

STATES OF JERSEY



DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200- (P.63/2008): COMMENTS

**Presented to the States on 30th May 2008
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

1. The Corporate Services Panel has considered the issues regarding the introduction of the Draft Non-Profit Organizations (Jersey) Law 200- (P.63/2008). The Chairman together with a Scrutiny officer attended, as an observer, a number of meetings including meetings with the Chief Minister, the officers involved in preparing the draft Law and the Focus group established by Advocate C. Lakeman and Deputy R.G. Le Hérissier, in order to determine whether the draft Law should be 'called in' by the Scrutiny Panel for detailed examination. In the event, the Panel decided that a full review by Scrutiny would not be appropriate given the urgent timescale for this Law. The Panel agreed therefore to make the following comments on the draft Law.

Principle

2. The Panel accepts that the principle of a system of registration of all local NPOs is necessary to fulfil international standards set by the Financial Action Task Force. No evidence has been put forward to indicate that there might be any current cause for concern regarding the operations of NPO in the Island; however, **we recognise that it is expedient that the Island responds to changing circumstances in the world and ensures that there is an adequate framework in place for the supervision of fund-raising bodies.**

Comparisons with other jurisdictions

3. Other jurisdictions have put legislation in place for this purpose, and the Panel has been provided with relevant extracts from IMF reports relating to the registration and monitoring of NPOs in Gibraltar, the Cayman Islands, the Bahamas and Bermuda.
4. The Panel noted that each of these jurisdictions already had pre-existing systems of registration in place prior to the IMF investigation. Despite this, with the exception of Gibraltar which was considered to have 'a solid framework of supervision' and was classified as 'largely compliant', the above jurisdictions were named as only 'partially compliant'. The IMF reviews found that authorities had not undertaken reviews of laws and regulations relating to NPOs to ensure that they could not be used for terrorist funding. For example, it was found in the Cayman Islands that there was no formal monitoring of NPOs after the licensing stage; similarly there was no formal outreach effort to the NPO sector to raise awareness of potential terrorist financial abuse. Consequently, the IMF review recommended improvements and updating of their processes of gathering information on the NPO sector.
5. **In our view the registration and monitoring framework which will be established under the draft Law is consistent with the recommendations contained in the IMF reports to which we have been given access.**

Information requirements

6. The Panel notes that the proposed information requirements on registration have been reduced to a minimum. Doubt was expressed in the public meeting in April whether the information provided will actually be sufficient to enable a realistic assessment of risk and it was feared that a growing requirement for information would subsequently ensue. We note that the current information requirements have been included in the principal Law rather than in subordinate legislation. Therefore any future change in information requirements will be subject to a States debate and not left to be slipped through by means of a ministerial decision.
7. The Panel also noted that Guernsey has approved an NPO Law which appears more demanding in terms of information requirements than the proposed Jersey legislation. The Guernsey Law provides for a register of all NPOs which includes detailed information on the names of directors, officers and trustees, a contact address, details of purpose and objects, details of manner in which assets, funds and income are

applied or used. There is also a requirement for annual renewal of registration and filing of annual financial statements.

8. We do not believe that the current proposed information requirements should cause any concern to NPOs classified as ‘low risk’. However, we note that there are a number of island NPOs who raise funds for international purposes, including the relief of poverty and development projects. These groups will have to demonstrate that their funds are being used responsibly by the recipients and the consequences of the legislation on these groups may be more onerous. Once again we reiterate the fact that there is no evidence of the misuse of funds by any local group; however, **we believe that the high standards of transparency and accountability should be expected of all such groups and for this reason we support an appropriate framework for registration and ongoing supervision.**

Exemptions

9. The draft Law in Jersey provides for a comprehensive register of all NPOs in the Island, with exemptions only for those NPOs already regulated under the Financial Services (Jersey) Law 1998 (already subject to substantial regulation) and NPOs raising less than £1,000 a year where funds it can be demonstrated that funds remain on-Island.
10. There were calls for local clubs and associations raising funds for purely domestic purposes (e.g. sports clubs, PTAs) to be exempted from the requirement to register. It was argued that a risk-based approach to register would exclude such groups on the grounds that it was difficult to perceive how such groups could be subject to suspicions of funding terrorist activities. The Panel understands however that a large group of exemptions would fail to satisfy IMF requirements and supports the creation of a comprehensive register of NPOs.
11. The question of an appropriate *de minimis* limit has been much discussed. It is noted that the *de minimis* limit for registration in the United Kingdom has recently been raised to £5,000. If this same limit were applied to Jersey it would carve out a number of small NPOs from the administrative requirements of registration. The Panel has no evidence, however, on the numbers of NPOs that would be involved at this level.
12. The draft Law also excludes clubs that raise funds from members for the benefit only of those members. This might remove many NPOs that might otherwise have benefited from a higher *de minimis*.
13. We note that Guernsey, which is also to be subject to IMF review, has also introduced provision for a *de minimis* limit in its legislation but it is not specified in the principal Law. This will be decided by Regulations.
14. The Director of International Finance advised that there was no basis in SRVIII for any form of exemption. He did not know of other examples of exemptions by value operating elsewhere (other than UK) that have been assessed. However, he believed that a £1,000 exemption level to match the UK Charities Commission was defensible with the IMF assessors by reference to a major regime which has received a “Largely Compliant” rating.
15. He said there was no obvious justification for a higher level other than it would exempt a greater proportion of NPO activity before it had been risk assessed and this was in direct conflict with the aims of SRVIII.
16. **The Panel supports the concept of a *de minimis* and believes that a level higher than £1,000 should be an aspiration in due course once a risk assessment procedure was fully established in the Island.**

Criminal Liability

17. The issue of potential criminal liability for voluntary organisations was a key issue of concern during the public consultation as it was felt that this might deter individuals from taking responsible positions in

clubs and associations. This section of the law has been reviewed by the AML/CFT Strategy Group. It is noted that assurance is given in the Feedback document that genuine administrative mistakes will not be subject to prosecution. A system of notification and reminders is to be used: Only where an offence '*is proved to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of certain person, those persons, and only those persons, will also be guilty and liable*'. Prior to any decision to prosecute, the Attorney General will take into account the public interest. It is argued that it is reasonable for the obligations under the law to be supported by an offence; however **we believe that a punitive process would be highly inappropriate in local circumstances unless there was clear evidence to link an NPO to terrorist activity.**

Charity Commission

18. The commitment made by the Chief Minister to expedite the feasibility study for a Charity Commission for Jersey is in accordance with previous recommendations made by the Panel in other reviews (GST and Overseas Aid). The Panel is aware that this development is likely to impose a greater administrative burden on local charities but is confident that it will also provide benefits in terms of improved governance and best practice and will give the public confidence that local charities and NPOs are effectively supervised. **The Panel accordingly welcomes this initiative which, in our view, is long overdue.**

Documents consulted

Extracts from IMF reports relating to NPOs in Gibraltar, the Cayman Islands, the Bahamas and Bermuda

AML/CFT Strategy Group Consultation Paper No. 1 2008 Registration and Monitoring of Non-Profit Organisations

Feedback on Consultation Paper No. 1 2008 Registration and Monitoring of Non-Profit Organisations

States of Guernsey report: Charities and Non Profit Organisations (August 2007)

Association of Jersey Charities response to Non Profit Organisations legislation, February 2008

Advocate C. Lakeman's letter to the Chief Minister, dated 14th February 2008, following a public meeting of voluntary sector organisations.