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Advocates, Commissioners
for Oaths and Notaries Public

LEGAL ALERT

Vol. 05 | August 2023

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The background of the lower half of the page is a vibrant green. It features a large, semi-circular graphic on the left side. Inside this graphic, there are silhouettes of several people holding hands in a circle, symbolizing community or teamwork. In the center of this circle is a soccer ball. The overall aesthetic is clean and modern, with a focus on community and social impact.

THE REGISTRATION OF **NOT-FOR-PROFIT ORGANISATIONS IN KENYA**

1. A SOCIETY

The registration, conduct and Administration of Societies in Kenya is governed by the Societies Act Cap 108 of the Laws of Kenya. This falls under the Registrar of Societies, within the Office of the Attorney General.

Advantage

- With the Society, you can operate independently through the trustees.

Constrain

- The lack of legal status of the Society, effectively meaning that the society would have to operate through the trustees.

Requirements for registration

- 1) Name of the proposed Foundation (it is advised that you provide at least three (3) names for search and reservation);
- 2) Names, occupation and address of the officials in full i.e. the Chairman, Secretary and Treasurer. Names of Assistant officials should also be included where applicable;
- 3) Addresses of each official;
- 4) Proposed physical address of the society. (includes Plot number, road, town, county);
- 5) Copies of the ID, KRA Pin and Passport photo of the officials.
- 6) A minimum of ten (10) or more Members to be registered and
- 7) The constitution of the Society.

REGISTRATION PROCESS

A SOCIETY



STEP
01

Name search.
This is carried out to confirm the suitability and availability of the group's preferred name.

STEP
02

Fill Forms A and B in duplicate.

STEP
03

*** Preparation of the constitution that will govern the Society.**

STEP
04

Payment of the Requisite fee.

STEP
05

Submitting the registration documents at the Registrar of Societies' office.

*** STEP 3:** The Constitution in this case should contain the Name of the Society, Names of the officials, the physical address of the Society's office as well as the postal address. It should also state the following;

- The objectives of the Society or reason for its establishment.
- The group or class of people whom membership is open to.
- The terms and conditions governing the admission of new members, suspension and dismissal of members as well as guidelines on how elections are to be conducted within the Society.
- Guidelines on meetings. This should state when and how meetings will be held, including the date for the Annual General Meeting.
- Whether there is an intention to have branches of the Society in Future.
- The dissolution of the Society, and the disposal of property upon such dissolution.

This takes a period of about three (3) months to register.

2. COMPANY LIMITED BY GUARANTEE

Companies Limited by Guarantee are provided for under the Companies Act Cap 486 laws of Kenya. Unlike the ordinary companies that have shares and shareholders, companies limited by guarantee have none of those. It is instead owned by guarantors who agree to pay a set amount of money when the company is in debt. A company Limited by Guarantee is mostly used by Non-Profit Organisations that require Legal personality. Under this option, the Foundation would register as a company incorporated without share capital. The liability of the shareholders is therefore equated to the amount that they contribute to the company's assets in the case of liquidation in the articles of association.

The Memorandum and Articles of Association together with the Shareholding agreements shall detail the operations of the foundation. As part of the requirement for the registration, a report on the investigation of each individual shareholder shall be carried out by the National Intelligence Service (N.I.S).

Advantages

- Allows for multiple owners of the company
- The company is a separate legal entity from its owners, who are also protected by limited liability.
- It has perpetual succession.

Constrains

- Companies limited by guarantee take long to register
- Costs involved with incorporation are high
- It is unattractive to lending institutions due to lack of a share capital which also serves as debt collateral.
- It requires a high security clearance (By the NIS) unlike other models.

Requirements for registration

- 1) Name of the proposed foundation. (It is advised that you avail at least three (3) names for search and reservation at the company registry);
- 2) Share capital, number of Shareholders/Directors and the apportionment of the shareholding;
- 3) Objectives of the company;
- 4) Company address: Including the Name of the building and plot No., floor/Room number, Street/Road, Town, District, Postal address, Phone number and Email address;
- 5) Directors' names and particulars: Including Postal address, Phone number, Email address, residential address (indicate Plot No. and house No. where applicable) and their occupation;

- 6) Copies of the Directors' identification documents (ID/Passport/certificate of incorporation), KRA-PIN and two (2) copies of their passport size photographs where applicable and
- 7) Name and address of the Company Secretary if any.

The investigations and preparation of the report by the N.I.S may take about six (6) months to complete.

3. A CHARITABLE TRUST

A Charitable Trust is an entity created to hold/manage property on behalf of and for the benefit of others. They are intended to benefit the public at large or an appreciable portion of the public. Trusts in Kenya are provided for and established under the Trustee (perpetual Succession/ Trustee) Act.

To make sure that the trust is legally identifiable, they are formally registered under the Act and a certificate is issued upon successful completion. This accords it Legal personality, such that it can sue and be sued in its own name. Registration as a Trust also enables it to apply for Charitable status.

Benefits

- They enjoy tax exemptions over investment incomes.
- They are not restricted by the rule against perpetuity.
- They will not fail for uncertainty of object so long as there is a paramount intention of charity and are exclusively charitable.

Constrains

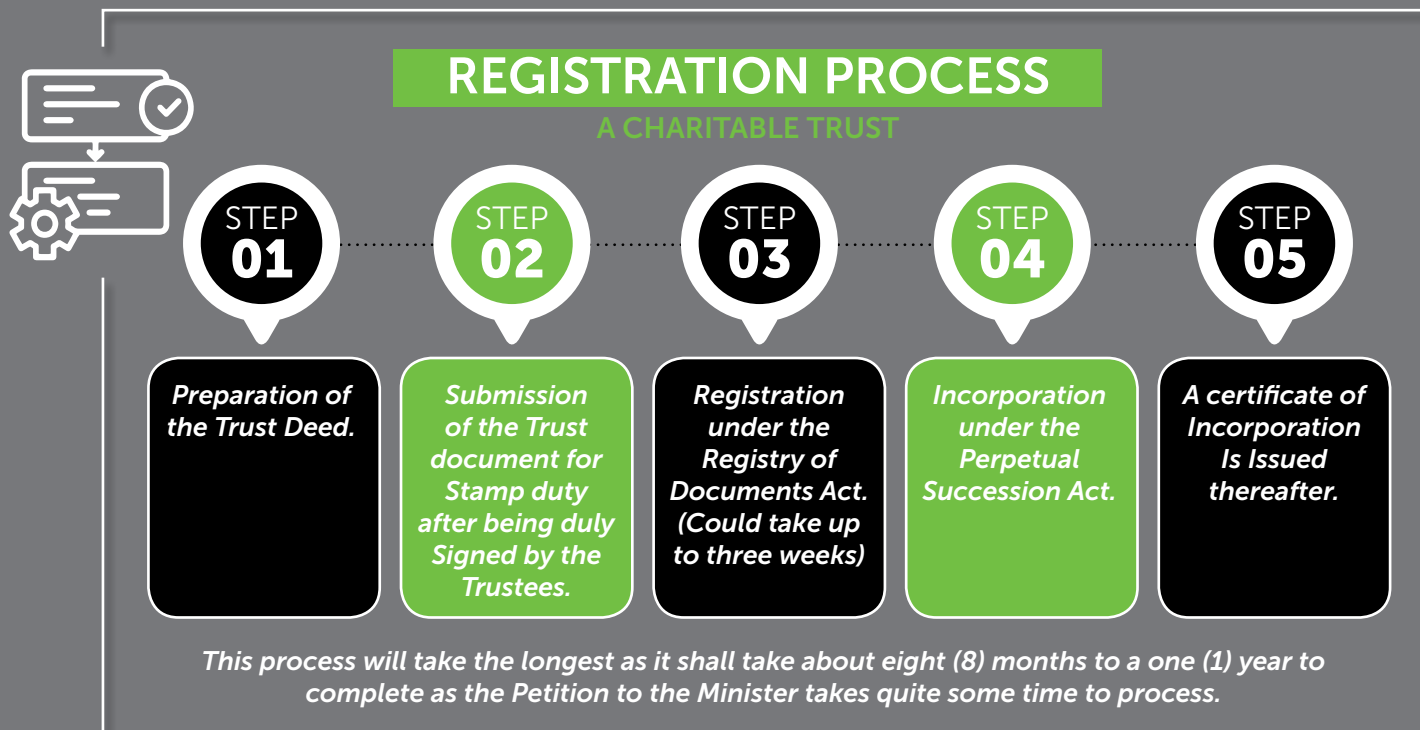
- They take a very long time to register.
- They are significantly more expensive to register.

Requirements for registration.

- 1) Name of the proposed Foundation. (It is advised that you avail at least three (3) names for search and reservation.);
- 2) Trust Deed. (To be prepared by the firm);
- 3) Objectives of the Trust. (This shall be informed by the purpose for which the foundation is to be established.);
- 4) Names of the Trustees in full;
- 5) Postal addresses of the Trustees;
- 6) Proposed physical addresses of the Trust. Address includes the Road, plot number, town, county;
- 7) Copy of the Id/Passport of the Trustees;
- 8) The petition to the minister (To be prepared by the Firm);
- 9) Minutes appointing the Trustees;

- 10) Seal of the Trust;
- 11) The financial statement of the trust;
- 12) CV of the Trustees/employees;
- 13) Colored Passport Photos of the trustees;

- 14) Statement of donor funding;
- 15) Copy of title documents showing ownership of immovable property owned by the Trust and;
- 16) Copy of PIN Certificates of the Trustees.



4. NON-GOVERNMENTAL ORGANIZATION (NGO)

The foundation can also be Registered as a Non-Governmental Organization. This is would be the best advised of all the other processes given the length of time, limitations on Legal status and stringent registration requirements posed by the other options available.

Benefits

- A registered NGO is a legally recognizable entity, thus enjoying the ability to open a bank account in its own name and enter into contracts.
- It also qualifies for Financial assistance from Government Agencies as well as Local, National and International Donors.
- Tax exemptions from certain incomes.
- Concessions when obtaining vehicles, equipment and commodities.
- Access to training opportunities and technical assistance as well as help and guidance from relevant authorities and departments.

Constrains

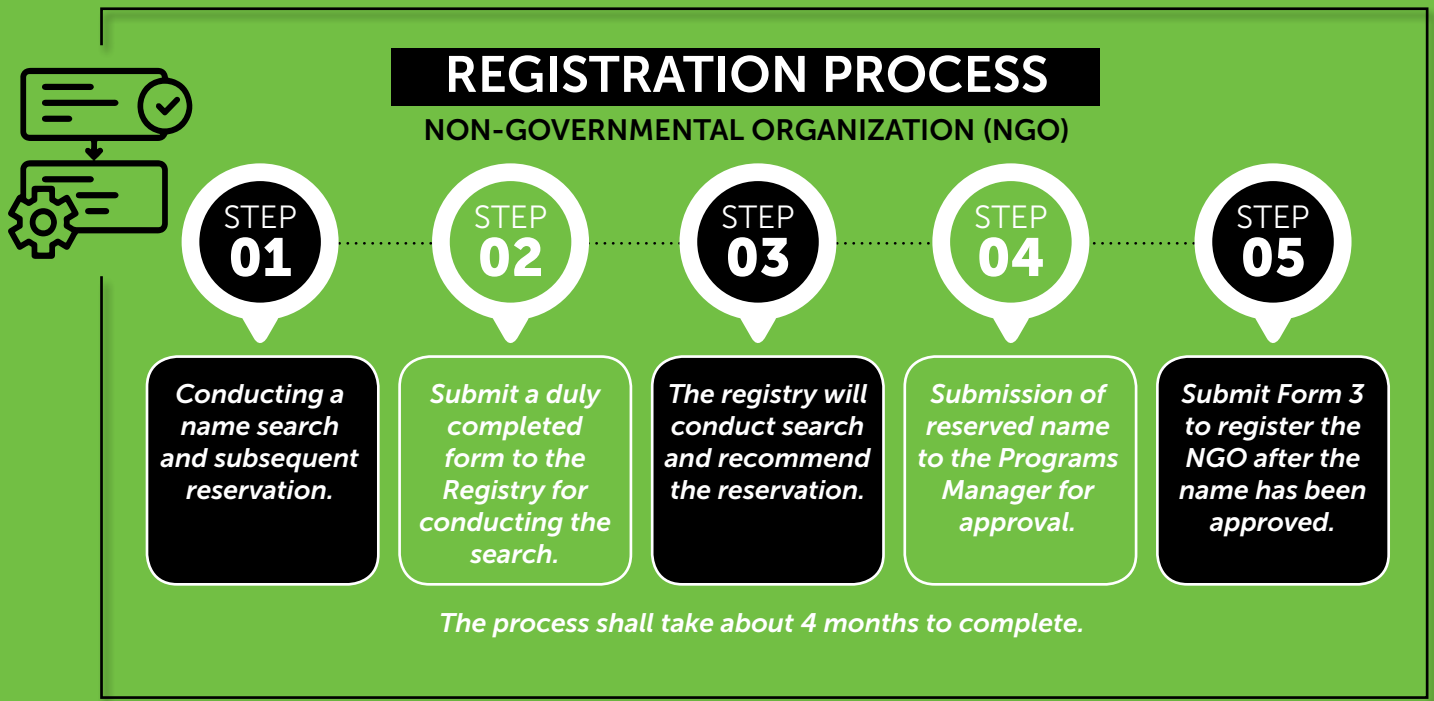
- Lack of a clear national framework required in recognizing and appreciating the role of NGO's in development issues.

- Frequent tensions between NGO's and the Government.

Requirements for registration.

- 1) Name of the proposed Foundation (it is advised that you avail at least three (3) names for search and reservation at the company registry)
- 2) Two colored passport size photographs on a white background (2 by 2 inches) of the proposed (3) three officials and two other board members with their names and organization written at the back;
- 3) Copy of ID / Passport and KRA PIN Certificates for the 5 proposed officials and Board members (At least One third (1/3) of all the board members Must be Kenyan in the case of foreign based NGOs.);
- 4) Copy of a valid police clearance (certificate of Good Conduct including the fingerprints and receipts) for Kenyans and equivalent notarized clearance certificate for Foreigners from their Country of Origin (MUST not be more than six (6) months Old);
- 5) Constitution of the proposed NGO/INGO signed by both the proposed three (3) officials and the two (2) board members Two (2) – (As prepared by the Firm on your behalf.);

- 6) Minutes authorizing the filling of the application with a specific agenda and resolution to register the organization as an NGO with the NGOs Board. Election of the interim officials forming part of the Agenda- (As prepared by the firm on your behalf.) and
- 7) A proposed one-year budget of the NGO;
- 8) A Processing fee of KSH. 16,000/= for National NGOs and KSH. 30,000/= for International NGOs.



5. COMMUNITY BASED ORGANISATION (CBO)

It is noted that the Institution is currently registered as a CBO which is a Non – Government, non – Profit and Non – Political Organization registered through the department of Gender and social services.

Herein below are the benefits the Organization is currently enjoying as well as some of the constraints the organization may be faced with;

Benefits

- The application process is relatively quick as compared to other models.
- They are cheap to register and renew.

- The registered entity enjoys official recognition, allowing it to raise funds and undertake activities.
- The CBO is not required to file Tax returns to the Kenya Revenue Authority (KRA).

Constrains

- Registration does not provide legal recognition. Therefore, the CBO cannot enter into contracts or own assets (unless through individuals and other legally registered Organizations as trustees).

It is possible, as part of the processes for all the above options above to make an application for a tax-exempt waiver from the National tax authority, Kenya Revenue Authority (KRA).

DISCLAIMER

This alert is for informational purposes only and should not be taken or construed as a legal opinion. If you have any queries or need clarifications, please get in touch with Steve Kimathi at steve@asadvocates.co.ke or your usual contact in our firm for legal advice.