

Charities (Amendment) Bill

Bill No. 29/2010.

Read the first time on 18th October 2010.

A BILL

intituled

An Act to amend the Charities Act (Chapter 37 of the 2007 Revised Edition) and to make a related amendment to the Companies Act (Chapter 50 of the 2006 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 may be cited as the Charities (Amendment) Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2(1) of the Charities Act is amended —

(a) by deleting the definition of “charity trustees”;

(b) by deleting the words “section 13(2)” in paragraph (b) of the definition of “financial year” and substituting the words “section
10 13(1)”;

(c) by inserting, immediately after the definition of “financial year”, the following definitions:

““governing board members” means members of the governing body of a charity or trustees for a charity having the general control and management of the
15 administration of the charity;

“governing instruments”, in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether or not those
20 provisions take effect by way of trust or are set out in any document, and in relation to other institutions has a corresponding meaning;”;

(d) by inserting, immediately after the definition of “institution”, the following definitions:

““key officer” means an officer of a charity, whether or not an employee of the charity, having the general control and management of the administration of the charity, and includes any person, by whatever name called, who exercises such general control and management;

“public accountant” means a person who is registered or deemed to be registered under the Accountants Act (Cap. 2) as a public accountant;” and

(e) by deleting the definition of “trusts” and substituting the following definition:

““trustee” has the same meaning as in the Trustees Act (Cap. 337).”.

Amendment of section 5

3. Section 5 of the Charities Act is amended —

5 (a) by deleting the words “trusts (or, if the trusts are not set out in any document, particulars of them)” in subsection (5) and substituting the words “governing instruments (or, if any provisions of the governing instruments are not set out in any document, particulars of them)”; and

10 (b) by inserting, immediately after subsection (6), the following subsection:

15 “(6A) Where the governing instrument of a registered charity requires the prior approval of the Commissioner for any amendment to the governing instrument and the Commissioner has delegated his power to grant such approval to a Sector Administrator under section 40C(1)(e), that requirement shall be deemed to apply as if it required the prior approval of the Sector Administrator (instead of the Commissioner) for the amendment of the governing instrument.”.

20 Repeal of sections 9, 10 and 11

4. Sections 9, 10 and 11 of the Charities Act are repealed.

Amendment of section 12

5. Section 12 of the Charities Act is amended —

25 (a) by deleting the words “The charity trustees” in subsection (1) and substituting the words “Unless otherwise excepted by regulations made under this Act, the governing board members”;

(b) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

30 “(b) enable the governing board members to ensure that, where any statements of accounts are prepared by them under regulations made under section 13, those statements of accounts comply with the requirements of those regulations.”; and

(c) by deleting subsection (5).

Repeal of sections 13, 14 and 15 and re-enactment of sections 13 and 14

5 **6.** Sections 13, 14 and 15 of the Charities Act are repealed and the following sections substituted therefor:

“Annual statements of accounts

13.—(1) The Minister may make regulations relating to the financial reporting requirements for charities, including provisions —

- 10 (a) allowing the governing board members of specified classes of charities to prepare a receipts and payments account and a statement of assets and liabilities instead of a statement of accounts in respect of any financial year of the charity;
- (b) prescribing requirements as to the form and contents of accounts and statements of charities;
- 15 (c) requiring the accounts and statements of specified classes of charities to be in compliance with all or any of the following:
- (i) specified accounting standards that are made or formulated by the Accounting Standards Council under
- 20 Part III of the Accounting Standards Act (Cap. 2B);
- (ii) other accounting standards or requirements specified in the regulations;
- (d) providing for relief from the requirements of such accounting standards applicable to charities;
- 25 (e) determining the financial years of a charity for the purposes of this Act;
- (f) modifying the application of any provisions in the Companies Act (Cap. 50) as to the form and content of a company’s accounts or consolidated accounts being in
- 30 compliance with the Accounting Standards (as defined in the Companies Act) in respect of a company that is registered as a charity or approved as an institution of a public character under this Act; or

(g) providing that any person who is guilty of an offence under any regulations made under paragraph (c) in respect of a charity which is registered as a company under the Companies Act (Cap. 50) shall be liable on conviction to the same penalty as that provided under section 204(1) of that Act.

(2) The governing board members of a charity shall preserve any statement of accounts or other account and statement prepared by them for the purposes of regulations made under this section, for at least 5 years from the end of the financial year to which any such statement relates or to which any such account and statement relate, as the case may be.

(3) Section 12(4) shall apply, with the necessary modifications, in relation to the preservation of any such statement or account and statement as it applies in relation to the preservation of any accounting records.

Annual audit or examination of charity accounts

14.—(1) The Minister may by regulations make provision —

- (a) requiring the accounts of charities to be audited or examined and specify the circumstances in which such audits or examinations shall be carried out by a public accountant, an independent qualified accountant or an independent person;
- (b) with respect to the duties of an auditor or independent examiner carrying out an audit or examination for the purposes of this section;
- (c) conferring on such an auditor or independent examiner a right of access with respect to books, documents and other records (however kept) which relate to the charity concerned;
- (d) entitling such an auditor or independent examiner to require, in the case of a charity, information and explanations from past or present governing board members or trustees for the charity, or from past or present officers, employees or auditors of the charity; and
- (e) enabling the Commissioner, in prescribed circumstances, to dispense with any of the requirements prescribed under

paragraph (a) in the case of a particular charity or in the case of any particular financial year of a charity.

(2) Where it appears to the Commissioner —

5 (a) that any requirement under this section for the accounts of a charity to be audited or examined has not been complied with in relation to a financial year of a charity within 10 months from the end of that year; or

10 (b) that it would be desirable for the accounts of a particular charity for any year to be audited by a public accountant although the regulations made under this Act do not so require,

the Commissioner may by order require the accounts of the charity for that year to be audited by a person appointed by the Commissioner.

15 (3) The expenses of any audit carried out by a person appointed by the Commissioner under subsection (2), including his remuneration, shall be paid —

20 (a) by the governing board members of the charity concerned who shall be personally liable, jointly and severally, for those expenses; or

(b) to the extent that it appears to the Commissioner not to be practical to pay those expenses in accordance with paragraph (a), from the funds of the charity.

25 (4) The Commissioner may give such directions as he may think appropriate with respect to the carrying out of an examination required by regulations made under this Act, and any such directions may either be of general application or apply to a particular charity only.

30 (5) If any person fails to afford an auditor or independent examiner any facility to which he is entitled by virtue of regulations made under subsection (1)(c) or (d), 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
35 after conviction, and the Commissioner may by order give to that person or to the governing board members for the time being of the

charity concerned, such directions as the Commissioner thinks appropriate for securing that the default is made good.

5 (6) Section 391 of the Companies Act (Cap. 50) shall have effect in relation to an auditor or independent examiner appointed by a charity in pursuance of this section as it has effect in relation to a person employed as auditor by a company within the meaning of that Act.”.

Amendment of section 16

7. Section 16 of the Charities Act is amended —

10 (a) by deleting subsection (3) and substituting the following subsection:

“(3) Subject to subsection (4), every such annual report shall have attached to it the statement of accounts or account and statement prepared for the financial year in question in pursuance of section 13(1), together with —

15 (a) where the accounts of the charity for that year have been audited under section 14, a copy of the report made by the auditor on that statement of accounts or on that account and statement, as the case may be; or

20 (b) where the accounts of the charity for that year have been examined under section 14, a copy of the report made by the independent examiner in respect of the examination carried out by him under that section.”; and

(b) by deleting subsection (6).

Amendment of section 17

25 8. Section 17(3) of the Charities Act is amended by deleting the words “or (3)” in paragraph (a).

Amendment of section 19

9. Section 19(8) of the Charities Act is amended —

30 (a) by deleting the words “the trustees have complied” and substituting the words “they have complied”; and

(b) by deleting the words “notify the trustees in writing” and substituting the words “notify them in writing”.

Amendment of section 20

10. Section 20(7) of the Charities Act is amended —

- (a) by deleting the words “the trustees have complied” and substituting the words “they have complied”; and
- 5 (b) by deleting the words “notify the trustees in writing” and substituting the words “notify them in writing”.

Amendment of section 25

11. Section 25 of the Charities Act is amended by deleting subsection (10) and substituting the following subsections:

10 “(10) Before exercising any jurisdiction under this section (otherwise than by virtue of subsection (2)), the Commissioner shall give notice of his intention to do so to —

- (a) each of the governing board members; and
- (b) in the case of an order —
 - 15 (i) for the removal of any trustee for the charity or key officer;
 - (ii) for the appointment of an additional trustee for the charity or a key officer; or
 - (iii) for the transfer of any property,
 - 20 each trustee for the charity or key officer concerned,
 except those who cannot be found or who have no known address in Singapore.

25 (10A) A notice referred to in subsection (10) may be given by post and, if given by post, may be addressed to the last known address in Singapore of the governing board member or trustee for the charity or key officer, as the case may be.”.

Amendment of section 27

12. Section 27 of the Charities Act is amended —

- 30 (a) by deleting the words “disqualified for being a charity trustee or” in subsection (1) and substituting the words “disqualified from being a governing board member or key officer of a charity or a”;

- (b) by deleting the words “charity trustee” in subsection (1)(d) and substituting the words “governing board member or key officer of a charity”;
- 5 (c) by deleting the words “charity trustee or trustee for any charity” in subsection (2) and substituting the words “governing board member or key officer of a charity or a trustee for a charity”;
- (d) by deleting the words “for being a charity trustee or trustee for such a charity” in subsection (2) and substituting the words “from being a governing board member or key officer of a
10 charity or trustee for a charity”; and
- (e) by deleting the words “disqualified for being trustees” in the section heading and substituting the words “disqualified from being governing board members, etc.,”.

Amendment of section 28

- 15 **13.** Section 28 of the Charities Act is amended —
- (a) by deleting the words “disqualified for” in subsections (1), (2), (3)(a) and (4) and substituting in each case the words “disqualified from”;
 - 20 (b) by inserting, immediately after the words “being such a” in subsections (1) and (3)(a), the words “governing board member or key officer or”; and
 - (c) by deleting the words “charity trustee” in the section heading and substituting the words “governing board member, etc.,”.

Amendment of section 29

- 25 **14.** Section 29(2) of the Charities Act is amended by deleting paragraph (b) and substituting the following paragraph:
- 30 “(b) an order discharging or removing a governing board member or key officer or trustee if the Commissioner is of the opinion that it is unnecessary and not in the interest of the charity to give publicity to the proposal to discharge or remove the governing board member or key officer or trustee.”.

New section 32A

15. The Charities Act is amended by inserting, immediately after section 32, the following section:

“Power to relieve governing board members, etc., from personal liability

32A.—(1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, whether appointed by the court or otherwise, it appears to the court before which the proceedings are taken that —

- (a) the person is or may be liable in respect thereof; but
- (b) the person has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused for the negligence, default or breach,

the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the High Court for relief, and the High Court shall have the same power to relieve him as it would have had, under subsection (1), if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Without prejudice to the generality of subsection (1), the circumstances of the case referred to in subsection (1) may include the circumstances connected with the appointment of the person.

(4) For the avoidance of doubt and without prejudice to the generality of subsection (1), “liability” includes the liability of a person to whom this section applies to account for profits made or received.

(5) The persons to whom this section applies are —

- (a) governing board members or trustees for charities; and

- (b) receivers and managers in respect of the property and affairs of a charity (whether appointed under this Act or otherwise).”.

Repeal of Part VII

- 5 **16.** Part VII of the Charities Act is repealed.

Amendment of section 39

- 17.** Section 39 of the Charities Act is amended —

- (a) by inserting, immediately before the definition of “fund-raising appeal” in subsection (1), the following definitions:

10 ““charitable contributions”, in relation to any representation made by any commercial participator or other person, means —

(a) the whole or part of —

15 (i) the consideration given for goods or services sold or supplied by him; or

(ii) any proceeds (other than such consideration) of a promotional venture undertaken by him; or

20 (b) sums given by him by way of donation in connection with the sale or supply of any such goods or services (whether the amount of such sums is determined by reference to the value of any such goods or services or otherwise);

25 “charitable institution” means a charity or an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes;

30 “collector”, in relation to a fund-raising appeal, means any person by whom that appeal is made (whether made by him alone or with others and whether made by him for remuneration or otherwise);

“commercial fund-raiser” means any person who for reward solicits or otherwise procures money or other property for, or purportedly for, the benefit of a charity or any charitable, benevolent or philanthropic purpose;

“commercial participator”, in relation to any charitable institution, means any person who carries on for gain a business other than a fund-raising business, but in the course of that business, engages in any promotional venture in the course of which it is represented that charitable contributions are to be given to or applied for the benefit of the institution;”;

(b) by inserting, immediately after the definition of “fund-raising appeal” in subsection (1), the following definition:

“ “fund-raising business” means any business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, benevolent or philanthropic purposes;”;

(c) by deleting the full-stop at the end of the definition of “proceeds” in subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

“ “promotional venture” means any advertising or sales campaign or any other venture undertaken for promotional purposes;

“represent” and “solicit” mean, respectively, represent and solicit in any manner whatever, whether expressly or impliedly and whether done —

(a) by speaking directly to the person or persons to whom the representation or solicitation is addressed (whether or not in his or their presence);
or

(b) by means of a statement published in any newspaper, film or radio or television programme, or otherwise, and references to a representation or solicitation shall be construed accordingly;

“services” includes facilities and, in particular —

(a) access to any premises or event;

(b) membership of any organisation;

(c) the provision of advertising space; and

(d) the provision of any financial facilities,

and references to the supply of services shall be construed accordingly.”; and

(d) by deleting subsection (2) and substituting the following subsections:

“(2) In this Part and any regulations made for the purpose of this Part —

(a) any reference to charitable purposes, where occurring in the context of a reference to charitable, benevolent or philanthropic purposes, shall be a reference to charitable purposes whether or not the purposes are charitable within the meaning of any rule of law; and

(b) any reference to soliciting or otherwise procuring money or other property is a reference to soliciting or otherwise procuring money or other property whether any consideration is, or is to be, given in return for the money or other property or not.

(3) Where —

(a) any solicitation of money or other property for the benefit of a charitable institution is made in accordance with arrangements between any person and that institution; and

(b) under those arrangements that person will be responsible for receiving on behalf of the institution money or other property given in response to the solicitation,

then (if he would not be so regarded apart from this subsection) that person shall be regarded for the purposes of this Part as soliciting money or other property for the benefit of the institution.”.

New section 39C

18. The Charities Act is amended by inserting, immediately after section 39B, the following section:

“Regulations relating to fund-raising appeals

39C.—(1) The Minister may make regulations for the purposes of this Part, including provisions —

- 5 (a) regulating the conduct of commercial fund-raisers and commercial participators in relation to fund-raising appeals, and in particular —
- 10 (i) prescribing the form and content of agreements between a charitable institution and commercial fund-raisers, commercial participators or any other persons conducting or participating in a fund-raising appeal for the benefit of the institution;
- 15 (ii) providing for the refund of charitable contributions or cancellation of agreements or undertakings made by donors in response to a fund-raising appeal, where notice of the donor’s intention to cancel the agreement, undertaking or charitable contribution has been given to the relevant fund-raiser within a prescribed period;
- 20 (iii) requiring commercial fund-raisers or commercial participators or other persons conducting or participating in a fund-raising appeal for the benefit of a charitable institution to make available to the institution books, documents or other records (however kept) which relate to the institution; and
- 25 (iv) specifying the manner in which money or other property acquired by such commercial fund-raisers or commercial participators or other persons for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charitable institutions is to be transmitted to such institutions; and
- 30 (b) regulating the raising of funds for charitable, benevolent or philanthropic purposes (whether by commercial fund-raisers or commercial participators or otherwise) or the conduct of fund-raising appeals, including provisions prohibiting persons under a prescribed age from acting as collectors and prohibiting others from causing them so to act and
- 35 determining the remuneration of the collectors.

(2) In subsection (1)(a)(iv), the reference to money or other property includes a reference to money or other property which, in the case of a commercial fund-raiser or commercial participator, has been acquired by him otherwise than in accordance with an agreement with a charitable institution, but by reason of any solicitation or representation in consequence of which it has been acquired, is held by him on trust for such an institution.”.

New sections 41A, 41B and 41C

19. The Charities Act is amended by inserting, immediately after section 41, the following sections:

“Power of Commissioner to call for documents and search records

41A.—(1) The Commissioner may, for the purpose of discharging his functions under this Act, by order —

- (a) require any person to furnish the Commissioner with any information in his possession which relates to any charity or fund-raising appeal; and
- (b) require any person who has in his custody or under his control any document which relates to any charity or fund-raising appeal —
 - (i) to furnish the Commissioner with a copy of or an extract from the document; or
 - (ii) unless the document forms part of the records or other documents of a court or public authority, to transmit the document itself to the Commissioner for his inspection.

(2) The Commissioner shall be entitled without payment to keep any copy or extract furnished to him under subsection (1); and where a document transmitted to him for his inspection relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of the document, the Commissioner may keep it or may deliver it to the governing board members or to any other person who may be so entitled.

(3) The Commissioner or any officer authorised by him in that behalf shall at all times have full and free access to all buildings, places, books, documents and other papers for the purpose of

discharging his functions under this Act, and may, without payment, inspect, copy or make extracts from any such books, documents or papers.

5 (4) The Commissioner may take possession of any books, documents or papers where in his opinion —

(a) the inspection, copying thereof or extraction therefrom cannot reasonably be performed without taking possession;

(b) the books, documents or papers may be interfered with or destroyed unless possession is taken; or

10 (c) the books, documents or papers may be required as evidence in proceedings for an offence under this Act or any regulations made thereunder.

(5) The Commissioner may require any person to give orally or in writing, as may be required, all such information concerning any charity or fund-raising appeal as may be demanded of him by the Commissioner for the purposes of this Act.

(6) The rights conferred by this section shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

(7) Any person who fails to comply with any requirement specified in any order under subsection (1) or any requirement under subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both 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.

(8) Subject to section 41C(2), no person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

(9) In this section, “fund-raising appeal” has the same meaning as in section 39(1).

Supply of false or misleading information to Commissioner, etc.

35 **41B.**—(1) Any person who knowingly or recklessly provides the Commissioner with information which is false or misleading in a

material particular shall be guilty of an offence if the information is provided —

(a) in purported compliance with a requirement imposed by or under this Act; or

5 (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Commissioner for the purpose of discharging his functions under this Act.

10 (2) Any person who wilfully alters, suppresses, conceals or destroys any document which he is or is liable to be required, by or under this Act, to produce to the Commissioner shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both.

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(4) In this section, references to the Commissioner include references to any person conducting an inquiry under section 8.

Disclosure of information to and by Commissioner

20 **41C.**—(1) Subject to subsection (2) and to any express restriction imposed by or under any other written law, a body or person to whom this section applies may disclose to the Commissioner any information received by that body or person under or for the purposes of any written law, where the disclosure is made by the body or person for the purpose of enabling or assisting the Commissioner to discharge any of his functions.

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(2) Subsection (1) shall not have effect in relation to the Comptroller of Income Tax; but the Comptroller may disclose to the Commissioner the following information:

30 (a) the name and address of any institution which has for any purpose been treated by the Comptroller as established for charitable purposes;

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(b) information as to the purposes of an institution and the governing instruments under which it is established or regulated, where the disclosure is made by the Comptroller in order to give or obtain assistance in determining whether

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the institution ought for any purpose to be treated as established for charitable purposes; and

(c) information with respect to an institution which has for any purpose been treated as so established but which appears to the Comptroller —

(i) to be, or to have been, carrying on activities which are not charitable; or

(ii) to be, or to have been, applying any of its funds for purposes which are not charitable.

(3) Subject to subsection (4), the Commissioner may disclose to a body or person to whom this section applies any information received by him under or for the purposes of any written law, where the disclosure is made by the Commissioner —

(a) for any purpose connected with the discharge of his functions; and

(b) for the purpose of enabling or assisting that body or person to discharge any of its or his functions.

(4) Where any information disclosed to the Commissioner under subsection (1) or (2) is so disclosed subject to any express restriction on the disclosure of the information by the Commissioner, the Commissioner's power of disclosure under subsection (3) shall, in relation to the information, be exercisable by him subject to any such restriction.

(5) This section shall apply to the following bodies and persons:

(a) any Government department;

(b) any statutory authority;

(c) any police officer; and

(d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(6) Nothing in this section shall be construed as affecting any power of disclosure exercisable apart from this section.”

Amendment of section 43

20. Section 43(1) of the Charities Act is amended —

- (a) by inserting, at the end of paragraph (a), the word “and”; and
- (b) by deleting paragraph (b).

5 **New section 43A**

21. The Charities Act is amended by inserting, immediately after section 43, the following section:

“Holding out as registered charity or institution of a public character

10 **43A.** Where any institution holds itself out to be a registered charity or an institution of a public character when it is not a registered charity or an institution of a public character, as the case may be, such institution and any person acting or purporting to act on behalf of or for the benefit of the institution, unless he proves that such
 15 holding out by the institution was made without his knowledge or consent, 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 thereof
 20 during which the offence continues after conviction.”.

Amendment of section 48

22. Section 48 of the Charities Act is amended by deleting subsections (2) and (3) and substituting the following subsection:

- 25 “(2) Without prejudice to the generality of subsection (1), any such regulations may —
- (a) prescribe the procedures and conditions for the registration of charities or any class of charities;
 - (b) prescribe the fees for the inspection of the register of charities or of other material kept by the Commissioner and for other services provided by the Commissioner;
 - 30 (c) provide that any person who 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 thereof during which the offence continues after conviction; and

- 5 (d) prescribe any other matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.”.

Miscellaneous amendments

23. The Charities Act is amended —

- 10 (a) by deleting the words “charity trustees” in section 4(1)(b) and substituting the words “governing board members and key officers”;
- (b) by deleting the word “trusts” wherever it appears in the following sections and substituting in each case the words
15 “governing instruments”:
- Sections 5(3) and (6)(b), 7(2)(b)(i) and (ii) and (4), 19(2)(c) and (d) and (9)(b), 25(1)(iii), (2)(vi) and (3), 26A(3)(b), 26B(3)(b), 30(3) and 41(1);
- (c) by deleting the words “charity trustees” wherever they appear in
20 the following sections and substituting in each case the words “governing board members”:
- Sections 5(6)(a) and (b), 6(3), 7(1), (4), (5) and (7), 12(3) and (4), 16(1), (2) and (4), 17(2)(a) and (b), 19(2) to (8), (9)(a), (10) and (12), 20(2) to (8), 24(3) and (5), 25(5)(b)
25 and (9), 26(3)(a), 30(1) and (3), 31(1) and 41(1) and (3);
- (d) by deleting the word “trustees” in section 16(1)(a) and (b) and substituting in each case the words “governing board members”;
- (e) by deleting the words “those trustees” in sections 17(2), 19(4) and (9)(a) and 26(3)(b) and substituting in each case the words
30 “those governing board members”;
- (f) by deleting the words “charity trustees” in section 22(5)(b) and (6) and substituting in each case the words “governing board members of the charity”;

(g) by deleting the words “charity trustee” in sections 24(1)(b) and 29(3) and substituting in each case the words “governing board member of a charity”;

5 (h) by deleting the word “trustee’s” in section 24(3) and substituting the words “governing board member’s”;

(i) by deleting the words “charity trustee” wherever they appear in the following sections and substituting in each case the words “governing board member”:

10 Sections 25(1)(i), (2)(i), (7), (9) and (13), 25A(1) and 41(1) and (3);

(j) by deleting the words “charity trustees” in section 25(2)(ii) and (5)(d) and substituting in each case the words “governing board members or key officers”;

15 (k) by deleting the word “trustee” wherever it appears in section 25(4) (except its first occurrence) and substituting in each case the words “governing board member or key officer”;

(l) by deleting the words “charity trustee” wherever they appear in section 25(4) and (5) and substituting in each case the words “governing board member or key officer”;

20 (m) by deleting the words “charity trustees” wherever they appear in section 25(6) and substituting in each case the words “governing board members or trustees for a charity”;

25 (n) by deleting the words “charity trustee” in section 25(6) and substituting the words “governing board member or trustee for the charity”;

(o) by deleting the words “charity trustee” in the following sections and substituting in each case the words “governing board member or key officer of a charity”:

Sections 28(1), (2), (3)(a) and (4) and 29(2); and

30 (p) by deleting the words “charity trustee” in section 28(3)(b) and substituting the words “governing board member or key officer of the charity”.

Related amendment to Companies Act

24. Section 201 of the Companies Act (Cap. 50) is amended by deleting subsection (20) and substituting the following subsection:

5 “(20) In respect of a company that is registered as a charity or approved as an institution of a public character under the Charities Act (Cap. 37), the requirements of this section as to the form and content of a company’s accounts or consolidated accounts being in compliance with the Accounting Standards shall apply subject to any modification prescribed under section 13(1)(f) of that Act in respect
10 of such a company.”.

Savings and transitional provision

25. For a period of 2 years after the date of commencement of this section, the Minister may, by regulations, prescribe such provisions of a savings or transitional nature consequent on the enactment of any
15 provision of this Act as he may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Charities Act (Cap. 37) to facilitate the operation of the Act, in particular —

- (a) to clarify the Act by replacing various terms in the Act with terms that are more readily understood by the charity sector, namely, the term “trusts” is replaced by the term “governing instruments”, and the term “charity trustees” is replaced by the terms “governing board members” or “key officers”, as appropriate;
- (b) to provide relief for governing board members of charities from personal liability, similar to relief currently available to trustees and directors under the Trustees Act (Cap. 337), the Companies Act (Cap. 50) and the Business Trusts Act (Cap. 31A);
- (c) to make provision to extend the controls relating to charity accounts and audits, including the application of accounting standards issued by the Accounting Standards Council, to more charities, including exempt charities and companies registered under the Act, and to make a related amendment to the Companies Act; and
- (d) to consolidate and enhance the provisions relating to the regulation of fund-raising appeals.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 by deleting the definitions of “charity trustees” and “trusts” and inserting definitions for the terms “governing board members”, “governing instruments”, “key officer”, “public accountant” and “trustee”. The clause also makes a consequential amendment to the definition of “financial year”.

Clause 3 amends section 5 to make changes to subsection (5) that are consequential upon the substitution of the term “governing instruments” for “trusts”, and to insert a new subsection (6A) which enables the delegation of the power to approve amendments to the governing instruments of charities by the Commissioner of Charities to a Sector Administrator to take effect under the terms of the governing instrument.

Clause 4 repeals sections 9, 10 and 11. These sections are re-enacted as new sections 41A, 41B and 41C by clause 19.

Clause 5 amends section 12 to provide for subsection (1) to apply unless otherwise excepted by regulations made under the Act, and to delete subsection (5) to allow the section to apply to exempt charities and companies.

Clause 6 repeals sections 13, 14 and 15, and re-enacts the provisions relating to annual statements of charities and annual audits or examination of charity accounts as sections 13 and 14, respectively.

The new section 13 empowers the Minister to make regulations relating to financial reporting requirements. The regulations may, amongst other things —

- (a) require the accounts and statements of certain classes of charities to be in compliance with specified accounting standards that are made or formulated by the Accounting Standards Council, or other accounting standards or requirements specified in the regulations;
- (b) modify the application of provisions in the Companies Act (Cap. 50) as to the form and content of the accounts or statements of any company that is a registered charity or an approved institution of a public character being in compliance with the Accounting Standards; and
- (c) provide for a person who is guilty of an offence under any regulations made under section 13(1)(c) (relating to compliance with accounting standards) in respect of a company shall be liable on conviction to the same penalty as that provided under section 204(1) of the Companies Act.

The new section 14 combines the existing sections 14 and 15, with modifications, and empowers the Minister to make regulations relating to audits and examinations of the accounts of charities.

The re-enacted sections extend to exempt charities and charities which are companies as existing sections 13(6) and 14(7), which excluded them, have not been re-enacted.

Clause 7 amends section 16 by making consequential amendments to subsection (3), and by deleting subsection (6) to allow the section, which relates to the annual reports of charities, to extend to exempt charities.

Clause 8 includes a consequential amendment to section 17(3)(a).

Clauses 9 and 10 amend sections 19(8) and 20(7), respectively, to make amendments consequential upon the substitution of the term “charity trustees” by the term “governing board members” in those subsections by clause 23.

Clause 11 amends section 25 by deleting subsection (10) and replacing it with subsections (10) and (10A), which re-enact the existing subsection (10) with modifications consequential upon the substitution of the term “charity trustees” by the terms “governing board members” and “key officers” in the section by clause 23. The subsections relate to the notice to be given by the Commissioner of Charities of his intention to exercise his powers to act for the protection of charities under section 25.

Clause 12 amends section 27 to make amendments consequential upon the substitution of the term “charity trustees” by the terms “governing board members” and “key officers” in the section and to correct a typographical error by replacing the words “disqualified for” with the words “disqualified from”.

Clause 13 amends section 28 to make amendments consequential upon the substitution of the term “charity trustees” by the terms “governing board members” and “key officers” in the section by clause 23 and to correct a typographical error by replacing the words “disqualified for” with the words “disqualified from”.

Clause 14 amends section 29(2)(b) to make amendments consequential upon the substitution of the term “charity trustees” by the terms “governing board members” and “key officers” by clause 23.

Clause 15 inserts a new section 32A. The new section 32A gives the court the power to grant relief from personal liability to governing board members for negligence, default, breach of duty or breach of trust if it appears to the court that he has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused. This power is similar to powers under section 60 of the Trustees Act (Cap. 337), section 391 of the Companies Act (Cap. 50) and section 105 of the Business Trusts Act (Cap. 31A). The provision also applies to trustees for the charity and to receivers and managers in respect of the property and affairs of a charity.

Clause 16 repeals Part VII, which has never been brought into operation. Certain definitions from the repealed section 33 are re-enacted in section 39 by clause 17.

Clause 17 amends section 39 by inserting the definitions of the terms “charitable contributions”, “charitable institution”, “collector”, “commercial fund-raiser”, “commercial participator”, “fund-raising business”, “promotional venture”, “represent”, “solicit” and “services”, and provisions on the interpretation of charitable purposes, soliciting or otherwise procuring money or other property, from the repealed section 33.

Clause 18 inserts a new section 39C, which re-enacts with modifications the portions of section 48 repealed by clause 22, to empower the Minister to make regulations relating to Part VIII (Fund-raising Appeals). The regulation-making powers extend to the conduct and agreements of commercial fund-raisers and commercial participators, which matters were provided for by sections 34, 35 and 36 from Part VII which is repealed by clause 16.

Clause 19 inserts new sections 41A, 41B and 41C in Part IX (Miscellaneous), which replace sections 9, 10 and 11 which are repealed by clause 4. The new section 41A extends the powers formerly provided under section 9 to fund-raising appeals.

Clause 20 deletes section 43(1)(b), relating to notices under Part VII which is repealed by clause 16.

Clause 21 inserts a new section 43A which creates an offence of holding out an institution as a registered charity or an institution of a public character when it is not so. The new section 43A replaces section 38, which was limited to false representations when soliciting money or other property for an institution and is repealed by clause 16.

Clause 22 deletes subsections (2) and (3) of section 48 and substitutes subsection (2) to omit the provisions relating to fund-raising appeals which are to be re-enacted in the new section 39C by clause 18.

Clause 23 makes miscellaneous amendments throughout the Act to replace the term “charity trustees” with the terms “governing board members”, “key officers” and “trustees for charity”, as appropriate, and the term “trusts” with the term “governing instruments”.

Clause 24 makes a related amendment to section 201(20) of the Companies Act which is consequential upon the changes made by clause 6.

Clause 25 contains savings and transitional provision.

EXPENDITURE OF PUBLIC MONEY

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