

NON-GOVERNMENTAL ORGANIZATIONS (REGISTRATION) REGULATIONS, 2022

FIRST DRAFT

GOVERNMENT NOTICE NO.

NON-GOVERNMENTAL ORGANIZATIONS ACT (Cap. 5:05)

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IN EXERCISE of the powers conferred by section 35 (1)(a)(iii) of the Non-Governmental Organizations Act, I, PATRICIA ANNIE KALIATI, Minister of Gender, Community Development and Social Welfare, in consultation with the NGO Authority of Malawi, make the following Regulations—

NON-GOVERNMENTAL ORGANIZATIONS (REGISTRATION) REGULATIONS, 2022

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PART I

PRELIMINARY

- Citation **1.** These Regulations may be cited as the Non-Governmental Organizations (Registration) Regulations, 2022.
- Interpretation **2.** In these regulations —
 “Politicking” means to engage in partisan political discussions or activity
 “Electioneering” means an Act of persuading people to vote for a particular party or candidate in an election
- Compliance with regulations **3.** An NGO, established or operating in Malawi shall comply with these Regulations.

PART II
REGISTRATION

- Requirement of registration **3.—** (1) An organization shall not operate as an NGO in Malawi unless it is registered under this Act.
 (2) An NGO intending to operate in Malawi shall apply to the Authority for registration in Form 1 prescribed in the *First Schedule* hereto.
 (3) An NGO being registered under this Act shall operate as per the NGO’s objectives as stipulated in its constitution in respect of which it is registered.
 (4) An employee of an NGO registered under this Act shall not be deemed to be operating within the meaning of sub-regulation (1) or (2) by reason only of his performance of his functions as an employee.
- Authority to maintain register **4.—** (1) The Authority shall, for the purpose of this Act, keep and maintain, in the appropriate prescribed form, a register of NGOs, international NGOs and exempt organizations operating in Malawi.
 (2) The Registrar shall be the custodian of any register or sub-register maintained by the Authority under sub-section (1):

(3) The Registrar shall deposit, at the public Documentation Centre, any register or sub-register where members of the public may freely access any register, database, records or returns of NGOs that the Authority shall, from time to time, lodge with the public Documentation Centre.

(4) The Registrar shall designate an officer of sufficient seniority to operate the public Documentation Centre on behalf of the Registrar.

(5) The Authority shall, once in every year and as soon as may be convenient after 1st April, each year, publish in the *Gazette*, the names, addresses, dates of registration, category and other particulars of all NGOs, registered under this Act.

Application for
registration

5.— (1) The Authority shall, before registering an NGO pursuant to an application made under sub-regulation 3 (2), take into consideration the following—

- (a) status of incorporation of the applicant under a written law;
- (b) whether the principal office of the NGO is located within or outside Malawi;
- (c) compliance of the NGO with any written law prior to registration where the compliance is necessary for registration of the NGO;
- (d) approval from the Ministry responsible for the activities to be undertaken by the NGO in form of a memorandum of understanding or any other agreement between the Ministry and the NGO;
- (e) any other requirements which the Authority may determine for each category necessary to enable the NGO to discharge in a satisfactory manner, the obligations which may reasonably be expected of or undertaken by a person belonging to the category in respect of which registration is sought;
- (f) a declaration that management and staff of the NGO shall not engage in partisan politics, including electioneering and politicking.

(2) On application for registration, an NGO shall submit the following particulars to the Authority—

- (a) the particulars of the NGO concerned such as—
- (i) name of the NGO;
 - (ii) physical, postal and electronic addresses, as the case may be;
 - (iii) the personal details of the principal officers of the NGO, including trustees, board members and key executive officers;
- (b) a certified copy of the constitutive documents of the NGO as prescribed in form 2;
- (c) the source of funds for the NGO;
- (d) the nature of operation and activities which the NGO intends to undertake;
- (e) the area or areas of Malawi the NGO intends to operate in or is already operating in.

(3) An application for registration under these Regulations shall be accompanied by a registration fee prescribed by the Authority in the *NGO Fees Regulations*.

Politicking and
Electioneering

6.— An NGO or its staff shall not undertake the following—

- (a) contest in any political position
- (b) hold any political position
- (c) be a member of a political party
- (d) fund a political party or candidate
- (e) put on political attire at the office or during time of work
- (f) promote a particular party or candidate
- (g) promote party or political messages

- (h) always engaging with one party or candidate
- (i) participating in political fundraising events
- (j) contributing to the political fundraising events

Authority to
decide
applications for
registration

7.— (1) After considering an application for registration, the Authority shall decide whether to—

- (a) grant the application;
- (b) withhold the grant pending a request for further and better particulars; or
- (c) refuse the application.

(2) Where the Authority refuses to grant the application, the Authority shall, promptly, communicate its decision and the reason for refusing to grant the application.

Types of Registration

8.— The Authority shall register an NGO based on its established laws

Exempted NGOs

9.— The Authority shall exempt an NGO from the requirements of the Act if it is—

- (a) informal, and does not have a written constitution
- (b) excluded, so that it belongs to a category of organizations deemed not to fall within the ambit of this Act
- (c) established, administered or controlled by or on behalf of the Government of Malawi or other Government; or
- (d) specially exempted, so that the Regulator has determined in its discretion that such organization is to be exempted from all or some of the requirements of this Act

Certificate of
registration

10.— (1) The Authority shall issue a certificate to every NGO registered under this Act prescribed in the *Third Schedule*.

(2) The certificate issued under subsection (1) shall be valid for five years from the date of registration.

(3) An NGO shall, three months to the expiry of its certificate issued under subsection (1), apply for renewal of the registration.

(4) The Authority shall, before re-registering an NGO pursuant to an application made under sub-regulation 7 (3), take into consideration the following—

- a. Compliant for the last 3 years

Appeals against
refusal to register or
removal from register

11. An NGO aggrieved by—

(a) the refusal of the Authority to register it under this Act for any reason; or

(b) the removal by the Authority of its name from the register;

may, after filing written notice to the Authority and within three months after the date on which notice is given to it by the Authority of the refusal or removal as the case may be, appeal to the High Court for review of such decision.

Power of
Authority to
suspend or
cancel
registration

12. Where an NGO, fails or refuses to comply with the Act or any rules or regulations made under the authority of the Act, the Authority may withhold, suspend or cancel the registration of the NGO:

Provided that the Authority shall give the NGO, an opportunity to be heard before taking action in accordance with this regulation.

Striking off
from register

13.—(1) When an NGO registered under this Act has—

(a) failed to pay its annual registration fee;

(b) ceased to operate in Malawi;

(c) undertaken operations in a category or area other than that in respect of which it is registered;

(d) been declared bankrupt; and

(e) at least half of its principal officers convicted of an offence for which there is no option of a fine.

(2) the Authority may call upon such an NGO to show cause why it should not be struck off the register.

(3) Where an NGO which has been called upon to show cause why it should not be struck off the register fails to show such cause to the satisfaction of the Authority, it shall be struck off the register.

Ceasing
operations

14.— (1) An NGO which intends to cease or ceases its operations shall, in writing, inform the Authority of its decision and shall submit to the Authority, the following information—

- (a) the resolution of the Authority on the permanent closure of its operations;
- (b) a report on the interventions undertaken during the year; and
- (c) a schedule of the distribution of assets.

(2) The Authority shall, upon receipt of the information in sub-regulation (1), issue a certificate of closure to the NGO as prescribed in the *Fourth Schedule*.

Offences

15. Any NGO which contravenes the provisions of these Regulations, commits an offence, and shall, on conviction, be liable to—

- (a) a fine not exceeding K1,000,000

PATRICIA ANNIE KALIATI
Ministry of Gender, Community Development and Social Welfare

(File No.)

FORM 1: CONSTITUTION TEMPLATE

THE CONSTITUTION OF REGISTERED DIRECTORS OF XXXXXX

Article I

Name and Physical Address of the Organization

The name of the organization shall be; THE REGISTERED DIRECTORS OF XXXXXX (herein abbreviated as `XXX"). It shall be referred to as Organization. The registered office or headquarters of the organization for the time being shall be (herein Room number, name of the building& location) and the postal address shall be P.O. Box XXXXXXXX.

Article 2

Interpretation

In this Constitution the following shall be expressions with meaning hereby assigned to them-

2.1 "Board of Directors" shall mean a trustee or Board member independent appointed to manage or control the organization.

2.2 The "organization" means XXXXXXXX.

2.3 The "Executive/Management" shall mean officers involved in day-to-day management of the organization.

2.4 "Co-opted" means a member taken because of their expertise.

Article 3

Legal Status

3.1. The XXXXXX shall be registered as an NGO under NGO Act, Cap. 5:05 of the laws of the Republic of Malawi with the Office of the Registrar. It shall be an entity existing in its own right and independent of its members. The XXXXXX shall be a legal entity/body corporate with perpetual succession, capable of suing and being sued and acquiring and disposing property in its name

3.2. XXXXXX shall have power to do everything necessary or conducive to the furtherance of its Vision, Mission, Objectives and Values for the benefit of the public

3.3. The organization shall be a not for-profit separate from its founders/owners and none of its funds shall be transferred or distributed directly or indirectly to its members, donors, Directors, directors or officers except if such benefit is remuneration for service rendered or by being part of the beneficiary of an eligible group.

Article 4

Administration

4.1 XXXXXX and its property shall be administered and managed in accordance with this constitution by the Board of Directors and members of the Executive/Management. XXXX shall be guided by a Board of Directors.

Article 5

Objectives

5.1 The organization is established to achieve the following specific objective(s):

Article 6

Mode of Operations

To attain its objectives, the organization shall collaborate and partner with Government, donors, international and local organizations in areas of mutual interest.

Article 7

Powers of organization

The powers of the organization shall include:

- 7.1. Soliciting financial or material resources from the general public and donors within and outside Malawi for public benefit purpose;
- 7.2. Administer the financial or material resources for public benefit purpose;
- 7.3. Employ any qualified person for the delivery of NGO work on agreed terms or conditions of service;
- 7.4. Lay down policies and procedures for the management of the organization;
- 7.5. Invest funds of the organization for the profit and pro back the profit for public benefit;
- 7.6. Own assets for the purposes of delivering a service.

Article 8

Membership

8.1. Membership of XXXX shall be open to any anyone over the age of 18 years interested in furthering the goals of the organization and has paid the annual subscription fees as may be determined and fixed by the Board of Directors from time to time

8.2. To become a member, one must fill out the membership application form and return it to the Board of Directors or the Executive Management.

8.3. The AGM shall have the power to approve or disapprove membership to an applicant in line with the aims, purposes or activities of the XXXX.

8.4. Every member shall have one vote at general meetings

8.5. Any member of XXXXXX may resign his/her membership and any representative of a member organization or section may resign from such positions by giving a 30 days' written notice to the Board of Directors of XXXX.

8.6. The AGM may, by resolution passed at a board meeting thereof, terminate or suspend the membership of any member, if it is in its opinion that his/her conduct is prejudicial to the interests and goals of XXXX provided that the individual member or representative of the member organization (as case may be) shall have the right to be heard by the disciplinary and complaints handling committee before the final decision is made. There shall be right of appeal to an independent arbitrator appointed by mutual agreement.

Article 9

Board of Directors

9.1. This is the governing body of the organization appointed to provide oversight in the management of XXXXXXXXXXXX.

Composition of the Board

9.2. The board of Trustee of XXXX shall consist of members between 5 and 10 who shall be appointed into office for a specific term.

9.3. The board of Trustee shall comprise of members with diverse skills for the better carrying out of the NGO Activities.

9.4. The first Directors shall apply for registration of the organization under the NGO Act (Cap 5:05) and shall pay expenses incurred in connection therewith out of the funds of the

organization and may exercise such powers, authorities, rights, discretion and privileges as are by this constitution conferred to them.

9.5. The funds and property of the organization shall vest in the Directors, and such funds or property shall not be used by any person including a Trustee for personal purposes, except as may be specifically authorized by the Board.

Tenure of Office

9.6. A member of the board shall hold office for a period of maximum of 5 years and at expiry of that period shall be eligible for re-appointment for one more similar term.

9.7. The office of the member of the board shall be vacated:

- i) Upon his/her death;
- ii) Upon written resignation;
- iii) If he/she has been absent without valid excuse from three consecutive meetings of the Board of which he has had notice;
- iv) If he/she is convicted of a criminal offence and sentenced to serve a sentence of custodial imprisonment of whatever term; or
- v) If he/she is incapable of efficiently performing his/her duties as a member of a Board.

Appointment of the Board of Trustee

9.8 The Board of Trustee of XXXXX shall be appointed through an invitation and confirmed at Annual General Meeting (AGM)/invitation by the outgoing Board/through public advert in the newspapers. The appointment should be independent and transparent.

9.9 If a vacancy in the office of the Directors arises before the term of office expires where appointment of the Directors take place, the remaining Directors shall fill the vacancy by appointing a new trustee or Directors who shall hold office until the end of the term of office.

9.10 Every change in the membership of the Board shall be filed with the Registrar of NGOs.

9.11 the Board shall be appropriately oriented on its roles and regulatory requirements.

9.12 the Board shall have a minimum of two of its members, as the case may be, as citizens of Malawi.

Article 10**Functions and Powers of Board**

The Board of Directors of XXXXXX shall have the following functions and powers:

1. Manage and be responsible for all the property of the organization;
2. Determine financial requirement and expenditure of the organization;
3. Borrow money on behalf of the organization on such terms and conditions as the treasury may think fit;
4. Appoint the Executive Director and senior management for the day-to-day operations of the organization;
5. Mortgage, charge or pledge any property of the organization as a means of securing repayment of any debt, liability or obligation of the organization
6. Approval annual budgets and audits of the organization;
7. Lead in the fundraising of the organization for the fulfilment of the objects of the organization:
8. Ensure the NGO submits reports to the Registrar of NGOs and compliance with any other Laws;
9. exercise such powers as are necessary for the fulfilment of the objects and power of the organization

Article 11**Meetings of the Board**

- 11.1. The board shall hold ordinary meetings for the dispatch of business at least once every three months in each year.
- 11.2. No member of the Board shall attend the meetings of the Board by representation.
- 11.3. The Board members shall be given minimum of seven days written notice of the meeting being convened.
- 11.4. At any meeting of the Board:-
 - I. The Chairperson or in his/her absence the vice chairperson shall preside;

II. Quorum shall be formed by any three members;

III. In the absence of both the chairperson and vice chairperson, the members present shall elect one of their members to preside.

11.5. At any meeting of the Board, a decision on any matter shall be that of the majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his/her deliberative vote.

11.6 The Board shall cause minutes to be kept of the proceedings of every meeting of the Board.

11.7. An extraordinary meeting of the Board: -

a. Maybe convened by the Chairperson within seven days after giving notice in writing to members of the Board;

Article 12

Disclosure of Interest

Any member of the Board who has an interest directly or indirectly, in any matter to be considered by the Board shall, soon after the facts have come to the knowledge of the member, disclose this fact and the nature of the interest to the Board.

After the disclosure, the remaining members shall discuss the matter and determine whether the member should be precluded from participating further in the meetings concerned and the decision taken by the remaining members regarding the matter shall be recorded in the minutes of the meeting.

Subject to the provisions of subsection (2), a member who has an interest in a matter that is before the Board and who cannot therefore perform his/her functions in a fair, unbiased and proper manner shall not vote, participate in any other matter in the proceedings of a meeting of the Board or be present at the venue where such a meeting is being held.

Where a member does not comply with the provisions of subsection (1) and (3) then the proceedings of such a meeting relating to the matter which he/she has an interest shall be void.

Article 13

Annual General Meeting (AGM)

The organization shall hold an Annual General Meeting of members to receive reports from the Board of Directors and Management of any matter relating to the affairs of the organization.

The secretary shall cause a notice in writing to be issued to all eligible attendants together with the draft agenda of the said meeting at least thirty (30) days prior to the date of the Annual General Meeting.

Proceedings of any General Meeting shall not be invalidated by reason of the fact that any member did not receive a notice thereof or that the notice was received late

The quorum at a General Meeting shall be two-thirds of the members due and eligible to attend such meeting.

If within thirty minutes from the time appointed for a General Meeting, a quorum is not formed, the meeting shall stand adjourned to the following week on the same place and hour. No notice may be given of the adjourned meeting.

Article 14

Business of Annual General Meeting

The business of an annual General Meeting shall be:

- i. to receive statements of accounts of the organization presented by the Board
- ii. to receive and consider Board of Directors and Auditor's reports;
- iii. to approve appointment of Auditors of the organization for the ensuing year
- iv. to elect members of the Board; and
- v. to transact any other business of the organization as special business

Article 15

Voting and Passing of Resolution

Every member shall be entitled to speak and vote at the General Meeting.

Every member shall have one vote

No objection shall be raised regarding the qualification of any vote except at the meeting or adjourned meeting at which the vote objected to is cast, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting who shall consult other members of the Board to decide on the outcome through Board members own vote.

Article 16**Management Board of the Organization**

The XXXXX shall have a management who shall be responsible for the day to day running of the Organization

Management shall be headed by the Executive Director who shall secretary to the Board.

The terms and conditions of service of the Executive Director shall be subjected to the approval of the Board.

The Executive Director shall administer and implement the constitution and perform such other duties as the Board may, from time to time assign him.

The Board shall delegate to the Executive Director the appointment of employees of such ranks as the Board may specify.

Article 17**Funds of the Organization**

The funds of the XXXXX shall consists of:-

- i. Any donation and grant of funds made to the organization
- ii. Any sums of money from the organizations Income generating activities
- iii. Loans contracted by the organization
- iv. Proceeds from sale of any asset or property by or on behalf of the organization

Powers to Borrow

The XXXXX shall have powers to borrow either temporarily, by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions.

Provided that any such borrowings shall subsequently be approved by the Board.

Financial year

The financial year of the XXXX shall be a period of twelve months from (Date and month) to (Date and month) of each year as determined by the organization.

Accounts and Audit

The organization shall keep proper accounts and other accounting records in accordance with the generally accepted accounting principles and practice.

The accounts of the organization shall be audited annually by an independent auditor accredited by the Malawi Accountants Board (MAB) appointed by the Board and approved by the General Assembly.

Article 18

Dissolution and Disposal of Assets

The organization shall be dissolved if members decide so by a ballot at a General Assembly provided the results of such a ballot show two-thirds majority in favor of the dissolution.

Upon dissolution of the organization, the properties and assets of the organization shall be towards the satisfaction of its debts and liabilities and or donated to a charitable

organization with similar objectives.

Article 19

The Common Seal

The organization shall have a common seal which shall consist of an embossed stamp inscribed with the words "THE REGISTERED DIRECTORS OF XXXXXXXXXX"

The Seal shall be kept in the safe custody of the Executive Director and shall only be used on the written authority of the executive.

Article 20

Indemnity

Every trustee of the organization, every employee or volunteer acting with the full authority of the organization in a matter concerning the organization shall be indemnified by the organization out of the funds of the organization against any liability incurred by such Trustee, Executive or employee as the case may be arising from claims by third parties.