

Malawi

Trustees Incorporation Act Chapter 5:03

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Trustees Incorporation Act
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Malawi

Trustees Incorporation Act

Chapter 5:03

Commenced on 15 June 1962

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

[5 of 1962; 18 of 1996; G.N. 22/1963; G.N. 219/1964(N)]

An Act to amend the law relating to the incorporation of the Trustees of certain Charities and Associations

1. Short title

This Act may be cited as the Trustees Incorporation Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**constitution**” means the rules, regulations and documents, relating to the objects of a charity or association and regulating the affairs thereof, and the appointment of trustees or other officers thereof;

[18 of 1996]

“**public security**” includes the prevention and suppression of violence, intimidation, disorder, crime, mutiny, rebellion and concerted defiance of and disobedience to lawfully constituted authority and laws in force in Malawi, and the maintenance of the administration of justice;

[18 of 1996]

“**Registrar**” means the Registrar General;

“**trustees**” includes a sole trustee.

3. Upon application of trustees Minister may grant certificate of registration

(1) Trustees of any charity for religious, educational, literary, artistic, scientific or public charitable purposes or of any association of persons for any religious, educational, literary, artistic, scientific, social, athletic or charitable purpose or for any purpose which in the opinion of the Minister is for the benefit or welfare of the inhabitants of Malawi or any part thereof may apply in the prescribed manner to the Minister for a certificate of incorporation of the trustees of such charity or association as a corporate body.

(2) If the Minister, having regard to the extent nature and objects and other circumstances of the charity or association, shall consider such incorporation expedient he may grant such certificate:

Provided that if the Minister is satisfied that it is necessary for the preservation of public security so to do, he may refuse to grant such certificate.

[18 of 1996]

(3) Upon the issue of a certificate under subsection (2), the trustees shall thereupon become a body corporate by the name described in the certificate and shall have perpetual succession and a common seal and power to sue and to be sued in such corporate name.

- (4) Subject to this Act, such body corporate shall also have power to hold and acquire and, by instrument under its common seal, to convey, assign, transfer, mortgage, demise or otherwise deal with any property movable or immovable or any interest therein belonging to or held on trust for the charity or association in the like manner and subject to such restrictions and provisions as the trustees of the charity or association might without incorporation convey, assign, transfer mortgage, demise or otherwise deal with such property or interest for the purposes of the charity or association.
- (5) A certificate of incorporation so granted shall be conclude evidence that all the requirements in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

[18 of 1996]

4. Trusts not affected

Any property movable or immovable vested in, transferred to, held or acquired by the body corporate shall be held for the purposes of the charity or association and in such and the like manner as it was held by the trustees prior to incorporation, subject to this Act.

5. Liability of trustees notwithstanding incorporation

After a certificate of incorporation has been granted under this Act, all trustees of the charity or association, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults and for the due administration of the property of the charity or association, in the same manner and to the same extent as if no such incorporation had been effected.

6. Manner of vesting land

- (1) Any immovable property may be vested in a body corporate to which a certificate has been issued under [section 3](#), in accordance with any other law relating to such matters or in accordance with this section.
- (2) Subject to section 17 (1) of the Deeds Registration Act, the certificate of incorporation or a copy thereof certified under the hand of the Registrar may be registered in the Deeds Registry provided that particulars of the immovable property intended to be affected are attached thereto.

[Cap. 58:02]

- (3) Upon registration of the certificate of incorporation in accordance with subsection (1), all immovable property of which particulars have been so attached, and which belonged to or was held by, any person, immediately prior to the date of the certificate, in trust for the charity or association shall vest in such body corporate for such estate and interest, if any, as the person held immediately prior to registration, and all covenants and conditions relating to such land enforceable by or against the trustees thereof before registration shall be enforceable to the same extent and by the same means by or against the body corporate.
- (4) Any person who shall make or permit to be made any transfer or payment *bona fide* in reliance on any instrument to which the common seal of any body corporate created under this Act is affixed shall be indemnified and protected in respect of such transfer or payment notwithstanding any defect or circumstances affecting the execution of the instrument.

7. Vacancies in trustees

- (1) Where a certificate of incorporation has been granted to the trustees of a charity or association, vacancies in the number of trustees thereof shall from time to time be filled as required by the constitution of the charity or association or by such legal means as would have been available for the appointment of new trustees thereof if no such certificate of incorporation had been granted;

and the appointment of every new trustee shall be certified and registered in the prescribed manner and thereupon the new trustee shall be deemed to be incorporated for the purposes of this Act.

- (2) Within one month after the expiration of each year after the grant of a certificate of incorporation, and whenever required by the Registrar, a return shall be made in the presented manner by the trustees of the charity or association of the names of the trustees thereof together with their addresses.

8. Name and change of name

- (1) The name of every body corporate registered under this Act shall include the words “registered” and “trustees”.
- (2) Subject to subsection (1) such body corporate may with the written approval of the Registrar change its name.
- (3) In any case where such body corporate is trustee for an association, a change of name shall also be effected in accordance with the constitution of that association.
- (4) Where such body corporate changes its name the Registrar shall enter a new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case.
- (5) Change of name shall not affect any rights or obligations of the body corporate or render defective any legal proceedings by or against the body corporate, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

9. Change in constitution

- (1) In case any association, on whose behalf any property is held by a body corporate registered under this Act, desires to change its constitution in any manner described in subsection (3), it shall first submit, in the prescribed form, a draft of the proposed amendment for the approval of the Minister, who may, in his discretion, grant or withhold his approval.
- (2) Every amendment of the constitution of an association approved by the Minister shall be registered in the prescribed manner.
- (3) The amendments which require approval under subsection (1) are those which in any way affect the objects of the association, the appointment, retirement and authority of the trustees or other officers thereof, the authorization, by the association of acts of the trustees thereof and the manner in which such authorization may be verified and the use of the common seal.
- (4) The constitution of an association, particulars, whereof are registered under this Act, shall, in favour of any person dealing with that body corporate, be deemed to be the constitution of that body corporate.
- (5) In case any association to which this section applies alters its constitution in any manner not approved by the Minister, the Minister may by notice published in the *Gazette* revoke the certificate of incorporation granted to the trustees thereof, and thereupon all property vested in the body corporate shall vest in the trustees at that date of the association, but if there be no such trustee, in the officers of the association, upon such trusts and subject to such obligations as were binding upon the body corporate at the date of revocation.

10. Contract made by trustees

Every contract made or entered into by the trustees of a charity or association which would be valid and binding according to the constitution of the charity or association if no such incorporation had taken place under this Act shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

11. Gifts to charity before incorporation to have same effect afterwards

After the incorporation of the trustees of any charity under this Act, every donation, gift and disposition of property movable or immovable, theretofore lawfully made (but not actually having taken effect), or thereafter lawfully made by deed, will, or otherwise to or in favour of such charity, or to trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to or in favour of the incorporated body or otherwise for the like purposes.

12. Registrar may strike off a defunct corporate body

- (1) Where the Registrar has reasonable cause to believe that any charity or association whose trustees are incorporated under this Act is no longer in operation, he shall send to each of the trustees by post a letter enquiring whether the charity or association is in operation.
- (2) If the Registrar does not, within two months of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the period of two months send to each of the trustees by post a registered letter referring to the first letter and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the body corporate off the register.
- (3) If the Registrar either receives an answer to the effect that the association is not in operation or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette* and send to the trustees by post a notice that at the expiration of three months from the date of that notice, the name of the body corporate mentioned therein will, unless cause is shown to the contrary, be struck off the register.
- (4) At the expiration of the time mentioned in the notice, the Registrar may unless cause to the contrary is previously shown, strike the name of the body corporate off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice, the body corporate shall be dissolved and the liability, if any, of every trustee shall continue and may be enforced as if the body corporate had not been dissolved.
- (5) If an association or trustee thereof, or a trustee of a charity, or a creditor of the body corporate feels aggrieved by the body corporate having been struck off the register, the High Court, on the application of the person aggrieved may, if satisfied that it is just that the body corporate be restored to the register, order the name of the body corporate to be restored to the register and thereupon the body corporate shall be deemed to have continued in existence as if its name had not been struck off, and the Court may give such directions and make such provisions as seem just in the matter.

13. Service of process and notices

- (1) Every body corporate registered under this Act shall register with the Registrar an address in Malawi at which service of process and notices may be effected.
- (2) Trustees incorporated under this Act shall be deemed to be authorized to accept service of process and any notices required to be served on the body corporate.
- (3) Any process, notice or other document may be, served on a body corporate registered under this Act by leaving it at or sending it by post to the address for service registered under this section.

14. Register

The Registrar shall compile and maintain a register of all bodies corporate incorporated under the Trustees Incorporation Ordinance (now repealed) and under this Act, and such register shall be open to public inspection in accordance with rules made under this Act and on payment of the prescribed fee.

[14 of 1921]

15. Rules

The Minister may make rules—

- (1) prescribing the number and forms of registers to be kept, the duties of the Registrar and other persons authorized to supervise any operation prescribed by this Act or rules made thereunder;
- (2) prescribing the fees and fixing the charges to be made for any act, matter or thing under this Act, or rules made thereunder, to be done or observed, and penalties for failure to comply with such requirements, and for the remission of penalties;
- (3) generally for carrying any of the purposes or provisions of this Act into effect.

16. Transitional

- (1) Every body corporate incorporated under the Trustees Incorporation Ordinance (now repealed) shall continue in existence as though it had been incorporated under this Act, and this Act and any rules made thereunder shall apply to every such body corporate, but no such body corporate shall be required to comply with [section 8](#) (1) unless and until it is desired to change its name.
- (2) The Minister shall have power to fix a date on or before which such body corporate is to register an address for service, and penalties for failure so to do.
- (3) The Minister may approve the adoption by any such body corporate of a new common seal.

[14 of 1921]