



Tonga

CHARITABLE TRUSTS ACT

Chapter 16.04

2020 Revised Edition



CHARITABLE TRUSTS ACT

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CHARITABLE TRUSTS ACT ¹

AN ACT TO PROVIDE FOR THE INCORPORATION AND REGISTRATION OF RELIGIOUS, EDUCATIONAL AND OTHER CHARITABLE TRUSTS AND SOCIETIES

Commencement [3rd January, 1994]

1 Short title

This Act may be cited as the Charitable Trusts Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Board**” means any trust or society incorporated under this Act;

“**Charitable purpose**” includes every charitable purpose, whether it relates to relief of poverty, the advancement of education or religion, or any matter beneficial to the community;

“**Court**” means the Supreme Court of Tonga, and includes a Judge of that Court;

“**Minister**” means the Minister responsible for commerce;²

“**Property**” means real and personal property of every kind, and includes money;

“**Registrar**” means the Registrar of Charitable Trusts who shall be the Registrar of Incorporated Societies under the Incorporated Societies Act.

3 Trustees may apply for incorporation

- (1) The trustees of any trust which is exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Act for the incorporation of the trust as a Board under this Act.
- (2) No such application shall be made by the trustees of any trust —
 - (a) if the trust is incorporated under this Act or under any other Act or otherwise; and
 - (b) unless they are authorised to do so.
- (3) Every such application for incorporation shall be in Form 1 of the Schedule to this Act and shall be signed by a majority of the trustees.

4 Society may apply for incorporation

- (1) Any society which exists exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Act for the incorporation of the society as a Board under this Act.
- (2) No such application shall be made by any society —
 - (a) if the society is already incorporated under this Act or any other Act or otherwise; and
 - (b) unless the application is authorised by the society.
- (3) Every such application for incorporation shall be in Form 2 of the Schedule to this Act and shall be signed by a majority of the members of the society.

5 Manner in which application is authorised

For the purposes of sections 3 and 4 of this Act, the application shall be deemed to be authorised by the trustees of a trust or a society if —

- (a) it is authorised by a majority of the trustees of that trust or a majority of the members of that society; or
- (b) a resolution authorising the making of the application is passed at a meeting of the trustees of that trust or a meeting of that society, as the case may be, and the Registrar is satisfied that such notice of intention to hold that meeting and of its purpose was given as may be reasonable in the circumstances; or
- (c) the application is authorised by the trust deed or the rules of the society as the case may be.

6 Applications for incorporation

- (1) Each subscriber to an application for incorporation shall add to his signature his occupation and address. The signature of each subscriber shall be attested

by a witness who is not a subscriber, and the witness shall add to his signature his occupation and address. When any body corporate is a subscriber its seal shall be affixed to the application.

- (2) Every application for incorporation under this Act shall be accompanied by —
 - (a) a copy (certified by one of the subscribers to the application as a correct copy) of the relevant parts of all wills, declarations of trust, and other documents (if any) showing the general purposes of the trust or society for which the application is being made and the trusts on which the applicant or applicants hold any property that is vested in the applicant or applicants as such and is not held for the general purposes of the applicant or applicants; and
 - (b) a statutory declaration made by one of the subscribers to the application setting forth any trusts on which the applicant or applicants hold any property, being trusts not set out in any document or copy of a document accompanying the application; and
 - (c) in any case where the application for incorporation is made by a society —
 - (i) a copy of the rules and other documents (if any) providing for the constitution of the society, certified by one of the subscribers to the application as a correct copy of the then current rules and documents, or (where there are neither any such rules nor any such documents) a statutory declaration made by one of the subscribers to the application setting forth the purposes of the society, the manner in which persons become members or cease to be members thereof, and the manner in which the society operates; and
 - (ii) a statutory declaration made by one of the subscribers to the application to the effect that the application is authorised by the society, and specifying the mode in which it is so authorised.
- (3) If the Registrar considers that any document accompanying an application does not disclose sufficient information regarding the trusts on which any property is held by the applicant or applicants, or regarding the purposes and constitution of any society, he may refuse to register the trust or society as provided in this Act until such further information as he requires is supplied to him.
- (4) Original documents may in any case accompany any such application instead of copies, and the provisions of subsection (5) of section 25 of this Act shall thereupon apply in respect of the documents.

7 Registration of Boards

- (1) The Registrar shall, on being satisfied that the purposes of the trust or society (as the case may be) are exclusively or principally charitable, and that the procedural requirements of this Act have been observed —
 - (a) enter the name of the Board in the register kept by him under this Act, together with particulars as to whether a trust or a society constitutes the Board, the place of its registered office, and such other particulars as he thinks fit; and
 - (b) issue under his seal a certificate that the Board has been incorporated under this Act on the date mentioned in the certificate.
- (2) From the date of incorporation mentioned in the certificate of incorporation the Board shall be a body corporate, and shall consist of —
 - (a) the persons who are for the time being the trustees of the trust in any case where a trust is incorporated as a Board; or
 - (b) the persons who are for the time being the members of the society in any case where a society is incorporated as a Board.

8 Evidence of incorporation

Every certificate of incorporation issued under the seal of the Registrar shall be sufficient evidence, in the absence of proof to the contrary, that the Board therein named was incorporated on the date specified in the certificate, and that the procedural requirements of this Act have been observed, but shall not be evidence that the purposes of the trust or society are exclusively or principally charitable.

9 Effect of incorporation

Every Board shall have perpetual succession and a common seal and (subject to this Act and to the rules and other documents providing for the constitution of the Board) shall be capable of holding real and personal property of whatsoever nature and whether situated in Tonga or elsewhere, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

10 Vesting of property

- (1) All property held by the trustees of any such trust or by any society shall immediately upon incorporation of the trust or society as a Board vest without transfer, conveyance, or assignment in the Board for the same purposes, with the same powers, and upon and subject to the same trusts, contracts, and equities as then affect the same.
- (2) Where any estate or interest in, or any mortgage or charge on, any land under the Land Act is vested in a Board by virtue of this section, the Board shall

without delay advise the Minister of Lands under its common seal of such estate, interest, mortgage or charge and the Minister of Lands shall without delay register the Board as proprietor of that estate, interest, mortgage or charge.

11 Name of Board

- (1) No trust or society shall be incorporated under a name which is identical with that of any other Board, or of any company carrying on business in Tonga (whether registered in Tonga or not) or of any other body corporate or business established or registered in Tonga under any Act, or which so nearly resembles that name as to be calculated to deceive, except where the other Board, company, or body corporate, as the case may be, signifies its consent in such manner as the Registrar requires and the Registrar is satisfied that registration of the Board by that name will not be contrary to the public interest.
- (2) The name of a Board need not include —
 - (a) the words “Trust Board”; or
 - (b) any of the following words, namely, “Trust”, “Board”, “Society” or “Incorporated”.
- (3) No Board shall be registered with a name which contains the word “Royal”, or any other word which, in the opinion of the Registrar, is calculated to lead to the belief that the Board is under the ownership, control or patronage of —
 - (a) His Majesty, without the consent of the King;
 - (b) the Royal Family, without the consent of the King; and
 - (c) the Government, without the consent of the Cabinet.³
- (4) Every Board registered under this Act shall include on its letterhead and in all its publications that it is “incorporated under the Charitable Trusts Act”.

12 Change of name

- (1) In any case where a society is incorporated as a Board, the Board may, pursuant to a resolution of the society passed at a general meeting, apply to the Registrar to change the name under which the Board is registered.
- (2) In any case where a trust is incorporated as a Board, the Board may, pursuant to a resolution passed at a meeting of the Board, apply to the Registrar to change the name under which it is registered.
- (3) All applications for change of name under this section shall be accompanied by the certificate of incorporation of the Board.

- (4) Where the Registrar approves of the change, he shall enter the new name in the register in place of the former name and shall alter the certificate of incorporation to meet the circumstances of the case.
- (5) A change of name of a Board under this section shall not affect any rights or obligations of the Board, or render defective any legal proceedings by or against the Board, and any legal proceedings that may have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

13 Right to appeal to court

- (1) Any person dissatisfied with any decision of the Registrar may appeal to the Court against that decision:

Provided that before the Court hears the appeal that person shall adduce proof of circumstances which in the opinion of the Court make it proper that he should make the appeal.
- (2) Notice of every such appeal shall be filed in the Court and served upon the Registrar within 28 days after the day on which the decision appealed against was given.
- (3) If in any case the appellant does not prosecute his appeal with due diligence, the Court, on application made by the Registrar or any person interested, may dismiss the appeal and make such order as to costs as it thinks proper.

14 Service on a Board

Any notice or legal process shall be deemed to be served upon a Board if left at its registered office or if sent through the post in a registered letter addressed to the Board at that office.

15 Forms of Contracts

- (1) Contracts on behalf of a Board may be made as follows —
 - (a) a contract which if made between private persons would be by law required to be by deed may be made on behalf of the Board in writing under the common seal of the board, attested in such manner as may be provided in the rules or other documents providing for the constitution of the society that is incorporated as the Board or of which the members of the Board are the trustees, or (in the absence of any such provision) attested by at least 2 members of the committee or other governing body of the society that is incorporated as the Board or by at least 2 of the trustees of the trust which is incorporated as the Board and may in the same manner be varied or discharged;

- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties thereto, may be made on behalf of the Board in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;
 - (c) a contract which if made between private persons would by law be valid although made by parol only, may be made by parol on behalf of the Board by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.
- (2) A contract made according to this section shall be effectual in law, and shall bind the Board and its successors and all other parties thereto, their heirs, executors or administrators as the case may be.

16 Presumption of validity of acts trustees, etc.

All acts or deeds done or made by any person acting in good faith as one of the trustees of a trust which for the time being constitutes a Board, or as one of the committee or governing body for the time being of a society which constitutes a Board, shall be valid notwithstanding any defect that may afterwards be found in his appointment; and the signature of any person purporting to act as one of those trustees or as a member of that committee or governing body shall, in the absence of proof to the contrary, be sufficient evidence of his being one of those trustees or a member of that committee or governing body, as the case may be.

17 Powers in respect of property

- (1) Without prejudice to any other power that a Board may have by virtue of this Act or any other Act, a Board may —
- (a) with the consent of the Court, dedicate all or any part of its property for any public purpose:
Provided that consent shall not be given unless the Court is satisfied that the purpose for which the trust was created cannot be fulfilled;
 - (b) notwithstanding any provision to the contrary in the trust instrument, sell or exchange all or any part of its property:
Provided that, where it is of the essence of the trust that a particular property be used for the purpose of the trust, no sale or exchange may be made without the consent of the Court;
 - (c) apply any money for the time being held by the Board for or towards the acquisition of any property whether situated in Tonga or elsewhere, and any property so acquired shall be held upon the same trust as affected the money applied in the acquisition of the property.
- (2)

- (a) Any money or property received in consequence of a sale or exchange referred to in subsection (1) of this section shall be held in the same trust as affected the property before its sale or exchange.
- (b) Any money referred to in this section may be invested by the Board in any investment for the time being authorised by law for the investment of trust funds.

18 Power to incorporate for charitable purposes under other Acts

Nothing in this Act shall prevent any company, society, or corporation from being incorporated under any other Act or otherwise for any religious, educational, or other charitable purpose, or from including any such purpose among its objects:

Provided that no Board incorporated under this Act shall be incorporated under any other Act.

19 New trusts, and alterations of rules, trusts, or registered office

- (1) If any variation is made in the trusts on which any Board holds any property, or if any additional property becomes vested in any Board on trusts not completely shown in the declarations and the copies of the relevant parts of wills and declarations of trust and other documents already lodged with the Registrar, then, within one month from the date of the variation or vesting, there shall be lodged with the Registrar —
 - (a) a copy (certified by one of the trustees of the trust constituting the Board or by a member of the committee or governing body of the society constituting the Board, as a correct copy) of the relevant parts of every scheme, order, will, declaration of trust, and other documents which (when read where necessary with the copies and documents already lodged with the Registrar) show the trusts as varied and the trusts on which the additional property is vested in the Board; and
 - (b) a statutory declaration by any such trustee or member setting forth the variation of the trusts or the trusts on which the additional property is held so far as they are not shown in any such scheme, order, will, declaration of trust, or other document.
- (2) If any alteration is made in the rules or other documents providing for the constitution of any Board, and the alteration affects the trusts on which any property is held or is to be held, or if any Board desires to alter the address of its registered office, notice of the alteration or desired alteration shall be given to the Registrar within one month from the date thereof. Where any Board gives notice under this subsection of its desire to alter the address of its registered office and specifies a new address for its registered office with sufficient particularity to enable documents to be served by hand and served by post, the Registrar shall forthwith alter the registered address accordingly.

- (3) If in any case the requirements of this section are not complied with within any such period of one month, each of the trustees of a trust incorporated as the Board, or each member of the committee or other governing body of the society incorporated as the Board, and each officer of the Board, commits an offence and shall be liable on summary conviction to a fine not exceeding \$500 or not exceeding \$20 for every day thereafter during which the default continues or to both.

20 Winding up

Subject to this Act and to any regulations made thereunder, the winding up of a Board shall be governed by the same rules with such modifications as are necessary as govern the winding up of a company under the Companies Act.

21 Winding up of a Board by the Court

- (1) A Board may be wound up by the Court if the Court is satisfied that it is just and equitable that the Board should be wound up.
- (2) An application to the Court for winding up of a Board may be presented by —
 - (a) the Attorney General;
 - (b) the Board;
 - (c) a member thereof;
 - (d) a creditor thereof;
 - (e) the Registrar; or
 - (f) any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.
- (3) All costs incurred by the Attorney General or the Registrar in making application for the winding up of a Board shall, unless the Court otherwise orders, be a first charge on the assets of the Board.

22 Dissolution by Registrar

- (1) If at any time the Registrar is satisfied that a Board is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, he may make under his seal a declaration that the Board is dissolved as from the date of the declaration, and shall thereupon publish the declaration in the Gazette, and make in the register an entry of the dissolution of the Board.
- (2) Incorporation of the Board shall cease as from the date of the declaration irrespective of the date of the making of the entry in the register.
- (3) At any time thereafter the Registrar, on being satisfied that the declaration was made in error and ought to be revoked, may revoke the same by a

declaration in the Gazette, and shall thereupon make an entry of that revocation in the register, and the Board shall thereupon be revived from the date of the dissolution thereof as if no such dissolution had taken place.

- (4) The Registrar may at any time send to any Board, by registered letter addressed to it at its registered office, an inquiry as to whether or not the Board is still carrying on its operations. If no reply is received to that letter within 3 months of the posting thereof, or if the letter is not delivered and is returned to the Registrar, that shall be sufficient to satisfy the Registrar that the Board is no longer carrying on its operations:

Provided that nothing in this subsection shall prevent the Registrar from satisfying himself to that effect in any other manner.

23 Distribution of surplus assets on winding up or dissolution

On the winding up of a Board or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall be disposed of by the Court to such other charity, board or trust which by its nature and character most closely approaches the Board which has been wound up or failing which, to the Crown.

24 Register of Boards and seal of Registrar

- (1) The Registrar shall keep a register in which shall be recorded all matters required by this Act or by any regulations under this Act to be recorded by the Registrar.
- (2) The seal of the Registrar may be used for the authentication of any documents required for the purposes of this Act.

25 Inspection, production, and evidence of documents kept by Registrar

- (1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be prescribed.
- (2) Any Board may, on payment of the prescribed fee and on proof that the certificate of incorporation of the Board which has previously been issued has been lost or destroyed, require the Registrar to issue under his seal a further certificate of incorporation in respect of the Board.
- (3) Any person may, on payment of the prescribed fee, require a copy of or extract from the register or any document lodged with the Registrar under this Act to be given or certified by the Registrar under his hand and seal.
- (4) A copy of or extract from any document kept by or lodged with the Registrar under this Act, certified to be a true copy or extract under the hand and seal of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

- (5) At any time while there are no regulations prescribing the fees payable under this section, or so far as no such fees are prescribed by any regulations, the fees so payable shall be the same as those payable under the corresponding provisions in rule 19(3) of the Company Rules. All fees paid to the Registrar under this Act shall be paid into the general revenue of the Kingdom.

26 Exemption from fees

Except as provided in section 25 of this Act, no fee shall be payable to the Registrar in respect of any document made or thing done under or for the purposes of this Act.

27 Documents not liable to stamp duty

No document required by this Act to be delivered by the Registrar shall be liable to any stamp duty.

28 Power to make Regulations

The Minister may make such regulations as he deems necessary for carrying into full effect the provisions of this Act.

29 Register of trustees or members

- (1) Every Board shall keep a register of trustees or members of the committee or other governing body and shall supply details thereof to the Registrar on demand.
- (2) The Register shall contain the names, addresses and occupations of the trustees or members of the committee or other governing body and the dates of first appointment.

30 Audited annual financial statements

- (1) Every Board shall deliver annually to the Registrar in such form and within such time as he requires, an audited financial statement containing the following particulars —
- (a) the income and expenditure of the Board during the Board's last financial year; and
 - (b) the assets and liabilities of the Board at the close of the said year; and
 - (c) all mortgages, charges and securities of any description affecting any of the property of the Board at the close of the said year; and
 - (d) the names, addresses and occupations of all trustees or members of the committee or other governing body and the dates of appointment.

- (2) The said statement shall be accompanied by a certificate signed by an officer of the Board to the effect that the statement has been submitted and approved by the trustees or members of the committee or other governing body at a meeting of the Board.
- (3) If any default is made by a Board in the observance of the provisions of this section, every officer of the Board shall be liable to a fine not exceeding \$500 or not exceeding \$20 for every day thereafter during which the default continues or to both.

SCHEDULE

Form 1

THE CHARITABLE TRUSTS ACT

(Section 3 (3))

APPLICATION FOR INCORPORATION OF TRUST AS A BOARD

1. We being the trustees for , hereby apply for that trust to be incorporated as a Board under the provisions of the Charitable Trusts Act.

2. We desire the name of the Board to be

3. The registered office of the Board is to be at [State an address with sufficient particularity for service by hand and service by post of documents thereat].

4. This application is made with the authority of [State name of trust for which the trustees act and mode of authorisation by the trust].

5. The said trust is not itself incorporated.

6. The following documents are attached to this application: [Here insert a list sufficiently describing and identifying each document].

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7. We being the majority of the trustees sign as follows:

Dated this day of 20

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.....

Form 2

THE CHARITABLE TRUSTS ACT

(Section 4 (3))

APPLICATION FOR INCORPORATION OF TRUST AS A BOARD

1. We hereby apply for the incorporation of
(being a society established for charitable purposes which is not yet incorporated under the provisions of the Charitable Trusts Act or any other Act or otherwise) under the provisions of the Charitable Trusts Act.

2. We make this application as [Insert "the members (or the majority of the members) of the society"].

3. It is desired that upon incorporation the name of the society should be [Insert "as shown above", or "as the case may be"].

4. The registered office of the society is to be at [State an address with sufficient particularity for service by hand and service by post of documents thereat].

5. This application is made with the authorisation of the society given as follows: [State method of authorisation].

6. The following documents are attached to this application:
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[Here insert a list sufficiently describing and identifying each document].

7. We being the majority of the members sign as follows.

Dated this day of 20

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ENDNOTES

¹ Act 14 of 1993

Amended by Act 5 of 2012, commencement 30 July 2012

² Amended by Act 5 of 2012

³ Substituted by Act 42 of 2010