



Ministry of Industry Investment & Commerce

Jamaica's **Business** Ministry



DEPARTMENT OF CO-OPERATIVES & FRIENDLY SOCIETIES

CHARITIES AUTHORITY, JAMAICA

CHARITIES POLICY

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Policy Statement and Intent

The Charities Policy has been developed to ensure consistency in the application of the Charities Act, 2013 and the Charities Regulations, 2022. Furthermore, the policy seeks to provide greater clarity in the interpretation of the provisions of the Charities Act and Regulations and where necessary, establish appropriate procedures and parameters to address legislative gaps. This policy will also address matters that may not have been explicitly provided for in the legislation.

In this document, The Charities Act, 2013 will be referred to as “*The Act*” and The Charities Regulations, 2022 will be referred to as “*The Regulations*.”

List of Main Acronyms

ASYCUDA	Automated System for Customs Data
DCFS	Department of Co-operatives and Friendly Societies
CFTAF	Caribbean Financial Action Task Force
COJ	Companies Office of Jamaica
FATF	Financial Action Task Force
ICAJ	Institute of Chartered Accountants of Jamaica
JCA	Jamaica Customs Agency
MIIC	Ministry of Industry, Investment and Commerce
MOCA	Major Organised Crime & Anti-Corruption Agency
NIS	National Insurance Scheme
PAB	Public Accountancy Board
RGD	Registrar General's Department
TAJ	Tax Administration Jamaica

Glossary

**Governing
Board Member**

- a) A trustee, director or other person who is a member of the governing body (by whatever name called) which is responsible for the management of the charitable organization, whether he is an employee of the charitable organization; and
(b) The secretary of the charitable organization.

**Politically
Exposed Person
(PEP)**

The Charities Regulations, 2022, defines a Politically Exposed Person as:

- (a) any individual who, in the relation to any State, holds any of the following positions or carries out functions analogous to the functions of the holder of any such position, namely—
- i. A head of State
 - ii. A head of Government
 - iii. A member of any House of Parliament
 - iv. A Minister of Government
 - v. A member of the judiciary
 - vi. A military official above the rank of Captain
 - vii. A member of the police of or above the rank of Assistant Commissioner
 - viii. A Permanent Secretary, Chief Technical Director or chief officer in charge of the operations of a Ministry, department of Government, executive agency or statutory body, as the case may be
 - ix. A director or chief executive of any company in which the Government owns a controlling interest
 - x. An official of any political party
- (b) An individual who holds or has held a senior management position in an international organization
- (c) An individual who is an immediate family member of or close associate of a person described in paragraph (a) to (b).

**Register
Registered
Charitable
Organization
Registrar (or
Registrar of
Charitable
Organizations)**

The Register of Charitable Organizations.

A Charitable organization registered under Section 24 of the Charities Act, 2013.

The person designated as such under Section 23 of the Charities Act, who is currently at the Companies Office of Jamaica.

1. Policy Context

The Charities Act, 2013 is administered by the Department of Co-operatives and Friendly Societies (DCFS), the designated Charities Authority. The Act makes provisions for the regulation of Charitable Organizations in Jamaica. The process of registering Charities under Jamaica's Charities Act commenced officially on December 24, 2013.

Based on the provisions of the Act, Registered Charitable Organizations (RCOs) are entitled to relief from Custom Duties, General Consumption Tax, Income Tax, Property tax, Transfer tax, and Special Consumption Tax.

2. Scope of Charities Policy

The Charities Policy applies to all entities seeking and have obtained registration as a charitable organization in keeping with the provisions of the Act. This policy outlines the provisions of the Act that qualifies entities for charitable status and the attendant benefits from various tax reliefs.

Section 2 of the Act defines a Charitable Organization as:

- a) Charitable Trust or
- b) Any institution whether incorporated or not, which is:
 - i. established for a charitable purpose exclusively;
 - ii. is intended to and does operate for the public benefit;
 - iii. has no part of its net income or assets enuring to the personal benefit of any governing board member or settlor of the organization, or any other private individual, but shall not include an excluded body.

Section 2 also outlines bodies that are excluded from obtaining charitable status under the Charities Act. These include:

- A political party or a body that promotes a political party or a candidate of a political party.
- A trade union.
- A representative body of employers.
- A Chamber of Commerce or other body that promotes the interests of commercial entities.
- Bodies that promote unlawful and prejudicial acts.

3. The Public Benefit Specification

The Public Benefit is one of the main factors established by the legislation and the Authority to determine qualification for registered charitable organization status. Section 4 of the Act stipulates that a public benefit is “available to members of the public at large” or “a section of the public ascertained by reference to some specified geographical area.”

The Act also makes it clear that there is no benefit if the intended beneficiaries have been determined primarily based on relationships with members of the charity, whether by blood, status, contract or otherwise.

The Authority advises that Registered Charitable Organizations (RCOs) should allocate most of their donations to activities that directly benefit the public. While it is understood that administrative and operational expenses are necessary, donations should primarily be directed towards charitable purposes.

4. Legislative and Regulatory Framework

The legislation governing the application, registration, renewal and monitoring of charitable organizations are the Charities Act, 2013, and the Charities Regulations, 2022.

5. Purpose of the Act, Regulations and Policy

The general purposes of the Act and Regulations are to enhance public trust in charitable organizations and promote legal compliance within these registered organizations. The DCFS (Charities Authority), as the regulatory body for Registered Charitable Organizations (RCOs), has developed this policy with the aim of providing a user-friendly operational framework to guide the process of charity registration and renewal. In line with global standards, the Act aims to align the activities of charities in Jamaica with international best practices.

Section 5 of the Act outlines that the primary aims of the legislation are to:

- a) Maintain, protect and enhance public trust and confidence in charitable organizations in Jamaica.
- b) Promote compliance of governing board members with legal obligations concerning the management of charitable organizations.
- c) Enhance the accountability of charitable organizations to donors, beneficiaries and the general public.

6. Charities Authority

The Department of Co-operatives and Friendly Societies is the designated Charities Authority since 2013, serving as the primary regulator of Registered Charitable Organizations.

The functions of the Authority include:

- a) Receiving, processing and determining applications for registration under this Act;
- b) Making appropriate information available to assist persons in making applications for registration under the Act;

- c) Providing the Registrar with the necessary information to facilitate the keeping of the Register;
- d) Carrying out activities or publishing information (including statistical information) concerning charitable organizations as it deems appropriate;
- e) Providing information (including statistical information) or advice, or making proposals to the Minister on matters relating to the functions of the Authority;
- f) Monitor charitable organizations and their activities to ensure that organizations that are registered as charitable organizations continue to be qualified to be so registered;
- g) monitor and promote compliance with this Act and any regulations made hereunder;
- h) enquire into or, appoint any person who in its opinion is qualified to do so to enquire into the operations or activities of any charitable organization;
- i) take such steps as may be required to ensure that registered charitable organizations are not misused for criminal purposes or controlled by persons engaged in criminal activities; and
- j) perform such other functions as may be assigned to the Authority by the Minister by or under this Act or any other enactment.

7. Duties of Charitable Organizations

Sections 27, 28, and 29 of the Act stipulate the following requirements for charitable organizations:

- a) Keeping proper records.
- b) Enabling true and fair financial statements to be prepared and audited.
- c) Furnishing to the Authority such particulars regarding its accounts and other records as may be required.
- d) Notifying the Authority of certain matters relating to changes of name, address, persons appointed to the Board, changes to its constitution, etc.

The Regulations further details the responsibilities of RCOs:

Regulation 26 provides for the maintenance of donation records: A registered charitable organization must issue receipts for every donation received and maintain detailed records of all donations. These records should include the receipt number, donor's name, date of donation, type and method of donation, amount or value of the donation, and any terms and conditions associated with the donation. These records must be kept for at least seven years from the end of the assessment year in which the donation was received. Failure to comply with these requirements can result in a fine of up to one million dollars or imprisonment for up to twelve months upon summary conviction.

Regulation 27 outlines the duties of the RCOs to donors: Registered charitable organizations must provide accurate information about their organization, donation purposes, and any involvement of

commercial fundraisers during fundraising activities. They must also implement proper control measures to ensure accountability and prevent misuse or loss of donations. If they hire commercial fund-raisers, all collected donations must go directly to the charity, with separate payments made for the fund-raising.

Regulation 28 outlines the RCOs' duty to furnish specified documents within three months after each financial year ends. These include audited financial statements, the auditor's report on the financial statements, a report on the use of donated funds, details of fund-raising activities and expenditure plans for the upcoming financial year, and the annual report of the organization. Additionally, during inspections, organizations must provide copies of relevant books, records, and documents to inspectors upon request.

8. Charitable Purpose

The first schedule of the Charities Act categorizes activities that are considered charitable purposes and thus qualifying an entity to be registered as a charitable organization. The Act lists fourteen (14) charitable purposes, which are:

1. The prevention or relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health or saving of lives.
5. The advancement of good citizenship or community development.
6. The advancement of arts, culture, heritage, or science.
7. The advancement of amateur sport.
8. The promotion of efficiency of the armed forces or the efficiency of the police forces.
9. The advancement of human rights, conflict resolution, or reconciliation.
10. The promotion of religious or racial harmony or equity and diversity.
11. The advancement of environmental protection or improvement.
12. The relief of those in need because of youth, advanced age, ill-health, disability, financial hardship, or another disadvantage.
13. The advancement of animal welfare.
14. A purpose specified by the Minister, by order, subject to negative resolution of the House of Representatives, as being analogous to a purpose mentioned above.

9. Exclusions under the Charities Act, 2013

Registered Charitable Organizations are entitled to a range of tax relief benefits designed to support their benevolent activities. These benefits, which span several key tax statutes, include exemptions and refunds that aim to ease the financial burden on charitable operations.

9.1 Benefits or Relief Summary for Registered Charitable Organizations

This certificate during its period of validity qualifies a Registered Charitable Organization for the following tax relief:

- ✓ Exemption of its income under Section 12(h) of the Income Tax Act (Financial Institutions are being advised not to withhold tax on the income of the organization on presentation of this certificate).
- ✓ Exemption from import duties under Section 5(2) of the Customs Act.
- ✓ Exemption from property tax under Section 10(1)(b) of the Property Tax Act.
- ✓ Exemption under paragraph 4(1) and (2) of The Provisional Collection of Tax (Minimum Business Tax) Order, 2014.
- ✓ Exemption under transfer tax under Section 17(1)(c) of the Transfer Tax Act.
- ✓ Refund of GCT paid under Section 43 of the General Consumption Act (to be claimed within two years of the date on which the tax was paid in respect of the zero-rated supply).
- ✓ Zero-rating of Goods and Services acquired by an approved charitable organization for the charitable purpose of the organization in accordance with Group 9 (Part 7A) of the First Schedule of the General Consumption Tax Act. (Except for motor vehicles).

Note: That the amount of value of donation made to the Registered Charitable Organization is to be an allowable expense in the books of the donor under Section 13(1)(q) of the Income Tax Act (subject to statutory limit).

9.2 To claim tax benefits from the Jamaica Customs Agency:

The beneficiary must be a Registered Charitable Organization before the shipment is received by the JCA. RCOs have a duty to clarify donor information and intentions before accepting any donation. They also have a duty to maintain accurate donor records and are encouraged to produce financial statements to uphold their due diligence.

9.2.1 To receive shipments:

The shipment must be sent only in the name and address of the registered charitable organization. The nature of the shipment must also align with the organization's objectives and the powers stated to the DCFS.

10. Ancillary Operations

A charity is permitted to engage in commercial and trading activities. According to Section 3(2) and 3(3) of the Charities Act, 2013, if the purpose of an organization that is or seeks to be registered as a charitable organization includes a purpose that is not a charitable purpose but is merely ancillary to a charitable purpose of the organization, the presence of that non-charitable purpose alone will not prevent the organization from being regarded as, or qualifying to be registered.

Furthermore, Section 3(3) of the Charities Act states that for the purpose of Section 2(2), a purpose is ancillary to a charitable purpose of the organization if the non-charitable purpose:

- a) Is ancillary, secondary, subordinate, or incidental to a charitable purpose of the organization.
- b) is not an independent purpose of the organization.

11. Beneficial Ownership

A Beneficial Owner is defined as a legal entity or individual for whom a transaction is carried out, including those who have ultimate control over a legal entity or arrangement. In keeping with Jamaica's efforts to comply with the FATF¹ standards and recommendations, the Department has established a Beneficial Owners Framework and register.

Within our context, the beneficial ownership form must be completed by applicants that are foundations or charitable trusts. General Information Requested:

For the Entity:	For the identified beneficial owner:	For Shareholders, whether Direct/Indirect Ownership:
<ul style="list-style-type: none"> ✓ Registration Number ✓ Taxpayer Registration Number ✓ Entity's Name ✓ Contact ✓ Address ✓ Shareholder listing – This includes the member names and number of shares held. 	<ul style="list-style-type: none"> ✓ Full name ✓ Taxpayer Registration Number ✓ Nationality ✓ Residential address ✓ Position in the organization. 	<ul style="list-style-type: none"> ✓ Names ✓ Number of Shares ✓ Date beneficial interest was acquired. ✓ Date that beneficial interest ceases to exist. ✓ Position in the company.

¹ The Financial Action Task Force (FATF) has 40 Recommendations that offer comprehensive countermeasures against money laundering (ML) for countries. The Charities Authority has made significant efforts to comply with Recommendation 8, which aims to prevent non-profit organizations (NPOs) from being exploited by terrorist organizations.

12. Stakeholders

The DCFS, as the Charities Authority, works with several government organizations to successfully manage, regulate and monitor RCOs in Jamaica. These government organizations include:

→ **Companies Office of Jamaica (COJ)**

- COJ is the national agency responsible for the registration and regulation of companies in the country.

The Companies Office of Jamaica is responsible for maintaining the Register of Charitable Organizations. This is in accordance with Part III - Sections 24, 25 & 26 of the Charities Act.

→ **Jamaica Customs Agency (JCA)**

- The Jamaica Customs Agency (JCA) is responsible for revenue collection, enforcing import and export regulations, facilitating trade, and protecting Jamaica from illicit activities. The Department assesses and approves entries for registered and current Registered Charitable Organizations (RCOs) on the **Automated System for Customs Data (ASYCUDA)**, a computerized customs management system that streamlines trade processes. This ensures that eligible parties receive their tax exemptions efficiently.

→ **Ministry of Labour and Social Security (MLSS):**

- The Ministry of Labour and Social Security (MLSS) is the government ministry responsible for labour-related services and social protection programmes. It administers the National Insurance Scheme (NIS), a mandatory social security program covering all employed Jamaicans.
- Unincorporated entities seeking registration can apply for an NIS number through the MLSS NIS offices, which will facilitate their acquisition of a Taxpayer Registration Number (TRN) from the Tax Administration Jamaica (TAJ).

→ **Registrar General's Department (RGD):**

- The Registrar General's Department (RGD) is the primary agency responsible for registering vital statistics in Jamaica, including births, deaths, and marriages. It also maintains a secure repository of historical and public records, deed polls, and other official registers. Constitutive documents for unincorporated entities that have been stamped at the Stamp Office must be lodged with the RGD.

→ **Stamp Office:** The Stamp Office is responsible for issuing government stamps and collecting stamp duties. Entities seeking to register unincorporated RCOs must have their constitutive documents stamped at this office.

→ **Tax Administration Jamaica (TAJ):**

- The national revenue collection agency of Jamaica. The Tax Administration Jamaica is mandated by Section 16 of the Charities Act to review applications for registration and to inform the Authority whether there is either a non-objection or

an objection to the registration within fourteen (14) days from the date of receiving the application.

Section 16(1)(b) specifies that the Department shall provide a copy of the application to the Commissioner General, except where Tax Administration Jamaica has been designated as the Authority under Section 6 of the Charities Act, 2013.

13. Registering a Charitable Organization

13.1 Eligibility

For any entity to be eligible to receive Registered Charitable Organization status the following must be met in keeping with Section 17 of the Act.

- a) The Authority must establish that all governing board members are fit and proper as defined in section 18 of the Act.
- b) The entity:
 - i. must be established exclusively for charitable purposes. This can be either a charitable trust, an incorporated or unincorporated institution.
 - ii. intends to or is already operating for the public benefit.
 - iii. has no part of its net income or assets enuring to the personal benefit of any governing board member or settlor of the charity, or of any other private individual.

13.2 Classification of Registered Charitable Organizations

Entities are assigned a unique identification number upon submission of their application. This identification code is derived based on the type of entity seeking registration and its appropriate designation according to the Act.

The policy aims to streamline the process used to classify entities to align their registration and designation with the Risk Assessment framework implemented by the Charities Authority. The policy mandates the use of the following codes to ensure clear distinction between entities:

- Acts of Parliament: Entities established by an Act of Parliament.
- Benevolent Societies: Community based organizations established for Benevolent or Charitable purposes.
- Charitable Trusts: A Trust can be registered as incorporated (registered with COJ) or unincorporated (Trust Deed certified at Stamp Office and lodged at RGD). The Trust Deed is then submitted to the Charities Authority along with the supporting Documents for processing.
- Incorporated Entities: Companies that are registered under the Companies Act.
- Overseas Entities: Incorporated entities (registered with the Companies Office) that operate overseas are designated as "OS."

- Public Entities: a statutory body or authority or any government company, excluding executive agencies designated under the Executive Agencies Act.
- Unincorporated Entities: Unincorporated entities can register by submitting their constitution to the Stamp Office and then present it to the Island Records Office, within the Registrar General's Department for lodging. Consequently, it should be delivered to the DCFS for approval and completion of the form. Following this process, they will receive a letter enabling them to obtain a Taxpayer Registration Number (TRN).

Classification Codes for Registered Charitable Organizations

Entity	Code
Act of Parliament	AP (Old Churches)
Benevolent Societies	BS
Incorporated Entities	CAIN
Unincorporated Entities	CAUN
Poor Relief	PR
Overseas Entities	OS

13.3 General procedures after application for Charitable Status is received

Upon receipt of an application for charitable status, the Authority will conduct a thorough check to verify that all relevant documentation is submitted and completed correctly. The Authority is also empowered to have an inspector verify that the information given is true and accurate.

Once the steps are completed, Section 16 of the Act requires that the Authority:

- a) Forward the application to the Commissioner General, Tax Administration Jamaica for review; and
- b) May request, within a specified period, written comments, or recommendations from any relevant public body as deemed necessary.

13.4 Approval of Charity Applications

Section 16(3) of the Charities Act specifies that the Authority is prohibited from approving the application of an entity unless the Commissioner General, TAJ has indicated a non-objection to the registration of the charitable organization.

If the Commissioner General does object to the registration of the charitable organization, he must provide the reasons for the objection.

13.5 Guidelines for fourteen days lapsed without review by Commissioner General

Should the Commissioner-General fail to review an application submitted within the stipulated fourteen (14) days' timeline, the Authority will, on the following day (the 15th day), send a written inquiry to the Commissioner-General requesting an update on the review of the application.

**THE CHARITIES AUTHORITY CANNOT PROCEED WITH REGISTERING AN
ENTITY WITHOUT THE CONFIRMATION OF A NON-OBJECTION FROM THE
TAJ.**

13.6 Required documentation

For an entity to be considered for charitable status, it must complete the “Application for Registration of Charitable Organizations” (First Schedule – Form I) which can be located on the DCFS website or completed on the Online Registration and Management System (ORMS). A Fit and Proper Questionnaire must be completed by each governing board member and submitted along with a recent certified passport-sized photograph.

The application requirements and documents are as below:

1. A non-refundable application fee of Five Thousand (\$5,000 JMD) Dollars
2. Completed Application Form
3. Certificate of Registration / Certificate of Incorporation
4. Entity’s Taxpayer Registration Number (TRN)
5. Articles of Association and Memorandum of Association (entities registered with COJ before 2005); Form 1B – Articles of Incorporation to include the relevant schedules (entities registered after 2005); Rules; Vested Act; or any other applicable constitutive document
6. Fit and Proper Questionnaire along with Certified Passport Sized Pictures to be submitted by the Governing Board Members (*See section on Fit and Proper Test Policy*).
7. Audited financial statements for the previous financial year, audited by a registered public accountant/ auditor. The following is also accepted:
 - a. Proposed/Projected Annual Income and Expenditure Statement for newly registered entities
8. A detailed plan of charitable activities to be carried out or a disbursement plan of donor funds.
9. A copy of the administrative and operations management policies and procedures of the charitable organization.
10. A completed Politically Exposed Person (PEP) Self-Declaration Form
11. Any other requested documents.

13.7 Submission Requirements: Single and Duplicate Copies

Single	Duplicate
✓ Administrative and operations management policies and procedures document	✓ Application Form.
✓ Authorization Form (if applicable).	✓ Certificate of Incorporation/Registration.
✓ Detailed Plan of Charitable Activities or the disbursement of donor funds to further the charitable purposes of the organization	✓ Articles of Incorporation, Trust Deed, By-Laws, Constitution, etc.
✓ Fit and Proper Questionnaire for each Governing Board Member	✓ Income Statement/Financial Statements <i>If the entity has not been operational for a year or more, the reviewing officer is required to request the projected or proposed annual income for the entity.</i>
✓ TRN Certificate/letter	Detailed Plan of Charitable Activities or the disbursement of donor funds to further the charitable purposes of the organization
✓ Certified passport-sized photograph for EACH Governing Board Member	
✓ Politically Exposed Person (PEP) Self-Declaration Form	

Where certified copies are not given, applicants are required to present the original documents, and the officer receiving the application should make a note on all copies that the original has been seen. The original documents are to be returned to the applicant.

NO APPLICATION SHOULD BE PROCESSED WITHOUT THE REQUIRED SUBMISSIONS.

13.8 Regulation 4, The Charities Regulations, 2022 - Prohibitions on The Use of Certain Names

Charitable organizations not registered under the Charities Act are prohibited from using any name, title, word, term, or grammatical presentation that implies registration as a charitable organization. Additionally, the use of "Foundation" and "International" in names or titles is restricted, along with having a name entirely in a foreign language without prior written approval from the Authority.

Entities seeking to obtain Charitable Status and have the above prohibited names must submit a letter requesting permission from the Registrar if they do not meet the criteria outlined below:

Exceptions:

- a) The term "Foundation" may be permitted if the organization is self-funded by an individual, family or for profit company to aid the organization's intended charitable purpose or if it operates based on endowment funding.
- b) The term "International" may be used if the organization conducts activities beyond Jamaica to fulfil its charitable purpose.

13.9 Reviewing the Application**13.9.1 Review Procedure for Processing Charity Files**

1. Review the file to ensure that the Application Form is fully completed and that all questions on the Fit and Proper Questionnaires are answered.
2. Check the Constitutive Documents to verify that all listed Directors align with the Fit and Proper Questionnaires submitted. If any discrepancies are identified, the officer should:
 - a) request a copy of Form 23 (Notice of Appointment of /Change of Directors) **and or**
 - b) A copy of Form 20 (Notice of Appointment of/Change of Secretary) from the Companies Office of Jamaica.
3. Inspect the photographs to confirm that they are certified by a Justice of the Peace, Attorney-at-Law, or notary public, and ensure that they are not older than six (6) months.
4. Ensure that all other accompanying documentation is provided and in order.

13.9.2 Performance Standards for Processing Charity Applications

Application files are processed by Officers upon receipt from their Supervisor.

1. The assigned officer should prepare a letter to the applicant acknowledging receipt of documents and highlighting any shortcomings within two (2) days of receiving the file.

If there are outstanding documents, the applicant should be notified that the processing period of thirty (30) days, as prescribed in the legislation, will no longer be applicable. They should be made aware that they have a period of ten (10) or twenty (20) working days, for the submission of outstanding documents, as guided by the Reviewing Officer. Further to above, the applicant is allowed two additional requests for extensions.
2. Where all criteria have been met for submission to TAJ, the file is then sent for dispatch within two (2) days.

13.9.3 Follow-up Requirements for Officers

1. The officer should follow up to ensure that outstanding documents have been submitted within the established timeline. If no feedback is received within the given timeframe, the file is referred to the supervisor for decision or action which may include closing the application file.
2. The Senior Secretary should follow up with TAJ to ensure that the documents are being processed. If no feedback is received within fourteen (14) days of submission, further communication is to take place with TAJ to determine the status of the application.

13.10 Procedure after Feedback Is Received from TAJ

13.10.1 Action if there is an Objection from TAJ

1. Upon receiving feedback from TAJ, if there is an "Objection," the applicant is to be notified in writing with the grounds for objection and the option to appeal within twenty-eight (28) days of receipt of the Objection Letter.
2. If the entity resubmits amended documentation within sixty (60) days of the objection, the processing will continue if all previously submitted documentation remain valid, and if there have been no other changes. Documents submitted in response to the objection letter after sixty (60) days will be treated as new, and the application process is restarted. If an extension is needed, the applicant should submit a request before the sixty (60) days have passed.

13.10.2 Action if there is No Objection from TAJ

1. If there is "No Objection", the file referred to the assigned officer for the completion of the Risk Assessment Form and to ensure that all outstanding documents (if any) have been submitted. If there are outstanding documents a "Closing Out Letter" will be prepared giving the entity twenty (20) working days from the date of the letter to submit. If the outstanding documents are not received within the stated time, the Charities Authority will refuse to approve the registration.
2. Once all requirements are met, the file is to be forwarded to the Director through the Supervisor for review and recommendation for registration.
3. The Registrar will conduct a final review of the file and then determine whether to approve or reject the application.

Reviewing Officers are not to use the word "reject" in communications to applicants about the status of their applications. It is preferred that the applicants be advised that the application will not be processed any further at this time or some variation of the foregoing.

14. Renewals

Section 5 of the Charities Regulations, 2022 stipulates that the maximum duration for a charity's certificate of approval is not to exceed two (2) years. The Charities Authority can issue certificates for any period, not exceeding two years.

Registered Charitable Organizations registered at the Companies Office of Jamaica (COJ) should advise the Charities Authority of any change no later than twenty-eight (28) days after the change has taken effect. The organization is required to submit a completed Form 7, along with supporting documents from the COJ.

The supporting COJ documents can include:

- Form 23 – Notice of Appointment of Change of Directors
- Form 20 – Notice of Appointment of Change of Company Secretary
- Form 17 – Notice of Change of Address of Registered Office
- Form 5 –Entities that are considered “Overseas Entities” (registered outside of Jamaica - having a registered branch with the COJ) should advise of all changes using Form 5.

Regulation 6 of the Charities Regulations, 2022 specifies that a charitable organization may apply for renewal of registration, by submitting to the Authority a completed application form in accordance with the provisions set out in the Third Schedule within—

- a) 60 days (2 months) prior to the expiration of the certificate.
- b) 180 days (6 months) after the expiration of the certificate.

Where the entity fails to apply for renewal within the stipulated period, a new application with the relevant documents must be submitted to facilitate Re-registration.

Steps to apply for renewal:

RCOs seeking to apply for renewal of their charitable status must submit:

1. A completed application for Renewal of Registration' in the Third Schedule of the Charities Regulations/Form 3
2. A non-refundable fee of \$5,000.00 JMD
3. File Notice of Change to the Charities Authority (Form 7), where applicable
4. Fit and Proper Questionnaire (Form 2) for all Directors, where applicable – to be witnessed and submitted with a recent passport sized photograph certified by the same JP, Attorney-at-Law or Notary Public
5. Satisfy all statutory and regulatory requirements
6. A completed Politically Exposed Person (PEP) Self-Declaration Form
7. Submit all outstanding Annual Returns
8. Submit all outstanding Audited Financial Statements (*Prepared by an accountant or auditor registered by ICAJ or PAB*)

Comply with any other regulatory requirement imposed by the Authority

NO APPLICATION IS TO BE PROCESSED WITHOUT THE REQUIRED SUBMISSIONS.

14.1 Review Procedure for Processing Renewal of Registration

1. Review the file to ensure that the Application Form is fully completed and that all questions on the Fit and Proper Questionnaires are answered.
2. Check the Constitutive Documents to verify that all listed Directors align with the Fit and Proper Questionnaires submitted. If any discrepancies are identified, the officer should:
 - i. request a copy of Form 23 (Notice of Appointment of /Change of Directors) **and or**
 - ii. A copy of Form 20 (Notice of Appointment of/Change of Secretary) from the Companies Office of Jamaica.
3. Ensure that all other accompanying documentation is provided and in order.

14.2 Performance Standards for Processing Charity Applications

Application files are processed by Inspection Officers upon receipt from their Supervisor. The assigned officer should prepare a letter to the applicant acknowledging receipt of documents and highlighting any shortcomings within two (2) days of receiving the file.

- a. If there are outstanding documents, the applicant should be notified that the processing period of fifteen (15) days, as prescribed in the legislation, will no longer be applicable. They should be made aware that they have a period of ten (10) or twenty (20) working days, for the submission of outstanding documents.
- b. further to (a) above, the applicant is allowed two additional requests for extensions

14.3 Follow-up Requirements

4. The officer should follow up to ensure that any outstanding documents have been submitted within the established timeline. If no feedback is received within the given timeframe, the file is referred to the supervisor for decision or action.
5. The Secretary should follow up with TAJ to ensure that the documents are being processed. If no feedback is received within fourteen (14) working days of submission, the Secretary should follow up with TAJ to determine the status of application.

14.4 Procedures after Feedback Is Received from TAJ

6. Upon receiving feedback from TAJ, if there is an "Objection," the Commissioner General should state the reasons for the objection.

7. After receiving the feedback from TAJ, the Authority may, according to Regulation 6,
 - a. approve the renewal of registration of the charitable organization; or
 - b. refuse to approve the renewal of registration of the charitable organization.
8. A certificate of approval issued under this regulation may include terms and conditions deemed appropriate by the Authority, including those not specified in the original certificate or any subsequent renewals.
9. If the Authority refuses to renew the registration of a charitable organization, it must notify the organization in writing, providing reasons for the refusal and informing of the right to appeal under section 37 of the Act.

RCOs that fail to file annually and instead submit lump sum filings when seeking renewal may face shortened registration periods, potentially as brief as one (1) year or six (6) months.

15. Re-Registration

Re-registration is required when an entity fails to submit a request for renewal (Form 3) **within one hundred and eighty (180) days (6 months)** after the expiration of the certificate of registration.

Re-registration is not automatic; it is evaluated on a case-by-case basis.

Factors considered include previous compliance with the Act and Regulations, adherence to statutory requirements, governance standards, achievement of charitable goals, provision of public benefits, quality of record-keeping, timely completion of annual audits, compliance with regulatory guidance, and the organization's risk profile from the latest assessment.

Required submissions upon re-application include:

- a. Application for Registration under the Charities Act, 2013 (**Form 1**)
- b. Fit and Proper Questionnaires (**Form 2**) for all Directors – to be witnessed and submitted with a recent passport sized photograph certified by the same JP, Attorney-at-Law or Notary Public that witnessed/notarized the Fit and Proper Questionnaire
- c. Taxpayer Registration Data Sheet (if there have been any changes)
- d. For incorporated entities, certified copies of change documents from COJ, where applicable:
 - a. *Form 23 – Notice of Appointment of Change of Directors*
 - b. *Form 20 – Notice of Appointment of Change of Company Secretary*
 - c. *Form 17 – Notice of Change of Address of Registered Office*
 - d. *Form 5 –Entities that are considered “Overseas Entities” (registered outside of Jamaica - having a registered branch with the COJ Forms 20&23 &17*

- e. Notice of Change to the Charities Authority (Form 7) – outlining any changes made to Directors/Secretary/Address *(if applicable)*
- f. Copy of Constitution/Constitutive documents
- g. Outstanding Financial Statements
- h. Outstanding Annual Returns **(Form 8)**
- i. \$5000 **Non-refundable** fee
- j. Detailed plan of charitable activities to be carried out **or** the plan for the disbursement of donor funds to further the charitable purposes of the organization
- k. Copy of the administrative and operations management policies and procedures of the charitable organization.
- l. A completed Politically Exposed Person (PEP) Self-Declaration Form
- m. The Annual Report of the RCO.

Where there are changes to the constitutive documents and management structure *(including the membership of the governing board)*, or any matter affecting the tax compliance status of the entity, the documents will be sent to TAJ.

This submission is to be sent to TAJ by the Inspectorate Section regardless of a no objection in the first instance (Registration Stage) as outlined in Regulation 6 (4).

For any proposed changes to the constitution, the Charities Authority should be consulted first and provided with a draft. The Authority will then submit the draft to the TAJ. Only after this step should the entity register their amendment at the COJ.

16. Maintenance of the Charities Register

It is the Registrar of Charitable Organizations' duty, in accordance with the direction of the Authority, to maintain the accuracy and currency of the charities register. Section 26(1) of the Act empowers the Registrar to:

- a) Remove any entity from the Register
- b) Restore to the Register any entry which the Authority directs him to restore.
- c) Correct any entry in the Register which the Authority directs him to correct as being, in the opinion of the Authority, an entry which was incorrectly made; and
- d) Make any necessary alterations in any of the particulars set out in section 24(2) of the Act.

Governing board members must promptly report any errors in the Register or changes in the organization's details to the Authority. Through these actions, the Registrar contributes to maintaining the accuracy and integrity of the Register, ensuring its reliability and relevance.

Section 26 (2) of the Charities Act outlines the process the Authority follows if a registered charitable organization appears to have ceased its operations. The Authority may post a letter to the organization's address as listed in the Register, inquiring about its operational status or any

address changes. If there is no reply within three (3) months, a second letter will be sent. If there is still no response within another three (3) months, the Authority will instruct the Registrar to remove the organization's name from the Register.

The Authority is obligated to notify the RCO in writing within fourteen (14) days of any such action.

Regulatory Letters

In its monitoring efforts, the Authority may deem it necessary to serve RCOs with regulatory letters. These letters can be triggered by breaches of the Act or Regulations, including but not limited to:

- a) Failure to file Audited Financial Statements
- b) Failure to file Annual Returns
- c) Any breach to compliance or suspicious activity that might have been discovered through the media
- d) A lack of activity related to the entity's stated charitable purpose
- e) Failure to address any concerns or implement any corrective action to any offenses previously identified
- f) Any other breach of provisions outlined in the Act or Regulations.

17. Monitoring and Compliance

Monitoring Framework

Among its functions, the Charities Authority is responsible for monitoring registered charitable organizations. Section 7 (1) (f)-(i) of the Act empowers the Department to:

- a) Monitor charitable organizations and their activities to ensure that organizations registered as charities continue to qualify to be so registered.
- b) Monitor and promote compliance with the Charities Act and any regulations made.
- c) Enquire into or appoint any person who in its opinion is qualified to enquire into the operations of any charitable organization.
- d) Take the necessary steps to ensure that charities are not misused for criminal purposes or controlled by persons engaged in criminal activities.

The Department is tasked with monitoring the fit and proper status of board members following the approval of an application. This responsibility involves conducting inspections through the Inspectorate Section within the Department.

Any changes in the fit and proper status of board members can be reported to the Inspectors during these inspections.

18. Suspension of Charitable Status – Section 21, The Charities Act

Suspension refers to the action taken by the Authority to temporarily withdraw the approval for the registration of a charitable organization (its charitable status). This is done under Section 21 of the Act.

A suspended entity also loses its associated benefits for the designated period. The suspension lasts for **six (6) months**, irrespective of the nature of the breach. If the entity remedies the issues within this six-month period, the Authority will withdraw the suspension order.

18.1 Grounds for Suspension

Section 21 (1) of the Act outlines provisions for the Authority to suspend the approval of a registered charitable organization. The approval for registration of a charitable organization may be suspended if:

- a) The charitable organization fails to pay fees or other payments required by the Charities Act, 2013.
- b) The registered charitable organization is in breach of any of the following:
 - i. Any provision of the Charities Act or any Regulations so relevant to the Act
 - ii. Any term or condition under which the approval has been granted.
 - iii. An undertaking given pursuant to sections 32, and the circumstances set out in section 33(1) apply;
- c) The charitable organization notifies the Department in writing that it intends to cease operations for the period stated in the notice.
- d) The Charitable organization or any of its governing board members, who is an employee of the charitable organization, has been charged with any offence under the Proceeds of Crime Act (POCA) or the Terrorism and Prevention Act or an offence involving fraud and or dishonesty or
- e) The charitable organization is conducting its affairs in a way that is harming or jeopardising, or is likely to harm or jeopardise, the public trust and confidence in charitable organizations.

18.2 Procedure for Suspension

- a) The Authority shall notify the organization in writing of its intention, stating the reasons and requiring the breach to be remedied within a specified time - **Form 4: Notice of Intention to Suspend Approval of Registration**
- b) A copy of this notice will be forwarded to the Commissioner General and the Registrar.

- c) Upon suspension, the Authority shall notify the organization in writing and forward a copy to the Commissioner General and the Registrar.
- d) The Registrar will be directed to note the suspension in the Register.

18.3 Remediating Breaches and Authority Actions

If the organization remedies the breach, it must notify the Authority in writing, detailing the actions taken. The Authority will then decide whether to withdraw the suspension notice or take further action.

- a) Upon receiving notice that a breach has been remedied, the Authority will inspect or take appropriate actions to verify the claim.
- b) If the breach is remedied, the Authority will withdraw the notice of suspension.
- c) If the breach is not remedied, the Authority may revoke the approval of the charitable organization or take other appropriate actions as per Section 22 of the Act.

Organizations have the right to request a review or appeal against suspensions. Such requests must be submitted in writing within 30 days of receiving the notification.

19. Revocation of Charitable Status and Maintenance of the Charities Register – Section 22, The Charities Act

The Charities Authority, empowered by the Charities Act 2013, has the authority to revoke the registration of any charitable organization. The registration may be revoked on the following grounds:

- a) Voluntary request for revocation
- b) Revocation for failure to file
- c) Revocation resulting from an audit
- d) Revocation for other reasons within the provisions of the Act, Regulations, or this Policy.

Conditions that could necessitate a revocation may include whether it is found that the entity was not eligible for approval of charitable status, provided false information, or was involved in criminal activities. The organization might even ask for revocation itself, or it could be pursued if the organization's actions harm public trust.

In making its decision, the Authority will assess how serious and ongoing the issues are, actions taken to remedy them, and whether the organization's actions align with its charitable goals.

The Authority may revoke the approval of a charitable organization if:

- a) The organization was not entitled to approval at any time.
- b) The organization provided false or misleading information during application.
- c) The organization contravened any provision of the Charities Act.
- d) A resolution for voluntary winding up has been passed, or a court order for winding up has been made.
- e) The organization requests revocation in writing.
- f) An undertaking given under Section 32 is breached, with circumstances under Section 33(1) applicable.
- g) The organization or any governing board member/employee is convicted of an offence under the Proceeds of Crime Act, the Terrorism Prevention Act, or an offence involving fraud or dishonesty.
- h) The organization conducts its affairs in a manner that harms or jeopardizes public trust and confidence in charitable organizations.

19.1 Voluntary Revocation of Registered Charitable Registration

Voluntary revocation occurs when an RCO requests that the Authority revoke its charitable status.

RCOs can voluntarily apply to revoke their Charitable Status in one of two ways:

- a) **Passing a resolution for voluntary winding up and register it at COJ – Complete Removal of Charitable and Incorporated Status**
 - i. A request for removal from the Register of Companies should be submitted to the COJ and following their processing, a letter is given to the entity which confirms their removal from the register. A copy of this should be submitted to the Charities Authority along with:
 - ii. Form 6A (The Request for Revocation of Approval) to be accompanied by a signed resolution passed by the directors.
- b) **Applying for revocation directly from the Authority – Removal of Charitable Status Only**
 - i. The entity should submit a letter to the Authority requesting revocation with the relevant justifications (Section 22(1)(e) Charities Act, 2013).
 - ii. Complete and submit Form 6A- The Request for Revocation of Approval.
 - iii. The Authority will notify the stakeholders, including COJ, TAJ, JCA and RGD of the revocation so that the entity can be removed from the Register.

The resolution for revocation must also provide sufficient evidence to show that the decision was collective, with at least a majority of directors voting in favour of the request to revoke the charitable registration.

19.2 Involuntary Revocation

Involuntary revocation of Registered Charitable registration occurs when an RCO's charitable status is withdrawn without a request from the organization. The Charities Authority should carefully consider all matters within Section 22(2) (a-f) of the Charities Act, 2013 when proceeding with an involuntary revocation. The Authority should also inform the Commissioner General (TAJ) and the Registrar of Charities (COJ) of the revocation via the Notice of Revocation (Form 6).

19.3 Reasons for Involuntary Revocation

Section 22 (1) of the Act provides for revocation if any one of the following conditions are met.

- a) The RCO is no longer, or was never, entitled to approval.
- b) The organization provided false or misleading information during the application process.
- c) A court order has been issued for the winding up of the entity.
- d) The charitable organization or any governing board member who is an employee of the RCO has been convicted under the Proceeds of Crime Act, the Terrorism Prevention Act, or has committed any fraud or dishonesty-related offense.
- e) The RCO is conducting its activities in a manner that is harming or jeopardizing public trust in charitable organizations.
- f) Violation of undertakings as outlined in Sections 32 and 33 of the Charities Act, 2013.
- g) Post-approval, the RCO contravenes or breaches a provision of the Charities Act, 2013.

19.4 Procedure for Revocation

When deciding whether to revoke the approval of an RCO, the Authority will consider:

- a) The nature, significance, and persistence of the contravention.
- b) Actions taken to address or prevent contravention.
- c) Consistency of contributions with the charitable purpose.
- d) The extent to which public trust and confidence are jeopardized.
- e) Welfare of beneficiaries.
- f) Any other relevant matters.

19.5 The Revocation Order:

- a) The revocation notice will specify the effective date of the revocation order.
- b) The Authority will provide written notice to the organization within fourteen days (14) of the revocation.

- c) A copy of the revocation notice will be forwarded to the Commissioner General, TAJ (*except where TAJ has been designated as the Authority as per Section 6 of the Act*) and the Registrar.
- d) The Registrar will remove the organization's name and particulars from the Register, noting the effective date of revocation.

The revoked RCO should return the Certificate of Registration of Approved Charity to the Authority if the registration period has not expired.

Organizations have the right to request a review or appeal of a revocation; however, such requests must be submitted in writing within fourteen (14) days of the notification and prior to the effective date of revocation.

19.6 Right of Appeal

Any individual or entity aggrieved by a decision made by the Charity's Authority in respect of a matter under this Act may submit an appeal to the Charity Tribunal under Section 37 of the Charities Act 2013.

Reasons for appeals may include, but are not limited to:

- a) Refusal of Registration:
 - i. Appealing an objection from TAJ
 - ii. Not passing the Fit and Proper Assessment
- b) Suspension
- c) Refusal of Renewal
- d) Revocation
- e) Designation as a Protected Charity

The appeals process must be initiated by submitting a '**Notice of Appeal to the Charities Appeal Tribunal.**' The notice of appeal must be submitted **within twenty-eight (28) days** from the date of the decision. In special circumstances, the Tribunal may allow a longer period for submitting the appeal. All parties must adhere to principles of confidentiality and transparency throughout the process.

19.7 Steps to make an appeal

An applicant can appeal using the following procedure:

1. Complete the Notice of Appeal to the Charities Appeal Tribunal Form, stating the grounds of the appeal, and submit the completed form to the Secretariat of the Appeal Tribunal.
 - a. The notice of appeal must clearly outline the grounds for the appeal and be accompanied by copies of any relevant correspondence, documents, or statements.

- b. A copy of the notice of appeal, along with relevant documents, must be served on the Authority.

Once the Notice of Appeal to the Charities Appeal Tribunal form is submitted to the Secretariat of the Appeals Tribunal, the following internal mechanism is to be activated:

1. The Secretariat upon receipt of the application for appeal is to provide the necessary communique to the Registrar.
2. The Tribunal shall request the Authority, through the Registrar, to provide a written statement within **seven (7) days**, explaining the reasons behind its decision. This statement should be submitted to both the appellant and the Tribunal.
3. The Secretariat is then required to prepare a “bundle” that contains all documentation relevant to the appeal. This is to be referred to a five-member Review Tribunal.
 - a. The Tribunal may order the production of any relevant books, papers, documents, or statements from the Authority or the appellant during the hearing.
4. A date will then be scheduled for the appeal hearing
5. When the date has been set, the Tribunal will inform both parties:
 - a. that they may represent themselves or be represented by their attorney-at-law;
 - b. that they have the right to summon witnesses in support of their case.

On hearing the appeal, the Tribunal may:

- a) dismiss the appeal, thereby confirming the decision of the Authority;
- b) allow the appeal, overturning the decision of the Authority;
- c) modify the decision of the Authority;
- d) refer the matter back to the Authority for reconsideration;
- e) issue orders regarding costs and fees as deemed necessary.

It should be noted that a compromise may be arrived at between the entity seeking charitable status and the Charities Authority at any time before the Tribunal convenes. The decision made by the Tribunal following the appeal hearing will be final and binding on all parties involved. Records of the appeal process will be maintained securely and will be accessible to relevant parties only.

20. Risk Management

To address and manage risks in the expanding Charities Sector, the Department of Co-operatives and Friendly Societies (DCFS) has established procedures for monitoring Registered Charitable Organizations (RCOs). The Risk-Based Supervisory Framework aims to enhance the assessment, monitoring, and evaluation of RCOs as recommended by the National Risk Assessment (NRA). Guided by the Charities Act and Regulations, and the Financial Action Task Force (FATF), this framework seeks to strengthen the sector's regulatory oversight.

The Risk-Based Supervisory Management Framework is designed to help the Charities Authority monitor RCOs more effectively, understand different levels of risk, and coordinate interventions to mitigate them. There are two stages in the Authorities Risk Assessment Process:

Stage 1: The risk levels of the entities are assessed at first registration.

Stage 2: The risk levels of the registered entities are determined monitored annually and at renewal and re-registration.

Procedures include:

1. Classifying RCOs by charitable purpose and size (based on annual income).
2. Conducting an initial risk assessment for new applicants.
3. Performing a detailed risk assessment one year after registration using a Risk-based Criteria Matrix.
4. Implementing a risk treatment plan to manage and monitor identified risks.
5. Providing outreach and support to help RCOs address weaknesses.

The Department's Risk Assessment Plan identifies risks using information not limited to:

- ✓ Annual Returns
- ✓ Auditors Report and Financial Statement
- ✓ Fit and Proper Questionnaire
- ✓ Incident reports from donors and the public
- ✓ Inspectors Findings
- ✓ Stakeholders Reports (e.g. MOCA-FID)
- ✓ Concerns raised in the Media
- ✓ PEP form
- ✓ Concerns raised by the political Directorate
- ✓ UN Sanction List

It is this framework that allows for the designation of Protected Charities.

20.1 Procedural fairness

The Department of Co-operatives and Friendly Society is mandated by Section 21 (2) of the Charities Act to:

- a) Notify the organization in the question of the intent to suspend their registration where issues arising call into question the fit and proper status of a board member.
- b) Give reasons for the suspension or in instances of a breach, requires the entity to correct the breach within a particular time framework.
- c) Forward a copy of intention to suspend approval for an entity to the Commissioner General.

If the applicant(s) receive an unfavourable ruling from the authority regarding its registration, the aggrieved party is afforded a right of appeal under Section 37 of the Charities Act.

21. Protected Charities

Protected Charities are registered charitable organizations designated by the Minister in accordance with Regulation 7. Specific criteria must be met for a charity to be classified as protected. This classification is based on the recommendation of the Charities Authority following inter-agency consultation and a thorough risk assessment.

This chapter outlines the regulatory framework and requirements for protected charities in accordance with the Regulations. Charities are designated as Protected where necessary to mitigate identified risks related to money laundering, terrorist financing, and other financial crimes, thereby enhancing oversight and safeguarding the integrity of the sector.

21.1 Designation of Protected Charities

A charitable organization may be designated as a protected charity if it is deemed vulnerable and at high risk of misuse for TF and other financial crimes, necessitating the implementation of stringent protective measures. The Department aims to recommend charities matching these criteria for designation by March 31 of each year.

Identifying/classifying a Protected Charity

1. The Stage 2 Risk Assessment for the RCO is completed
2. Based on the results of the Risk Assessment, if the entity is classified as High Risk, the authority will submit a memorandum to the Minister requesting that the entity be designated as a Protected Charity.
 - The memorandum should outline the major risks identified as a justification for the request.
 - The validated risk profile should be submitted.
3. The Minister will conduct an inter-agency consultation with:
 - a. the Designated Authority (Chief Technical Director of the Financial Investigation Division);
 - b. the Commissioner of Police;
 - c. the Tax Administration Jamaica; and
 - d. any other relevant department, agency or public body engaged in co-operation, co-ordination and information exchange with respect to combating money laundering, terrorist financing and other financial crimes.
4. If the consultation results in no objections, the Minister will prepare a notice declaring the RCO's designation as a Protected Charity.

21.2 Actions Post Designation

All Protected Charities are automatically enrolled into the Department's NPOs Outreach and Enrichment Plan and are assigned a Protected Charity Officer. This Officer will have responsibility for continued monitoring of the Charity, specifically for the identified risks and vulnerabilities. Other actions include conducting inspections and regulatory interventions. These are all to safeguard the entity from increased vulnerabilities, including exploitation for financial crimes.

21.3 Addressing Exposure to Risk

In assessing the level of risk of a registered charitable organization, the Authority shall consider the increased risk of misuse associated with the following factors:

- a) The registered charitable organization received charitable donations from or provided funding to a listed entity.
- b) The RCO received charitable donations from:
 - i. An entity in a high-risk jurisdiction
 - ii. An entity in a jurisdiction bordering a conflict zone, resulting in an increased risk of misuse for money laundering, cross-border terrorist financing, or other financial crimes.
 - iii. Politically exposed persons (PEPs), necessitating the implementation of more stringent anti-money laundering (AML), counter-terrorism financing (CTF), and due diligence measures to mitigate the increased risk associated with donations from PEPs.
- c) The governing board members responsible for the management of the registered charitable organization have acted in contravention of the Proceeds of Crimes Act or the Terrorism Prevention Act.
- d) A person connected with the registered charitable organization is established or resides outside of Jamaica or is a politically exposed person (PEP).
- e) The work for which the registered charitable organization receives donations is conducted in a conflict zone or involves activities that expose the organization to an increased risk of being misused for money laundering, financing of terrorism, or other financial crimes.
- f) The income, assets, and size of the registered charitable organization.
- g) The frequency and amount of charitable donations received from outside Jamaica by the registered charitable organization.
- h) The quality of the information provided by a donor organization, or the failure or refusal of a donor organization to provide requested information.
- i) The RCO's non-compliance with the provisions of the Act and these Regulations.

These considerations ensure a comprehensive assessment of the potential risks and vulnerabilities faced by registered charitable organizations.

21.4 Responsibilities of a Protected Charity

A protected charity is mandated to establish and implement comprehensive programs, policies, procedures, and controls to:

1. Detect, Prevent, or Mitigate Risks
2. Prevent Exploitation as a Conduit
3. Prevent Fraudulent Diversion
4. Avoid Transactions with Listed Entities

21.5 Specific Measures Include:

- a) Establishment of protocols to verify the identity, credentials, and good standing of donors, beneficiaries, associate charitable organizations, and governing board members.
- b) Developing systems to monitor interactions with listed entities and prevent transactions with them.
- c) Implementing procedures to verify transactions in accordance with regulatory requirements.
- d) Development of procedures to identify and report transactions suspected of financial crimes, including those involving listed entities.
- e) Maintenance of detailed record-keeping procedures as specified by regulations.
- f) Establishment of accounting and financial reporting procedures to ensure transparency and compliance.
- g) Conducting continuous training programs for employees on relevant compliance and risk mitigation measures.
- h) Arranging for annual independent audits by registered public accountants or Chartered Accountants to verify compliance with implemented measures.
- i) Implementing any other protective measures specified by the Authority.

21.6 Training and Awareness

Employees of protected charities, including relevant officers, shall receive training on compliance with regulations, recognition of suspicious transactions, and risk management within six months after the date of commencement of employment and every two years thereafter.

Governing board members shall receive training to ensure proper administration and management of protected charities in compliance with regulations.

21.7 Compliance and Enforcement

Protected Charities, like all other RCOs are expected to comply with the regulatory obligations set out in the Act and Regulations. Failure to do so may result in fines or imprisonment, as outlined in the regulations.

Protected charities are encouraged to review and maintain compliance of their overseas branches and subsidiaries with applicable standards, if any.

22. **Audit and Financial Management of Non-Profit Organizations (NPOs)**

This chapter outlines the new audit framework and the responsibilities of the DCFS, Audit Unit, in preparing audited Financial Statements for RCOs. The RCOs are required to maintain proper accounting records, ensuring compliance with the Charities Act, and promoting transparency within the not-for-profit sector.

The Audit Unit will now play a pivotal role in ensuring compliance with International Financial Reporting Standards for Small and Medium-sized Entities (IFRS for SMEs) while promoting adherence to sound financial management practices.

To address the concerns regarding unaudited RCOs and ensure that financial statements are accurate and complies with necessary standards, a "*Twin Peak Audit Regime*" will be introduced. The regime will consist of two primary components:

22.1 Peak 1: DCFS-Conducted Audits

This peak will involve the Audit Unit directly conducting audits for RCOs that meet the following criteria:

- ✓ The RCO must belong to the small category (less than \$5 million modal income).
- ✓ The RCO must demonstrate weaknesses in its accounting or financial management practices, as identified either by the Audit Unit or through recommendations from the Development or Inspectorate Unit.

22.2 Peak 2: Letters of Exemption (LOE)

Under this peak, RCOs with less than \$1 million in modal income may be issued a Letter of Exemption (LOE) from formal audits. These organizations will be required to submit unaudited balance sheets and profit & loss statements, signed by their directors. However, in this peak, the Audit Unit will conduct due diligence before issuing the LOE.

22.3 Conditions for Letters of Exemption

The following conditions will apply in Peak 2:

- ✓ LOEs will only be issued after a thorough review by the Audit Unit.

- ✓ If the RCO is a Public Interest Entity, it will not be eligible for an LOE.
- ✓ The RCO must be responsible for preparing its own accounting records.
- ✓ RCOs may still be required to undergo an audit under charity legislation, depending on the circumstances.

22.4 Training and Capacity Building

To ensure the Audit Unit is adequately equipped to carry out these new responsibilities, training on the nuances of the Charities Act and financial management for NPOs was delivered. The aim was to familiarise auditors with the operational dynamics of RCOs and the regulatory requirements they must meet.

22.5 Effective Date

From September 1, 2024 onward, RCOs will be subject to the new audit framework, with the potential for audits or LOEs being issued based on the criteria set out in this policy.

22.6 Audit Fees and Review Process

The following proposals are made for audit fees and the review process:

- ✓ **Audit Fees:** A fee of 5% of the total assets for RCOs with a positive net worth.
- ✓ **Flat Fee:** A flat fee of \$5,000 will apply to entities undergoing the review process or receiving an LOE.

The implementation of the Twin Peak Audit Regime will strengthen the oversight of RCOs and NPOs, ensuring that they are financially accountable and transparent. Through this process, the DCFS aims to foster a culture of good governance in the non-profit sector, while providing a fair and transparent system for organizations of all sizes. Ongoing training and support will be offered to ensure that all stakeholders are equipped to navigate the new requirements effectively.

23. Appendix I - Criteria for Registration

UNDER THE CHARITIES ACT AND REGULATIONS

	REQUIREMENTS
DULY COMPLETED APPLICATION FORM	<ul style="list-style-type: none"> ▪ All areas on the Application Form (Form I, First Schedule) are to be completed. ▪ <i>“N/A” is not an appropriate response to most Questions on this document.</i> ▪ The Application Form must be signed by the Applicant and submitted with original signatures. ▪ In the case of an unincorporated entity, a governing board member should be the applicant. ▪ At least one governing board member should be a resident of Jamaica. ▪ An Application Form dated over six months is not acceptable to start processing. ▪ Two (2) copies of the Application Form must be submitted (for manual applications).
SUPPORTING DOCUMENTS	
CONSTITUTION OF THE CHARITABLE ORGANIZATION	<ul style="list-style-type: none"> ▪ Two (2) copies of the constitution: ▪ Entities registered at the Companies Office after 2005): Articles of Incorporation ▪ Entities incorporated with Companies Office of Jamaica before 2005): Articles of Association and Memorandum of Association

	<ul style="list-style-type: none"> ▪ Entities established by enactment in Parliament: Incorporating and Vesting Acts of Parliament ▪ Unincorporated entities: Documents to include Trust Deed for Charitable Trust and written constitution for others. These must be stamped at the Stamp Office and lodged at the Island Records Office (Registrar General's Department). ▪ For unincorporated entities, the DCFS Officer (on the Charities Authority's behalf) writes to National Insurance Scheme (NIS) Office seeking assistance in acquiring NIS reference number; and Tax Administration Jamaica seeking assistance to acquire Taxpayer Registration Number. <p>Constitution <u>must</u> include the following particulars (which satisfies the conditions specified in the Charities Act and Regulations) and is set out below:</p> <ul style="list-style-type: none"> ▪ Objects and Powers ▪ Arrangements established for the management of the organization, which shall include provisions that:— <ul style="list-style-type: none"> i. the governing board shall be constituted by not less than two governing board members and in the case of a charitable organization that is a private company, one of whom shall be a director and the other being the company secretary; ii. outline the duties and terms of office of the governing board members; iii. require at least one governing board member to be a resident of Jamaica; and iv. require the Authority to be notified in writing of any changes in the membership of the governing board; ▪ Procedures to address conflicts of interest
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	<ul style="list-style-type: none"> ▪ Quorum for meetings ▪ Remuneration Clause prohibiting governing board members from receiving payment of any kind from the charitable organization except for reimbursement of out of pocket expenses incurred while undertaking the affairs of the charitable organization ▪ Income Clause ▪ Winding Up/Dissolution Clause ▪ True Accounts Clause ▪ Details of any immoveable property and the name of any person who has legal or beneficial interest in the immoveable property. ▪ Financial Year of the Charity ▪ Provision that permits the amendment of the Constitution
PROOF OF LEGAL STATUS OF THE CHARITABLE ORGANIZATION	<ul style="list-style-type: none"> ▪ Certificate of Incorporation for Companies Office of Jamaica. ▪ Certificate of Registration for Benevolent Societies, Department of Co-operatives & Friendly Societies. ▪ Incorporating and Vesting Act for organizations incorporated by Acts of Parliament
TAXPAYER REGISTRATION DATASHEET	<ul style="list-style-type: none"> ▪ Taxpayer Registration Datasheet which can be obtained from Tax Administration Jamaica.
FIT AND PROPER QUESTIONNAIRE	<p>Secretary and all Directors listed on the Constitution must present:</p> <ul style="list-style-type: none"> ▪ Fit and Proper Questionnaires (Form II, First Schedule).

	<ul style="list-style-type: none"> ▪ Charity must have at least two governing board members. ▪ At least one Governing Board Member should be a resident of Jamaica. ▪ <i>“N/A” is not an appropriate response to most questions on this document</i> ▪ Fit and Proper Questionnaire must be signed by a Justice of the Peace or an Attorney-at-Law or notarized overseas (original signature is required). ▪ Fit and Proper Questionnaire dated 6 months and over is not acceptable to start processing. ▪ Commission for Notary Public should not be expired. <p>For Fit and Proper Questionnaire Declaration Pages that are older than one year, the trustee should submit a new declaration page and a letter of validation stating that nothing on their status has changed.</p>
PHOTOGRAPH OF EACH GOVERNING BOARD MEMBER	<ul style="list-style-type: none"> ▪ Passport sized Photograph (should be 6 months old or less) ▪ Valid Government Identification: <ul style="list-style-type: none"> ▪ Passport ▪ Driver’s License ▪ National ID <p>(All identification submitted must be dated, signed and certified by a Justice of the Peace or Notarized)</p>
PRIOR YEAR AUDITED FINANCIAL STATEMENTS	Prior Year Audited Financial Statements prepared by a registered Public Accountant for entities incorporated for a year or more.

	Any other document or information that the Authority may require – such as the filing of Nil Returns at Companies Office of Jamaica and provide Charities Authority with copies.
DETAILED PLAN OF CHARITABLE ACTIVITIES TO BE CARRIED OUT	<p>Plan of Charitable Activities must contain:</p> <ul style="list-style-type: none"> ▪ Plans to be achieved by the Charity ▪ Steps to be taken to achieve the goals established ▪ Actions related to the charitable purpose directed at meeting the specified objectives. ▪ Summary of benefits to be achieved by the target group. ▪ Details of how the Charity will be funded ▪ Annual Budget or cost (Actual or Proposed)
PLAN FOR THE DISBURSEMENT OF DONOR FUNDS	<p>Plans for disbursement must include:</p> <ul style="list-style-type: none"> ▪ Outline of Donations received and purpose; ▪ Donor information and details on how funds will be used or disbursed; ▪ Systems to be employed to ensure proper account and record keeping <p><i>(Regulations 25 - 27)</i></p>
ADMINISTRATIVE AND OPERATIONS MANAGEMENT POLICIES AND PROCEDURES OF THE CHARITABLE ORGANIZATION	Provide details on internal control systems, policies and procedures to ensure proper management of the charitable organization.
COST AND FEES	
PAYMENT OF APPLICABLE / RENEWAL FEE	<p>A Non-refundable Application Fee of Five Thousand Dollars (\$5,000.00)</p> <ul style="list-style-type: none"> ▪ Original receipt to be given to client. ▪ Photo-copy receipt to be placed on file to verify proof of payment.

	<i>Evidence must be provided for fee payments before registration is recommended.</i>
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Appendix II - Fit and Proper Trustees Fit and Proper Policy **Procedure Guidelines**

The Fit and Proper test policy incorporates provisions from the Charities Act, 2013, existing operational policies and procedures, and published guidance from various competent authorities. This policy aims to ensure that individuals with strong moral principles of integrity and honesty, sound judgment, and high professional standards of conduct serve on the board of registered charitable organizations (RCOs).

The Department of Co-operatives and Friendly Societies is mandated to ensure that all directors (governing board members) and secretaries of entities seeking RCO status are fit and proper persons before considering registration. Determining whether a person is a fit and proper person involves assessing their overall suitability to carry out intended roles and the imperative to uphold the public's interest. A person is deemed fit and proper if they possess good character, honesty, a reputable demeanour, and demonstrate an ability and likelihood to discharge their responsibilities in the best interest of the public.

Scope of Fit and Proper

This policy applies to governing board members of any entity seeking registration as a charitable organization, in accordance with Section 17 of the Charities Act, 2013. Section 17 of the Charities Act stipulates that the Authority shall ensure that:

- a) Each governing board member is a fit and proper person (as defined in section 18); and
- b) The organization:
 - i. is established exclusively for a charitable purpose;
 - ii. is intended to, and if already operating, operates for the public benefit;
 - iii. has no part of its net income or assets benefiting any governing board member, settlor, or any other private individual.

The policy outlines the criteria for determining what constitutes a fit and proper person, as well as additional eligibility criteria for individuals wishing to serve as governing board members of a charity.

Purpose of the Fit and Proper Questionnaire

The purpose is to ensure board members of entities seeking charitable status are of a fit and proper repute as outlined in Section 18 of the Act. The fit and proper testing procedures aim to address growing concerns regarding financial crimes, including money laundering and terrorist financing. This procedure aims to:

- a) Ensure compliance with statutory and regulatory requirements.
- b) Protect the interest of all stakeholders in the philanthropic sector and the public generally.
- c) Protect the system from being used as a vehicle to facilitate criminal activities.
- d) Ensure consistency with internationally accepted standards and best practices for regulating charitable organizations.

Introduction

Section 18 of the Charities Act, 2013 provides the framework for assessing individuals serving on the boards of charitable organizations. In this regard, the policy outlines the criteria by which a person designated to be a governing board member of a charitable entity can be deemed fit or unfit.

Furthermore, this policy details the application of a fit and proper test assessment for both existing post holders and new appointments to the board of management of a charitable entity.

Requirements Stipulated by Section 18 - Charities Act, 2013

The Charities Authority bears the ultimate responsibility to ensure that each governing board member is fit and proper. To fulfil this responsibility under the Charities Act, 2013, the authority will make every reasonable effort to ascertain the fitness of both existing post holders and new applicants, conducting specified inquiries into the fitness of board directors.

Section 18(1) states that an individual, whether in Jamaica or abroad is considered fit and proper if they:

- i. have not been convicted of an offence involving dishonesty; and
- ii. are not an undischarged bankrupt; and
- iii. in the opinion of the Authority, is a person of sound probity, and is able to exercise competence, diligence, and sound judgment in fulfilling his responsibilities in relation to a charitable organization.

Section 18 subsection (2)(a) of the Charities Act further elaborates on subsection 1(a), specifying that the authority shall consider any evidence that a governing board member:

- i. Has engaged in any business practice that appears to the authority to be deceitful, oppressive, or otherwise improper.
- ii. Has contravened any provision of any enactment aimed at protecting the public against financial loss.
- iii. Is incapacitated due to a mental disorder.

Implementation of Fit and Proper Test

Upon application for RCO status, each governing board member and the secretary of a charitable organization must complete a fit and proper questionnaire, including the declaration. This

declaration, positioned at the end of the questionnaire, serves as an attestation by the member to their truthfulness and fitness to serve as a board member for the entity seeking charitable status. It must be witnessed by an Attorney-at-Law, Justice of the Peace, or Notary Public/Consular Officer for those outside of Jamaica's jurisdiction. The signed declaration also obliges the declarants to ensure the accuracy of all provided information and to inform the authority of any changes that would compromise their status as fit and proper board members.

Completed Fit and Proper Questionnaires are also required upon re-application for charitable status, in cases where an RCO does not renew within the allowable time window, or when there are changes in the directorship of the organization.

The Authority implements quality assurance processes to ensure that each Fit and Proper Questionnaire is completed correctly, with responses provided to all questions asked.

The questionnaire items, among other things, are designed to ascertain whether an individual has been charged or convicted of crimes, particularly those relating to honesty, and to determine any previous or current leadership, employment, or voluntary history.

Exclusions under the Charities Act, 2013

Consideration is given to the exclusion of individuals desirous of serving as Board members once they fall within the category of excluded bodies as defined in the Act. Section 2 outlines the bodies that are excluded from obtaining charitable status under the Charities Act. These include:

- A political party or a body that promotes a political party or a candidate of a political party
- A Trade Union
- A representative body of Employers
- A Chamber of Commerce or other body that promotes the interests of commercial entities
- A body that promotes purposes that are unlawful; prejudicial to public order/safety; and in support of terrorist activities.

Assessment of Fit and Proper Questionnaire

Documentation to Be Collected

The following are required:

- a) A completed, up-to-date version of the Fit and Proper Questionnaire as issued by the Authority.
- b) The Fit and Proper questionnaire is considered complete when:
 - a) All relevant fields are filled out.
 - b) An answer is provided for all questions, and the applicant does not incorrectly use "Not Applicable" (N/A) to respond to a relevant question.
- c) Reference the criteria document; all other documents and procedures required

among the application requirements is the submission of one of the following identifications along with the Fit and Proper Questionnaire:

- a) A recent passport-sized photograph (no older than 6 months) certified by a Justice of the Peace, Attorney-at-law, or notary public.

Assessment Procedure

Reviewing the file:

1. The officer reviewing the Charities application submission must verify that all directors and the secretary submit a fit and proper questionnaire.
2. All fit and proper questionnaires should be signed by a Justice of the Peace or other appropriate notary public with the relevant seal.
3. The applicant should attach their signature in all relevant sections, attesting to and declaring the truthfulness of the responses given.
4. All Fit and Proper Questionnaires should be dated within the last six (6) months at the time of submission.

Where the Fit and Proper Questionnaire has not been completed properly due to a failure to answer all required questions, the officer is required to request that the relevant fit and proper questionnaire be completed as directed. This request should be sent in writing to the person listed as the applicant and or the Secretary on the form.

The officer must allow a ten (10) day window for the applying entity to resubmit or visit the offices to amend the fit and proper questionnaire. The applicant in these instances is to be advised that the thirty (30) day processing time for the application will be negatively impacted.

A fit and proper questionnaire is not required for a trustee who is on the governing board of a current compliant entity. However,

- a) The applicant must submit a letter indicating the affected trustee and the particulars of the previously registered entity.
- b) The Officer will then validate this claim by checking the existing file.
- c) A copy of the existing declaration page should then be enclosed on the new file.

Procedure if Applicant Contravenes Any Provision of The Fit And Proper Standard.

Reviewing Officer

In cases where the applicant has violated a requirement to be deemed fit and proper, or where upon examination of the content of the fit and proper questionnaire and accompanying documents for the application, there is prima facie evidence suggesting that the declarant may not be a fit and

proper person, the Officer is required to refer the application file to their Supervisor for review and further action, highlighting any observations.

Supervisor/Manager

Upon receipt of the file, the Reviewing Manager is responsible for reviewing it. If it is subsequently confirmed that, based on the information declared on the completed fit and proper questionnaire, the applicant does not meet the standard of being considered fit and proper, the Reviewing Manager is to prepare the relevant internal memo or utilize the file minute sheet. This memo should outline the issues as they exist with the application and refer the matter to the Director.

Director

After reviewing the file and having discourse on the matter, if it is determined that the governing board member/secretary is not fit and proper, the Director will prompt the Supervisor/Officer to write to the applicant. This letter will advise that the member has not met the threshold to be considered a fit and proper person and will provide further instructions for the member to be removed from the directorship, with the possibility of naming a replacement if necessary. The entity must make the appropriate changes at the Companies Office and submit a Notice of Change form to the Charities Authority.

If it is found that the disqualified director/secretary or the entity applying for charitable status has a questionable reputation, the Director will refer the file to the Registrar.

Registrar

After reviewing the file, the Registrar will decide whether the individual is fit and proper. This decision will involve either agreeing to the request to remove the affected director or appointing another, or refusing the application entirely, as per sections 17 and 18 of the Charities Act. Once a determination is made, the Registrar will instruct the relevant Officer to prepare the refusal letter.

Subsequent Applications

Prior failure to meet the fit and proper person test will not negatively affect subsequent applications.

Appendix III – Guidance Notes for Constructing a Constitution

Constructing the Constitution of a Charitable Organization

Effective December 8, 2022 and in keeping with the promulgation of Charities Regulations, 2022 all Constitutive Documents (Articles of Incorporation, Articles of Association/Memorandum of Association, Trust Deed, Constitution, Registered Rules, etc.) **must include information or provisions on the following:**

Charitable Purposes and Activities

- The charitable purposes of the organization and any power conferred to carry out activities in support of those charitable purposes must be stated. The objects and powers are to be clearly and ambiguously stated.

Objects

What your charity is set up to achieve (its purposes must all be charitable for the public benefit) should answer the following questions:

- What? – What charitable purpose(s) the organization wants to be involved with/ what outcomes are the charity set up to achieve.
- Who? – Who are the beneficiaries of the charity, who is the target group(s) e.g., women, children, animals, people in need etc.
- Where? – Where is the target area for the charity? Where does your charity want to extend itself e.g., a particular parish or town, community or all of Jamaica.

Powers

The powers must state the activities to be undertaken by the charity in order to ensure that the objectives are being achieved. Powers answers the question how:

- How? – This reveals how the organization will carry out/ execute its objectives. What are the steps that will be taken in fulfilling the objectives of the organization?

Governing Board

- Should not be less than two (2) and in the case of a charitable organization that is a private company, one of whom shall be a director and the other being the Company Secretary.

- Duties and terms of office – outline the duties of Director(s) and Company Secretary and state the length of time each will serve in that particular position.
- The board may consist of residents outside of Jamaica; provided that at least one board member is a resident of Jamaica.
- Where there are changes in the membership of the board, the Charities Authority is to be notified within 28 days of change on the Notice of Change to Charities Authority (Form 7).

Quorum for Meetings of the Governing Board

- The required quorum for meetings of the governing board must be explicitly stated.

Financial Year

- State the financial year of the charitable organization

Prohibition on Director's receiving Payments

- Include a provision that prohibits governing board members from receiving any form of payment from the charitable organization, except for reimbursement of out-of-pocket expenses incurred while performing their duties.

Immovable Property

- All immovable property of the organization must be vested in the name of the organization. Where there are immovable properties they should be explicitly identified in the Constitution along with any person who has legal or beneficial interest in the immovable property.

Conflict of Interest

- Procedures to address conflicts of interest between a governing board member and the charitable organization.
- A conflict of interest situation may arise when a governing board member takes action or has interest that make it difficult to perform their duties objectively and effectively.
- It may also arise when a director, employee or member of his/ her family receives personal benefits as a result of his / her position in the organization.

Provisions for Dissolution

- This should address how the assets will be dealt with in the event that the charity is wound-up. It should be expressly provided that upon dissolution any charitable donations, funds or assets of the charitable organization be distributed to another registered charitable organization and which include procedures for the distribution of any charitable donations, funds or assets to other registered charitable organization.

Amendments

- Provisions that permit the amendment of the Constitution and the manner in which amendments are to be made.

N.B. For an Incorporated Entity - the amendments should be lodged at the Companies Office of Jamaica (COJ) and you may contact their offices for specific details regarding process and cost.

For an Unincorporated Entity - the amendments should be stamped at the Stamp Office and then registered at the Registrar General's Department and you may contact their offices for specific details regarding process and cost.

Kindly note that if you currently have a Constitution which does not have all the above elements and you intend to apply for charitable Status you should amend the Articles/Constitutive Document before submitting the application to the Charities Authority.

Appendix IV - Guidelines for Applying for Permission to Use Certain Words in the Name of a Charitable Organization

These guidelines provide the step-by-step process for applying for permission to use the words 'Foundation,' 'International,' or foreign language terms in relation to the name, title or designation of the organization, ensuring that the criteria set out in the Charities Regulations, 2022 are met.

Understanding Regulation 4

Regulation 4(1): Prohibitions on the Use of Certain Words

- Charitable organizations that are not registered under the Act **must not**:
 - Use any name, title, word, term, or grammatical presentation that implies the organization is a registered charitable organization.
 - Use the words "Foundation" and "International" in their name, title, or designation.
 - Use any name, title, or designation that is wholly in a foreign language.

Regulation 4(2): Exceptions to the Restrictions

- Organizations may be permitted to use restricted words if they meet the following criteria:
 - **Foundation:**
 - The organization is self-funded by an individual, family, or for-profit company to aid its intended charitable purposes.
 - The organization is financed by an endowment.
 - **International:**
 - The organization has activities outside Jamaica that serve its charitable purpose.

Application Process

1. Prepare Supporting Documents

- Compile documents demonstrating that the organization meets one of the exceptions outlined in Regulation 4(2). These may include:
 - Proof of funding sources (self-funded by an individual, family, or for-profit company, or financed by an endowment).
 - Evidence of charitable activities conducted outside Jamaica.

2. Prepare letter and address it to:

The Registrar,
Department of Co-operatives and Friendly Societies, (Charities Authority)
2 Musgrave Avenue,
Kingston 10

- Include the following information:
 - Name and contact details of the organization.
 - The specific word(s) you wish to use ("Foundation" or "International").
 - A brief explanation of how the organization meets the criteria for the exception.

Any supporting documents as attachments.

3. Submit the Request for Approval

- Send the completed application and supporting documents to the Authority's office.

The request, along with supporting documents, may be submitted along with the Application for Registration of Charitable Organizations- First Schedule Form 1.

4. Review and Approval

- The Authority will review the letter seeking approval along with the supporting documents.
- A written approval or denial will be issued based on the evaluation.
- If approved, the organization may use the specified word(s) in its name, title, or designation.

By following these guidelines, entities can properly apply for permission to use the words "Foundation" or "International" in their name, ensuring they meet the necessary legal requirements.

Special Note: Applicants registering a charity with the Companies Office of Jamaica (COJ) must also comply with the regulations outlined above. The relevant documents, including the application letter, supporting documents, and the specific word(s) requested ('Foundation' or 'International' or foreign words), should be submitted via the COJ. The COJ will forward these documents to the Charities Authority, which will issue either a letter of objection or a letter of no objection regarding the use of the specified words. The COJ will then communicate the decision to the applicant.

Appendix V - Guidance Notes for Filing of Returns and Maintenance of Accounts

Be prepared, 31st March each year is the deadline for registered charitable organizations to submit their Annual Return² to the Charities Authority. Failure to file is taken seriously by the Authority and grant funders.

All Registered Charitable Organizations (RCOs) shall file with the Authority within three months after the end of the [organization's] financial year, the following documents:

- The Audited Financial Statements
- The Auditor's Report on the Financial Statements
- The Auditor's Report on the use of donation money and whether the use was in accordance with the charitable purpose (s) of the organization
- The Annual Report³
- The fund-raising activities (aka Plan of charitable Activities) and expenditure plans for the next financial year (aka Budget/Schedule of Expenses)

Here are some top tips to avoid making mistakes when filing:

- Don't leave it to the last moment. Failure to file on time is against the law – if you are ready to file, do it now. Deadline extensions are not offered, and if you fail to file on time your online register entry will be flagged red as being overdue.
- All charities must keep records of their accounts and provide them to the public if requested. All registered charities must inform the Authority of their income and expenditure.
- You can now authorise your accountant, independent examiner, or another person to file the charity's return and other documents for you.
- Income and expenditure and balance sheet figures etc. must be recorded in Jamaican dollars.
- File your annual information in a **signed** hard copy. Attempts to file by way of a letter notification or by email will not be processed and your charity's online register will be marked overdue.
- The annual return prompts you to tell us if your accounts are qualified. Accounts are marked qualified when the independent examiner or auditor has doubts or concerns about some aspects of the accounts. This does not relate to the fitness of the individual scrutinizing the accounts.
- It is the Trustees' collective responsibility to file, even if the task is given to one person.
- All registered charities must have a contact person identified to the Authority. If this individual leaves the charity, their last action should be to change their details to those of the new contact person. This is also an action attributed to the charity. Failure may lead to significant delay.

² Form 8 - Annual Return

³ Must be signed by at least one director and bears the name of the RCO.

- The annual return prompts you to populate and to confirm that certain facts you entered are correct. Make sure you provide complete and accurate disclosures.
- Registered Charitable Organizations have a duty to notify the Authority of certain matters (changes) pursuant to Section 28 of the Charities Act 2013. The Authority is to be notified of the matters by way of a Notice to the Authority (Form 7) within 28 days.
- DCFS - If you have all the information you need, completing your annual returns should only take about 20 minutes – so file on time this upcoming March.

Further to the foregoing, the law requires that:

- A registered charitable organization shall enable true and fair financial statements to be prepared and audited to enable any *recognized assessment activity*⁴ to be carried out in relation to the charitable organization.
- A registered charitable organization shall keep written financial records that correctly record and explain its transactions and financial position and performance.
- Registered charitable organizations shall keep written financial records that enable true and fair financial statements to be prepared and to be audited.
- A registered charitable organization shall keep and maintain its books, documents, and other records in the manner and for the period required of taxpayers under the Revenue Administration Act, and the provisions of that Act shall apply in relation thereto.
- A registered charitable organization shall furnish to the Authority such particulars with regard to its accounts and other records as the Authority may require.
- The books, records or documents of every registered charitable organization shall be open at all times for inspection by an inspector or any person duly authorized by the Authority.

⁴ Under this Section 28 of the Charities Act 2013 “recognized assessment activity” in relation to a charitable organization, means -
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- (a) An activity carried out by the Authority involving assessment of the organization’s entitlement to registration
- (b) An activity carried out by the Authority involving assessment of the organization’s compliance with this Act and any Regulations made under this Act, or
- (c) An activity carried out by the Commissioner General involving assessment of the charitable organization’s compliance with revenue laws.

Appendix VI - Charities Donations Policy Guidelines

Due Diligence, Monitoring, and Verifying the End Use of Charitable Funds:

The public and donors to charities should have confidence that their donations are used for legitimate purposes and reach their intended beneficiaries. Trustees bear legal responsibility for ensuring that charitable funds are appropriately utilized, adequately safeguarded, and not exploited for financial crime, terrorism, or other unlawful purposes. Trustees are subject to public accountability and have duties and responsibilities under the Charities Act, 2013, to protect their charity, its funds, property, and beneficiaries.

The most effective way for trustees to prevent the abuse of a charity's funds is by implementing good governance practices and ensuring robust financial management, including strong internal and financial controls, and risk management procedures. They should also promote transparency and accountability within charities, ensuring that the public can trust and have confidence in their work.

Risk Assessment and donations

In alignment with the risk assessment framework utilized by the Department to direct the monitoring process of charities, the donations policy establishes guidelines for how charities should handle donations and delineates acceptable types of donations. Additionally, it authorizes the department to pinpoint vulnerabilities and propose measures to prevent charities from being utilized for money laundering purposes.

Due diligence

Due diligence encompasses a spectrum of practical measures that registered charities can undertake to ensure the integrity of charitable funds. It involves conducting comprehensive "checks" on individuals and organizations that provide or receive funds from the charity, including partners and contracted entities involved in its activities. By implementing this practice, charities will be able to safeguard themselves and uphold the public interest, enabling them to identify and effectively mitigate associated risks.

Project due diligence checklist

Robust monitoring processes will help satisfy trustees that funds are adequately protected from abuse and have been put to proper use. These processes should also be capable of identifying system weaknesses and breakdowns at an early stage so that corrective action can be taken. At the end of a project, high-quality monitoring feedback will assist trustees in assessing whether there are areas for improvement in planning future projects. Below is a checklist of the main questions to ask as part of the monitoring process, with sub-questions likely to follow each:

1. How do performance and delivery link to agreed milestones and targets?
 - a. What are the performance measures?
2. Is the quality of activities/services delivered acceptable?
 - a. Can improvements be made?
3. Can all the money sent be accounted for?
 - a. Is there proper record keeping?
 - b. Can inconsistencies be accounted for?
4. Is there sufficient proof of expenditure?
5. Are there sufficient financial controls in place?
6. Have there been any significant personnel changes?
7. Has the project been carried out?
 - a. What were the challenges?
 - b. How were challenges solved?
 - c. Can these be mitigated against in the future?
8. Have the project activities, services, or funds reached the intended identified beneficiaries?
9. Are all funds, assets, and premises accounted for?
10. Were any significant problems encountered? If so, were these reported promptly to the charity and dealt with effectively?
11. Are there any lessons that can be learned to improve future performance and quality?

Monitoring

When charities allocate funds to partners and beneficiaries, particularly substantial sums or in high-risk contexts, it is crucial to conduct thorough monitoring. In essence, trustees must take necessary measures to confirm that charity funds or assets reach their designated destinations and are utilised in alignment with the charity's objectives. This oversight enables trustees to maintain a transparent view of fund utilization throughout the charity's operations, spanning both national and international scopes.

Guidelines to Protect Charity against Misuse

Charities work in a diverse range of situations with a wide range of beneficiaries. Some individuals and organizations donate regularly to charity and have a good, close working relationship. Other donors want to remain anonymous. Both these arrangements are perfectly acceptable and reasonable. It just means charities may need to put in place additional safeguards to protect themselves against those who want to take advantage while ensuring this does not put off legitimate donors.

The 'Know Your' Principles

The 'know your' principles guidelines set out key principles that can help charity trustees to carry out their legal duties as required by the Charities Act, 2013 and manage the risks to the charity's assets and services. As a policy requirement Charities organizations are mandated to develop frameworks that cover the scope of the 'know your' principles guidelines to safeguard against abuse.

For charities, the “know your” principles can be described in the following three ways:

- ✓ Know your donor
- ✓ Know your beneficiaries
- ✓ Know your partner

FATF Recommendation

The 'know your' principles align with internationally recognized standards, including those outlined in Financial Action Task Force Special Recommendation VIII (FATF SR VIII). According to these standards, charities should exert their best efforts to verify the identity, credentials, and standing of their beneficiaries and associates. Furthermore, they should make diligent attempts to document the identity of their major donors.

Effective monitoring procedures enable trustees to meet their legal obligation of ensuring that charitable funds are appropriately utilized and reach their designated beneficiaries. Additionally, they facilitate the assessment and mitigation of key risks to the charity and its funds, thus enhancing safeguards against money laundering. The specific procedures, controls, and systems required by a charity depend on its unique characteristics, activities, and other relevant factors. While certain monitoring actions are mandated by law, the nature and extent of monitoring should be commensurate with the level of risk faced by the charity.

Trustee Legal Duties for Due Diligence

What are trustees' legal duties and responsibilities for due diligence?

Charity trustees are obligated to utilize their charity's funds and assets solely for the advancement of the charity's established purposes as outlined in the First Schedule of the Charities Act, 2013. They must refrain from engaging in activities that could jeopardize the charity's funds, assets, or reputation.

In practice, this entails fulfilling their legal duty to safeguard charity assets with due care and assess risk appropriately by conducting thorough due diligence on individuals and organizations from whom the charity receives donations, to whom it disburses funds, or with whom it closely collaborates.

As per legal requirements, trustees hold ultimate responsibility for controlling and managing a charity's affairs\ and they must adhere to the law, including the Charities Act, 2013. Section 27 of the Charities Act mandates the following:

- ✓ Entities must comply with legal principles by maintaining accurate records and providing explanations for all transactions and financial positions, as outlined in Section 27(2) of the Charities Act.
- ✓ Trustees must facilitate the preparation and auditing of true and fair financial statements.
- ✓ Charity funds must be utilized properly, lawfully, and in alignment with the charity's objectives.
- ✓ Registered charitable organizations must maintain their books, documents, and records as required by the Revenue Administration Act, with relevant provisions applying accordingly.
- ✓ The books, records, or documents of every charitable organization must be accessible for inspection by authorized inspectors or individuals designated by the authority at all times.

Appendix VII – Guidance Notes on Political Activity by Charitable Organizations

Registered Charitable Organizations (RCOs) typically play a significant role in advancing societal well-being. The Charities Act and Regulations make no provisions for RCOs to engage in political activities. Therefore, enabling them to engage in political campaigns may pose threats to both the RCOs and democracy.

Charitable Organizations are actively involved in pursuits geared towards societal well-being; this means there is a potential for them to influence beneficiaries of their efforts. This makes the partisan based political intervention by RCOs particularly inappropriate.

A **registered** charitable organization is strictly prohibited from endorsing or opposing any political party or candidate across various government levels. Engagement in partisan political activities is deemed as a forbidden undertaking.

A charitable entity may be allowed to partake in certain non-partisan political activities. These endeavours must be aligned with the constitution of the charity and must be restrictive in the utilization of its resources.

Failure to adhere to these stipulations may lead to significant consequences, including the suspension or revocation of its charitable status.

A Politically affiliated person/group may participate in the activities of a RCO; however, the charity must not endorse or promote any partisan ideals.

Permittable Non-Partisan Activities:

- ✓ Public education on the voting process
 - This includes how to vote as well as polling centres/stations.
- ✓ Promote or encourage the public to vote.
 - This includes educating them on their rights to vote and its importance.
 - Public forums to challenge politicians on what they promised to do versus what has been done.
- ✓ Host a candidate forum such as political debates for constituents to challenge them.
- ✓ Calls to action from political representatives, whether it is to implement, update or stop a political decision or legislation. These, of course must fit the RCO's objects and powers.
- ✓ Any advocacy related activity that falls within their charitable purpose.

Non-permittable Partisan Activities:

- ✓ Funding the campaign of a political representative or candidate
- ✓ Displaying bias or favouritism to one candidate or representative. This can be through:
 - Displaying bias in allowing use of facilities or resources
 - Public endorsement of an individual

Charities that have been found of breaching these guidelines will be at risk of revocation.