

# *Channels for Change*

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## **A Guide to Setting Up Civil Society Organisations in Namibia**





# ACKNOWLEDGEMENTS

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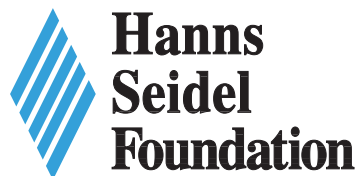
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# TABLE OF CONTENTS

<b>1. Introduction</b>	<b>4</b>
1.1 What is CIVIC +264?	4
1.2 What is the purpose of this Guide?	5
<b>2. Terminology</b>	<b>6</b>
2.1 General terms	6
2.2 Names for civil society organisations	8
2.3 Special types of civil society organisations	10
<b>3. Legal structures for civil society organisations</b>	<b>14</b>
3.1 Voluntary association	16
3.2 Trust	21
3.3 Non-profit company (“section 21 company”)	29
<b>Future Changes?</b>	<b>40</b>
<b>4. What every civil society organisation needs to know</b>	<b>41</b>
4.1 Duties relating to employment	41
4.2 Paying taxes and customs duties	44
4.3 Responsibilities under the Financial Intelligence Act 13 of 2012	46
4.4 Registering as a Welfare Organisation under the National Welfare Act 79 of 1965	48
4.5 Registering to carry out research under the Research, Science and Technology Act 23 of 2004	50
4.6 Lottery funding under the Lotteries Act 13 of 2017	51
4.7 Partnerships under the Public Private Partnership Act 4 of 2017	51
4.8 Local authority regulations	52
4.9 International NGOs	52
<b>5. Codes of ethics</b>	<b>53</b>
5.1 NamCode	53
5.2 International Code of Ethics and Conduct for NGOs	57
<b>Future Changes?</b>	<b>73</b>

# 1. Introduction

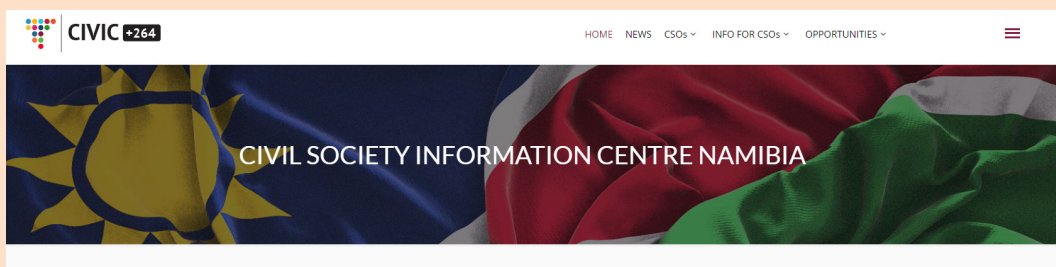
## 1.1 What is CIVIC +264?

*CIVIC +264 is a civil society organisation which was set up in 2019 to promote the sharing of information with and amongst civil society organisations in Namibia.*

### Objectives of CIVIC +264

- to act as a **conduit for information** relevant to civil society in Namibia
- to develop and maintain a **database of active Namibian civil society organisations**
- to **monitor and share developments** in civil society, government and the donor community which are relevant to civil society in Namibia
- to facilitate **networking opportunities** amongst civil society and between civil society and other relevant stakeholders
- to **connect civil society organisations with government bodies and donors** in connection with specific issues, in light of the areas of interest of various civil society organisations
- to create and maintain a **website** and a presence on appropriate **social media platforms** with the aim of enhancing communication to and between civil society organisations
- to produce and disseminate a regular **newsletter** focusing on news relevant to civil society and information about potential funding opportunities and government or legislative developments relevant to civil society
- to organise and coordinate an **annual Civil Society Indaba**, relevant **ad hoc meetings of civil society organisations, workshops, press conferences** and **other forums or events**, for the purpose of facilitating networking and coordination between civil society organisations and providing forums for discussion on issues of common interest

CIVIC +264 website: [www.civic264.org.na](http://www.civic264.org.na)



## 1.2 What is the purpose of this Guide?

The purpose of this Guide is to explain the different ways of setting up civil society organisations under Namibian laws, and some of the advantages and disadvantages of each type of structure. The Guide also discusses some issues that are relevant to all civil society organisations.

### USEFUL RESOURCES

- “How to create a non-profit group”, Legal Assistance Centre, 2023, available at [www.lac.org.na/projects/grap/Pdf/non-profit.pdf](http://www.lac.org.na/projects/grap/Pdf/non-profit.pdf)
- Benedict C Ihome, “The Legal and Regulatory Framework for Civic Organizations in Namibia”, The International Journal of Not-for-Profit Law, Vol 11 Issue 2, February 2009, available at [www.icnl.org/resources/research/ijnl/the-legal-and-regulatory-framework-for-civic-organizations-in-namibia#\\_ftnref10](http://www.icnl.org/resources/research/ijnl/the-legal-and-regulatory-framework-for-civic-organizations-in-namibia#_ftnref10).  
Note that some of the legal information in this article is now outdated.
- “Registration of Civil Society Organisations in Namibia: A Handbook”, INara, 2005, available at [www.academia.edu/42960564/Registration\\_of\\_Civil\\_Society\\_Organisations\\_in\\_Namibia\\_A\\_Handbook\\_Supported\\_by\\_the\\_German\\_Development\\_Service\\_and\\_Nara\\_Training\\_Centre](http://www.academia.edu/42960564/Registration_of_Civil_Society_Organisations_in_Namibia_A_Handbook_Supported_by_the_German_Development_Service_and_Nara_Training_Centre).  
Note that some of the information in this document is now outdated.
- Legal Resources Centre, “Legal Structures commonly used by Non-Profit Organisations”, 2002 published in South Africa and available at [www.etu.org.za/toolbox/docs/building/lrc.html](http://www.etu.org.za/toolbox/docs/building/lrc.html).  
However, note that the South African law on civil society organisations is different from the Namibian law in some respects.



# 2. Terminology

## 2.1 General terms

*There are many overlapping terms that people use to describe what this Guide refers to as **civil society organisations**. Note that none of these are general legal terms in Namibia, and none of them have precise definitions.*

### **Civil society organisations (CSOs)**

Civil society organisations are non-profit groups formed voluntarily by citizens to advance shared goals or interests. The hallmark of civil society organisations is that they are separate from government, family groups and profit-making enterprises.

### **Non-governmental organisations (NGOs)**

Non-governmental organisations are non-profit groups that function independently of government. In Namibia, this term is used interchangeably with the term civil society organisations. Some non-governmental groups prefer the designation “non-State actors”.

### **Non-profit organisations (NPOs)**

Civil society organisations are generally non-profit organisations. Non-profit organisations are groups that are set up for some public purpose other than making a profit. Non-profit organisations sometimes engage in income-generating activities, but they use this income to further their objectives instead of distributing their profits to their members. Non-profit organisations are often unable to generate enough income to cover all their expenses, meaning that they must raise funds from donors or other sources.

### **Community-based organisations (CBOs)**

Community-based organisations are typically civil society organisations that work in a single local community.

### **Charitable organisations (charities)**

Charitable organisations are civil society organisations that provide funds or services to help people with some kind of need, such as addressing poverty, hunger, educational needs, lack of adequate housing or social welfare issues.

### **Faith-based organisations (FBOs)**

Faith-based organisations are civil society organisations that are affiliated with a religious group or inspired by religious or spiritual beliefs.

## ***Umbrella bodies***

An umbrella body is just one of many terms for groups that bring together civil society organisations (and sometimes other stakeholders as well). Some other terms for this kind of group are listed below, but there may be other names that are not on the list. Umbrella bodies may be informal relationships, or they may be formally constituted as civil society organisations in their own right.

**Alliance**  
**Association**  
**Campaign**  
**Coalition**  
**Chamber**  
**Council**

**Forum**  
**Federation**  
**Movement**  
**Network**  
**Society**  
**Union**

Examples of past and present umbrella bodies in Namibia include the Church **Alliance** for Orphans, the Museums **Association** of Namibia, the Multi-Media **Campaign** Against Violence against Women and Children (no longer in existence), the Basic Income Grant **Coalition**, the Namibian **Chamber** of Environment, the **Council of Churches in Namibia**, the Shack Dwellers **Federation** of Namibia, the National **Federation** of People with Disabilities in Namibia, the Namibia Equal Rights **Movement**, the Hardap Region Civil Society Organizations **Network**, the Namibia Agricultural **Union** and the Namibia National Farmers **Union**.

## ***International NGOs***

This term refers to non-governmental organisations (NGOs) that have an international scope of work. Some examples are Amnesty International, Doctors Without Borders, the Namibia Red Cross Society (which is part of the International Federation of Red Cross and Red Crescent Societies), Project HOPE, Transparency International and the Wikimedia Foundation (a non-profit organisation that hosts the popular online publication “Wikipedia”). There is no general requirement for international NGOs to register in Namibia, but some types of international NGOs must comply with certain duties under Namibia’s **Companies Act 28 of 2004**. There could be other situations where international NGOs must follow specific requirements contained in agreements between the Namibian government and the NGO, or between the Namibian government and the government of the country where the international NGO is headquartered. Rules for international NGOs operating in Namibia are not covered in this Guide.



## 2.2 Names for civil society organisations

### What's in a name?

- The names used by civil society organisations can be very confusing. The important thing to remember is that most names for civil society organisations do not have specific legal meanings and so do not signal that the organisation belongs to a specific category of civil society groups.
- For example, a group that calls itself a “network” might be an umbrella body that brings together multiple organisations, or it might be an organisation made up of individuals. A group that calls itself an “association” might be a voluntary association, but this is not necessarily the case.
- Some names are simply a matter of choice, while others - such as “trusts” and “co-operatives” - have specific legal meanings in Namibia and require compliance with the legal rules and procedures which apply only to that kind of group.
- The name of a civil society organisation should not be misleading, by implying that a group is set up in a certain way when it is not. For example, a civil society organisation should not refer to itself as a trust if it is not actually set up as a trust. This could be considered fraud.

### Association

Association is a word commonly used to describe a group of people who come together for a common purpose. As explained elsewhere in this Guide, one of the legal structure for a civil society organisation is a “voluntary association”, while another is a “non-profit association” registered under the Companies Act (a term used in the law for a non-profit company, also known as a section 21 company). But groups that use the word “association” are not necessarily set up in either of these ways, because the word “association” is often used in its more general sense. Organisations that call themselves “associations” may be umbrella bodies that bring together multiple organisations, or they may function simply as a single civil society organisation without group membership.

Examples of Namibian groups that use the name “association” are the Autism Association of Namibia (which is set up as a non-profit company) and the Economic Association of Namibia (which is also set up as a non-profit company).

### Centre

The term “centre” is often used to describe organisations that operate out of one primary physical office. But again, this is not necessarily the case for every group that uses this term as part of its name.

Examples of Namibian groups that use the name “centre” are the Legal Assistance Centre (which is set up as a trust), the Women’s Leadership Centre (which is also set up as a trust) and the Civil Society Information Centre (set up as a voluntary association).



## Foundation

The term “foundation” is often used to describe organisations with their own sources of funds which they spend according to their own judgment on projects or activities for public benefit. They may give grants to individuals or groups for specific activities. But the term “foundation” is not always used to indicate this meaning. There is no legal framework that specifically applies to foundations in Namibia, so they are structured like any other civil society organisation.

Examples of Namibian groups that use the name “foundation” are the One Economy Foundation (which is set up as a non-profit company) and the Namibia Nature Foundation (which is set up as a trust).

## Institute

The term “institute” is often used for organisations that have a scientific, educational or social purpose – but this is not necessarily the case.

Examples of Namibian groups that use the name “institute” are the Namibia Institute for Democracy (which is set up as a non-profit company) and the Institute for Public Policy Research (which is set up as a non-profit company).

## Other names

The list below contains some other names that are often used to describe civil society organisations. You will note that some of these names may describe either umbrella groups or individual civil society organisations. This list is not complete because there are many, many possible names.

Alliance	Group
Association	Initiative
Campaign	Movement
Coalition	Network
Chamber	Organisation
Council	Project
Federation	Society
Forum	Union

Groups may choose a name that describes what they do, a name that is easy to remember or a name that will set them apart from other groups. Some groups may be affiliated to an international network that uses the same name for its affiliated groups in different countries.

Some Namibian examples of names that are simply descriptive include Beautiful Kidz, Havana Soup Kitchen and Men on the Side of the Road. One Namibian example of a group with a name used across different countries is LifeLine/ChildLine; groups around the world with the same or similar names are part of a global network called Child Helpline International.

The names of civil society organisations do not have to be in English.

Some Namibian examples of names of civil society organisations that are not in English are the Ombetja Yehinga Organisation, Ileni Tulikwafeni and the Deutsch-Namibische Gesellschaft.

## 2.3 Special types of civil society organisations

*This section gives a quick overview of some special types of civil society organisations that must be set up according to special rules and procedures. It does not describe all of the requirements in detail. If you want to set up one of these groups, you should check the law cited for more information, or contact the relevant ministry or registering authority. Updated versions of all of the laws in force in Namibia are available on the Legal Assistance Centre website: [www.lac.org.na/index.php/laws/statutes](http://www.lac.org.na/index.php/laws/statutes). This website also includes the regulations under each law, which may contain more detail.*

### Conservancies

A conservancy is a community-based mechanism that gives residents in communal areas a way to benefit from the wildlife in their area, under the management of a conservancy committee set up according to the rules in the **Nature Conservation Ordinance 4 of 1975**.

This process can be initiated by any group of persons residing on communal land who want to have the area where they live declared to be a conservancy. The community must decide on the people to serve on the conservancy committee, who must be representative of the people who live in the conservancy area. They must also prepare a constitution that provides for the sustainable management and utilization of game in the proposed conservancy area, and a statement identifying the geographic area that will become the conservancy. They must then apply to the **Minister of Environment, Forestry and Tourism** for recognition and for an official declaration of the land in question as a conservancy.

The community is then in a position to set up a system of community game guards to monitor and preserve the wildlife in the area, and to gain profits for the community through agreements with groups such as tourist enterprises.

### Co-operatives

The word “cooperative” comes from the word “cooperate”, which means working together to reach a common goal. A cooperative is an organisation formed by a group of people who have a common need that they want to address jointly, or a group of people who want to create employment for themselves. A cooperative is controlled democratically, so that each member has an equal voice in decisions. A cooperative’s primary duty is to its members, not to anyone outside the cooperative. The benefits or services of the cooperative are shared by all of the members, while members’ liability for losses depends on the rules of the specific co-operative.

In Namibia, a co-operative can be either a workers’ co-operative or a service co-operative. A *workers’ co-operative* creates employment for its members. But the employees work for the benefit of the co-operative and its members, as opposed to a company where employees work for wages and the profits of the company benefit the company’s shareholders. A *service co-operative* provides services to its members. It might be a marketing and supply co-operative, a consumer co-operative, a housing co-operative, or a savings and credit co-operative.

A co-operative must comply with the requirements in the **Co-operatives Act 23 of 1996**, and it must be registered with the Registrar of Co-operatives in the **Ministry of Agriculture, Water and Land Reform**. For instance, a co-operative must have at least seven members who are citizens or residents of Namibia, and it must have by-laws that cover certain issues set out in the law. The law also sets out certain procedures that must be followed when forming a co-operative.

## **Facilities for children**

A person or a group that wants to operate a facility that cares for children must follow the rules in the **Child Care and Protection Act 3 of 2015** and apply to register the facility with the **Ministry of Gender Equality, Poverty Eradication and Social Welfare**. This applies to children’s homes, child detention centres, day-care centres and crèches, early childhood development centres, places of safety and shelters. All of these facilities must comply with minimum standards set by the law and by the Ministry.

The people who operate these facilities, and the persons who work or volunteer there must provide a police clearance certificate (known as a “Certificate of Conduct”) showing that they have not been convicted of certain types of crimes that would make them unsuitable to have access to children. All of these types of facilities must respect the rights of children and they are subject to regular monitoring and inspection by the Ministry. For more information, see the *Guide to Namibia’s Child Care and Protection Act 3 of 2015* produced by the Ministry together with the Legal Assistance Centre. Chapter 7 of the Guide deals with facilities and is available here:

<http://www.lac.org.na/projects/grap/Pdf/7-Facilities.pdf>.

## **Friendly societies**

A friendly society is a group that comes together to provide a financial or social benefit for its members – such as support for persons who are old or ill, funeral expenses, educational expenses, or support for people who are out of work or retired. The members make contributions to the friendly society that go towards the chosen kind of support in times of need. Friendly societies were particularly important in the past, when commercial insurance policies were less widespread and government support for persons in need was less extensive.

A friendly society must be set up according to the rules in the **Friendly Societies Act 25 of 1956**. This law lists the purposes that friendly societies can serve in Namibia. A friendly society must register with the **Ministry of Finance and Public Enterprises**. It must have a set of rules explaining how it will operate, and a certificate from a person with a specific type of financial knowledge confirming that the society’s rules are financially sound. The law sets up a number of other requirements that friendly societies must follow.

## **Non-profit companies**

“Non-profit company” and “section 21 company” are common informal terms for what is technically a “non-profit association incorporated under section 21 of the Companies Act”. (“Section 21” is the section of the Companies Act that applies to non-profit companies.) A civil society organisation which chooses this structure must follow the rules in the **Companies Act 28 of 2004** and register with the **Registrar of Business and Industrial Property** at the **Business and Intellectual Property Authority (BIPA)**. (Before 2017, the relevant official was known as the Registrar of Companies.) This is a common legal structure for civil society organisations, so it will be discussed in detail in the next chapter.

## **Political parties or associations**

A political party is a group that seeks to participate in elections in Namibia. It must be registered by the **Electoral Commission of Namibia** under the **Electoral Act 5 of 2014** before it can take part in elections.

A political party must have a constitution, and it must show that it has the support of at least 3500 registered voters from a minimum of seven of the regions in Namibia before it can be registered.

It must also comply with other requirements set out in the law. For example, a political party must not exclude or restrict membership on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status, and it must not accept or advocate the use of force or violence as a means of attaining its political objectives.

The Electoral Act makes similar provision for an association or an organisation to register to participate in a local authority election, if it can show that it has the support of at least 250 voters who are registered to vote in the election for that local authority.

### **Professional associations**

People who practice particular trades or professions may join together in a professional association that is open only to members of those trades or professions.

Sometimes these bodies are set up under a specific statute as a way to allow the trade or profession in question to regulate itself for the protection of the public, in addition to promoting the interests of the trade or profession in question. In such cases, the law will set out duties, rules and procedures for the professional association. Examples are the Estate Agents Board ([Estate Agents Act 112 of 1976](#)), the Namibia Institute of Architects ([Architects' and Quantity Surveyors' Act 13 of 1979](#)), the Engineering Council of Namibia ([Engineering Profession Act 18 of 1986](#)), the Law Society of Namibia ([Legal Practitioners Act 15 of 1995](#)) and the Medical and Dental Council of Namibia ([Medical and Dental Act 10 of 2004](#)). Professional associations set up under statutes will typically carry out at least some government functions by regulating the profession in question in accordance with the statute. This means that such groups are not strictly part of civil society – although they may have roles beyond their statutory duties that align them with civil society in some respects.

Professional bodies may also be set up without specific statutory authority as civil society organisations that serve the interests of the trade or profession in question. Examples are the Namibia Professional Hunting Association, the Hospitality Association of Namibia, the ICT Professional Association of Namibia and Visual Artists Namibia.

### **Trade unions or employers' organisations**

A trade union is an organisation of workers formed to protect and advance its members' rights and interests. An employers' organisation is an organisation of employers, formed to represent and promote its members' interests. Both types of groups are typically involved in regulating relations between employers and employees.

Trade unions and employers' organisations fall under the [Labour Act 11 of 2007](#). This law contains certain requirements for the constitutions of these groups and provides for a procedure for registration with the [Labour Commissioner](#) at the [Ministry of Labour, Industrial Relations and Employment Creation](#). A trade union or an employers' organisation can exist without being registered under the Labour Act, but registered groups have certain rights, duties and protections under the Act, such as the power to enter into collective agreements on behalf of their members. Registration comes with certain rights and duties, including the duty to disclose foreign and local donations.

### **Trusts**

In general terms, a trust is a legal arrangement where someone (the founder) gives control over assets to another person (the trustee) for the benefit of someone else (the beneficiary) or for a public interest objective. Trusts are currently regulated in Namibia by the [Trust Administration Act](#)



**11 of 2023** together with the common law, which means the law developed over time through court cases. Namibian trusts must be filed with an official called the **Master of the High Court**. This is a common legal structure for civil society organisations, so it will be discussed in detail in the next chapter.

### **Voluntary associations**

A voluntary association is a group of three or more people who agree to work together for a common non-profit objective. It is usually formed by means of a written constitution that must contain a few basic elements. The rules for voluntary associations are not set out in any statute. Voluntary associations are regulated by the common law, which means the law developed over time through court cases. Voluntary organisations are not generally required to register with any government ministry or government official.

However, voluntary associations that engage in certain welfare activities and solicit government funding or public donations must register with the **Ministry of Health and Social Services** as “welfare organisations”. A voluntary association is a common legal structure for civil society organisations, so it will be discussed in detail in the next chapter.

### **Welfare organisations**

Civil society organisations that engage in certain “public welfare” activities AND intend to request donations from the government at national, regional or local level OR collect money from the general public must register with the **Ministry of Health and Social Services** as “welfare organisations” under the **National Welfare Act 79 of 1965**. A registered welfare organisation receives a certificate of registration from the Ministry which it can present to show that it is validly soliciting donations for public welfare activities. Because this type of registration may be relevant to many civil society organisations, it is explained in more detail in section 4.4 of this Guide.

**A welfare organisation is NOT a legal structure for setting up a civil society organisation.**

## **STATUTORY BODY**

Sometimes statutes will set up bodies that are concerned with the interests of a particular group. An example is the National Youth Council which is set up by the **National Youth Council Act 3 of 2009**. Another example is the National Disability Council of Namibia which is set up by the **National Disability Council Act 26 of 2004**. A third example is the Namibia Sports Commission set up by the **Namibia Sports Act 12 of 2003**. In such cases, the law typically sets out the powers and duties of the group and the procedures for choosing its members and officers. Most statutory bodies carry out governmental functions and so cannot be considered to be part of civil society. However, some may have roles beyond their statutory duties that align them with civil society in some respects.

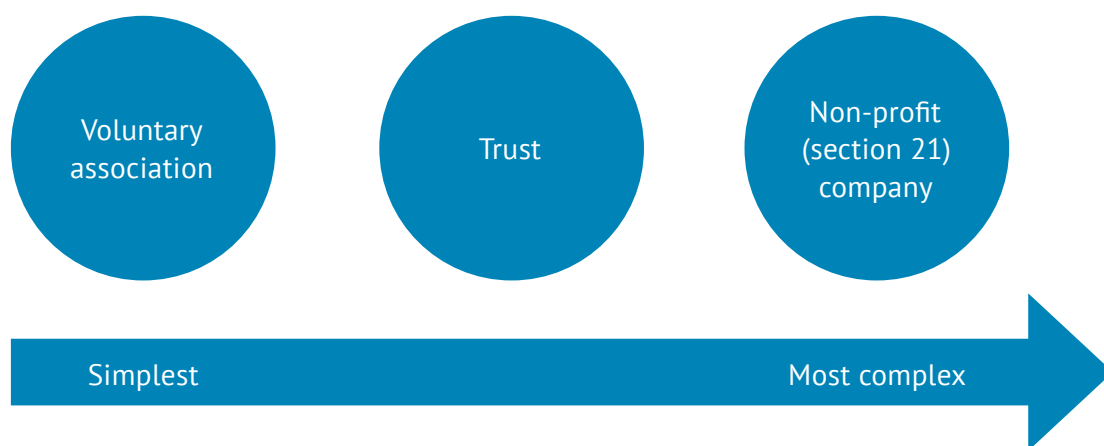
# 3. Legal structures for civil society organisations

As we have seen, there are many terms that civil society organisations may choose to describe themselves. But there are only **three main legal structures** that are used to set up civil society organisations in Namibia: (1) **voluntary associations**; (2) **trusts** and (3) **non-profit companies (also known as section 21 companies)**.

A voluntary association is the simplest structure to set up and administer, followed by a trust. A non-profit company is the most complex legal structure to use.

This chapter contains some guidelines on the contents of the founding documents of the different forms of organisation. No matter what legal structure you choose, you may find the principles in the **NamCode** and the **Code of Ethics and Conduct for NGOs** in Chapter 5 of the Guide useful when you are drafting your founding documents. It is not a good idea simply to copy the founding documents of another group; you need to think through what will work for your organisation.

This Guide explains the legal requirements for the different types of legal structures. In practice, the relevant administrative bodies may not always insist on strict compliance with all aspects of the law. But you should be aware of all the legal requirements because failure to comply with the law could lead to problems in some circumstances.



## FREQUENTLY-ASKED QUESTIONS

### *Do civil society organisations have to formalise themselves with a legal structure?*

No. A group of people can come together for a common purpose without any formal legal structure.

### *What are the advantages of a formal legal structure?*

Setting up a formal legal structure has some important advantages.

(1) **Legal personality (independent legal identity):** Individual adult persons all have certain legal powers. For example, they can open bank accounts, own property and bring or defend court cases. But a group can do these things in its own name only if it is a “legal person”. Setting up a group with a formal legal structure is a way to give the group the power to do these things in its own name, instead of having to rely on individual members of the group to do these things on its behalf. A group with its own legal personality is sometimes referred to as being “*incorporated*”, while a group that does *not* have its own legal personality is sometimes referred to as being “*unincorporated*”. Not all legally-structured civil society organisations are incorporated; this depends on the form chosen and sometimes on the wording of the documents that set up the group.

(2) **Limited liability:** “Liability” means responsibility for debts, including liability for damages when something goes wrong (such as when someone suffers a loss due to fraud, or injury from some kind of accident). When it comes to a group, there are two kinds of liability:

“**Unlimited liability**” means that there is no limit to the financial responsibility of each member of the group. If the group is in debt for more than the value of all its property, then the individual members would have to reach into their own pockets to pay off the debts. A court could order the members to sell their personal assets to pay off the group’s debts.

“**Limited liability**”, in simple terms, means that the liability of the group is limited to the assets of the group. If a group is in debt for more than the value of all its property, the individual members of the group cannot be forced to use their personal assets to pay off these debts.

It is necessary to set up a formal legal structure to get the advantage of limited liability. However, note that limited liability does *not* protect members or office-bearers who have committed fraud or been seriously negligent about their duties.

### LIMITED LIABILITY IS A VERY IMPORTANT ISSUE.

(3) **Clear rules and procedures:** It is often helpful for a group to agree upon rules and procedures for how it will operate and to write them down in a constitution or a deed of trust or a company’s memorandum of association. Formal legal structures generally involve clear rules and safeguards on how the group will elect officials and make decisions, and on how the group’s finances will be handled. Formal legal structures can prevent disputes between the members and increase public confidence in the group.

**(4) Donor confidence:** Some government bodies or donor organisations may give funds only to groups with a formal legal structure, because this enables the money to be held in the group's name, separate from the individual members – and because having a formal legal structure usually involves some checks and balances that increase the accountability of the group.

***Do civil society organisations have to register with any government body?***

It depends on their structure. **Voluntary associations** are not generally required to register with any government agency or official. **Trusts** *must* register with the Master of the High Court. **Non-profit (section 21) companies** *must* register with the Registrar of Business and Industrial Property at the Business and Intellectual Property Authority (BIPA).

## 3.1 Voluntary association

### ***What is a voluntary association?***

A voluntary association is a group of people who agree to work together for a common non-profit objective.

### ***What law applies to a voluntary association?***

The rules for voluntary associations are not set out in any statute. They come from the **common law**, which means the law developed over time through court cases.

### ***How many members are required to form a voluntary association?***

A voluntary association must have three or more members. There is no maximum number of members. Members of a voluntary association can be individual persons or legal entities such as other NGOs - or some combination of both.

### ***What is the founding document of a voluntary organisation?***

The founding document is usually a written constitution. A voluntary association can be formed by means of an oral or written agreement, but a written constitution is usually best. Having a written constitution ensures that all of the members have the same understanding of how the voluntary association will work, which can help prevent disputes. A written constitution can also be provided to potential donors to show how the group is organised and how its finances will be handled.

### ***Must a voluntary association be registered?***

No. There is no legal requirement for a voluntary association to be registered. This simplifies the process of establishment, but sometimes donors are more comfortable dealing with an organisation that has been registered somewhere; some may require a group to provide some sort of registration number to be eligible for funding.

There is, however, one situation where registration could be required. *A voluntary association that has “the acquisition of gain” as its object is required to register as a company if it has more than 20 members.* This requirement to register as a company is unlikely to apply to a civil society organisation set up for a non-profit purpose, but it could be relevant if there is a commercial arm of the organisation that generates income to fund the non-profit work of the group. Note that the authority that registers companies has the power to make exceptions to this registration requirement. (The registration process for companies is explained in section 3.3 of this Guide.)



## **Financial procedures and reporting**

The law on voluntary organisations does not require any specific financial safeguards or reporting requirements. However, if the voluntary association will be dealing with funds, there should be measures in place to make sure that the funds are used to advance the purpose of the group and to prevent any misappropriation of funds. Potential donors will also look for good financial governance. Some suggestions to consider on financial issues are set out in the text box on pages 18 to 20 below.

## **Winding up (dissolution)**

The constitution should provide a procedure for winding up the voluntary association. As noted above, it must also say what will happen to the organisation's property if it ceases to exist. Constitutions of voluntary associations will typically say that any remaining assets must be donated to a group with similar aims or objectives.

## **Does a voluntary association have a legal personality separate from its members?**

It depends on what the constitution says. To give your voluntary association an independent legal personality, the constitution must include these three elements:

- The association must continue to exist even if there are changes to its membership or its officers. The legal term for this is "perpetual succession". As part of this concept, the constitution must say what will happen to the association's property and other assets if it ceases to exist. Typically, the constitutions of voluntary associations will say that the assets must be donated to a group with similar aims or objectives.
- The voluntary association must have the power to hold property and other assets in its own name, separate from its members. The association's property must not be held in the name of its members or officers.
- No member or officer must have any right to the voluntary association's assets just because of their membership in the voluntary association.

It is also helpful if the constitution says that the voluntary association can sue and be sued, and enter into contracts, in its own name. These powers are generally available to any organisation with an independent legal personality, but including a specific statement about these powers confirms that the constitution intended to give the voluntary association a separate legal personality.

## **Does a voluntary association have limited liability?**

It depends on what the constitution says. If the voluntary association has an independent legal personality, this will normally mean that liability is limited to the assets of the organisation and cannot extend to the assets of its individual members. However, to make this as clear as possible, the constitution should reinforce this point by including a statement that members and officers of the voluntary association will not be personally liable for any of its obligations and debts.

## **Advantages and disadvantages of a voluntary association**

A voluntary association is easy and cheap to set up since no registration is required. However, this advantage can also be a disadvantage. Because voluntary associations do not go through a registration process, no one has a duty to check the constitution to see if it is adequate. A poorly-drafted constitution can lead to disputes, and it could mean that the members and officers do not actually get the protection of limited liability. If the financial controls set out in the constitution are not well-considered, donors and other organisations may be reluctant to enter into agreements or joint projects with the voluntary association.

## ELEMENTS OF A VOLUNTARY ASSOCIATION CONSTITUTION

*The constitutions of voluntary associations will differ from group to group, because voluntary associations set up for different purposes are likely to adopt different structures. The following list is a broad guideline of elements to consider. The principles in the NamCode and the International Code of Ethics and Conduct for NGOs in Chapter 5 of this Guide should also inform the drafting of the constitution.*

### Article 1: Name

- Include the shortened form of the name if there is one.

### Article 2: Objectives

- The primary purpose must not be to make a profit or to serve the interests of the membership.
- The voluntary association must benefit some segment of the public in some way.

### Article 3: Legal status

- Is it intended that the voluntary association will have an independent legal personality?
- To have an independent legal personality, the constitution must say these three things:
  - The voluntary association has “perpetual succession”. This means that it continues to exist regardless of changes to its membership or its officers. The constitution must also include a statement about what will happen to the assets if the voluntary association stops operating or is dissolved.
  - The voluntary association must have the power to hold property and other assets in its own name, separate from its members.
  - The assets of the voluntary association may not be distributed to the members or officers.

### Article 3: Membership

- Who is eligible to be a member?
- Will there be different types of membership, such as associate membership or alumni membership?
- What are the qualifications for various types of membership?
- What is the procedure for becoming a member?
- What are the rights and duties of members?
- What members are entitled to vote?
- Will there be a membership fee?
- How can a member be removed?
- Will the members have limited liability, and if so, what is their maximum liability?  
This is an important point to include in the constitution.

### Article 4: Officers

- What positions will there be (chairperson/director, secretary, treasurer, etc)?

- What are the duties of each position?
- What are the qualifications for each position?
- How will the officers be chosen?
- What are the terms of office? Can a person be re-elected/re-appointed for more than one term?
- What happens when a vacancy occurs?
- How can an officer be removed?

#### **Article 4: Decision-making**

- What is the highest-decision making body? This is typically an Annual General Meeting (AGM) of the members.
- How will members be notified of the AGM and how far in advance?
- How many members must be present for the AGM to proceed? This is often referred to as a “quorum” for the meeting.
- How will decisions be made at the AGM?
- Who is responsible for preparing and filing the minutes of the AGM?
- Will there be a procedure for calling special general meetings between the regular AGMs?
- What level of support is required for a decision? For example, this could be a vote of a majority (more than half) of the members present at the meeting, or a higher level of support.
- Will some kinds of decisions require a higher level of support than others - such as agreement by two-thirds of all the members present at the meeting?
- Who is responsible for the day-to-day management of the voluntary association?
- What decisions can be made by the officers without approval by the AGM?

#### **Article 5: Powers**

- Examples:
  - to open and operate a bank account in the voluntary association’s name;
  - to hold property on behalf of the voluntary association;
  - to apply for and receive funds or property;
  - to buy, lease or mortgage property;
  - to invest funds;
  - to provide, furnish, manage and maintain offices and other premises;
  - to employ, pay and dismiss staff or consultants;
  - to sue and be sued;
  - to enter into contracts on behalf of the voluntary association;
  - to obtain insurance;
  - to apply the funds of the organisation in any reasonable manner to advance its aims;
  - to do any other lawful things to further the objectives of the organisation.

#### **Article 6: Finances**

- How will the voluntary association get money?
- How will the voluntary association spend money?

- Who will be responsible for deciding on expenditures?
- Who will have signing powers on the bank account?
- What will be the “financial year” of the voluntary association? It may be useful to make it the same as the Namibian tax year, which runs from the beginning of March to the end of February in the next year, or to make the financial year the same as the calendar year.
- What financial controls will be applied? Examples:
  - rules about keeping funds in a bank account in the voluntary association’s name;
  - approval of expenditures over a certain amount by more than one person;
  - annual financial statements presented to AGM (noting whose duty it is to prepare these statements);
  - annual audits by a bookkeeper or accountant presented to AGM;
  - steps in case of financial irregularities.

#### **Article 7: Disputes**

How will the voluntary association resolve disputes between members? Disputes between officers? Disputes between members and officers?

What disciplinary procedures can be applied to officers and staff?

#### **Article 8: Amendments**

- How can the constitution be changed?
- Who can propose a change to the constitution?
- What is the decision-making process for changing the constitution? For example, will this require a higher level of support than other decisions?

#### **Article 9: Winding up**

- What is the procedure for winding up the voluntary association?
- What will happen to the assets of the voluntary association if it is wound up? Typically, the assets are transferred to a group with similar aims, which can be named or described in general terms.
- If the voluntary association stops operating without being formally wound up according to its constitution, it could be dissolved by an order of the High Court on application by any interested party. In such a case, the association’s remaining assets would typically be transferred to an organisation with a similar purpose.

**Signatures:** The founding members of the organisation should sign the constitution and indicate the date when they signed it. A signed copy of the constitution should be carefully stored to serve as proof of its existence.



## 3.2 Trust

### ***What is a trust?***

A trust is a legal arrangement where someone (the founder) gives control over assets to another person (the trustee) for the benefit of someone else (the beneficiary). A trust can be established for private benefit or for a charitable purpose. This Guide is concerned only with non-profit trusts set up to serve an objective in the public interest. When the trust has a public interest objective, the beneficiaries are typically the public or some segment of the public.

### ***What law applies to a trust?***

Trusts are governed by the [Trust Administration Act 11 of 2023](#) and the [Trust Administration Regulations, 2023](#) issued under this law. Regulations are subordinate to statutes passed by Parliament. They are issued under the authority of the statute by Ministers or other administrative officials to give details about the implementation of the statute. Some rules about trusts are contained in the [common law](#), which means the law developed over time through court cases.

### ***Does a trust have members?***

No. A trust has “trustees” and “beneficiaries” instead of members. There is no minimum or maximum limit on the number of beneficiaries. A non-profit trust may be aimed at benefitting a specific target group (such as orphans or persons with disabilities) or it may be aimed at benefitting members of the general public in a specific way (such as increasing public access to information or justice).

### ***What is the founding document of a trust?***

The founding document is a Deed of Trust (also called a “trust instrument”), which is similar to a constitution. The Deed of Trust must identify the founder of the trust, the initial trust property, the trustees and the beneficiaries of the trust. The key elements of the Deed of Trust are explained in more detail below.

### ***Must a trust be registered?***

Yes. The Deed of Trust must be registered with the [Master of the High Court](#). Any amendments to a Deed of Trust must also be registered with the Master.

To register a trust, you must submit the original signed Deed of Trust OR a copy of the original Deed of Trust certified by a Notary Public (a legal practitioner with certain special training) or a Commissioner of Oaths (who can be found at any police station), along with some supporting documents that are explained below. There is a registration fee of N\$200. If the registration of the trust is approved, the Master will issue the trust with a trust certificate. If the registration of the trust is not approved, the Master must provide written reasons.

The Master must keep a “basic information register” with information about registered trusts and trustees. This information is available to the public and to government authorities, and it must also be accessible on the Master’s website: [www.mohc.moj.na](http://www.mohc.moj.na). Information about trusts that are de-registered or dissolved and information about trustees who have died, resigned or been removed from office must be removed from this register.

## **The founder of the trust**

Every trust must have one person who acts as the “founder”. In the case of a trust formed for a public interest purpose, virtually anyone can act as the founder. The founder provides the initial trust property and appoints the trustees. The founder does not play any ongoing role once the trust is established, unless the founder is also a trustee. (Note that the founder can be a trustee, but not the *only* trustee. The founder can also be one of the beneficiaries of the trust.)

## **Initial trust property**

Every trust, including a trust set up for a public interest objective, must have some initial trust property. This can be a nominal amount, even as little as N\$1.

## **How many trustees are required?**

The Deed of Trust can require that the Board of Trustees must be made up of any number of Trustees. It is possible to have only one Trustee, as long as this person is not also the founder of the trust. Some Deeds of Trust provide for a flexible number of trustees, such as saying that the number of trustees must not fall below a certain minimum number. Other Deeds of Trust specify the exact number of trustees.

One important thing to remember is that the Board of Trustees must be properly constituted to act on behalf of the trust. So, for instance, if the Deed of Trust says that there must be three trustees but the number has fallen to only two, then those two trustees cannot act on behalf of the trust.

## **Qualifications of trustees**

A trustee can be an individual or a “legal person” such as a voluntary association, a company or a law firm – but a “legal person” who is a trustee must nominate an individual to act as a trustee on its behalf. Trustees must be over the age of 18.

Individuals may not act as trustees if they are personally insolvent (“bankrupt”); are disqualified from acting as a director of a company or being involved in the management of a close corporation; have been removed from an office of trust because of misconduct involving dishonesty; have engaged in fraudulent dealing related to trading in companies; have been convicted of a crime involving theft, fraud, corruption, dishonesty or a financial crime; or are mentally ill or incapable of managing their own affairs. The Master of the High Court is required to keep a register of persons who are disqualified from acting as trustees. This register is open to the public for inspection and must also be published on the website of the Ministry of Justice.

If a person is approved to be a trustee, the Master will issue them with an authorisation to act as trustee. If a person is not approved to act as a trustee, the Master must provide written reasons.

## **Provision of security by trustees**

The Master of the High Court has the power to require trustees to provide an amount of money as security to show their good faith intention to administer the trust property responsibly and to cover any losses resulting from their failure to carry out this duty. The Deed of Trust can state that the trustees are excused from providing security, but this must still be approved by the Master. In the case of non-profit trusts set up to serve some public interest purpose, the Master typically dispenses with the security requirement. If security is required, the amount will be set by the Master.

## Removal of trustees

In terms of the Trust Administration Act, a trustee can be removed if that trustee becomes disqualified to act as a trustee after being appointed, or fails to carry out the duties of a trustee satisfactorily. A trustee can be removed by the Master of the High Court on these grounds after giving the trustee a chance to give his or her side of the story. The Master, or any person with an interest in the trust property, may apply to a court for the removal of a trustee on these grounds by a court if the court is satisfied that the removal of the trustee is in the interests of the trust and the beneficiaries. The Deed of Trust can set out additional grounds and procedures for removing a trustee.

## Beneficial owners

Every trust must provide the Master with a record of information about the identification, nationality and contact details of its “beneficial owners” – which means the individuals who ultimately own or control the trust or exercise ultimate ownership or control of the trust in practice. For example, if the trust has a trustee who represents a “legal person”, the beneficial owners would include the individuals who own and control that “legal person”. In most cases, a non-profit trust’s beneficial owners will be its founder and trustees. The regulations contain a form for listing the details of the beneficial owners. The purpose of this requirement is to help fight money-laundering and the financing of terrorism, which sometimes takes place through trusts with complicated structures.

## Duties of trustees

Trustees must generally look after the trust with care, diligence and skill. More specifically, they must –

- know the requirements of the Deed of Trust and act in accordance with them;
- act honestly and in good faith;
- administer the trust property for the benefit of the beneficiaries or to further the purpose of the trust, and not for their own benefit;
- avoid conflicts of interest between the trust and their own personal interests, as well as between the trust and any of the beneficiaries of the trust.

Where a trust has more than one trustee, the trustees must exercise their powers and functions jointly.

The trustees must preserve and enhance the value of the trust property, so far as this is reasonable, and make sure that all trust property is clearly separated from their own personal property.

Trustees should not receive any payment or other reward in their capacity as trustees, with a few exceptions: They can be paid for serving as trustees, as long as this is not more than the maximum amount set by the Master, and they can be reimbursed for reasonable expenses connected to the administration of the trust property, in an amount approved by the other trustees or by the Master.

When a trust is registered, the trustees must provide the Master with an address that can be used for legal purposes and with the physical address where the trust’s books and other documents will be kept. Trustees must also inform the Master in writing of any change in their personal residential address, business address or postal address within 14 days of the change. Any changes to the composition of the Board of Trustees must also be reported to the Master.

## Trust practitioners

Trustees can engage “trust practitioners” to assist with setting up, registering or administering the trust. Trust practitioners are legal practitioners, accountants, auditors or other persons with appropriate qualifications and skills who have been registered as trust practitioners by the Master of the High Court.

## **Financial procedures and reporting**

All of the money of the trust must be kept in an account in the name of the trust at a banking institution. The bank and branch where this account will be held must be identified at the time of applying for registration of the trust.

All trust property must be kept separate from the personal property of the trustees. All of the money, land, investments and other property of the trust must be clearly indicated as belonging to the trust.

The trust's accountant must prepare annual financial statements for the trust and submit them to the Master of the High Court within seven months after the end of the financial year. The trustees are required to submit an annual tax return for the trust to the Namibia Revenue Agency (NamRA) within seven months after the end of the financial year, unless they provide the Master with a tax clearance certificate or some other confirmation from NamRA that the trust is not liable to pay tax. The deadlines for these submissions can be extended by agreement with the Master.

When a trust is applying for registration, it must provide information on who will act as the trust's accountant or auditor, and include an undertaking signed by that individual on a form provided in the regulations. In addition to submitting the annual financial statements, the accountant or auditor has a duty to verify the trust's financial statements and submit them to the Master on request, and to inform the Master if the trustees fail to keep proper financial records, if the finances of the trust are not being properly administered or if the trustees fail to register the trust with NamRA. An accountant or auditor who resigns from acting for the trust must inform the Master in writing of the resignation and the reasons for it, provide the Master with all of the financial statements and supporting documents in his or her possession, and indicate if possible who will be the new accountant or auditor for the trust.

## **Record-keeping**

Each trustee must keep up-to-date records containing the following information –

- a copy of the Deed of Trust and any amendments to it
- full name and identification number of the founder
- full name and identification number of each beneficiary (where the trust has identifiable individual beneficiaries)
- full name and identification number of each current trustee, along with records of the appointment, removal and discharge of trustees, and the full names and identification numbers of all former trustees and their relationship with trust beneficiaries
- full name and identification number of each beneficial owner as well as the dates, nature and extent of the beneficial ownership along with other details set out in the regulations
- full name and identification number of each trust practitioner who has assisted the trust
- records of all trust property that identify the trust's assets, liabilities, income and expenses
- information about any foreign trust administered by the trustees
- records of all transactions, advisory communications and other matters relating to trust accounts or investments
- details about financial institutions and accountable institutions that have business relationships with any trustee or provide any services relating to trust property ("Accountable institutions" are listed in Schedule 2 of the Financial Intelligence Act 13 of 2012. They are primarily people engaged in businesses that involve financial transactions or financial instruments, real estate, casinos, auctions, trading in minerals or petroleum, insurance or imports and exports – all of which carry a high risk of being used for money laundering or terrorist financing.)



- written contracts entered into by the trust
- records of the decisions of the trustee about the trust
- records of all payments to the trustee and any trust practitioners engaged by the trust
- records of any reports of irregularities relating to the administration of the trust and how the trustee dealt with them.

These records must be made available on request to the Master or to other authorities (such as the Namibian Police, Anti-Corruption Commission, Namibia Central Intelligence Service, Prosecutor-General, NamRA or the Financial Intelligence Centre). Whenever there are changes to these records, the trustees must give notice of the changes to the Master within 14 days. When trustees change, these records must be passed on from the former trustees to the current ones.

### ***Inspection and investigation of trusts***

The Master has a broad power to inspect or audit the books of trustees or trust practitioners to monitor compliance with the laws on trusts.

The Master can also instruct an inspector to investigate a trust or a trustee for any one of three purposes:

- (1) if there are reasonable grounds to believe that an offence has been or is going to be committed;
- (2) to ensure compliance with the law; or
- (3) to determine whether a trustee is conducting business in a way that prejudices the trust property or the interests of the beneficiaries of the trust.

The inspectors are persons appointed by the Ministry of Justice after consultation with the Master. An inspector can search premises, documents and computers. A warrant is required only if the place to be searched is used as a home. All inspectors are issued with identification cards which they must present during an investigation. They can be assisted with their investigations by police.

The Master may issue guidelines from time to time to assist trusts in complying with the law. All guidelines must be posted on the website of the Ministry and provided to any person on request.

### ***Winding up (dissolution)***

The Deed of Trust should include provisions on who can decide to wind up a trust and what will happen to any remaining assets if the trust is wound up. The Trust Administration Act does not specifically address the procedure for winding up a trust. But, since trusts must be registered with the Master of the High Court, the Master must be informed if the trust is closing down. It would be useful to check with the Master's office about what documents are required to deregister a trust. The documentation should include a resolution by the trustees that follows any rules set out in the Deed of Trust about winding up the trust, and confirmation that any remaining assets have been disposed of as the Deed of Trust requires. The Master may require other information and documentation to make sure that the trust has been properly dissolved.

### ***Does a trust have an independent legal personality?***

No, but it does have a special status. A trust creates a special kind of legal relationship where a trustee holds or administers property separately from his or her own property, under public supervision. The trust can act only through its trustees. The trustees can hold assets, enter into contracts, sue and be sued or engage in other legal transactions as representatives of the trust.

### ***Does a trust have limited liability?***

Yes. The trustee, when acting in his or her official capacity on behalf of the trust, is treated as being separate from the trustee as an individual. Trustees normally have no personal liability for their official acts as trustees, but a Deed of Trust cannot protect a trustee against personal liability caused by the trustee's dishonesty, wilful misconduct or gross negligence. The liability of the trust itself is normally limited to the value of the assets of the trust.

### ***Advantages and disadvantages of a trust***

A trust is very flexible and can be adapted to suit many different kinds of organisations. However, setting up a trust and getting exemptions from the security requirements for trustees can take some time. Setting up a trust is somewhat harder than setting up a voluntary association, but not as difficult as setting up a non-profit company.

The law on trusts enacted in 2023 introduces new record-keeping and reporting requirements that did not exist under the previous law. Failure to comply with the law's requirements can lead to criminal charges or administrative sanctions, which include a warning, a directive to take action to address the problem, a financial penalty of up to N\$10 million or de-registration of the trust. The 2023 law makes trusts more complicated to administer than in the past, as well as giving new powers to the Master to monitor the operation of trusts. Although the additional requirements make trusts more difficult to administer, they may give potential donors greater confidence about the financial management of trusts.

A trust does not have an independent legal personality, but a trustee acting in his or her official capacity on behalf of the trust is treated as being separate from the trustee as an individual. This means that trustees are not personally liable for trust debts unless they have failed to carry out their duties in a responsible manner.



## ELEMENTS OF A DEED OF TRUST

*Like constitutions of voluntary associations, Deeds of Trust will differ from trust to trust, depending on the purpose of the trust. The following list is a broad guideline of elements to consider. The principles in the NamCode and the International Code of Ethics and Conduct for NGOs in Chapter 5 of this Guide should also inform the drafting of the Deed of Trust.*

### **Article 1: Name of trust, type of trust (non-profit), founder and trust property**

- Include the shortened form of the name if there is one.
- Include the name of the founder. (The founder provides the initial trust property and appoints the trustees but does not play any ongoing role once the trust is established - unless the founder is also one of the trustees.)
- Identify the trust property clearly.

### **Article 2: Purpose and beneficiaries**

- What is the purpose of the trust?
- Who is the trust intended to benefit?
- How will the Trust get funds in future?
- The Deed of Trust must say that all income and property of the trust will be applied solely towards the promotion of the trust's objective and that no trust money or other asset may be given to the trustees, except perhaps as reasonable payment for their services (ideally with safeguards to prevent abuse).

### **Article 3: Trustees**

- Who are the initial trustees (identified by name)?
- What is their term of office? Can a trustee serve more than one term?
- How many trustees must there be? This can be a specified number or a minimum and/or a maximum.
- How will trustees be chosen in future? For example, they might be appointed by the founder or chosen by the existing trustees.
- What are the qualifications for future trustees?
- What are the grounds and procedure for removal of a trustee?
- What happens when a vacancy occurs?
- Will the trustees be exempt from providing security to the Master of the High Court? Remember that exemptions from security must be approved by the Master even if they are stated in the Deed of Trust.
- Include a statement confirming that the trustees have limited liability.
- How often must the trustees meet?
- How will the trustees make decisions? For example, this could be by the vote of a majority (more than half), unanimously, or in some other way.
- What number of trustees must be present for a meeting to take place? This is the "quorum" for a meeting.
- Can a trustee who is not present at a meeting register a vote in some other way?

- Will there be officers or employees (such as a director and staff) who are responsible for the day-to-day management of the trust? If so –
  - What are their decision-making powers and what decisions require the approval of the trustees?
  - How will they be appointed or removed?

#### **Article 4: Powers of Trustees**

- Examples:
  - to open and operate a bank account in the trust's name;
  - to hold property on behalf of the trust;
  - to apply for and receive funds or property;
  - to buy, lease or mortgage property;
  - to invest funds;
  - to provide, furnish, manage and maintain offices and other premises;
  - to employ, pay and dismiss staff or consultants;
  - to sue and be sued;
  - to enter into contracts on behalf of the trust;
  - to obtain insurance;
  - to apply the funds of the organisation in any reasonable manner to advance its aims;
  - to do any other lawful things to further the objectives of the organisation.

#### **Article 5: Finances**

- How will the trust generate future income? Can it accept donations to advance the purpose of the trust?
- How will the trust spend money?
  - Who will be responsible for deciding on expenditures?
  - Who will have signing powers on the bank account?
- What financial controls will be applied? Examples of controls that go beyond what the law requires:
  - approval of expenditures over a certain amount by more than one person;
  - requirements for three quotations for the supply of goods or services above a certain amount.

*Note that the "financial year" of a trust must be the same as the Namibian tax year, which runs from the beginning of March to the end of February in the next year.*

#### **Article 7: Disputes**

- How will the trust resolve disputes between trustees? Disputes between staff members of the trust? Disputes between trustees and staff?
- What disciplinary procedures will be applied to staff?

#### **Article 8: Amendments**

- How can the Deed of Trust be changed?
- Who can propose a change to the Deed of Trust?
- What is the decision-making process for changing the Deed of Trust? For example, will this require a higher level of support by the trustees than other decisions?

*Remember that any amendments to the Deed of Trust must be filed with the Master of the High Court.*

#### **Article 9: Winding up**

- What is the procedure for winding up the trust?
- What will happen to the assets of the trust if it is wound up? Typically, the assets are transferred to a group with similar aims, which can be named or described in general terms.
- If the trust stops operating without being formally wound up according to its Deed of Trust, it could be dissolved by an order of the High Court on application by any interested party. In such a case, the trust's remaining assets would typically be transferred to an organisation with a similar purpose.

**Signatures:** The founder and the initial trustees should sign the Deed of Trust and indicate the date when they signed it.

#### **Required attachments:**

- (1) Record of beneficial owners of the trust (who may be the trustees or someone else)
- (2) Written acceptance of the trustee position from each trustee (on the form provided in the regulations)
- (3) An undertaking by an accountant or an auditor to perform the duties in the law in respect of the trust (on the form provided in the regulations).
- (4) An undertaking identifying the name and branch of the bank where the bank account in the name of the trust will be opened
- (5) An undertaking identifying the tax office where the tax registration in the name of the trust will take place.

*The required documents must be submitted electronically to the Master, with the original hard copies being kept on file in case of a future inspection.*

## **3.3 Non-profit company (“section 21 company”)**

### ***What is a non-profit company?***

“Non-profit company” and “section 21 company” are common informal terms for what is technically a “non-profit association incorporated under section 21 of the Companies Act”. (“Section 21” is the section of the [Companies Act 28 of 2004](#) that applies to non-profit companies.)

A non-profit company must -

- be formed for a lawful purpose;
- have the object of promoting religion, arts, sciences, education, charity, recreation, or any other cultural or social activity or communal or group interests;
- have the intention to apply all of its profits or other income to this object;
- prohibit the payment of any dividends to its members;
- follow all the requirements of the Companies Act on non-profit companies.



A profit-making company often has shares and shareholders, but a non-profit company does not. It is set up as “a company limited by guarantee”, which is explained below.

The Companies Act talks about two general categories of companies: “private companies” and “public companies”. Non-profit companies fall into the category of “public companies” for the purposes of this law.

### ***What law applies to a non-profit company?***

Non-profit companies are governed by the [Companies Act 28 of 2004](#) and the accompanying [Companies Administrative Regulations, 2010](#). (Regulations are subordinate to statutes passed by Parliament. They are issued under the authority of the statute by Ministers or other administrative officials to give details about the implementation of the statute.)

The Companies Act is a lengthy law that contains many rules about the operation of companies. Not all of the rules that apply to non-profit companies are explained here. This Guide mentions some of the key rules and responsibilities in the law to help groups decide if a non-profit company seems like the appropriate structure for them.

### ***How many members are required to form a non-profit company?***

A non-profit company must have at least 7 members. There is no maximum number of members.

### ***What is the founding document of a non-profit company?***

The founding document is a Memorandum of Association, which must be accompanied by Articles of Association. A Memorandum of Association contains basic information about the company. Articles of Association set out the rules and regulations of the company and explain how it will be governed. The law gives directions about what these documents must contain. This is explained in more detail below.

### ***Must a non-profit company be registered?***

Yes. A non-profit company must be registered with the [Registrar of Business and Industrial Property](#) at the [Business and Intellectual Property Authority \(BIPA\)](#). (Before 2017, the relevant official was known as the Registrar of Companies.)

The Act and the regulations require a substantial amount of paperwork for registration. This Guide gives an overview of the process, but it does not cover all of the details. You can find out more from BIPA. You will need to engage a legal practitioner who is certified as a “Notary Public” for at least some parts of the registration process.

Fees must be paid to BIPA for most of the steps in the registration process, but they are relatively modest amounts. (The fees change from time to time. The fees for each step are listed in the [Companies Administrative Regulations](#).) The most expensive part of the process will be the cost of legal assistance.

The box below lists the key steps for the registration process and the standard forms that are required. Once a company is registered, there are other official forms that must be used for various reports and procedures.

## BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY (BIPA)

Procedure to register Non-Governmental Organisations (NGOs) and Associations not for Gain

1. Submission of name application/reservation form **CM5** or **reserve a name online**.
2. Once the name is approved, you may apply for a Certificate of Incorporation and a Certificate to Commence Business. This requires the submission of the following documents:
  - Memorandum and Articles of Association in triplicate on Forms **CM3**, **CM4**, **CM44B** and **CM44C**, certified by a Notary Public.
  - Copy of approved name on Form **CM5**
  - Notice of postal and registered address on Form **CM22**
  - List of directors, auditors and public officers on Form **CM29**
  - Appointment of an auditor on Form **CM31**
  - Application for certificate to commence business on Form **CM46**.

Once your company is registered, you will be given a certificate of incorporation on form CM3. Once it is approved to commence business, you will be given a certificate to commence business on form **CM46**.

All of the forms referred to can be found at the end of the **Companies Administrative Regulations, 2010**. There are also links to the forms on the BIPA website: <https://www.bipa.na>. The forms must all be filled in with black ink.

based on <https://www.bipa.na/business-registration/companies/section-21ngo/>,  
<https://www.bipa.na/downloads/how-to-complete-company-forms/section-21-form/>  
 and the **Companies Administrative Regulations, 2010**

### **Reservation of name**

The first step in registering a company is to make sure that the name you want to give your company is not already being used by another company. You must make a written application to the Registrar to reserve your company name and any shortened form of the name you intend to use. If the name is not in English, you must provide a translation of it in English. The name you have reserved will be held for two months to allow time for the other steps in the registration process.

It is possible to register your desired name as a “defensive name” for a two-year period that can be renewed for a second two-year period, to stop anyone else from using it – but you must demonstrate to the Registrar that you have “a direct and material interest” in that name. This might apply, for instance, if your group is already known by the name in question even though you have not formally set up your non-profit company yet.

## Memorandum of Association

The Memorandum of Association must be in English and must contain the following elements:

- It must state the name of the company.
- It must state the object of the non-profit company.
- It must say that all income and property of the company will be applied solely towards the promotion of its object. No portion of the income or property must be paid or transferred to the members, directly or indirectly. The only exception is that members may be paid a reasonable amount for services to the company, including services as an officer or employee.
- It must state that, if the company is wound up, dissolved, or deregistered, any assets remaining after all the debts are paid must be given or transferred to some other association or institution with similar objects. The group to receive the assets will be decided by the members or, if they do not determine a recipient, by the court.
- It must state the maximum amount of liability for its members. Each member must give an undertaking to contribute towards the assets of the company if it is wound up, to help pay the company's debts and liabilities and the costs of winding up the company. This obligation can be capped at a very low amount, but it must be at least N\$1.

**Form CM 4** functions as a template for a Memorandum of Association for any company without share capital, which includes non-profit companies.

## Articles of Association

The Articles of Association must be in English. This document will give details about the governance of the company. The Act includes some rules about Articles of Association, but there is much scope to tailor the Articles of Association of non-profit companies to fit the needs of the company. The Articles of Association can be amended by the members only by way of a special resolution, which requires approval by three-fourths of the members who are present at a meeting attended by at least one-fourth of all the members.

**Form CM 44A** functions as a template for Articles of Association for any company without share capital, which includes non-profit companies.

Before being submitted for registration, both the Memorandum of Association and Articles of Association *must* be certified by a **Notary Public** (a legal practitioner with certain special training). This is *different from* the standard process of having copies of documents certified by a Commissioner of Oaths to show that they are true copies of the original. A Notary Public reviews the documents to see if they comply with the requirements of the law.

## Signing the founding documents

The Memorandum and the Articles must be signed by at least seven members. Each member who signs must give their full name, occupation and residential, business and postal addresses. Each must sign in the presence of at least one witness, who must also sign the document and give his or her residential, business and postal addresses.

If additional members join the company later, they are bound by the Memorandum of Association and Articles of Association just as if they had signed them initially. Every member of the company has a right to be provided with copies of the Memorandum and Articles.

## Registration of the company

The Memorandum of Association and the Articles of Association must be presented to the Registrar, along with two certified copies and payment of a fee. If the documents submitted comply with all the requirements set out in the law and the regulations, the Registrar will provide a certificate signed and endorsed with a seal saying that the company is incorporated. The Registrar will also provide a registration number that can be used to identify the company as a validly-registered non-profit company. Anyone who pays the required fee can inspect these documents at the BIPA office and get copies of them if they so wish.

## Postal address and registered office

Every company must have a postal address and a physical place that serves as its registered office. Any intended change in these addresses must be reported to the Registrar 21 days in advance of the change. This makes it possible to send communications to the company reliably.

## Identification of the company

A non-profit company must include the phrase “Non-profit association incorporated under section 21” along with its name to identify itself properly. (A non-profit company set up *before* the [Companies Act 28 of 2004](#) came into force may use the phrase “Incorporated Association not for Gain” along with its name.)

A non-profit company must display its name on the outside of its registered office, and also on the outside of every office or place where it carries on business. This name must be in a place that is clearly visible, and it must be written in a way that is easily readable. It must also have a seal that has its name engraved in an easily-readable way. The company must use its name and registration number in all notices and other official publications of the company, and in all official documents relating to the company – such as letters, orders, delivery notes, invoices and receipts.

## Governance structure

The highest decision-making power in a non-profit company belongs to the members, who consider and vote on issues at general meetings. For example, the members have the power to appoint and remove directors, amend the founding documents of the company and dispose of the company’s assets.

The day-to-day operation of the company takes place through directors and officers. Non-profit companies must have a minimum of two directors. Some of the duties of directors are set out in the law – such as the duty to submit annual reports about the state of the company to the members for consideration at the Annual General Meeting of the members – but their other powers and duties will be set out in the Articles of Association.

The law does not provide any details about what officers a company must have, or their powers and duties. The officers of a company – such as a Chief Executive Officer and others – generally operate under the broad supervision of the directors. Specifics about officers are usually contained in the Articles of Association.

## Meetings of members

Every company must have an Annual General Meeting (AGM) of its members according to the time frames set out in the law. It may convene additional general meetings of its members – and a general meeting *must* be held if at least five per cent of the members request it. Members of the company must be given 21 days’ written notice of the AGM and of any general meeting where a special resolution will be considered, and 14 days’ written notice of any other general meeting.

The quorum for a general meeting of a non-profit company is at least three members, unless the Articles of Association set a larger number.

Every member of a non-profit company has one vote, unless the Articles of Association contain a different rule.

The Articles of Association will say if it is allowed for a member to be represented at a meeting by a proxy. This is where a member of the company has the right to appoint another person (whether or not that person is also a member of the company) to attend, speak, and vote at a meeting in the absent member's place.

The AGM will consider the company's annual financial statements and a report from the company's directors on the company's activities and state of affairs.

Minutes of the AGM and other general meetings must be kept in English in a minute book that is kept at the company's registered office. The minute book must be permanently bound. It is not allowed to keep minutes on loose pieces of paper that can be removed or swapped around. Any member of the company has the right to inspect the minute book or to request a copy of the minutes of any meeting.

## **Directors**

A non-profit company *must* have at least two directors. As long as that requirement is fulfilled, the Articles of Association can decide on the number of directors. A majority of the members who sign the initial Memorandum of Association can appoint the first directors by means of a written document unless the Articles of Association say something different. After that, directors are chosen by the members at general meetings. Directors must sign an official form consenting to serve as directors.

A director must be an adult individual. A person *cannot* act as a company director without permission from a court if they are personally insolvent ("bankrupt"), if they have been removed from an office of trust because of misconduct, if they have engaged in fraudulent dealing related to trading in companies or been convicted of a crime involving theft, fraud, corruption or dishonesty (other than a minor crime where the only punishment was a fine of less than N\$1000). The Articles of Association can set additional qualifications. A court can issue an order disqualifying a specific person from serving as a company director if that person has committed certain kinds of wrongdoing in the past.

It is also possible for the company to remove a director by a resolution passed at a meeting of the members, after giving the director in question an opportunity to make representations to the meeting.

The Articles of Association will say how vacancies will be filled if a director is disqualified or removed.

The law contains several rules about financial dealings that involve directors, to prevent conflicts of interest. For example, a director must disclose any personal interest in a contract that the company is considering. There are also some limits on the powers of all company directors. For example, a director cannot dispose of all or most of the assets of the company without authority from a general meeting.



Minutes and attendance registers of all meetings of directors or managers must be recorded in the same type of minute books used for minutes of general meetings, and these minutes must be kept at the company's registered office.

Any business letter sent to anyone in Namibia in the company's name must list the name of every director of the company, and in the cases of non-Namibians, their nationality.

### **Auditor**

An auditor for purposes of the Companies Act must be a registered accountant. The initial members of the non-profit company must appoint a person or a firm to act as the company's auditor at the time when they submit the Memorandum of Association and the Articles of Association for registration of the company. If they do not, then the directors of the company must appoint the first auditor within 21 days after the company is registered. After that, an auditor must be appointed each year at the company's AGM. If the meeting fails to do this, the directors must fill the vacancy within 30 days of the AGM. If they do not, then the Registrar can appoint an auditor for the company. The auditor selected by any of these processes must sign an official form consenting to serve as auditor.

### **Financial procedures and reporting**

The law contains some directions about accounting records and the information that must be included in the annual financial statements. Any group that registers as a non-profit company should ask BIPA for information about the financial procedures required by the law.

### **Registers**

The company must keep a register in English that lists its directors and officers. It must include their names, identity number or date of birth, their nationality (if they are non-Namibian), their occupation, their residential, business and postal addresses, and the date on which they were appointed. In the case of directors, the register must list the name and registration number of every other company where that person also serves as a director. Changes in these particulars must also be recorded in the register. The company must record particulars of each auditor, including the auditor's name, particulars and date of appointment, in the same register. It must also inform the Registrar of any change of auditors.

Every company must also keep an up-to-date register of information about the identification, nationality and contact details of its "beneficial owners" – which means the individuals who ultimately own or control the company or exercise ultimate ownership or control of the company in practice. For example, if one of a non-profit company's members is a "legal person" such as a voluntary association, a trust or another company, the beneficial owners would include the individuals who own and control that legal person. In most cases, a non-profit company's beneficial owners will be its members and directors. The purpose of this register is to help fight money-laundering and the financing of terrorism, which sometimes takes place through companies with complicated structures.

### **Annual returns**

Every year, a non-profit company must send a report to the Registrar not later than one month after the end of the company's financial year. There is an official form for this "annual return", which must include:

- the name of the company, its registration number, the location of its registered office, its postal address and the place where the register of members is kept (if this is some place other than the registered office);

- the date on which the company’s financial year ends;
- the date of the last annual general meeting;
- the full names, addresses and dates of appointment of the directors and officers of the company;
- the name and address of the auditor of the company;
- a list of the special resolutions passed and the forms, notices and returns filed with the Registrar during the past year, and the dates of each of these items.

The company must file a copy of each annual return at its registered office. If a company fails to submit its annual return to the Registrar for more than two years, the Registrar can cancel its registration. Profit-making companies have to pay an annual duty when they submit their annual return, but non-profit companies are exempted from paying this duty.

### **Special resolutions**

Some decisions of the members – such as a decision to amend the Articles of Association, to change the company’s name or to wind up the company – must be made by “special resolution”. A special resolution can only be considered at a meeting attended by at least one-fourth of the members (in person or by proxy), and it must be passed by at least three-fourths of the members of the company who are present in person or by proxy. There is an official form to use for special resolutions. A special resolution must be filed with the Registrar within 21 days of being passed.

### **Winding up (dissolution)**

The law sets out the rules and procedures for winding up a company. The members of a company might decide by special resolution to wind up the company. This resolution would have to be registered with the Registrar. The company would also have to provide security for the payment of the debts of the company for the next six months to the Master of the High Court, unless this requirement is waived by the Master because the directors and the auditor have certified that the company has no outstanding debts. There are procedures that must be followed in this kind of voluntary winding up – and other rules and procedures for other situations, such as where the company is liquidated because it cannot pay its debts. If the company is wound up, dissolved, or deregistered, any assets remaining after all the debts are paid must be given or transferred to some other association or institution with similar objects – which can be chosen by the members or, if they do not determine a recipient, by the court.

*Note that failure to follow the rules in the law may lead to fines.*

*It can even result in cancellation of the company’s registration in some cases.*

*In practice, non-profit companies may be given some leeway by BIPA, but it is risky not to comply with all of the legal rules that apply to a non-profit company.*

### **Does a non-profit company have an independent legal personality?**

Yes. From the date of incorporation stated on the certificate of incorporation, the company is a “legal person” with perpetual succession.

### **Does a non-profit company have limited liability?**

Yes, but there are a few exceptions:

- The members have a duty to contribute to the assets of the company if it is wound up, but the amount for which they are personally liable can be capped in the Memorandum of Association at an amount as low as N\$1. This is the meaning of being “limited by guarantee”; the liability of the members is limited to the amount they promise to provide in the Memorandum of Association.

- If the company continues to operate for more than six months while it has fewer than seven members, every person who is a member of the company after that six-month grace period becomes liable for the payment of any debts incurred by the company during that time – as long as they were aware that the number of members had dropped below the minimum.
- Directors, officers and the company’s auditor may all be held liable for losses or damages if they have acted negligently, in violation of their duties or in violation of the company’s trust.

### **Advantages and disadvantages of a non-profit company**

This is by far the most formal and complex legal structure for a civil society organisation, and it requires at least some assistance from a legal practitioner who is certified as a Notary Public. The legal framework for companies is very detailed. The legal requirements cover registration, and there are also annual reporting requirements and other rules about the ongoing operation of the company.

Some of these requirements entail some extra expense. For example, a non-profit company must engage the services of a registered accountant to do annual audits, whereas a voluntary association or a trust might decide to use a bookkeeper.

It may be difficult for some groups to comply with all the requirements in the law. On the other hand, the detailed legal rules provide safeguards that may give donors and partners confidence that the organisation will be soundly administered. It is clear that a company has an independent legal personality, and the rules on the liability of members, directors and officers are also clearly set out in the law.

A non-profit company structure is probably unsuitable for small community-based organisations. It may be more appropriate for large organisations with more extensive budgets.

#### **ELEMENTS OF THE MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION FOR A NON-PROFIT (SECTION 21) COMPANY**

**Form CM 4** functions as a template for a Memorandum of Association for any company without share capital, which includes non-profit companies.

**Form CM 44A** functions as a template for Articles of Association for any company without share capital, which includes non-profit companies. However, because rules on governance can vary greatly, this form does not give much guidance on that score. The governance issues to consider in respect of voluntary associations and trusts listed above in this chapter of the Guide can be consulted. The principles in the NamCode and the International Code of Ethics and Conduct for NGOs in Chapter 5 of this Guide should also inform the drafting of the Articles of Association.

Both of the forms referred to are contained in the Companies Administrative Regulations, 2010 and can also be found online on the BIPA website.

COMPARING THE THREE DIFFERENT LEGAL STRUCTURES FOR CIVIL SOCIETY ORGANISATIONS			
	Voluntary association	Trust	Non-profit (section 21) company
<b>Relevant law</b>	common law developed over time through court cases	Trust Administration Act 11 of 2023	Companies Act 28 of 2004
<b>Founding document</b>	Constitution	Deed of Trust	Memorandum of Association and Articles of Association
<b>Registration</b>	No registration requirement	Master of the High Court	Registrar of Business and Industrial Property at the Business and Intellectual Property Authority (BIPA).
<b>Registration fees</b>	None	N\$200	Modest registration fees
<b>Minimum requirements for formation</b>	3 or more members (no maximum number of members)	1 founder, 1 or more trustees and 1 or more beneficiaries who can be described as a group (no maximum number of trustees or beneficiaries)	7 or more members and 2 or more directors (no maximum numbers)
<b>Management structure</b>	Depends on constitution; ultimate decision-making power lies with members	Board of Trustees	Board of Directors; Annual General Meeting (AGM) of members
<b>Reporting requirements</b>	None	Annual financial statements must be filed with the Master along with an annual tax return or proof of tax exemption; certain records and registers must be kept and provided on request	Annual return containing specified contents must be filed with the Registrar; certain registers must be kept and provided on request

<b>COMPARING THE THREE DIFFERENT LEGAL STRUCTURES FOR CIVIL SOCIETY ORGANISATIONS</b>			
	<b>Voluntary association</b>	<b>Trust</b>	<b>Non-profit (section 21) company</b>
<b>Financial safeguards</b>	No specific legal requirements, but constitution should ideally include sound financial controls	Trust property to be kept separate from other property; annual audit by a registered accountant to be provided to the Master; specified records of financial transactions to be kept by trustees	Annual audit by a registered accountant; accounting records that comply with requirements set out in the law; annual financial statements provided to members and to the Registrar in advance of the AGM
<b>Winding up</b>	Constitution must say what will happen to the organisation's assets if it ceases to exist (typically transferred to an organisation with similar objectives)	Deed of Trust must say how the trust will be closed down and what will happen to its assets (typically transferred to an organisation with similar objectives)	Special resolution of members registered with the Registrar; security for outstanding debts provided to the Master of the High Court (unless waived by the Master); other rules and procedures set out in the law must be followed
<b>Independent legal personality?</b>	Yes, if constitution contains certain elements	No, but it has a special status and acts through its trustees as its representatives	Yes
<b>Limited liability? (except in cases of negligence or wrongdoing)</b>	Can be provided for in the constitution if the constitution also gives the group an independent legal personality	Yes	Yes, with a few exceptions



## FUTURE CHANGES?

During 2022, there was discussion in various forums of approaches to -

- supporting new civil society groups to establish themselves as legal entities, particularly grassroots groups;
- facilitating joint projects between civil society and government;
- developing a Namibian Code of Ethics for civil society.

For example, one controversial point of discussion was a proposal for voluntary registration of civil society groups by government. Such a system might benefit some civil society organisations by facilitating cooperative projects between civil society and government. On the other hand, registration (even if voluntary) could be misused by government to monitor or control groups that are critical of government policies. Elsewhere in Africa, voluntary registration systems have proved to be gateways to increased government control. Greater government involvement in the establishment of non-governmental organisations might also compromise the principle of independence which is one of the hallmarks of civil society.

Interested groups should be sure to participate in future discussions and debates about these issues.



# 4. What every civil society organisation needs to know

*This Guide gives an overview of legal requirements that may be applicable to civil society organisations, depending on their structure and activities. In practice, the relevant administrative bodies may not always insist on strict compliance with all aspects of the law - but you should be aware of all the legal requirements because failure to comply with the law could lead to problems. Note that the Guide provides an overview of the different legal requirements that might apply, without giving all of the details, Note also that legal requirements change from time to time as laws and regulations are amended or replaced. You can get more details and updated information from the implementing bodies identified in each section of this Chapter.*

## 4.1 Duties relating to employment

### **Labour Act 11 of 2007**

A civil society organisation that employs staff must follow the provisions of the Labour Act just like any other employer. The Labour Act has rules about hours of work, overtime and payment for work on Sundays and public holidays. All employees are entitled to annual leave, sick leave and (where applicable) compassionate leave and maternity leave as set out in the Labour Act. The Labour Act also has rules about fair dismissal, retrenchment and severance pay. It prohibits unfair discrimination in employment decisions and practices on the basis of -

- race, colour, or ethnic origin;
- sex, marital status or family responsibilities;
- religion, creed or political opinion;
- social or economic status;
- degree of physical or mental disability;
- AIDS or HIV status; or
- previous, current or future pregnancy.

It also prohibits sexual harassment, which is unwarranted sexual behaviour towards an employee by the employer or a co-worker, where the employee has indicated that the conduct is unwelcome or where any reasonable person would find the conduct unacceptable. If you need more information about your responsibilities under the Labour Act, you can contact a Labour Commissioner at the [Ministry of Labour, Industrial Relations and Employment Creation](#).

### **Social Security Act 34 of 1994**

All employees must be registered with the [Social Security Commission](#). The employer and the employee are required to pay equal monthly social security contributions to the Social Security Commission. The amount of the contributions is based on the employee's salary. As of 2022, the employer and the employee are each required to pay 0.9% of the employee's earnings, with a minimum monthly contribution of N\$2.70 and a maximum monthly contribution of N\$81.00 by each. Note that these minimum and maximum amounts may change from time to time, as well as the applicable percentage of earnings for calculating the payments. You can confirm the applicable amounts with a Namibian accounting firm or the Social Security Commission.

At the moment, the only operational fund under this law is Maternity Leave, Sick Leave and Death Benefit Fund. This fund pays maternity benefits to female employees who are on maternity leave, sick leave benefits to employees who have exhausted their paid sick leave under the Labour Act and a one-off death benefit payment in respect of any deceased employee. The law provides for three other funds that may be set up in future: a National Medical Benefit Fund, a National Pension Fund and a Development Fund that is intended to be utilised for financial aid for students and for training and employment schemes for socio-economically disadvantaged persons who are unemployed.

### **Employees' Compensation Act 30 of 1941**

Employers are also required to pay an annual contribution to the [Social Security Commission](#) for the Employees Compensation Fund each year. The employer provides information about each employee's earnings, and the Commission calculates the amount to be paid. The Employees Compensation Fund provides compensation to employees who are injured on duty.

### **Income Tax Act 24 of 1981**

If a civil society organisation employs any staff members who earn more than a threshold amount each year, it must register with the [Ministry of Finance and Public Enterprises](#), deduct the income tax due from each of these staff members every month, and pay this money over to the Ministry. This is called PAYE (Pay As You Earn). Annual PAYE reconciliation forms must be submitted to the Ministry by 30 March each year. There are penalties for failing to deduct PAYE correctly and on time. The amount of N\$50 000 per year is the threshold for taxable income as of 2022, but note that this amount is changed from time to time. You can confirm the applicable threshold amount and get additional information about income tax by contacting a [Namibian accounting firm](#) or the [Namibia Revenue Agency](#) ("NamRA").

### **Affirmative Action (Employment) Act 29 of 1998**

This law provides affirmative action measures for three designated groups: (1) racially disadvantaged persons, (2) women and (3) persons with disabilities – with the goal of achieving equal opportunity in employment. To advance this goal, the law places certain requirements on "relevant employers" - which are defined as of 2022 as employers with **10 or more employees**.

Relevant employers must give preference to suitably-qualified members of the three designated groups when filling positions. If there are two or more suitably-qualified candidates from designated groups who qualify for a position of employment, a relevant employer must give priority to a candidate who is a Namibian citizen, or (if all the suitably-qualified candidates are Namibian citizens) to any candidate who belongs to more than one designated group (such as a black woman, or a woman with a disability). Relevant employers must also train a Namibian citizen as an understudy to every non-Namibian citizen whom they employ – but they can also apply to

the **Minister of Labour, Industrial Relations and Employment Creation** for an exemption from this requirement if it is impractical.

Relevant employers are required to submit annual affirmative action reports to the **Employment Equity Commission**, with the first being due within 18 months of becoming a “relevant employer”. Details about the contents of these reports are set out in the law. In summary, the report must include:

- a three-year affirmative action plan based on an analysis of the employer’s current workforce, and an evaluation of its current employment practices on affirmative action;
- a statistical report, which must be updated annually, detailing the representation of the designated groups in respect of job categories, salary scales, and employees who have been hired, promoted or terminated in the past year;
- a summary of the employer’s planned affirmative action measures, including numerical goals for persons in designated groups in the various job categories;
- the names of every non-Namibian citizen who is employed and the Namibian citizen understudy being trained for that position;
- supporting records.

The annual report and the three-year affirmative action plan must both be developed in consultation with existing employees, and the minutes of the consultations must be recorded. The employer’s affirmative action report will be made available for public inspection at the head office of the Employment Equity Commission. Failure to submit the required documents is a criminal offence, punishable by a fine or even imprisonment.

### **Employment Services Act 8 of 2011**

This law establishes a National Employment Service aimed at achieving full employment in Namibia. To advance this goal, designated employers are required to provide certain information to the **Employment Services Bureau** unless they have been exempted from these requirements by the **Minister of Labour, Industrial Relations and Employment Creation**. “Designated employers” are defined as of 2022 as employers with **10 or more employees**.

Designated employers must report information on the overall composition and training of their workforces. In summary, this information must include:

- the number of positions by occupation, including apprenticeships, job attachments and vacancies;
- the number of employees who are Namibian citizens or permanent residents, along with details about their sex, age, occupation and ID or birth certificate number;
- the number of employees who are not Namibian citizens, along with details about their sex, age, occupation and passport or birth certificate number;
- the salary or salary range for each occupation;
- any skills development loans, bursaries or scholarships offered by the employer.

Designated employers must also report information on vacancies and new positions, along with the minimum qualifications for these posts. The Employment Services Bureau will refer any suitably-qualified job-seeker listed on its employment information system to the employer as a possible job candidate. Any persons referred by the Bureau must be given good faith consideration for the post in question before the position can be filled. The employer must give feedback to the Bureau on whether or not it employed the referred job-seeker.

Failure to provide any of the required information is a criminal offence, punishable by a fine or even imprisonment.

## 4.2 Paying taxes and customs duties

### **Value-Added Tax Act 10 of 2000**

Everyone in Namibia generally pays 15% Value-Added Tax (VAT) on most goods and services that they purchase. VAT is a consumption-based tax, meaning that it is paid by the people and organisations who “consume” goods and services. The government’s income from VAT, like the funds it receives from the payment of income tax by people who earn money in Namibia, funds the government budget. There are two important VAT issues that may be relevant to a civil society organisation.

#### **(1) Exemption from paying VAT on goods and services supplied to the organisation**

There are certain exemptions from VAT that apply to non-profit organisations. For example, no VAT is charged on unconditional gifts given to a non-profit group. Also, if goods or services are supplied to a non-profit group for free, or at a price below market value, VAT is charged on the payment made and not on the actual value of the item supplied. As another example, used clothing that is imported by a church or a welfare organisation for free distribution to indigent persons does not currently attract VAT. The rules on VAT exemption change from time to time and should be confirmed with the [Namibia Revenue Agency \(“NamRA”\)](#).

#### **(2) Charging VAT on goods and services provided by the organisation**

A non-profit organisation may charge for work that it carries out to generate funds to apply towards its objectives. If the organisation’s taxable income adds up to a total of more than N\$500,000 in a single year, the organisation *must* register with the [Ministry of Finance and Public Enterprises](#) and charge VAT on top of the fees for the goods or services it supplies to others. A non-profit organisation *may* register for VAT if its taxable earnings are between N\$200,000 and N\$500,000 in a single year, but this is optional. Note that the income levels for VAT are changed from time to time. You can confirm the relevant thresholds with a [Namibian accounting firm](#) or the [Namibia Revenue Agency \(“NamRA”\)](#).

The organisation must pay over to the government the VAT amounts it charged on a set schedule. (As of 2022, the VAT cycle is a two-month period and the VAT must be paid over to government on or before the 25<sup>th</sup> day of the second month). Organisations that have registered for VAT are assigned a “VAT registration number” that must appear on their invoices and receipts.

If an organisation is registered for VAT, then the VAT that it pays on the goods and services that it purchases can be offset against the amount of VAT it charged to others which must be paid over to the government.

Why might an organisation want to register for VAT if its annual taxable income is below the threshold for mandatory VAT registration? It is possible that the VAT amounts claimed back from the purchase of goods and services by the organisation might *exceed* the VAT amounts that the organisation charged others on the goods and services that it supplied to them which must be paid over to government. This would benefit the organisation. But the costs of the administrative burden of dealing with VAT must be considered to see if voluntary registration makes sense.

If your organisation meets the level of taxable income that makes VAT registration mandatory, it should be sure to register with NamRA for this purpose. Failure to comply with the VAT requirements in a timely fashion can result in interest charges and other financial penalties.

You can get more information about VAT from the [Namibia Revenue Agency \(“NamRA”\)](#).



## **Income Tax Act 24 of 1981**

The law on income tax applies to all persons, including legal persons and trusts. However, most civil society organisations will be exempt from paying taxes on their organisational income if the income is used solely for advancing the group's non-profit purposes.

The Income Tax Act contains a list of exempted groups that specifically includes “**all ecclesiastical, charitable and educational institutions of a public character**” as well as groups that –

- carry on scientific, technical or industrial research;
- provide necessary or useful commodities, amenities or services to the State or the inhabitants of Namibia in general;
- carry on activities to promote commerce, industry or agriculture or any branch of these sectors;
- provide medical, dental, blood transfusion, hospital or nursing services;
- engage in or promote nature conservation or animal protection activities;
- engage in or promote cultural activities;
- provide social or recreational amenities or facilities for their members;
- promotes the common interests of persons carrying on any particular kind of business, profession or occupation;
- function as amateur sporting associations.

The broad wording of the list of exempted groups means that most genuine non-profit groups should be able to qualify for tax exemption. You can get more information about income tax from the [Namibia Revenue Agency \(“NamRA”\)](#).

## **Customs and Excise Act 20 of 1988**

Some civil society organisations may be eligible for rebates of custom duties on particular types of goods imported into Namibia, under certain conditions. The list of customs duties and exemptions is often amended, so you should enquire with the [Namibia Revenue Agency \(“NamRA”\)](#) about the possibility of customs rebates and what paperwork is required if your organisation imports goods.



## 4.3 Responsibilities under the Financial Intelligence Act 13 of 2012

The Financial Intelligence Act combats **money laundering** and the **financing of terrorism and proliferation**. Money laundering is the process of dealing with the proceeds of a criminal activity to disguise their illegal source. Organised crime groups do this to keep government authorities from discovering the crime that produced the profit. Money laundering is common in crimes that produce large profits, such as illegal weapons trading and drug trafficking. It often involves moving funds to a different country or making them appear to be the profits of a legitimate business. The goal of the process is to make “dirty” money resulting from crimes look like “clean” money from an honest enterprise – which is why it is called “money laundering”. Concerns about the financing of terrorism and proliferation (activities involving weapons of mass destruction) grew in the wake of the terrorist attacks in the United States on 11 September 2001 and other terrorist attacks around the world. The United Nations Security Council adopted a resolution that gives all its member countries a duty to create legal frameworks to combat terrorism and the financing of terrorism. Namibia is also a party to the International Convention for the Suppression of Terrorism, which includes a duty to criminalise the financing of terrorism.

The following are the key duties of non-profit organisations under the Financial Intelligence Act:

(1) **All non-profit organisations** must request a **clearance certificate** from the **Financial Intelligence Centre (FIC)** so that the Centre can assess whether or not they will be required to register with the FIC. This involves providing the FIC with the name of the organisation and its contact details, as well as a general description of its areas of activity. This information can be provided by email. However, faith-based organisations and charitable non-profit organisations are not eligible for clearance certificates, but must rather register with the FIC. This is because these categories of non-profit organisations have been identified as being at higher risk of abuse for terrorist financing.

All non-profit organisations also have a duty to **update and verify their registration details** with the **“applicable registration or regulatory authority”**. The registration or regulatory authority for NPOs set up as trusts is the Master of the High Court. For those set up as section 21 companies, it is BIPA. For those set up as voluntary organisations, there is no registration or regulatory authority – unless they are registered as welfare organisations in which case the Ministry of Health and Social Services is the relevant authority.

(2) **All faith-based organisations and charitable non-profit organisations** must **register** with the **Financial Intelligence Centre (FIC)**. The registration form is available from the FIC. As of 2023, the form is contained in **Directive 4 of 2023**, which is available on the FIC website: [www.fic.na](http://www.fic.na). It requires -

- information about the form of the organisation (voluntary association, trust or section 21 company), its founding documents (constitution, deed of trust or memorandum of association) and proof of registration (where registration is required)
- identification, address and contact details for the individuals responsible for the organisation’s establishment and management (such as its Founder, Trustees, Board members or Management Committee members)
- details about the individual who will act as the organisation’s compliance officer or reporting person for the FIC and serve as the contact person for communications with the FIC
- information about the organisation’s sources of funding
- information about the organisation’s branches inside and outside Namibia, if it has any.

Registration with the FIC also requires the following documents:

- **a risk management policy document or standard operating procedures**, which must include:
  - o procedures for confirming the identity, credentials and good standing of donors and beneficial owners
  - o procedures for managing risks relating to beneficiaries
  - o procedures for assuring transparency around founders, donors and beneficiaries
  - o procedures for screening all donors, beneficiaries, beneficial owners and relevant stakeholders against the United Nations Security Council sanctions lists which identify individuals, businesses, and countries that are sanctioned by the United Nations because of their involvement in criminal or terrorist activities
  - o requirements for keeping records of the organisation's activities, purpose and objectives
  - o accounting procedures for expenditures
- **governance policies or procedures**, which must include a list of the primary functions and powers of the Board or Management Committee and the procedures that guide the appointment of Board or Management Committee members.

If the FIC assesses an organisation as being a particularly high risk group, it may require **additional information**, such as police clearance certificates and ITC records for Board or Management Committee members and CVs, police clearance certificates and ITC records of persons in senior management and the procedures for their appointment. ("ITC records" are reports about a person's debts that show arrears, blacklisting and payments still to be made. Their purpose is to identify "bad debts". You can obtain your ITC records from an international body called TransUnion which has representation in Namibia or from your local bank.)

When there are changes in the organisation, the information supplied to the FIC must be updated within 14 days of the change in question.

Failure to comply with the FIC requirements can lead to criminal or administrative sanctions, including suspension of the organisation's activities.

Note that the rules about the duties of different categories of non-profit organisations, may change from time to time. You should contact the [Financial Intelligence Centre](#) to be sure that your organisation complies with all of the applicable rules.



## 4.4 Registering as a Welfare Organisation under the National Welfare Act 79 of 1965

What is a “welfare organisation”? The National Welfare Act defines it as any association of persons with one or more of the following objects:

- carrying out social work by means of individual treatment, group work or community organisation;
- addressing the material, spiritual or social requirements of persons or families in distress and in need of assistance;
- carrying out charitable activities for persons or families who are in need and require assistance;
- preventing social distress and poverty of persons or families;
- giving legal assistance and advice as a form of social assistance;
- collecting contributions towards any war fund;
- preventing cruelty to animals and promoting animal welfare;
- collecting funds for any of these purposes.

It does not matter whether or not the group has an independent legal personality.

However, the category is defined to *exclude* institutions maintained and controlled by the State, a local authority, a hospital board, a registered trade union or any religious body (where the activities are confined to religious work).

A civil society organisation that falls under the definition of “welfare organisation” *must* register with the [Ministry of Health and Social Services](#) under the National Welfare Act **IF** it gets some or all of its funding from the State, a local authority or contributions collected from the public.

Registration requires that the group must have a written founding document (constitution, Deed of Trust or Memorandum of Association) that provides for a **managing committee of at least seven members**. The founding document must also contain -

- the name of the organisation;
- the objects of the organisation;
- the area or areas where the welfare organisation proposes to operate;
- how the managing committee is constituted and how vacancies are filled;
- how any branch and subsidiary organisations are controlled and managed;
- how the assets of the organisation will be disposed of if the organisation is dissolved;
- the procedure for amending the founding document; and
- details about membership of the organisation.

To register, an organisation must submit an application to the [National Welfare Board](#). The objects of the group will be published in the *Government Gazette* (a regular government publication of legal issues that is issued several times each week), along with a call for any objections to its registration. If any objections are filed, then the application for registration must go to the Minister for decision.

Registration can be denied if the Board believes that the group does not comply with the requirements set out in the law for registration, is not primarily operating for one of the purposes of a welfare organisation, is not operating in good faith, is duplicating the work of some other similar group, or has adopted a name that is likely to mislead the public.

If the registration is approved, the organisation will be given a registration certificate that contains its welfare organisation number. This can be used to demonstrate the organisation’s good faith to potential contributors.

A registered welfare organisation must keep books and accounts as directed by the National Welfare Board and file certain reports and returns. (The details regarding these requirements may change from time to time and should be confirmed at the time of registration.) The Ministry has the authority to arrange an inspection of any aspect of the activities of a registered welfare organisation at any time, and to examine all documents relating to its activities. The Ministry can also examine and audit the finances of a registered welfare organisation

If a registered welfare organisation conducts its activities wholly or partly through branches, each branch must be governed by a branch committee consisting of at least five members, but it must also be subject to the control and guidance of the overall management committee.

A registered welfare organisation must supply the names, addresses and occupations of the members of its managing committee to the National Welfare Board, and give notice of any changes to the committee of any of its key office-bearers. It must provide the Board with the address of its head office and give notice of any change of address. It must also comply with certain basic financial and record-keeping requirements, including an annual audit. A registered welfare organisation must also apply to the National Welfare Board if it wants to change its name or its objects.

The registration can be cancelled if the group –

- no longer meets the criteria for registration;
- has failed to comply with any condition of its registration;
- has not actually functioned for at least two years;
- has failed to provide the required financial returns to the National Welfare Board;
- has collected contributions from the public without using its full name as the name appears on the registration certificate; or
- provides wages or other rewards to any person that are excessive in comparison to the contributions it receives.

If the Ministry discovers that a registered welfare organisation is collecting contributions under false pretences, or that a welfare organisation is collecting contributions without being registered, it can require that the contributions be returned to the contributors as far as possible, or handed over to the Ministry to return. The Ministry can decide what is to be done with any contributions that cannot be returned in these circumstances. The collection of contributions in violation of the law is also a crime.

Contributions made to a registered welfare organisation are tax-deductible for the person who made them.

The law on welfare organisations is outdated. In late 2022, the Ministry of Health and Social Services indicated that a new law on welfare organisations was in an advanced stage of preparation. You should ask the Ministry for updated information.

**Note that being a “registered welfare organisation” is NOT a legal structure for a civil society organisation.** This type of registration does NOT give an organisation a separate legal personality or limited liability. A group that wants to register as a welfare organisation must *already* have a written constitution or other founding document. For instance, the Cancer Association of Namibia (CAN) is a non-profit company which is also a registered welfare organisation. As another example, Ombetja Yehinga Organisation is a trust which is also a registered welfare organisation.

## 4.5 Registering to carry out research under the Research, Science and Technology Act 23 of 2004

The Research, Science and Technology Act covers a broad scope of activities. It defines research very broadly as “the systematic investigation or analysis into, and study of, materials, sources and the physical universe in order to establish facts and knowledge and reach conclusions”. It defines a research institution as “any research, science or technological organisation, institute, society or other body, whether corporate or unincorporated, and whether in the public or private sector, which has the practising of research, science and technology as a part of its activities”. These broad definitions mean that many civil society organisations will find themselves engaged in “research”.

A research institute based in Namibia may not conduct any type of research in Namibia unless it is registered with the **National Commission on Research, Science and Technology** set up under the law to monitor and supervise research. The registration process requires detailed information about the specific research project that is to be undertaken and the individuals who will be involved, as well as payment of application and registration fees.

In its application for registration, a Namibian-based research institute must show that the purpose, goal or result of the research will be beneficial to Namibia, and that nothing in its past conduct suggests that it will not comply with the legal rules on research.

If the application is approved, the research institute will be issued with a research certificate that is valid for a period specified in the certificate, and which can be renewed on application by the research institute. If the research project changes after the certificate has been issued, the Commission must approve the changes. A research certificate can be cancelled for a number of reasons – including delays of more than 12 months in the commencement or progress of the research.

There are separate rules and procedures for research institutes and researchers who are not based in Namibia.

A research institute or a researcher who does not comply with the legal rules commits a criminal offence punishable by a fine or imprisonment, and can also be banned from conducting any future research in Namibia.

The rules about registration to carry out research are likely to change in the future. Amendments to the law have been under discussion since a few civil society organisations complained that the requirements are so restrictive that they may interfere with the constitutional right to freedom of thought and opinion. On the positive side, the Commission also provides grants, training and other support to encourage research in some cases.

For up-to-date information on the legal framework and the availability of grants, you should contact the National Commission on Research, Science and Technology. Its website is: <https://ncrst.na/>.



## 4.6 Lottery funding under the Lotteries Act 13 of 2017

The Lotteries Act came into force on 1 December 2021. This law authorises the organising of a State Lottery in Namibia. Proceeds from the State Lottery are paid into a State Lottery Trust Fund that is administered by a Lotteries Board appointed by the relevant Minister. Set percentages of the money paid into the Trust Fund must go to:

- charity;
- arts, culture, sport, national heritage and conservation;
- youth empowerment, psycho-social disorders, science and innovation;
- any other matter approved by the Minister, particularly items related to national emergencies such as droughts and floods.

The percentages that apply to each of these categories can be changed from time to time.

Part of the money in the Trust Fund will be given out as grants to persons or groups who are engaged in the listed types of activities. Invitations to apply for these grants will be advertised from time to time. The **Lotteries Board** will set up a distribution committee to consider the grant applications and decide which ones to approve. Successful applicants must enter into a grant agreement saying how the grant money will be used. This could be a potential source of funding for some civil society organisations.

## 4.7 Partnerships under the Public Private Partnership Act 4 of 2017

The Public Private Partnership Act provides a framework for “public private partnership projects”. These are projects based on agreements between a public entity and a private entity that include the following components:

- the private entity provides public infrastructure or services for use by the public, either directly or indirectly;
- the private entity invests in or manages the infrastructure or service for a specified time;
- risk is optimally shared between the private entity and the public entity; and
- the private entity receives performance-linked payments.

This framework obviously applies only to limited types of joint projects. For more information about the public-private partnerships that are governed by this law, you can contact the **Public Private Partnership Unit** in the **Ministry of Finance and Public Enterprises**. Its website is <https://mfpe.gov.na/public-private-partnerships>.

Other partnerships between government bodies and civil society organisations could take the form of agreements concluded outside the boundaries of this law.

## 4.8 Local authority regulations

A civil society organisation that carries out activities within a local authority needs to check with the local authority to see if there are any local regulations that might apply. These will differ from place to place. For instance, there may be local rules about serving food or about conducting activities in public spaces. It is usually a good idea to cultivate a positive relationship with the local authority officials in the area where your group intends to be active, as well as asking about relevant rules and regulations.

## 4.9 International NGOs

The [Companies Act 28 of 2004](#) (section 23) says that a branch of a foreign company or a foreign association of persons *may* set themselves up as a non-profit (or “section 21”) company in Namibia if they meet the requirements for establishing themselves under this structure.

The Companies Act also has certain rules that apply to an “external company”, which means “a company or other association of persons, incorporated outside Namibia, which has a place of business in Namibia”.

International NGOs may also operate in terms of agreements between the Namibian government and the NGO, or between the Namibian government and the government of the country where the international NGO is headquartered.

Rules for international NGOs operating in Namibia are not covered in this Guide. International NGOs operating in Namibia can find out more from the [Ministry of International Relations and Cooperation](#) or the [Business and Intellectual Property Authority \(BIPA\)](#).



# 5. Codes of ethics

## 5.1 NamCode

*The “Corporate Governance Code For Namibia” (known as the “NamCode”) was prepared by the Namibian Stock Exchange and launched in 2014. It is based on international best practices and on the King Code on Governance for South Africa, 2009. (The King Code is informally referred to as “King III” because it is the third version of these South African governance guidelines, and because the committee that initiated the first set of guidelines in 1993 was chaired by a retired South Africa judge named Mervyn E King.)*

*Compliance with the NamCode is voluntary, but companies that are listed on the Namibian Stock Exchange are expected to apply the NamCode, or to explain the reasons for their failure to do so. The Board of Directors of the Namibian Stock Exchange has recommended that the NamCode should be applied to all Namibian entities, regardless of their form, including entities in the public, private and non-profit sectors. The entire NamCode can be found here: [www.nsx.com.na/index.php/about/namcode/namcode-inside.pdf](http://www.nsx.com.na/index.php/about/namcode/namcode-inside.pdf). Below you will find a summary of the key principles of the NamCode, reproduced from its closing chapter.*

*Some of the principles are more appropriate for companies with shareholders than for civil society organisations, but some of the principles can also be useful to civil society. For instance, some of the principles on relationships with shareholders are applicable to relationships between a civil society organisation and the members of the public it serves.*



## The principles at a glance

### Chapter 1 Ethical leadership and corporate citizenship

- 1.1: The board should provide effective leadership based on an ethical foundation
- 1.2: The board should ensure that the company is and is seen to be a responsible corporate citizen
- 1.3: The board should ensure that the company’s ethics are managed effectively

### Chapter 2 Boards and directors

- 2.1: The board should act as the focal point for and custodian of corporate governance
- 2.2: The board should appreciate that strategy risk, performance and sustainability are inseparable
- 2.3: The board should provide effective leadership based on an ethical foundation
- 2.4: The board should ensure that the company is and is seen to be a responsible corporate citizen
- 2.5: The board should ensure that the company’s ethics are managed effectively

- 2.6: The board should ensure that the company has an effective and independent audit committee
- 2.7: The board should be responsible for the governance of risk
- 2.8: The board should be responsible for information technology (IT) governance
- 2.9: The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards
- 2.10: The board should ensure that there is an effective risk-based internal audit
- 2.11: The board should appreciate that stakeholders' perceptions affect the company's reputation
- 2.12: The board should ensure the integrity of the company's integrated report
- 2.13: The board should report on the effectiveness of the company's system of internal controls
- 2.14: The board and its directors should act in the best interests of the company and not to those of the nominating shareholder(s).
- 2.15: The board should consider turnaround mechanisms as soon as the company is financially distressed
- 2.16: The board should elect a chairman of the board who is an independent non-executive director. The CEO of the company should not also fulfil the role of chairman of the board
- 2.17: The board should appoint the chief executive officer and establish a framework for the delegation of authority
- 2.18: The board should comprise a balance of power, with a majority of non-executive directors. The majority of non-executive directors should be independent
- 2.19: Directors should be appointed through a formal process
- 2.20: The induction of and on-going training and development of directors should be conducted through formal processes
- 2.21: The board should be assisted by a competent, suitably qualified and experienced company secretary
- 2.22: The evaluation of the board, its committees and the individual directors should be performed every year
- 2.23: The board should delegate certain functions to well-structured committees but without abdicating its own responsibilities
- 2.24: A governance framework should be agreed between the group and its subsidiary boards
- 2.25: Companies should remunerate directors and executives fairly and responsibly
- 2.26: Companies should disclose the remuneration of each individual director
- 2.27: Shareholders should approve the company's remuneration policy

### **Chapter 3 Audit committees**

- 3.1: The board should ensure that the company has an effective and independent audit committee
- 3.2: Audit committee members should be suitably skilled and experienced independent nonexecutive directors
- 3.3: The audit committee should be chaired by an independent non-executive director
- 3.4: The audit committee should oversee integrated reporting
- 3.5: The audit committee should ensure that a combined assurance model is applied to provide a coordinated approach to all assurance activities
- 3.6: The audit committee should satisfy itself of the expertise, resources and experience of the company's finance function
- 3.7: The audit committee should be responsible for overseeing of internal audit

- 3.8: The audit committee should be an integral component of the risk management process
- 3.9: The audit committee is responsible for recommending the appointment of the external auditor and overseeing the external audit process
- 3.10: The audit committee should report to the board and shareholders on how it has discharged its duties

#### **Chapter 4 The governance of risk**

- 4.1: The board should be responsible for the governance of risk
- 4.2: The board should determine the levels of risk tolerance
- 4.3: The risk committee or audit committee should assist the board in carrying out its risk responsibilities
- 4.4: The board should delegate to management the responsibility to design, implement and monitor the risk management plan
- 4.5: The board should ensure that risk assessments are performed on a continual basis
- 4.6: The board should ensure that frameworks and methodologies are implemented to increase the probability of anticipating unpredictable risks
- 4.7: The board should ensure that management considers and implements appropriate risk responses
- 4.8: The board should ensure continual risk monitoring by management
- 4.9: The board should receive assurance regarding the effectiveness of the risk management process
- 4.10: The board should ensure that there are processes in place enabling complete, timely, relevant, accurate and accessible risk disclosure to stakeholders

#### **Chapter 5 The governance of information technology**

- 5.1: The board should be responsible for information technology (IT) governance
- 5.2: IT should be aligned with the performance and sustainability objectives of the company
- 5.3: The board should delegate to management the responsibility for the implementation of an IT governance framework
- 5.4: The board should monitor and evaluate significant IT investments and expenditure
- 5.5: IT should form an integral part of the company's risk management
- 5.6: The board should ensure that information assets are managed effectively
- 5.7: A risk committee and audit committee should assist the board in carrying out its IT responsibilities

#### **Chapter 6 Compliance with laws, codes, rules and standards**

- 6.1: The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards
- 6.2: The board, each individual director and the company secretary should have a working understanding of the effect of the applicable laws, rules, codes and standards on the company and its business
- 6.3: Compliance risk should form an integral part of the company's risk management process
- 6.4: The board should delegate to management the implementation of an effective compliance framework and processes

## **Chapter 7 Internal audit**

- 7.1: The board should ensure that there is an effective risk based internal audit
- 7.2: Internal audit should follow a risk based approach to its plan
- 7.3: Internal audit should provide a written assessment of the effectiveness of the company's system of internal control and risk management
- 7.4: The audit committee should be responsible for overseeing internal audit
- 7.5: Internal audit should be strategically positioned to achieve its objectives

## **Chapter 8 Governing stakeholder relationships**

- 8.1: The board should appreciate that stakeholders' perceptions affect a company's reputation
- 8.2: The board should delegate to management to proactively deal with stakeholder relationships
- 8.3: The board should strive to achieve the appropriate balance between its various stakeholder groupings in the best interests of the company
- 8.4: Companies should ensure the equitable treatment of shareholders
- 8.5: Transparent and effective communication with stakeholders is essential for building and maintaining their trust and confidence
- 8.6: The board should ensure that disputes are resolved as effectively, efficiently and expeditiously as possible

## **Chapter 9 Integrated reporting and disclosure**

- 9.1: The board should ensure the integrity of the company's integrated report
- 9.2: Sustainability reporting and disclosure should be integrated with the company's financial reporting
- 9.3: Sustainability reporting and disclosure should be independently assured

**“Responsible leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency.”**  
**NamCode, principle C1-1, point 1.1**





## 5.2 International Code of Ethics and Conduct for NGOs

*The World Association of Non-Governmental Organisations (WANGO) has developed a Code of Ethics and Conduct for NGOs. This Code was developed in 2004 by an international committee representing the non-governmental community. The process included input from NGO leaders from all regions of the world, and drew on numerous standards and codes of conduct and ethics from NGOs and NGO associations worldwide.*

### Code of Ethics and Conduct for NGOs World Association of Non-Governmental Organisations (WANGO)

#### I. GUIDING PRINCIPLES

*Every actor operates on the basis of fundamental principles, whether plainly stated or implicitly understood. Further, an examination of organisations that are held in universal esteem reveals a great commonality in these principles. In other words, to a great extent, good NGOs from throughout the world tend to share the same fundamental assumptions or beliefs that make their successful operation possible. The following is an articulation of the more important of these shared fundamental principles.*

#### A. Responsibility, Service, and Public Mindedness

*Sustainable progress, peace, and justice require that all organisations contribute to the common good. Thus, an NGO should integrate self-development and service to others, balancing individual and public concerns, focusing on higher, broader, and more public levels of service.*

- Responsibly maintaining itself, an NGO should conduct its activities for the sake of others, whether for the public at large or a particular segment of the public.
- Public money must not be misused for selfish purposes and all public assets are to be treated with utmost seriousness, as a public trust.
- An NGO should recognize that its conduct and activities impact on the public's perception of NGOs and that it shares responsibility for the public's trust of NGOs.
- An NGO should exhibit a responsible and caring attitude toward the environment in all of its activities.

#### B. Cooperation Beyond Boundaries

*Significant progress toward world peace and global well-being can be fostered through inter-religious, intercultural, and interracial work, and across artificial barriers of politics and ethnicity that tend to separate people and their institutions. NGOs should maintain ethical, cooperative relationships with other NGOs, and should partner where possible and appropriate for the sake of the greater public good.*

- An NGO should be willing to work beyond borders of politics, religion, culture, race and ethnicity, within the limits of the organizing documents and with organisations and individuals that share common values and objectives.

### C. Human Rights and Dignity

*As the Universal Declaration of Human Rights states, “All human beings are born free and equal in dignity and rights, are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood.” (Universal Declaration of Human Rights, Article 1) The family is the fundamental natural group unit of society promoting human rights and human dignity. (Universal Declaration of Human Rights, Article 16)*

- An NGO should not violate any person’s fundamental human rights, with which each person is endowed.
- An NGO should recognize that all people are born free and equal in dignity.
- An NGO should be sensitive to the moral values, religion, customs, traditions, and culture of the communities they serve.
- An NGO should respect the integrity of families and support family-based life.

### D. Religious Freedom

*“Everyone has the right of freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” (Universal Declaration of Human Rights, Article 18)*

- An NGO should respect religious freedom.

### E. Transparency and Accountability

*NGOs should strive for openness and honesty internally and toward donors and members of the public. Periodic accountings should be made.*

- An NGO should be transparent in all of its dealings with the government, the public, donors, partners, beneficiaries, and other interested parties, except for personnel matters and proprietary information.
- An NGO’s basic financial information, governance structure, activities, and listing of officers and partnerships shall be open and accessible to public scrutiny and the NGO is to make effort to inform the public about its work and the origin and use of its resources.
- An NGO should be accountable for its actions and decisions, not only to its funding agencies and the government, but also to the people it serves, its staff and members, partner organisations, and the public at large.

### F. Truthfulness and Legality

*An NGO should be honest and truthful in its dealings with its donors, project beneficiaries, staff, membership, partner organisations, government, and the public in general, and should respect the laws of any jurisdiction in which it is active.*

- An NGO should give out accurate information, whether regarding itself and its projects, or regarding any individual, organisation, project, or legislation it opposes or is discussing.
- An NGO should fulfil its obligations under the laws of the nation in which it is organized or works, and must be strongly opposed to, and not be a willing partner to, corruption, bribery, and other financial improprieties or illegalities.

- An NGO should have a policy for staff and volunteers to confidentially bring evidence to the governing body of misconduct of anyone associated with the organisation.
- An NGO should meet all of the legal obligations in the countries in which it is organized or works. Such obligations may include laws of incorporation, fundraising legislation, equal employment opportunity principles, health and safety standards, privacy rules, trademark and copyright legislation, and so forth. An NGO should take prompt corrective action whenever wrongdoing is discovered among its staff, governing body, volunteers, contractors, and partners.

## II. NGO INTEGRITY

*Fundamental to the very character of each NGO is that it be not-for-profit, nongovernmental, organized, independent, self-governing, and voluntary. While these general criteria may appear self-evident, particularly for those NGOs whose national law codifies and requires such standards, they remain basic for the integrity and conduct of an NGO.*

### A. Nonprofit

1. **NOT-FOR-PROFIT** *The NGO is to be organized and operated as a not-for-profit organisation. Any surplus that is generated through its operations is to be utilized solely to help the organisation fulfil its mission and objectives. No part of the net earnings of the NGO is to inure to the benefit of the directors, officers, members or employees of the organisation, or to any other private persons, except that the NGO may provide reasonable compensation for services provided to the organisation.*
2. **TRADE OR BUSINESS** *The organisation is not to be operated for the primary purpose of carrying on a trade or business, unrelated to its mission and stated objectives.*
3. **GOVERNING INSTRUMENT** *The NGO's governing instrument shall prevent the organisation from distributing profits or assets for the benefit of individuals both during operation and when winding up.*

### B. Non-Governmental

1. **NON-GOVERNMENTAL** *The organisation is not to be part of, or controlled by, government or an intergovernmental agency.*
2. **POLITICALLY INDEPENDENT** *The organisation shall maintain independence and not be rigidly aligned or affiliated with any political party, although it may share a common political or legislative cause within the limit of its mission, stated objectives and legal structure. By itself, being non-governmental does not mean that an NGO is prohibited from political activity, although certain types of NGOs may be proscribed by their nations from political and legislative activity, such as tax-exempt organisations in the United States, which are prohibited from participating or intervening to any substantial extent in attempts to influence legislation or participating in political campaigns to support or oppose any candidate(s) for political office. However, an NGO that is permitted to do political and legislative activity shall only engage within the limit of its mission and stated objectives.*
3. **FOREIGN POLICY** *The organisation shall not act as an instrument of government foreign policy, but act independently of governments. The NGO shall not seek to implement the*

*policy of any government, unless it coincides with the mission of the organisation and the organisation's own independent policy.*

### C. Organised

1. **ORGANIZING FEATURES** *The NGO shall have an organizing document, an executive board, officers, and regular meetings and activities.*
2. **ORGANIZING DOCUMENTS** *The organizing documents (such as bylaws, a written constitution, or memorandum of association) shall clearly define the mission, objectives, governance structure, membership rights and obligations, if any, and rules of procedure.*
3. **LEGAL RECOGNITION** *These organizing principles apply whether or not the NGO is legally recognized by any government.*

### D. Independent and Self-Governing

1. **INDEPENDENT** *The organisation shall be independent. Its policies, vision, and activities shall not be determined by any for-profit corporation, donor, government, government official, political party, or other NGO.*
2. **SELF-GOVERNING** *The organisation shall govern itself autonomously, according to whatever governance structure it selects for itself. It shall be equipped to control its own activities.*

### E. Voluntary

1. **VOLUNTARY VALUES AND PRINCIPLES** *Rather than being required to exist by law, NGOs are formed by private initiative, resulting from the voluntary actions of individuals who have chosen to pursue a shared interest or concern. The retaining of voluntary values and principles shall remain a primary force in the way of working of the NGO.*
2. **CONTRIBUTIONS FROM VOLUNTEERS** *In order to achieve its mission and objectives, the organisation is to have meaningful contributions from volunteers. These may include both the target group and supporters.*
3. **VOLUNTEERISM OF GOVERNING BOARD** *Those who are part of the NGO's governing body (generally the board of directors) are to serve in a voluntary capacity, for no pay.*

## III. MISSION & ACTIVITIES

*An NGO's mission is its raison d'être – the reason or purpose why the NGO exists and what it hopes to accomplish. NGOs have an obligation to clearly identify and articulate their mission. This well-defined mission should serve as the foundation and frame of reference for all activities and organisational planning of the NGO. An NGO has an obligation to utilize its resources in an effective and efficient manner toward accomplishment of its stated purpose.*

### A. Mission

1. **FORMAL STATEMENT** *The organisation shall formally and succinctly state its mission in a written statement approved by the governing body of the NGO. This statement shall clearly set forth why the NGO exists and what it hopes to accomplish.*

2. **BOARD OF DIRECTORS** *Each member of the board of directors shall fully understand and support the mission of the organisation.*
3. **PUBLIC AVAILABILITY** *The mission statement of the NGO shall be made available to all officers, members, staff, partners, donors, program beneficiaries, and the public in general.*
4. **EVALUATION** *The mission of the NGO shall be reviewed periodically (every two or three years) to determine if it is still relevant. Among issues to evaluate: (a) whether the mission has been fulfilled, either by the organisation or another entity, and thus whether there is a need for the organisation as currently constituted to continue to exist; (b) whether the mission should be revised to reflect societal changes; or (c) whether there is a desire for the organisation to address new needs which might require a new mission statement.*

## B. Activities

1. **CONSISTENT WITH MISSION** *Activities shall be consistent with the organisation's mission. The NGO's mission is to serve as the foundation for strategic planning and as the blueprint for the organisation's activities. The NGO's focus shall be directed toward making sure that its goals are met.*
2. **EFFECTIVE AND EFFICIENT** *The programs of the organisation shall effectively and efficiently work toward achieving its stated mission.*
3. **FEEDBACK** *The organisation shall regularly seek feedback on its activities from project beneficiaries, as well as other stakeholders.*
4. **EVALUATION** *The activities of the organisation shall be critically examined periodically to determine their relevancy to the mission, their efficiency and effectiveness, the value of continuing the programs or revising them, and the need for new programs. Among issues to evaluate: (1) whether the activities are consistent with the current mission of the organisation or whether they need to be revised or discontinued in light of changes in the mission; (2) the efficiency and effectiveness of the programs in achieving the NGO's objectives; (3) the outcomes for the program beneficiaries; (4) the cost of the program relative to its outcomes; and (5) whether new services should be offered. Evaluations shall be open and honest and include input from stakeholders.*
5. **PROFESSIONALISM** *The organisation shall carry out its activities with professionalism and centred on the concept of serving others.*
6. **PERCENTAGE OF EXPENDITURES** *The organisation shall spend at least 65% of its total expenditures (including fundraising costs) on program activities, and ideally more than 80%. If the organisation does not meet this 65% standard, it should provide reasons why its higher overhead and fundraising expenditures are reasonable. Possible explanations for not meeting this standard could be the higher administrative and fundraising costs of a new organisation and exceptions related to donor restrictions or unusual political and social factors.*

## IV. GOVERNANCE

*An effective governance structure and a strong, active, and committed governing body is crucial to the soundness of an organisation and its ability to achieve its mission and objectives. The plan of governance of an NGO should reflect the core values, mission, and cultural standards of*



*the organisation. Democratic principles should be used where appropriate and applicable. The governing body of an NGO (generally a board of directors or trustees) holds ultimate responsibility for all activities and resources of the organisation. This includes establishing the direction of the organisation, beginning with its mission statement, and assuring that the mission statement is appropriate and relevant as times change. The governing body also determines the organisation's activities and monitors their compliance with the mission. The governing body exercises responsibility for obtaining and appropriately employing the human and financial resources to carry out the organisation's mission and sustain the organisation, and oversee fiduciary and legal requirements.*

## **A. Governance Structure**

1. **PLAN OF GOVERNANCE** *The NGO shall establish a plan of governance that best allows it to fulfil its mission, and reflects the core values and cultural standards of the organisation. Democratic principles are to be used where appropriate and applicable.*
2. **ORGANIZING DOCUMENTS** *The organisation's governance structure - including rules relating to the conducting of business by the governing body and, if applicable, an executive committee that acts between board meetings, and the procedure for electing and appointing officers and their roles - is to be clearly specified in the organizing documents (bylaws, etc.) and available to all interested parties.*

## **B. Structure of the Governing Body**

1. **DIRECTOR RESOURCES** *The NGO's governing body shall consist of individuals who are dedicated to the mission of the organisation, willing to volunteer their time and energies toward achievement of the mission, and able to offer substantial contributions to the organisation. Among resources they may bring to the governing body are experience and wisdom; prestige; the ability to raise money for the organisation; and professional skills, such as legal, accounting, management, fundraising and marketing.*
2. **UNRELATED DIRECTORS** *The governing body is to have at least three members, who are not closely family related, and preferably should have at least five unrelated members. Family relationships are accepted between two members at most, but then the board should have seven or more members.*
3. **POLICIES ON PAID STAFF** *The organisation shall have a policy restricting the number of paid staff who are voting members of the governing body, ideally to no more than one person or 10% of the governing body. An indirectly or directly compensated person should not serve as the governing body's chairman or treasurer.*
4. **TERM LIMITS** *Term limits are to be established for membership on the governing body. Consideration should be given to both the maximum number of years that can be served in an individual term and the number of consecutive terms allowed. It is generally preferable to limit board service to a maximum of three-year terms and three consecutive terms, with at least one year required before a member becomes eligible for re-election after completing the maximum number of consecutive terms.*
5. **NOMINATING COMMITTEE** *The procedure for nominating members to serve on the governing body shall be known to members and other relevant parties.*



6. **DIVERSITY** *The governing body should have broad representation, reflecting the diversity of the NGO's constituencies. The NGO may enhance participation of members from diverse geographical distances if the organisation's bylaws, and the local or national law, allow meetings via such technologies as teleconferencing.*
7. **BYLAWS** *Each member of the governing body is to be presented with the bylaws of the organisation and be familiar with these bylaws.*
8. **COMPENSATION** *Members of the governing body are not to receive compensation for their board service. They may receive reimbursement for expenses directly related to their board duties.*

### C. Responsibilities of the Governing Body

1. **MISSION STATEMENT** *The governing body shall establish the direction of the NGO, by creating or adopting the mission statement, reviewing it periodically for accuracy and validity, and revising it as necessary or desirable.*
2. **PROGRAMS AND COMPLIANCE** *The governing body shall determine the NGO's programs and services, and monitor their compliance with the mission and their effectiveness and efficiency.*
3. **RESOURCES** *The governing body shall ensure the organisation has the proper resources to fulfil the mission.*
4. **ANNUAL BUDGET AND FUNDRAISING** *The governing board shall approve the annual budget and actively participate in the fundraising process. In approving the annual budget, the governing body is to ascertain the percentage of the resources spent on administration and fundraising, versus program expenses, and strive for a goal of at least 65% of revenue being used for programs, and ideally greater than 80%.*
5. **RESOURCE MANAGEMENT** *The governing body shall manage the resources effectively, and provide oversight regarding fiduciary and legal requirements.*
6. **CHIEF EXECUTIVE OFFICER HIRING AND EVALUATION** *The governing body shall hire the chief executive officer, undertaking a careful search process to find the most qualified individual. The governing body also shall set the chief executive officer's compensation, ensure that he or she has the moral and professional support needed to advance the goals of the NGO, and periodically evaluate his or her performance.*
7. **STRATEGIC PLANNING** *The governing body shall actively participate with the staff in long-term and short-term strategic planning processes, including defining goals and objectives and the success of the NGO toward achieving its mission.*
8. **CODE OF ETHICS AND CONDUCT** *The governing board shall approve a code of ethics and/or conduct for the NGO, and assure that the organisation is in compliance with this code.*

9. **AMBASSADORS FOR THE NGO** *Members of the governing board shall serve as ambassadors for the organisation, articulating its mission, accomplishments and goals to the public, and garnering support for the organisation.*

#### D. Conduct of the Governing Body

1. **MEETINGS OF THE GOVERNING BODY** *The governing body, and any subset of the governing body (executive committee) which is authorized to conduct the affairs of the organisation between meetings of the governing body, are to meet as frequently as is necessary to fully and adequately conduct the business of the organisation. At a minimum, there should be a least 4 meetings annually of the governing body, or the governing body and the executive committee combined. If face-to-face meetings are not required by local or national law and the organizing documents, then communication technologies can aid in conducting frequent meetings.*
2. **MINUTES** *Minutes of each meeting of the governing body and executive committee, and reports of each committee when acting in the place of the governing body, are to be produced, distributed to each member of the governing board, and archived for future reference. The minutes also are to be available to an association's membership, officers, staff, and the general public, with the exception of discussions related to personnel evaluation and other such confidential information.*
3. **RESPONSIBILITY FOR CONDUCT** *The governing body shall be responsible for its own conduct. The governing body is to establish written expectations for board members (including expectations related to service on committees, attendance at meetings, and participation in fundraising and program activities), and annually evaluate its own performance. If not already established in the organizing document, the governing body is to establish job descriptions for its officers (chair, treasurer, secretary, etc.).*

#### E. Conflict of Interest

1. **BEST INTERESTS OF THE NGO** *In serving on the governing body, directors shall put organisational goals before personal goals, and put the best interests of the organisation ahead of individual desires.*
2. **MATTERS IMPACTING A DIRECTOR** *No director shall participate in deciding a matter directly impacting that individual (such as re-election to the governing body, personal remuneration, etc.)*
3. **DISCLOSURE** *Each director shall disclose all potential and actual conflicts of interest, including each institutional affiliation he or she has that might possibly involve a conflict of interest (such as sitting on a board of another NGO with overlapping goals and missions). Such disclosure does not preclude or imply ethical impropriety.*
4. **WRITTEN CONFLICT OF INTEREST POLICY** *The governing body shall develop a written conflict of interest policy, which is applicable to the directors and to any staff and volunteers who have significant decision-making authority regarding the organisation's activities or resources, as well as relevant organisational partners.*

5. **SIGNATURE** *The governing body shall provide its members with the written conflict of interest statement, which should be signed by the individual at the outset of each term of service.*
6. **LOANS TO MEMBERS OF THE GOVERNING BODY** *If an NGO has provision for making loans to members of the governing body, there shall be a policy describing how the loans operate. All loans or transactions with members of the governing body are to be included in the NGO's full financial reports and publicly disclosed.*

## V. HUMAN RESOURCES

*A committed, capable and responsible staff is vital for the success of an NGO. The foundation for this is effective human resource policies. For most NGOs, these should address both paid employees and unpaid volunteers, given the use of volunteers in many roles, including in management and as individuals rendering program and support services. An NGO should seek qualified staff, offer them proper training and supervision, treat them with fairness and equity, and provide them with avenues for individual growth and development. On the other hand, the NGO should expect employees and volunteers to maintain the highest standards of professional and personal conduct, use information and resources responsibly, and avoid conflicts of interest.*

### A. Responsibilities of the NGO

1. **CAPABLE AND RESPONSIBLE STAFF** *The organisation shall seek capable and responsible employees and volunteers (collectively, "staff"), who are committed to the mission of the organisation.*
2. **TRAINING AND WORKING CONDITIONS** *The organisation shall provide proper training and orientation for new staff, and provide them with suitable working conditions.*
3. **WRITTEN HUMAN RESOURCE POLICIES** *If the organisation has ten or more staff, it is to have written human resource policies (or an employment manual) for its staff, including basic aspects of employment (benefits, vacation days, sick leave, etc.), and other fundamental policies such as confidentiality of information, computer policies (use of computer resources for personal work, ownership of computer resources), drug and alcohol policy, conflict of interest, and grievance procedures. If the organisation has fewer than ten staff, it is encouraged to have written human resource policies for its staff.*
4. **STAFF GROWTH AND DEVELOPMENT** *The organisation shall provide opportunities for individual growth and staff development, and foster an atmosphere whereby supervisors encourage personal growth of staff.*
5. **FAIRNESS AND RIGHTS** *All staff shall be treated with fairness and equity, and as individuals with rights to be honoured and defended. Their rights to freedom of association, conscience and expression must be respected and protected.*
6. **CODE OF ETHICS AND CONDUCT** *Each staff member shall be provided with the NGO's code of ethics and/or conduct and any written human resource policies.*
7. **COMMUNICATION OF SERIOUS CONCERNS** *Key staff shall be enabled to communicate serious concerns to a member of the governing board or officer.*

8. **STANDARDS AND RESPONSIBILITY** *Staff shall be encouraged and guided in maintaining the highest standards of professional and personal conduct, and in taking personal and professional responsibility for their actions and decisions.*
9. **CONFIDENTIALITY** *Guidance shall be provided staff with access to official documentation or information regarding maintenance of the integrity, confidentiality, and privacy of such information to protect any individual concerned.*

## **B. Conflicts of Interest**

1. **WRITTEN POLICY** *The governing body shall provide staff who have decision-making power a written statement of how they shall handle potential conflicts of interest. Ideally, this statement will be signed by each individual at the time of their beginning service with the NGO and periodically thereafter.*
2. **DISCLOSURE** *Each officer shall disclose each institutional affiliation that he or she has that might possibly involve a conflict of interest.*
3. **GIFTS** *The NGO shall establish a policy regarding gifts to staff members, such as requiring that staff refuse all significant gifts connected with their position, or turn them over to the organisation.*
4. **USING POSITION FOR PERSONAL BENEFIT** *Staff members shall refrain from using their official position, either regular or volunteer, to secure special privilege, gain or benefit for themselves.*
5. **LOANS** *If the organisation has provision for making loans to staff, there is to be a policy describing how the loans operate and all loans shall be disclosed to the governing body.*
6. **BEST INTERESTS OF THE NGO** *Employees and staff should put organisational goals before personal goals, putting the best interests of the entire program ahead of individual desires.*

## **VI. PUBLIC TRUST**

*Trust is the lifeblood of an NGO - trust by the public, trust by the media, trust by the government, trust by corporations, trust by donors, trust by other NGOs, trust by beneficiaries, and trust by its employees and those who volunteer their time. To develop and maintain trust, each NGO should exhibit genuine public accountability and transparency, and should be honest in the information that it makes available to the public.*

### **A. Public information on the NGO**

1. **ACCURACY AND TIMELINESS** *Information provided about the organisation to donors, members, clients, staff, and the general public shall be accurate and timely.*
2. **ANNUAL REPORT** *At least annually, the organisation shall prepare and make available to the public information on its programs and services, and provide public access to appropriate records of those programs and services.*

3. **FINANCIAL INFORMATION** *The NGO annually shall prepare and make available to the public basic financial information on the organisation, including the source of its funding; the use of those funds; the percentage of the funds used for service and programs, administration activities, and fundraising; and any compensation provided to the governing body. The NGO shall also provide public access to appropriate financial records.*
4. **LISTING OF GOVERNING BODY AND OFFICERS** *The organisation shall make available the names of its governing body and management staff, publicize any changes in its governing board, and provide access to appropriate minutes of meetings of its governing board.*
5. **PARTNERSHIPS** *The organisation shall make available, in a timely and accurate manner, information on any partnerships or other joint ventures into which it has entered.*
6. **CONFIDENTIALITY** *The organisation shall maintain the confidentiality of personal information on staff, clients and others, unless the individuals waive this right, or disclosure is required by law.*
7. **COMPARISON** *The organisation shall describe itself in terms of its own merits, not in depreciation of other NGOs. Communications regarding another NGO shall not be made with the purpose of creating a self-benefit at the expense of the other.*
8. **COMMUNICATIONS CHANNEL** *The organisation shall provide a communication channel for the public should they wish to make inquiries regarding the NGO and its activities.*
9. **DISCLOSURE** *The NGO shall assign at least one person to assure that the organisation is complying with national and local laws regarding disclosure of information to the public.*

## B. Public advocacy

1. **ACCURACY AND IN CONTEXT** *Information that the organisation chooses to disseminate to the media, policy makers or the public must be accurate and presented with proper context. This includes information presented by the NGO with respect to any legislation, policy, individual, organisation, or project it opposes, supports, or is discussing. Forward-looking projections are to be presented clearly as such, and not as fact.*
2. **VERBAL AND WRITTEN STATEMENTS** *The organisation shall have clear guidelines and approval processes for the issuing of verbal and written statements.*
3. **DISCLOSURE OF BIAS** *The organisation shall present information in a fair and unbiased manner. Where a possible bias is unavoidable or inherent, it is to be disclosed.*
4. **AUTHORITY FOR STATEMENTS** *An NGO's statements must reflect its actual authority. A membership NGO may be able to represent its membership, if such a role is provided in its organizing document and the views of the membership are determined by proper means. A public benefit NGO shall not improperly assume the authority of the community it serves.*



## VII. FINANCIAL & LEGAL

NGOs should have proper financial and legal procedures and safeguards in place, not only to stay within the law, but also as a measure of the organisation's health and to assure donors, members, and the general public that investments in the organisation are safe and being correctly used. NGOs should employ sound internal financial procedures, maintain financial records carefully, and make financial statements available to the public. They should also have their financial records reviewed periodically by a qualified examiner who can certify that the organisation is operating legally and according to generally accepted accounting practices. NGOs must be diligent that they are complying with applicable federal, state and local laws.

### A. Financial Transparency and Accountability

1. **FISCAL RESPONSIBILITY** *Members of the governing body hold ultimate fiscal responsibility for their organisation and are to understand the organisation's financial statements and reporting requirements.*
2. **ANNUAL BUDGET** *The organisation's annual budget is to be approved by the governing body, and is to outline projected expenses for program activities, fundraising, and administration. The NGO is to operate in accordance with that budget.*
3. **INTERNAL FINANCIAL STATEMENTS** *Internal financial statements shall be prepared regularly and provided to the governing body. Any and all significant variations between budgeted expenses and actual expenditures, and between budgeted revenues and actual revenues, are to be identified and explained to the governing body.*
4. **FINANCIAL POLICIES** *The NGO shall have established financial policies, suitable for the size of the organisation, regarding the receiving and disbursement of financial resources, investment of assets, purchasing practices, internal control procedures (such as policies for signing checks), and so forth.*
5. **INTERNAL CONTROL PROCEDURES** *The organisation's internal control procedures shall have a safeguard against a person having the power to issue a check to himself or herself, such as requiring an additional signature. The organisation's internal control procedures shall have a safeguard against one person being able to issue a check over a certain amount (such as two signatures being needed over \$5,000) and shall have restrictions on checks made out to cash.*
6. **AUDIT** *If the organisation has substantial annual revenue, the accuracy of the financial reports shall be subject to audit by an independent, qualified accountant. NGOs with small gross incomes are to have a review by a qualified accountant. For NGOs with very small revenues, an internally produced, complete financial statement may suffice.*
7. **PROFESSIONAL STANDARDS** *The organisation shall adhere to professional standards of accountancy and audit procedures as stipulated by the law in its nation, and fulfil all financial and reporting requirements.*



## B. Legal Compliance

1. **LAWS AND REGULATIONS** *The organisation's activities, governance, and other matters shall conform to the laws and regulations of its nation and locality. (An NGO may seek to change those laws and regulations, if such activity is consistent with its mission.)*
2. **ATTORNEY REVIEW** *The organisation shall obtain attorney review of the organizing documents of the NGO to make sure that they are in compliance with existing laws and regulations, and shall make recourse to attorney services as appropriate to ensure continued legal compliance.*
3. **LIABILITY INSURANCE** *The organisation should consider having liability insurance, if available and applicable.*
4. **INTERNAL REVIEW** *The organisation periodically shall conduct an internal review regarding compliance of the organisation with current laws and regulations and summaries of this review should be presented to members of the governing body.*

## VIII. FUNDRAISING

*In order to fund their operational and program costs and reach their objectives, most NGOs raise funds from outside their organisation, via seeking voluntary financial support from foundations, corporations, individual donors, and government agencies. However, such financial support is not simply the movement of money from these sources to the NGO. It is a two-way street, involving value for and obligations to the donor. As a recipient of such funds, it is important that the NGO be open and transparent, be accountable to the donor, use the funds responsibly and according to the intent of the donor, and allow the funding individuals and organisations to be able to have insight into the project at all times. It is important that the fundraising activity also be consistent with the mission of the NGO.*

### A. General Fundraising Principles

1. **GOVERNING BODY** *The governing body should be very active in the fundraising effort, including being active in solicitations and in making individual contributions.*
2. **CONSISTENCY WITH MISSION** *The organisation shall only accept funding that is consistent with its mission, does not compromise its core principles, and does not restrict its ability to address relevant issues freely, thoroughly, and objectively.*
3. **TRUTHFUL** *The organisation must be truthful in all matters relating to the raising of funds and their use.*
4. **MISSION PRIORITY** *Programs shall be designed to meet the mission of the NGO and never designed simply to meet the needs of a funding source.*
5. **UNETHICAL ACTIONS** *The organisation must not tolerate any unethical activities such as double funding for one project, diversion of dedicated funds to uses other than the project for which funds were approved, or overstatement of achievements.*

## B. Solicitations

1. **SOLICITATION MATERIALS** *The organisation shall be careful to ensure that all solicitation and promotional materials are accurate, and that they clearly and truthfully present the NGO, its mission, and its programs. All solicitations are to correctly reflect the NGO's planned use of the solicited funds, and fundraising solicitations shall only make claims that the organisation can fulfil. There shall not be any exaggerations of fact or material omissions, nor any communication or images that would create a false or misleading impression.*
2. **TAX BENEFITS** *The organisation shall ensure that donors receive informed, accurate, and ethical information regarding the tax implications of potential gifts.*
3. **FUNDRAISING PRINCIPLES** *Fundraising shall be for the purpose of the NGO's mission, and free of coercion, improper motive, inappropriate conduct, unreasonable reward, or personal inurement.*
4. **EXCESS FUNDS** *When funding for a particular purpose is invited from the public, there shall be a plan for handling any excess funds, and, where appropriate, the appeal should include information on how any excess funds will be used.*
5. **COMPENSATION TO FUNDRAISERS** *The organisation shall not provide compensation to fundraisers that is based on a percentage of charitable contributions raised or expected to be raised, nor should it provide a finder's fee. Percentage-based compensation can be an impediment to keeping the donor's and NGO's best interests primary, and may foster unethical behaviour or inappropriate conduct on the part of the fundraiser. It likewise can be a hindrance toward maintaining a volunteer spirit and keeping the mission of the NGO at the forefront, and may offer reward without merit in the case of a large donation that may be the product of many individuals. The organisation may provide compensation based on skill, effort and time expended, and performance-based compensation, such as bonuses, provided such bonuses are in accordance with prevailing practices of the NGO and not based on a percentage of charitable contributions raised.*
6. **SALES PROMOTIONS** *Fundraising promotions involving the sale of products or services shall indicate the duration of the campaign, and the actual or anticipated portion of the purchase price that will benefit the NGO or program.*
7. **PERCENTAGE OF FUNDRAISING COSTS** *The costs involved in fundraising shall be reasonable relative to the revenue generated. Over the course of a number of years, the NGO's average expenditure on fundraising activities should be one-third or less of the amount of revenue generated from these activities, and ideally fundraising costs should be less than 25% of fundraising income. An organisation that does not meet this ceiling of 33 $\frac{1}{3}$ % (fundraising costs/fundraising revenue) over a five-year period should demonstrate that it is progressing toward this goal or explain why its fundraising costs are reasonable (such as the higher fundraising costs of a newly-created organisation, or unique donor, social or political factors).*
8. **INFORMATION ON SOLICITORS** *The NGO shall have policies in place to protect the donor's right to be informed whether the solicitors are paid staff, volunteers, or agents of the NGO.*

## C. Use of Funds

1. **USE OF CONTRIBUTIONS** *The organisation shall ensure that contributions are used as promised or implied in fundraising appeals or for the purposes intended by the donors.*
2. **GRANT COMMITMENT** *When the organisation accepts a grant, it is entering into a contract to carry out the program activities in an agreed-upon manner, and has an ethical and legal responsibility to honour that commitment.*
3. **DONOR CONSENT FOR CHANGES** *The organisation may alter the conditions of a gift or grant only by obtaining explicit consent by the donor.*
4. **EFFICIENT AND EFFECTIVE USE** *The organisation shall ensure efficient and effective use of grants and charitable contributions.*

## D. Accountability

1. **TRACKING EXPENDITURES** *The organisation shall set up an organized system to track grant expenditures.*
2. **TIMELY REPORTS** *The organisation shall produce timely reports on the use and management of funds.*
3. **FINANCIAL STATEMENTS** *Financial statements regarding donations shall be available upon request by the donor and interested parties.*

## E. Relationship with Donor

1. **DONOR RELATIONSHIP** *The directors, management, staff and volunteers of the organisation shall not exploit any relationship with a donor or prospective donor for personal benefit or the benefit of any relative, friend, associate, colleague, and so forth.*
2. **CONFIDENTIALITY** *Privileged or confidential information regarding the donor or donation must not be disclosed to unauthorized parties.*
3. **DONOR PRIVACY** *A donor's privacy shall be respected and an NGO must safeguard any confidential information regarding the donor or the gift. Donors are to have the opportunity to remain anonymous, and to not have their names added to any lists that are sold, rented or given to others, unless the donor has had an opportunity to approve such lists or have their names removed.*
4. **PRIVACY POLICY** *The organisation shall have a clear and easily accessible privacy policy that informs the public what information is being collected on individuals and donors and how that information will be used, how to contact the organisation to review personal information collected and to request corrections, how to inform the NGO that the individual does not wish his or her personal information to be shared outside the NGO, and what security measures are in place to protect personal information.*
5. **UNETHICAL SOLICITATIONS** *The NGO or its agents must not use excessive pressure, coercion, undue influence or other unethical means in their solicitations.*

## IX. PARTNERSHIPS, COLLABORATION & NETWORKING

When appropriate, NGOs may find that cooperation with other civil society organisations, government and intergovernmental agencies, and for-profit corporations may be beneficial in advancing their mission-related objectives. Such collaboration for common good may reduce duplication of services and eliminate using resources for competitive purposes rather than serving constituencies. Collaboration may allow pairing diverse strengths and resources and promote effectiveness in tackling priorities. However, an NGO may enter into such a relationship only if it is consistent with its mission.

### A. General Principles of Partnerships and Collaboration

1. **MISSION CONSISTENCY** *The organisation shall collaborate with other entities only if the relationship is consistent with the mission of the NGO.*
2. **SHARED VALUES** *The organisation shall collaborate on the basis of shared values, common ground, and for the good of society.*
3. **MUTUAL BENEFIT** *The NGO shall collaborate on the basis of equitable and genuine mutual benefit to each organisation.*
4. **TRANSPARENCY** *NGO collaboration shall allow financial transparency and a two-way flow of information, ideas, and experiences.*
5. **ADAPTIVE TO CHANGE** *Collaborations are to be adaptive to change. Changes in the relationship are to be developed through cooperation, and not forced by one or the other organisation.*

### B. Relations With Other NGOs and Civil Society Organisations

1. **COMMON OBJECTIVES** *When appropriate, NGOs with overlapping missions, values, and target groups should partner with each other and civil society organisations, when it would be beneficial for the common target groups and for the achievement of common objectives.*
2. **COMPETITION AND SERVICE DUPLICATION** *NGOs with overlapping missions, values, and target groups should refrain from competing with each other and with other civil society organisations, and should refrain from unnecessary duplication of services and disruption of each other's projects.*
3. **INFORMATION SHARING** *NGOs with overlapping missions, values and target groups should share relevant project information with other NGOs and civil society organisations, and mutually support each other.*
4. **SUPPORT FOR OTHER NGOS** *The NGO shall express solidarity with campaigns and actions of other NGOs, and promote the effectiveness and success of other NGOs, when it does not compromise the integrity or values of the NGO.*
5. **NETWORKING** *The organisation shall network with other ethical NGOs as a means for promoting the growth, effectiveness and efficiency of the NGO sector and the ability to advance the public good.*

## C. Relations with Government Agencies and Intergovernmental Bodies

1. **NGO OBJECTIVES AND INDEPENDENCE** *The organisation shall enter into a partnership agreement with a government or intergovernmental body only when it is beneficial to achievement of the NGO's objectives and does not compromise the independence or self-control of the organisation.*
2. **APPROPRIATE AND MUTUALLY BENEFICIAL** *The organisation shall seek to dialogue and cooperate with government and intergovernmental agencies when such cooperation would be both appropriate and mutually beneficial and could increase the NGO's effectiveness in dealing with issues and priorities in its agenda.*
3. **MISSION-LED** *The organisation shall not enter into a partnership with a governmental or intergovernmental body solely to promote the sustainability or competitive advantage of the NGO independent of achieving its mission objectives.*
4. **POLITICAL FAVOUR** *The organisation shall not change its policies or non-partisan nature in order to curry political favour.*

## D. Relations with For-Profit Corporations

1. **NGO OBJECTIVES AND INDEPENDENCE** *The organisation shall enter into collaboration with a for-profit corporation only when it is beneficial to achievement of the NGO's objectives and does not compromise the independence or self-control of the organisation.*
2. **MISSION-LED** *The organisation shall not enter into collaboration with a for-profit corporation if motivated by financial reasons that are independent of achieving its mission objectives.*
3. **MARKET ADVANTAGE** *The organisation shall not enter into collaboration with a for-profit corporation if the main motivation of the corporation is to gain a market advantage over competitors.*

### FUTURE CHANGES?

One of the objectives listed in Namibia's **National Anti-Corruption Strategy and Action Plan 2021-2025 (NACSAP)** is to support the development of **comprehensive codes of conduct for civil society organisations**.

However, it is important that civil society develops its own codes of conduct and ethics to maintain its independence from government.











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