

No. of 2008. Non-Governmental Organisation Bill Saint Christopher
2008. and Nevis.

SAINT CHRISTOPHER AND NEVIS

No. of 2008

A BILL to regulate the operation of Non-Governmental Organisations within Saint Christopher and Nevis and for related matters

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

PART I - PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Non-Governmental Organisations Bill, 2008 and shall come into force on such date as the Minister may by Order appoint.

Interpretation.

2. In this Act, unless the context indicates otherwise, the following definitions shall have the following meanings:

“Commission” means the Non-Governmental Organisation Commission established under section 17;

“Minister” means the Minister with responsibility for Community Affairs;

“NGO” means a Non-Governmental Organisation as described under

section 3.

PART II - REGISTRATION

Role and function of
NGO.

3. (1) An NGO is a legal entity formed as a company limited by guarantee under the Companies Act whose aims, nature and objectives, are primarily for the purposes of sustainable development within the State and shall include the pursuit of activities of national benefit, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like.

(2) Without prejudice to the generality of subsection (1), an NGO shall possess the following attributes and characteristics:

- (a) it shall be independent of Government control in its operations and management;
- (b) its aims, objects and purposes shall be to achieve sustainable human development on a voluntary, non-profit basis;
- (c) it shall be self-governing and its business and affairs shall be under the management and control of a Board of Directors, elected to office for a period and in a manner specified in its Articles of Association;

(3) A member of the Board of Directors, or an officer or employee of the NGO shall be excluded from using the objects, aims and purposes of the NGO for personal gain or profit;

(4) The provisions of this section shall not be prejudicial to the formation of any Association pursuant to the Constitution but any such relevant Association that is not registered pursuant to this act shall not be entitled to any of the benefits provided to registered NGOs under this Act.

(5) An NGO shall adhere to the provisions of the Code of Good Conduct for Caribbean NGOs, as set out in the Schedule

Schedule.

Economic activities
of NGO.

4. Any economic activities undertaken by an NGO must be in furtherance of its stated objectives within the Memorandum and Articles of Association.

Registrar.

5. The Registrar for NGOs shall be the Registrar of Companies.

Application to
Registrar.

6. (1) Every organisation that is desirous of being registered under this Act shall apply to the Registrar.

(2) An application made pursuant to subsection (1) shall be in writing and shall be submitted with the following documents:

- (a) the name and address of the NGO;
- (b) the Memorandum and Articles of Association of the NGO, demonstrating that it is a company limited by guarantee;
- (c) a brief statement and details of the aims, objects and purposes of the NGO;
- (d) the organisational structure of the NGO including its membership and management, and how Directors are elected, their duties and powers and terms of office;
- (e) the names, addresses and occupation of at least three members of the Board of Directors of the NGO.

of the NGO;

- (f) the By-laws of the NGO.

Sustainable human development.

7. For the purposes of section 3, the expression “sustainable human development” shall include but not be limited to the following:

- (a) a programme of activities that promotes and develops the educational system within the Federation;
- (b) a programme of activities geared towards development, promotion and implementation of community-based projects;
- (c) a programme of activities that promotes and encourages the proper conservation, protection and sustainable use of the natural environment, cultural heritage, resources, antiquities and monuments;
- (d) a programme of activities that promotes and encourages the formation and sustainable growth of social and civil society organisations,
- (e) a programme of activities that encourages and maintains the development of sports athletics within the Federation and to foster progressive advancement of athletics within the Federation
- (f) any other activities that are consistent with sustainable positive growth and development of Saint Christopher and Nevis and its

Christopher and Nevis and its
citizens within the Federation.

Grant or refusal of
registration.

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

- (a) the organisation
making the application
meets the requirements
of section 3;
- (b) the application
complies with section
6;
- (c) the programme of
activities of the
organisation complies
with the requirements of
section 7,

register the organisation as an NGO and issue to that
organisation a Certificate of Registration in the
prescribed form, upon payment of the prescribed fee.

(2) The Registrar may refuse to
register a NGO where, in the opinion of the Registrar:

- (a) the name of the NGO is
similar to the name of
another NGO or other
organisation or entity as
to be likely to mislead
the public as to its true
identity;
- (b) the name of the NGO is
offensive to good
morals;
- (c) the proposed NGO or its
Directors, is involved
or materially concerned
in fraud. organised

in fraud, organised
crime, money
laundering or
terrorist activities;

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

(3) If the Registrar refuses to register a NGO under subsection (2) (d), the Registrar may direct the NGO to resubmit, within such time as may be prescribed, a new application complying with the requirements of this Act.

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

PART III – Coordination with Government

Coordination of
NGO affairs.

9. (1) The Minister of Community Affairs shall be responsible for coordinating the activities of, and the relationship between, NGOs and the Government with a view to establishing procedures for consultation and other related matters affecting sustainable human development in Saint Christopher and Nevis.

(2) The duties of the Minister shall include the following:

- (a) maintaining a database of the addresses and contact information of every NGO registered under this Act;
- (b) providing assistance to organisations desirous of being registered as NGOs under this Act, and producing guidelines explaining to those

explaining to those organisations, in a language which the members thereof understand, the criteria for and effects of, registration;

- (c) providing technical and other assistance, where possible upon request or as needs arise, to foster institutional strengthening of NGOs;
- (d) identifying in appropriate cases, suitably qualified and experienced NGOs to formulate, evaluate, implement or manage relevant projects funded by the Government or by local or foreign funding agencies.

Publication of
NGOs.

10. The names of registered NGOs shall be published in the Gazette and at least one newspaper of general circulation, and, where applicable, a list of NGOs which were registered in the previous year, but which are no longer registered.

PART IV. – Administration and Exemptions

Administration.

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

(2) The composition of the Board of Directors, committee or governing body referred to under subsection (1) shall be as provided for in the Memorandum and Articles of Association of the NGO or its by-laws.

(3) The Memorandum and Articles of Association of the NGO, or its by-laws, shall specify:

- (a) the manner of electing the Chairman of the Board of Directors, committee, or other governing body of the NGO.
- (b) the period for which the Chairman shall be appointed;
- (c) the time and place at which the Board, committee or governing body shall meet to transact the business of the NGO.
- (d) what conditions would disqualify a person from becoming or remaining a Director;
- (e) any allowances which may be paid to the Directors
- (f) the persons to whom the Board, committee or governing body may delegate its powers in respect of the affairs of the NGO.

(4) The Board of Directors of an NGO Organisation may appoint and employ, at such remuneration and subject to such terms and conditions as it thinks fit, a suitably qualified, fit and proper person to be the executive officer of the NGO.

Exemptions.

12. (1) Every NGO registered under this Act shall be exempt from the payment of corporate income tax and the payment of business tax but subject to the provisions of regulations made under subsection (3) below may apply to the Minister

under subsection (3) below, may apply to the Minister of Finance to be exempted from the payment of any other tax, duty or impost levied by the Government as the occasion may arise.

(2) Subject to the Income Tax Act, and the Licences on Businesses and Occupations Act, every corporate person in the state who makes a donation to an NGO registered under this Act shall be eligible, in the financial year when the donation is made, to have such donation treated as tax-deductible for income tax and business tax purposes.

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

Income-generating activities.

PART V – Financial Provisions

13. (1) Every NGO registered under this Act may engage in any commercial income-generating project on the condition that:

- (a) such project is authorised by its Articles and Memorandum of Association or its By-Laws;
- (b) the monies derived therefrom are credited to its account and are used exclusively for the furtherance of its aims, objects and purposes; and
- (c) no part of the income or monies generated from that project is payable to, or available for, the personal benefit of a proprietor, member, or shareholder.

(2) Subject to subsection (3), where any Non-Governmental Organisation registered under this Act is involved in the management and disbursement of monies on credit for projects to individuals or community based groups, such monies, and any interest derived therefrom, shall not be liable to the taxes, duties and imposts referred to in section 11 (1) above.

(3) Subsection (2) above shall only be applicable where the monies disbursed by the NGO and any interest derived therefrom are approved by the Ministry of Finance to be exempt from the taxes, duties and imposts referred to in section 11 (1) above.

Accounting.

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

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

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

Reporting.

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

(a) a statement of its accounts audited in

accordance with section 15 (2) above;

- (b) a certified copy of its financial statements;
- (c) a report dealing generally with the programme of activities and policies of the NGO during that financial year.

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

(3) The Registrar shall publish in the *Gazette*, and in at least one local newspaper of general circulation in the State, in the month of September in each year, a copy of the financial statements and other documents submitted to him by each NGO pursuant to subsection (1) above.

Accountability.

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

(2) Every NGO registered under this Act shall, in addition to complying with the requirements of subsection (1) above, also comply with the following:

- (a) utilise its financial and other resources for the attainment of its aims, objects and purposes;
- (b) train its officers and employees so that they become efficient and professional in delivering the programme of activities of the NGO;
- (c) any relevant provisions of the Anti-Money Laundering regulations made under the Proceeds of Crime Act or any other pertinent legislation to

NGO Commission.

other pertinent legislation, to promote good governance and financial accountability and to safeguard against money laundering and financing of terrorist activities.

17. (1) There is hereby established a Non-Governmental Organisation Commission that shall function as an oversight body for the purposes of this Act.

(2) The functions of the Commission shall include:

- (a) monitoring of the activities of NGOs to ensure compliance with the provisions of the Act;
- (b) recommendation of activities to further the goals and principles of good governance for civil society;
- (c) mediation of disputes among NGOs and between NGOs and Government;
- (d) subject to section 18, review the decisions of the Registrar in relation to matters of registration, and related matters.

(3) The procedure for the setting up and constitution of the Commission shall be prescribed by the Minister in Regulations made to this Act.

Penalties.

18. (1) An NGO that is registered under this Act that fails to comply with the provisions of this Part shall:

of this Part shall:

- (a) have its Certificate of Registration cancelled by the Registrar;
- (b) lose all tax exemption privileges granted to NGOs under this Part.

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

(3) Any NGO aggrieved by the Registrar's decision to cancel its Certificate of Registration may appeal to the High Court whose decision thereon shall be final.

19. (1) Any international, regional or intergovernmental organisation operating in the State as a Non-Governmental Organisation whose programme of activities falls within the definition of "sustainable development" shall be and is hereby required to be registered under this Act.

International
organisations.

(2) Any international organisation which intends to operate in the State as an NGO shall not be entitled to any relief from taxes and duties as provided under this Act, unless it is registered hereunder, or unless it operates in the State only with an NGO registered under this Act.

(3) The Minister may, in consultation with the Commission exempt any inter-governmental organisation referred to in subsection (1) from registering under this Act.

MISCELLANEOUS

Regulations.

20. The Minister may make Regulations to give effect to the provisions of this Act and for prescribing anything that is required by this Act to be prescribed.

.....
CURTIS A MARTIN
Speaker

Passed by the National Assembly this day of
, 2008.

JOSÉ LLOYD
Clerk of the National Assembly