

Tanzania

## Trustees' Incorporation Act Chapter 318

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Trustees' Incorporation Act  
 Contents

1. Short title ..... 1

2. Application for incorporation ..... 1

3. Compulsory incorporation ..... 1

4. Persons not eligible to take part in management or administration as trustee ..... 1

5. Grant of certificate ..... 2

6. Names of bodies corporate ..... 2

7. Certificate to be evidence of compliance with requisitions ..... 2

8. Effect of incorporation ..... 2

9. Property to vest in body corporate ..... 3

10. Gifts to vest in body corporate ..... 3

11. Common seal ..... 3

12. Deeds and contracts ..... 4

13. Liability of trustees notwithstanding incorporation ..... 4

14. Registrar-General may investigate activities of trustee or trustees ..... 4

15. Certain trustees to be resident in Tanzania ..... 4

16. Nomination of trustees, filling of vacancies and return of trustees ..... 5

17. Monitoring meetings of body corporates, and organisations ..... 5

18. Postal address ..... 5

19. Notification of change of trust ..... 5

20. Registrar-General may call for audited accounts ..... 6

21. Persons responsible for supplying information ..... 6

22. Discretion to publish information for the benefit of members ..... 7

23. Revocation of incorporation ..... 7

24. Registrar-General may revoke or suspend incorporation ..... 8

25. Record of applications and documents to be kept and copies supplied ..... 8

26. Application to decide question whether a person is a member of a corporate body or as to property ..... 8

27. Appeals ..... 8

28. Offences ..... 9

29. Power to compound offences ..... 9

30. Exercise of power in relation to religious bodies ..... 9

31. Rules ..... 9

32. Repeal of R.L. Cap. 119 and saving ..... 9

# Tanzania

## Trustees' Incorporation Act

### Chapter 318

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[R.L. [Cap. 375](#); Ord. No. 18 of 1956; G.Ns. Nos. 112 of 1962; 478 of 1962; 112 of 1992; 242 of 1997; Acts Nos. 29 of 1967; 10 of 1999]*

**An Act to provide for the incorporation of certain Trustees.**

#### 1. Short title

This Act may be cited as the Trustees' Incorporation Act.

#### 2. Application for incorporation

- (1) A trustee or trustees appointed by a body or association of persons bound together by custom, religion, kinship or nationality, or established for any religious, educational, literary, scientific, social or charitable purpose, and any person or persons holding any property on trust for any religious, educational, literary, scientific, social or charitable purpose, may apply to the Administrator-General for incorporation as a body corporate.
- (2) Every such application shall be in writing signed by the person or persons making the application, and shall contain such particulars as may be prescribed and shall have annexed thereto copies, verified in the prescribed manner, of the constitution and rules of the body or association, if any, and of any trust instrument or declaration of trust defining the trusts on which such property is so held.
- (3) The Administrator-General may require such declaration upon oath or otherwise or other evidence in verification of the statements and particulars in the application, and such other particulars, information or evidence as he may think necessary or proper.

#### 3. Compulsory incorporation

Notwithstanding [section 2](#), a trustee or trustees holding property in trust for any religious, educational, literary, scientific, social or charitable purposes who has not or have not been incorporated under any law or whose incorporation is not provided by any law, shall apply for incorporation under this Act.

*[s. 2A]*

#### 4. Persons not eligible to take part in management or administration as trustee

- (1) Any person who is a member of a body corporate or organisation concerned with the management or otherwise concerned with the administration of such body corporate or organisation shall not be qualified to apply for incorporation as a trustee or trustees—
  - (a) if he is convicted of a criminal offence or any offence involving fraud or dishonesty;

- (b) if he is adjudged bankrupt under any written law or enters into any agreement or scheme of composition with his creditors, or takes advantage of any law for the benefit of his debtors.
- (2) No person who has been directly or indirectly concerned with the management or has otherwise been directly or indirectly suspended, shall without the approval of the Registrar-General act or continue to act in any capacity in the management or administration of any body corporate or organisation.
- (3) Any person who contravenes this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than two years or to a fine of not less than two hundred thousand shillings or to both.

[s. 2B]

## 5. Grant of certificate

- (1) If the Administrator-General shall consider such incorporation expedient, he may grant a certificate of incorporation, subject to such conditions or directions generally as he shall think fit to insert in such certificate, and in particular, but without prejudice to the generality of the foregoing, may impose restrictions on the amount of land which such body corporate may hold, and the uses to which such land may be put.
- (2) The Administrator-General shall give notice in the *Gazette* of all certificates of incorporation granted under this section.

[s. 3]

## 6. Names of bodies corporate

- (1) No trustee or trustees shall be incorporated with a name which in the opinion of the Administrator-General is undesirable.
- (2) The name of every body corporate created under this Act shall include the words "Registered Trustees".
- (3) A body corporate created under this Act may, with the prior approval in writing of the Administrator-General, change its name, and shall, within one month of so doing, notify the change to the Administrator-General in the prescribed manner.
- (4) Where a body corporate has changed its name, the Administrator-General may amend its certificate of incorporation or may issue a new certificate in substitution therefor.

[s. 4]

## 7. Certificate to be evidence of compliance with requisitions

Subject to the provisions of [section 23](#), a certificate of incorporation granted under [section 5](#) shall be conclusive evidence that all the preliminary requisitions herein or in any rules made hereunder and required 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.

[s. 5]

## 8. Effect of incorporation

- (1) Upon the grant of a certificate under subsection (1) of [section 5](#) the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have—
  - (a) perpetual succession and a common seal;
  - (b) power to sue and be sued in such corporate name;

- (c) subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest.
- (2) All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustee or trustees as trusts of the body or association of persons or under the trust instrument or declaration of trust, as the case may be.

[s. 6]

## 9. Property to vest in body corporate

The certificate of incorporation shall, subject to compliance with the Land Registration Act<sup>1</sup> and of any law amending or replacing the Land Registration Act, vest in such body corporate all movable and immovable property of whatever nature or tenure, belonging to or held by the trustee or trustees or by any other person or persons in trust for the body or association of persons or under the trust instrument or declaration of trust, as the case may be, and upon incorporation any person or persons in whose name or names any stocks, funds or securities shall be standing in trust for the body or association of persons or under such trust instrument or declaration of trust, as the case may be, shall transfer the stocks, funds or securities into the name of such body corporate, and all covenants and conditions relating to any such immovable property enforceable by or against the trustee or trustees thereof before his or their incorporation shall be enforceable to the same extent and by the same means by or against the body corporate.

[s. 7]

## 10. Gifts to vest in body corporate

After the incorporation of any trustee or trustees under this Act, every donation, gift and disposition of land, or any interest therein, lawfully made (but not having actually taken effect) or thereafter lawfully made by deed, will or otherwise to or in favour of the body or association of persons by whom the trustees were appointed, if any, or the trustee or trustees, or otherwise for the purposes of the trust, shall take effect as if the same had been made to, or in favour of, the body corporate for the like purposes.

[s. 8]

## 11. Common seal

- (1) The common seal of the body corporate shall contain the title of the body corporate and shall have such device as may be approved by the Administrator-General and until such common seal is provided a seal authorised by the Administrator-General may be used as the common seal of the body corporate.
- (2) Where a seal purporting to be the seal of a body incorporated under this Act has been affixed to a deed and attested in apparent compliance with the regulations of the body corporate governing the use thereof, no disposition effected by such deed in favour of a *bona fide* purchaser for value shall be defeasible solely by reason of any irregularity in such affixing or attestation or by reason of any defect in the appointment or qualification of any trustee.

[s. 9]

## 12. Deeds and contracts

- (1) Every deed to which a body incorporated under this Act is a party shall be executed by such body under its common seal or by an attorney appointed in that behalf under such common seal.
- (2) Except as provided in subsection (1), contracts made by a body incorporated under this Act shall not require the affixing of the common seal.

[s. 10]

## 13. Liability of trustees notwithstanding incorporation

All trustees incorporated under this Act shall, notwithstanding their incorporation, be chargeable for such property as shall come into their hands or which might by the exercise of due diligence have come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults, in the same manner and to the same extent as if no such incorporation had been effected.

[s. 11]

## 14. Registrar-General may investigate activities of trustee or trustees

- (1) Where the Registrar-General is of the opinion that a trustee incorporated under this Act uses or misuses any property vested in the trustee, he may investigate or authorise any fit and proper person to investigate on his behalf into the trustee.
- (2) If as the result of investigation carried out in pursuance of subsection (1), the Registrar-General is of the opinion that the trust property has been used, or misused in circumstances which are prejudicial to the interests of members of the body corporate or organisation in respect of which the trustee has been incorporated, he may—
  - (a) suspend or remove the trustee and any person found in use or misuse of such property;
  - (b) appoint a receiver and manager or the Public Trustee to take care of such property and run the day to day affairs of the body corporate or organisation for a period pending appointment of the new trustee or trustees;
  - (c) freeze the bank account of that body corporate or organisation;
  - (d) stop further action by the trustee or trustees in dealing with the property of the body corporate or organisation;
  - (e) refer the matter to a police officer of the rank of Inspector or above for further investigations with a view to taking further legal action in a court of law;
  - (f) pursue trustee or trustees who have committed breach of trust and to recover trust property or seek damages.

[s. 11A]

## 15. Certain trustees to be resident in Tanzania

- (1) Where a body incorporated under this Act consists of a sole trustee, that trustee shall be a person ordinarily resident in Tanzania.
- (2) Where a body incorporated under this Act consists of two or more trustees, not less than two of such trustees shall be persons ordinarily resident in Tanzania.
- (3) Notwithstanding the provisions of subsections (1) and (2) nothing in this section shall affect the capacity of a member of a body incorporated under the Land (Perpetual Succession) Ordinance<sup>2</sup> who

holds office as trustee on the date upon which this Act comes into force to continue in office as such trustee.

[s. 12]

## 16. Nomination of trustees, filling of vacancies and return of trustees

- (1) Where a certificate of incorporation has been granted, vacancies in the number of the trustees comprising the body corporate shall from time to time be filled by such legal means as would have been available for the appointment of a new trustee or new trustees if no certificate of incorporation had been granted.
- (2) When any person ceases to be a trustee and when any new trustee is appointed and when any trustee changes his name or residence or postal address, the change shall, within one month of the happening, be notified in writing to the Administrator-General, in the prescribed manner, by the trustees for the time being.
- (3) Whenever required in writing by the Administrator-General, and in any event within one month after the expiration of each period of twelve months after the grant of a certificate of incorporation, a return shall be made to the Administrator-General by the then trustee or trustees of the names of the trustee or trustees at such time as may be required or at the expiration of each such period, as the case may be, with his or their residences and postal addresses.

[s. 13]

## 17. Monitoring meetings of body corporates, and organisations

- (1) No changes of the names of a person who is or who were trustee or trustees of a body corporate or organisation incorporated under this Act shall be authorised by the Registrar-General unless he is satisfied that—
  - (a) there were held a lawful meeting of the body corporate or organisation for the purposes of electing a person or persons as trustee of such a body corporate or organisation;
  - (b) the meeting electing new leaders as trustees or any person to fill any vacancy was monitored by any of Government authorities.
- (2) In the case of religious bodies corporate or organisations, they shall each be monitored by their respective relevant supreme authority in Tanzania in accordance with their statutes, charter or instrument of that body corporate or organisation.

[s. 13A]

## 18. Postal address

Every body corporate created under this Act shall at all times have a postal address and any change of the postal address of the body corporate shall, within one month of the change taking place, be notified in writing to the Administrator-General by the body corporate.

[s. 14]

## 19. Notification of change of trust

Trustees incorporated under this Act shall within one month notify to the Administrator-General in the prescribed manner—

- (a) the adoption of any resolution changing the constitution or rules of the body or association, if any, by whom they were appointed, if and so far as any such change affects the powers or duties of the trustees, or their appointment or tenure of office, or the trusts to which they are subject; and

- (b) the execution of any deed, the making of any order, the exercise of any power or any other act or happening by which the trusts to which they are subject are changed.

[s. 15]

## 20. Registrar-General may call for audited accounts

- (1) The Registrar-General may by notice under his hand order any trustee or trustees incorporated under this Act to furnish to him, within a period prescribed in the order, duly audited accounts of any trustee or trustees incorporated under this Act.
- (2) For the purposes of this section "duly audited accounts" means accounts audited by an approved or authorised auditor.
- (3) Without prejudice to the provisions of subsections (1) and (2) of this section, the Registrar-General may at any time by notice under his hand order any trustee, within a time to be stated in such order, to permit its accounts to be inspected by himself or by a person authorised by him in writing.
- (4) Every office-bearer and every person managing or assisting in the management of a trust in respect of which a notice under subsection (3) of this section has been served shall supply to the Registrar-General or the person authorised by him such information relating to the accounts of the trust or other matters incidental thereto as the Registrar-General or such authorised person may require and, when the inspection is undertaken by a person authorised by the Registrar-General, such person shall make a report of his inspection and shall at the earliest practicable opportunity submit such report to the Registrar-General with such recommendations as he may deem fit to include.
- (5) Where the accounts of a trustee or trustees are inspected by a person authorised by the Registrar-General, there shall be paid to such person (if he is not in the employment of the Government) out of funds allocated for that purpose from the general revenue of Tanzania in respect of the inspection such reasonable fee as the Registrar-General may determine.
- (6) The trustee or trustees who, on the grounds of failure to comply with an order under this section, shall—
  - (a) have its incorporation revoked under [section 23](#);
  - (b) not be entitled to apply for incorporation under this Act until such an order has been complied with.

[s. 15A]

## 21. Persons responsible for supplying information

- (1) Any order made by the Registrar-General in relation to any trust incorporated under this Act shall be binding upon every office-bearer and upon every person managing or assisting in the management of any such trust in Tanzania who has been served with the order.
- (2) If any trustee fails to comply with the whole or part of any order given under [section 20](#), each of the persons mentioned in subsection (1) who had been served with the order, shall be liable on conviction to a fine of not less than five hundred thousand shillings unless he establishes to the satisfaction of the court that he has exercised due diligence and has failed to comply with the order for reasons beyond his control.
- (3) If any information supplied to the Registrar-General in compliance with an order given under [section 20](#) or any information supplied to the Registrar-General or the person authorised by him in compliance with an order given under [section 20](#), is incorrect or incomplete in any material particular, the person who has supplied such information shall be liable on conviction to a fine of not less than two hundred thousand shillings unless he establishes to the satisfaction of the court that he believed and had good reason to believe that the information was correct and complete.

[s. 15B]

## 22. Discretion to publish information for the benefit of members

The Registrar General, where it appears to him to be in the interest of the members of a body corporate or organisation so to do, may, with the approval of the Minister take such steps as may be necessary to publish to such members or the members by advertisement in the *Gazette*, and in any local newspaper or in such other manner as he may think fit, any information furnished by or on behalf of such trustee or trustees as was reported to the Registrar General in pursuance to [section 20](#) or [section 21](#).

[s. 15C]

## 23. Revocation of incorporation

- (1) The Administrator-General may—
  - (a) if he is satisfied that a body incorporated under this Act has obtained its certificate of incorporation by means of any fraud or false representation; or
  - (b) if for a period of one month there are no trustees comprising a body corporate created under this Act, or if at any time the number of such trustees ordinarily resident in Tanzania falls below the minimum number of such trustees required to be so ordinarily resident in the case of the body corporate under the provisions of [section 15](#); or
  - (c) if he is satisfied that any such body corporate has ceased to hold any trust property and that it is improbable that it will hold such property in the future; or
  - (d) if he is satisfied that any such body corporate has failed to fulfil or perform any of the conditions or directions inserted in its certificate of incorporation, or any of its obligations or duties under this or any other Act, or under the constitution and rules, or trust instrument, or declaration of trust, by which it is governed, as the case may be; or
  - (e) if the trusts governing any such body corporate are so changed that they are no longer within the provisions of subsection (1) of [section 2](#), serve notice on the body corporate, or, where the body corporate has failed to give notice to the Administrator-General of a change of postal address or cannot be found with the exercise of due diligence, give notice in the *Gazette* that he intends to revoke the incorporation of such body corporate, either unconditionally or unless such conditions as he may determine are satisfied within such period as may be specified in the notice, and a copy of every such notice shall, if practicable, be sent to the body or association, if any, which appointed the trustee or trustees.
- (2) At the expiration of such period as aforesaid, the Administrator-General may by notice in the *Gazette* revoke the incorporation of such body corporate and thereupon the trustee or trustees shall cease to be incorporated and all movable and immovable property vested in the body corporate shall, subject to the provisions of the Land Registration Act<sup>5</sup> or any Act amending or replacing the same, vest in the trustee or trustees for the time being, and if more than one, jointly, or where there is no trustee, in the Public Trustee, upon the same trusts as such movable and immovable property was held by the body corporate immediately preceding the revocation of its incorporation, and all covenants and conditions relating to any such immovable property enforceable by or against the body corporate before the revocation of its incorporation shall be enforceable to the same extent and by the same means by or against the trustee or trustees or the Public Trustee, as the case may be, and his or their successors in title.
- (3) A body corporate may at any time request the Administrator-General to revoke the incorporation of such body, and upon receipt of such request the Administrator-General shall by notice in the *Gazette* revoke such incorporation; and thereupon the provisions of subsection (2) of this section as to the vesting of property and the enforceability of covenants and conditions shall apply.

- (4) When the incorporation of any body corporate has been revoked under the foregoing powers, the trustee or trustees shall forthwith render up the certificate of incorporation to the Administrator-General.

[s. 16]

#### **24. Registrar-General may revoke or suspend incorporation**

- (1) Without prejudice to [section 23](#), the Registrar-General may revoke or suspend at any time the incorporation of any trust if it is expedient so to do on the grounds that the body corporate or organisation—
- (a) is being used for unlawful purposes or for any purpose prejudicial to or incompatible with the maintenance of peace, order and good governance; or
  - (b) has altered its objects or pursues objects other than its declared objects; or
  - (c) has failed to comply with an order issued by the Registrar-General in pursuance of [section 20](#) or [21](#) within the time stated in the order; or
  - (d) has breached in any way the trust.
- (2) No revocation or suspension shall be effected under this section unless the Registrar-General has notified his intention to do so and the trustee or trustees concerned had an opportunity, within one month to submit to the Registrar-General reasons why the revocation or suspension should not be effected.

[s. 16A]

#### **25. Record of applications and documents to be kept and copies supplied**

The Administrator-General shall, in such manner as he shall think fit, keep a record of all applications for and certificates of incorporation, and shall preserve all documents sent to him under the provisions of this Act, and any person may require a copy or extract of any such document to be certified under the hand of the Administrator-General or of such other person as he may appoint for that purpose.

[s. 17]

#### **26. Application to decide question whether a person is a member of a corporate body or as to property**

When any question arises as to whether a person is a member of a body corporate or as to the vesting or divesting of any property under the provisions of this Act, any person interested in such question may apply to the High Court for its opinion on such question and notice of hearing shall be given to such persons and in such manner as the court shall think fit, and any opinion given by the court on an application under this section shall be deemed to have the force of a declaratory decree.

[s. 18]

#### **27. Appeals**

Any person aggrieved by the refusal of the Administrator-General to grant a certificate of incorporation or to approve a change of name, or by any conditions or directions inserted in any certificate of incorporation, or by the revocation of the incorporation of any body corporate may within twenty-one days after the notification of such refusal, conditions or directions or revocation, as the case may be, appeal to the Minister responsible for legal affairs and the Minister may make such order as the circumstances may require and except as aforesaid no appeal shall lie against any such refusal, conditions or directions or revocation.

[s. 19]

## 28. Offences

- (1) Where a body corporate created under this Act makes a default in making any return or giving any notice required by or provided for under the provisions of this Act to the Administrator-General within the time limited therefor, every trustee being a member of the body corporate commits an offence and is liable upon conviction to a fine not exceeding one thousand shillings for every month during which the default continues.
- (2) If any person in any return or notice to the Administrator-General required by or provided for under the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he commits an offence and is liable upon conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (3) Where the offence concerned relates the late filing of returns contrary to sections 6(3) and (4), 16(2) and (3) and 18, the defaulter shall in addition to any other penalty provided pay to the Registrar-General late filing fees of one thousand shillings for every month during which the default continues.

[s. 20]

## 29. Power to compound offences

Where in relation to any offence committed by any trust, organisation or other body under this Act the offender admits the offence and the penalty impossible for it would be a fine of any amount not exceeding five hundred thousand shillings the Registrar-General may, with the consent of the offender compound the offence by requiring the offender to pay the fine determined by the Registrar-General who shall then provide the offender with a valid receipt for the amount.

[s. 20A]

## 30. Exercise of power in relation to religious bodies

Notwithstanding the preceding provisions of this Act, the Registrar-General shall not exercise in relation to a religious body corporate or organisation any of the powers conferred upon him by sections 4, 14, 20, 21, 22 or 24 except after he has carried out consultations with the relevant supreme authority in Tanzania of the body or organisation concerned and in accordance with the statute, charter or instrument of that body corporate or organisation.

[s. 20B]

## 31. Rules

- (1) The Chief Justice may make rules of court for regulating any proceedings before and applications to the court under the provisions of this Act and for the fees to be paid in respect thereof.
- (2) Subject to the provisions of subsection (1), the Minister responsible for legal affairs may make rules for the better carrying out of the purposes and provisions of this Act, including the fixing of fees to be paid in respect of any matter under this Act required to be done, the prescribing of anything which this Act requires to be prescribed, the prescribing of forms, and the regulation of the records to be kept.

[s. 21]

## 32. Repeal of R.L. Cap. 119 and saving

The Land (Perpetual Succession) Act is hereby repealed without prejudice, however, to the validity of any certificate of incorporation or the creation of any body corporate under that Act, and all certificates of

incorporation issued under that Act and all bodies corporate created thereunder shall be deemed to be issued or created under this Act, and such bodies shall continue in existence accordingly.

[s. 22]