

The Commonwealth Of The Bahamas:

BILL

For

AN ACT to provide for the establishment and registration of Non- Governmental Organizations; to regulate the operations of Non- Governmental Organizations; so as to create transparency and accountability; to specify minimum standards which must be observed by all Non-Governmental Organizations; and to provide for matters connected therewith or incidental thereto.

PART I

PRELIMINARY

1. This Act may be cited as the

NON-GOVERNMENTAL ORGANIZATIONS ACT, 2005.

This act is to come into effect as of January 2007, all Non-Profit Organizations registered under the Companies Act of 1992 are not invalidated by the passing of this act. This act serves as a voluntary listing of non-profit NGOs which will be recognized by The Government of The Bahamas for potential participation in the various international forums.

Definition.

2. In this Act, unless the context otherwise requires:-

“auditor” means a person who examines and reports on financial statements or accounts;

“Board of Directors” means the Board of Directors of a Non-Governmental Organization appointed pursuant to section 12 of this Act;

“By-Law means any By-law made by a Non-Governmental Organization for its own internal regulation;

“financial year” means the period used by any Non-Governmental Organization registered pursuant to this Act to estimate its annual revenue and expenditure;”

“Minister” means the Minister to whom the subject of civil society is assigned by the Governor-General pursuant to Chapter VI (77) of The Commonwealth of The Bahamas

“Non-Governmental Organization” has the meaning assigned to it in section 3 below;

“sustainable human development” has the meaning assigned to it in section 7 below;

“Register” means the Register of Non-Governmental Organizations registered under this Act;”

PART II
REGISTRATION REQUIREMENTS

Non-Governmental Organization Defined.

3. (1) A Non-Governmental Organization is a legal entity which formed as a company limited by guarantee under the Companies Act whose aims, nature and objects, direct or indirect, are consistent with the principles enshrined in the preamble to The Commonwealth Of The Bahamas Constitution and the Universal Declaration of Human Rights and all those international and regional human rights treaties and instruments to which The Commonwealth Of The Bahamas is a party.

(2) Without prejudice to the generality of subsection (1) above, but subject to Chapter 3(24) of The Commonwealth Of The Bahamas Constitution, a Non-

Governmental Organization shall also have the following attributes and characteristics:-

(a) it shall be independent of Government control in its operations and management;

(b) within the laws of society, they are controlled by those who have formed them, or by boards of Management to which such people have delegated, or are required by law to delegate, responsibility for control and management;

(c) NGOs may engage in revenue generating activities. They do not however, distribute profit or surplus to shareholders or members. They use revenues generated solely in pursuit of their aim;

(d) its aims, objects and purposes shall be to achieve sustainable human development on a voluntary, non-profit basis;

(e) to act on concerns and issues which are detrimental to the well being, circumstances or prospects of people, the environment or society as a whole;

(f) its business and affairs shall be under the management and control of a Board of Directors, elected to office for a period and in a manner specified in its Articles of Association and no member of the Board of Directors or an officer or employee of the Non-Governmental Organization shall have any interest in using the objects, aims and purposes of the Non-Governmental Organization for personal gain or profit;

(g) There will be an element of voluntary participation in the organization: whether in the form of small numbers of board members or large numbers of members or beneficiaries giving their voluntarily;

(h) its activities in and within The Commonwealth Of The Bahamas shall be consistent with the principles and provisions of The Commonwealth Of The Bahamas Constitution.

4. (1) Subject to subsection (2) below, no Non-Governmental Organization or any member thereof shall enjoy any tax benefits provided under this Act unless such Non-Governmental Organization is registered under this Act.”

(2) The Attorney General may by Order published in the Gazette specify the period in which Non-Governmental Organizations already in existence and operating prior to the commencement of this Act shall be

Non-Governmental Organizations prohibited for operating unless registered.

required to register under this Act.

5. (1) The Minister may from time to time appoint a fit, suitably qualified proper person to be Registrar of Non-Governmental Organizations:

The Registrar
and Deputy
Registrar.

Provided that the Director of Legal Affairs shall act as the Registrar of Non-Governmental Organizations until such time as the Minister appoints a Registrar pursuant to subsection (1) above.

(2) The Registrar may have a Deputy Registrar and such other staff as may enable the full and effectual discharge of his duties as provided under this Act and any Regulations made thereunder.

6. (1) "Every Non-Governmental Organization desirous of being registered under this Act shall submit to the Registrar, within three months

Application
for
Registration.

of the commencement of this Act, or within such other time as may be prescribed, the documents and information referred to in subsection (2) below.”

(2) In support of such application, the Non-Governmental Organization shall furnish the Registrar with the following documents together with its application:-

(a) the Memorandum and Articles of Association of the Non-Governmental Organization, showing that it is a company limited by guarantee;

(b) the name and address of the Non-Governmental Organization;

(c) brief details of the aims, objects and purposes of the Non-Governmental Organization, especially those relating to sustainable human development and environmental sustainability in The Commonwealth of The Bahamas;

(d) the organizational structure of the Non-Governmental Organization (including without limitation details of its membership and management) and how its Directors are elected, their duties and powers and terms of office;

(e) the accounting and management procedures of the Non-Governmental Organization;

(f) the names, addresses and occupation of each member of the Board of Directors of the Non-Governmental Organization for each year, where applicable;

(g) the types of programmes that the Non-Governmental Organization intends to carry out for that year;

(h) the maximum annual estimated revenues and grants of the Non-Governmental Organization and, for a Non-Governmental Organization with revenues and grants of at least twenty-five thousand dollars per annum, the audited accounts of the Non-Governmental Organization for the previous financial year, duly audited by an independent auditor, and for a Non-governmental Organization with annual revenues and grants below twenty-five dollars per annum, the statement of accounts for the Non-Governmental Organization prepared by its accountant or bookkeeper;

(i) the By-laws of the Non-Governmental Organization.

(3) Where the aims, objectives and purposes of a Non-Governmental Organization require the Non-Governmental Organization to possess particular technical or professional qualifications or expertise, such Non-

Governmental Organization shall be required, within two months after registration, to submit to the Registrar satisfactory proof that its officers and/or employees are duly registered or licensed and comply in all respects under the relevant law in The Commonwealth of The Bahamas, where the practice of such profession is regulated by a specific law in The Commonwealth of The Bahamas.

(4) Notwithstanding the adherence of Non-Governmental Organization to the Code of Good Conduct for Caribbean NGOs.

Sustainable
human
development
defined.

7. For the purposes of section 3 and 6 (2) above, the expression “sustainable human development” shall be construed to include but not to be limited to any of the following:-

(a) a programme of activities by a Non-Governmental Organization which promotes, protects, educates and encourages respect of human rights generally and the fundamental rights and freedoms enshrined in Chapter III of the Commonwealth of The Bahamas Constitution in particular;

(b) a programme of activities which encourages, promotes, protects and develops the educational system to meet the basic needs of the Bahamaian society and economy;

(c) a programme of activities which educates the Bahamaian public or any section thereof about the Commonwealth of The Bahamas Constitution and laws and their constitutional and legal rights and obligations as enshrined thereunder;

(d) a programme of activities that assists communities in general, and certain marginalized groups like women and the youth in particular, in the planning, implementation and successful execution of community-based development projects;

(e) a programme of activities that promotes and encourages the formation and sustainable growth of social and civil society

Registration.

organizations, groups and societies concerned with the constitutional and legal rights of workers, and the legal rights of

fishermen, farmers, women, children, youth, the elderly, the disabled, marginalized sections of the society and other disadvantaged social groups;

(f) a programme of activities that promotes and encourages in the Commonwealth of The Bahamas the observance of primary and secondary health care and sanitary standards and health education;

(g) a programme of activities that assists local, rural or urban communities in engaging in income generating production projects;

(h) a programme of activities that promotes among Bahamains multi-cultural citizens, patriotism and national consciousness as Bahamians over and above identity at the ethnic level;

(i) a programme of activities that promotes, protects and disseminates Bahamian culture, or the culture of a specific cultural or ethnic group thereof;

(j) a programme of activities that promotes the participation of women in all spheres of national development, and that promotes gender awareness issues and sensitivity;

(k) a programme of activities that aims to provide supervised micro-credit schemes to community groups for the implementation of income generating projects; or

(l) any other programme of activities which promotes sustainable human development.

Environmental sustainability defined

8. For the purpose of section 3 and 6 (2) above, the expression “environmental sustainability” shall be constructed to include but not to be limited to any of the following:-

(a) a programme of activities that improves and maintains the well-being of the people and the natural environment of The Commonwealth of The Bahamas, and that meets the needs of the present generation without compromising the needs of future generations.

(b) a programme of activities by a Non-Governmental Organization which promotes, protects, educates and encourages respect, wise use, conservation and sustainable development of the natural resources of the Commonwealth of The Bahamas;

(c) a programme of activities which encourages, promotes, protects the biodiversity of The Bahamas and the development of the educational system or materials to meet the basic needs of the Bahamian society;

(d) a programme of activities that promotes and encourages the responsible conservation, protection and sustainable use of The Bahamas' natural environment, resources, antiquities and monuments;

9. (1) The Registrar shall, within such time as shall be prescribed, if he is satisfied after receipt of an application under section 6 (1):-

(a) that the organization making the application meets the

Effect of
Registration.

requirements of section 3 above;

(b) that the application complies with section 6 above;

(c) that the programme of activities of the organization complies with the requirements of section 7 above;

register the organization as a Non-Governmental Organization and issue to that organization a Certificate of Registration in the prescribed form, upon payment of any prescribed fee.

(2) The Registrar may refuse to register a Non-Governmental Organization where, in the opinion of the Registrar:-

(a) the name of the Non-Governmental Organization is similar to the name of another Non-Governmental Organization or other organization or entity as to be likely to mislead the public as to its true identity;

(b) the name of the Non-Governmental Organization is offensive to good morals;

(c) the application for registration does not comply with the requirements of this Act or any Regulations made thereunder.

(3) Where the Registrar refuses to register a Non-Governmental Organization under subsection (2) (c) above, he may direct the Non-Governmental Organization to resubmit, within such time as may be prescribed, a new application complying with the requirements of this Act. If the Non-Governmental Organization complies with the Registrar's direction within the prescribed time, he shall register the Non-Governmental Organization.

(4) Any Non-Governmental Organization, or a member or officer thereof aggrieved by the Registrar's refusal to register a non-Governmental Organization under subsection (2) above may appeal to the Supreme Court and the decision of the Supreme Court thereon shall be final.

9. (1) The Government shall designate a Ministry or Ministries to coordinate the activities of, and the relationship between, Non-Governmental Organizations and the Government with a view to establishing procedures for consultation and other related matters affecting sustainable human, environmental and/or economic development in The Bahamas:

Provided that until such time as the Government assigns the subject of “Non-Governmental Organizations” to a specific Ministry, each Ministry whose mandates are shared by an Non Governmental Organization will continue its interaction with said agencies pursuant to responsibilities and the functions provided in subsection (1) above.

(2) The duties of the Ministry designated under subsection (1) above shall include the following:-

Publication of
names in the
Gazette.
Appointment of
Staff.

(a) maintaining a directory of the addresses, telephone numbers, and contact persons of every Non-Governmental Organization registered under this Act;

(b) providing assistance to organizations desirous of being registered as Non-Governmental Organizations under this Act and producing guidelines explaining to such organizations, in a language which the members thereof understand, the criteria for and effects of, registration;

(c) providing technical and other assistance, if funds allow or where possible, upon request of from time to time as occasion demands, for the institutional strengthening of Non-Governmental Organizations;

(d) identifying, in appropriate cases, suitably qualified and experienced Non-Governmental Organizations to formulate, evaluate, implement or manage relevant projects funded by the Government or by local or foreign funding agencies.

10. In the month of June in each year, the Registrar shall cause to be published in the Gazette a list of all the names of Non-Governmental Organizations registered under this Act, a list of all Non-Governmental Organizations which were registered the preceding year but not currently registered.

PART III

APPOINTMENT OF STAFF, ETC.

11. (1) Unless provided otherwise in its Articles and Memorandum of Association or in its By-Laws, the Board of Directors of a Non-Governmental Organization may appoint and employ, at such remuneration and subject to such terms and conditions as it things fit, a suitably qualified, fit and proper person to be the executive officer of the Non-Governmental Organization.

(2) Unless otherwise provided in its Memorandum and Articles of Association or in its By-Laws, the person appointed under subsection (1) above

Board of
Directors.

may, with the approval of the Board of Directors, appoint and employ, at such remuneration and subject to such conditions as the Board things fit, such other officers, employees and agents as he considers necessary for the proper performance of the Non-Governmental Organization's aims, objects and purposes.

(3) The person appointed as executive officer of the Non-Governmental Organization pursuant to subsection (1) above shall, subject to the general policy directions of the Board of Directors, be responsible for the day to day management of the affairs of the Non-Governmental Organization, including the organization of staff in accordance with the general terms and conditions of service established by the Board of Directors.

PART IV

ADMINISTRATION

12. (1) Each Non-Governmental Organization registered under this Act shall, subject to its Memorandum and Articles or Association and its By-laws, have a Board of Directors or other committee or governing body and such Board of Directors, committee or governing body shall be the principal policy making organ of the Non-Governmental Organization.

(2) The Composition of the Board of Directors, committee or governing body referred to under subsection (1) above shall be as provided in the Memorandum and Articles of Association of the Non-Governmental Organization or in its By-Laws.

(3) The Memorandum and Articles of Association of the Non-Governmental Organization, or its By-Laws, shall specify:-

(a) the manner of electing the Chairman of the Board of Directors, committee or governing body of the Non-Governmental Organization;

(b) the period for which the Chairman shall be appointed;

(c) the period and place at which the Board, committee or governing body shall meet to transact the business of the Non-Governmental Organization;

(d) the disqualifications (if any) which a person may have in order to be ineligible to become a Director;

(e) the allowances (if any) which may be paid to the Directors;

Commercial activities.

Accounts and reports.

(f) the persons to whom the Board, committee or governing body may delegate its powers in respect of the affairs of the Non-Governmental Organization.

PART V

FINANCIAL PROVISIONS

13. (1) Every Non-Governmental Organization registered under this Act shall be exempt from the payment of income tax, but subject to the provisions of regulations made under subsection (3) below, may apply to the Minister of Finance to be exempted from the payment of business tax or any other tax, duty or impost levied by the Government from time to time.

Exemption from income tax, business tax, and other duties.

(2) Only Non-Governmental Organizations registered under this Act may apply for exemptions from the payment of business tax or any tax, duty or impost levied by the Government from time to time.

(3) The Minister shall, after consultation with the Minister responsible for Finance, make Regulations to give effect to the provisions of this section.

14. (1) Every Non-Governmental Organization registered under this Act may engage in any commercial income-generating project provided that:-

(a) such project is authorized by its Articles and Memorandum of Association or its By-Laws;

(b) the monies derived therefrom are credited to its account and are used exclusively for the furtherance of its aims, objects and purposes.

(2) Subject to subsection (3) below, where any Non-Governmental Organization registered under this Act is involved in the management and disbursement of monies on credit for projects to individuals or community-based groups, such monies, and any interest derived therefrom, shall not be liable to the taxes, duties and imposts referred to in section 13 (1) above.

(3) Subsection (2) above shall only be applicable where the monies disbursed by the Non-Governmental Organization and any interest derived

therefrom are approved by the Ministry of Finance to be exempt from the taxes, duties and imposts referred to in section 13 (1) above.

15. (1) Every Non-Governmental Organization registered under this Act shall keep accounts and other records in relation to its business and shall, subject to subsection (2) below, prepare annually a statement of accounts in a form which conforms to the best commercial and accounting standards.

Annual report.
Fiscal and
administrative
transparency.

(2) The accounts of every Non-Governmental Organization registered under this Act shall be audited annually by an auditor appointed in each year by its Board of Directors, committee or governing body.

(3) The provisions of this section shall be subject to section 6 (2) (h) above.

16. (1) Within four months after the end of each financial year, every Non-Governmental Organization registered under this Act shall cause to be made and submitted to the Registrar:-

(a) a statement of its accounts audited in accordance with section 15 (2) above;

(b) a certified copy of its financial statements;

(c) a report dealing generally with the programme of activities and policies of the Non-Governmental Organization during that financial year.

(2) The documents submitted to the Registrar pursuant to this section shall be open to inspection by any person upon payment of the prescribed fee.

(3) The Registrar shall publish in the Gazette, and in at least one local newspaper in circulation throughout [Country Name], in the month of September in each year, a copy of the financial statements and other documents submitted to him by each Non-Governmental Organization pursuant to subsection (1) above.

17. (1) Every Non-Governmental Organization registered under this Act shall implement internal accounting and administrative procedures necessary to ensure the transparent and proper use of its financial and other resources.

(2) Every Non-Governmental Organization registered under this Act shall, in addition to complying with the requirements of subsection (1)

above, also comply with the following:-

(a) submit to the designated Ministry of Government, the documents it submits to the Registrar pursuant to sections 6. (2) And 16 above, at the same time it submits those documents to the Registrar;

(b) utilize its financial and other resources for the attainment of its aims, objects and purposes;

(c) take steps to train its officers and employees so that they become efficient and professional in delivering the programme of activities of the Non-Governmental Organization.

Penalties. 18. (1) Every Non-Governmental Organization registered under this Act which fails to comply with the provisions of this Part shall:-

(a) have its Certificate of Registration cancelled by the Registrar;

(b) lose all the tax exemption privileges granted to Non-Governmental Organizations under this part:

Provided that before making a decision whether to cancel the Certificate of Registration of a Non-Governmental Organization under paragraph (a) above, the Registrar shall first make an independent investigation, either on his own motion or at the request of the designated Ministry of Government, and shall allow the Non-Governmental Organization to present its case.

(2) Any Non-Governmental Organization aggrieved by the Registrar's decision to cancel its Certificate of Registration may appeal to the Supreme Court whose decision thereon shall be final.

PART VI

NETWORKS AND ASSOCIATIONS

19. (1) Any international, regional or intergovernmental organization operating in The Commonwealth of The

International Non-Governmental Organizations.

Bahamas as a Non-Governmental Organization whose programme of activities falls within the definition of “sustainable

Regulations.
Commence-
ments.

development” shall be and is hereby required to be registered under this Act.

Associations
and Networks.

(2) The Minister may, exempt any intergovernmental organization

referred to in subsection (1) above from registering under this Act.

(3) Any international organization which intends to operate in The Commonwealth of The Bahamas as a Non-Governmental Organization shall not be entitled to any relief from taxes and duties as provided under this Act, unless it is registered hereunder, or unless it operates in The Commonwealth of The Bahamas only with a Non-Governmental Organization registered under this Act.”

20. (1) Every Non-Governmental Organization registered under this Act may, **subject to section 13** of the The Commonwealth of The Bahamas Constitution, associate with any other Non-Governmental Organization, within or outside The Commonwealth of The Bahamas, for the purpose of forming Associations, Federations or Networks.

(2) Every Association, Federation or Network established pursuant to subsection (1) above shall be and is hereby required to be registered under this Act and upon registration, the provisions of this Act shall apply to it as if it were a Non-Governmental Organization.

PART VII

MISCELLANEOUS

21. The Minister may make Regulations to give effect to the provisions of this Act.

22. This Act shall come into force on a day to be appointed by the Minister by Order published in the Gazette.