

Charities consultation
Cyril Le Marquand House
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Jersey
JE4 8QT

1 May 2014

Via email: s.macnair@gov.je

Dear Sir,

Draft charity law

I am pleased to submit the Institute's response to the draft legislation for charities in the States of Jersey and trust the comments are useful to your deliberations.

About ICSA

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK, Ireland and the Crown Dependencies. Our members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and charity and corporate governance; and is able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. ICSA was central to the development of a code of governance for charities in 2005, and continues to play a leading role in its ongoing development and relevance.

A number of our members are involved in the not for profit and charitable sectors and all will be familiar with the importance of building and developing effective regulation and guidance to support charitable activities. This wealth of expertise and experience has informed our response to this consultation.

ICSA welcomes the opportunity to comment on the proposals to amend charity legislation in Jersey. Given our experience and input into charity law development in each of England and Wales, Scotland, Northern Ireland, and Eire, we believe we are well placed to inform your thinking on this matter.



General comments:

Terminology

The draft charities legislation refers to those in control of a charitable organisation as 'charity managers'. Given that many charities may decide to employ staff to manage the day to day affairs of the organisation, it may be more appropriate to define those with ultimate control over the organisation as 'trustees' in line with similar legislation across the UK.

It is acknowledged that the term 'trustee' may not be universal (board, committee or council members may be more common), but there should be a clearer delineation between those that control the charity and those responsible for implementing their decisions. In our experience, there is some confusion between governance and management and the use of the term 'manager' in this instance would add further to that confusion.

Should the States continue to use the term 'managers' however, page 2 of the draft legislation may require minor amendments to ensure consistency between the use of the term manager and trustee.

Restricted section of charities register

The desire to support and promote a flourishing voluntary and philanthropic sector within the States is to be applauded and the draft legislation should help to create that vision. There is a need however, to balance the desire to create that environment with the necessity to ensure an appropriate level of transparency and accountability for those entities placed on the restricted section of the charities register. Any legislation should take into account the FATF guidelines to ensure that regulatory measures are suitably robust to prevent and counter abuse of the sector.

For those wealthy donors who wish to remain anonymous, there is always the possibility to provide funds without divulging the information to the general public. While those in control of the charity will have to undertake appropriate due diligence to ensure the donation complies with any anti-money laundering regulations, this could be achieved without divulging the source of funds publicly. Likewise, any charity established eponymously would be unlikely to argue to maintain anonymity and privacy.

Regardless of the form of the charity, where the organisation seeks, and gains, tax advantages from registering as a charity, there should be a corresponding level of public accountability. ICSA therefore urges that the proposal to develop a restricted part of the register is carefully considered and any benefits balanced by any potentially adverse impact on the sector in terms of public confidence and trust. All charities should be held to account for the way they raise and apply their resources. A minimum level of information regarding their effectiveness should therefore be available to the public regardless of whether they ask for public donations or not. Recent scandals in England have adversely affected the sector because individual charities have not appeared to apply an appropriate amount of charitable resources on charitable activities.

Role of the Commissioner

ICSA does not have any additions to the role and functions of the Commissioner, but raises the question as to how the person fulfilling that role will be funded to perform those tasks and correspondingly held to account. Further information regarding the reporting arrangements and accountability framework concerning the role would be of benefit to the sector, and general public. While the draft legislation provides for certain decisions to be appealed by charities to the tribunal, this is separate from the Commissioner being held to account for their effectiveness and impact.

Due consideration should be given to the resources on offer to the Commissioner. For the role to be a success, appropriate levels of staff support, funding, and other resources will be required. Demanding too much from the Commissioner, without the necessary funding could have a negative impact on the public's perception of both the Commissioner's office and the wider charitable sector.

Charity names

In addition to the provisions detailed in the draft legislation relating to charity names, it may be beneficial for the enacted legislation to provide permission for charities to use 'operating names' clearly linked to the registered name of the charity. As the sector, and individual charities, evolve it may be appropriate to use alternative names as a result of social or environmental developments. Adopting an operating name

may therefore be more pragmatic than registering a new charity name or establishing a new charity and transferring funds.

Charity tribunal

There may be some benefit to adding to the criteria included in appeals to the charity tribunal to cover instances where the Commissioner has not decided to take any action. For example, a complaint regarding a charity may not be investigated by the Commissioner. The complainant may wish to challenge that decision because she feels that the charity's actions are questionable and significantly impact on the reputation of the sector.

Private charitable arrangements

As previously mentioned, the arrangements surrounding private trusts and foundations do not add clarity or transparency to the fledgling sector. The lack of consistency is likely to cause confusion and misunderstanding about the sector and could undermine the aims and vision of this draft legislation.

Effects of registration

Charitable organisations should be established for wholly charitable purposes; as such there should be appropriate mechanisms in place to restrict the use of funds being spent on those activities that do not fulfil the registered purposes. Where an organisation registering as a charity includes in its proposed constitution the power to change its charitable objects, it would be advisable for the Commissioner to reject the application and refuse similar constitutions that include such a provision. Should a registered charity wish to amend its charitable objects, or transfer its assets to another charity, such provisions could be provided for under the Commissioner's powers.

It is hoped that the above comments are useful to you in your deliberations relating to the development of charity law and regulation. Should you wish to discuss any points in further detail, or how ICOSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours sincerely,

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