

Guernsey: Charity and Philanthropy

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Charity and philanthropy are becoming increasingly important considerations in wealth planning.

This Guide provides an overview of charity and philanthropy in Guernsey, including the regulation of registered charities and not for profit organisations (NPOs) under the Charities etc. (Guernsey and Alderney) Ordinance, 2021 (the **Ordinance**).

Effective structuring

Wealth planning advisers may wish to consider the following vehicles which are well suited to supporting philanthropic ventures:

- **Trusts** - the Trusts (Guernsey) Law, 2007 allows for both charitable and non-charitable purpose trusts. As such, it is possible to establish a trust for philanthropic purposes which are not technically charitable, or a trust for purposes that are partly personal and partly philanthropic.
- **Foundations** - the Foundations (Guernsey) Law, 2012 allows for the creation of a foundation for objects which are charitable, non-charitable, or a combination of both. Foundations can be established with very wide objects and have features which resemble both companies and trusts.
- **Funds** - Guernsey has an established reputation as a funds domicile, especially in alternative investments and a number of impact funds have been established on the Island in recent years.
- **Companies limited by guarantee** – these are often used for philanthropic purposes as members do not, generally, receive a distribution of profits by way of a dividend, and any profit generated by the company is typically applied to further the purposes for which the company was established.

Why form a charitable or philanthropic structure in Guernsey?

There are a number of reasons why Guernsey is a suitable jurisdiction for the formation and administration of charitable and philanthropic structures:

- It has autonomy over its domestic affairs, including taxation, and has a stable political and economic climate.
- It is readily accessible from the UK and is in the UK time zone.
- It provides a tax neutral environment for the running of philanthropic structures, including exemptions from income tax.
- Its trusts and foundations laws emphasise flexibility, so structures can be tailored to the specific requirements of the philanthropist.

Regulation

The regime for the regulation of charities and NPOs in Guernsey is set out in the Ordinance and the Charities etc. (Amendments, Exemptions, Governance and Specified Amount) Regulations, 2022 (the **Regulations**) which provide further detail around certain areas.

The Regulations and Ordinance came into effect on 29 April 2022. To give time for charities and NPOs to comply, the obligations were brought into force on a phased basis with all requirements to be met by 30 June 2023.

The legal framework:

- contains a charitable purposes test, clarifying the distinction between a charity and an NPO
- ensures that charities and NPOs comply with international standards against money laundering and terrorist financing
- sets the thresholds for which charities and NPOs are required to be registered in the Register of Charities (the **Register**), and
- increases transparency of charities and NPOs.

What is a charity or NPO under the legislation?

An organisation is a charity if all of its purposes are charitable (or are ancillary or incidental to its charitable purposes), and it provides benefit for the public or a section of the public by carrying out its purposes.

Charitable purposes are listed in the Ordinance.

An organisation is an NPO if it does not fit the criteria to be a charity but is established solely or principally for the non-financial benefit of its members or for the benefit of the public. An example of an NPO would include a private members club.

When to register a charity/NPO in Guernsey

Charities and NPOs must be registered if they fall into one or both of the following categories:

- Category 1: (domestically focused charities / NPOs) they have gross assets and funds of £100,000 or more, or a gross annual income of over £20,000, unless they do not solicit or accept donations, funds or contributions from the public, or
- Category 2: (charities / NPOs engaging in international activities) they raise or distribute assets outside the Bailiwick of Guernsey (subject to limited exceptions) and must be registered regardless of whether they meet the financial threshold or solicit/accept donations from the public.

If the charity or NPO falls within category 1 or 2 there may be additional requirements to consider under the Ordinance and the Regulations, depending on the structure being used. For example in the case of a charitable foundation there would be a need to have three councillors with distinct roles and independence between the treasurer and at least one of the other councillors.

Charities and NPOs that do not fall within the above categories may still apply to be registered voluntarily. One benefit of registering as a charity is that donations within specified limits made by individuals out of income taxed in Guernsey receive tax relief. This means that the donation is considered to be a payment net of tax in the charity's hands and, provided that certain requirements are met, the charity may claim a repayment of the tax paid in respect of the donation by the person making it.

How to register a charity in Guernsey

An application for registration of a charity or NPO must be made using the official application form. In order to be placed on the Register and to be issued with a certificate of registration, an application must contain:

- details of the purposes, objectives and objects of the organisation
- details of the manner in which the assets, funds and income of the organisation are to be applied or used
- the full names of the persons who own, direct or control (the **Managing Officers**) the activities of the organisation including its directors, officers and trustees, and for each of those persons:
 - in the case of an individual, their name, nationality, date of birth, principal residential address and details of any criminal convictions, or
 - in the case of a legal person or legal arrangement, its legal name and form, jurisdiction of registration or establishment and registered office or principal place of business address, and
- a copy of the organisation's constitutional documents.

There is no charge for being registered as a charity, or any annual charge for remaining on the Register. However, an annual validation must be filed by 28 February each year, and changes to the information provided to the Guernsey Registry (the **Registry**) must be notified within 21 days of any change.

Is the Register publicly available?

The Register is publicly accessible and contains the following information on registered charities and NPOs:

- the name and the registered address of the charity/NPO
- the names of its Managing Officers, and
- details of its purposes.

Requirements

Registered charities/NPOs are subject to **basic governance measures**, and **risk mitigation measures**, which are explained below.

In addition, subject to limited exceptions, all charities/NPOs are required to report, to the Registry, payments made outside the Bailiwick of £100,000 or more.

Basic governance measures

The Regulations contain specific directions regarding the governance requirements for charities and NPOs. The Regulations outline:

- what needs to be included in the constitutional or other governing documents
- requirements to maintain financial records which demonstrate that their assets are being applied in line with their objectives
- requirements for compulsorily registered charities and NPOs to file annual financial statements with the Registry, and for voluntarily registered charities and NPOs to prepare annual financial statements
- requirements to make and keep records of meetings and decisions, and copies of contractual and other documents, and
- requirements to implement standard measures to ensure financial probity and transparency, which must include the following four principles:
 - that funds must pass through the charity/NPO's bank accounts
 - that two unconnected people must sign to release funds
 - that the charity/NPO's assets must be kept separate from those of third parties, and
 - for compulsorily registered charities and NPOs, policies and procedures that follow accepted accounting principles and controls.

Risk mitigation measures

The risk mitigation measures are requirements to:

- put in place controls against money laundering, fraud, bribery and corruption
- identify donors and beneficiaries in certain situations, and
- periodically review compliance with the legislation and address any issues with non-compliance.

There are exemptions from some requirements for certain types of registered charity/NPO. In addition, there are financial crime risk mitigation measures which are risk-based and contain additional requirements for charities/NPOs that carry out international activity.

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).