

REGISTRATION REQUIREMENTS FOR TYPES OF CHARITABLE ENTITIES REGISTERED IN KENYA BY GND CONSULT

I. NON-GOVERNMENTAL ORGANISATION

A Non-Governmental Organization (NGO) is a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and services.

There are two types of NGOs registered in Kenya under Non-governmental organizations co-ordination Act no. 19 of 1990; **International NGO** with the original incorporation in one or more countries other than Kenya, but operating within Kenya under a certificate of registration and **National NGO** which is registered exclusively in Kenya with authority to operate within or Kenya.

The registration of an NGO in Kenya typically begins with a name search. The Applicant makes a request to the NGOs Board proposing three (3) names by which the organization could be named. A name search is then conducted at a fee after which a name is then reserved. Once this has been done, the Applicant can then file a formal application for registration via the eCitizen portal.

The requirements for registration include;

1. A copy of a valid police clearance (certificate of Good Conduct including the finger prints and receipts) for Kenyans, and equivalent notarized clearance certificates for foreigners from their countries of origin which should not be more than six (6) months Old.
2. A draft constitution of the proposed NGO, which must be signed by the proposed three (3) top officials and the two (2) board members. Two (2) copies should be signed by all the proposed board members on the execution page, and by at least one of the proposed officials on each page.
3. A list of other board members.
4. Contact details of the proposed organization.
5. Copies of IDs/Passports and KRA PIN Certificates for the proposed officials and Board members. Please note that at least One third (1/3) of all the board members should be Kenyan for all foreign based NGOs.
6. Details of the three (3) top officials.
7. At least One third (1/3) of all the board members must be Kenyan for all foreign based organizations.
8. Duly filled Form 1 stating the organization's contact person.
9. Minutes authorizing the filing of the application with a specific agenda and resolution.
10. Proposed one-year budget.
11. The charitable objectives of the organization.
12. Two colored passport size photographs, on a white background, of the proposed 3 top officials and two other board members.
13. The application must be accompanied with a forwarding cover letter.
14. The application must contain original signatures of the three officials and board members of the NGO as applicable.
15. The application should either be typed or filled in block letters.

Registration fees vary depending on the nature of the organization; whether it is national or international. An organization with a previous registration certificate is required to produce a notarized copy of the certificate accompanied by a letter from its board of directors authorizing its registration.

Additionally, if the organization had been registered under any other law in Kenya, a certificate of dissolution from the registering Authority must be presented to the board or the board must be notified of the same registration for its acceptance.

II. FOUNDATION

A foundation is a type of non-profit organization that is usually established to provide funding and support for charitable, educational, religious, or other philanthropic purposes. Foundations are often endowed with a significant amount of financial resources, and they use the income generated from their endowments to fund projects and initiatives aligned with their mission.

Private charitable foundations in Kenya are mainly incorporated as companies limited by guarantee because the owners enjoy the benefit of limited financial liability. Such foundations are also granted income tax and other tax exemptions on application.

Establishment of a Charitable Foundation in Kenya

A charitable foundation under Kenyan laws can be established either as:(a) a company limited by guarantee; or (b) a charitable trust.

a) Incorporation of company limited by guarantee

A company limited by guarantee under the Kenyan Companies Act can be incorporated either with or without share capital. However, in most cases companies limited by guarantees are incorporated without share capital. A company limited by guarantee maybe a private company or a public company. A private company must have a minimum of 2 and a maximum of 50 members. On the other hand, a public company must have a minimum of 7 members but there is no statutorily prescribed maximum number of persons.

Private companies enjoy a number of privileges including an exemption from the requirement to file annual accounts at the Companies Registry. Although incorporation of a company limited by shares in Kenya is a relatively straight-forward process, incorporation of charitable companies is a lengthy process due to security verifications that are conducted against the promoters of such a company before incorporation.

Procedure of incorporation

A summary of the information required for the purposes of incorporation and the costs involved are set out below;

1. An application is made to reserve the proposed name with the Registrar. The Registrar has the right to reject names he considers undesirable or which are similar to the names of existing companies. It is therefore advisable to apply for 2 or 3 alternative names. The name must include the word "Limited". However, this requirement can be dispensed in case of charitable companies (essentially companies limited by guarantee)
2. Preparation of the Memorandum and Articles of Association of the company. The Memorandum sets out the objects of the company in detail. In the case of companies limited by guarantee, the

Companies Act require the memorandum of association to state the minimum amount which each member guarantee to contribute to the assets of the companies in the event of liquidation and this amount is left at the discretion of the promoters. It is necessary to set out all the anticipated activities of the company as part of its main objects of association. The Articles will contain the regulations for conducting the company's affairs. It will be necessary to consider various matters including: the size of the board of directors, the quorum for meetings of members and directors, whether the directors are subject to retirement by rotation, any special rights conferred on members to appoint directors etc.

3. The Memorandum and Articles of a private charitable company must be signed by at least 2 persons who state the minimum amount they undertake to contribute in the event of liquidation of the company.
4. The Memorandum and Articles and a Statement of the Nominal Capital are then lodged for stamping with duty.
5. After stamping, the documents are presented to the Registrar of Companies together with the following prescribed forms:
 - (a) Particulars of the registered office. The full physical and postal address of the registered office must be supplied. This includes the land reference number.
 - (b) Particulars of the directors and company secretary including their full names, usual postal address, nationality and business occupation. It is usual to have a minimum of 2 directors. There are no unusual restrictions as to who may be appointed a director. In particular, there is no requirement that a director be a resident or citizen of Kenya. Companies may also act as directors.
 - (c) A Declaration of Compliance by the advocate attending to the incorporation of the company.
6. For companies limited by guarantee, the documents are usually forward to the Director of National Intelligence Service in order to carry out further investigation and inquiries on the objects of the proposed company. This process may take 2 to 3 months and if the National Intelligence Service approves the incorporation of the proposed company, these documents are sent back to the Registrar of Companies for incorporation.
7. Incorporation is complete when the Registrar issues a Certificate of Incorporation which must be displayed at the registered office. At this stage, the Attorney General will usually exempt the company from using the word "limited" as part of its name.

b) Incorporation of a foundation under the Trustees (Perpetual Succession) Act

Under the laws of Kenya, a foundation can be incorporated under the Trustees (Perpetual Succession) Act (Chapter 164 of the Laws of Kenya). Section 4(1) provides that Trustees who have been appointed by any body or association of persons established for any religious, educational, literary, scientific, social, athletic or charitable purpose, or who have constituted themselves for any such purpose, may apply to the Minister for a certificate of incorporation of the trustees as a corporate body.

The requirements for registration are similar to those listed below under Part IV on charitable trusts.

III. COMMUNITY GROUP REGISTRATION

In Kenya, these include Self –Help Groups and community-based organizations (CBOs). They are non-profit, non-governmental, or charitable organizations that address specific community needs and play a vital role in addressing local needs, empowering communities, and driving positive change.

a) Requirements for registration of a CBO

1. Name search.
2. Minutes of the meeting seeking registration and showing elected officials **MUST** be attached to the Application form.
3. List of members duly signed with Name/Position/ID No./Mobile No. and Signatures **MUST** be attached to the Application form.
4. The Application form **MUST** be accompanied by the CBOs Constitution.
5. Attach ID Copies of all members.
6. The Application form **MUST** be accompanied by a Memorandum of Understanding (MOU) where CBO is formed through amalgamation (i.e. where several groups come together to form an umbrella organization).
7. Attach the original certificates of the affiliate group who are amalgamating.
8. Pay Approved Registration fee of Ksh. 5,000/=.

After registration, the CBO **MUST** adhere to the following which are done at sub-county level;

- i. Renew the Certificate Annually
- ii. Submit Quarterly Progress Reports to the Registering Authority
- iii. Allow accessibility of records to the Registering Authority upon request or when demanded to do so.

Failure to adhere to the above requirements will lead to deregistration.

b) Requirements for the registration of a group

1. Name search.
2. Minutes of the meeting seeking registration and showing elected officials **MUST** be attached to the application forms.
3. List of All members duly signed with Name/Position/Mobile. No/ID No. and Signatures **MUST** be attached to the application forms.
4. ID copies for all members.
5. Application Form **MUST** be accompanied by the Group Constitution.
6. Pay Approved Registration fee of Ksh.1, 000/=

NOTE:

After Registration, the Group **Must** undertake the following at the Sub-County level failure to which will lead to deregistration;

1. Renew the Certificate annually after the first two years of registration.
2. Submit Annual Progress Reports to the Director Social Development
3. Allow accessibility of records to the Director Social Development upon request or when demanded to do so.

IV. CHARITABLE TRUST

A Charitable trust is an entity created to hold and manage assets for the benefit of others. Trusts can be established under the Trustees (Perpetual Succession) Act (“Trustees Act”) only for religious, educational, literary, scientific, social, athletic, or charitable purposes (Trustees Act Chapter 164, Section 3(1)). Charitable purposes may also be effected by forming a trust by way of a trust deed.

Charitable trusts are usually exempted from income tax if formed for relief of poverty, distress or advancement of religion and education.

A charitable foundation under Kenyan law can be established as either a company limited guarantee or a charitable trust.

To give the trust its own “corporate” identity and enable it make arrangements under seal in much the same way as a limited company, it is thereafter registered under the Trustees (Perpetual Succession) Act whereupon a Certificate of Registration for the trust is granted. This gives the trust the ability to sue and be sued in its own name (as opposed to those of the trustees) and is especially useful where the trust wants to hold interest in movable and immovable property (i.e. land) in its name rather than in the individual trustees’ names. In addition, by Registering an organization as a trust, it may be possible to apply for charitable status. The eligibility for charitable status is obtained once the trust complies with the requirements as stipulated by the Kenya Revenue Authority.

Requirements for registration of charitable trust

1. Name of the Trust.
2. Main Objective of the Trust. A charitable trust must fall in at least one of the following categories:
 - Advancement of religion.
 - Advancement of Health or saving of lives.
 - Advancement of environmental protection or improvement.
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 - Advancement of environmental protection or improvement.
 - Relief of poverty e.g. homes & orphanages, hospitals
 - Trusts beneficial to the community not falling under the preceding heads e.g. advancing art, culture, racial harmony.
3. Name of the Settlor/ Donor. (Specify if donor is an individual or company, local or foreign)
 - Full name, copy of ID card/passport; If company, a copy of the certificate of registration.
 - Address
 - Domicile and residence.
 - Nationality.
 - Occupation.
 - Number of Shares in the Trust.
 - KRA PIN.
 - ID number.
 - Passport photo.
4. Beneficiaries: These could be a class of persons in the society such as widows, orphans and vulnerable children, bright children from poor backgrounds etc. There is also need to specify the area of benefit e.g. Nairobi, Kenya or Africa
5. Trust Fund:
 - A list of assets held by the trust/ in the absence a deed of donation indicating the properties to be donated to the trust.
 - A letter/statement from the donor stating his/her commitment.

- The transfer of properties/ funds may be progressive but indicate the initial amount/properties to be transferred.
6. Trustees: The trustees should show competence in running the trust.
The following information is required from the trustees:
- Names and addresses in full of the persons to act as trustees.
 - Passport photos of the trustees
 - Copies of KRA PIN certificates of Trustees
 - Copies of national ID or Passport.
 - Curriculum vitae of the trustees.
 - Statement of their accounts.
 - Minutes appointing the trustees.
 - Petition to the minister.
 - Seal of the trust.
 - Statement of donor funding where applicable.
 - Financial statement of the trust or foundation.
7. Administration of the Trust: Additionally, it is important to consider whether standard procedures are appropriate or if there are any special administrative procedures required.
Below are the Administrative procedures in the registration of a foundation:
- Appointment of trustees.
 - Operation of Trust accounts.
 - Powers of the trustees.
 - Procedure of conducting meetings.
 - Amendment of the Trust deed.

Registration of a charitable trust may involve two stages:

a. Registration under the Registration of Documents Act(RDA)

Registration under the RDA does not make a trust into a body corporate. However, the trust can commence implementing the objects of the trust as a simple trust.

b. Incorporation under the Trustees (Perpetual Succession) Act (TPSA)

After registration under the registry of documents, a certified copy of trust deed and a petition for incorporation is lodged with the Ministry of Lands for incorporation of trust. The Trust may be incorporated under the TPSA, making it a body corporate.

Contact [GND Consult](#) for registration of all forms of charitable entities in Kenya.

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