

Office of the Commissioner for Voluntary Organisations

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NOTES

to assist Voluntary Organisations
in the application for enrolment in accordance
with the Voluntary Organisations Act

These notes have been prepared by the Office of the Commissioner for Voluntary Organisations.

In these notes:

“applicant” means the organisation;

“application form” means the application form issued by the Office of the Commissioner for Voluntary Organisations for the enrolment of an organisation pursuant to article 13 of the Voluntary Organisations Act;

“Commissioner” means the Commissioner for Voluntary Organisations;

“Office” means the Office of the Commissioner for Voluntary Organisations and its staff.



Preliminary:

All voluntary organisations may apply for enrolment under the Voluntary Organisations Act. Voluntary Organisations are **NOT** obliged to enrol. Enrolment is an option which the Voluntary Organisations Act gives to all voluntary organisations.

A voluntary organisation will be enrolled with the Commissioner if it qualifies as a voluntary organisation under article 3 of the Voluntary Organisations Act.

Article 3 requires that the voluntary organisation is:

- established by a written instrument;
- established for a lawful purpose, that can be a social purpose or any other purpose which is lawful;
- non-profit making;
- voluntary; and
- independent of the State.

The above terms are explained in the Voluntary Organisations Act and are reproduced here so that the voluntary organisation can verify that it qualifies.

It is **NOT** necessary that the voluntary organisation is registered as a legal person in terms of the Second Schedule of the Civil Code or that it has legal personality under Maltese law.

<p style="text-align: center;">Article 2, Voluntary Organisations Act Definitions</p>	<p style="text-align: center;">Explanatory Comment</p>
<p>"voluntary organisation" means a foundation, a trust, an association of persons or a temporary organisation which is independent and autonomous and which qualifies under article 3;</p>	<p>It is not important which form the organisation takes as long it has a written statute to regulate it. This could be in Maltese or English and when in another language a certified translation into English or Maltese should be provided.</p>
<p>"non-profit making" is used in respect of an organisation where:</p> <p>(a) the statute of the organisation contains an express exclusion of the purpose to make profits; and</p> <p>(b) there is express provision in the statute defining the purposes of the organisation which do not include the promotion of private interests, other than a private interest which is a social purpose; and</p> <p>(c) no part of the income, capital or property is available directly or indirectly to any promoter, founder, member, administrator, donor or any other private interest:</p> <p>Provided that if a promoter, founder, member, administrator or donor is another enrolled non-profit making organisation, the limitation in paragraph (c) shall not apply provided the availability of such income, capital or property is subject to conditions which are consistent with the general purposes of the grantor organisation:</p> <p>Provided further that an organisation shall continue to be deemed as non-profit making notwithstanding that:</p> <p>(i) it obtains a pecuniary gain from its activities when such gain is not received or credited to its members but is exclusively utilised for its established purposes;</p> <p>(ii) it buys or sells or otherwise deals in goods or services where such activities are exclusively related to its principal purposes;</p> <p>(iii) it is established for the general entertainment, past-time, education or other similar benefit only of its members; or</p> <p>(iv) it is established for the promotion of the social role, ethics, education and values of a trade or profession provided it does not promote the private interests of its members.</p>	<p>If the statute of the organisation does NOT have an express statement that it is non-profit making, then the statute needs to be amended before applying for enrolment. The usual procedures for amending the statute should be followed. A clause on the following lines may be added:</p> <p><i>"The organisation shall be a non-profit making organisation as defined in the Voluntary Organisations Act (Chapter 492 of the Laws of Malta)."</i></p> <p>The organisation also needs to ensure that on dissolution, no part of its assets may be received by any promoter, founder, member, administrator, donor (except as allowed in the proviso) or any other private interest. A clause on the following lines may be added :</p> <p><i>"Upon dissolution, all assets of the organisation shall be applied in favour of another non-profit organisation with similar purposes as the organisation which may be selected by the [administrators, the members or the Court]."</i></p> <p>It is not disqualifying for members to make use of facilities of an organisation without payment or enjoy reasonable discounts on its services or goods such as at bars or canteens, performances and so on.</p> <p>It is also not disqualifying for the organisation to make gains from limited commercial activities as long as they are related to its purposes, e.g. a performing society may receive fees for performances, an educational establishment may receive fees for tuition, as long as the funds raised are re-applied to the purpose.</p> <p>A clause on the following lines may be added in the statute according to the relevant facts:</p> <p><i>"The organisation may:</i></p> <p><i>(i) obtain a pecuniary gain from its activities when such gain is not received or credited to any private interest but is exclusively utilised for the purposes of the organisation; and</i></p> <p><i>(ii) buy or sell or otherwise deal in goods or services where such activities are exclusively related to its principal purposes."</i></p>
<p>"voluntary" in the context of a voluntary organisation means the existence of one or more of the following elements:</p> <p>(a) the overall control of the organisation is exercised by administrators who do not receive any remuneration for their services for carrying on functions of administrators except as hereunder permitted;</p> <p>(b) the organisation is created by the endowment of voluntary and gratuitous grants and the organisation's</p>	<p>If the organisation satisfies any ONE of these tests then it qualifies as voluntary.</p> <p>The administrators should not, as a rule (but see below), receive any payments for their services. This does not mean that the organisation cannot have employees or other persons carrying out services on a remunerated basis. The focus here is on the persons who control the organisation and to whom others are accountable.</p> <p>It is important that a voluntary organisation finds its birth and existence on the basis of donations and grants or</p>

<p>affairs are supported, at least in part, by such voluntary or gratuitous grants or by services rendered on a voluntary basis;</p> <p>(c) subject to limitations due to the nature or size of the organisation and subject to any discretion which may be exercised in terms of the statute of an organisation by the administrators or a membership committee, any person can join the organisation or participate in the activities of the organisation; and</p> <p>(d) every participant in the organisation has the right to freely leave the organisation:</p> <p>Provided that:</p> <p>(i) unless the statute provides otherwise, administrators may receive a reasonable honorarium for services rendered insofar as the payment of such honorarium does not materially prejudice the achievement of the purposes of the voluntary organisation;</p> <p>(ii) the remuneration of persons who are employed to carry out management, executive or fundraising functions in a voluntary organisation shall not be such as to materially prejudice the achievement of the purposes of the voluntary organisation; and</p> <p>(iii) the organisation may refund reasonable expenses to administrators, managers, executives, volunteers and other persons supporting the purposes of the organisation;</p>	<p>services, which can then be supplemented by activities which raise funds. What is to be avoided is the creation of an organisation with a “business plan” to raise money from commercial activities, which then exists only because of that money making function without any voluntary external support for its purposes.</p> <p>People must be generally free to join and leave the organisation as they wish without penalty or sanction. It is permissible to have membership or admissions committee and policies which can exclude persons from joining on stated grounds which could be related to the facilities, the subscription to stated principles and undertakings or the payment of membership fees.</p> <p>The statute may prohibit income to administrators. However unless expressly prohibited, it is possible for administrators to receive some remuneration if approved by the appropriate persons, such as a supervisory body or members of the Court but not themselves. The key factor is that their remuneration does not prejudice the purposes of the organisation. That is a relative test because it all depends on how much income the organisation has.</p> <p>The same test applies to employees and fund raisers. They can be paid but not to the extent that their income erodes the ability of the organisation to fulfil its purposes. It is the responsibility of the administrators to see that this does not happen.</p> <p>The refund of expenses to administrators and members is never a difficulty as long as they are reasonable. Systems should be in place to avoid the need for administrators to spend their own money and receive refunds. The organisation should seek to pay for its own costs directly.</p>
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► Excluded Organisations:

Commerce: Organisations cannot enrol if they are a commercial entity such as a limited liability company or a commercial partnership. Neither can an organisation apply if it is established to carry out commercial activities or to trade, even if the profits made are to be donated to charity or to voluntary organisations. That is not to say that a commercial organisation cannot establish and enrol a voluntary organisation, or that a voluntary organisation cannot itself establish a commercial entity if the rules are observed. Indeed the latter case is mandated by the Voluntary Organisations Act to ensure that there is a level playing field and voluntary organisations do not trade and compete unfairly: they are required to set up appropriate commercial organisations which are subject to all the compliance and disclosure rules if they wish to do so.

Private: Organisations cannot be enrolled as a voluntary organisation if they are established to promote a private interest such as the commercial interest of a company or a particular product or to benefit a named individual beneficiary. A co-operative, a private foundation for an individual or his/her personal and family interests and a condominium arrangement cannot be enrolled as their aims are private.

If the aim of an organisation is the general promotion of the social role, ethics, education and values of a trade or profession, that will not exclude enrolment as long as no particular private interests are promoted. Neither will an organisation be excluded because it seeks to support individuals, as a class, who suffer from a particular need which qualifies as a social purpose as long as it seeks to support the class as a whole and not one or two identifiable persons.

► The Voluntary Organisations Act:

There are several provisions of the Voluntary Organisations Act which are relevant to the application for enrolment and its consideration. The Voluntary Organisations Act can be downloaded from the websites www.mfss.gov.mt; www.doi.gov.mt; or www.mjha.gov.mt

► Why Should A Voluntary Organisation Enrol?

It is beneficial for an organisation to enrol since that organisation will then qualify for certain privileges. If a voluntary organisation does not enrol, it cannot make public collections without the permission of the Commissioner of Police, it cannot receive grants or enter into co-operation contracts with the Government of Malta and it will not be able to avail itself of the support of the Office of the Commissioner for Voluntary Organisations or be a beneficiary of the positive policies which government entities are bound to provide in favour of enrolled voluntary organisations. A non-enrolled voluntary organisation will also not be able to use the "VO" status in its name or on its logos and letterheads.

► Consideration of Applications for Enrolment:

The following rules apply to consideration of ordinary applications. There are different rules for Fast Track Applications (see below).

The Application Form has been prepared to guide you through the requirements of the law as to information and supporting documents required by the Office of the Commissioner for Voluntary Organisations. It is highly recommended that a voluntary organisation follows the form's requirements carefully to provide the Office of the Commissioner with what it needs to enrol an organisation.

The Office of the Commissioner for Voluntary Organisations may ask an organisation to provide more information, if this is considered necessary to carry out properly the duties established by law. The aim of seeking more information is to continuously ensure and maintain the integrity of the sector. In particular, more information may be required on the following albeit not exclusively:

- (a) the promoters, founders, administrators, donors and beneficiaries;
- (b) the assets and liabilities;
- (c) the past, if any, present and intended activities of the organisation;
- (d) the purposes of the organisation and the intended activities through which they are to be achieved; and
- (e) any other matter on which the Commissioner may require further clarifications.

The Commissioner for Voluntary Organisations cannot enrol a voluntary organisation even if only one of the administrators is a person who does not qualify to be an administrator of an organisation in terms of applicable law. Therefore an organisation must pay attention to any disqualifying matters applicable to the proposed administrators.

Due regard will be paid to all information provided and representations made. The Office of the Commissioner for Voluntary Organisations shall seek to co-operate as much as possible with applicants so as to achieve a speedy enrolment process and an agreed classification of the organisation. Classification will in due course be relevant as a basis for the application of rules, including those on benefits and taxation.

In the event that the applicant fails to provide any requested information or to make representations on any point, the Commissioner for Voluntary Organisations shall proceed with the determination of the application for enrolment on the basis of the information available.

When an application is submitted, it is the role of the Commissioner for Voluntary Organisations to determine whether the conditions set out in the law are satisfied and subsequently accept or refuse an application.

► Timing:

The Office of the Commissioner for Voluntary Organisations will seek to expedite applications. The Commissioner is bound to determine applications by not later than three months from the date of the application.

The Commissioner is bound to notify the organisation, in writing, of his determination of the application for enrolment. In case of a decision not to accept an application, the reasons for such determination shall be notified. Failure to so determine and notify an organisation within the established three months shall mean that the application has been refused. Therefore, in such an event, an organisation can immediately appeal before the Board of Appeal.

► Fast Track Applications:

Self regulation is encouraged and when the Commissioner accepts an organisation or authority as a competent regulator of organisations, then members within such arrangements can enrol on the basis of a certificate of compliance issued by the self regulatory entity. In such cases the Commissioner is bound to enrol the applicant organisation on receipt of the documents submitted without further review.

► **Refusal of Applications:**

The Commissioner for Voluntary Organisations may refuse an application if it is submitted in an incomplete manner. Other reasons why the Commissioner may refuse an application are:

- the presence or otherwise of any factors which bar enrolment under an express provision of the Voluntary Organisations Act, such as when an organisation is an excluded organisation as explained above; and
- the legality or otherwise of the proposed purposes of the organisation having regard to the stated purposes of the organisation and the stated intentions of the promoters relating to its activities;
- the name of the organisation is the same as one which already exists or if the name is offensive or likely to deceive.

► **Appeals:**

If an application for enrolment has been refused by the Commissioner, an organisation shall have the right to appeal against such decision to the Board of Appeal established by the Voluntary Organisations Act.

► **Enrolment:**

Upon being satisfied that an organisation is eligible for enrolment in terms of the Voluntary Organisations Act and therefore not in breach of the provisions of that Act, the Commissioner is then bound to accept the application. The Office of the Commissioner shall then:

- (a) enter the particulars of the voluntary organisation in the Register of Voluntary Organisations;
- (b) issue a Certificate of Enrolment with the identification number of the voluntary organisation;
- (c) specify whether the voluntary organisation is a foundation, an association, a trust or a temporary organisation; and
- (d) specify the voluntary organisation's enrolment classification.

The voluntary organisation will be asked to collect the Certificate of Enrolment from the Office of the Commissioner. Certified copies of this can be issued by the Office of the Commissioner at the organisation's request.

The Certificate of Enrolment is similar to an identity card or passport and is very important in proving an organisation's status. This is a public instrument but it does not automatically determine the fiscal status of a voluntary organisation or the taxability or otherwise of its income and transactions. Taxation issues need to be addressed with the Commissioner of Inland Revenue.

► **Enrolment Fees:**

Together with the application for enrolment, an organisation is required to submit the nominal fee of €40 (Lm17.17).

► **Support by the Office of the Commissioner for Voluntary Organisations:**

Should an organisation or person require any assistance, the Office of the Commissioner is there to support and assist as necessary.

Any correspondence or queries to the Office of the Commissioner may be addressed to the following:

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The opening hours of the Office of the Commissioner for Voluntary Organisations are between 08:30 hrs and 12:00 hrs and 14:00 hrs and 16:00 hrs.