

CHARITIES ACT

(CHAPTER 37)

An Act to make provision for the registration of charities, the administration of charities and their affairs, the regulation of charities and institutions of a public character, the regulation of fund-raising activities carried on in connection with charities and other institutions and the conduct of fund-raising appeals, and for purposes connected therewith.

[10/2007]

[1st January 1995 except Part VII]

Notes:—Unless otherwise stated, the abbreviations used in the references to other Acts and statutory provisions are references to the following Acts and statutory provisions. The references are provided for convenience and are not part of the Act:

NSW CFA 1991	:	New South Wales Charitable Fundraising Act 1991 (No. 69)
UK Charities Act 1992	:	United Kingdom Charities Act 1992 (Chapter 41)
UK Charities Act 1993	:	United Kingdom Charities Act 1993 (Chapter 10)
UK Charities Bill 2006	:	United Kingdom Charities Bill (dated 13 July 2006)
Casino Control Act 2006	:	Singapore Casino Control Act 2006 (No. 10 of 2006)
Charities Act 1985 Ed.	:	Singapore Charities Act (Chapter 37, 1985 Revised Edition)
Charities Act 1995 Ed.	:	Singapore Charities Act (Chapter 37, 1995 Revised Edition)
Income Tax Act	:	Singapore Income Tax Act (Chapter 134, 2004 Revised Edition)
IRAS Act	:	Singapore Inland Revenue Authority of Singapore Act (Chapter 138A, 1993 Revised Edition)

PART I

PRELIMINARY

Short title and commencement

1. —(1) This Act may be cited as the Charities Act and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The Minister may appoint different dates for the coming into operation of the different provisions of this Act.

Interpretation

2. —(1) In this Act, unless the context otherwise requires —

"charitable company" means a charity which is a company or other body corporate;

"charitable purposes" means purposes which are exclusively charitable according to the law of Singapore;

"charity" means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in exercise of the Court's jurisdiction with respect to charities;

"Commissioner" means the Commissioner of Charities appointed under section 3;

"company" means a company incorporated or registered under any law in force in Singapore or elsewhere;

"Council" means the Charity Council established under section 4A;

"document" includes information recorded in any form, and, in relation to information recorded otherwise than in legible form —

(a) any reference to its production shall be construed as a reference to the furnishing of a copy of it in legible form; and

(b) any reference to the furnishing of a copy of, or extract from, it shall accordingly be construed as a reference to the furnishing of a copy of, or extract from, it in legible form;

"exempt charity" means a charity specified in the Schedule;

"financial year" —

(a) in relation to a charity which is a company, shall be construed in accordance with the Companies Act (Cap. 50); and

(b) in relation to any other charity, shall be construed in accordance with regulations made under section 13(1);

"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 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 provisions take effect by way of trust or are set out in any document, and in relation to other institutions has a corresponding meaning;

"gross income" , in relation to a charity, means its gross recorded receipts from all sources;

"institution" includes any trust or undertaking;

"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;

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

(2) References in this Act to a charity whose income from all sources does not in aggregate amount to more than a specified amount shall be construed —

(a) by reference to the gross receipts of the charity; or

(b) if the Commissioner so determines, by reference to the amount which he estimates to be the likely amount of those receipts,

but without (in either case) bringing into account anything for the annual value of land occupied by the charity apart from the pecuniary income (if any) received from that land; and any question as to the application of any such reference to a charity shall be determined by the Commissioner, whose decision shall be final.

(3) The Commissioner may direct that, for all or any of the purposes of this Act, an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity.

[*Charities Act 1985 Ed., s. 2*]

PART II

COMMISSIONER OF CHARITIES

Appointment of Commissioner of Charities and other officers

3.—(1) The Minister may appoint —

(a) an officer to be known as the Commissioner of Charities who shall have such functions as are conferred on him by this Act; and

(b) a Deputy Commissioner and such Assistant Commissioners of Charities or such other officers as he may think necessary to assist the Commissioner in the proper discharge of his functions.

(2) The Deputy Commissioner of Charities shall have and may exercise all the powers, duties and functions of the Commissioner except those which are exercisable under sections 24 25, 25A, 26A, 26B and 30.

[10/2007]

(3) An Assistant Commissioner of Charities shall have and may exercise all the powers, duties and functions of the Commissioner as may be delegated to him by the Commissioner in writing, except those which are exercisable under sections 24, 25, 25A, 26A, 26B and 30.

[10/2007]

[*Charities Act 1985 Ed., s. 3*]

Objectives and general functions of Commissioner

4.—(1) The objectives of the Commissioner shall be —

(a) to maintain public trust and confidence in charities;

(b) to promote compliance by governing board members and key officers with their legal obligations in exercising control and management of the administration of their charities;

(c) to promote the effective use of charitable resources; and

(d) to enhance the accountability of charities to donors, beneficiaries and the general public.

[10/2007]

(2) The general functions of the Commissioner shall be —

- (a) to determine whether institutions are or are not charities;
- (b) to encourage and facilitate the better administration of charities;
- (c) to identify and investigate apparent misconduct or mismanagement in the administration of charities;
- (d) to take remedial or protective action in connection with misconduct or mismanagement in the administration of charities;
- (e) to obtain, evaluate and disseminate information in connection with the performance of any of the Commissioner's functions or meeting any of the Commissioner's objectives;
- (f) to give information or advice, or make proposals, to the Minister on matters relating to any of the Commissioner's functions or meeting any of the Commissioner's objectives; and
- (g) to perform such other functions as the Minister may determine.

[10/2007]

(3) The Commissioner shall, as soon as possible after the end of every year, submit to the Minister a report on his operations during that year, and the Minister shall present a copy of the report to Parliament.

[10/2007]

[UK Charities Bill 2006, clause 7]

PART IIA

CHARITY COUNCIL

Charity Council

4A. —(1) There shall be established a Charity Council consisting of a Chairman and such other members as the Minister may appoint.

[10/2007]

(2) The Chairman and other members of the Council shall be appointed for such duration and on such terms and conditions as the Minister may determine.

[10/2007]

Functions of Council

4B. —(1) The functions of the Council shall be —

- (a) to advise the Commissioner on any question which he may refer to it in connection with the administration of this Act, and the objectives and functions of the Commissioner under this Act;
- (b) to make such recommendations to the Commissioner as it may think fit in relation to the regulation of charities; and
- (c) to promote self-regulation and good governance standards in the charity sector.

[10/2007]

(2) The Council may perform such other functions as the Minister may determine.

[10/2007]

(3) The Council may regulate its own procedure.

[10/2007]

PART III

REGISTRATION OF CHARITIES AND PROVISIONS FOR INQUIRING INTO CHARITIES

Registration of charities

5. —(1) The Commissioner shall continue to keep a register of charities in which shall be entered such particulars as he may from time to time determine of any charity registered therein.

(2) There shall be entered in the register every charity not excepted by subsection (4); and a charity so excepted may be entered in the register at the request of the charity, but (whether or not it was excepted at the time of registration) may at any time, and shall at the request of the charity, be removed from the register.

(3) Any institution which no longer appears to the Commissioner to be a charity shall be removed from the register with effect, where the removal is due to any change in its purposes or governing instruments, from the date of that change; and there shall also be removed from the register any charity which ceases to exist or does not operate.

(3A) The Commissioner shall refuse to register an institution as a charity —

(a) if it appears to the Commissioner that the registration of the institution will be contrary to the public interest; or

(b) on such other ground as the Minister may prescribe.

[10/2007]

(3B) The Commissioner shall remove an institution from the register of charities —

(a) if it appears to the Commissioner that the continued registration of the institution as a charity is contrary to the public interest; or

(b) on such other ground as the Minister may prescribe.

[10/2007]

(4) The following charities are not required to be registered:

(a) any charity specified in the Schedule; and

(b) any charity which is excepted by regulations made under this Act.

(5) Any application to the Commissioner for a charity to be registered shall be accompanied with copies of its governing instruments (or, if any provisions of the governing instruments are not set out in any document, particulars of them) and such other documents or information as the Commissioner may require for the purpose of the application.

(6) It shall be the duty of —

(a) the governing board members of any charity which is not registered nor excepted from registration to apply for it to be registered, and to supply the documents and information required by subsection (5), within 3 months after its establishment or such longer period as the Commissioner may, in his discretion, allow; and

(b) the governing board members (or last charity trustees) of any institution which is for the time being registered to notify the Commissioner if it ceases to exist, or if there is any change in its governing instruments, or in its particulars entered in the register, and to furnish the Commissioner with particulars of any such change and copies of any new trusts or alterations of the trusts, within 7 days after such cessation or change or such longer period as the Commissioner may, in his discretion, allow,

and any person who makes default in carrying out any of the duties imposed by this subsection 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, and the Commissioner may by order require that person to make good that default.

[26/2001]

(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.

(7) The register (including entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times, except in so far as regulations otherwise provide.

(8) The register of charities may be prepared and kept in such manner as the Commissioner may think fit, including in electronic form in a computer.

(9) Where any information contained in the register is not in documentary form, subsection (7) shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

[*Charities Act 1985 Ed., s. 5*]

Effect of, and claims and objections to, registration

6. —(1) An institution shall, for all purposes other than rectification of the register, be conclusively presumed to be or have been a charity at any time when it is or was on the register of charities.

(2) Any person who is or may be affected by the registration of an institution as a charity may, on the ground that it is not a charity, object to its being entered by the Commissioner in the register, or apply to the Commissioner for it to be removed from the register; and such objection or application shall be made or dealt with in such manner as may be prescribed by regulations made under this Act.

(3) An appeal against any decision of the Commissioner to enter or not to enter an institution in the register of charities, or to remove or not to remove an institution from the register, may be brought in the High Court by the persons who are or claim to be the governing board members of the institution, or by any person whose objection or application under subsection (2) has been disallowed by the Commissioner; and a copy of every notice of such appeal shall be transmitted to the Attorney-General.

(4) If there is an appeal to the High Court against any decision of the Commissioner to enter an

institution in the register, or not to remove an institution from the register, then until the Commissioner is satisfied whether his decision is or is not to stand, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) an institution shall be deemed not to be on the register during any period when the entry relating to it is in suspense under this subsection.

(5) Any question affecting the registration or removal from the register of an institution may, notwithstanding that it has been determined by a decision on appeal under subsection (3), be considered afresh by the Commissioner and shall not be concluded by that decision, if it appears to the Commissioner that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such an appeal or not.

[*Charities Act 1985 Ed., s. 6*]

Power of Commissioner to require change of charity's name

7. —(1) The Commissioner may, with respect to a charity to which this subsection applies, give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the governing board members may determine with the approval of the Commissioner.

(2) Subsection (1) shall apply to a charity if —

(a) it is a registered charity and its name (referred to in this Act as the registered name) is the same as, or is in the opinion of the Commissioner too like, the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not);

(b) the name of the charity is in the opinion of the Commissioner likely to mislead the public as to the true nature of —

(i) the purposes of the charity as set out in its governing instruments; or

(ii) the activities which the charity carries on under its governing instruments in pursuit of those purposes;

(c) the name of the charity includes any word or expression which in the opinion of the Commissioner is likely to mislead the public in any respect as to the status of the charity;

(d) the name of the charity is in the opinion of the Commissioner likely to give the impression that the charity is connected in some way with the Government or any public authority, or with any other body of persons or any individual, when it is not so connected; or

(e) the name of the charity is in the opinion of the Commissioner offensive,

and any reference in this subsection to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.

(3) Any direction given by virtue of subsection (2) (a) shall be given within 12 months of the time when the registered name was entered in the register in respect of the charity.

(4) Any direction given under this section with respect to a charity shall be given to the governing board members; and on receiving any such direction the charity trustees shall give effect to it notwithstanding anything in the governing instruments of the charity.

(5) Where the name of any charity is changed under this section, it shall be the duty of the governing board members to notify the Commissioner, within 7 days after such change or such longer period as the Commissioner may, in his discretion, allow, of the new name of the charity and of the date on which the change occurred.

[26/2001]

(6) A change of name by a charity under this section shall not affect any rights or obligations of the charity; and any legal proceedings that might have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(7) Any reference in this section to the governing board members of a charity shall, in relation to a charity which is a company, be read as a reference to the directors of the company.

(8) Where any direction is given under this section with respect to a charity which is a company, the direction shall be taken to require the directors of the company to take the necessary steps to effect the change of the name of the company, including applying to the Registrar of Companies for the reservation and approval of the new name under section 27 or 378 of the Companies Act (Cap. 50), as the case may be.

(9) Nothing in this section shall apply to an exempt charity.

[UK Charities Act 1993, s. 6]

General power of Commissioner to institute inquiries

8.—(1) The Commissioner may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(2) The Commissioner may either conduct such an inquiry himself or appoint a person to conduct it and make a report to him.

(3) For the purposes of any such inquiry, the Commissioner or a person appointed by him to conduct the inquiry may by order require any person —

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which that person has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to furnish copies of documents in his custody or under his control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration; and

(c) to attend at a specified time and place and give evidence or produce any such documents,

and any person who fails to comply with any requirement specified in the order 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.

(4) For the purposes of any such inquiry, evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) Where the Commissioner proposes to take any action in consequence of an inquiry under this

section, the Commissioner may publish the report of the person conducting the inquiry, or such other statement of the results of the inquiry as he thinks fit, in any manner calculated in his opinion to bring it to the attention of persons who may wish to make representations to him about the action to be taken.

(6) A copy of the report of the person conducting an inquiry under this section shall, if certified by the Commissioner to be a true copy, be admissible as evidence of any fact stated in the report, and as evidence of the opinion of that person as to any matter referred to in the report, in any legal proceedings instituted by the Commissioner under section 25 and in any legal proceedings instituted by the Attorney-General in respect of a charity.

(7) A document purporting to be a certificate issued for the purposes of subsection (6) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

(8) If any person wilfully alters, suppresses, conceals or destroys any document which he may be required to produce under this section, he 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.

[*Charities Act 1985 Ed., s. 7*]

9. Deleted by Act 34/2010, wef 01/03/2011.

10. Deleted by Act 34/2010, wef 01/03/2011.

11. Deleted by Act 34/2010, wef 01/03/2011.

PART IV

CHARITY ACCOUNTS, REPORTS AND RETURNS

Duty to keep accounting records

12. —(1) Unless otherwise excepted by regulations made under this Act, the governing board members of a charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to —

(a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time; and

(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.

(2) The accounting records shall, in particular, contain —

(a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and

(b) a record of the assets and liabilities of the charity.

(3) The governing board members of a charity shall preserve any accounting records made for the purposes of this section in respect of the charity for at least 5 years from the end of the financial year of the charity in which they are made.

[2/2007]

(4) Where a charity ceases to exist within the period of 5 years mentioned in subsection (3) as it applies to any accounting records, the obligation to preserve those records in accordance with that subsection shall continue to be discharged by the last governing board members of the charity, unless the Commissioner consents in writing to the records being destroyed or otherwise disposed of.

(5) *Deleted by Act 34/2010, wef 01/03/2011.*

Annual statements of accounts

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

(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;

(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 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;

(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 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) or (3)(a), as the case may be, 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 —

- (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
- (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.

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

- (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.

(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.

(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 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.

(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.

15. Deleted by Act 34/2010, wef 01/03/2011

Annual reports

16. —(1) Unless otherwise excepted by regulations made under this Act, the governing board members of a charity shall prepare in respect of each financial year of the charity an annual report containing —

- (a) a prescribed report by the governing board members on the activities of the charity during that year; and
- (b) such other information relating to the charity or to its governing board members or officers as may be prescribed by regulations made under this Act.

(2) The annual report required to be prepared under this section in respect of any financial year of a charity shall be transmitted to the Commissioner by the governing board members —

- (a) within 6 months from the end of that year; or
- (b) within such longer period as the Commissioner may for any special reason allow in the case of that report.

(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 —

- (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
- (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.

(4) Subsection (3) shall not apply to a charity which is a company, and any annual report transmitted by the governing board members of such a charity under subsection (2) shall have attached to it a copy of the charity's annual accounts prepared for the financial year in question under Part VI of the Companies Act (Cap. 50), together with a copy of the auditor's report on those accounts.

(5) Any annual report transmitted to the Commissioner under subsection (2), together with the documents attached to it, shall be kept by the Commissioner for such period as he may think fit.

(6) Deleted by Act 34/2010, wef 01/03/2011.

[UK Charities Act 1993, s. 45]

Public inspection of annual reports, etc.

17. —(1) Any annual report or other document kept by the Commissioner in pursuance of section 16 (5) shall be open to public inspection at all reasonable times —

- (a) during the period for which it is so kept; or
- (b) if the Commissioner so determines, during such lesser period as he may specify.

(2) Where any interested person —

(a) requests the governing board members of a charity in writing to provide him with a copy of the charity's most recent accounts; and

(b) pays the governing board members such reasonable fee (if any) as they may require in respect of the costs of complying with the request,

those governing board members shall comply with the request within the period of 2 months beginning with the date on which the request is made.

(3) In subsection (2), the reference to a charity's most recent accounts shall be —

(a) a reference to the statement of accounts or account and statement prepared in pursuance of section 13(1) in respect of the last financial year of the charity the accounts for which have been audited or examined under section 14; and

(b) in the case of a charity which is a company, a reference to the annual accounts of the company most recently audited under Part VI of the Companies Act (Cap. 50).

[UK Charities Act 1993, s. 47]

Offences

18. Any person who, without reasonable excuse, is persistently in default in relation to any requirement imposed by section 16 (2) or 17 (2) 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.

[10/2007]

[UK Charities Act 1993, s. 49]

PART V

SMALL CHARITIES

Power to transfer all property, modify objects, etc.

19. —(1) This section shall apply to a charity if —

(a) its gross income in its last financial year did not exceed \$20,000; and

(b) it does not hold any land on trusts which stipulate that the land is to be used for the purpose, or any particular purpose, of the charity,

and it is neither an exempt charity nor a charitable company.

(2) Subject to the following provisions of this section, the governing board members of a charity to which this section applies may resolve for the purposes of this section —

(a) that all the property of the charity should be transferred to such other charity as is specified in the resolution, being either a registered charity or a charity which is not required to be registered;

(b) that all the property of the charity should be divided, in such manner as is specified in the

resolution, between such 2 or more other charities as are so specified, being in each case either a registered charity or a charity which is not required to be registered;

(c) that the governing instruments of the charity should be modified by replacing all or any of the purposes of the charity with such other purposes, being in law charitable, as are specified in the resolution;

(d) that any provision of the governing instruments of the charity —

(i) relating to any of the powers exercisable by the charity trustees in the administration of the charity; or

(ii) regulating the procedure to be followed in any respect in connection with its administration,

should be modified in such manner as is specified in the resolution.

(3) Any resolution passed under subsection (2) must be passed by a majority of not less than two-thirds of such governing board members present and voting on the resolution.

(4) The governing board members of a charity to which this section applies (referred to in this Act as the transferor charity) shall not have power to pass a resolution under subsection (2)(a) or (b) unless they are satisfied —

(a) that the existing purposes of the transferor charity have ceased to be conducive to a suitable and effective application of the charity's resources; and

(b) that the purposes of the charity or charities specified in the resolution are as similar in character to the purposes of the transferor charity as is reasonably practicable,

and before passing the resolution they must have received from the charity trustees of the charity, or (as the case may be) of each of the charities, specified in the resolution written confirmation that those governing board members are willing to accept a transfer of property under this section.

(5) The governing board members of any such charity shall not have power to pass a resolution under subsection (2)(c) unless they are satisfied —

(a) that the existing purposes of the charity (or, as the case may be, such of them as it is proposed to replace) have ceased to be conducive to a suitable and effective application of the charity's resources; and

(b) that the purposes specified in the resolution are as similar in character to those existing purposes as is practical in the circumstances.

(6) Where governing board members have passed a resolution under subsection (2), they shall —

(a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and

(b) send a copy of the resolution to the Commissioner, together with a statement of their reasons for passing it.

(7) The Commissioner may, when considering the resolution, require the governing board members

to provide additional information or explanation —

(a) as to the circumstances in and by reference to which they have determined to act under this section; or

(b) relating to their compliance with this section in connection with the resolution,

and the Commissioner shall take into account any representations made to him by persons appearing to him to be interested in the charity where those representations are made within the period of 6 weeks beginning with the date when the Commissioner receives a copy of the resolution by virtue of subsection (6)(b).

(8) Where the Commissioner has so received a copy of a resolution from any governing board members and it appears to him that they have complied with this section in connection with the resolution, the Commissioner shall, within the period of 3 months beginning with the date when he receives the copy of the resolution, notify them in writing either —

(a) that the Commissioner concurs with the resolution; or

(b) that he does not concur with it.

(9) Where the Commissioner so notifies his concurrence with the resolution, then —

(a) if the resolution was passed under subsection (2)(a) or (b), the governing board members shall arrange for all the property of the transferor charity to be transferred in accordance with the resolution and on terms that any property so transferred —

(i) shall be held and applied by the charity to which it is transferred (referred to in this Act as the transferee charity) for the purposes of that charity; but

(ii) shall, as property of the transferee charity, nevertheless be subject to any restrictions on expenditure to which it is subject as property of the transferor charity,

and those governing board members shall arrange for it to be so transferred by such date as may be specified in the notification; and

(b) if the resolution was passed under subsection (2)(c) or (d), the governing instruments of the charity shall be deemed, as from such date as may be specified in the notification, to have been modified in accordance with the terms of the resolution.

(10) For the purpose of enabling any property to be transferred to a charity under this section, the Commissioner shall have the power, at the request of the governing board members of that charity, to make orders vesting any property of the transferor charity —

(a) in the charity trustees of the first-mentioned charity or in any trustee for that charity; or

(b) in any other person nominated by those charity trustees to hold the property in trust for that charity.

(11) The Minister may by order amend subsection (1) (a) by substituting a different sum for the sum for the time being specified therein.

(12) In this section, references to the transfer of property to a charity are references to its transfer —

- (a) to the governing board members;
- (b) to any trustee for the charity; or
- (c) to a person nominated by the to hold it in trust for the charity,

as the may determine.

[UK Charities Act 1993, s. 74]

Power to spend capital

20. —(1) This section shall apply to a charity if —

- (a) it has a permanent endowment which does not consist of or comprise any land; and
- (b) its gross income in its last financial year did not exceed \$5,000,

and it is neither an exempt charity nor a charitable company.

(2) Where the governing board members of a charity to which this section applies are of the opinion that the property of the charity is too small, in relation to its purposes, for any useful purpose to be achieved by the expenditure of income alone, they may resolve for the purposes of this section that the charity ought to be freed from the restrictions with respect to expenditure of capital to which its permanent endowment is subject.

(3) Any resolution passed under subsection (2) must be passed by a majority of not less than two-thirds of such governing board members present and voting on the resolution.

(4) Before passing such a resolution, the governing board members must consider whether any reasonable possibility exists of effecting a transfer or division of all the charity's property under section 19 (disregarding any such transfer or division as would, in their opinion, impose on the charity an unacceptable burden of costs).

(5) Where governing board members have passed a resolution under subsection (2), they shall —

- (a) give public notice of the resolution in such manner as they think reasonable in the circumstances; and
- (b) send a copy of the resolution to the Commissioner, together with a statement of their reasons for passing it.

(6) The Commissioner may, when considering the resolution, require the governing board members to provide additional information or explanation —

- (a) as to the circumstances in and by reference to which they have determined to act under this section; or
- (b) relating to their compliance with this section in connection with the resolution,

and the Commissioner shall take into account any representations made to him by persons appearing to him to be interested in the charity where those representations are made within the period of 6 weeks beginning with the date when the Commissioner receives a copy of the resolution by virtue of subsection (5)(b).

(7) Where the Commissioner has so received a copy of a resolution from any governing board members and it appears to him that they have complied with this section in connection with the resolution, the Commissioner shall, within the period of 3 months beginning with the date when he receives the copy of the resolution, notify them in writing either —

- (a) that the Commissioner concurs with the resolution; or
- (b) that he does not concur with it.

(8) Where the Commissioner so notifies his concurrence with the resolution, the governing board members shall have, as from such date as may be specified in the notification, power by virtue of this section to expend any property of the charity without regard to any such restrictions as are mentioned in subsection (2).

(9) The Minister may by order amend subsection (1) (b) by substituting a different sum for the sum for the time being specified therein.

(10) A charity shall be deemed for the purposes of this section to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this section “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.

[*UK Charities Act 1993, s. 75*]

PART VI

APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSIONER

Occasions for applying property cy-près

21. —(1) Subject to subsection (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy-près shall be as follows:

- (a) where the original purposes, in whole or in part —
 - (i) have been as far as may be fulfilled;
 - (ii) cannot be carried out; or
 - (iii) cannot be carried out according to the directions given and to the spirit of the gift;
- (b) where the original purposes provide a use for part only of the property available by virtue of the gift;
- (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes;
- (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or

(e) where the original purposes, in whole or in part, have, since they were laid down —

(i) been adequately provided for by other means;

(ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or

(iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.

(2) Subsection (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy-près, except in so far as those conditions require a failure of the original purposes.

(3) References in subsections (1) and (2) to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(4) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.

(5) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before 1st January 1995.

[*Charities Act 1985 Ed., s. 11*]

Application cy-près of gifts of donors unknown or disclaiming

22. —(1) Property given for specific charitable purposes which fail shall be applicable cy-près as if given for charitable purposes generally, where it belongs to a donor who —

(a) after the prescribed advertisements and inquiries have been published and made, and after the prescribed period beginning with the publication of those advertisements has expired, cannot be identified or cannot be found; or

(b) has executed a disclaimer in the prescribed form of his right to have the property returned.

(2) Where the prescribed advertisements and inquiries have been published and made by or on behalf of trustees with respect to any such property, the trustees shall not be liable to pay to any person in respect of the property if no claim by him to be interested in the property is received by the trustees before the expiry of the period specified in subsection (1) (a).

(3) For the purposes of this section, property shall be conclusively presumed (without any advertisement or inquiry) to belong to donors who cannot be identified, in so far as it consists of the proceeds of —

(a) cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or

(b) any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(4) The High Court may by order direct that property not falling within subsection (3) shall, for the

purposes of this section, be treated (without any advertisement or inquiry) as belonging to donors who cannot be identified, where it appears to the Court —

(a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or

(b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(5) Where property is applied cy-près by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (3) or (4) —

(a) the scheme shall specify the total amount of that property;

(b) the donor of any part of that amount shall be entitled, if he makes a claim not later than 6 months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the governing board members of the charity after that date in connection with claims relating to his gift; and

(c) the scheme may include directions as to the provision to be made for meeting any such claim.

(6) Where —

(a) any sum is, in accordance with any directions in a scheme, set aside for meeting any such claims; but

(b) the aggregate amount of any such claims actually made exceeds the relevant amount,

then if the Commissioner so directs, each of the donors in question shall be entitled only to such proportion of the relevant amount as the amount of his claim bears to the aggregate amount referred to in paragraph (b); and for this purpose, “relevant amount” means the amount of the sum so set aside after deduction of any expenses properly incurred by the governing board members of the charity in connection with claims relating to the donors’ gifts.

(7) For the purposes of this section, charitable purposes shall be deemed to fail where any difficulty in applying property to those purposes makes that property or the part not applicable cy-près available to be returned to the donors.

(8) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

(9) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before 1st January 1995.

[*Charities Act 1985 Ed., s. 12*]

Entrusting charity property to Public Trustee and termination of trust

23. —(1) The High Court may by order vest any property held by or in trust for a charity in the

Public Trustee or authorise or require the persons in whom the property is vested to transfer it to him, or appoint any person to transfer the property to him; and the property may be vested in the Public Trustee with or without powers of management as the Court may direct.

(2) Where any property is held by or in trust for a charity, or is comprised in any testamentary gift to a charity, the property may, with the agreement of the Public Trustee, be transferred to him; and his receipt for the property comprised in a testamentary gift to a charity shall be a complete discharge of the personal representative.

(3) Where property is vested in the Public Trustee in trust for a charity, the High Court may make an order discharging him from the trusteeship as respects all or any of that property.

(4) Where the Public Trustee is discharged from his trusteeship of any property, or the trusts on which he holds any property come to an end, the High Court may make such vesting orders and give such directions as may seem to the Court to be necessary or expedient in consequence.

(5) No person shall —

(a) be liable for any loss occasioned by his acting in conformity with an order under this section or by his giving effect to anything done in pursuance of that order; or

(b) be excused from so doing by reason of the order under this section having been in any respect improperly obtained.

(6) No vesting or transfer of any property in pursuance of this section shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

[*Charities Act 1985 Ed., s. 13*]

Concurrent jurisdiction with High Court for certain purposes

24. —(1) Subject to the provisions of this Act, the Commissioner may, with the consent of the Attorney-General, by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes:

(a) establishing a scheme for the administration of a charity;

(b) appointing, discharging or removing a governing board member of a charity or trustee for a charity, or removing an officer or employee; and

(c) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or any payment.

(2) The Commissioner shall not have jurisdiction under this section to try or determine the title to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity, or to try or determine any question as to the existence or extent of any charge or trust.

(3) Before exercising any jurisdiction under this section, the Commissioner shall give notice of his intention to do so to each of the governing board members except those who cannot be found or who have no known address in Singapore; and the notice may be given by post and, if given by post, may be addressed to the governing board member's last known address in Singapore.

(4) The Commissioner shall not exercise his jurisdiction under this section in any case (not referred to him by order of the High Court) which, by reason of its contentious character, or of any special

question of law or of fact which it may involve, or for other reasons, the Commissioner may consider more fit to be adjudicated on by the High Court.

(5) An appeal against any order of the Commissioner under this section may at any time, within the 3 months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the governing board members, or any person interested in the charity, or by any person removed from any office or employment by the order.

[*Charities Act 1985 Ed., s. 14*]

Power to act for protection of charities

25. —(1) Where, at any time after the Commissioner has instituted an inquiry under section 8 with respect to any charity, he is satisfied —

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; and
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commissioner may, with the consent of the Attorney-General, do one or more of the following things:

- (i) by order remove any trustee, governing board member, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;
- (ii) by order establish a scheme for the administration of the charity;
- (iii) notwithstanding anything in the governing instruments of the charity, by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without his approval.

(2) Where, at any time after the Commissioner has instituted an inquiry under section 8 with respect to any charity, he is satisfied —

- (a) that there is or has been any misconduct or mismanagement in the administration of the charity; or
- (b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,

the Commissioner may, with the consent of the Attorney-General, do one or more of the following things:

- (i) by order suspend any trustee, governing board member, officer, agent or employee of the charity from the exercise of his office or employment pending consideration being given to his removal (whether under this section or otherwise);
- (ii) by order appoint such number of additional governing board members or key officers as he considers necessary for the proper administration of the charity;

(iii) by order vest any property held by or in trust for the charity in the Public Trustee, or require the persons in whom any such property is vested to transfer it to the Public Trustee, or appoint any person to transfer any such property to him;

(iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commissioner;

(v) order any debtor of the charity not to make any payment in or towards the discharge of his liability to the charity without the approval of the Commissioner;

(vi) by order restrict (notwithstanding anything in the governing instruments of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commissioner;

(vii) by order appoint (in accordance with section 26) a receiver and manager in respect of the property and affairs of the charity.

(3) The references in subsections (1) and (2) to misconduct or mismanagement shall (notwithstanding anything in the governing instruments of the charity) extend to the employment for remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(4) The Commissioner may remove a governing board member or key officer by order made of his own motion where the governing board member or key officer —

(a) has been convicted of an offence involving dishonesty, fraud or moral turpitude;

(b) is a bankrupt;

(c) is a corporation in liquidation;

(d) lacks capacity (within the meaning of the Mental Capacity Act 2008) to exercise his functions as governing board member or key officer;

(e) has not acted, and will not declare his willingness or unwillingness to act; or

(f) is outside Singapore or cannot be found or does not act, and his absence or failure to act impedes the proper administration of the charity.

(5) The Commissioner may, by order made of his own motion, appoint a person to be a governing board member or key officer —

(a) in place of a governing board member or key officer removed by him under this section or otherwise;

(b) where there are no governing board members, or where by reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

(c) where there is a single governing board member or key officer, not being a corporation, and the Commissioner is of the opinion that it is necessary to increase the number for the proper administration of the charity; or

(d) where the Commissioner is of the opinion that it is necessary for the proper administration of the charity to have an additional governing board member or key officer, because one of the existing governing board members or key officers who ought nevertheless to remain a governing board member or key officer cannot be found or does not act or is outside Singapore.

(6) The powers of the Commissioner under this section to remove or appoint governing board members or trustees for a charity shall include the power to make any such order with respect to the vesting in or transfer to the governing board members or trustees for a charity of any property as the Commissioner may make on the removal or appointment of a governing board member or trustee for the charity by him under section 24.

(7) Any order under this section for the removal or appointment of a governing board member or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 24.

(8) Section 24 (4) shall apply to orders under this section as it applies to orders under section 24.

(9) The power of the Commissioner to make an order under subsection (2) (i) shall not be exercisable so as to suspend any person from the exercise of his office or employment for a period of more than 12 months; but (without prejudice to the generality of section 42) any such order made in the case of any person may make provision as respects the period of his suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and, in the case of a governing board member, for adjusting any rules governing the proceedings of the governing board members to take account of the reduction in the number capable of acting.

(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 —

(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,

each trustee for the charity or key officer concerned,

except those who cannot be found or who have no known address in Singapore.

(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.

(11) The Commissioner shall, at such intervals as he thinks fit, review any order made by him under subsection (2) (i), (iii), (iv), (v), (vi) or (vii); and if on any such review it appears to him that it would be appropriate to discharge the order in whole or in part, he shall so discharge it (whether subject to any savings or transitional provisions or not).

(12) Any person who contravenes an order under subsection (2) (iv), (v) or (vi) 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.

(13) Nothing in subsection (12) shall be taken to preclude the bringing of proceedings for breach of trust against any governing board member or trustee for a charity in respect of a contravention of an order under subsection (2)(iv) or (vi) (whether proceedings in respect of the contravention are brought against him under subsection (12)).

(14) This section shall not apply to an exempt charity.

[Charities Act 1985 Ed., s. 15]

Power to suspend or remove trustees, etc., from membership of charity

25A. —(1) This section shall apply where the Commissioner makes an order under section 25 removing or suspending any trustee, governing board member, officer, agent or employee of a charity from his office or employment, as the case may be, and the person in question is a member of the charity.

[10/2007]

(2) If the order suspends the person in question from his office or employment, the Commissioner may also make an order suspending his membership of the charity for the period for which he is suspended from his office or employment.

[10/2007]

(3) If the order removes the person in question from his office or employment, the Commissioner may also make an order —

(a) terminating his membership of the charity; and

(b) prohibiting him from resuming his membership of the charity for not less than 2 years or such time as the Commissioner may specify.

[10/2007]

(4) Any person who continues in his membership of a charity in contravention of an order under subsection (2) or (3) 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 12 months 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.

[10/2007]

(5) This section shall not apply to an exempt charity.

[10/2007]

[UK Charities Bill 2006, clause 19]

Supplementary provisions relating to receiver and manager appointed for a charity

26. —(1) The Commissioner may under section 25 (2) (vii) appoint to be receiver and manager in respect of the property and affairs of a charity such person (other than an officer or employee of the charity) as he thinks fit.

(2) Without prejudice to the generality of section 42 (1), any order made by the Commissioner under section 25 (2) (vii) may make provision with respect to the functions to be discharged by the receiver and manager appointed by the order; and those functions shall be discharged by the receiver and manager under the supervision of the Commissioner.

(3) In connection with the discharge of those functions, any such order may provide —

(a) for the receiver and manager appointed by the order to have such powers and duties of the governing board members of the charity concerned (whether arising under this Act or otherwise) as are specified in the order; and

(b) for any powers or duties exercisable or falling to be performed by the receiver and manager by virtue of paragraph (a) to be exercisable or performed by him to the exclusion of those governing board members.

(4) Where a person has been appointed receiver and manager by any such order, the Commissioner may apply to the High Court for directions in relation to any particular matter arising in connection with the discharge of those functions.

(5) The High Court may, on an application under subsection (4), give such directions or make such orders declaring the rights of any person (whether before the Court or not), as the Court thinks just; and the costs of any such application shall be paid by the charity concerned.

(6) The Minister may make regulations with respect to —

(a) the appointment and removal of receivers and managers appointed in accordance with this section;

(b) the remuneration of such receivers and managers out of the income of the charities concerned; and

(c) the making of reports to the Commissioner by receivers and managers.

(7) Regulations made under subsection (6) may, in particular, authorise the Commissioner to require a receiver and manager so appointed to give security for the due discharge of his functions, to determine the amount of his remuneration, and to disallow any amount of remuneration in such circumstances as are prescribed by the regulations.

[UK Charities Act 1993, s. 19]

Power to direct application of charity property

26A. —(1) This section shall apply where the Commissioner is satisfied —

(a) that a person or persons in possession or control of any property held by or on trust for a charity is or are unwilling to apply it properly for the purposes of the charity; and

(b) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the charity.

[10/2007]

(2) The Commissioner may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.

[10/2007]

(3) An order under this section —

(a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property; but

(b) may not require any action to be taken which is prohibited by any written law or expressly prohibited by the governing instruments of the charity.

[10/2007]

(4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3) (a).

[10/2007]

(5) Subsection (4) shall not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

[10/2007]

(6) Any person who contravenes an order under subsection (2) 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 12 months 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.

[10/2007]

[UK Charities Bill 2006, clause 21]

Power to direct application of charity property after charity ceases to exist

26B. —(1) This section shall apply in respect of any institution that was a charity (whether or not registered under section 5) —

(a) from the time the institution ceases to be a charity, or ceases to exist or operate, whichever occurs earlier; and

(b) where the Commissioner is satisfied —

(i) that a person or persons in possession or control of any property held by or on trust for the institution is or are unwilling to apply it properly for the purposes of the trust; and

(ii) that it is necessary or desirable to make an order under this section for the purpose of securing a proper application of that property for the purposes of the trust.

[10/2007]

(2) The Commissioner may by order direct the person or persons concerned to apply the property in such manner as is specified in the order.

[10/2007]

(3) An order under this section —

(a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned in relation to the property; but

(b) may not require any action to be taken which is prohibited by any written law or expressly prohibited by the governing instruments of the institution.

[10/2007]

(4) Anything done by a person under the authority of an order under this section shall be deemed to be properly done in the exercise of the powers mentioned in subsection (3) (a).

[10/2007]

(5) Subsection (4) shall not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.

[10/2007]

(6) Any person who contravenes an order under subsection (2) 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 12 months 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.

[10/2007]

[UK Charities Bill 2006, clause 21]

Persons disqualified from being governing board members, etc., of a charity

27. —(1) Subject to the provisions of this section, a person shall be disqualified from being a governing board member or key officer of a charity or a trustee for a charity if —

(a) he has been convicted, whether in Singapore or elsewhere, of any offence involving dishonesty or deception;

(b) he has been adjudged bankrupt, and has not been discharged;

(c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

(d) he has been removed from the office of governing board member or key officer 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 on the ground of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or

(e) he is subject to a disqualification order under section 148, 149 or 154 of the Companies Act (Cap. 50).

(2) Where (apart from this subsection) a person is disqualified under subsection (1) (b) for being a governing board member or key officer of a charity or a trustee for a charity which is a company, he shall not be so disqualified if leave has been granted under section 148 of the Companies Act for him to act as director of the charity; and similarly a person shall not be disqualified under subsection (1) (e) from being a governing board member or key officer of a charity or trustee for a charity if leave under the order has been granted for him to act as director of the charity.

[UK Charities Act 1993, s. 72]

Persons acting as governing board member, etc., while disqualified

28. —(1) Any person who acts as a governing board member or key officer of a charity or trustee for a charity while he is disqualified from being such a governing board member or key officer or trustee by virtue of section 27 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.

[10/2007]

(2) Any act done as governing board member or key officer of a charity or trustee for a charity by a person disqualified from being such a trustee by virtue of section 27 shall not be invalid by reason only of that disqualification.

(3) Where the Commissioner is satisfied —

(a) that any person has acted as governing board member or key officer of a charity or trustee for a charity while disqualified from being such a governing board member or key officer or trustee by virtue of section 27; and

(b) that, while so acting, he has received from the charity any sum by way of remuneration or expenses, or any benefit in kind, in connection with his acting as governing board member or key officer of the charity or trustee for the charity,

the Commissioner may by order direct him to repay to the charity the whole or part of any such sum, or (as the case may be) to pay to the charity the whole or part of the monetary value (as determined by the Commissioner) of any such benefit.

(4) Subsection (3) shall not apply to any sum received by way of remuneration or expenses in respect of any time when the person concerned was not disqualified from being a governing board member or key officer of a charity or trustee for the charity.

[*UK Charities Act 1993, s. 73*]

Publicity for proceedings under this Part

29. —(1) The Commissioner shall not make any order under this Part to establish a scheme for the administration of a charity unless not less than one month previously there has been given public notice of his proposals, inviting representations to be made to him within a time specified in the notice, which shall not be less than one month from the date of the notice.

(2) The Commissioner shall not make any order under this Part to appoint, discharge or remove a governing board member or key officer of a charity or trustee for a charity (other than the Public Trustee), unless not less than one month previously there has been given the like public notice as is required by subsection (1) for an order establishing a scheme but this subsection shall not apply in the case of —

(a) an order under section 25(2)(ii); or

(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.

(3) Before the Commissioner makes an order under this Part to remove without his consent a governing board member of a charity or trustee for a charity, or an officer, agent or employee of a charity, the Commissioner shall, unless he cannot be found or has no known address in Singapore, give him not less than one month's notice of the Commissioner's proposal, inviting representations to be made to the Commissioner within a time specified in the notice.

(4) Where notice is given of any proposal as required by subsection (1), (2) or (3), the Commissioner shall take into consideration any representation made about the proposal within the time specified in the notice, and may (without further notice) proceed with the proposal either without modification or with such modification as appear to him to be desirable.

(5) Where the Commissioner makes an order which is subject to appeal under subsection (5) of section 24, the order shall be published either by giving public notice of it or by giving notice of it to all persons entitled to appeal against it under that subsection, as the Commissioner thinks fit.

(6) Where the Commissioner makes an order under this Part to establish a scheme for the administration of a charity, a copy of the order shall, for not less than one month after the order is published, be available for public inspection at all reasonable times at the office of the Commissioner.

(7) Any notice to be given under this section of any proposals or order shall give such particulars of the proposals or order, or such directions for obtaining information about them, as the Commissioner thinks sufficient and appropriate, and any public notice shall be given in such manner as he thinks sufficient and appropriate.

(8) Any notice to be given under this section, other than a public notice, may be given by post and, if given by post, may be addressed to the recipient's last known address in Singapore.

[*Charities Act 1985 Ed., s. 16*]

Power to authorise dealings with charity property, etc.

30. —(1) Subject to this section, where it appears to the Commissioner that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, he may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the governing board members in the administration of the charity; and anything done under the authority of that order shall be deemed to be properly done in the exercise of those powers.

(2) An order under this section may be made so as to authorise a particular transaction, compromise or the like, or a particular application of property, or so as to give a more general authority, and (without prejudice to the generality of subsection (1)) may authorise a charity to use common premises, or employ a common staff, or otherwise combine for any purpose of administration, with any other charity.

(3) An order under this section may give directions as to the manner in which any expenditure is to be borne and as to other matters connected with or arising out of the action thereby authorised; and where anything is done in pursuance of an authority given by any such order, any directions given in connection therewith shall be binding on the governing board members for the time being as if contained in the governing instruments of the charity except that those directions may on the application of the charity be modified or superseded by a further order.

(4) Without prejudice to the generality of subsection (3), the directions which may be given by an order under this section shall in particular include directions for —

- (a) meeting any expenditure out of a specified fund;
- (b) charging any expenditure to capital or to income;
- (c) requiring expenditure charged to capital to be recouped out of income within a specified period;
- (d) restricting the costs to be incurred at the expense of the charity; or
- (e) the investment of moneys arising from any transaction.

[*Charities Act 1985 Ed., s. 17*]

Taking of legal proceedings

31. —(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the governing board members, or by any person interested in the charity, but not by any other

person.

(2) Subject to this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioner.

(3) The Commissioner shall not, without special reasons, authorise the taking of charity proceedings where in his opinion the case can be dealt with by him under the powers of this Act.

(4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.

(5) Where subsection (2) requires the taking of charity proceedings to be authorised by an order of the Commissioner, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from the High Court.

(6) Nothing in subsections (1) to (5) shall apply to the taking of proceedings by the Attorney-General, with or without a relator.

(7) Where it appears to the Commissioner, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney-General, the Commissioner shall so inform the Attorney-General, and send him such statements and particulars as the Commissioner thinks necessary to explain the matter.

(8) In this section, “charity proceedings” means proceedings in the High Court brought under the jurisdiction of the Court with respect to charities, or brought under the jurisdiction of the Court with respect to trusts in relation to the administration of a trust for charitable purposes.

[Charities Act 1985 Ed., s. 18]

Charitable companies

32. —(1) Where a charity may be wound up by the High Court under the Companies Act (Cap. 50), an application for it to be wound up under that Act by the High Court may be made by the Attorney-General, as well as by any person authorised by that Act.

[42/2005]

(2) Where a charity is a company or other body corporate, and has power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body corporate ceasing to be a charity shall be valid so as to affect the application of —

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money’s worth;
- (b) any property representing property referred to in paragraph (a);
- (c) any property representing income which has accrued before the alteration is made; or
- (d) the income from any such property referred to in paragraphs (a) to (c).

[Charities Act 1985 Ed., s. 19]

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).

***PART VII**

Deleted by Act 34/2010, wef 01/03/2011.

PART VIII

FUND-RAISING APPEALS

Interpretation of this Part

39. —(1) In this Part and any regulations made for the purpose of this Part, unless the context otherwise requires —

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

(a) the whole or part of —

(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

(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);

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

"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 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;

"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;

"fund-raising appeal" means —

(a) an appeal, whether made expressly or impliedly, to any member of the public to give money or other property (whether for consideration or otherwise) which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes; or

(b) a receipt from any member of the public of any money or other property (whether for consideration or otherwise) which is given in whole or in part for any charitable, benevolent or philanthropic purposes;

"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;

"proceeds" , in relation to a fund-raising appeal, means all money or other property given (whether for consideration or otherwise) in response to the fund-raising appeal in question;

[10/2007]

"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.

(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.

Prohibition on conducting fund-raising appeal without permit

39A. —(1) No person shall conduct or participate in any fund-raising appeal unless he is —

(a) exempt from the provision of this section; or

(b) a person to whom a permit has been granted by the Commissioner in accordance with regulations made for the purpose of this section.

[10/2007]

(2) Any person who contravenes subsection (1) 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.

[10/2007]

(3) The Minister, or such person as he may appoint, may exempt any person or class of persons from the provision of this section.

[10/2007]

[Charities Act 1995 Ed., s. 39 (1) to (3)]

Power of Commissioner to prohibit or restrict fund-raising appeal

39B. —(1) Notwithstanding any exemption or permit granted under section 39A, the Commissioner may, at any time, by order published in the *Gazette* —

- (a) prohibit or stop the conduct of any fund-raising appeal by any charity or person; or
- (b) restrict the conduct of any fund-raising appeal by any charity or person by imposing conditions,

if he is satisfied —

- (i) that any fund-raising appeal conducted by the charity or person has not been conducted in good faith for charitable, benevolent or philanthropic purposes;
- (ii) that any of the persons who have conducted a fund-raising appeal, or any persons associated with any such appeal, are not fit and proper persons to administer, or to be associated with, a fund-raising appeal for charitable, benevolent or philanthropic purposes;
- (iii) that any fund-raising appeal has been improperly administered;
- (iv) that, in connection with any fund-raising appeal conducted, the provisions of this Act or the regulations or the conditions imposed by the Commissioner were not complied with by any person conducting or participating in the appeal; or
- (v) that, in the public interest, the fund-raising appeal should not be conducted.

[10/2007]

(2) Any person who conducts any fund-raising appeal in contravention of any order made by the Commissioner under subsection (1) 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 12 months 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.

[10/2007]

[NSW CFA 1991, s. 31]

Regulations relating to fund-raising appeals

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

- (a) regulating the conduct of commercial fund-raisers and commercial participators in relation to fund-raising appeals, and in particular —
 - (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;
 - (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;
 - (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

(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

(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 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.

Exclusion of judicial review

40. —(1) There shall be no judicial review in any court of any act done or decision made by the Minister or Commissioner under any regulations made for the purpose of section 39A except in regard to any question relating to compliance with any procedural requirement of the regulations governing that act or decision.

[10/2007]

(2) In this section, “judicial review” includes proceedings instituted by way of —

(a) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order;

(b) an application for a declaration or an injunction; or

(c) any other suit or action relating to or arising out of any act done or decision made in pursuance of any power conferred upon the Minister or Commissioner by any regulations made for the purpose of section 39A.

[42/2005;10/2007]

PART VIIIA

INSTITUTIONS OF A PUBLIC CHARACTER AND SECTOR ADMINISTRATORS

Interpretation of this Part

40A. In this Part, unless the context otherwise requires —

"institution of a public character" means an institution or fund in Singapore which is —

(a) a hospital not operated or conducted for profit;

(b) a public or benevolent institution not operated or conducted for profit;

(c) a public authority or society not operated or conducted for profit and which is

engaged in research or other work connected with the causes, prevention or cure of disease in human beings;

(d) a university or a public fund for the establishment, maintenance, enlargement or improvement of a university;

(e) an educational institution not operated or conducted for profit, or a public fund for the establishment, maintenance, enlargement or improvement of such an educational institution;

(f) a public or private fund for the provision, establishment or endowment of a scholarship, exhibition or prize in a university, or an educational institution not operated or conducted for profit;

(g) a public fund established and maintained for the relief of distress among members of the public;

(h) an institution which is established for charitable, benevolent or philanthropic purposes only; or

(i) an organisation not operated or conducted for profit which is engaged in or connected with the promotion of culture or the arts or with the promotion of sports,

which is approved as an institution of a public character by the Minister, Commissioner or any Sector Administrator on the application of the institution, or which is deemed as an institution of a public character under any written law;

"sector" , in relation to a Sector Administrator, means the class or classes of charities or institutions of a public character that the Minister has by notice published in the *Gazette* designated as under the supervision of that Sector Administrator;

"Sector Administrator" means any person or organisation appointed to be a Sector Administrator under section 40B.

[10/2007]

[*Income Tax Act, s. 2*]

Appointment of Sector Administrators

40B. The Minister may appoint any person or organisation to be a Sector Administrator for one or more of the following purposes:

(a) regulating the administration of charities within the sector;

(b) approving institutions as institutions of a public character from among such class or classes of institutions as the Minister or Commissioner may determine;

(c) regulating the administration of donations made to institutions of a public character within the sector;

(d) exercising such other functions and powers as the Minister may determine.

[10/2007]

[*Income Tax Act, s. 107 (1)*]

Regulations relating to institutions of a public character and Sector Administrators

40C. —(1) The Minister may make regulations to provide for —

- (a) the manner and criteria to be adopted —
 - (i) for the approval of institutions of a public character; and
 - (ii) for the extension and revocation of the approval granted to institutions of a public character;
- (b) the regulation of any amendment of the constitution or any other governing instrument of any institution of a public character;
- (c) the use of donations, issue of tax deduction receipts and maintenance of donation records and accounts by institutions of a public character;
- (d) the regulation of institutions of a public character, including the application of provisions in the Act to institutions of a public character, whether or not such institutions are charities;
- (e) the delegation by the Commissioner to any Sector Administrator of any of his functions or powers, except those which are exercisable under sections 24, 25, 25A, 26A, 26B and 30;
- (f) the procedures for appeal against decisions made by Sector Administrators; and
- (g) generally giving effect to or for carrying out the purposes of this Part.

[10/2007]

(2) Where any institution of a public character contravenes any regulations made under subsection (1) —

- (a) the institution of a public character shall be liable to pay to the Commissioner a financial penalty of the higher of \$100 or 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; and
- (b) the Minister, Commissioner or the appropriate Sector Administrator may revoke the approval granted to the institution of a public character.

[10/2007]

(3) Any financial penalty payable by any institution of a public character under subsection (2) (a) shall be recoverable as a debt due to the Government.

[10/2007]

(4) The Commissioner may remit or refund the whole or any part of the financial penalty payable by any institution of a public character under subsection (2) (a).

[10/2007]

(5) Any financial penalty paid under subsection (2) (a) shall, after deducting any remission or refund under subsection (4), be paid into the Consolidated Fund.

[10/2007]

(6) Any financial penalty imposed under subsection (2) (a) shall be deemed to be interest on tax for the purposes of section 33 (2) of the Limitation Act (Cap. 163).

[10/2007]

(7) Where any Sector Administrator contravenes any regulations made under subsection (1), the Minister may revoke the appointment of the Sector Administrator.

[10/2007]

[*Income Tax Act, ss. 100 (2) and 107 (2) to (4)*]

PART IX

MISCELLANEOUS

Manner of giving notice of charity meetings, etc.

41. —(1) All notices which are required or authorised by the governing instruments of a charity to be given to a governing board member, member or subscriber may be sent by post, and, if sent by post, may be addressed to any address given as his in the list of governing board members, members or subscribers for the time being in use at the office or principal office of the charity.

(2) Where any such notice required to be given under subsection (1) is given by post, it shall be deemed to have been given by the time at which the letter containing it would be delivered in the ordinary course of post.

(3) No notice required to be given under subsection (1) of any meeting or election need be given to any governing board member, member or subscriber, if in the list of governing board members, members or subscribers he has no address in Singapore.

[*Charities Act 1985 Ed., s. 21*]

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.

(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

(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.

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

(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.

(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.

(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

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.

(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:

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

(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 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.

Miscellaneous provisions as to orders of Commissioner

42. —(1) Any order made by the Commissioner under this Act may include such incidental or supplementary provisions as the Commissioner thinks expedient for carrying into effect the objects of the order.

(2) Where the Commissioner makes an order under this Act, then (without prejudice to the requirements of this Act where the order is subject to appeal) he may himself give such public notice as he thinks fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity affected by the order.

(3) The Commissioner may, at any time within 12 months after he has made an order under this Act, if he is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act, with or without any application or reference to him, discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.

(4) Except for the purposes of subsection (3) or of an appeal under this Act, an order made by the Commissioner under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

[*Charities Act 1985 Ed., s. 22*]

Service of documents

43. —(1) This section shall apply to —

- (a) any order or direction made or given by the Commissioner under this Act; and
- (b) *Deleted by Act 34/2011, wef 01/03/2011.*
- (c) any notice required to be served under any regulations made under this Act.

(2) A document to which this section applies may be served on or given to a person (other than a body corporate) —

- (a) by delivering it to that person;
- (b) by leaving it at his last known address in Singapore; or
- (c) by sending it by post to him at that address.

(3) A document to which this section applies may be served on or given to a body corporate by delivering it or sending it by post —

- (a) to the registered or principal office of the body corporate in Singapore; or
- (b) if it has no such office, to any place in Singapore where it carries on business or conducts its activities, as the case may be.

[*UK Charities Act 1993, s. 91*]

Holding out as registered charity or institution of a public character

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 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 during which the offence continues after conviction.

Offences by bodies corporate

44. —(1) Where any offence under this Act or any regulations made thereunder is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, “director” means a member of the body corporate.

[*UK Charities Act 1993, s. 95*]

Enforcement of orders of Commissioner

45. A person guilty of disobedience —

(a) to an order of the Commissioner under section 24 or 25 requiring a transfer of property or payment to be called for or made; or

(b) to an order of the Commissioner requiring a default under this Act to be made good,

may on the application of the Commissioner to the High Court be dealt with as for disobedience to an order of the High Court.

[*Charities Act 1985 Ed., s. 23*]

Appeals from Commissioner

46. —(1) Provisions shall be made by Rules of Court for regulating appeals to the High Court under this Act against orders or decisions of the Commissioner.

(2) On such an appeal —

(a) the Attorney-General shall be entitled to appear and be heard; and

(b) such other persons as the Rules allow or as the High Court may direct may appear and be heard.

[*Charities Act 1985 Ed., s. 24*]

Protection from liability

46A. No action, suit or other legal proceedings shall lie against the Commissioner, the Deputy Commissioner, any Assistant Commissioner, any officer appointed or authorised by the Commissioner or any Sector Administrator appointed under section 40B, for anything done (including any statement made) or omitted to be done in good faith in the course of or in connection with —

(a) the exercise or purported exercise of any power under this Act or any other written law;

(b) the performance or purported performance of any function or the discharge or purported discharge of any duty under this Act or any other written law; or

(c) the compliance or purported compliance with this Act or any other written law.

[10/2007]

[*Casino Control Act 2006, s. 192*]

Power to compound

47. —(1) The Commissioner may, in his discretion, compound any offence under this Act or any regulations made thereunder which is prescribed as an offence which may be compounded by collecting from a person reasonably suspected of having committed the offence a sum not exceeding one half of the amount of the maximum fine that is prescribed for the offence.

[10/2007]

(2) The Minister may prescribe the offences which may be compounded.

Prosecution of offences

47A. Proceedings in respect of any offence under this Act or any regulations made thereunder may, with the authorisation of the Public Prosecutor, be conducted by any public officer who is authorised to conduct such proceedings by the Commissioner.

[10/2007]

[*IRAS Act, s. 26 (1)*]

Regulations

48. —(1) The Minister may make such regulations as he considers necessary or expedient for giving full effect to the provisions and purposes of this Act and for the due administration thereof.

(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;

(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

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

(3) *Deleted by Act 34/2010, wef 01/03/2011.*

(4) All regulations made under this Act shall be presented to Parliament as soon as possible after publication in the *Gazette*.

[*Charities Act 1985 Ed., s. 25*]

Transitional provisions

49. —(1) Any document or order made or thing done under any provision of the repealed Charities Act (Cap. 37, 1985 Ed.), and every such document, order or thing so far as it is subsisting or in force on 1st January 1995 shall continue and have effect as if it had been made or done under the corresponding provisions of this Act.

(2) On 1st January 1995, the Commissioner of Charities, Deputy Commissioner, Assistant Commissioner and other officers appointed under section 3 of the repealed Charities Act shall continue in office and shall be deemed to be appointed under section 3 of this Act.

(3) In any written law, any reference to the repealed Charities Act shall be read as a reference to this Act.

THE SCHEDULE

Sections 2 and 5

EXEMPT CHARITIES

The following institutions, so far as they are charities, are exempt charities within the meaning of this Act:

- (a) any university or educational institution, hospital or religious body established by an Act of Parliament; and
- (b) any other institution which the Minister by order declares to be an exempt charity for the purposes of this Act.

LEGISLATION HISTORY

1. Act 22 of 1994 — Charities Act 1994

Date of First Reading	:	25 July 1994 (Bill No. 18/94 published on 29 July 1994)
Date of Second and Third Readings	:	31 October 1994
Date of commencement	:	1 January 1995 (except Part VII)

2. 1995 Revised Edition — Charities Act (Chapter 37)

:	:	
Date of operation	:	15 March 1995
:	:	

3. Act 43 of 1999 — Telecommunications Act 1999

(Consequential amendments made to Act by)

Date of First Reading	:	11 October 1999 (Bill No. 33/99 published on 12 October 1999)
Date of Second and Third Readings	:	23 November 1999
Date of commencement	:	1 December 1999

4. Act 26 of 2001 — Statutes (Miscellaneous Amendments and Repeal) Act 2001

Date of First Reading	:	11 July 2001 (Bill No. 24/2001 published on 12 July 2001)
Date of Second and Third Readings	:	25 July 2001
Date of commencement	:	1 March 2002 (section 3 — Amendment of Charities Act)

5. Act 5 of 2004 — Companies (Amendment) Act 2004

(Consequential amendments made to Act by)

Date of First Reading	:	5 January 2004 (Bill No. 3/2004 published on 6 January 2004)
Date of Second and Third Readings	:	6 February 2004
Date of commencement	:	1 April 2004 (except section 28 (a) and (c)) 1 October 2004 (section 28 (a) and (c))

6. Act 42 of 2005 — Statutes (Miscellaneous Amendments) (No. 2) Act 2005

Date of First Reading	:	17 October 2005 (Bill No. 30/2005 published on 18 October 2005)
Date of Second and Third Readings	:	21 November 2005
Date of commencement	:	1 January 2006 (sections 5 and 6 — Amendment of Charities Act)

7. Act 2 of 2007 — Statutes (Miscellaneous Amendments) Act 2007

Date of First Reading	:	8 November 2006 (Bill No. 14/2006 published on 9 November 2006)
Date of Second and Third Readings	:	22 January 2007
Date of commencement	:	Financial year ending on any date in 2007 and subsequent financial years (section 2 — Amendment of Charities Act)

8. Act 10 of 2007 — Charities (Amendment) Act 2007

Date of First Reading	:	8 November 2006 (Bill No. 22/2006 published on 9 November 2006)
Date of Second and Third Readings	:	23 January 2007
Date of commencement	:	1 March 2007