

Bermuda

What is charitable?

There have been recent calls to modernise the law in Bermuda relating to charitable organisations and we expect to see a comprehensive review of the Bermudian non-profit sector in the near future. In determining what is charitable, Bermuda law historically looks to the 1601 Elizabethan Statute of Charitable Uses and the judgment of Lord Macnaghten in the 1891 case of the Income Tax Special Purposes Commissioners v Pemsel. The 1601 statute enumerates in its preamble the types of charitable trusts that were then in common use and provides in its body means for the protection and enforcement of such trusts. Following the Pemsel case and the 1601 statute, charitable purposes have principally been limited to (i) the relief of poverty; (ii) the advancement of education; (iii) the advancement of religion; and (iv) other purposes beneficial to the community not falling under (i), (ii) and (iii).

The Bermuda Charities Act 1978

This legislation, as amended (the '1978 Act') was enacted to provide 'further and better measures for the control of charitable organisations, appeals for charitable purposes and the disposal in certain circumstances of property donated for charitable purposes'. As such the 1978 Act provides for a mechanism for the registration of charitable organisations 'wishing to undertake ...money-raising activities' within the public domain. The 1978 Act arguably contains statutory references to charitable organisations and purposes that are broader and therefore inconsistent with the 1601 statute and the Pemsel case. It should be noted therefore that the 1978 Act does not purport to bestow charitable status on an organisation seeking to be registered there under.

Supervision and regulation under the 1978 Act are overseen by the Ministry of Health and a committee of Charity Commissioners appointed through that Ministry. In order to ensure public accountability, all registered organisations are subject to restrictions on their public fund-raising activities and are required to submit annual accounts with the Registrar General.

Bermuda's Third Sector is well established, active and supported with some 400 registered charitable organisations. Bermuda's Centre on Philanthropy (www.centreonphilanthropy.org) believes in a Bermuda where effective and efficient charities and non-profit organisations collaborate with the private sector and Government to build a caring and giving community. Additionally Bermuda's Donor Forum and National Standards Committee contribute significantly to the overall vibrancy of Bermuda's third sector.

Charitable Organisations

In Bermuda charitable organisations are generally established by the formation of a charitable trust or by the incorporation of a company limited by guarantee. Unless, as noted above, there is a proposal to undertake public fund-raising within Bermuda, there is no requirement for registration and the establishment of the charitable vehicle is an entirely private and confidential matter.

Non-Charitable Purpose Trusts

Bermuda is a premier off-shore jurisdiction and at the forefront in the development of specialised fiduciary vehicles. The Bermuda non-charitable purpose trust is often used as a vehicle for advancing philanthropic endeavours that may not fall within the strict definition of charitable. Principal features of this type of trust are that it has as its object the advancement of purposes rather than an ascertainable class of beneficiaries and the rule against perpetual trusts need not apply to such a trust.

Reliefs

Bermuda is a low tax jurisdiction that imposes a liability to stamp duty upon the execution of certain instruments. Exemptions to this liability to stamp duty under the Stamp Duties Act 1976, as amended, may be afforded (i) to a charitable organisation registered under the 1978 Act (ii) to a donor in relation to gifts to a charitable organisation registered under the 1978 Act or (iii) in favour of charitable purposes which by reason of their connection to Bermuda and their benefit to Bermuda warrant an exemption from duty.

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Philanthropy Impact: www.philanthropy-impact.org

Philanthropy Impact (incorporates EAPG, Philanthropy UK and the Philanthropy Advisors Forum). It was launched on 3 December 2012.