Ogier

Guernsey's new charities law: key points for Guernsey trust and corporate service providers

Insights - 01/08/2022

Spurred on by the need to bring its regulation into line with international norms on anti-money laundering (**AML**) and countering the financing of terrorism (**CFT**), Guernsey introduced new charities legislation on 29 April 2022 redefining charities and non-profit organisations under Guernsey law, setting out criteria to determine which of them are required to be registered on the Register of Charities and other Non Profit Organisations, and laying out the governance and risk mitigation measures that such organisations are required to implement.

What is the new legislation?

There are three pieces of legislation, which apply in Guernsey and Alderney but not Sark:

1. The Charities etc (Guernsey and Alderney) Ordinance, 2021 (the **Ordinance**), which repealed and replaced the existing regime. The Ordinance provides the definitions of charities and non-profit organisations (**NPOs**), and sets the thresholds for which charities and NPOs are required to be registered on the Register of Charities and other Non Profit Organisations (the **Register**)
2. The Charities etc (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2022 (the **Regulations**). The Regulations provide various exemptions from the requirement to be registered, and set out the good governance and risk mitigation measures registered charities and NPOs have to implement
3. The Charities etc (Commencement and Transitional Provisions) (Guernsey and Alderney) Regulations, 2022, which sets out the phased timetable of implementation of the Ordinance and Regulations

For the purposes of this briefing, we will refer to Guernsey only.

What's a charity and what's a non-profit organisation under Guernsey law?

NPOs are any organisations established solely or principally either for the non-financial benefit of their members or for the benefit of society.

Charities are NPOs that pass the following two tests:

1. all of their purposes are charitable or are purely ancillary or incidental to any of its charitable purposes; and
2. they provide or intend to provide benefit for the public or a section of the public in Guernsey, Alderney or elsewhere to a reasonable degree in giving effect to its purposes

The Ordinance provides a list of charitable purposes, which applies for the purpose of the Ordinance and registration regime. The list is long and includes 16 separate items, starting with (a) the prevention or relief of poverty, (b) the advancement of education, and (c) the advancement of religion, and ending with "any other purpose that may reasonably be regarded as analogous to any of the purposes listed in subparagraphs (a) to (o)".

NPOs benefit from preferential income tax rates on profits. Charities enjoy an additional tax advantage which is to receive tax rebates on the donations they receive, subject to certain limitations.

Which NPOs are covered by the Guernsey charities legislation?

The legislation applies to NPOs that are either:

1. based in Guernsey or Alderney; or
2. are established, administered, controlled in or operating from either Guernsey or Alderney

An NPO that is not based in Guernsey or Alderney may not be placed on the Register.

Which NPOs must register under the Guernsey charities legislation?

NPOs must be registered if they fall into one or both of the following categories:

1. they have gross assets and funds of £100,000 or more, or a gross annual income of over

£20,000 (the **financial threshold**), unless they do not solicit or accept donations, funds or contributions from the public. Under the previous regime the thresholds were £10,000 and £5,000 respectively; or

2. they engage in international activities, meaning they raise or distribute assets abroad (the **international threshold**). The requirement to register applies regardless of whether they meet the financial threshold or solicit or accept donations from the public. It is subject to limited exceptions, for example if the international activity is to assist someone whose principal place of residence is in Guernsey or Alderney

Do NPOs have to register if they are administered by a regulated trustee or corporate service provider?

Under the previous regime, so called "manumitted organisations" were exempt from the requirement to register. Manumitted organisations were defined as NPOs that were "administered, controlled or operated" by a person regulated by the Guernsey Financial Services Commission who administers, controls or operates the organisation in the course of their regulated activities.

This exemption has been removed. Manumitted organisations that meet either the financial threshold or the international threshold must be registered. However, concessions have been made in the legislation for organisations that are "administered, directed or controlled by a corporate services provider in its capacity as such". Such organisations are exempt from certain governance requirements, most notably the requirements that:

- the board must comprise at least three people to occupy the roles of Chair, Secretary and Treasurer or equivalent
- that a majority of the board members must be Guernsey or Alderney residents; and
- that board members must be persons of integrity and probity who have suitable and appropriate skills and experience

How to register a charity or NPO in Guernsey and when to update the Register

The deadline for organisations that did not have to be registered under the previous regime but now have to be registered (ie those that previously qualified under the "manumitted organisations" exemption) was 31 July 2022.

Registration is administered by the Guernsey Registry. Application forms together with further information for charities, can be found on their website: www.guernseyregistry.com/charities

The application form must contain certain details including the name and address of the NPO and full details of the purposes, objectives and objects of the organisation, and must be accompanied by a copy of its constitutional documents.

An annual validation must be filed by 28 February each year, and changes to the information provided to the Registrar must be notified within 21 days of any change.

Is the Guernsey charities Register public?

The Register is public, but contains limited information and only on registered NPOs that solicit or accept donations, funds and contributions from the public, or that elect to be inscribed there. The publicly available information is the name and registered address of the NPO, the details of its purposes and the names of the Managing Officers.

What are the new governance requirements for NPOs in Guernsey?

The Regulations are quite prescriptive in terms of how NPOs are to be governed. In addition to the regulations dealing with composition of the board noted above, the Regulations:

- detail what needs to be included in the constitution or other governing documents
- require NPOs to maintain financial records demonstrating that their assets are being applied in line with its objectives
- require compulsorily registered NPOs to file annual financial statements with the Registrar
- require NPOs to make and keep records of meetings, decisions, and contractual documents; and
- require NPOs to implement standard measures to ensure financial probity and transparency, for example that funds must pass through their bank accounts, that two unconnected people must sign to release funds, and that the NPO's assets must be kept separate from those of third parties

What are the new risk AML/CFT mitigation requirements for NPOs in Guernsey?

International organisations have found that the risk of money laundering and terrorist financing is heightened when money is sent or received abroad and therefore under the new regime internationally active NPOs have to work to tighter timeframes and are subject to certain additional requirements.

Notable thresholds and deadlines include:

- from 1 August 2022, registered NPOs must identify donors and beneficiaries if they receive a donation from outside the Bailiwick or provide assets to a beneficiary outside the Bailiwick of £15,000 or more in any one year, or if they receive a donation which they consider to be unusual
- any international payments over £100,000 made on or after 1 August 2022 must be reported to the Registrar (excluding the donation of physical items, payments that are incidental to the purposes of the NPO to support a person from the Bailiwick who is residing elsewhere for reasons connected to the payment, or payments to an affiliated organisation in the UK, Jersey or the Isle of Man)
- all NPOs must carry out a risk assessment and put in place mitigating measures where necessary. Internationally focussed NPOs must have completed this by 30 November 2022 and domestic NPOs by 31 March 2023; and
- internationally focussed NPOs must also have a written anti financial crime policy in place and filed with the Registrar by 30 November 2022

Additional resources

The Guernsey Registry has published useful resources about the new legislation, including a flowchart explaining whether NPOs need to register and FAQs for both domestic and internationally active NPOs. These resources are available on the Registry website at www.guernseyregistry.com

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

Meet the Author

Diana Rodriguez

Senior Associate

Guernsey

E: diana.rodriguez@ogier.com

T: +44 1481 752236

Key Contacts

Matt Guthrie

Partner

Guernsey

E: matt.guthrie@ogier.com

T: +44 1481 752342

Catherine Moore

Partner

Guernsey

E: catherine.moore@ogier.com

T: +44 1481 752364

Related Services

Private Wealth

Family Office

Channel Islands Local Legal Services

Related Sectors

Family Office

Trusts Advisory Group