

GUIDANCE NOTES

Constructing the Constitution of a Charitable Organization

Effective December 8, 2022 and in keeping with the promulgation of Charities Regulations, 2022 all Constitutive Documents (Articles of Incorporation, Articles of Association/Memorandum of Association, Trust Deed, Constitution, Registered Rules, etc.) **must include information or provisions on the following:**

Charitable Purposes and Activities

- The charitable purposes of the organization and any power conferred to carry out activities in support of those charitable purposes must be stated. The objects and powers are to be clearly and ambiguously stated.

Objects

What your charity is set up to achieve? (Its purposes must all be charitable for the public benefit) should answer the following questions:

- What? – What charitable purpose(s) the organization wants to be involved with/ what outcomes are the charity set up to achieve.
- Who? – Who are the beneficiaries of the charity, who is the target group(s) e.g., women, children, animals, people in need etc.
- Where? – Where is the target area for the charity? Where does your charity want to extend itself e.g., a particular parish or town, community or all of Jamaica.

Powers

The powers must state the activities to be undertaken by the charity in order to ensure that the objectives are being achieved. Powers answers the question how:

- How? – This reveals how the organization will carry out/ execute its objectives. What are the steps that will be taken in fulfilling the objectives of the organization?

Governing Board

- Should not be less than two (2) and in the case of a charitable organization that is a private company, one of whom shall be a director and the other being the Company Secretary
- Duties and terms of office – outline the duties of Director(s) and Company Secretary and state length of time each will serve in that particular position
- The board may consist of residents outside of Jamaica; provided that at least one board member is a resident of Jamaica

- Where there are changes in the membership of the board the Charities Authority is to be notified within 28 days of change on the Notice of Change to Charities Authority (Form 7)

Quorum for Meetings of the Governing Board

- The required quorum for meetings of the governing board must be explicitly stated.

Financial Year

- State the financial year of the charitable organization

Prohibition on Director's receiving Payments

- Include a provision that prohibits governing board members from receiving any form of payment from the charitable organization, except for reimbursement of out-of-pocket expenses incurred while performing their duties.

Immovable Property

- All immoveable property of the organization must be vested in the name of the organization. Where there are immoveable properties they should be explicitly identified in the Constitution along with any person who has legal or beneficial interest in the immoveable property.

Conflict of Interest

- Procedures to address conflicts of interest between a governing board member and the charitable organization
- A conflict of interest situation may arise when a governing board member takes action or has interest that make it difficult to perform their duties objectively and effectively
- It may also arise when a director, employee or member of his/ her family receives personal benefits as a result of his / her position in the organization.

Provisions for Dissolution

- This should address how the assets will be dealt with in the event that the charity is wound-up. It should be expressly provided that upon dissolution any charitable donations, funds or assets of the charitable organization be distributed to another registered charitable organization and which include procedures for the distribution of any charitable donations, funds or assets to other registered charitable organization.

Amendments

- Provisions that permit the amendment of the Constitution and the manner in which amendments are to made.

N.B. For an Incorporated Entity - the amendments should be lodged at the Companies Office of Jamaica (COJ) and you may contact their offices for specific details regarding process and cost.

For an Unincorporated Entity - the amendments should be stamped at the Stamp Office and then registered at the Registrar's General Department and you may contact their offices for specific details regarding process and cost.

Kindly note that if you currently have a Constitution which does not have all the above elements and you intend to apply for charitable Status you should amend the Articles/Constitutive Document before submit the application to the Charities Authority.