

**ALERT**  
**(International Version)**  
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**NON-PROFIT ORGANISATIONS ACT, 2012 TAKES EFFECT**

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The Non-Profit Organisations Act, 2012 (the “**NPOA**”), which was passed by the House of Assembly on 11 October 2012 and received the Governor’s assent on 12 November 2012, takes effect from 1 January 2013. While this legislation does not apply to BVI charitable or non-charitable purpose trusts with trustees who hold a trust license under the Banks and Trust Companies Act, 1990, it has broad and sweeping implications for charitable organizations operating in or from within the British Virgin Islands.

**1. Application to Register**

With the Minister appointing the Board and designating the Registrar, it is necessary for all non-profit organizations (“**NPOs**”) to apply for registration by **1 April 2013** or be subject to a maximum fine of US\$10,000.00 or 6 months imprisonment or both. However, an association of persons operating under and subject to the control of a registered NPO may not itself need to be separately registered but a report of its financial statements must also be provided to the Board with the application by its parent body. For example, each individual church within a denominational group, or each individual company of the BVI Girls’ Brigade Council, would not need to be separately registered once they are subject to a single entity.

The application fee for a NPO with a gross annual income of more than \$250,000.00 would be \$100.00 while a gross annual income of \$250,000.00 or less will be subject to an application fee of \$50.00. The same amount will be required to be paid annually as the renewal fee. The application must be signed on behalf of the NPO and accompanied by the constitutional documents of the NPO, a statement of purpose and the appropriate fees. It becomes necessary to ensure that the NPO’s constitutional documents comply with the obligations under the NPOA, including certain mandatory statements.

A copy of the application form is available upon request, but NPOs should seek legal advice in creating or amending their constitutional documents and preparing their statement of purpose.

**2. Changes & Maintenance of Records**

Every time any information provided to the Board changes it becomes necessary to inform the Board of those changes within 14 days of the date of the change. There is currently no fee associated with giving notice of any change. This duty to notify the Board is also coupled with an obligation to maintain certain records, including proper financial statements which

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must be submitted within six months after the end of the year, which is likely to be the financial year of the NPO, unless an extension is granted. All these records are required to be kept for at least 5 years, and for this purpose it is advisable that a Records Destruction Policy be adopted since failure to maintain the records can result in a penalty of US\$1,000.00 – US\$10,000.00.

### **3. Anti-Money Laundering and Terrorist Financing**

NPOs are required to comply with the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (as amended) (the “**Code**”) issued under the Proceeds of Criminal Conduct Act, 1997. However, where the NPO has 5 employees or less it may apply to the Board to disapply the Code as it relates to a requirement to appoint a Money Laundering Reporting Officer. This, however, does not exempt the NPO from ensuring compliance with the Code and it is recommended that a Compliance Manual appropriate to the NPO be prepared.

### **4. Tax Considerations**

NPOs are still liable to pay payroll taxes and social security contributions in relation to all their employees, therefore, they must obtain a tax identification number from the Inland Revenue Department and a Social Security Employer Number. However, a separate request may be submitted to the Commissioner of Inland Revenue to obtain a payroll tax exemption on the employer portion of payroll taxes. NPOs owning property in the territory are also subject to the same taxes as other property owners, including the possibility of obtaining a non-belonger land holding license, where appropriate.

### **Conclusions**

It should be noted that the NPOA also does not apply to a NPO which is created as a corporation sole by statute, for example, the Board of Trustees of the Seventh-Day Adventist Church and the Roman Catholic Bishop of St. John, but they are advised to ensure that they are fully compliant with the Code. However, churches and other charitable organizations which are not corporations sole must comply with the NPOA by 1 April 2013.

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If you would like more information about the establishment of a non-profit organization or to reorganize your existing non-profit organization in the British Virgin Islands, contact Jamal S. Smith.

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