

Operation TIMEPIECE

Charities Services Investigation

Andy Grieve

19 December 2016

Released under the
Official Information Act 1982.

Table of Contents

1. Executive Summary.....	2
2. Charity Background.....	2
3. Initiation.....	3
4. Issues & Investigation Purpose.....	4
5. Investigation Methodology.....	4
6. Analysis	4
7. Conclusion.....	8
8. Recommendations.....	8

Released under the
Official Information Act 1982.

Investigation	Operation TIMEPIECE The Mulligan Charitable Trust The Birdy Charitable Trust Shepherd Charitable Trust
Registration Number	CC50518 (Mulligan) CC49450 (Birdy) CC49451 (Shepherd)
Date Assigned	5 June 2015
Date Completed	14 December 2016
Investigator	Andy GRIEVE, Investigator

1. Executive Summary

The Mulligan Charitable Trust, The Birdy Charitable Trust and Shepherd Charitable Trust are three related, high-value foreign trusts registered under the Charities Act 2005. These three trusts exhibit a number of risk-factors for money-laundering such as the use of corporate trustees, professional gatekeepers and multiple 'tax-haven' jurisdictions. An investigation was opened to determine whether the trusts were being used to facilitate tax evasion (or otherwise launder funds). A number of indicators were discovered during the investigation. However, due to the jurisdictional issues, it has been decided to refer the investigation to other agencies and suspend the investigation pending further information being received. However, an in-depth case study will be prepared based on the wider implication of the issues found to the integrity of the Charities Register.

2. Charity Background

The three charities which are the subject of this report (The Mulligan Charitable Trust, The Birdy Charitable and Shepherd Charitable Trust – Mulligan, Birdy and Shepherd respectively, the Charities together) are very similar foreign trusts executed for the purpose of advancing medical research, and women's and children's rights.

Mulligan and Birdy were established on 10 December 2012. Shepherd was originally established as Shepherd Trust on 26 March 2004. However, on 10 December 2012, a deed of amendment was executed to make certain changes to the trust and to rename it Shepherd Charitable Trust. The Charities all have one New Zealand company as their corporate trustee—

Charity	Corporate Trustee	Company Number
Mulligan	Chasselat Trustee Limited	4153298
Birdy	Alpage Trustee Limited	4152559
Shepherd (until 10/12/12)	Bellerive Trustee Limited	4153118
Shepherd (prior to 10/12/12)	L'Orangerai Trust Limited	1494948

The Charities were settled by various corporate entities—

Charity	Settlor	Jurisdiction
Mulligan	Albatross Charitable Foundation	Panama
Birdy	Yellowstone Trust	New Zealand
Shepherd	Eagle Charitable Trust	Isle of Man

Two individuals are listed as the Protector and Default (Successor) Protector respectively of each of the Charities, Mr Dominique R DZIURZYNSKI and Mrs Bhavna DZIURZYNSKI.

All three of the current Corporate Trustees have the same structure—

Name	Address	Position
Yves BONNARD	Avenues De Senaleche 12 1009 Pully SWITZERLAND	Director 49% Shareholder
Jean DE SAUGY	Avenues Des Cavaliers 11 1224 Chene-bougeries Geneva SWITZERLAND	Director 51% Shareholder
Kevin George TAYLOR	32 Gulf View Road Murrays Bay AUCKLAND 0630	Director
Lauren Cherie WILLIS	42C Merani Street Narrow Neck AUCKLAND 0622	Director
Megan Shiu Chui WU	13B Omahu Road Remuera AUCKLAND 1050	Director

The Charities applied for registration under the Charities Act 2005 (the Act) on or around 13 June 2013. Shepherd and Birdy were registered on 12 August 2013. The author, in his previous role as Analyst, received the application of Mulligan and enquired further into its operation than the Analyst in charge of Shepherd and Birdy's application. Because of this, Mulligan was registered on 21 May 2014 with an effective date of registration of 13 June 2013.

3. Initiation

During the application process for Mulligan, a number of factors were noted that raised concerns that the Charities may be using registration under the Act for improper purposes. Specifically these factors included—

- a lack of clear connection to New Zealand;
- no information regarding natural persons involved in the Charities other than professional gatekeepers;
- the clear link to entities in other jurisdictions;
- the use of complex corporate structures facilitated by the same trust and company service providers; and
- unusually high equity from unknown sources.

These factors closely align with traditional typologies used to launder money and finance terrorism. The high wealth of the Charities coupled with these typologies led to proactive investigations into the Charities being opened.

4. Issues & Investigation Purpose

Unlike more traditional investigations undertaken by Charities Services, this investigation was opened based in large part on wider issues regarding the integrity of the Charities Register and the abuse of the New Zealand charity/tax system. It was unknown what (if any) wrongdoing may be facilitated through the Charities. s6(c)

With this issue specifically in mind, the investigation sought to determine whether the Charities—

- were established to facilitate tax evasion or other transnational crime (i.e. serious wrongdoing); and/or
- were established for non-exclusively charitable purposes.

5. Investigation Methodology

In undertaking this investigation, Charities Services—

- s6(c)
- s6(c)
- s6(c) s6(c)
- Worked with Financial Integrity to obtain information on the Charities' Trust and Company Service Provider (TCSP);
- Obtained bank statements for the Charities' corporate trustees from their New Zealand bank; and
- Served s51 notices on the Charities.

6. Analysis

The essential question throughout this investigation has been "Why are the Charities registered under the Act?" When asked this question, representatives of the Charities provided the following answer—

The Trust was established under New Zealand law because the Trust is committed to carrying out its charitable purpose from New Zealand benefitting charities situated in New Zealand and overseas.

New Zealand is a well-known trust jurisdiction which offers political and economic stability. It also has a well-developed legal system. New Zealand has a good international reputation and is one of the least corrupt countries in the world.

The choice was initially made between New Zealand and Switzerland, but as the donations are often made to charities registered in Anglo-Saxon jurisdictions, a common law jurisdiction with a solid base of trust law was preferred. As Switzerland does not recognise trust law, it was therefore decided to establish the Trust in New Zealand.

The Act imposes a certain level of compliance cost (for example the requirement to file publicly accessible financial statements and the ability of Charities Services to conduct investigations) and it

can be assumed that in most cases registrants have balanced these costs against the benefits gained by registration. However, as can be seen from the below table, the usual benefits do not have the same weight in respect of the Charities—

Benefit	Reason
Exemption from income taxation	<p>While the Charities will qualify for their passive income to be exempt from taxation, this is not an extra benefit to the Charities. The Charities will already have an exemption from taxation on any foreign sourced income as they are foreign trusts.</p> <p>As all of the income for the Charities consists of arbitrage and share trading conducted through their Swiss bank accounts, all of the Charities' income would qualify for the foreign trust foreign source income exemption.</p> <p>In fact, the foreign sourced income tax exemption for such trusts is broader than the exemption under s CW 42 for charities' business income.</p>
Exemption from fringe benefit tax	<p>Charities in general are able to claim exemption from taxes on certain fringe benefits provided to their employees in connection with carrying out the entity's charitable purposes.</p> <p>However, the Charities do not have any employees in New Zealand.</p>
Ability for donors to receive donation tax credits	<p>Individuals are able to claim 33% of donations made to certain organisations back as a tax credit. It is likely that the Charities would not be able to access this benefit as its funds are not applied wholly or mainly within New Zealand for charitable purposes.</p> <p>However, this is a moot point as the Charities have stated that they will not seek donations from the New Zealand public.</p>

While the Charities are unlikely to have sought registration for the above reasons, it is possible that they sought registration for the public trust and confidence provided by registration under the Act. This could be useful to the Charities as they provide funding to certain New Zealand charities.

For example in 2015, the Charities provided the following funding—

Donor	Recipient	Amount
Mulligan	Plunket New Zealand	NZD65,000
Shepherd	Starship Foundation New Zealand	NZD200,000
Birdy	Plunket New Zealand	NZD65,000

While it is likely that Plunket and Starship would take increased confidence in receiving funds from the Charities because they are registered under the Act, it must be noted that these donations are a

small fraction of the asset base of the Charities. At year-end 2015, the Charities had the following net assets—

Charity	Net Assets
Mulligan	NZD12,540,710
Shepherd	NZD106,586,600
Birdy	NZD12,349,580

Further, the distributions to New Zealand charities are a relatively small percentage of the total expenditure of the Charities—

Charity	2015 Total Expenditure	Distributions to NZ charities as percentage of 2015 expenditure
Mulligan	NZD285,785	22.74%
Shepherd	NZD2,144,972	9.32%
Birdy	NZD282,796	22.98%

The Charities do provide distributions to other organisations outside New Zealand—

Charity	Recipient	Amount
Mulligan	Malawi Project ¹	NZD22,057 (GBP11,280)
Mulligan	Fondation Eagle	NZD68,433 (CHF50,000)
Mulligan	Fondation Eagle	NZD136,867 (CHF100,000)
Shepherd	Fondation Eagle	NZD547,465 (CHF400,000)
Shepherd	Fondation Eagle	NZD547,465 (CHF400,000)
Shepherd	Fondation Eagle	NZD273,733 (CHF200,000)
Birdy	Condor Trust Ecuador ²	NZD6,572 (USD5,000)
Birdy	Fondation Eagle	NZD67,228 (CHF50,000)
Birdy	Fondation Eagle	NZD134,457 (CHF100,000)

Fondation Eagle is the shortened name for the Swiss foundation “Fondation Eagle pour la recherche médicale et l’aide aux défavorisés”. This foundation is incorporated in Vaud Canton with Jean DE SAUGY, Yves BONNARD and Bhavna DZIURZYNSKI as the listed officers. It is clear from this cross-over of officers that Fondation Eagle and the Charities are closely related. Therefore, the movement of funds from the Charities to Fondation Eagle can be considered to be simply an extension of the Charities to an extent.

¹ Chasselat Trustee Limited provided information that the recipient of the funds directed to Malawi Project was Ripple Africa, a charity registered with the Charity Commission for England and Wales. There is no overt connection between this entity and the Charities.

² Alpage Trustee Limited provided information that the recipient of the funds directed to Condor Trust Ecuador was The Condor Trust for Education, a charity registered with the Charity Commission for England and Wales. There appears to be no overt connection between this entity and the Charities.

Therefore, given the small proportion of funds distributed to New Zealand charities, it is considered unlikely that registration under the Act will greatly increase the ability of the Charities to carry out their charitable purposes.

In light of this, the question of why the Charities have registered under the Act remains. In their response to a s51 notice, the Charities each provided an invoice for “Legal Services Relating to FATCA Planning and Registration” from s9(2)(a), attorney in Washington, DC. The description of services provided by s9(2)(a) is—

Work on FATCA planning, FATCA registration, Forms W-8EXP, legal opinion to be appended to Form W-8EXP, liaison with Alice Einmahl. Emails; participation in GoToMeeting sessions. Research.

FATCA, or the Foreign Account Tax Compliance Act, is a piece of United States federal legislation which imposes obligations on all foreign financial institutions to provide annual reports to the US Internal Revenue Service (**IRS**) regarding the balance of all US tax residents’ (regardless of other residence) facilities. The obligations extend to all accounts over which a US tax resident can exert control (for example, a trust of which the settlor is a US tax resident). This reporting allows the IRS to levy taxes on all US tax residents throughout the world.

New Zealand and Switzerland have both signed agreements with the US to assist with financial institutions providing this information to the IRS.

In order to concentrate on those accounts that will provide the best balance between the largest revenue return to the US and reduced administrative burden for the IRS, FATCA contains a number of exemptions. One such exemption is for non-profit entities that are tax-exempt in their country of residence. This exemption means that the IRS will not receive any reporting regarding bank accounts held by tax-exempt entities regardless of their value.

Throughout the Department s6(c), the representatives of the Charities provided information that the ultimate settlor/ultimate beneficial owner (**UBO**) of the Charities is not a New Zealand tax resident, however, further information is not available because the Charities’ settlor entities were settled over 10 years ago. It is considered unlikely that, absent a US individual settling the Charities, that the legal advice referred to above would have been provided.

It should be noted that the Charities’ bank, Lombard Odier Darier Hentsch (**LODH**), states on their website that they will not accept clients from the US. However, the W-8EXP form referred to in s9(2)(a) invoice is a form produced by the IRS for FATCA-exempt organisations to provide to their financial institutions. While it is possible that LODH requires all offshore clients to file this form, it is also possible that the Charities sought to protect themselves from FATCA requirements should LODH find indicators that the Charities have substantial US ownership.

The mere fact of a US individual settling three entities that are established in New Zealand but have their banking in Switzerland does not constitute serious wrongdoing. If the settlor declares their control over the Charities as required to FinCEN/the IRS, no wrongdoing will have been facilitated through the registration of the Charities in New Zealand.

Given the Charities' reticence to provide any information regarding the identity or tax residence of the settlor/UBO despite having a FATCA opinion drafted suggests that wrongdoing may be being committed. However, there is currently no conclusive evidence held by the Department to confirm or deny this.

7. Conclusion

Based on the above, it is likely that the Charities are taking advantage of the FATCA exemption provided to tax-exempt non-profits. Establishment in New Zealand may have been chosen based on our reputation as being a favourable tax jurisdiction for foreign trusts.

However, without further evidence, the Department is unable to determine whether serious wrongdoing has been committed. Further, because of the jurisdictional issues surrounding the Charities, it is unlikely that the Department will have success on obtaining further evidence without reasonable belief of offences being committed.

8. Recommendations

Due to the issues surrounding collection of evidence, it is recommended that this investigation be suspended and referred s6(c). s6(c) provide relevant information that suggests that the Charities have been/are being used to facilitate criminal offending, this investigation can be reopened.

Because of the wider risk to the Charities Register and charitable sector, it is recommended that an in depth case study be prepared regarding the Charities (and similar entities). This study should be disseminated to relevant agencies s6(c) to demonstrate an emerging trend that can present a high risk to the international reputation of New Zealand's tax and charitable systems.

Released under the Official Information Act 1982.