

## Frequently Asked Questions about the BVI's Non-Profit Organisations Act, 2012

The Non-Profit Organisations Act was passed in the British Virgin Islands in 2012 and came into force on 1 January 2013. The law introduces a number of new requirements for non-profit organisations operating in the BVI. The following guide has been prepared by Harneys to assist the non-profit sector in the BVI understand its obligations under the law.

### Q1 What is the Non-Profit Organisations Act, 2012?

A1 The Act is legislation passed by the British Virgin Islands to provide a framework for regulating charities and other non-profit organisations which operate predominantly in the Territory. The Act was passed as part of the global fight against terrorist financing; some international organisations believe that charities are used as a front by terrorists.

### Q2 I run a local non-profit organisation. What does this mean for me?

A2 First you need to consider if the Act applies to you. Firstly, are your activities conducted primarily within the Territory? Secondly, are you engaged in *“the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the benefit of the public, or a section of the public”*. Finally, you need to consider if your organisation is established *“solely or primarily”* to do this.

If the answer to all three questions is “yes”, then the Act probably applies to you and you will need to complete an application form and pay the relevant fee (either US\$100 or, if your organisation is not a new organisation and your annual income is below US\$250,000 then it is US\$50).

### Q3 What does *“charitable, religious, cultural, educational, social or fraternal purpose”* mean?

A3 It covers a pretty wide spectrum of organisations. Any religious organisation, including established churches will need to register as will all schools and colleges. A number of organisations such as the Lion’s Club, Rotary and sporting associations would be included under the heading “social or fraternal”. But any organisation which works for the public good is likely to be affected. This would include, for example, VISAR and the Historical Society.

**Q4 OK, but what does “solely or primarily” mean?**

A4 It really means that the public good should be the organisation’s main purpose and any other functions are secondary. For example, the BVI Red Cross runs a second hand shop, but clearly it is a charity first and shop second, so it would need to register. Conversely many medical clinics in the Territory provide services at little or no charge for the needy. However, they are businesses first and only provide these services as an adjunct to their business, and so would not need to register.

**Q5 What happens if I don’t register?**

A5 Theoretically it means you are committing a crime, punishable by either a fine or imprisonment. Whilst we expect that the authorities will take a sympathetic approach to the new legislation, the safest course is to comply.

**Q6 Do those criminal penalties apply to me personally?**

A6 Unfortunately, yes. If your organisation is what lawyers refer to as an “unincorporated association” then each member is potentially personally liable. If your organisation is incorporated as a limited company, then the members of the board of directors are potentially personally liable, but not other members.

**Q7 But my organisation is small and/or informal - does it still apply to me?**

A7 Probably. Being small does not unfortunately make any difference; the Act applies to all organisations, no matter how small. However they do have to be “organisations”. That implies a certain degree of permanence. A purely temporary endeavour, such as a charity sale or a sponsored cycling event, is probably not sufficiently permanent and would not need to be registered.

**Q8 Alright I give in - I will register. Then what happens?**

A8 Provided your registration is accepted, you then carry on much as before. Theoretically there are powers to inspect premises suspected of terrorist financing, but that is extremely unlikely. If your registration is rejected it means the Board does not consider you to be covered by the Act, and unless your organisation’s status changes you can forget all about it.

However, once you are registered your organisation is going to have to provide financial records every year to the Board for review. Moreover, if your revenues are greater than US\$250,000 a year you will need your financial records to be “certified” by an accountant.

**Q9 But what if we don’t maintain formal financial records?**

A9 Unfortunately you are going to have to start.

- Q10 Is it true we need to appoint a “money laundering reporting officer” now? What is that anyway?**
- A10 Well, strictly speaking all charities are supposed to have money laundering reporting officers already under BVI law under the Anti Money Laundering Code of Conduct, but the law is not strictly enforced against charities. The Act simply reiterates this requirement. The Act also provides that organisations with fewer than 5 employees are exempt, but no amendment has been made to the Code so we would suggest caution.
- Q11 Does this “money laundering reporting officer” need to be a lawyer or accountant?**
- A11 No. Although it sounds very scary, being a money laundering reporting officer is really just about being the sensible person in the organisation whom people can approach when they have concerns about these issues. In an organisation like a bank or a trust company this needs to be a qualified professional, but in less formal non-profit organisation like a charity you really just need a bit of guidance and a lot of common sense. However, if you do have a lawyer or an accountant within your organisation to fill the role they may be more comfortable dealing with the relevant regulations.
- Q12 Do we need a “compliance manual”? What is that?**
- A12 Unfortunately, you do. Under the Anti Money Laundering Code all charities are required to have a compliance manual to assist the members of the organisation and the money laundering reporting officer in setting out internal procedures to deal with these matters.
- Q13 Is this all really necessary?**
- A13 We appreciate your frustration. From your point of view this all looks highly unnecessary and a big waste of time. However, it is important to remember that the British Virgin Islands needs to do this as part of the wider fight against terrorist financing and to maintain the support of the international bodies which are crucial to the Territory’s offshore finance industry. Charities are formed for the greater good, and so you unfortunately you just need to trust us when we say that, even if it is not apparent to all the people working hard for their local charities, there is a “greater good” for the BVI behind this legislation.

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*The foregoing discussion and analysis is for general information purposes only and not intended to be relied upon for legal advice in any specific or individual situation.*

## FURTHER INFORMATION

Please contact any of the following Harneys lawyers if you require additional information on the Non-Profit Organisation Act.

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