

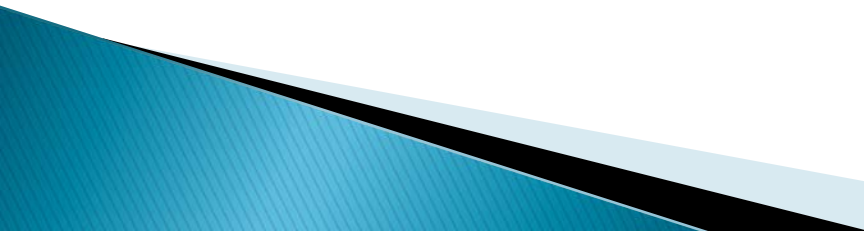
The Charities Act 2014: The next phase – Implementation

*Presentation to Centre on Philanthropy's fifth
biennial Third Sector Conference “Building Hope”*

Friday, 29 January 2016

Richard Ambrosio
Chairperson, Charity Commissioners

Sources of Charity Law in Bermuda

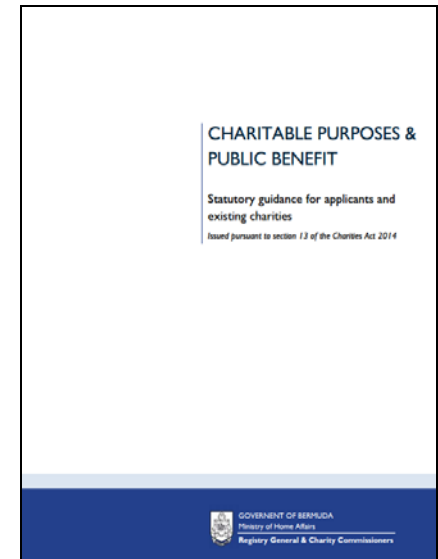
- ▶ Charities Act 2014
 - ▶ Charities Regulations 2014
 - ▶ Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014
 - ▶ Statutory Guidance on Charitable Purposes and Public Benefit
 - ▶ Protection of Vulnerable Persons Guidance
- 

Précis of Charity Law in Bermuda (1)

- ▶ To be a charity an organization must
 - be subject to the charity jurisdiction of the courts
 - have only 'charitable purposes'
- ▶ A charitable purpose is a purpose that:
 - falls within the descriptions of purposes in the Charities Act and
 - is for the public benefit. This is known as 'the public benefit requirement'
- ▶ Charity trustees have a duty to:
 - 'have regard' to the public benefit guidance
 - run their charity for the public benefit
 - report annually on their charity's public benefit

Précis of Charity Law in Bermuda (2)

- ▶ Public Benefit Test
 - There must be an actual benefit to the public.
 - Charities must serve the public or a sufficient section of the public, and must not unduly restrict access to its benefits.
 - Private or personal benefits must be necessary or incidental to achieving charitable purposes.



Statutory objectives (1)

So far as is reasonably practicable they shall, in performing their functions, act in a way—

- a) which is compatible with the [statutory] objectives under section 10; and
- b) which they consider most appropriate for the purpose of meeting those objectives.

Section 12(2), Charities Act 2014

Statutory objectives (2)

- ▶ to increase public trust and confidence in charities (“the public confidence objective”);
- ▶ to promote awareness and understanding of the operation of the public benefit requirement (“the public benefit objective”);
- ▶ to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities (“the compliance objective”);
- ▶ to promote the effective use of charitable resources (“the charitable resources objective”); and
- ▶ to enhance the accountability of charities to donors, beneficiaries and the general public (“the accountability objective”).

Section 10, Charities Act 2014

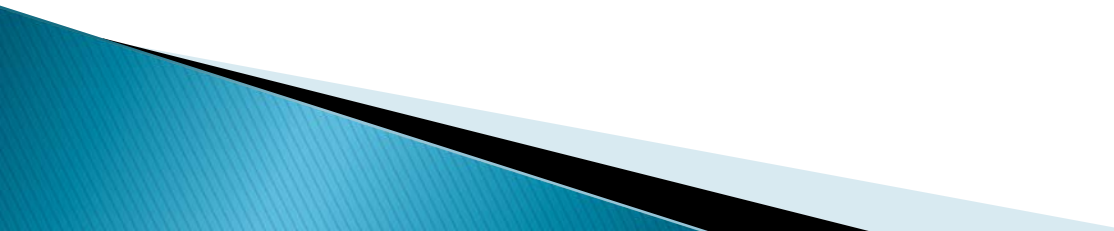
Statutory objectives (3)

In performing their functions they shall, so far as relevant, have regard to the principles of best regulatory practice, including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed.

Section 12(5), Charities Act 2014



Annual Reporting

- ▶ Updated information regarding trustees, directors, officers, etc
 - ▶ Changes to objectives of the organization
 - ▶ Within 6 months of the end of latest financial year (together with financial statements)
 - ▶ Public benefit reporting
 - ▶ AML/ATF reporting
 - ▶ Other governance issues that may arise
 - ▶ Reports to grant-making organizations, etc.
 - ▶ Avoid “mission statement” speak
- 

Application vs Annual Reporting

(Re)application

- ▶ How will the charity be structured and operate?
- ▶ What will be the objectives of the charity going forward?
- ▶ What activities will the charity engage in to achieve these objectives?
- ▶ How will these objectives and activities meet the public benefit test?

Annual Report

- ▶ Changes to how the charity is structured or operates?
- ▶ How were stated objectives met?
- ▶ Activities to achieve its stated objectives?
- ▶ Met the public benefit test?
- ▶ Material changes to charities objectives and activities in the future?

Financial Reporting (1)

Small charities

- ▶ Annual income of \$35,000 or less
- ▶ Statement of income and expenditure
- ▶ Balance sheet


Medium charities

- ▶ Annual income of more than \$35,000 but less than \$450,000
- ▶ Statement of income and expenditure
- ▶ Balance sheet
- ▶ Cash flow statement
- ▶ Explanatory notes

Large charities

- ▶ Annual income of \$450,000 or more OR
 - ▶ Assets of \$1,000,000 (before liabilities), or more
 - ▶ Statement of income and expenditure
 - ▶ Balance sheet
 - ▶ Cash flow statement
 - ▶ Explanatory notes
- Which are Audited**

Financial Reporting (2)

- ▶ Ensure compliance with bye-laws
 - ▶ Accounting Standards for Not-for-Profit Organizations of the Canadian Institute of Chartered Accountants *“to which all registered charities in Bermuda shall have regard”* – Reg 8(1)
 - ▶ Year-to-year comparative figures – Reg 9(5), 2014 Regulations
 - ▶ Public benefit should be clear from the financial accounts alone or in conjunction with the annual report
- 

Public Benefit Reporting


- ▶ Public Benefit Test
 - There must be an actual benefit to the public.
 - Charities must serve the public or a sufficient section of the public, and must not unduly restrict access to its benefits.
 - Private or personal benefits must be necessary or incidental to achieving charitable purposes.

CHARITABLE PURPOSES & PUBLIC BENEFIT

Statutory guidance for applicants and existing charities

Issued pursuant to section 13 of the Charities Act 2014

Example Annual Report & Financial Statements (1)



GOVERNMENT OF BERMUDA

CHARITIES ACT 2014
ANNUAL REPORT FOR CHARITIES

This information is being collected to determine the suitability of registered charities and associated persons for continued registration under the Charities Act 2014. Questions about this Form or the collection of the information can be directed to the Registrar General at the address below, or via email: charityinfo@gov.bm or at tel: 297-7841.

RETURN THIS FORM TO: The Registrar General
Government Administration Building, 1st Floor
30 Parliament Street
Hamilton HM 12 Email: charityinfo@gov.bm

1. Name of Organisation Bermuda Youth Charity Club		
2. Phone number: 555-5555	Fax Number: 555-6666	Email address: wyc@sample.bm
3. Address of Organisation (street address) 123 Main Street Hamilton, HM 28		
4. Mailing address (if different from street address) PO Box 121212 HM BX		
5. Registered Charity No. 1092	6. Registration Expiry Date (if applicable):	7. Company Registration Number (if applicable): N/A
8. Financial year covered by this Report: 2014/2015	9. Has this report been submitted within 6 months of the charity's financial year-end? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

10. Which of the following categories of charitable purposes best describe those of your organization? Tick all that apply.

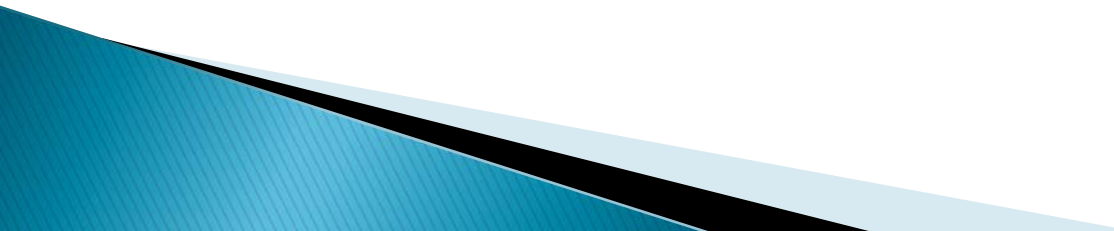
<ul style="list-style-type: none"> <input type="checkbox"/> The prevention or relief of poverty <input checked="" type="checkbox"/> The advancement of education <input type="checkbox"/> The advancement of religion <input type="checkbox"/> The advancement of health or the saving of lives <input checked="" type="checkbox"/> The advancement of citizenship or community development <input type="checkbox"/> The advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity <input type="checkbox"/> The provision of recreational or similar facilities in the interests of social welfare 	<ul style="list-style-type: none"> <input type="checkbox"/> The advancement of sport <input type="checkbox"/> The advancement of the arts, culture, heritage or science <input type="checkbox"/> The advancement of animal welfare <input checked="" type="checkbox"/> The relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage <input type="checkbox"/> The advancement of environmental protection or improvement <input type="checkbox"/> The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services <input type="checkbox"/> Other (please specify)
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Bermuda Youth Charity Club

Balance Sheet / Statement of Financial Position
as of September 31, 2015, with comparatives as of September 31, 2014

Assets	Notes	2015 September 31 \$	2014 September 31 \$
Fixed assets			
Office equipment		5,000	5,100
Current assets			
Cash in bank and at hand		15,448	3,549
Total Assets		20,448	8,649
Liabilities			
Accounts payable		2,082	-
Total Assets		2,082	-
Fund balance		18,366	8,649
Total liabilities and fund balance		20,448	8,649

Example Annual Report & Financial Statements (2) – General Observations

- ▶ Bullet point information; to the point
 - ▶ Big picture – what it does; how it does it
 - ▶ Information on vulnerable persons policy
 - ▶ Public benefit reporting
 - cross-reference public benefit test
 - f/s incomplete – complement with report
 - ▶ Independence maintained
 - ▶ Details of collaboration
- 

Example Annual Report & Financial Statements (3) – UK samples

- ▶ <http://www.charitySORP.org/>

The screenshot shows the homepage of the Charities SORP website. At the top, there is a dark navigation bar with four links: 'Home', 'Download a full SORP', 'Customise your SORP', and 'Choose SORP modules'. Below this, the main heading is 'Charities SORP' in a large green font, followed by the subtitle 'Application guidance for charity accounting'. The page is divided into two main content areas. The left area is titled 'Choosing the right SORP' and contains text about the Charity Commission and the Office of the Scottish Charity Regulator. Below this text is a green button labeled 'How to select the right SORP'. The right area is titled 'Responses to the SORP consultation published' and contains text about consultation responses and GAAP changes. Below this text is a green button labeled 'Find out more'. At the bottom of the page, there are three dark blue boxes with green icons and text: 'Customise your SORP' with a gear icon, 'Choose SORP modules' with a shopping cart icon, and 'Download a full SORP' with a folder icon.

[Home](#) [Download a full SORP](#) [Customise your SORP](#) [Choose SORP modules](#)

Charities SORP

Application guidance for charity accounting

Choosing the right SORP

The Charity Commission and the Office of the Scottish Charity Regulator, as the joint SORP-making body for charities, have developed two SORPs, one to support the Financial Reporting Standard for Smaller Entities (FRSSE) and one to support the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102).

[How to select the right SORP](#)

Responses to the SORP consultation published

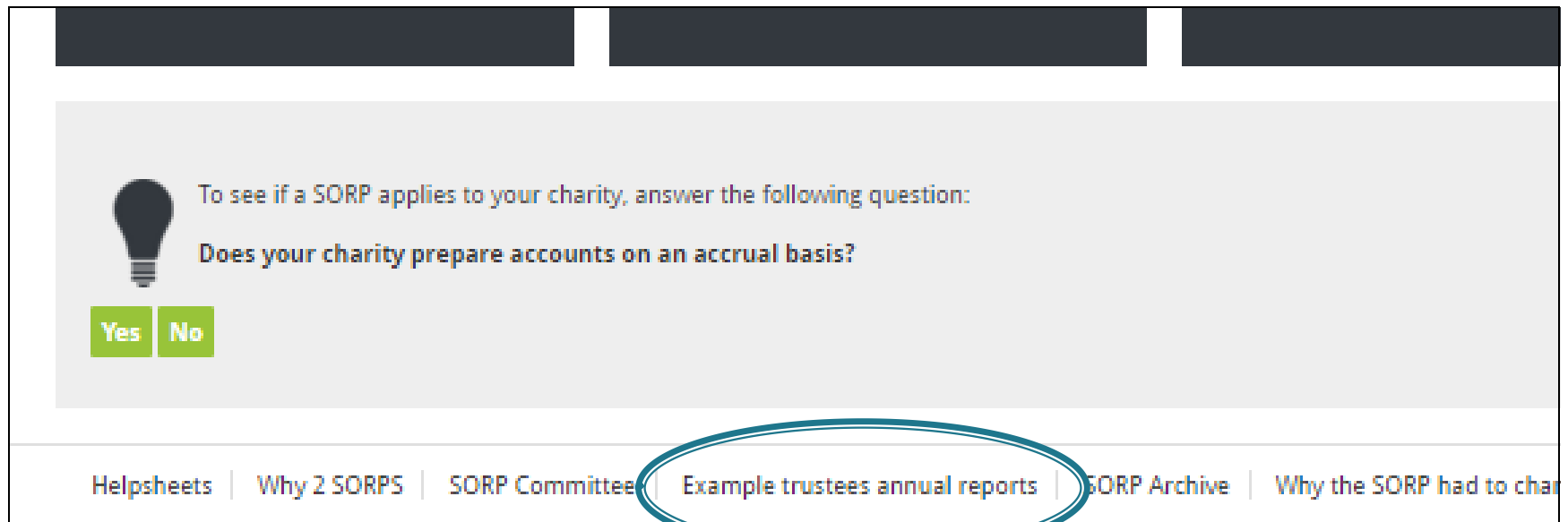
The Joint-SORP making body has published the consultation responses. The Update Bulletin to amend the SORPs due to changes in UK-Irish Generally Accepted Accounting Practice (GAAP) that take effect in 2016 has been submitted for FRC approval. These changes affect the Charities SORP (FRS 102) and also the Charities SORP (FRSSE). The Charities SORP (FRSSE) will not apply from 2016.

[Find out more](#)

[Customise your SORP](#) [Choose SORP modules](#) [Download a full SORP](#)

Example Annual Report & Financial Statements (4) – UK samples

- ▶ <http://www.charitycorp.org/>



The screenshot shows a website interface with a dark header bar at the top. Below the header, there is a light gray box containing a lightbulb icon on the left. To the right of the icon, the text reads: "To see if a SORP applies to your charity, answer the following question:" followed by "Does your charity prepare accounts on an accrual basis?". Below this text are two green buttons labeled "Yes" and "No". At the bottom of the page, there is a navigation bar with several links: "Helpsheets", "Why 2 SORPS", "SORP Committee", "Example trustees annual reports", "SORP Archive", and "Why the SORP had to cha". The link "Example trustees annual reports" is circled in blue.

Example Annual Report & Financial Statements (5) – UK samples

▶ <http://www.charitycorp.org/>

SORP examples and useful information

SORP Examples: England and Wales

The SORP example for the Arts Theatre Trust (FRS 102 version) is for a company limited by guarantee, operating a theatre and related activities with one trading subsidiary which is preparing consolidated accounts under accounting standard FRS 102.



Arts Theatre Trust - FRS 102

Download [PDF \(485 Kb\)](#)

The SORP example for the Arts Theatre Trust (FRSSE version) is for a company limited by guarantee, operating a theatre and related activities with one trading subsidiary which is preparing consolidated accounts under accounting standard FRSSE.



Arts Theatre Trust - FRSSE

Download [PDF \(493 Kb\)](#)

The SORP example for the Rosanna Grant Trust (FRS 102 version) is for an unincorporated trust which has endowment invested on a total return basis and makes grants to institutions and individuals.



Rosanna Grant Trust - FRS102

Download [PDF \(633 Kb\)](#)

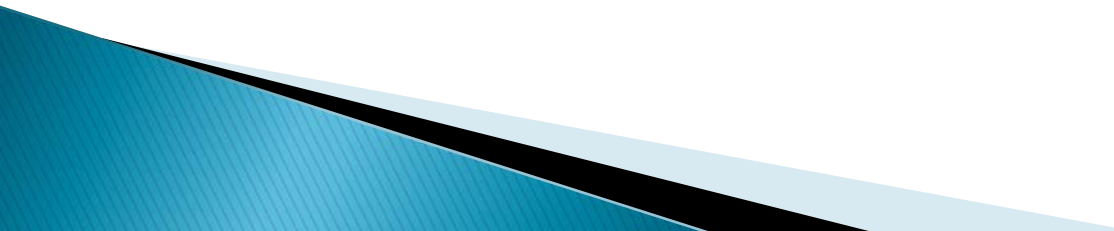
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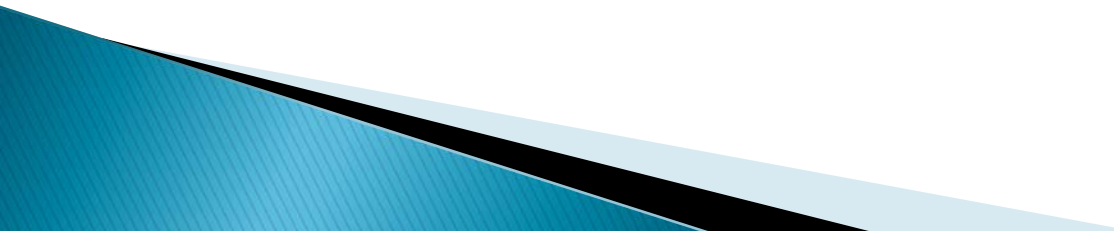
Rosanna Grant Trust - FRSSE

Download [PDF \(632 Kb\)](#)

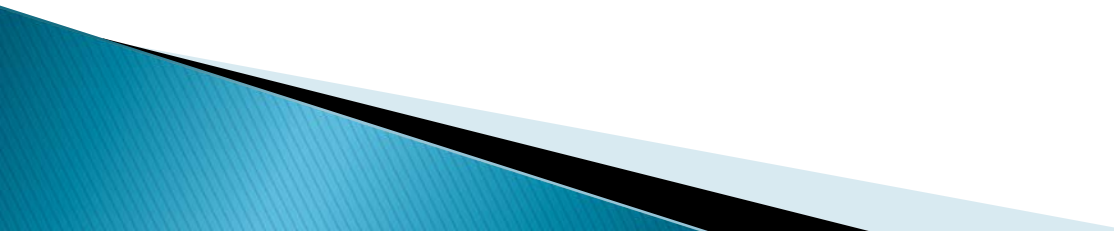
Re-application

- ▶ 2–3 months before expiration
 - ▶ Periods of registration – 1, 3, 5, indefinite
 - ▶ May be adjusted for an additional 11 months to sync up submission of annual reports and re-registration applications
- 

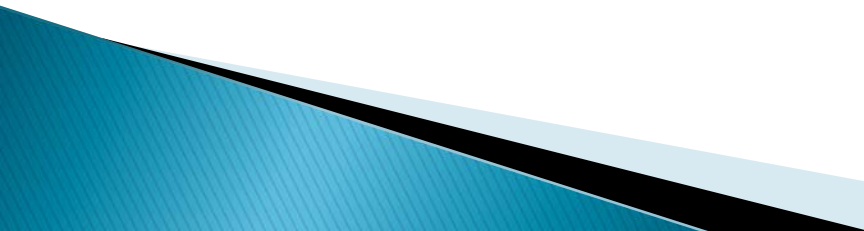
Fit and proper

- ▶ Character of individuals involved
 - ▶ Appropriateness of structure proposed or used
 - ▶ Capacity of organization to deliver on proposed objectives
 - ▶ Legal obligations – eg as employers
 - ▶ Health Insurance Act 1970, etc.
- 

General Governance issues (1)

- ▶ Independence of board
 - ▶ Appropriate structure
 - ▶ Accountability and transparency
 - ▶ Periodic meetings and elections
 - ▶ Meaningful engagement
 - ▶ Requirements of other applicable legislation, eg Companies Act 1981
- 

General Governance issues (2)

- ▶ Separate objects clause – reg 4(2)
 - ▶ Objects clause – sufficient detail re descriptions of purposes and public benefit – reg 4(3)
 - ▶ Sufficient independence of trustees/directors /etc. – reg 4(4)
 - ▶ Authorization and disbursement of financial transactions by two or more trustees – reg 4(5)
 - ▶ Dissolution clause – reg 4(6)
- 

General Governance issues (3)

Consent of the RG / Commissioners required for changes to the following:

- ▶ Financial year – reg 6
- ▶ Composition of trustees / directors / etc. – reg 7(3) [trustee declaration forms]
- ▶ Objects of the charity – reg 7(4)
- ▶ Dissolution clause – reg 7(4)
- ▶ Changes affecting good governance and accountability practices within the charity – reg 7(4)

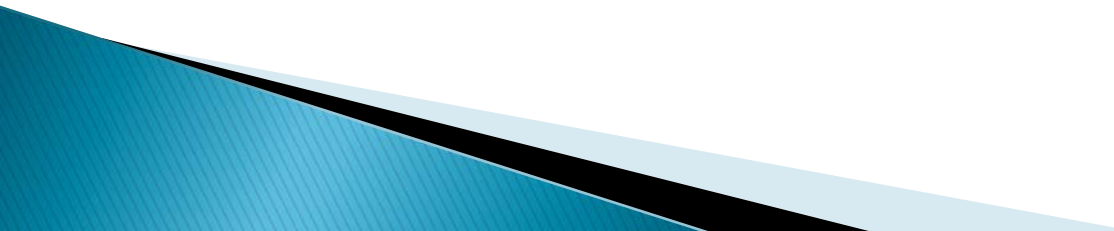
Dissolution clauses (1)

- ▶ Upon satisfaction of any outstanding debts and liabilities, the organization must distribute any surplus funds to a registered charity in good standing with similar purposes to those of the organization.

Dissolution clauses (2)

- ▶ Upon satisfaction of any outstanding debts and liabilities, the organization must distribute any surplus funds to [XYZ named charity ltd. or, where that is no longer registered or in good standing, such other] registered charity in good standing with similar purposes to those of the organization.

Dissolution of charities (1)

- ▶ Charities cannot continue to operate after losing charity status
 - ▶ In furtherance of charitable purposes and for the public benefit ...
 - ▶ Lost registration = difficult to enforce
 - ▶ Alternatively, donations may be returned
- 

Dissolution of charities (2)

- ▶ Charity must settle all affairs
- ▶ If donor is identifiable, assets should be returned, unless the donor disclaim any interest
- ▶ If donor is not identifiable, distribute according to dissolution clause
- ▶ If distribution not possible, eg, because a named charity is no longer in existence or if there are no 'similar charities', a court order is needed to apply property *cy-pres*.

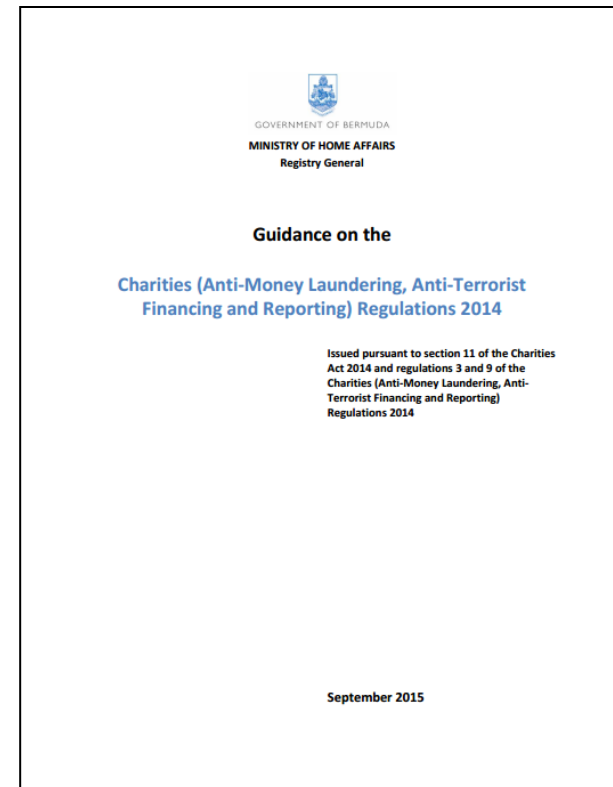
Dissolution of charities (3)

- ▶ Final accounting must be submitted
 - Start of financial year through to cessation of activities
 - Written confirmation of final source of funds
- ▶ Cease fundraising activities
- ▶ Obligation to maintain accounting records and financial statement for 7 years

Sections 35 and 39, Charities Act 2014

AML/ATF requirements

- ▶ RG Charities AML/ATF Guidance and Compliance Officer Training – <http://www.registrygeneral.gov.bm/>



Exempted charities

- ▶ Privately funded, and
- ▶ Does not solicit funds from the public, and
- ▶ Does not receive funding from Government or from Bermuda public sources, and
- ▶ In the case of a trust, trustee is licenced under Trusts (Regulation of Trust Business) Act 2001 or is exempted paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002, or
- ▶ In any other case, has a registered office with, and is subject to compliance by, an institution that is licensed by a supervisory authority within the meaning of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Questions?

Registry General

Telephone – 297-7841

charityinfo@gov.bm