

CONSULTATION PAPER.

MANUMITTED ORGANISATIONS.

ISSUED BY: THE REGISTRAR OF NON PROFIT ORGANISATIONS ("THE REGISTRAR")

DATE OF ISSUE: 4 APRIL 2014

RESPONSES REQUIRED BY 2 MAY 2014

PURPOSE OF THIS CONSULTATION

The Registrar is seeking comments in relation to the oversight of manumitted organisations¹ and in particular:

Whether the register of Non Profit Organisations² ("NPOs") held by the Registrar should be extended to include manumitted organisations, so that they become subject to all existing and any future requirements in connection with registration.

Submissions should be made in writing to:

R Gray
Registrar of Non Profit Organisations,
PO Box 37,
2 Cornet Street,
St Peter Port,
Guernsey
GY1 3AZ.

¹ Manumitted – in general terms this means any non-profit organisation which is administered, controlled or operated by a person who holds a license granted by the GFSC under its regulatory laws and who administers controls or operates the organisation in the course of these regulated activities.

² "Charity" means:

- (a) any organisation established for charitable purposes only, and
- (b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person, means, in relation to that property or fund and the income thereof, that person.

"Non profit organisation" means any organisation established solely or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity.

BACKGROUND

Guernsey currently has in place a registration framework for NPOs which is set out in the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended (“the Law”), a copy of which can be found at:

<http://www.guernseylegalresources.gg/article/91269/Charities>

In 2010 the Guernsey Financial Services Commission issued a letter to the fiduciary sector advising that it would not regard discretionary trusts, which are not set up for charitable purposes, but which have charities appointed alongside natural persons as long-stop beneficiaries, as NPOs for the purposes of the Law. The Law Officers Chambers have confirmed this interpretation and the Registrar will issue this guidance on its website. This document should be read in that context.

In 2011, the International Monetary Fund (IMF) published a report on the Bailiwick’s compliance with the Financial Action Task Force (“FATF”) Recommendations. The report made some recommendations in respect of the framework for dealing with NPOs.

In February 2012, new FATF Recommendations were issued which were followed up in February last year by a new Methodology (collectively “the new FATF standards”). The new FATF standards make a number of changes that affect NPOs including the introduction of internal governance measures.

Therefore, consideration is being given to the steps that are necessary in order both to meet the IMF recommendations in relation to the existing FATF standards and to comply with the new FATF standards going forward.

The following have been identified as areas which need to be further addressed;

- NPO governance issues, such as due diligence, internal controls and record keeping, together with monitoring and enforcement of compliance.
- Clarification and consistency of the penalties for non-compliance available under the Law.
- The inclusion of manumitted organisations within the NPO framework.

This consultation document focuses on the inclusion of manumitted organisations within the NPO framework only. The other areas identified, together with some proposals about the disclosure of information, are subject to another consultation exercise. However, please be aware that any decision to include manumitted organisations within the NPO framework is likely to be made on the basis that they will be subject to any changes that are introduced as a result of that other exercise.

THE EXISTING FRAMEWORK

In general terms, a manumitted organisation is any NPO which is administered, controlled or operated by a person:

- (a) who holds or is deemed to hold a licence granted by the Guernsey Financial Services Commission under the regulatory Laws; and
- (b) who administers, controls or operates the organisation in the course of his regulated activities.

In practice, manumitted NPOs are administered, controlled or operated by 50 full fiduciaries licensees. There are 176 manumitted NPOs compared to 174 registered NPOs. Ninety-five per cent of manumitted NPOs have assets outside the Bailiwick and/or are active outside the Bailiwick. The total value of assets of manumitted NPOs is almost £1.85 billion with an average value of over £10 million. The activities and scope of activities of the manumitted NPO sector is significantly larger than the registered NPO sector.

Registered and manumitted NPOs are subject to requirements under the Law. They must:

- (a) make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income. The records must be retained in a readily retrievable form for a period of no less than six years after the date of being made.
- (b) in the case of a registered organisation, file annual financial statements with the Registrar, in such form as the Registrar may specify; and in the case of a registered organisation, inform the Registrar as soon as is reasonably practicable of any change to any of the matters required to be stated in the application for registration.

MANUMITTED ORGANISATIONS

It is a requirement of both the existing FATF standards and the new FATF standards that the various measures governing NPOs be applied to *“those NPOs which account for (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities”*.

The position of manumitted organisations in relation to this requirement in the existing FATF standards was considered by the IMF, and their findings, as set out in Paragraph 1194 of their report, were as follows:

“The registration framework for NPO[s] is not comprehensive. The decision to exempt manumitted organization[s] is not justified from a risk perspective. A total of 207 manumitted organizations hold £2.018 billion in asset[s] with over 76% of those assets held internationally. The large asset values and the international nature of the holdings do not justify a low risk evaluation from a terrorist financing perspective. Manumitted organizations present the highest vulnerability to Terrorist Financing in the NPO and charities sector in Guernsey and therefore should be subject to registration.”

If the present situation as regards manumitted organisations remains as it is, Guernsey will clearly remain vulnerable to this criticism in future evaluations. It is therefore proposed that the Law be amended to bring manumitted organisations within the same range of requirements as other NPOs under the Law. This is on the basis that the amendment will not extend to non-charitable discretionary trusts that have charities appointed alongside natural persons as long-stop beneficiaries, as indicated above.

The Registrar is seeking comments in relation to this proposal and specifically on:

Whether the register of NPOs held by the Registrar should be extended to include manumitted organisations, so that they become subject to all existing and any future requirements in connection with registration.

Submissions should be made in writing to:

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Registrar of Non Profit Organisations,
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GY1 3AZ.

CONFIDENTIALITY

Submissions will be used solely for the purposes of this consultation as set out above. They will be considered by the Registrar who may wish to use them for additional consultation with other interested bodies (including, but not limited to, the Policy Council, the Fiscal and Economic Policy Group, the Treasury and Resources Department, the Registrar of Companies, Registrar of Foundations, Guernsey Border Agency, Guernsey Financial Services Commission and the Law Officers of the Crown (for legislative drafting purposes). Those making submissions should clearly indicate, within the body of the submission, if they wish their contributions to remain anonymous for such additional consultation purposes.

Respondents are asked not to include any Personal Data, as defined in section 1 of the Data Protection (Bailiwick of Guernsey) Law, 2001. Should any Personal Data be included in the responses received the Director will process such data in accordance with the published Data Protection Policy.

Closing date for responses to the Registrar is: **2 May 2014**