



**Tuvalu**

**INCORPORATION OF NON-  
GOVERNMENTAL ORGANIZATIONS ACT**

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Tuvalu

## INCORPORATION OF NON-GOVERNMENTAL ORGANIZATIONS ACT

### Arrangement of Sections

#### Section

<b>PART I - PRELIMINARY</b>	<b>5</b>
1 Short Title .....	5
2 Interpretation.....	5
<b>PART II - FORMATION AND REGULATION OF NON- GOVERNMENTAL ORGANIZATIONS</b>	<b>6</b>
3 Incorporation.....	6
4 Definition of NGO .....	6
5 Corporate body may become member of NGO .....	7
6 Rules of NGO .....	7
7 Penalty for improper use of word “Incorporated” .....	7
8 Registered office .....	8
9 Register of members .....	8
10 Application for incorporation .....	8
11 Registration of NGO .....	8
12 Certificate of incorporation to be conclusive evidence of registration .....	9
13 Upon issue of certificate NGO becomes body corporate.....	9
14 Name of NGO not to be the same as the name of another NGO or body corporate .....	9
15 Registrar.....	9
16 Registrar to keep register of NGOs.....	9
17 Powers of inspection of Registrar .....	10
18 Service of documents on NGO .....	11
19 Restriction of operations of NGO .....	11
20 NGO not to engage in operations involving pecuniary gain.....	11
21 Change of name .....	11
22 Alteration of rules .....	12

23	Appeals from decision of Registrar .....	12
----	--	----

**PART III - FINANCIAL MATTERS 13**

---

24	Annual financial statement and identification of executive .....	13
----	--	----

**PART IV - DISSOLUTION 13**

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25	Voluntary liquidation .....	13
----	-----------------------------	----

26	Dissolution by Registrar .....	13
----	--------------------------------	----

27	Dissolution by court .....	14
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28	Regulations.....	14
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**ENDNOTES 15**

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Tuvalu

# INCORPORATION OF NON-GOVERNMENTAL ORGANIZATIONS ACT

AN ACT TO REGULATE THE FORMATION AND INCORPORATION OF NON-GOVERNMENTAL ORGANIZATIONS FOR ANY LAWFUL PURPOSE BUT NOT FOR PECUNIARY GAIN OR PROFIT AND FOR OTHER CONNECTED PURPOSES<sup>1</sup>

Commencement [17th August 2007]

## PART I - PRELIMINARY

### 1 Short Title

This Act may be cited as the Incorporation of Non-Governmental Organizations Act.

### 2 Interpretation

In this Act, unless the context otherwise requires —

“**Minister**” means the minister responsible for social, community affairs and rural development;

“**NGO**” means a non-governmental organization incorporated under this Act;

“**officer**” includes trustee, member of an executive committee or any other person occupying such position by whatever name called;

“**Registrar**” means the person appointed under section 15 of this Act;

“**rules**” means the Rules of a non-governmental organization.

## **PART II - FORMATION AND REGULATION OF NON-GOVERNMENTAL ORGANIZATIONS**

### **3 Incorporation**

- (1) An association or organization consisting of not less than 20 persons of 18 years or above formed for any lawful purpose but not for pecuniary gain or profit may, on application made to the Registrar in accordance with this Act, become incorporated as an NGO under this Act.
- (2) No such application must be made except with the consent of a majority of the members of the association or organization.

### **4 Definition of NGO**

- (1) An NGO is an independent voluntary organization formed to provide social and community services and not for pecuniary gain or profit of its members.
- (2) An NGO is deemed not to have been formed for pecuniary gain or profit of its members merely by reason of any of the following circumstances:
  - (a) that the NGO itself makes a pecuniary gain or profit, unless that gain or profit or some part of it is divided among or received by the members or some of them;
  - (b) that any member is paid emoluments as a servant or an officer and the members of the governing board are reimbursed for expenses they incur in the course of performing their duties;
  - (c) the revenues of the NGO are not distributed among its members but used in pursuit of its aims and objectives that are:
    - (i) to improve the circumstances and prospect of the disadvantaged people who are unable to realize their potential or achieve their full rights in society through direct or indirect form of action; and/or
    - (ii) to act on the concerns and issues that are detrimental to the well-being, circumstances or prospects of people or community as a whole;
  - (d) that the NGO is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the NGO itself does not engage or take part in any such trade, business, industry, or calling.

## **5 Corporate body may become member of NGO**

A corporate body, whether incorporated under this Act or other laws, may become a member of an NGO incorporated under this Act, unless the purposes for which the NGO is established are beyond the objects of that corporate body.

## **6 Rules of NGO**

- (1) The rules of an NGO must provide for the following matters:
  - (a) the name of the NGO, with the addition of the word “Incorporated” as the last word in the name;
  - (b) the board of management;
  - (c) the objects for which the NGO is established;
  - (d) the mode in which persons become members of the NGO;
  - (e) the mode in which persons cease to be members of the NGO;
  - (f) the mode in which the rules of the NGO may be amended;
  - (g) the mode of summoning and holding general meetings of the NGO, and of voting at the meetings;
  - (h) the appointment of officers of the NGO;
  - (i) the control and investment of the funds of the NGO;
  - (j) the powers, if any, of the NGO to borrow money;
  - (k) the disposition of the property of the NGO in the event of the NGO being put into liquidation; and
  - (l) such other matters as the Registrar may require to be provided for in any particular instance.
- (2) The rules of the NGO may contain any other provisions but such rules must be consistent with this Act or any other laws.
- (3) Any amendments to the rules must be delivered to the Registrar within 14 days from their promulgation.

## **7 Penalty for improper use of word “Incorporated”**

If an NGO, not being an NGO incorporated under this Act, operates under a name or title of which the word “Incorporated” or any contraction or imitation of it, is included so as to leave an inference that the NGO is so incorporated under this Act, every member of the NGO commits an offence and is liable on conviction to a fine not exceeding \$20 for every day upon which that name or title has been used.

**8 Registered office**

- (1) An NGO must have a registered office at a physical place to which all communications may be addressed.
- (2) Until that notice is given, the NGO is deemed not to have complied with the provisions of this section as to having a registered office.
- (3) If an NGO carries on its operations without having a registered office, every officer of the NGO and every member of the governing body of the NGO commits an offence and is liable on conviction to a fine not exceeding \$1 for every day during which those operations are carried on.

**9 Register of members**

An NGO must keep a register that must contain the names and addresses of the members, and the dates at which they became members or ceased to be members.

**10 Application for incorporation**

An application for the incorporation of an NGO must be made to the Registrar with the following:

- (a) a copy of the rules of the NGO signed by not less than 20 members of the NGO, and each subscriber to the application must add to his signature, his description and address, and his signature must be attested by a witness who is not a subscriber;
- (b) a statutory declaration by an officer of the NGO or by a solicitor to the effect that a majority of the members of the NGO have consented to the application, and that the rules so signed are the rules of the NGO; and
- (c) a non-refundable registration fee of \$25.

**11 Registration of NGO**

If the Registrar is satisfied that the requirements of this Act have been observed, the Registrar must do the following things:

- (a) enter the name of the NGO in the register kept by the Registrar under this Act, together with such other particulars with respect to the NGO as the Registrar thinks fit;
- (b) issue under the Registrar's seal a certificate that the NGO is incorporated under this Act;
- (c) register the rules of the NGO by sealing with the Registrar's seal the copies; and
- (d) return one of the copies to the applicant.

**12 Certificate of incorporation to be conclusive evidence of registration**

A certificate of incorporation issued under the seal of the Registrar is conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental to have been complied with, and that the NGO is authorised to be registered and has been duly registered under this Act.

**13 Upon issue of certificate NGO becomes body corporate**

Upon the issue of the certificate of incorporation, the NGO becomes a body corporate from the date of incorporation mentioned in the certificate having perpetual succession and a common seal.

**14 Name of NGO not to be the same as the name of another NGO or body corporate**

No NGO must be registered under a name which is identical with that of:

- (a) any other NGO registered under this Act; or
- (b) a company carrying on business in Tuvalu (whether registered in Tuvalu or not); or
- (c) any other body corporate established or registered in Tuvalu under any Act, or, so nearly resembles that name as to be calculated to deceive; or
- (d) any registered business name,

except where that other NGO or company or body corporate or business, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the NGO by the proposed name will not be contrary to the public interest.

**15 Registrar**

There shall be a Registrar of Non-Governmental Organizations who may be a public officer, or person who is not a public officer, appointed by the Minister.

**16 Registrar to keep register of NGOs**

- (1) The Registrar must keep a register in which there must be recorded all matters required by this Act to be recorded by him.
- (2) The Registrar must keep a seal for the authentication of any documents required the purposes of this Act.
- (3) There must be paid to the Registrar such fees as may be prescribed in respect of such matters as may be so prescribed.
- (4) All fees so paid to the Registrar must be paid into the Consolidated Fund.

- (5) All expenses incurred in the administration of this Act must be paid out of money appropriated by Parliament.

## **17 Powers of inspection of Registrar**

- (1) Subject to subsection (3), the Registrar or any person authorised by him may, for the purpose of ascertaining whether an NGO or any officer of an NGO is complying or has complied with this Act, or of ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act, the Registrar may –
- (a) require an NGO or any officer of an NGO to produce for inspection any registers, records, accounts, books, or papers that are kept by the NGO;
  - (b) in any case where the Registrar or the person authorised by him considers that that purpose cannot be achieved by inspecting only the documents specified in paragraph (a), or where such documents are not produced for inspection, require any person to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is or has been managed, supervised, controlled, or held in trust by or for the NGO;
  - (c) inspect and make records of any such registers, accounts, books, or papers; and
  - (d) for the purposes of making such records, take possession of and remove from the premises where they are kept, for such period of time as it is reasonable in the circumstances, any such registers, records, accounts, books, or papers.
- (2) A person who has made an inspection under subsection (1) must give, divulge, or communicate any records or information that he has acquired in the course of the inspection to the Registrar.
- (3) A person who has made an inspection under subsection (1) must, upon being directed to do so by the Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to the following persons:
- (a) the Minister who is for the time being responsible for the administration of this Act;
  - (b) any person authorised by the Registrar to receive such records or information.
- (4) If an NGO or an officer of the NGO refuses or fails to produce any document for inspection by the Registrar, or any person authorised by him for the purposes of subsection (1), such NGO or an officer of the NGO commits an offence and is liable on conviction to a fine not exceeding \$1,000.
- (5) Any person who wilfully obstructs or hinders the Registrar, or any person authorised by him for the purposes of subsection (1), while the Registrar or

authorised person is making an inspection, or a record, or taking possession of, or removing any documents, such person commits an offence and is liable on conviction to a fine not exceeding \$1,000.

- (6) Nothing in this section limits or affects legal professional privilege.

## **18 Service of documents on NGO**

A summons, notice, order or other document required to be served upon an NGO may be served by leaving the same at the NGO's registered office, or by sending it through the post in a registered letter addressed to the NGO at that office.

## **19 Restriction of operations of NGO**

- (1) If an NGO carries on any operation which is beyond the scope of the objects of the NGO as defined in its rules, based either on the NGO's reports or inspection by the Registrar, the Registrar may give notice in writing to the NGO not to carry out that operation.
- (2) If after the receipt of that notice the NGO fails or refuses to comply, every officer of the NGO and every member of the committee or other governing body of the NGO commits an offence and is liable on conviction to a fine not exceeding \$20 for every day during which that failure or refusal continues, unless he or she proves that the failure or refusal has taken place without his authority or consent.

## **20 NGO not to engage in operations involving pecuniary gain**

- (1) No NGO must do any act that would be deemed to be of pecuniary gain within the meaning of section 4(2).
- (2) An NGO that does any such act commits an offence and is liable on conviction to a fine not exceeding \$1,000.
- (3) A member of an NGO who knowingly aids, abets, procures, assists, or takes part in the doing of any such act by an NGO is liable to a fine not exceeding \$500 and all such members are jointly and severally liable to any creditor of the NGO for all debts and obligations incurred by the NGO in or in consequence of the doing of that act.

## **21 Change of name**

- (1) If through inadvertence or otherwise, an NGO at its first registration, or on its registration by a name which is in contravention of section 14, or of any enactment, other than this Act, relating to restrictions on the use of any name, the NGO must, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as the Registrar may allow,

change its name in accordance with section 22(6) to a name that is not in contravention and is not, in the opinion of the Registrar, undesirable.

- (2) If an NGO makes default in complying with the requirements of subsection (1), such NGO commits an offence and must be liable on conviction to a fine not exceeding \$20 for every day on which the offence has continued.
- (3) A fee of \$7 is payable to the Registrar in respect of an alteration of the rules of an NGO to change the NGO's name pursuant to the requirement of subsection (1).

## **22 Alteration of rules**

- (1) Subject to the provisions of this Act, an NGO may from time to time alter its rules in the manner provided by the rules.
- (2) Every such alteration must be in writing, signed or sealed in duplicate by at least three committee members of the NGO, and the documents so signed or sealed must be delivered to the Registrar.
- (3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Act, must register the alteration in like manner as in the case of the original rules, and the alteration must thereupon take effect according to its tenor. Such registration must be conclusive evidence that all conditions precedent to the making of the alteration, or to its registration, have been duly fulfilled.
- (4) The Registrar will inform the NGO of his or her decision at the earliest opportunity.
- (5) No alteration in the objects of an NGO must be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the NGO, or that all creditors who may be so affected consent to the alteration.
- (6) An application by an NGO for the registration of an amendment to its rules or name must be accompanied with a non-refundable fee of \$7.

## **23 Appeals from decision of Registrar**

- (1) Any person who is aggrieved by the refusal of the Registrar to register an NGO, or to register or receive any document submitted to him under this Act or who is aggrieved by any other act or decision of the Registrar under this Act, may appeal to the Minister within 21 days after the date of the refusal or other act or decision.
- (2) On hearing the appeal, the Minister may confirm the act or decision of the Registrar, or give such directions or make such determination in the matter as he thinks fit.

## PART III - FINANCIAL MATTERS

### 24 Annual financial statement and identification of executive

- (1) An NGO must deliver annually and by the last day of the sixth month after its financial year to the Registrar a financial statement.
- (2) The financial statement must contain the following information:
  - (a) the income and expenditure of the NGO during the NGO's last financial year;
  - (b) the assets and liabilities of the NGO at the close of the year; and
  - (c) all mortgages, charges, and securities of any description affecting any of the property of the NGO at the close of the year.
- (3) The financial statement must be accompanied by a certificate signed by at least one officer of the NGO to the effect that the statement has been submitted to and approved by the members of the NGO at a general meeting.
- (4) If an NGO defaults in the observance of the provisions of this section, every officer of the NGO is liable to a fine not exceeding \$20 for every day during which the default continues.

## PART IV - DISSOLUTION

### 25 Voluntary liquidation

- (1) An NGO may be voluntarily dissolved in accordance with its Rules.
- (2) In the event of the dissolution of an NGO which received tax or fiscal benefits, donations from the public or government grants or other foreign sources, any assets remaining after the discharge of the NGO's liabilities must be distributed, with the approval of the Minister, to another NGO with the same or similar purposes.
- (3) The Registrar must remove the name of the NGO which has been dissolved from the register.

### 26 Dissolution by Registrar

- (1) If at any time the Registrar is satisfied that –
  - (a) any NGO is no longer carrying out its operation; or
  - (b) any NGO has been registered by reason of a mistake of fact or law; or

- (c) an NGO has failed, for a period of at least 9 months from providing information or financial statement as required under section 24 of this Act,

the Registrar may after giving such notice as he considers appropriate, declare in writing that the NGO is dissolved as from the date of the declaration, and make an entry of the dissolution of the NGO in the register.

- (2) On the making of that entry in the register, the NGO is dissolved as from the date of the declaration.
- (3) If the Registrar is satisfied that the declaration was made in error and ought to be revoked, he or she may revoke the same, and make an entry of that revocation in the register, and the NGO is accordingly revived from the date of the dissolution as if no such dissolution had taken place.

## **27 Dissolution by court**

Part II of the Companies (Winding Up) Act<sup>2</sup> shall apply to the winding up of an NGO by the court.

## **28 Regulations**

The Minister may make such regulations as are necessary for giving effect to the provisions of this Act.

## ENDNOTES

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<sup>1</sup> Act 3 of 2007

<sup>2</sup> Cap. 40.16