

TRUSTEES INCORPORATION

CHAPTER 5:03

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**CHAPTER 5:03**  
**TRUSTEES INCORPORATION**  
**ARRANGEMENT OF SECTIONS**

## SECTION

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

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

[15TH JUNE, 1962]

1. This Act may be cited as the Trustees Incorporation Act. Short title
2. In this Act, unless the context otherwise requires— Interpretation
  - “constitution” means the rules, regulations and documents, 18 of 1996  
relating to the objects of a charity or association and  
regulating the affairs thereof, and the appointment of  
trustees or other officers thereof;
  - “public security” includes the prevention and suppression of 18 of 1996  
violence, intimidation, disorder, crime, mutiny, rebellion  
and concerted defiance of and disobedience to lawfully  
constituted authority and laws in force in Malaŵi, and the  
maintenance of the administration of justice;
  - “Registrar” means the Registrar General;
  - “trustees” includes a sole trustee.

Upon application of trustees Minister may grant certificate of registration 18 of 1996

3.—(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:

18 of 1996

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.

(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 conclusive 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.

Trusts not affected

4. 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.

Liability of trustees notwithstanding incorporation

5. 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

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association, in the same manner and to the same extent as if no such incorporation had been effected.

6.—(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. Manner of vesting land

(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.—(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. Vacancies in trustees

(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 prescribed manner by the trustees of the charity or association of the names of the trustees thereof together with their addresses.

8.—(1) The name of every body corporate registered under this Act shall include the words "registered" and "trustees". Name and change of name

(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.

Change in constitution

**9.**—(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.

Contract made by trustees

**10.** 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.

Gifts to charity before incorporation to have same effect afterwards

**11.** 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.—(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. Registrar may strike off a defunct corporate body

(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.—(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. Service of process and notices

(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 send-

ing it by post to the address for service registered under this section.

Register  
14 of 1921

**14.** 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.

Rules

**15.** 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.

Transitional  
14 of 1921

**16.—**(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.

**SUBSIDIARY LEGISLATION**  
**TRUSTEES INCORPORATION RULES**

G.N. 87/1962  
20/1997

*under s. 15*

**1.**—(1) These Rules may be cited as the Trustees Incorporation Rules. Citation

(2) In these Rules references to sections are references to sections of the Act.

**2.**—(1) In the case of an application under section 3 by trustees of an association, the application shall be made to the Registrar and shall— Application by trustees

(a) be in Form A in the First Schedule;

(b) be accompanied by two copies of the constitution certified by the secretary or other principal officer of the association, and a copy so certified of the minutes of the meeting of the association at which the trustees were authorized to apply for incorporation.

(2) In the case of an application under section 3 by trustees of a charity, the application shall be made to the Registrar and shall—

(a) be in Form B in the First Schedule;

(b) be accompanied by the original of the will, deed or other instrument creating or regulating the charity or by a copy thereof certified by a trustee or authorized officer of the charity.

(3) Every application shall be accompanied by the device in quadruplicate of the proposed common seal and the prescribed fee.

(4) The signatures of the applicants and the statements in the application shall be verified by declaration before a legal practitioner, commissioner for oaths, mayor or District Commissioner or in such other manner as the Registrar shall require.

(5) Any person who knowingly and wilfully makes in such declaration a statement false in a material particular shall be liable to a fine of £50 and to imprisonment for three months.

**3.** On receipt of an application, the Registrar shall examine the documents presented to him and shall report to the Minister whether— Registrar's report on application

(a) in his opinion the objects of the association or charity are limited to one or more of the objects specified in section 3;

[Subsidiary]

*Trustees Incorporation Rules*

(b) the constitution of the charity or association makes adequate provision for filling vacancies in the number of trustees and whether an adequate address for service has been furnished;

(c) the trustees of any association have been duly authorized by the association to apply for incorporation;

(d) limitations, and if so what, are placed by the constitution on the disposition of property by the proposed body corporate and what are the provisions regarding the custody and use of the common seal;

(e) the name proposed for the corporate body is identical with a registered business name or that by which a company or body corporate is already registered or so nearly resembles such name as to be calculated to deceive;

(f) in his opinion there is any, and if so what, objection to the application.

Incorporation

4.—(1) The certificate of incorporation issued by the Minister shall be in Form C in the First Schedule.

(2) The original certificate, together with a copy thereof certified by the Registrar, shall be issued to the body corporate and a further certified copy shall be retained by the Registrar.

(3) Securely attached to the original certificate and all copies thereof shall be a copy of the approved device for the common seal.

(4) Every body corporate incorporated or deemed to be incorporated under the Act shall have its name engraven in legible characters on its seal, and if any such body corporate fails to comply with this subrule, the body corporate shall be liable to a fine of £50 payable to the Registrar on demand:

Provided that in the cases provided for by section 16, the body corporate may continue to use a common seal which is not engraven until the expiration of a period of twelve months after the coming into operation of the Act or until the approval of a new device for its common seal, whichever shall first happen.

New trustee

5.—(1) The appointment of a new trustee shall be notified in writing to the Registrar within twenty-eight days after such appointment with particulars of the name and address of the trustee.

(2) Every such notification shall be accompanied by the original document (if any) effecting the appointment and informa-

tion regarding the death or retirement of any prior trustee, and the prescribed fee.

(3) The Registrar may require further evidence by statutory declaration or otherwise in verification of the facts notified and on being satisfied of the truth thereof shall make the necessary entries in the register maintained by him and shall return any document effecting the appointment which was presented to him.

**6.** The return to be made under section 7 (2) shall be in Form D in the First Schedule. Return of trustees

**7.—(1)** If any body corporate registered under the Act wishes to change its name, the application for that purpose shall be signed by all the trustees and shall be in Form E in the First Schedule and shall be accompanied by four copies of the device proposed for a new common seal, the prescribed fee, and, in the case of a body corporate which is trustee of an association, a copy, certified by the principal officer, of the resolution approving the proposed change of name. Change of name

(2) The certificate of incorporation issued by the Registrar under section 8 (4) shall be in Form F in the First Schedule.

**8.—(1)** The submission of proposed amendments to a constitution under section 9 shall be made in Form G in the First Schedule, and shall be accompanied by the prescribed fee. Change in constitution

(2) If a change is made in the constitution of an association, the trustees shall notify such change to the Registrar within twenty-eight days of it being made, and in case of default each trustee shall be liable to pay a penalty of £5 to the Registrar on demand.

(3) The certificate of registration of a change of constitution shall be in Form H in the First Schedule.

**9.** The particulars to be recorded in the register kept by the Registrar under section 14 shall be those specified in Form I in the First Schedule. Register

**10.** A body corporate incorporated under the Act may, on payment of the prescribed fee, change the address for service registered in respect of it under section 13 by applying to the Registrar, who shall notify the body corporate of the registration of the new address. Change of address for service

**11.** Within six months of the publication of these Rules, a body corporate incorporated under the Trustees Incorporation Ordinance (now repealed) shall register an address for service and failure so to do shall make each and every trustee liable to pay to the Registrar a penalty of £5 on demand. Transitional  
14 of 1921

[Subsidiary]

Trustees Incorporation Rules

- Inspection**      **12.**—(1) Subject to subrule (2), the register maintained under section 14 and the registered copy of the certificate of incorporation, the constitution, the registered addresses of the trustees and other registered documents shall be open to inspection by the public and any person shall be permitted to take copies of or extracts from any such document, and may require any such copy or extract to be certified under the hand of the Registrar.
- (2) The rights conferred by subrule (1) shall be subject to payment of the prescribed fees.
- Powers of Registrar**      **13.** The Registrar shall have power—
- (a) to remit any penalty payable under these Rules;
- (b) to issue a duplicate of any document previously issued by him under these Rules, if he is satisfied that such document is lost or destroyed, and upon payment of the prescribed fee.
- Fees**      **14.** The fees set out in the Second Schedule shall be payable to the Registrar in respect of the several matters specified therein, and no other fees shall be payable.

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FIRST SCHEDULE

r. 2 (1)      **FORM A**

## THE TRUSTEES INCORPORATION RULES

## APPLICATION FOR INCORPORATION OF TRUSTEES OF AN ASSOCIATION

To: The Registrar.

WE HEREBY APPLY for incorporation and registration in accordance with the Trustees Incorporation Act of ourselves as a body corporate to be known as

We are the trustees of the  
an association whose objects are—

We enclose herewith—

(a) two copies of the constitution, certified by \*  
, and a copy of the minutes of the association at which we were authorized to apply for incorporation;

(b) the device in quadruplicate of the proposed common seal, together with two copies of the rules regulating the use and custody of the seal.†

The address for service under section 13 will be—

We consent to continue to act after incorporation as trustees in accordance with the Act.

PARTICULARS OF TRUSTEES

<i>Full Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Signature</i>
------------------	----------------	-------------------	------------------

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

\* Here insert name and office of the secretary or other principal officer of the association concerned.

† These rules must not be separately supplied if included in the constitution.

FORM B

r. 2 (2)

THE TRUSTEES INCORPORATION RULES

APPLICATION FOR INCORPORATION OF TRUSTEES OF A CHARITY

To: The Registrar.

WE HEREBY APPLY for incorporation and registration in accordance with the Trustees Incorporation Act of ourselves as a body corporate to be known as

We are the trustees of the  
a charity formed on the                      day of                      and of which  
the objects are—

We enclose herewith—

(a) \* the original will, deed or other instruments creating or regulating the charity \*a copy of the original will, deed or other instrument creating or regulating the charity certified by a trustee or authorized officer of the charity;

(b) the device in quadruplicate of the proposed common seal, together with two copies of the rules regulating the use and custody of the seal.

The address for service under section 13 will be—

We consent to continue to act after incorporation as trustees in accordance with the Act.

[Subsidiary]

Trustees Incorporation Rules

PARTICULARS OF TRUSTEES

	<i>Full Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Signature</i>
1.				
2.				
3.				
4.				
5.				
6.				

\* Delete if inapplicable.

r. 4(2)

FORM C

THE TRUSTEES INCORPORATION RULES

CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that

is this day incorporated under the Trustees Incorporation Act and that the device affixed hereto of the common seal is approved.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
nineteen hundred and \_\_\_\_\_

*Minister of Justice*

r. 6

FORM D

THE TRUSTEES INCORPORATION RULES

Return of the \_\_\_\_\_  
made up to the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

1. Particulars of Trustees

<i>Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Date of Appointment</i>

2. Particulars of the former Trustees (since date of last return)

<i>Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Date of Appointment</i>

3. Has any change been made in the name since the date of the last return? .....

4. (In the case of trustees of an association). Has any change been made in the constitution since the date of the last return? .....

TRUSTEES:

\_\_\_\_\_

FORM E

r. 7 (1)

THE TRUSTEES INCORPORATION RULES

APPLICATION FOR CHANGE OF NAME

To: The Registrar.

WE, the trustees incorporated by the abovenamed, HEREBY APPLY for the name of the incorporated body to be changed from to and for the name in the Register to be altered accordingly.

We enclose four copies of the proposed device of the new common seal.

Dated this day of , 19

TRUSTEES:

\_\_\_\_\_

FORM F

r. 7 (2)

THE TRUSTEES INCORPORATION RULES

CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that the was incorporated on the day of , 19 , under the Trustees Incorporation Act and that the name of was changed to under the Trustees Incorporation Act, and the new device of the common seal attached hereto is approved.

Given under my hand at this day of 19

Registrar

\_\_\_\_\_

[Subsidiary]

Trustees Incorporation Rules

r. 8 (1) **FORM G**

**THE TRUSTEES INCORPORATION RULES**

**NOTICE OF PROPOSED ALTERATION OF CONSTITUTION**

To: The Registrar.

Notice is hereby given that it is proposed that the constitution of the \_\_\_\_\_ be amended.

Two copies of the proposed amendment(s) are enclosed herewith. It is proposed that the rule(s) set out in Column 1 hereof be altered to read as in Column 2 hereof.

Column 1

Column 2

TRUSTEES:

r. 8 (3) **FORM H**

**THE TRUSTEES INCORPORATION RULES**

**CERTIFICATE OF REGISTRATION OF CHANGE OF CONSTITUTION**

IT IS HEREBY CERTIFIED that the rules of the constitution of the \_\_\_\_\_

as set out in Column 1 have been changed as set out in Column 2.

Column 1

Column 2

and that such change has been registered by me pursuant to the Trustees Incorporation Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
Registrar

r. 9 **FORM I**

**THE TRUSTEES INCORPORATION RULES**

**REGISTER OF BODIES CORPORATE**

1. Registered name of body corporate.
2. Registered address.
3. Date of incorporation.
4. Number of certificate of incorporation.
5. Date(s) of alteration of constitution.
6. Date of striking off.
7. Reasons for striking off.
8. Particulars of publication of striking off in official Gazette.

**TRUSTEES**

<i>Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Date of Appointment</i>	<i>Date of Retirement, etc.</i>
_____				

## SECOND SCHEDULE

r. 14  
G.N. 20/1997

Matter	Fees K t
1. On application for incorporation, including certificate of incorporation . . . . .	200 00
2. On notification of change of trustee, or registration of new address of service . . . . .	10 00
3. On application for approval of change of name or constitution, including registration of change or issue of new certificate of incorporation, as the case may be . . . . .	100 00
4. On inspection of register or other registered documents . . . . .	10 00
5. For taking a copy or extract of any document (in addition to inspection fee) . . . . .	20 00
6. For certification of any copy or extract taken—	
(i) minimum . . . . .	20 00
(ii) for every 100 words or part thereof after the first 500 words . . . . .	2 00
7. For a copy of any document previously issued—	
(i) minimum . . . . .	20 00
(ii) for every 100 words or part thereof after the first 200 words . . . . .	2 00