



PROCEDURE OF REGISTERING AN NGO IN TANZANIA AND NPO IN ZANZIBAR

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The United Republic of Tanzania is comprised of two distinct jurisdictions: mainland Tanzania (previously Tanganyika) and the former People's Republic of Zanzibar. Two distinct governments manage the affairs of mainland Tanzania and Zanzibar. Both jurisdictions' legal systems are based on the English common law system, but that of Zanzibar also accommodates Islamic and customary laws. While mainland Tanzania and Zanzibar have similar laws in several areas, each government generally adopts separate laws that govern each respective jurisdiction. Mainland Tanzania and Zanzibar have adopted some of the same provisions governing taxes, for instance, though they otherwise have different legal frameworks governing non-profit organizations (NPOs) and philanthropy.

The government of mainland Tanzania comprehensively restructured the legal system governing NPOs through the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019. Under the new system, the main form of NPO in mainland Tanzania is a "non-governmental organization (NGO)," which is defined as an institution that is voluntary, self-governing, not-for-profit, apolitical, established (i.e., with regular meetings and rules of procedure); and operating for a public benefit purpose. Such purposes include enhancing economic, social or cultural development; protecting the environment; or advancing good governance, law and order, and human rights.

NGOs must adopt the standard NGO Constitution provided under NGO A-FORM No. 16, under the first schedule of the 2019 Regulations issued under the NGO Act (The NGO Act (Amendments) Regulations, 2019 Section 21)).

Other forms of NPOs in mainland Tanzania include societies and trusts. However, the 2019 Amendments effectively require organizations engaging in activities that benefit the community or public (i.e., benefit those beyond the organization's members) to register as NGOs (The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019 Section 29). Given this requirement, it is most likely that a US donor would provide a grant to an NGO. Thus, the sections of this Note devoted to mainland Tanzania will focus on explaining issues relevant to making an equivalency determination for the NGO legal form.

APPLICABLE LAWS

The laws governing NGOs in mainland Tanzania are:

The Constitution of United Republic of Tanzania
The Non-Governmental Organizations (NGO) Act, 2002



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The Companies Act, 2002
The Written Laws (Miscellaneous Amendment) (No. 2), 2005
The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019
The NGO (Amendments) Regulations, 2019
The NGO (Renewal and Incentives) Regulations, 2019
NGO (Rights and Duties of Assistant Registrars) Regulations, 2019
NGO (Amendments) Regulations, 2018 (G.N No. 609)
The Income Tax Act, 2019
The Customs Tariff Act, 1968
The Value Added Tax (VAT) Act, 2014
The VAT (General) Regulations, 2015
The VAT (General) (Amendment) Regulations, 2018
The Finance Act, 2020

NGO REGISTRATION LEVELS

Registration of a Non-Governmental Organization in Tanzania which is governed by the Non-Governmental Organizations Act, No.24, 2002 (as amended) is categorized into four levels namely

- 1.1 District Level
- 1.2 Regional Level
- 1.3 National Level
- 1.4 International Level

Section 22(1) of the Non-Governmental Organizations Act, No. 24, 2002 (as amended) empowers the Registrar to appoint public officers within the Region or District for the purpose of facilitating registration in such levels. In the current practice the Public Officers as referred in the Act are Community Development Officers of the Region or District. Subject to the provision of Section 12(1) of the Act, every application shall be made in a prescribed form by a group of persons to the Registrar. The term "group of persons" include group of Non-Governmental Organizations.



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DOCUMENTS REQUERED FOR REGISTRATION IN ALL LEVELS

- Copy of Constitution of the Non-Governmental Organization (3 bound Copies).
- Minutes containing full names and signatures of founder members.
- Personal particulars of office bearers (Chairperson, Secretary and Treasurer with 2 photographs). NOTE: For International NGOs 2 CVs must be of citizens of Tanzania
- A filled NGO A Form No.1 attached with 3 Stamp Duty worth **1500 Tanzania shillings** for Local NGO and Stamp Duty worth **2 USD** for International NGO.
- Recommendation letter from District/Regional Assistant Registrars.
- Any other particulars as may be required by the Registrar

APPLICABLE FEES

- Registration at District Level shall be **Tshs 80,000** equivalent to **40 USD**
- Registration at Regional Level shall be **Tshs 100,000** equivalent to **50 USD**
- National Level shall be **Tshs 115,000** equivalent to **60 USD**
- International Level shall be **350 USD** equivalent to **700,000 TZS**

POST REGISTRATION STATUTORY COMPLIANCE REQUIREMENTS

DOCUMENTS REQUERED

- The report contain all activities done in a quarter of the year
- The NGO A form no 14

SUBMISSION OF ANNUAL REPORT

The documents required are:

- The financial statement
- The report containing the activities done in the whole year
- The NGO A form no 10

SUBMISSION OF FUNDING CONTRACT OR AGREEMENT

The funding contract or Agreement entered by any non-Government Organizations shall be submitted to the Registrar for approval. See Regulation 21 of the Non-Governmental Organizations (amendments) Regulations of 2019 (GN .No. 685).



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DOCUMENTS REQUIRED

- A contracts or Agreements between an NGO and Donors
- The NGO A form no 16

ADHERENCE TO THE CURRENT NGOS CONSTITUION FORMAT

It is a requirement of regulation 22 of the Non-Governmental Organizations (amendments) Regulations of 2019 (GN .No. 685) for all Non-Governmental Organization's Constitutions to be in the said format.

DOCUMENTS REQUIRED

- The NGO A form no 17

ISSUANCE OF NEW CERTIFICATE FOR REGISTERED NGOS

It is a requirement of Regulation 19 (1) of the Non-Governmental Organizations (amendments) Regulations of 2019 (GN .No. 685). Those Organizations which we're registered Under the Act (NGOS ACT) and issued a certificate of registration or certificate of compliance shall make an application to the Board for issuance of new certificate.

NOTE: The purposes of the new certificate is to put expired date which will be every 10 years

DOCUMENTS REQUIRED

FOR NEW APPLICANTS THOSE COMPANIES LIMITED BY GUARANTEE WITHOUTH SHARE CAPITAL PRVIOUSLY REGISTERED UNDER THE COMPANIES ACT:

- Application shall be made under NGO A form no 1 for all
- Softy and hard copy certificate of incorporation
- Softy and hard copy of not less than five founder members
- Softy and hard copy of the constitution or memorandum
- Softy and hard copy CV of leaders/office bearers, each CV with (2) size pictures
- Other specify (if any)

FOR PRVIOUSLY REGISTERED NGOS

- Softy and hard copy of previous registration certificate
- Softy and hard copy trust deed, MEMART or constitution



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- Softy and hard copy CV of leader/office bearers, each CV with two (2) passport picture

Distribution of profits.

The law does not explicitly prohibit NGOs from distributing profits to their members. However, a local expert notes that the requirement that NGOs be “not-for-profit” under Section 2 of the NGO Act, 2002 as amended is understood to mean that NGOs are not permitted to distribute any generated profit as dividends to their members. Furthermore, the NGO Constitution that NGOs are required to adopt states in Article 26 that NGOs must apply any funds obtained solely to the promotion of their objectives (NGO A-FORM No. 16 Article 26).

There are no legal restrictions on salaries or expenses of NGOs. However, according to a local expert, in practice NGOs cannot engage in self-dealing.

Dissolution of an NGO

Dissolution of an NGO may be voluntary or involuntary. Members of the NGO may voluntarily pass a resolution to dissolve the NGO in accordance with the NGO’s founding documents.

The NGO Coordination Board (“the Board”), working with the Registrar of NGOs (“the Registrar”), can cancel the registration of an NGO (The NGO Act, 2002 Section 20).

The NGO Coordination Board can move to cancel the registration of an NGO on the following grounds:

1. The NGO violated the terms or conditions prescribed in its registration certificate;
2. The NGO has ceased to exist;
3. The NGO operates “in variance to its Constitution”; or
4. The National Council for NGOs has submitted a recommendation to the NGO Coordination Board for the NGO’s dissolution.

Where one of the above grounds is met, the Registrar of NGOs will notify the NGO of the grounds for dissolution and provide the NGO with the opportunity to rectify or remedy the situation. If the NGO fails to do so, the Registrar can recommend the Board to cancel the registration of the NGO. If the Board is satisfied with the Registrar’s recommendation, it will direct the Registrar to cancel the registration of the NGO (The NGO Act, 2002 Section 21). An NGO may appeal an unfavorable decision by the Board to the Ministry of Health, Community Development, Gender, Elders and Children.



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Upon dissolution, an NGO's assets are put towards its remaining debts. Excess assets are then transferred to other NGOs with similar objectives (NGO A-FORM No. 16 Article 29).

NGO REGISTRATION IN ZANZIBAR.

The forms of NPOs in Zanzibar that are most likely to receive US-donor support are societies and companies limited by guarantee. While "NGO" is a much-used term in Zanzibar, Zanzibar does not actually have a formal legal framework governing NGOs. Rather, "NGOs" are registered under and must abide by the Societies Act, which does not use the term "NGO." The sections of this Note devoted to Zanzibar will explain the relevant issues for the "society" and "company limited by guarantee" legal forms, with the understanding that the rules relating to "societies" also likely apply to "NGOs" in Zanzibar if a potential grant recipient self-identifies as an "NGO."

The pending NGO bill aims to officially recognize NGOs as a form of non-profit entity, and thus will impact the relevant legal frameworks in Zanzibar if adopted.

Society: The Societies Act, 1995, does not define a "society." Rather than identifying key characteristics of a "society," the Act states that an organization is considered a "society" if it properly follows registration procedures laid out in the Act (The Societies Act, 1995 Section 3).

Company limited by guarantee: a company whose members' liability is limited by memorandum (The Companies Act, 2013 Section 3(2)(b)).

Companies limited by guarantee must adopt the standard articles of association provided under Table C of Zanzibar's Companies Act, 2013.

The laws governing NPOs in Zanzibar are:

The Constitution of Zanzibar

The Societies Act, 1995

The Companies Act, 2013

The Companies Regulations, 2017

The Zanzibar Business and Property Registration Agency Act, 2012

The Tax Administration and Procedures Act, No. 7 of 2009

The Income Tax Act, 2019

The Value Added Tax Act, No. 4 of 1998

The Excise Duty Act, No. 8 of 2017



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Distribution of Profits:

Societies:The Societies Act, 1995 does not explicitly prohibit the distribution of profits to a society's members. However, a local expert explains that the requirement that societies only use funds to further their stated objectives (The Societies Act, 1995 Section 32), read together with the general understanding that societies must operate for the benefit of the community or public, is understood to mean that societies may not distribute any profits to their members.

The Societies Act, 1995 also does not impose any restrictions on societies' employee salaries or expenses.

Companies limited by guarantee:Companies limited by guarantee may not distribute dividends to their members. Moreover, income generated must be used to promote the objectives of the company (The Companies Act, 2013 Section 8). The law does not impose restrictions on a company limited by guarantee's employee salaries or expenses.

Dissolution of an NPO

societies:Dissolution of societies may be voluntary or involuntary. Members of a society may initiate the dissolution of an organization through a three-quarters vote in favor of dissolution (The Societies Act, 1995 Section 38).

Alternatively, the Registrar of Societies may cancel the registration of a society on certain grounds, including if the Registrar believes the society is likely to pursue or be used for any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare, or good order, or which is likely to engender racial hatred; the society's rules are repugnant to or inconsistent with law; or the society contravenes its own governing rules (The Societies Act, 1995 Section 13). A society may appeal the cancellation of its registration before the Zanzibar High Court within 21 days from the date of the cancellation (The Societies Act, 1995 Section 16).

The Minister responsible for societies may also revoke the registration of a society, provided that the Minister notifies the society of its decision at least 21 days in advance of the planned revocation, and provides the society with the opportunity to show that it should not lose its registration. The Minister must also demonstrate a sufficient effort to determine that the society must be de-registered in accordance with the Societies Act. A society typically cannot appeal the Minister's decision unless the Minister has abused his power to revoke the society's registration, in which case the society may appeal the decision to the High Court within 14 days of the Minister's decision (Zanzibar Societies Act, 1995 Section 14).



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Upon dissolution, a society's assets are put towards its remaining debts. The Registrar of Societies shall specify a scheme of distribution of remaining assets (The Societies Act, 1995 Section 37(2)).

Companies limited by guarantee:A company may voluntarily wind up in the following circumstances:

1. The set period of existence specified in the company's founding documents has concluded, or if the founding documents specify an event that triggers the company's dissolution and that event has occurred;
2. The company passes a special resolution to begin winding up; or
3. The company passes an extraordinary resolution stating that it cannot continue its business and it is advisable to wind up due to its liabilities (The Companies Act, 2013 Sections 224-25).

A company can appeal an unfavorable decision to the Minister of Trade and Industry within 21 days of the decision (The Zanzibar Business and Property Registration Agency Act, 2012 Section 8(2)).

Upon dissolution, a company's assets will be put towards its remaining debts. The Zanzibar Business and Property Registration Agency will distribute any remaining assets to another company with similar objectives (The Companies Regulations, 2017 Section 38(2)).

A. Tax Exemptions

In both Mainland Tanzania and Zanzibar, all forms of NPOs (e.g., NGOs in mainland Tanzania, and societies and companies limited by guarantee in Zanzibar) may enjoy a partial income tax exemption by obtaining "charitable" or "religious" organization status. An NPO must submit an application to the Commissioner General of the Tanzania Revenue Authority to be recognized as a "charitable" or "religious" organization. To be considered a "charitable" organization, an NPO must be established and function solely as an organization for (i) the relief of poverty or distress of the public; (ii) the advancement of education; or (iii) the provision of general public health, education, water or road construction or maintenance (The Income Tax Act, 2019 Section 64(8)(a)).

"Charitable" or "religious" organizations are granted a tax exemption for the following types of income:

All income that is applied towards the organization's activities that relieve poverty or distress of the public, advance education, or provide for public health, education, water, or road construction or maintenance, where these activities provide reasonable benefits to



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residents in the United Republic of Tanzania; and
Twenty-five percent of the organization's income from its charitable business (The Income Tax Act, 2019 Section 64).

Any income that a "charitable" or "religious" organization receives that is not put towards its activities during the year will be treated as taxable income.

B. Deductibility of Donations

In both Mainland Tanzania and Zanzibar, gifts to "charitable" or "religious" organizations may be deducted from an individual's or entity's income for the purposes of calculating taxable income (The Income Tax Act, 2019 Section 16(1)(a)). The deduction to the income tax shall not exceed two percent of the income, as calculated under Sections 7 through 9 of the Income Tax Act. Individuals and entities may also claim deductions from the income tax for contributions made to the AIDS Trust Fund and other Tanzanian Government initiatives to fight against COVID-19 (The Finance Act of 2020 Section 31). This deduction does not apply to donations to private sector or NGO efforts to combat AIDS or COVID-19.

Customs Duties, Excise Duties, and Value-Added Tax

MAINLAND TANZANIA

Goods imported into Tanzania by an NGO that are intended to be used solely by the NPO for certain humanitarian and development purposes can be exempted from customs duties (see The Customs Tariff Act, 1968 Third Schedule Rule 10). The customs duty will become due if the exempted goods are transferred, sold, or conveyed in any way to another person not entitled to the exemption (The Customs Tariff Act, 1968 Third Schedule Rule 10(3)).

To claim an exemption from the customs duty, an NGO must send an application to the Tanzania Revenue Authority with the following attachments:

- Letter from the head of the organization applying for duty and tax remission or on his/her absence the person acting on behalf substantiating the ownership of the goods;
Copy of the registration certificate(s) of the applying organization;
Letter from the District Commissioner substantiating the existence of the project in the respective District;
Letter from the Ward Executive Officer substantiating the existence of the project in the respective Ward;
Organization's annual procurement plan;
Organizations utilization report accounting for the remission granted during the previous year;



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Copies of Bill of Lading/Air waybill/Road Consignment Note, Invoice, Packing List, List of beneficiaries, and donation certificate in case of donation; and

Any other relevant information to support the application.

The value-added tax (VAT) rate is 18 percent. The threshold for VAT registration is TZS 100 million (approximately USD 43,000) (The VAT Act, 2014 Section 28 and the VAT (General) Regulations, 2015 Regulation 14). Foreign grants are not subject to VAT, nor are NGOs' imports for certain humanitarian and disaster relief (The VAT Act, 2014 Exemption Schedule Part II).

ZANZIBAR

Certain goods and services, including those imported by international organizations or aid agencies, are exempt from the excise duty (The Excise Duty Act Third Schedule). Imports by societies and companies limited by guarantee are not included in this list of exemptions from Zanzibar's excise duty. The Excise Duty Act does not lay out a procedure to claim the exemption, but in practice, the Zanzibar Revenue Board adopts the same procedure as the Mainland has in place for claiming customs duty exemptions, noted above.

The VAT rate is 15 percent. The threshold for VAT registration is a taxable turnover of over TZS 50 million (approximately USD 21,500). Foreign grants are not subject to VAT or similar taxes. As in Mainland Tanzania, the importation of certain goods and services are exempt from the VAT, such as those that provide relief from natural calamities and disasters or contribute to government-approved projects on health, education, water supply, and infrastructure (The Value Added Tax Act, No. 4 of 1998 Third Schedule).

Sources: The law, government, Council on Foundation, and other stakeholders.