the words “or (1A)”;

(c) by inserting, immediately after the word “restrict” in the section heading, the words “, or suspend”.

Amendment of section 40A

12. Section 40A of the Charities Act is amended by deleting the definition of “institution of a public character” and substituting the following definition:

“ “institution of a public character” means a registered charity or an exempt charity in Singapore —

(a) that is approved as an institution of a public character by the Minister, Commissioner or any Sector Administrator on the application of the charity; or

(b) which is deemed as an institution of a public character under any written law;”.

Amendment of section 40C

13. Section 40C of the Charities Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) Regulations made under subsection (1) may provide for the consequences of a contravention by any person of any regulation made under that subsection, as follows:

(a) where the person is a registered charity or an exempt charity, the Minister, Commissioner or appropriate Sector Administrator may revoke the approval of the person as an institution of a public

character given by the Minister, Commissioner or Sector Administrator, as the case may be;

- (b) that the person shall be guilty of an offence and shall be liable on conviction — 5
- (i) to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both; and
 - (ii) in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues after conviction; 10
- (c) for a contravention of a regulation relating to the issue of tax deduction receipts which is not an offence under paragraph (b), that the person shall be liable to pay to the Commissioner a financial penalty, being the higher of the following amounts: 15
- (i) \$100; 20
 - (ii) the amount ascertained by the formula $0.4 \times$ the total value of the donations (as determined under section 37(3) of the Income Tax Act (Cap. 134)) which ought not to be allowed a deduction under section 37(3) of the Income Tax Act by reason of the contravention, if any.”; and 25
- (b) by deleting the words “subsection (2)(a)” in subsections (3) to (6) and substituting in each case the words “subsection (2)(c)”. 30

Amendment of section 41A

14. Section 41A of the Charities Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

5 “(1) The Commissioner may, for the purpose of discharging the functions of the Commissioner under this Act, by order require any person to furnish the Commissioner, within the time specified in the order —

10 (a) any information relating to any charity or fund-raising appeal that —

(i) is within the knowledge of the person; or

15 (ii) comes within the knowledge of the person within a period specified in the order that does not exceed 2 years after the date of the order; and

(b) any document relating to any charity or fund-raising appeal that —

20 (i) is in the possession or under the control of the person; or

25 (ii) comes into the possession or under the control of the person within a period specified in the order that does not exceed 2 years after the date of the order.

(1A) An order under subsection (1)(b) may require —

30 (a) a copy or extract of the document to be furnished to the Commissioner; or

(b) unless the document forms part of the records or other documents of a court or public authority, the document itself to be

furnished to the Commissioner for the Commissioner's inspection.”;

- (b) by deleting the word “transmitted” in subsection (2) and substituting the word “furnished”; and
- (c) by inserting, immediately after the words “Any person who” in subsection (7), the words “, without reasonable excuse,”.

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Repeal and re-enactment of section 43

15. Section 43 of the Charities Act is repealed and the following section substituted therefor:

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“Service of documents

43.—(1) A document that is permitted or required by this Act to be served on a person may be served as described in this section.

(2) A document permitted or required by this Act to be served on an individual may be served —

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(a) by giving it to the individual personally;

(b) by sending it by prepaid registered post to the address specified by the individual for the service of documents or, if no address is so specified, the individual's residential address or business address;

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(c) by leaving it at the individual's residential address with an adult apparently resident there, or at the individual's business address with an adult apparently employed there;

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(d) by affixing a copy of the document in a conspicuous place at the individual's residential address or business address;

(e) by sending it by fax to the fax number last known to the person giving or serving the document as the fax number for the service of documents on the individual;

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(f) by sending it by email to the individual's email address; or

(g) by transmitting an electronic record of it to an account which the individual has with any electronic transactions service.

5 (3) A document permitted or required by this Act to be served on a partnership (other than a limited liability partnership) may be served —

10 (a) by giving it to any partner or other like officer of the partnership;

(b) by leaving it at, or by sending it by prepaid registered post to, the partnership's business address;

(c) by sending it by fax to the fax number used at the partnership's business address;

15 (d) by sending it by email to the partnership's email address; or

(e) by transmitting an electronic record of it to an account which the partnership has with any electronic transactions service.

20 (4) A document permitted or required by this Act to be served on a body corporate (including a limited liability partnership) or an unincorporated association may be served —

25 (a) by giving it to the secretary or other like officer of the body corporate or unincorporated association, or the limited liability partnership's manager;

(b) by leaving it at, or by sending it by prepaid registered post to, the body corporate's or unincorporated association's registered office or principal office in Singapore;

30 (c) by sending it by fax to the fax number used at the body corporate's or unincorporated association's registered office or principal office in Singapore;

(d) by sending it by email to the body corporate's or unincorporated association's email address; or

(e) by transmitting an electronic record of it to an account which the body corporate or unincorporated association has with any electronic transactions service. 5

(5) Service of a document under this section takes effect —

(a) if the document is sent by fax and a notification of successful transmission is received, on the day of transmission; 10

(b) if the document is sent by email, at the time that the email becomes capable of being retrieved by the person;

(c) if the document is sent by prepaid registered post, 2 days after the day the document was posted (even if it is returned undelivered); and 15

(d) if the document is sent through any electronic transactions service, at the time when the electronic record of the document enters the person's account with the electronic transactions service. 20

(6) A document may be served on a person under this Act by email only with that person's prior written consent.

(7) A document may be served on a person under this Act through any electronic transactions service only if the document is a prescribed document. 25

(8) This section does not apply to documents to be served in proceedings in court.

(9) In this section —

“business address” means —

(a) in the case of an individual, the individual's usual or last known place of business in Singapore; or 30

(b) in the case of a partnership (other than a limited liability partnership), the partnership’s principal or last known place of business in Singapore;

“document” includes a direction, order or notice permitted or required by this Act to be served;

“electronic transactions service” means any electronic transactions service provided for in regulations made under section 48;

“email address” means the last email address given by the addressee concerned to the person giving or serving the document as the email address for the service of documents under this Act;

“residential address” means an individual’s usual or last known place of residence in Singapore.”.

Repeal and re-enactment of section 44 and new section 44A

16. Section 44 of the Charities Act is repealed and the following sections substituted therefor:

“Offences by corporations

44.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his actual or apparent authority; and

(b) the officer, employee or agent had that state of mind, is evidence that the corporation had that state of mind.

(2) Where a corporation commits an offence under this Act, a person —

(a) who is —

(i) an officer of the corporation; or

- (ii) an individual involved in the management of the corporation and in a position to influence the conduct of the corporation in relation to the commission of the offence; and

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the offence;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the corporation; or
- (iii) knew or ought reasonably to have known that the offence by the corporation (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the corporation, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear.

(4) To avoid doubt, this section does not affect the application of —

- (a) Chapters V and VA of the Penal Code (Cap. 224); or
- (b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of the corporation for an offence under this Act, and applies whether or not that corporation is convicted of the offence.

(6) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

(a) any person purporting to act in any such capacity; and

(b) for a corporation whose affairs are managed by its members, any of those members as if the member were a director of the corporation;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

Offences by unincorporated associations or partnerships

44A.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or partnership engaged in that conduct within the scope of his actual or apparent authority; and

(b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits an offence under this Act, a person —

(a) who is —

- (i) an officer of the unincorporated association or a member of its governing body;
- (ii) a partner in the partnership; or
- (iii) an individual involved in the management of the unincorporated association or partnership and in a position to influence the conduct of that unincorporated association or partnership in relation to the commission of the offence; and

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the offence;
- (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the unincorporated association or partnership; or
- (iii) knew or ought reasonably to have known that the offence by the unincorporated association or partnership (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the unincorporated association or partnership, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

(4) To avoid doubt, this section does not affect the application of —

(a) Chapters V and VA of the Penal Code (Cap. 224); or

(b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of the unincorporated association or the partnership for an offence under this Act, and applies whether or not that unincorporated association or that partnership is convicted of the offence.

(6) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

(a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and

(b) any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.”.

Amendment of section 46A

17. The Charities Act is amended by renumbering section 46A as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) Without affecting subsection (1), the Commissioner, Deputy Commissioner, every Assistant Commissioner and other officer appointed under section 3, and the Government, are not liable for any loss or damage, suffered by any person by reason of any error or omission resulting from —

- (a) any malfunction in any electronic transactions service provided for in regulations made under section 48, if the malfunction occurred despite the Commissioner, Deputy Commissioner, Assistant Commissioner, officer or Government having acted in good faith and with reasonable care to prevent the malfunction; or 5
- (b) any fault or failure on the part of the person using the electronic transactions service.”.

Amendment of section 48

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18. Section 48 of the Charities Act is amended —

(a) by deleting paragraph (c) of subsection (2) and substituting the following paragraphs:

“(c) provide for the obligations, or otherwise to regulate the conduct, of any person that is given or provided with any money or other property (whether as consideration or otherwise) for or in connection with any charitable, benevolent or philanthropic purpose; 15 20

(ca) provide for an electronic transactions service for any one or more of the following purposes:

- (i) for any person to submit or serve on the Commissioner electronically any application, document or information; 25
- (ii) for the Commissioner to serve any notice or other document on any person under this Act; 30
- (iii) for the Commissioner to publish or supply to any person any application, document or information;

(iv) for any other prescribed purpose;”;
and

(b) by inserting, immediately after subsection (2), the following subsections:

5 “(3) Regulations made for the purpose of subsection (2)(ca) may —

(a) provide for the manner in which and the persons by which the electronic transactions service may be used;

10 (b) require that any prescribed application, document or information must be submitted to or served on the Commissioner only through the electronic transactions service;

15 (c) provide that any prescribed application, document, or information, submitted to a prescribed public authority in the prescribed manner, is treated as having been submitted through the electronic transactions service to the Commissioner;

20 (d) provide for the circumstances and the manner for correcting any error or omission in any application, document or information submitted, served, published or supplied through the electronic transactions service;

25 (e) despite the Evidence Act (Cap. 97), provide for the admissibility of electronic records, and copies and print-outs of such records, of any application, document or information submitted, served, published or supplied through the electronic transactions service, as evidence of the facts contained in the record, copy or print-out; and

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(f) provide for any other matter necessary or incidental to the use, maintenance or management of the electronic transactions service.

(3A) Regulations made under this Act (other than section 40C) may provide that any person that contravenes the regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues after conviction.”. 5
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Miscellaneous amendments to penalties

19.—(1) The sections of the Charities Act specified in the first column of the Schedule to this Act are amended by deleting the fine or term of imprisonment or both and further fine (if any) specified in the second column of that Schedule opposite that section and substituting in each case the fine or term of imprisonment or both and further fine (if any), as the case may be, specified in the third column of that Schedule. 15
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(2) Section 14(5) of the Charities Act is amended by deleting the words “the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction, and” and substituting the words “without affecting any regulations made under section 48(3A) for such failure,”. 25

Saving and transitional provisions

20.—(1) Section 25 of the Charities Act as amended by section 8(*d*) applies in relation to any inquiry under section 8 of the Charities Act —

5 (*a*) where —

 (i) the inquiry was commenced before the date of commencement of section 8(*d*);

 (ii) an order of suspension was made under section 25(2)(i) of the Charities Act in connection with that inquiry; and

 (iii) the order of suspension is in force immediately before that date; or

 (*b*) where the inquiry is commenced on or after that date.

15 (2) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

THE SCHEDULE

Section 19(1)

MISCELLANEOUS AMENDMENTS TO PENALTIES

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Section</i>	<i>Old penalty</i>	<i>New penalty</i>
Section 5(6)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 8(3)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 8(8)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 25(12)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 25A(4)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — 12 months	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 26A(6)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — 12 months	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 26B(6)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — 12 months	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 39B(2)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — 12 months	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100
Section 41A(7)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years
	Further fine — \$50	Further fine — \$100

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THE SCHEDULE — *continued*

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Section</i>	<i>Old penalty</i>	<i>New penalty</i>
Section 41B(3)	Fine — \$5,000	Fine — \$10,000
	Imprisonment — one year	Imprisonment — 3 years

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EXPLANATORY STATEMENT

This Bill seeks to amend the Charities Act (Cap. 37).

Clause 1 relates to the short title and commencement.

Clause 2 replaces the definition for “key officer” in section 2(1) with a broader new definition extending beyond a charity to cover governing board members of charities, and members of charities.

The new definition includes as a key officer, an individual who has the general control and management over any aspect (such as financial) of the administration of the charity, governing board member or member in question, and an individual who provides advice to the charity, governing board member or member on the control and management of the charity, governing board member or member to be adopted.

The clause also inserts new definitions for “electronic record” and “public authority” in section 2(1), and further inserts a new section 2(4) to provide for when a person’s conviction is treated as spent for purposes of the Act (see the new sections 25(4)(a) and (4C) and 27(4)(a) under clauses 8(b) and (c) and 9, respectively).

Clause 3 replaces the words “statement of accounts” in section 12(1)(b) with the more modern expression “financial statements”. The clause also makes clarifying amendments to section 12(3). Finally, the clause deletes and substitutes subsection (4) of section 12 to provide that the last governing board members of a charity that has ceased to exist can agree that any one or more of them are to comply with the obligation in section 12(3) requiring accounting records of that charity to be preserved.

Clause 4 amends the section heading to section 13, amends section 13(1)(a), and deletes and substitutes subsection (2) of section 13, to replace the references to “statements of accounts” in those provisions with the more modern expression “financial statements”. The clause also replaces section 13(3) with a text similar to new section 12(4).

Clause 5 amends section 16 to clarify that the obligations in relation to annual reports under subsections (2) and (3) apply only to registered charities and exempt charities. The clause also amends subsection (3) to replace the references to “statements of accounts” in section 16(3) with “financial statements”. Finally, the clause inserts new subsections (6) and (7) to introduce obligations in relation to the preservation of annual reports for charities generally.

Clause 6 amends section 17(3)(a) to replace the reference to “statement of accounts” with “financial statements”.

Clause 7 repeals and re-enacts section 18 to introduce a new offence of failing to comply with the requirements in sections 12(3) or (4), 13(2) or (3) or 16(6) or (7) (in addition to section 16(2) or 17(2)). Persistent default is no longer an element under section 18.

Clause 8 amends section 25 by inserting new subsections (9), (9A), (9B) and (9C) to provide for the extension of any suspension imposed under subsection (2), and matters relating to the suspension and extension.

Clause 8 further amends section 25 in order to, together with clause 9 that repeals and re-enacts sections 27 and 28, provide for various matters concerning the removal of persons acting in certain capacities, and the disqualification of persons from acting in certain capacities, in relation to charities.

Some grounds for removal become grounds for disqualification under the new section 27(1) instead. A new ground for disqualification is included in the new section 27(1), namely, conviction for an offence involving terrorism, terrorism financing or money laundering. The new section 27(6) and (8) further provides for the effect of removals made under section 25(1) and (4) in terms of disqualifications.

In respect of the grounds of disqualification under the new section 27(1) —

- (a) where a person falls under any such ground, the individual is disqualified from acting in all capacities set out in the new section 27(2);
- (b) the capacities that such a person is currently disqualified from acting in are expanded to capacities in a member of the governing board of a charity, or a member of the charity;
- (c) the disqualification is from all such capacities, regardless of whether, immediately before the disqualification, the person was already acting in any such capacity, and, if so, what that capacity was; and
- (d) the disqualification is for so long as the ground for disqualification exists. Once the ground for disqualification ceases to exist, the person can act in any of the capacities in question. In particular, a conviction for an offence ceases to be a disqualification once the record of

conviction becomes spent, or the person is granted a pardon for the offence. However, this does not prevent section 7E(2)(d) of the Registration of Criminals Act (Cap. 268) from applying to the person whose record of conviction has become spent.

In respect of the grounds of disqualification under the new section 27(6) and (8), in contrast with disqualifications under the new section 27(1), disqualifications under the new section 27(6) or (8) are permanent, and continue even if, after the removal has been ordered, the underlying basis for the removal being a conviction for an offence, the record of the offence becomes spent or the person is granted a pardon for the offence.

Acting while under a disqualification under section 27(1) (today or as amended) or new section 27(6) is now a ground for removal under section 25(4). For instance, a person who has been removed as employee of a charity pursuant to section 25(1)(i), is disqualified from acting as any employee in that charity, as well as, among other things, a key officer in that and any other charity. If the person then acts as a key officer in any charity, the person can be removed as a key officer under section 25(4).

The Commissioner of Charities (the Commissioner) cannot order a person's removal under section 25(4) based on the person's conviction for an offence, if the record of conviction has become spent or the person has been granted a pardon for the offence.

Where a person resigns from acting in certain capacities in a charity before the Commissioner can order the person's removal as such under section 25(1) or (4), the Commissioner can by order declare (under the new section 25(4A)) the person as being a person whom the Commissioner would have removed from that capacity if the person had not resigned. The order has the same effect on disqualification as if the person had not resigned and had been removed under section 25(1) or (4), and the same permanence as for removal orders. This is to prevent persons from avoiding removal orders being made against them, by resigning from the capacity in question before the removal order can be made.

A person is guilty of an offence under the new section 28(1) if the person acts in any capacity from which the person is disqualified from acting in. The new section 28 further provides for other related matters where a person acts whilst disqualified, including empowering the Commissioner to order the person to repay any money or the monetary equivalent of any benefit received by the person for acting in the capacity from which the person is disqualified. Failure to comply with the Commissioner's order is an offence, and the person who paid the money or provided the benefit to the person acting whilst disqualified, can recover the amount set out in the Commissioner's order as a debt due.

Clause 10 deletes and substitutes the definition of “fund-raising appeal” in section 39(1). Under the new definition, a fund-raising appeal is not restricted to appeals to or receipts from members of the public. For example, an appeal by an unincorporated association to its members only, is a “fund-raising appeal”.

Clause 11 amends section 39B to empower the Commissioner to order the suspension of any fund-raising appeal (pending investigations into the fund-raising appeal being completed), if the Commissioner has reason to suspect that one of the grounds specified in section 39B(1)(i) to (v) may apply in relation to the fund-raising appeal.

Clause 12 deletes and substitutes the definition of “institution of a public character” in section 40A to streamline the definition.

Clause 13 deletes and substitutes subsection (2) of section 40C. The new subsection (2) empowers regulations to be made to provide for the consequences of contraventions of regulations made concerning institutions of a public character, including convictions for offences (instead of only the imposition of a financial penalty, as is currently provided for in section 40C(2)).

Clause 14 amends section 41A to clarify that the Commissioner can require a person to provide information and documents that are not only already within the knowledge, or in the possession or under the control, of the person, but which come within the knowledge, or into the possession or under the control, of the person at a future point in time. The clause further amends section 41A(7) to provide for the offence for a contravention under the section to have been committed only if the contravention was “without reasonable excuse”.

Clause 15 repeals and re-enacts section 43 to update the provision on the service of documents.

Clause 16 repeals and re-enacts section 44 and inserts new section 44A.

The new section 44 concerns offences committed by corporations (including a limited liability partnership). The new section makes clear how the state of mind of a corporation may be evidenced when the offence in question has a mental element. It also clarifies when the criminal liability of a corporation may be attributed to an officer or a member of a corporation, or to certain other individuals.

The new section 44A is similar to section 44, but instead concerns offences committed by unincorporated associations and partnerships.

Clause 17 amends section 46A to extend the protection against actions, suits and other legal proceedings to cover the Commissioner, Deputy Commissioner, Assistant Commissioners, other officers appointed under section 3 of the Act, and the Government, for certain losses and damages suffered in connection with any electronic transactions service provided for in regulations made under section 48(2)(ca) and (3) (see clause 18).

Clause 18 amends section 48 by deleting and substituting paragraph (c) of subsection (2) to clarify that regulations may be made dealing with the obligations or regulation of persons that receive moneys and properties for or in connection with a charitable, benevolent or philanthropic purpose. The clause also inserts a new paragraph (ca) in subsection (2), and the new subsection (3), to empower the Minister to make regulations to provide for matters relating to an electronic transactions service. The electronic transactions service may be used for, among other things, the submission or service of applications, documents and information, and the publication or supply of information by the Commissioner. Finally, the clause inserts as a new subsection (3A), the current section 48(2)(c) to clarify its application to regulations made under any section of the Act (other than section 40C) (and not just to regulations made under section 48).

Clause 19 and the Schedule amend various provisions in the Act to raise and align penalties for offences under the Act.

Clause 20 provides for matters of a saving or transitional nature, and further empowers the Minister to make regulations of a saving or transitional nature for any provision in the Bill in the 2 years after the date of commencement of that provision.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
