

Legal Manual for Civil Society Organizations in Bangladesh

PREPARED BY

ICNL

INTERNATIONAL CENTER
FOR NOT-FOR-PROFIT LAW

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Table of Contents

| | |
|---|-----------|
| INTRODUCTION..... | 5 |
| CHAPTER ONE: Categories of Civil Society Organizations & Laws in Bangladesh..... | 8 |
| PART ONE: Civil Society Organization-Specific Laws ... | 13 |
| CHAPTER TWO: Non-Governmental Organizations with Foreign Donations..... | 14 |
| Overview | 14 |
| Registration & Statutory Obligations | 16 |
| Sources of Funding | 26 |
| Dissolution & Liquidation..... | 27 |
| CHAPTER THREE: Voluntary Social Welfare Agencies . | 30 |
| Overview | 30 |
| Registration & Statutory Obligations | 31 |
| Sources of Funding | 41 |
| Dissolution & Liquidation..... | 42 |
| CHAPTER FOUR: Cooperative Societies..... | 45 |
| Overview | 45 |
| Registration & Statutory Obligations | 46 |
| Sources of Funding | 52 |
| Dissolution & Liquidation..... | 53 |
| CHAPTER FIVE: Youth Organizations | 55 |
| Overview | 55 |

| | |
|--|-----------|
| Registration & Statutory Obligations | 56 |
| Sources of Funding | 60 |
| Dissolution & Liquidation | 61 |
| CHAPTER SIX: Societies | 63 |
| Overview | 63 |
| Registration & Statutory Obligations | 64 |
| Sources of Funding | 69 |
| Dissolution & Liquidation | 70 |
| CHAPTER SEVEN: Non-Profit Companies | 72 |
| Overview | 72 |
| Registration & Statutory Obligations | 73 |
| Sources of Funding | 81 |
| Dissolution & Liquidation | 82 |
| CHAPTER EIGHT: Trusts | 86 |
| Overview | 86 |
| Registration & Statutory Obligations | 87 |
| Sources of Funding | 90 |
| Dissolution & Liquidation | 90 |
| CHAPTER NINE: Waqfs | 92 |
| Overview | 92 |
| Registration & Statutory Obligations | 93 |
| Sources of Funding | 98 |

| | |
|--|------------|
| Dissolution & Liquidation | 99 |
| CHAPTER TEN: Microfinance Institutions..... | 100 |
| Overview | 100 |
| Registration & Statutory Obligations | 101 |
| Sources of Funding | 111 |
| Dissolution & Liquidation..... | 112 |
| PART TWO: Other Laws Affecting Civil Society | |
| Organizations & Activities | 114 |
| CHAPTER ELEVEN: Tax Laws..... | 115 |
| CHAPTER TWELVE: Other National Laws & Guidelines | |
| Affecting Civil Society Organization Activities | 118 |
| Chittagong Hill Tracts Regional Council..... | 118 |
| Money Laundering Prevention Act, 2012 (MLPA, 2012) | |
| & Money Laundering Prevention Rules, 2013..... | 120 |
| Penalties for Non-compliance under MLPA, 2012 | 123 |
| Anti-Terrorism Act, 2009 | 126 |
| Penalties under ATA, 2009 | 127 |
| Right to Information Act, 2009..... | 128 |
| Digital Security Act, 2018 | 130 |
| The National Integrity Strategy | 131 |
| UN Convention Against Corruption | 132 |
| The 2030 Agenda for Sustainable Development | 133 |
| Protection from Sexual Harassment | 134 |

| | |
|---|------------|
| PART THREE: International Laws & Standards Affecting Civil Society Organizations | 136 |
| CHAPTER THIRTEEN..... | 137 |
| Overview..... | 137 |

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INTRODUCTION

Civil society includes individuals, groups, and organizations that are independent from both the state and the corporate sectors. In Bangladesh, as in many countries, civil society plays a significant role in articulating people's concerns, priorities, and interests to the government.

The Constitution of the People's Republic of Bangladesh guarantees the right to freedom of association, which is the legal basis of the formation and operation of civil society organizations (CSOs). CSOs in Bangladesh include religious institutions, voluntary organizations, recreational and sports clubs, non-governmental organizations (NGOs), trade unions, professional groups, employee associations, socio-cultural institutions and organizations, community groups, chambers of commerce and industry, lawyers' associations, and small local clubs.

In principle, a CSO does not have to register with the government to engage in charitable, social, or development activities. However, some activities can only be carried out by CSOs that have obtained legal status by registering with relevant government agencies. Such activities include opening bank accounts or signing contracts in the name of the organization; fundraising; being eligible for financial assistance from government agencies and donors; and interacting with the government and donors in an official capacity. Registration also confers other benefits, including guidance and help from relevant registration authorities; service contracts and support from relevant government departments; certain tax exemptions; training opportunities; technical assistance; and concessions when obtaining vehicles, equipment, and commodities. However,

not all types of registered CSOs are eligible for all of these benefits.

Several legal acts govern the registration and operations of different types of CSOs in Bangladesh. In some cases, the same CSO may be registered under different laws and with several authorities. This manual will review those laws most relevant to the CSO sector in Bangladesh. In order to enhance understanding of the legal framework governing CSOs in Bangladesh, this manual seeks to explain the relevant laws in a language that is easily understood and to provide practical guidance to CSOs.

The purpose of this legal manual is to provide interested persons – primarily CSOs and individuals seeking to participate in CSOs – with easy-to-read information and an improved understanding of the legal landscape for civil society in Bangladesh. This legal manual is not intended to serve as legal advice. Laws may change and the implementation of laws may vary. Neither Counterpart International nor ICNL can be held responsible if the laws are not implemented as described in this manual.

This manual is based on desk research, followed by consultations with a Technical Review Panel (TRP) of country experts. We wish to thank the following TRP members who supported ICNL’s efforts in preparing this manual:

- Aroma Dutta, MP/ member of the Parliamentary Committee of Social Welfare;
- Dr. Syed Refaat Ahmed, Honorable Justice, Supreme Court of Bangladesh;

- K.S. Abdus Salam, Director General, NGO Affairs Bureau (Additional Secretary);
- Dr. Md. Helal Uddin, Director, NGO Affairs Bureau (Additional Secretary);
- Prof. Dr. Borhan Uddin Khan, Professor, Department of Law, University of Dhaka and Independent University;
- Syeda Rizwana Hasan, Advocate, Bangladesh Supreme Court; and
- Dr Iftekharuzzaman, Executive Director, Transparency International Bangladesh.

Categories of Civil Society Organizations & Laws in Bangladesh

The civil society sector has been labeled variously as the “third” sector, “voluntary” sector, “nonprofit” sector, “charitable” or “independent” sector, and the “social economy.” The organizations making up civil society come in a diverse range of forms, including associations, foundations, non-profit corporations, public benefit companies, development organizations, community-based organizations, religious communities and faith-based organizations, hospitals, universities, mutual benefit groups, sports clubs, advocacy groups, arts and culture organizations, charities, unions and professional associations, humanitarian assistance organizations, non-profit service providers and charitable trusts. Taken together, they are often referred to as non-governmental organizations (NGOs), not-for-profit organizations (NPOs), or civil society organizations (CSOs).

For the purposes of this manual, ICNL uses the definition of CSOs contained in the United Nation’s Policy of Engagement with CSOs (2001): “CSOs are non-state actors whose aims are neither to generate profits nor to seek governing power.” This definition is intended to embrace the diverse range of organizational forms listed above. Please note that political parties are not included in this

definition of civil society, although they are clearly important players in development contexts.

In Bangladesh, the term “NGO” is often used interchangeably with “CSO.” In this manual, however, we have chosen to use “CSOs” as the more inclusive concept. This is because “NGO” is defined as a distinct organizational form under the law in Bangladesh, subject to regulation by the NGO Affairs Bureau (NGOAB) under the Foreign Donations Regulation Act, and therefore has a narrower legal focus.

Decisions regarding which organizational form is most appropriate for any individual group or organization will likely depend on its mission and goals, scope of activities, internal governance structure, and sources of funding, among other considerations. Available organizational forms in Bangladesh include the following:

NON-GOVERNMENTAL ORGANIZATIONS (NGOS) An organization that wishes to receive foreign donations – that is, donations from foreign individuals, organizations or governments – needs to obtain registration from the NGO Affairs Bureau (NGOAB). An organization may obtain primary registration (as a legal entity) from the NGOAB and work with both local and foreign funds; or may seek registration from the NGOAB as an already registered legal entity (society, trust, etc.) in order to obtain foreign funding.

VOLUNTARY SOCIAL WELFARE AGENCIES

Organizations or associations working towards a variety of social welfare goals may seek registration as voluntary social welfare agencies from the Department of Social Services (DSS). In addition, an organization or association led by women and seeking to support women’s well-being

may seek registration as a voluntary social welfare agency with the Department of Women Affairs (DWA).

COOPERATIVE SOCIETY A group of individuals may seek to operate as a cooperative society in cases where the group members cooperate for mutual social, cultural, and economic benefit.

YOUTH ORGANIZATION Any association formed by young people and pursuing activities for youth development may seek registration as a youth organization with the Department of Youth Development (DYD).

SOCIETY A group of individuals may opt to register as a society if it seeks to operate as a membership association pursuing the promotion of science, culture, education, or the arts.

NON-PROFIT COMPANY An individual may form a non-profit company to promote commerce, art, science, religion, charity, or any other useful objectives. Such a company must apply its profits or income to promote its objectives without paying any dividends to its members.

TRUST Any owner of assets or property who wishes to dedicate his/her assets or property for the benefit of others may create a private trust (where the benefit is limited to select individuals) or a public trust (where the benefit is to the public at large).

WAQF Any owner of property, whether movable or immovable, who wishes to dedicate his/her property for the use of beneficiaries, may form a waqf under Islamic law.

MICROFINANCE INSTITUTION (MFI) A registered legal entity in Bangladesh intending to operate a microfinance program should secure registration as an MFI from the

Microcredit Regulatory Authority (MRA). Before registering as an MFI, the organization must already have obtained legal personality by registering as one of the organizational forms described above.

The organizational forms outlined above are governed by different laws and overseen by various government agencies. Many of these laws may be called laws of incorporation – that is, laws that provide a means of obtaining legal status to organizations seeking registration. Other laws might be considered special purpose laws – that is, they require a secondary level of registration in order to pursue certain special purposes, such as engaging in microfinance activity. Still other laws may fall into both of these categories, as they offer a means for both primary registration as a legal entity and also a secondary level of registration for legal entities seeking to pursue specific purposes (e.g., social welfare goals) or seeking to obtain specific categories of funding (e.g., foreign funding).

Relevant laws include the following:

- Foreign Donations (Voluntary Activities) Regulation Act, 2016 (FDRA 2016);
- Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (VSWO 1961);
- Cooperative Societies Act, 2001;
- Youth Organizations (Registration and Management) Act, 2015;
- Societies Registration Act, 1860;
- Companies Act, 1994;
- Trust Act, 1882;

- Waqf Ordinance 1962;
- Microcredit Regulatory Authority Act, 2006 (MRA 2006).

Moreover, other laws and regulations that are not directly aimed at CSOs significantly affect civic space. For example, all registered CSOs must file tax returns and pay taxes under the Income Tax Ordinance 1984. CSOs working in the Chittagong Hill Tracts must register with the Chittagong Hill Tracts Regional Council established under the Chittagong Hill Tracts Regional Council Act, 1998 in addition to their respective regulatory authorities. Additionally, CSOs are impacted by the Money Laundering Prevention Act, Anti-Terrorism Act, Right to Information Act, Digital Security Act, and other government policies, rules, and strategies.

This manual is organized into three main sections. It begins with an overview of CSO-specific laws. The second section briefly outlines the other national laws and policies that affect CSOs and their activities. In the last chapter, the international laws and guidelines that affect CSOs are briefly discussed.



PART ONE

Civil Society Organization Specific Laws



Non-Governmental Organizations with Foreign Donations

REGULATED BY THE FOREIGN DONATIONS (VOLUNTARY ACTIVITIES) REGULATION ACT, 2016 (FDRA 2016)

Overview

Any organization that wishes to receive foreign donations – that is, donations from foreign individuals, organizations or governments – needs to obtain registration as an NGO under the Foreign Donations (Voluntary Activities) Regulation Act, 2016 (FDRA 2016). An organization may obtain primary registration (as a legal entity) as an NGO and work with both local and foreign funds; or may seek registration under FDRA 2016 as an already registered legal entity (society, trust, etc.) in order to obtain foreign funding.

► HOW IS “NGO” DEFINED IN THE LAW?

According to the FDRA 2016, “NGO” means any organization registered by the NGO Affairs Bureau (NGOAB) to conduct voluntary activities inside Bangladesh and any international organization or NGO registered under the law of any foreign country, which is also registered in Bangladesh under the FDRA. Organizations registered with NGOAB can work with local or foreign funds (upon approval) within any geographical area of Bangladesh. In contrast, CSOs with organizational forms

described in the following chapters must get additional registration with NGOAB in order to obtain foreign funding.

► **WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF NGOS?**

Section 2.10 of the FDRA 2016 defines “voluntary activities” as:

- non-profit social, religious, cultural, economic, or educational activities;
- activities supporting healthcare, pure drinking water and sewage systems, relief and rehabilitation, agriculture and agricultural development, infrastructure, public awareness, poverty alleviation, women’s empowerment, democracy and good governance, human rights, and secularism;
- activities related to the empowerment of marginalized and under-privileged communities and upholding their rights, and those of children and youth;
- activities related to the participation of the elderly and disabled people and upholding their equal rights and equal participation;
- environmental conservation and development, climate change, natural resources, improved efficiency, science and information technology, vocational activities, and social welfare;
- research activities;
- activities related to the development and protection of various ethnic groups;

- upholding the right to land and development activities; and
- any other activities required by the government.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF NGOS?

The NGOAB, operating under the Prime Minister's Office, provides registration and approval to organizations and persons seeking to receive foreign donations under FDRA 2016.

► WHAT IS THE REGISTRATION FEE?

The registration fee for a domestic organization is BDT 50,000.00. The fee to register a foreign organization is USD 9,000 or the equivalent amount in BDT. A 15 percent value-added tax (VAT) is levied on the registration fee for both domestic and international organizations.

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

International NGOs (INGOs) must pay the relevant costs in their countries to have all documents from abroad notarized or attested by a Bangladesh Embassy.

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

According to the FDRA 2016, the total time period to review and process a registration application, including the process of obtaining the necessary clearances, is 90 working days. Registration requires clearance from the Ministry of Home Affairs (MoHA) and the Financial Institute Division, for which the official prescribed time is 60 working days. In practice, however, it usually takes about four to five months

to receive clearance from MoHA and the Financial Institute Division.

► **WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?**

To register with the NGOAB, national organizations must submit the following documents to the Director General of the NGOAB:

- FD-1 Form (signed by the chief executive) (9 copies);
- Constitution of the NGO (4 copies);
- Activities report of the NGO (6 copies) *if registered with other authorities*;
- Work plan of the NGO (including organogram) signed by the chief executive (6 copies);
- Copy of Treasury receipt for the deposit of BDT 50,000.00, along with the 15 percent VAT receipt (3 copies, including 1 original);
- Deed of agreement with the landlord in BDT 300.00 non-judicial stamp paper or the property ownership documents of the office (3 copies);
- Particulars of the members and office holders of the executive committee as per the prescribed table of the NGOAB (6 copies);
- Copy of signed meeting minutes by members approving the executive committee (6 copies);
- Letter of intent by the donor (attested by Gazetted Officer) (6 copies);
- Passport size photographs and copy of national ID card of all executive committee members attested by Gazetted Officer (6 copies); and

- List of general members with name, father's name, address, and signature (6 copies).

International organizations must submit the following documents in order to register:

- FD-1 Form (signed by the chief executive in Bangladesh) (9 copies);
- Certificate of incorporation in the country of origin (3 copies);
- Constitution of the NGO (4 copies);
- Activities report of the NGO (6 copies);
- Work plan of the NGO (including organogram signed by the Chairperson) (6 copies);
- Decision of the committee or board to open an office in Bangladesh (4 copies);
- Letter of appointment of the country representative (4 copies);
- Copy of Treasury receipt for the deposit of USD 9,000.00 or the equivalent amount in BDT, along with the 15 percent VAT (3 copies, including 1 original);
- Deed of agreement with the landlord in BDT 300.00 non-judicial stamp paper;
- Particulars of the members and office holders of the executive committee as per the prescribed table of the NGOAB (6 copies);

Note: for INGOs, all documents from abroad should be notarized by a Justice of Peace or attested by Bangladesh Embassy.

If the registration application and all other documentation are correct and clearance has been received from MoHA and the Financial Institute Division, then the Director General of the NGOAB shall issue a Registration Certificate to the applicant, valid for ten years and renewable after each ten-year period.

▶ **IS ELECTRONIC SUBMISSION POSSIBLE?**

No, but the prescribed form (FDI) for registration and detailed guidelines for the application can be downloaded from the NGOAB website at <http://www.ngoab.gov.bd>.

▶ **ARE NGOS REQUIRED TO HAVE AN OFFICE?**

Yes, an NGO must possess a furnished office with a proper address and signboard to be eligible for registration. A copy of the office lease agreement or ownership document of the office needs to be submitted to the NGOAB as part of the registration application.

▶ **ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?**

Registration requires clearance from MoHA and the Financial Institute Division, which usually takes about four to five months.

▶ **WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?**

According to the law, the NGOAB has the right to reject an application if it is not satisfied with the objectives, constitution, or plan of operation. Specific grounds for denial include:

- The application is not submitted in the prescribed manner;

- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the organization is not in compliance with the “voluntary activities” listed in FDRA 2016;
- The documents submitted do not comply with the requirements set by law.

Failure to receive clearance from MoHA or the Financial Institute Division will also result in denial of registration.

If NGOAB denies registration, it will send written notice to the organization. The organization can appeal the decision to the Secretary of the Prime Minister’s Office within 30 working days of the receipt of the notice.

► DOES REGISTRATION HAVE TO BE RENEWED?

Yes, registration with the NGOAB must be renewed every ten years. Application for the renewal of the registration has to be made six months prior to the expiration of the ten-year registration period. NGOs must submit a full application to the NGOAB using the prescribed template, including all documents submitted during the original registration procedure. The fees for renewing registration with NGOAB are BDT 30,000.00 for domestic organizations and USD 6,000.00 for international organizations, along with the 15 percent VAT in both cases.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

In addition to registration, the NGOAB must approve and monitor every foreign grant. The NGOAB also gives authorization for the disbursement of project funds.

The NGOAB monitors the activities of registered domestic and international NGOs through the local administration offices of Divisional and Deputy Commissioners.

Organizations must submit various reports, including annual reports and audited financial statements, to those offices. In addition, registered NGOs are required to attend monthly NGO coordination meetings headed by Deputy Commissioners (DC)/Upazilla Nirbahi Officers (UNO) in their area of operations and submit progress reports of their activities. After examining the reports, the local administrations provide financial expenditure and work completion certificates to organizations, who in turn must submit these certificates to the NGOAB in order to secure project approval and the release of further funds.

Specific financial rules applicable to NGOs include the following:

- An NGO can only maintain one bank account for receiving foreign donations. Separate bank accounts for separate projects may be maintained for internal transactions after the donations are received.
- Each organization shall maintain its accounts and prepare an annual statement of accounts.
- An annual financial audit by a recognized and NGOAB-listed audit firm is mandatory. The audit must be paid for by the organization and reflected in its proposed budget and expenditure.

- Following completion of a project, vouchers of expenditure shall be preserved for five years by the central office of the organization and the field offices.
- At the end of each financial year, an NGO shall submit to the Director General of the NGOAB an annual financial statement and activity report.
- The Director General of the NGOAB, if required, can request an explanation of any information provided in the annual report submitted by an NGO, and such organization shall be bound to supply the same.
- Unless it is exempt by a written government order, each NGO conducting voluntary activities fully or partially funded by foreign donations shall submit to the Director General a declaration containing the amount received as a foreign donation, its source, and its use.
- Every organization shall receive all foreign donations in a designated bank account.
- No bank shall debit such account of foreign donations to the benefit of any individual or organization without the NGOAB's approval for releasing the funds.
- The Bangladesh Bank shall send the NGOAB and the Economic Relations Division a semi-annual statement of accounts of foreign exchange received by every organization in January of each year.
- The Bangladesh Bank shall send the NGOAB and the Economic Relations Division a statement of accounts of foreign exchange received by any

individual or organization registered under this Act, in accordance with their requirements.

Approval and reporting requirements include the following:

- An NGO must receive specific approval from NGOAB for each foreign-funded project. During the project approval process (officially 21 working days), the NGOAB considers the opinion of the concerned ministry and evaluates the earlier performance of the applicant organization. If the concerned ministry provides a negative opinion of the organization's project proposal or notes any sort of bad performance of the applicant organization, the NGOAB will not approve the project proposal and will not allow receipt of the project funds. In addition, the NGOAB liaises with the bank that maintains the organization's account; without the NGOAB's approval, no bank will release any foreign funds to an organization.
- Organizations must submit to the NGOAB annual reports, audit reports, and clearance certificates for activities implemented and expenditures made in the specific geographical areas received from DCs or UNOs in their area of operations.
- Organizations must submit activity reports (quarterly/ annually) and audited financial reports for the preceding year, as well as activity plans (programs) and budgets for the coming year to the NGOAB for approval. Any change in the program or budget requires prior approval from the NGOAB. The NGOAB can suspend activities of an organization or even cancel its registration for the

non-submission of reports or for implementing activities without official approval.

- The NGOAB may, at any time, for reasons to be recorded in writing, initiate an inspection of the books of accounts and other documents of any organization and, where necessary, direct all such books of accounts and other documents to be seized;
- If any organization receives foreign funds without official approval or permission of the NGOAB, it will be considered an offence under the FDRA and the NGOAB Director General has the power to impose fines on the organization, up to as much as three times the amount of the foreign donation.

Moreover, the Director General can take necessary action in order to punish the concerned organization or individual under prevalent laws of the country.

- International organizations must apply for permission to buy any land or immovable property in Bangladesh by following the process described under The Acquisition and Requisition of Immovable Property Ordinance, 1982.
- Before undertaking any voluntary activities in Khagrachhari, Rangamati, and Bandarban Hill tracts, an organization shall obtain separate approval from the Ministry of Chittagong Hill Tracts Affairs.

► WHAT ARE THE BASIC LEGAL REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

According to the FDRA 2016:

- Each organization shall have a constitution regarding its formation, goals, objectives, and

management, including mention of the managing committee and the general committee.

- Anytime an organization's constitution is amended, a fee of BDT 13,000.00 plus 15 percent VAT must be paid.
- Appointment of any expatriate employees or consultants should be mentioned with the specific duration within a project proposal submitted for approval. Once the NGOAB approves the expatriate staff position within a project, the organization can apply for the appointment (or extension of appointment) of a foreign individual to the NGOAB through the prescribed form (FD9) along with other required documents for the time period approved in the project. The Director General of the NGOAB will approve the appointment for the specific period if all relevant information is correct and send the application for security clearance to MoHA. Upon receiving the security clearance from MoHA, the Director General will issue a work permit to the expatriate staff for the designated time period. All expatriate staff acquiring income for working in Bangladesh shall pay income tax in Bangladesh.
- An organization must inform the NGOAB in advance of any foreign travel by organization staff or officers that is supported by funding from an approved project budget.
- Penal action may be taken against any official of any organization if he/she commits any offense under this Act. But if the person can prove that the offense was not committed with his/her knowledge or s/he

took sufficient preventive measures, then the official concerned can be acquitted of the offense.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

An NGO's Executive Committee (EC) or governing body must be comprised of between seven and eleven members, including a Chairperson, General Secretary, and Treasurer.

Membership in an NGO is limited to adult citizens (18 years or older) of Bangladesh. Thus, non-citizens and minors are excluded from founding or belonging to organizations. In addition, government employees are barred from becoming office bearers (members of ECs).

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Registering with the NGOAB allows organizations to receive foreign funding, with approval. In addition, registered organizations are free to receive local grants without approval.

Permissible sources of funding for NGOs therefore include:

- State funding (on both the national and local level);
- Donations from domestic and foreign individuals and legal entities;
- Funding from Bangladesh-based corporate foundations and/or endowment funds;
- International funding mechanisms;
- Income from economic activities provided that the income generated is used only to support the organization's statutory purposes; and

- Contributions from the founders.

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, but the governing body of an organization can only dissolve itself with the approval of the Director General of the NGOAB.

► WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

If an organization commits an offense defined in Section 14 of the FDRA 2016, the NGOAB Director General is entitled to cancel or postpone its registration; suspend the voluntary activities of that organization by issuing an official notification; or direct the given organization to rectify the problem within a designated time period. These offenses include:

- violating any provision of the FDRA 2016, or any rules or orders issued under the FDRA 2016;
- making any malicious and indecent (i.e., derogatory and reproachful) comments regarding the Constitution of Bangladesh or any constitutional institutions;
- engaging in any anti-state activities or in the financing, patronizing, or support for militant and/or terrorist activities; and
- participating in the trafficking of women and children or in the smuggling of narcotics and arms.

If the registration of any domestic or international organization under this Act is cancelled or its activities are

suspended or the period of its registration has expired, the Director General shall:

- Issue a restraining order to the banks where the foreign donation of the organization is deposited, or any assets of the organization are entrusted from selling or transferring any property without the written permission of the Director General;
- Appoint an administrator to abolish any organization or to institute and conduct litigation for any other reasons;
- Order the transfer of remaining funds or assets to the concerned foreign donor after paying off all debts and liabilities of such organization;
- Order the transfer of remaining funds or assets under clause a) I to the government account or, in appropriate cases, to any other organization having similar objectives to the dissolved organization, in case such funds or assets cannot be transferred to the foreign donor.

► CAN AN NGO THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN THE COURT?

Any organization can appeal against any order (i.e., dissolution, punishment, registration, etc.) issued by the NGOAB to the Secretary, Prime Minister's Office (appellate authority), within 30 working days of the relevant order.

The appellate authority must consider the appeal within 30 working days from the date of receipt of the appeal. The appellate authority can extend the time limit by a maximum of 15 more working days, if the applicant presents reasonable grounds for the extension.

The appellate authority can uphold, cancel, or revise any orders given by NGOAB. The decision given by the appellate authority is considered final. No additional appeal to the courts is available.

► **WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?**

In order to dissolve voluntarily, more than three-fifths of an NGO's members must apply to the NGOAB Director General for dissolution. After considering the application, the Director General may order the organization to be dissolved upon a specific date if satisfied that it is proper to do so. The dissolution process is then the same as that for cancelled and suspended organizations described above

CHAPTER THREE

Voluntary Social Welfare Agencies

REGULATED BY THE VOLUNTARY SOCIAL WELFARE AGENCIES (REGISTRATION AND CONTROL) ORDINANCE, 1961

Overview

An organization or association working for a variety of social welfare goals may seek registration as a voluntary social welfare agency from the Department of Social Services (DSS). In addition, an organization or association led by women and seeking to support women's well-being may seek registration as a voluntary social welfare agency with the Department of Women Affairs (DWA).

► HOW IS “VOLUNTARY SOCIAL WELFARE AGENCY” DEFINED IN THE LAW?

The term “voluntary social welfare agency” or “association” is defined as an organization, association, or undertaking established by persons of their own free will for the purpose of rendering welfare services in any one or more of the fields mentioned in the schedule at the end of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and depending for its resources on public subscriptions, donations, or government aid [Section 2(f)].

► WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF VOLUNTARY SOCIAL WELFARE AGENCIES?

At the end of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961, the schedule

lists 15 social service activities that can be undertaken by associations registered as voluntary social welfare agencies. These include: child welfare, youth welfare, women's welfare, welfare of the physically and mentally handicapped, family planning, recreational programs intended to keep people away from anti-social activities, social education (i.e., education of adults aimed at developing a sense of civic responsibility), the welfare and rehabilitation of released prisoners, welfare of juvenile delinquents, welfare of the socially handicapped, welfare of beggars and the destitute, welfare and rehabilitation of patients, welfare of the aged and infirm, training in social work, and co-ordination of social welfare agencies.

Microcredit is not included in the Schedule, although many organizations registered under this law do engage in microcredit activities. Since the establishment of the Microcredit Regulatory Act (MRA) in 2006, organizations are required to secure an MRA license in addition to primary registration as a different organizational form in order to engage in microcredit programs.

Educational institutions and foreign organizations cannot register under this Ordinance.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF VOLUNTARY SOCIAL WELFARE AGENCIES?

Associations that want to register as voluntary social welfare agencies in Bangladesh can get registration from two different regulatory authorities:

- Voluntary social welfare agencies working in the fields listed above register with the Department of

Social Services (DSS) under the Ministry of Social Welfare.

- Associations headed by women that wish to operate projects for women's well-being register with the Department of Women Affairs (DWA) under the Ministry of Women and Children.

Organizations registered with DSS and those registered with DWA are generally subject to the same financial and governance regulations.

► WHAT IS THE REGISTRATION FEE?

The fee for registering with DSS is BDT 5,000.00, plus 15 percent VAT. The fee for registering with DWA is BDT 2,000.00, plus 15 percent VAT. These fees need to be paid at any government bank, and the Treasury receipt of the registration fee and accompanying VAT needs to be submitted with the registration application.

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

No.

► WHAT IS THE REGISTRATION PROCESS?

DSS issued a detailed registration procedure in 2008. Associations can apply for DSS registration with the District or Upazila Social Service Offices (SSOs) under DSS.

Associations must apply for name clearance in the prescribed form with three proposed names for their organization at the beginning of the registration process. The SSO (either District or Upazila) selects a name for the organization to avoid any duplication/similarity or to avoid names that creates conflict/confusion, etc. and issues a Name Clearance Certificate. Name Clearance Certificates

are valid for a specific period of time and are renewable through the SSO upon expiration.

Upon receiving the Name Clearance Certificate, associations can apply for registration by submitting the copy of the Name Clearance Certificate along with the application form. After a preliminary screening, the Upazila SSO forwards the application to the District SSO with the necessary documents. Registration is issued by the District SSOs for organizations working only within the geographical area of that specific district. Upon completion of agreeable one-year activities, associations can apply to the District SSO to extend their work area, although a maximum of five districts can be added at a time and the association must provide proof of at least BDT 500,000.00 in savings in their official bank account and a no-objection certificate by the Deputy Commissioner of the original registered district.

The process to register with DWA is largely the same as that with DSS. However, to register with DWA, the name clearance application and the registration application must be submitted to the Zila (district) or Upazila (sub-district) Women Affairs Officer's office.

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

The prescribed time to receive a Name Clearance Certificate is two working days.

By law, the time period within which the government (DSS or DWA) is required to review and decide upon a registration application is 20 working days. In practice, however, the registration process may take as long as seven months.

► WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

To register with DSS, associations are required to submit the following documents to the SSOs:

- Application for registration in prescribed format (Form B);
- Name Clearance Certificate;
- Memorandum of association in the prescribed format signed by the president and general secretary;
- The list of members (must be an odd number) of the executive committee mentioning the name, profession, designation, and current address of each;
- Attested copy of the meeting minutes approving the executive committee and memorandum of association;
- Attested photo of the president, general secretary, and treasurer of the executive committee;
- List of general committee members with name, parents' names, spouse's name, occupation, and present and permanent address duly signed by the president and general secretary;
- List of activities and methods of implementation of the proposed organization;
- List of furniture in the office of the organization;
- Sources of funding;
- Copy of the deed of the office premises;
- The probable budget with income and expenditures;

- Recommendation letter from the Union Council/Ward Commissioner;
- Certification by the president and general secretary that the members of the executive committee are not from the same family; and
- Copy of the oath taken by the president and general secretary, signed by members of the organization.

All documents submitted should be original or officially attested copies.

To register with DWA, the following documents must be submitted to the Women Affairs Officer at the district or sub-district level:

- Application for registration in prescribed format (Form A);
- Recommendation letter from Deputy Commissioner/ Upazila Nirbahi Officer;
- Treasury receipt for registration fee;
- Copy of the rental agreement (deed of lease agreement with the landlord in BDT 300.00 non-judicial stamp paper) or ownership deed of the organization's office;
- Proof of previous voluntary activities before registration;
- Specific bank account in the name of the organization, which is operated by any two of the following: president, general secretary, or treasurer of the organization;
- Attested copy of the general meeting minutes approving the formation of the organization, name

selection, approved executive committee and memorandum of association;

- List of names and addresses of general members (minimum of 35 members);
- List of executive committee members mentioning the name, profession, designation, and current address of each;
- Written pledge regarding “Do not take dowry, do not give dowry” by the organization;
- Marriage registration, birth registration, and elimination of child marriage should be listed under proposed activities of the organization;
- Confirmation of water, sanitation and hygiene (WASH) promotion by the organization;
- Maintenance of different registration books like register of admission; membership registration book; savings register book; cash book; visitor’s book; notice book; resolution book, etc. The Inspection Officer will check and verify these register books during a visit to the organization’s office, as part of the registration process;
- Three copies of attested Statutes of the Association (as per prescribed format) submitted with the Application Form.

► IS ELECTRONIC SUBMISSION POSSIBLE?

No, but the prescribed application form (Form B) for registration with DSS, as well as detailed application guidelines, can be downloaded from the DSS website at <http://www.dss.gov.bd/>.

The prescribed form (Form A) for registration with DWA, as well as detailed application guidelines can be downloaded from the DWA website at

<http://www.dwa.gov.bd/site/forms/e725349c-196d-49b3-8433-a624e81ac2e5/>

► ARE VOLUNTARY SOCIAL WELFARE AGENCIES REQUIRED TO HAVE OFFICES?

Yes, a voluntary social welfare agency must possess a furnished office with a proper address and signboard hung in a visible place to be eligible for registration. A copy of the office lease agreement or ownership document of the office needs to be submitted to the registrar along with the registration application, and the signboard will be verified during the inspection process.

► ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

To register with DSS, the Deputy Director of the District SSO, or any officer nominated by him, will make an inquiry on the applicant's association and file a report based on the findings. Then the District SSO shall issue the registration certificate with a letter containing conditions of registration.

Associations may need a bank account to carry out financial transactions, although it is not expressly stipulated by the law.

► WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Specific grounds for denial of registration under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 include:

- The application is not submitted in the prescribed manner;
- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the association is not in compliance with the relevant schedule of activities to be undertaken by the association;
- The documents submitted do not comply with the requirements set by law.

The registering authority – DSS or DWA – must explain its decision, including the grounds for denial, in writing, provide advice on how to make the corrections, and set a time period for submission of a corrected application in case of problems or mistakes.

If DSS or DWA rejects an application for registration, the applicant association can appeal to the High Court within 30 days from the date of the rejection notice. The High Court decision is final.

Any organization that is denied registration under this law still retains its legal status if it is incorporated under any of the other laws of incorporation mentioned above.

► DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a voluntary social welfare agency is permanent and does not need to be renewed. Name Clearance Certificates are renewable without any charge.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

Under the Voluntary Social Welfare Agencies (Registration and Control) Rules 1962, registered associations must prepare books of accounts at the end of every financial year which shall be audited by chartered accountant/s enlisted by DSS/ DWA. Audited accounts should be submitted to DSS/DWA within six months of the end of the financial year. An association also must maintain a cash book, ledger, members' register, meeting minutes register, visitors' book, and other documentation. [Section 9].

Section 7 of the Ordinance includes the following financial rules for associations:

- Maintain audited accounts in the manner laid down by the registration authority;
- Submit an annual report and audited accounts to the registration authority and make them available to the public at such time and in such manner as may be prescribed;
- Maintain all funds received in a separate account kept in its name at such bank or banks as may be approved by the registration authority;
- Submit any official accounts, records, or documents to the registration authority as required from time to time.

► WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

To register an association with DSS, its executive committee (EC) or governing body must be comprised of between seven and eleven members, including a chairperson, general secretary, and treasurer.

To register with DWA, an association needs at least 35 members. Other than this, an association registered with DWA is subject to all of the same financial and governance regulations as voluntary organizations registered with DSS.

The following rules govern the process of amending an association's constitution:

- An association must submit a proposed amended constitution to DSS or DWA for approval;
- If DSS/DWA is satisfied that any amendment of the constitution is not contrary to any of the provisions of this Ordinance or the rules made thereunder, it may, if it thinks fit, approve the amendment;
- Upon official approval of an amendment of constitution, DSS/DWA will issue a certified amended copy of the constitution to the association as a confirmation of approval; no amendment of the constitution of a registered association will be valid unless it has been approved by DSS/DWA.

The Voluntary Social Welfare Agencies Ordinance, 1961 empowers the government to intervene in the management structure of an association. DSS/DWA can suspend the EC of an association without providing any right to appeal. The governing body of an association cannot dissolve itself without the approval of DSS/DWA.

The following are prescribed actions by the authorities for irregularities by the governing body:

- If a registered association has any irregularities in the operation of its funds or any mismanagement in the conduct of its functions, or fails to comply with the provisions of the Ordinance or the rules made

thereunder, DSS/DWA shall temporarily terminate the EC and board of directors by a written dismissal order.

- If the board of directors is temporarily dismissed, DSS/DWA shall appoint an administrator or a supervisory board consisting of five persons.
- The supervisory board shall have all the authority and powers of the board in accordance with the EC or supervisory board's structure;
- Upon appointing the supervisory board, DSS/DWA will submit a provisional dismissal order of the existing board and transfer responsibilities to the new supervisory board. The supervisory board may order the association's board to reinstate or may abolish it and reorganize it.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

Membership of associations is limited to adult citizens (18 years or older) of Bangladesh. Thus, non-citizens and minors are excluded from founding or belonging to an association. In addition, government employees are barred from becoming office bearers (i.e., members of ECs).

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Registration with DSS or DWA does not provide authorization to accept foreign donations. Generally, associations registered as voluntary social welfare agencies are small and operate locally (within specific geographical area) with funds mobilized from local donations and government grants. Activities are primarily implemented

by local volunteers. However, an association may obtain additional registration with NGOAB in order to receive foreign funds.

Permissible sources of funding for voluntary social welfare agencies include:

- State funding (on both the national and local level);
- Donations from domestic individuals and legal entities;
- Membership fees;
- Funding from Bangladesh-based corporate foundations and/or endowment funds;
- Income from economic activities, provided that the income generated is used only to support the organization's statutory purposes; and
- Contributions from the founders.

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, but the governing body of an association can only dissolve itself with the approval of the DSS or DWA.

► WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

If a registered association breaches its constitution or contravenes the provisions of the law, or if it contradicts the interests of the people, DSS or DWA will provide a report to the Ministry of Social Welfare or Ministry of Women and Children Affairs, respectively, and give the association the

opportunity for a relevant hearing. Based on the report and hearing, the government can abolish the said association.

► CAN A VOLUNTARY SOCIAL WELFARE ORGANIZATION THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

Yes, the governing body of the association against whom an order of dissolution and reconstitution is made under subsection (3) of the Ordinance may appeal to the High Court within 30 days from the date of dissolution order. The High Court order shall be final and shall not be called in question in any court.

► WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

In order to dissolve voluntarily, more than three-fifths of a voluntary social welfare organization's members must apply to the DSS or DWA for dissolution. After considering the application, DSS or DWA may order the organization to be dissolved upon a specific date if it is satisfied that it is proper to do so.

In the event of liquidation and closure of the activities of a registered association, the registration authority will issue an order to the bank and any person holding money, securities, or other assets on behalf of the association to not disburse any money, securities, or assets without written permission of DSS or DWA or the Civil Court with local jurisdiction.

DSS or DWA will appoint a competent person to wind up the activities, debts, and liabilities of the association. S/he will be given the authority to file and defend legal proceedings on behalf of the association, and to take any necessary action on behalf of the association in order to

settle any debts and liabilities. S/he will be authorized to transfer all remaining money or assets to another association with the same objective and the order given by the appointed person will be enforced by the Civil Court with local jurisdiction.

Cooperative Societies

REGULATED BY THE COOPERATIVE SOCIETIES ACT,
2001

Overview

A group of individuals that seek to cooperate for mutual social, cultural, or economic benefit may register as a cooperative society with the Department of Cooperatives (DoC) under the Cooperative Societies Act, 2001.

► HOW IS “COOPERATIVE SOCIETY” DEFINED IN THE LAW?

A cooperative society is an association registered under the Cooperative Societies Act 2001 where the members cooperate for mutual social, cultural, or economic benefit. The main types of cooperative societies are:

- Primary cooperative society: a primary cooperative society has individuals as members and is focused on promoting the collective interests of its members;
- Central cooperative society: a central cooperative society has primary cooperative societies as its members.
- National cooperative society: a national cooperative society has central cooperative societies with the same objectives and missions as its members and is focused on ensuring that cooperative members have the same opportunities as other businesses operating in the country and that consumers have access to cooperatives in the marketplace.

► WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF COOPERATIVE SOCIETIES?

As per the law, activities of cooperative societies are for the purpose of economy, self-help, mutual aid, and creating the quality of credit worthiness among agriculturists, artisans, and other persons with common economic needs so as to bring about a higher standard of living, better business, better methods of production, equitable distribution, and exchange.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF COOPERATIVE SOCIETIES?

Cooperative societies register with the DOC.

► WHAT IS THE REGISTRATION FEE?

Fees to register cooperative societies are as follows:

- BDT 50.00 to register as a primary cooperative society under various government schemes for poverty reduction of extreme poor, landless, and homeless people;
- BDT 300.00 to register as any other primary cooperative society;
- BDT 1,000.00 to register as a central cooperative society; and
- BDT 5,000.00 to register as a national cooperative society

Applicants also must pay 15 percent VAT on the registration fee. All registration fees to register cooperative societies must be paid directly to any public (government) bank and

the Treasury receipt needs to be submitted to DOC along with the registration form.

► **ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?**

No.

► **HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?**

All applications will be reviewed by the DoC, which will grant registration within 60 working days provided satisfactory submission of documents and inspection. If the registrar refuses registration, he shall communicate the grounds of refusal in writing. The applicant may appeal to the government within 30 working days of receipt of the decision. The appeal will be heard and decided within 30 working days, and the decision will be final, per section 10 of the Act.

► **WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?**

The application form must be submitted to the registrar along with three copies of the proposed by-laws as per Form 1 for registration of a primary cooperative society and Form 2 for registration of central and national cooperative societies.

The following information is required to register a cooperative society:

- Name, national ID number, e-mail address (optional), and cell phone number of the cooperative organizer.
- Proposed name of the cooperative, address of the cooperative office, cooperative classification, each share price, total number of shares, number of shares sold, member constituency, cooperative

action area, number of cooperative members, and the purpose of cooperative formation.

- Information on the proposed management committee.
- Two-year projected budget, calculation of deposit, and detailed financial information of the cooperative.

In order to register, cooperative societies must have the following minimum paid-up share capital (the amount of money received from shareholders in exchange for shares of stock):

- A minimum of BDT 3,000.00 to register as a primary cooperative society for poverty alleviation;
- A minimum of BDT 20,000.00 for any other primary cooperative society other than credit cooperative societies;
- A minimum of BDT 10,000,000.00 for a credit cooperative society;
- A minimum of BDT 100,000.00 to register a central or national cooperative society.

Central and national cooperative societies need to apply directly to the DoC with necessary documents and individual registration of primary cooperatives.

► IS ELECTRONIC SUBMISSION POSSIBLE?

Yes, applications for registration can be submitted online at: <http://www.geeksntechnology.com/ors/registration/signup>

► **ARE COOPERATIVE SOCIETIES REQUIRED TO HAVE AN OFFICE?**

Yes, a cooperative society must possess a furnished office with a proper address and signboard to be eligible for registration. A copy of the office lease agreement or ownership document of the office needs to be submitted to the registrar along with the registration application.

► **ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?**

An Upazila Cooperative officer will make an inspection and inquiry of all given information and accounts of the cooperative and submit a report to the District Cooperative office based on the findings. Upon receiving a satisfactory report, the District Cooperative office will issue the registration certificate with a letter containing conditions of registration.

► **WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?**

Specific grounds for denial of registration include:

- The application is not submitted in the prescribed manner;
- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the association is not in compliance under the schedule mentioned at the end of the Ordinance, for activities to be undertaken by cooperative societies;

- The documents submitted do not comply with the requirements set by law.

If the registrar refuses registration, he shall communicate the grounds of refusal in writing, and the applicant may appeal to the DOC within 30 working days of receipt of the decision. The appeal will be heard and decided within 30 working days, and the decision will be final, per section 10 of the Act.

► DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a cooperative society is permanent and does not need to be renewed.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

A cooperative society may invest or deposit its funds in an approved bank or financial institution (or any other cooperative bank) as a deposit, or in the form of securities issued by the government or any other security.

If there is no surplus required for the operation or expenditure of the cooperative society, up to 10 percent of the money in a company's shares, debentures, or other securities can be kept in hand with a resolution of the general meeting.

If a cooperative society becomes a member of any other cooperative society and has the power to accept a deposit from the second cooperative society, it can be accepted in the form of a deposit.

The registration authority may at any time examine the accounts, cash, other property, and all related documents of a cooperative society.

► WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

The number of members cooperative societies are required to have is as follows:

- Primary cooperative society: minimum of twenty individuals as members
- Central cooperative society: minimum of ten cooperative societies as members
- National cooperative society: minimum of ten central cooperative societies with the same objective and mission as members

Membership in a cooperative society is limited to adult citizens (above 18 years) of Bangladesh. Thus, non-citizens and minors are excluded from founding or belonging to a cooperative society. All members of a cooperative society are required to designate a nominee, who is 18 years or older, throughout their membership, to be the official successor of any shares upon the death of the member.

Each cooperative society must form a Management Committee that will be responsible for the management of the cooperative society. The Management Committee must have at least six members. Members of the Management Committee will be elected in a general meeting by the general members. During the registration process, the registrar will approve the initial members of the Management Committee. The initial Management Committee approved by the registrar is responsible for forming a regular Management Committee within two years of registration and will maintain its responsibilities during this time. The duration of the elected Management Committee is for three years. Each Management Committee

is responsible for the establishment of the next Management Committee before the end of its term.

All cooperative societies shall maintain the following updated register books:

- member register;
- share register;
- deposit register, if applicable;
- loan register, if applicable;
- register of the decisions of the meeting of the management committee and general meeting;
- cash book / register; and
- any other documents/ books and register as prescribed by the rules or indicated by the registrar.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

Members of the Managing Committee must be 21 years or older. Government employees can be members of any cooperative society and the Managing Committee.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Registering as a cooperative society only allows an organization to accept funding from within Bangladesh. In order to receive any foreign donations, a cooperative society must obtain additional registration from NGOAB.

Permissible sources of funding for cooperative societies include:

- State funding (from both the national and local levels);

- Donations from domestic individuals and legal entities;
- Membership fees;
- Funding from Bangladesh-based corporate foundations and/or endowment funds;
- Income from economic activities, provided that the income generated is used only to support the organization's statutory purposes; and
- Contributions from the founders.

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, but the governing body of a cooperative society can only dissolve itself with the approval of the DoC.

► WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

According to Section 43 of the Act, the DoC has absolute power to dissolve a cooperative society if:

- the registrar decides to do so upon external audit of the accounts of the cooperative;
- quorum is not met during two consecutive general meetings;
- the cooperative society does not start its activities within one year of registration;
- the activities of the cooperative society are on hold for more than one year; or,
- the paid share capital decreases below the declared amount.

► CAN A COOPERATIVE SOCIETY THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

Yes, a cooperative society dissolved by the DoC for one of the above reasons can appeal the decision to the District Judge Court within 30 days from the date of dissolution order. The District Judge Court's decision will be final and shall not be called into question in any other court.

► WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

In order to dissolve voluntarily, at least three-quarters of a cooperative society's members must apply to the DOC for dissolution.

Upon receiving an application for voluntary dissolution, DOC can send a show cause notice to the Management Committee and ask for additional reasons or documents for dissolution, providing a set amount of time to reply.

After examining the application and accounts and deciding to dissolve the cooperative society, DOC will appoint a Receiver; the Managing Committee will be dismissed as soon as the Receiver is appointed. The Receiver will be authorized to pay off any debts by selling the property and assets of the cooperative society and to pay off any remaining shares to the members or nominees. The Receiver cannot pay any remaining shares or dividends without approval of the DOC.

Youth Organizations

REGULATED BY THE YOUTH ORGANIZATIONS
(REGISTRATION AND MANAGEMENT) ACT, 2015

Overview

Any association formed by young people and pursuing activities for youth development may seek registration as a youth organization with the Department of Youth Development (DYD) under the Youth Organizations (Registration and Management) Act, 2015. An organization may obtain primary registration (as a legal entity) as a youth organization or may seek secondary registration as a youth organization as an already registered legal entity (society, trust, etc.). Registering with the DYD allows local youth associations to access different government funds and to be included in specific youth development training programs including international training program through the department.

► HOW IS “YOUTH ORGANIZATION” DEFINED IN THE LAW?

As per the law, a youth organization is defined as a non-profit and non-political organization established by youths (between 18 and 35 years of age) for the purpose of conducting youth activities.

► WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF YOUTH ORGANIZATIONS?

Youth activities are defined under the Act as:

- Activities for youths in order to promote physical, psychological, moral growth; development of socio-

economic and cultural conditions, and to foster patriotism, conservationism, and humanitarianism among youths;

- Activities to create an efficient workforce, improve workforce productivity, and improve job opportunities;
- Activities to protect and rehabilitate youth from anti-social, unethical, and inhumane actions and all kinds of social disorders;
- Voluntary activities for the country, society, environment, and human welfare; and
- Activities to inspire youth to participate in the transformation of living standards and develop leadership qualities among them.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF YOUTH ORGANIZATIONS?

Youth organizations register with the DYD under the Ministry of Youth and Sports.

► WHAT IS THE REGISTRATION FEE?

The registration fee for a youth organization is BDT 500.00, which needs to be paid at any government bank. The Treasury receipt for the registration fee needs to be submitted with the registration application.

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

In addition to the registration fee mentioned above, applicants must pay BDT 500.00 for a Recognition Letter as a youth organization.

► **HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?**

The prescribed processing time for registration is 60 working days after receiving the registration application.

► **WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?**

To register with DYD, applicants must submit the following documents:

- Application for registration in prescribed format (Form A);
- Application for acceptance certificate in prescribed format (Form B);
- Treasury receipt for registration fee;
- Copy of memorandum of association/constitution with stamp on each page in prescribed format and signed by the organization's president and general secretary;
- List of executive committee members;
- Copy of annual general meeting minutes for previous years (if any);
- Copy of annual financial report for previous years (if any) (for Acceptance Certificate);
- Updated bank account statement;
- Attested photo and copy of National ID Card of organization's president and general secretary.

If the registrar refuses registration, he shall communicate the grounds of refusal in writing. The applicant may appeal to the DYD within 30 working days of receipt of the decision. The appeal will be heard and decided within 30 working days; such decision is final, per Subsection 4 of the Act.

► IS ELECTRONIC SUBMISSION POSSIBLE?

No, but the prescribed form (Form A) for registration and detailed application guidelines can be downloaded from DYD's website at: <https://dyd.portal.gov.bd>.

► ARE YOUTH ORGANIZATIONS REQUIRED TO HAVE AN OFFICE?

No, but they must have an address.

► ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

DYD will perform an inspection and investigation of all information provided in the registration form. Registration will be approved based on satisfactory result of the inspection.

► WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Specific grounds for denial of registration include:

- The application is not submitted in the prescribed manner;
- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the organization is not in compliance with the schedule mentioned in the Act;
- The documents submitted do not comply with the requirements set by law.

If the registration authority rejects an application for registration, the applicant can appeal to DYD within 30 days from the date of the rejection notice. DYD will resolve

the appeal within 30 working days of the receipt of the appeal and that decision shall be final.

A youth organization that is denied registration under this law still retains its legal status if it is incorporated under any of the other aforementioned laws of incorporation.

► DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a youth organization is permanent and does not need to be renewed.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

The Act includes the following financial rules for registered youth organizations [Section 18]:

- Maintain audited accounts in the manner laid down by the registration authority;
- Submit an annual report and audited accounts to DYD;
- Pay all moneys received into a separate account kept in the organization's name in a bank approved by DYD;
- Furnish to the registration authority such particulars regarding accounts and other records as DYD may from time to time require.

In addition, DYD has the power to inspect and audit all accounts, files, cash, and official documents regarding assets or other property of any youth organization any time.

► WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

- There must be a minimum of seven and a maximum of eleven executive committee members.

- All activities should be related to youth development, as stated in the Youth Policy 2017
- “Youth” should be included in the name of the organization.
- At least 20 members, all between the ages of 18 and 35 years, are required to form a youth organization.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

All members of a youth organization must be between the ages of 18 and 35 years.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Registering with DYD allows local youth associations to access different government funds. Registration with DYD does not permit an organization to accept foreign donations; youth organizations need to register with NGOAB in order to receive foreign funds.

Permissible sources of funding for youth organizations include:

- State funding (on both the national and local level);
- Donations from domestic individuals and legal entities;
- Membership fees;
- Funding from Bangladesh-based corporate foundations and/or endowment funds;

- Income from economic activities, provided that the income generated is used only to support of the association's statutory purposes; and
- Contributions from the founders.

Dissolution & Liquidation

▶ DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, but voluntary dissolution requires government approval.

▶ WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

The government has the power to cancel the registration of any youth organization if it finds that any false information was given during registration or that there has been any malpractice. As per Section 10 of the Act, DYD will send a written show cause notice regarding the decision and reasons and give a specific time for justification. DYD will take the necessary decision upon receiving show cause reply of the organization within 45 days of the issuance of the notice.

▶ CAN A YOUTH ORGANIZATION THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

Yes, the governing body against whom an order of dissolution and reconstitution is made under sub-section (3) may appeal to the High Court within 30 days from the date of the dissolution order. The High Court's decision shall be final and shall not be called into question in any other court.

► WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

As per Section 11 of the Act, a youth organization can apply to DYD for voluntary dissolution through prescribed form CHA. A resolution to dissolve the organization signed by at least three-fourths of its members passed in a general meeting along with the signed meeting minutes, list of assets, and lists of other financial accounts must be submitted with form CHA. After considering the application, DYD may order that the organization be dissolved upon a specific date if it is satisfied that it is proper to do so. After such dissolution order, the government will appoint a Settler. A retired government official, teacher of a school/ college, or any other youth organization can be appointed as a Settler.

CHAPTER SIX

Societies

REGULATED BY THE SOCIETIES REGISTRATION ACT,
1860

Overview

Societies are membership associations pursuing the promotion of science, culture, education, or the arts. Societies register with the Registrar of Joint Stock Companies and Firms (RJSC) under the Societies Registration Act, 1860.

► HOW IS “SOCIETY” DEFINED IN THE LAW?

According to Section 1 of the Societies Registration Act, 1860, any seven or more persons associated for any literary, scientific, or charitable purpose, or for any other purpose as mentioned in the Act, can form a society by signing their names to a memorandum of association and filing it with the RJSC.

► WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF SOCIETIES?

Societies can pursue the following activities under the Act:

- The promotion of science, literature, or the fine arts,
- Instruction, the diffusion of useful knowledge, and the diffusion of political education;
- The foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art,

collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF SOCIETIES?

The RJSC under the Ministry of Commerce registers organizations under the Societies Registration Act, 1860.

► WHAT IS THE REGISTRATION FEE?

Applicable fees for registration include:

- Registration fee: BDT 10,000.00
- Registration filing fee: BDT 400.00 (for filling any document required or authorized to be filed, other than the memorandum)
- For copy of certificate of incorporation/ registration: BDT 200.00

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

The fee to receive a name clearance for the association is BDT 600.00 per name. In addition, there is a fee of BDT 1,000.00 for no-objection digital (online) certificate for the society's name.

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

The registration process for societies is generally quicker and easier than that for other CSO legal forms. By law, the government must review the registration application within eight to ten working days. In practice, the registration process is normally completed within this time frame.

The name clearance approval is received within 24 hours after the fee is paid. The status can be checked online by using the account created during the name clearance application process.

► WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

The documents required to register a society include:

- Memorandum of Association in the prescribed format;
- Rules and Regulations signed by each founding member; and
- Name clearance from the RJSC.

The Memorandum of Association must include:

- Name of the association;
- Registered office;
- Objective(s);
- Members of the general body; and
- Members of the executive body (governing body).

The Rules and Regulations (by-laws) must address:

- Membership clause/rules;
- Renewal of subscription clause;
- Meeting clause;
- Committee/governing body clause;
- Audit clause;
- Legal procedure; and
- Dissolution.

The Rules and Regulations must be signed by three executive (governing) body members.

Other documents required are:

- Cover letter requesting registration of the said association, signed by all founding members;
- Certified copy of duly passed resolution for registration of association; and
- IDs of members

To apply for name clearance online through the RJSC registration website, an applicant must select Society as the entity type and search for the desired organization name.

Once the search confirms that the name is not already taken, the association can proceed with the name clearance application online. Applicants without internet access may submit name clearance applications by either:

- Using kiosks (special booths) at the RJSC (also an 'Online Submission'); or
- Manual submission at the RJSC counter.

► **IS ELECTRONIC SUBMISSION POSSIBLE?**

Yes, the application and name clearance application both can be submitted online at <http://app.roc.gov.bd:7781/>.

► **ARE SOCIETIES REQUIRED TO HAVE AN OFFICE?**

Yes, a society must possess a furnished office with a proper address and signboard to be eligible for registration.

► ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Security and law enforcement services will carry out investigations into the background of each founding member.

► WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Specific grounds for denial of registration include the following:

- The application is not submitted in the prescribed manner;
- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the association is not in compliance with the activities mentioned in the Society Registration Act;
- The documents submitted do not comply with the requirements set by law.

The RJSC informs the applicant of its decision in writing. In the case of denial of registration by the RJSC, written notice is provided to the applicant, with the grounds for denial, advice on how to correct the application, and a time period for submission of the corrected application. An applicant whose registration has been denied can appeal the decision to the High Court within 30 days from the date of the denial notice. The High Court's decision is final.

► DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a society is permanent and does not need to be renewed.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

The Act does not contain financial provisions for societies. The only reporting requirement is to submit an annual return, a list with details about the managing body. The annual return needs to be filed with the registrar within 14 days of the Annual General Meeting (AGM) or by the end of January. If satisfied, the RJSC approves and archives the return. In addition, societies must submit returns for any change in the entity.

► WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

- To register as a society, an association must have a minimum of seven founding members; at least seven Executive Committee (EC) members; and a minimum of 21 general members.
- If a governing body wants to alter, extend, or abridge any purpose of establishment of an association or to amalgamate the society wholly or partially with another society, the proposition must be agreed to by three-fifths of the members and confirmed by the votes of three-fifths of the members in a second special general meeting. The registrar must be informed of such changes within 21 days from the date of such action;
- Members whose subscriptions have been past due for more than three months will no longer be entitled to vote or be counted as members;

- In case of any crime by any individual member of the society, (i.e., theft or misuse of any money or other property, or intentional destruction of any property of the society, or forgery of any deed, bond, security for money, receipt, or other instrument), which causes loss to the society will be prosecuted and punished as a non-member of the society like any other person.

Neither the RJSC nor any other government agency is empowered to regulate a society. If any dispute arises in a society, it must be settled in a judicial court, which is often a very complex, time consuming, and costly process.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

The governing body of the association may be designated as the governors, council, directors, committee, trustees, or other body as mentioned within the rules and regulations of the society. The governing body must be comprised of between seven and eleven members.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Permissible sources of funding for societies include:

- State funding (on both the national and local level);
- Donations from domestic individuals and legal entities;
- Membership fees;
- Funding from national corporate foundations and/or endowment funds;

- Income from economic activities, provided that the income generated is used only to support the organization's statutory purposes; and
- Contributions from the founders.

In order to receive foreign funding, a society needs to be registered with the NGOAB.

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, the law recognizes both voluntary and involuntary dissolution as long as both the winding up and dissolution rules and procedure are addressed in the original Memorandum of Association and the Rules and Regulations. In addition, whenever any government body is a member, or contributor to, or involved with any registered organization under this Act, such society cannot be dissolved without the consent of the government.

► WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

A registered society may be dissolved if it breaches its constitution, contravenes the provisions of the Act, or contradicts the interests of the people.

► CAN A SOCIETY THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

Yes, the governing body may appeal the decision to the relevant court within 30 days from the date of the dissolution order. The court order shall be final.

► WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

In order to dissolve voluntarily, more than three-fifths of a society's members must apply for dissolution to RJSC, as per the rules in their Memorandum of Association and the Rules and Regulations. In this case, the association must submit to the RJSC documents of winding up procedures and dissolution. After considering the application, the RJSC may order that the society shall be dissolved upon disposal and settlement of the its property, claims, and liabilities as per the rules of the society.

The disposal and settlement of the society's property, claims, and liabilities in case of dissolution should be addressed in the Memorandum of Association. If no rule is specified, then it will be left to the discretion of the governing body. In the event of any dispute among the governing body members or the members of the society, the disposal of the remaining assets will be referred to the relevant civil court.

After paying all debts and liabilities, any remaining assets must be transferred to another association by the agreement of three-fifths of the members; assets cannot be paid or distributed among members of the association. This condition is not applicable to any society founded by the contributions of shareholders in a nature of joint stock company.

Non-Profit Companies

REGULATED BY SECTION 28 OF THE COMPANIES ACT, 1994

Overview

A non-profit company is a company limited by guarantee that seeks to promote commerce, art, science, religion, charity, or any other useful objectives, and that applies its profits or income to promote its objectives without paying any dividends to its members. Non-profit companies obtain legal status by registering with the Registrar of Joint Stock Companies and Firms (RJSC) under Section 28 of the Companies Act, 1994.

► HOW IS “NON-PROFIT COMPANY” DEFINED IN THE LAW?

According to Sec. 2 (1) of the Companies Act, 1994, “Company means a company formed and registered under this Act or an existing company.” A limited liability company is a company which may or may not have share capital and the members promise to pay the company's debts up to a fixed sum in the event of liquidation of the company. Such a company may be a public company or a private company.

Non-profit companies are limited liability companies formed under Section 28 of the Companies Act to achieve some common objectives and that apply their profits or income to promote their objectives without paying any dividends to their members.

Non-profit companies can either be private or public. A private company is a company which by its articles restricts the right to transfer its shares (if any) and limits the number of its members to fifty, not including employees. An invitation to the public to subscribe for its shares is not allowed. A public company is a company incorporated under this Act which is not a private company. A public company does not have any restrictions on the transfer of shares, the maximum number of members, or the invitation to the public seeking their subscription for its shares. The minimum limit of its members is seven.

▶ WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF NON-PROFIT COMPANIES?

The government will grant registration under Section 28 of the Act when the company will promote commerce, art, science, religion, charity, or any other useful objectives, and it will apply its profits or income to promote its objectives without paying any dividend to its members. These types of welfare-oriented and charitable companies are incorporated as limited liability companies.

Registration & Statutory Obligations

▶ WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF NON-PROFIT COMPANIES?

RJSC under the Ministry of Commerce is the registration authority for non-profit companies.

▶ WHAT IS THE REGISTRATION FEE?

Applicable registration fees are as follows:

- For the Memorandum of Association: BDT 1,000.00

- For filing six documents (five filled in forms plus one memorandum and articles of association @ BDT 400.00 per document): BDT 2,400.00
- Issuance of digital certificate: BDT 00

| Authorized Capital (BDT) | Fee (BDT) |
|---|-----------|
| i. For the Articles of Association: | |
| Up to 2,000,000.00 | 3,000.00 |
| > 2,000,000 up to 60,000,000.00 | 8,000.00 |
| > 60,000,000.00 | 20,000.00 |
| ii. For the authorized share capital: | |
| Up to 20,000.00 | 00 |
| Additional for every 10,000.00 or part after first 20,000.00 up to 50,000.00 | 00 |
| Additional for every 10,000.00 or part after first 50,000.00 up to 1,000,000.00 | 00 |
| Additional for every 100,000.00 or part after first 1,000,000.00 up to 5,000,000.00 | 50.00 |
| Additional for every 100,000.00 or part after first 5,000,000.00 | 80.00 |

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

The cost for receiving a name clearance is BDT 100.00 for each proposed name.

In addition, an applicant must pay the applicable non-judicial stamp fees as follows:

- For affixing on the Memorandum of Association: BDT 500.00
- For affixing on the Articles of Association:

For Authorized Capital (BDT) Stamp (BDT)

| | |
|------------------------------------|-----------|
| Up to 1,000,000.00 | 2,000.00 |
| > 1,000,000.00 up to 30,000,000.00 | 4,000.00 |
| > 30,000,000.00 | 10,000.00 |

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

Once the registration formalities are complied with, RJSC generally provides the certificate of incorporation (company registration certificate) within six to eight working days. It usually takes three to five weeks to register a company from the date of submitting all the documents to RJSC.

A company's name must be approved (cleared) before it can be incorporated. Generally, three working days are required to obtain a name clearance. Once the name clearance is obtained, the clearance remains valid for six months. After obtaining the name clearance certificate, a bank account needs to be opened into which the initial capital must be transferred from the shareholders' account. If there is any foreign investment, then the amount for paid up capital need to be remitted through the newly opened bank account following the proper procedure. The prescribed processing time is five weeks.

► WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

The application for registration consists of:

- Memorandum of Association and Articles of Association (RJSC requires that the object clause in

the Memorandum of Association be no more than 400 words and 7 clauses), original + two copies

- Form I: Declaration on Registration of Company
- Form VI: Notice of Situation of Registered Office and of Any Change therein
- Form IX: Consent of Directors to Act [Section 92].
- Form X: List of Persons Consenting to be Directors
- Form XII: Particulars of the Directors, Manager and Managing Agents and of any change therein (address, eTin, NID, Passport copy, Photograph)
- Evidence of Name Clearance
- Special Adhesive Stamps and Treasury receipt from Bangladesh Bank (photocopy) of Collecting the Stamps

► **IS ELECTRONIC SUBMISSION POSSIBLE?**

Yes, RJSC facilitates online submission of applications. If an applicant does not have access to the internet, s/he may submit applications either by using available kiosks at RJSC or submitting them manually at the RJSC counter.

► **ARE NON-PROFIT COMPANIES REQUIRED TO HAVE AN OFFICE?**

Yes, to register a company in Bangladesh, the applicant must provide a local address as the registered address of the company. The registered address must be a physical address (a residential or commercial address); it cannot be a P.O. Box.

► ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

- Directors of the company needs to open a temporary bank account in the name of the proposed company with any enlisted bank with the condition that the account shall be regularized once the company is duly registered with RJSC
- Capital contribution must be deposited into the bank account.
- Encashment certificate from the bank must be submitted with the application. The certificate expresses that the sum required for capital contribution has been duly dispatched in the temporary bank account of the proposed organization.

► WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Specific grounds for denial of registration include:

- Criminal Conviction: a criminal conviction on the directors' record can result in registration being denied.
- Individual directors' pending or unpaid income tax return with National Bureau of Revenue (NBR)
- Area Violations: the law prohibits businesses from being opened in particular locations. If the area in which a company address is located is not authorized for business activities, registration can be denied.

If the RJSC is satisfied that the requirements of the Companies Act have been met, it will grant registration. If it refuses registration, it shall communicate the grounds of

refusal. The applicant may appeal the decision to the District Court. The District Court's decision is final.

► DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a company is permanent and does not need to be renewed.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

A registered non-profit company must use its profits or income to promote its objectives (philanthropic activities) without paying any dividends to its members.

Minimum paid-up capital for registration of a Bangladeshi company is BDT 1.00 Paid-up capital (also known as share capital) can be increased any time after the incorporation of the company.

Authorized capital is the maximum amount of share capital that the company is authorized to issue (allocate) to shareholders. An applicant must state the authorized capital in the company's Memorandum of Association and Articles of Association. Part of the authorized capital can remain unissued. There is no minimum or maximum limit for authorized capital in Bangladesh.

The following is a list of requirements a company must fulfill after it obtains a registration certificate from RJSC:

- Trade License: Companies must obtain a trade license from the relevant City Corporation. A proposed company is required to file its application at the nearest City Corporation along with the relevant documents and appropriate fees.

- Tax Identification Number (TIN): A company has to obtain an E-TIN from the recommended website of the National Board of Revenue (NBR).
- VAT Registration Certificate: A newly incorporated company has to collect a VAT registration certificate from the NBR.
- Fire Certificate: A fire certificate is provided by the Bangladesh Fire Service and Civil Defense Authority.
- Environment Clearance Certificate: A company must obtain an environment clearance certificate from the Department of Environment if it is involved in an industrial project, by executing the prescribed form.
- Investment in kind: The concept of 'investment in kind' is not detailed under the Companies Act 1994. However, in practice, it is considered investment in kind when significant investment in a company is made in machinery and other equipment by a shareholder or a director or proposed shareholder in a company incorporated in Bangladesh. Such "investment in kind" requires separate government approval.

► WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

- A company limited by guarantee must have at least one director and one guarantor. A sole individual may assume both positions, or there can be multiple directors and guarantors. Information about all directors and guarantors will be available on public record.

- Any person who is above 18 is eligible to register a company.
- The law prescribes a minimum of two and a maximum of 50 shareholders, and two directors for a private company. A public limited company must have a minimum of seven members and three directors, with no maximum number of shareholders.
- A director must own qualification shares as stated in the Articles of Association.
- Any company can, through an extraordinary resolution, remove any shareholder director before the expiration of his/her duration and by ordinary resolution appoint another person in that place. The removed director cannot be re-appointed as a director by the Board of Directors.
- A registered company's Board of Directors must meet once every three months and at least four times a year.
- The Board of Directors of a company cannot sell or dispose any asset/property of the company or pay any director's liability without the consent of the company through a general meeting.

Appointment of the Managing Director cannot be made without the consent of the company in a general meeting and the term of appointment cannot exceed five years.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

Only a natural person may be appointed as a director of a company. Directors can be either local or foreign. A person

will not be eligible to be a director if he or she: (a) is certified as having an unsound mind by the court; (b) has an undischarged bankruptcy; (c) has an application pending for bankruptcy; (d) has unpaid calls of shares (alone or jointly with others); or (e) is a minor. In addition, they must not have been previously convicted of any malpractice. Moreover, any company within the articles can add additional grounds for disqualification of a director.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

At the time of registration, a nonprofit company must have either 100 percent local or foreign shareholding. A nonprofit company can have new shares, or existing shares can be transferred to another person any time after the Bangladeshi company has gone through the incorporation process.

Permissible sources of funding for non-profit companies include:

- Loan stock
- Retained earnings
- Bank borrowing
- Government sources
- Business expansion scheme funds
- Venture capital
- Franchising

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, besides cancellation of their licenses, non-profit companies may be involuntarily dissolved by the court, voluntarily dissolved without the intervention of a court, or voluntarily dissolved subject to the supervision of the court.

A company will be dissolved if it does not pay its debts, fails to submit its statutory reports, or adopts a special resolution that the company would be dissolved by the court. Where there is an extraordinary resolution to dissolve a company, a notice must be given in the official gazette as well as in the newspaper.

► WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

The RJSC may cancel registration at any time if a registered organization breaches its constitution, contravenes the provisions of the Companies Act, 1994 or the associated rules, or contradicts the interests of the people. Before canceling a license, RJSC shall notify the organization expressing the grounds for the decision and shall give the organization an opportunity to defend itself.

In addition, the authorities can take the following steps for irregularities by the governing body:

- If a registered non-profit company is responsible for any irregularities in the operation of its funds or for any mismanagement in the conduct of its functions, or fails to comply with the provisions of the Companies Act, 1994 or the rules made thereunder, the authority shall temporarily

terminate the executive committee (EC) and board of directors by a written/ dismissal order.

- If the board of directors is temporarily dismissed, the registration authority shall appoint an administrator or a supervisory board consisting of five persons.
- The supervisory board shall have all the authority and powers of the board in accordance with the administrative (EC) or supervisory board's structure;
- The registration authority will submit the provisional dismissal order to the existing board and transfer responsibilities to the new supervisory board. The supervisory board may order the company's board of directors to reinstate or may abolish it and reorganize it.

► CAN A NON-PROFIT COMPANY THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

Yes, the governing body against whom an order of dissolution and reconstitution is made under sub-section (3) may appeal to the High Court within 30 days from the date of dissolution order. The High Court's decision shall be final and shall not be called into question in any other court.

► WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

A voluntary dissolution may be initiated either by a company's members or by its creditors. If a company is dissolved, its assets are converted into money and shall be used to settle its debts. After satisfying the creditors, the balance is returned to the shareholders. The shares can be

transferred to another company with the agreement of the shareholders as per the Articles of Association.

The court will send a notice to the transferor company to pay or transfer the equivalent amount or other consideration representing the price by the transferee company for the shares.

If there are any dissenting shareholders who do not assent to the scheme or contract or any shareholder who fails or refuses to transfer his shares to the transferee company in accordance with the article, they will be allowed to sell their shares.

In the event of liquidation and closure of the activities of a registered non-profit company:

- The registration authority will issue an order to the bank and any person holding money, securities, or other assets on behalf of the CSO to not disburse any money, securities, or assets without written permission from the registration authority or the Civil Court with local jurisdiction;
- The registration authority will appoint a competent person to wind up the activities, debts, and liabilities of the non-profit company. S/he will be given the authority to file and defend the case and other legal proceedings on behalf of the CSO, and to take any necessary action on behalf of the CSO in order to settle any debts and liabilities;
- S/he will be authorized to transfer all remaining money or assets to another CSO with the same objective. The order given by the appointed person

will be enforced by the Civil Court with local jurisdiction as a decree of the Court.

CHAPTER EIGHT

Trusts

REGULATED BY THE TRUST ACT, 1882

Overview

A trust is created when an owner of assets or property dedicates his/her assets or property for the benefit of others. Trusts are regulated by the Trust Act, 1882, and can either be private (where the benefit is limited to select individuals) or public (where the benefit is to the public at large).

► HOW IS “TRUST” DEFINED IN THE LAW?

As per the law, “A Trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.” A trust can be declared both by way of a gift or a will and can include both moveable and immoveable properties.

Both private and public trusts operate in Bangladesh. A private trust is one where benefit is conferred to selected individuals. In a public trust, the benefits of the trust are conferred to the public at large. Trusts to promote public welfare activities or education are public trusts. They may be charitable or religious trusts.

The preamble of the Trust Act 1882 states that this legislation was made to define and amend the law relating to Private Trusts and Trustees. This section will therefore focus exclusively on private trusts.

► **WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF TRUSTS?**

Section 4 of the Act says that a trust can only be made for lawful purposes. In order to comply with Section 4 of the Act, a private trust must not be against the rules of valid disposition of property.

Registration & Statutory Obligations

► **WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF TRUSTS?**

A deed of trust needs to be registered in the local Sub-Registry Office under the Ministry of Law. As soon as it is registered, the organization can start functioning. Trust deeds for charitable purposes are not distinguished from other deeds during registration.

► **WHAT IS THE REGISTRATION FEE?**

The fee to register a trust is BDT 5,000.00 plus 15 percent VAT, which needs to be paid at any government bank. The Treasury receipt for the registration fee and VAT must be submitted with the registration application.

► **ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?**

No.

► **HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?**

After submission of all required documents and completing all formalities, it takes a minimum of seven working days to obtain a registration certificate.

► **WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?**

The registration process for a charitable trust is as follows:

- Determine appropriate name for the trust

- Determine the Settler (creator of the trust) and the Trustees
- Develop Memorandum of Association and Rules and Regulations of Trust
- Develop Bylaws of the Trust
- Submit all required documents for registration

To register the trust deed in the local Sub-Registry Office under the Trust Act, the following are required:

- Trust deed on non-judicial stamp paper of requisite value;
- Two passport-sized photographs and self-attested copy of the proof of identity of the Settler;
- Two passport-sized photographs and self-attested copy of the proof of identity of each Trustee;
- Signature of Settler on all pages of the trust deed;
- Proof of the registered office address of the trust, which must be attached to the trust deed;
- Proof of property ownership to be registered under the trust's name, as well as the value of the trust's property mentioned in the trust deed;
- The fee to register the trust's immovable property, which is valued according to Revenue Tax rules and is calculated at the time of the registration (it cannot be calculated beforehand); and
- The trust deed must contain the trust's aims and objectives and the geographical area of operation.

▶ IS ELECTRONIC SUBMISSION POSSIBLE?

No.

▶ ARE TRUSTS REQUIRED TO HAVE AN OFFICE?

A trust must possess a furnished office with a proper address and signboard to be eligible for registration.

▶ ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?

Registers verify the registered office address by sending an official letter for verification.

▶ WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?

Registration of a trust deed cannot be denied.

▶ DOES REGISTRATION HAVE TO BE RENEWED?

Registration as a trust is permanent and does not need to be renewed.

▶ WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

Trusts are not subject to any specific financial regulations or reporting requirements.

▶ WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?

A private trust needs a minimum of two trustees; there is no upper limit to the number of trustees.

▶ ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

Trustees can be either citizens or non-citizens of Bangladesh. There is no restriction on government employees becoming Trustees or Settlers.

Sources of Funding

▶ WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Charitable trusts are allowed to receive funds from either local or international donors. But in order to receive any foreign funds, a trust needs to get additional registration from NGOAB.

Dissolution & Liquidation

▶ DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

A trust created under the Trust Act may be extinguished when its purpose is fulfilled; when its purpose becomes unlawful; when fulfilment of its purpose becomes impossible due to destruction of trust property; or when a revocable trust is expressly revoked.

▶ WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

N/A

▶ CAN A TRUST THAT HAS BEEN DISSOLVED APPEAL THE DECISION IN COURT?

N/A

▶ WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?

- In the event of liquidation and closure of the activities of a registered trust, the registration authority will issue an order to the bank and any person holding money, securities, or other assets on behalf of the trust to not disburse any money, securities, and assets without written permission of

the registration authority or the Civil Court with local jurisdiction;

- The registration authority will appoint a competent person to wind up the activities, debts, and liabilities of the trust. S/he will be given the authority to file and defend the case and other legal proceedings on behalf of the trust, and to take any necessary action on behalf of the trust in order to settle any debts and liabilities;
- S/he will be authorized to transfer all remaining money or assets to another CSO with the same objective and the order given by the appointed person will be enforced by the Civil Court with local jurisdiction as a decree of the Court.

Waqfs

REGULATED BY THE WAQF ORDINANCE, 1962

Overview

Similar to the English concept of trust, the institution of waqf is found in Islamic Law which is enforced in Bangladesh. Waqf is an Arabic word which means to hold still and last long. A waqf is created when an owner of property, whether movable or immovable, dedicates these assets for the use of beneficiaries in perpetuity. The Waqf Ordinance, 1962 regulates waqf estates and related activities in Bangladesh.

► HOW IS “WAQF” DEFINED IN THE LAW?

According to the Waqf Ordinance, “waqf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim Law as pious, religious or charitable, and includes any other endowment or grant for the aforesaid purposes, a waqf by user, and a waqf created by a non-Muslim.”

The property, both movable and immovable, dedicated for the use of beneficiaries in perpetuity by declaring the creation of a waqf is known as the waqf property and the person who creates the waqf is known as a waqif. A waqf is administered by a trustee who is known as a mutawalli in accordance with the conditions of the waqf instrument.

A waqf can be private or public. A public waqf dedicates more than 50 percent of its available net income to religious

and charitable purposes. Private waqfs includes those estates whose benefit is directed to the beneficiaries of the waqf.

► **WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF WAQF?**

As per Islamic Law, a waqf should be focused on a religious, educational, or charitable cause inspired by Quranic verses and Prophet Muhammad's words.

Registration & Statutory Obligations

► **WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF WAQF?**

The registration of a waqf is called the enrollment of a waqf with the Office of the Waqf Administrator (OWA). Waqf properties in Bangladesh can be divided into three categories. The first category is waqfs enrolled with the OWA. Second are waqfs created as private trusts and not enrolled with OWA. Finally, some waqfs are managed only by mutawallis or committees without enrolling with OWA.

► **WHAT IS THE REGISTRATION FEE?**

The fee to register a waqf property deed under the proposed name of the waqf estate at the sub register office under the Registration Act is based on non-judicial stamp paper of requisite value.

There is no fee required to enroll the waqf property with OWA.

► **ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?**

No.

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

After submission of an application in the prescribed template with all required documents and completing all formalities, it takes four months to enroll the waqf property with OWA, that is Bangladesh Waqf.

► WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

In order to register, the mutawalli of the waqf property files an application with OWA .

The following documents are required to apply for registration:

- Application in prescribed form;
- Description of the waqf properties;
- Gross annual income from such properties;
- Amount of land revenue, rates, and taxes annually payable in respect of the waqf properties;
- Estimate of the expenses incurred annually in the realization of the income of the waqf properties;
- Amount set apart under the waqf for:
 - salary of the mutawalli and allowances to individuals,
 - purely religious purposes,
 - charitable purposes, and
 - any other purposes;
- Registered waqf deed on non-judicial stamp paper, or, if no such deed has been executed or a copy thereof cannot be obtained, a document that contains full particulars, as far as they are known to the applicant, of the origin, nature, and objects of the waqf;

- Copy of land record or similar documents of the waqf property in case of immovable property;
- Recent photo of the applicant; and
- Copy of national identification card of the applicant.

Upon receipt of the application, the Administrator may make necessary inquiries to determine the validity and accuracy of the application through the office of the Deputy Commissioner (DC) of that geographical area. Upon satisfactory report and the receipt of a no-objection certificate (NOC) from the DC and local waqf audit officer, the Administrator will proceed to register the waqf property. The Administrator then maintains detailed information about the waqf in his register, including the deeds, the name of the mutawalli, and the rules of succession to the office of mutawalli.

► **IS ELECTRONIC SUBMISSION POSSIBLE?**

Yes, online applications can be submitted at:

<http://online.forms.gov.bd/onlineApplications/apply/MTQyLzM4LzE2>

► **ARE WAQFS REQUIRED TO HAVE AN OFFICE?**

No.

► **ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?**

Yes, upon enrollment of a waqf estate, the OWA may, if considered necessary, appoint an official mutawalli to administer and manage the waqf property under the terms and conditions the Administrator deems appropriate.

► **WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?**

If the waqf property is recorded as the khas (original) property of the government, and the DC objects to the registration (enrolment) on the ground that the said property belongs to the Central or the Local Government, the applicant shall be informed accordingly and, unless the applicant can produce a decision of the Civil Court to the contrary, the application for registration shall be rejected.

► **DOES REGISTRATION HAVE TO BE RENEWED?**

Registration as a waqf is permanent and does not need to be renewed.

► **WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?**

Every mutawalli is required to prepare and furnish to the Administrator a full statement of accounts of income and expenditure occasioned by the waqf on an annual basis. The statement submitted shall be audited by an auditor appointed by the Administrator.

► **WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?**

The Ministry of Religious Affairs through OWA administers all enrolled waqf properties as the sole trustee. In the case of unregistered waqf properties, the property is managed by a trustee appointed by the waqif (donor).

The government shall appoint an Administrator of Waqfs for Bangladesh. The Administrator must be a Muslim and possess certain qualifications as prescribed in the rules. The Administrator will be appointed for five years and is eligible for reappointment. The government, in consultation with

the Administrator, can appoint the necessary number of Deputy and Assistant Administrators.

The government will establish a committee to be called the Waqfs Committee to assist and advise the Administrator in administering the waqfs and their funds and in the exercise and performance of his powers and duties in accordance with the provisions of this Ordinance. The Committee shall consist of the Administrator as Chairman and ten members to be appointed by the government.

The Administrator may be removed by the government at any time if he is found guilty of misconduct or he manifestly makes himself unsuitable for the office. Members of the Waqf committee may also be removed by the government for the same causes without any discrimination. Any removal of the Administrator or the members of the committee shall be notified in the official gazette.

If a mutawalli fails to comply with the directives of the Administrator, the Administrator may seek assistance from the Ministry of Religious Affairs, which will evict the mutawalli and turn over the possession of the waqf property to the Administrator. Upon taking possession of the waqf property, the Administrator will be responsible for maintaining all of the waqf's documents and accounts of expenditure.

A mutawalli will be punished by fine or imprisonment if he adopts any dishonest means in performing his duties. If he commits a breach of trust or causes loss by negligence, s/he may be required to repay the damage incurred by the waqf and may also be subsequently removed by the Administrator.

According to the law, a waqf property can never be sold, developed, or transferred without the full consent of the entitled trustees and for any cause except that which is essential for the improved welfare of the beneficiaries. The handover process of the property must be executed through a special committee of 14 members headed by the Administrator of Waqfs. The Waqf Ordinance, 1962 includes a strict ban on the transfer or illicit development of waqf property.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

The Administrator and any Deputy and Assistant Administrators must be adult Muslims and public officers under the Code of Civil Procedure, 1908.

One of the ten members of the Waqfs Committee shall be a mutawalli of the Shia sect, and three shall be mutawallis of the Sunni sect; the remaining six shall be prominent, respectable, and benevolent citizens of the Muslim community, well versed in Muslim Law. After appointing the members of the committee, the government will publish the names of the committee members in the official gazette. Every member of the committee will be appointed for five years and eligible for reappointment.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

The sources of funding for a waqf include:

- Any income from the waqf property or waqf estate;
- Any profit from the investment of the waqf fund managed by the Administrator.

Dissolution & Liquidation

► DOES THE LAW RECOGNIZE THE DISSOLUTION OF WAQFS?

The Waqf Ordinance, 1962 does not have any provisions governing the dissolution of a waqf, since it is intended to be a permanent dedication of a property. But the Ordinance empowers the Waqf Administrator to take over and assume the administration, control, and management of any waqf property if the objectives of the waqf are not being carried out properly in the spirit of its intended purposes. In this case, the Administrator or the waqif can appeal to the court and seek its directive in this regard.

Microfinance Institutions

REGULATED BY THE MICROCREDIT REGULATORY
AUTHORITY ACT, 2006 (MRA 2006)

Overview

Any organization with legal status under the Societies Registration Act, 1860; The Trust Act, 1882; The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Cooperative Societies Act, 2001; or Company Act, 1994 can apply for a license from the Microcredit Regulatory Authority (MRA) to operate a microcredit program.

► HOW IS “MICROFINANCE INSTITUTION” DEFINED IN THE LAW?

As per the Microcredit Regulatory Authority Act, 2006 (MRA 2006), a “microcredit organization” is any organization registered to operate and run microcredit programs under this Act that is also registered under: The Societies Registration Act, 1860; The Trust Act, 1882; The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Cooperative Societies Act, 2001; or Company Act, 1994.

► WHAT ARE THE PERMISSIBLE GOALS AND ACTIVITIES OF MICRO FINANCE INSTITUTIONS?

The sole activity of a microfinance institution is to run microcredit programs under the conditions mentioned in the MRA. As per MRA, “Micro Credit” means loan facilities

offered by microcredit organizations certified under this Act for poverty alleviation, employment generation, and small enterprise development.

Registration & Statutory Obligations

► WHICH AUTHORITY IS RESPONSIBLE FOR THE REGISTRATION OF MICRO FINANCE INSTITUTIONS?

The MRA issues registration under the MRA 2006.

The MRA does not have field-level offices to monitor activities. The MRA operates centrally through the e-Regulatory System of MRA.

► WHAT IS THE REGISTRATION FEE?

The license fee and annual fee for microfinance institutions (MFIs) are as follows:

| No. of borrowers | License Fee (BDT) | Annual Fee (BDT) |
|-------------------------------------|-------------------|------------------|
| more than 1,000,000 | 500,000 | 25,000 |
| more than 100,000 & up to 1,000,000 | 200,000 | 15,000 |
| more than 25,000 & up to 100,000 | 25,000 | 10,000 |
| up to 25,000 | 10,000 | 5,000 |

► ARE THERE ANY OTHER DIRECT FINANCIAL COSTS?

No.

► HOW LONG SHOULD THE REGISTRATION PROCESS TAKE?

According to MRA rules, registration should be completed within ten days of receipt of the license fee from the applicant. If the application is rejected, MRA will notify the applicant in writing within 30 days.

► WHAT DOCUMENTS ARE REQUIRED FOR REGISTRATION?

The applicant organization must provide an application form with information such as its name; address; registration with other agencies; financial information including bank accounts, sources of funding, and proposed security deposits; loan and branch locations; plan for microcredit activities; head office; and management and employee information. The applicant organization must additionally submit the following documents for registration [MRA Rules, 2010]:

- Copy of resolution of the general body of the organization;
- Attested Certificate of Incorporation or Registration Certificate with Articles of Association and Memorandum of Association;
- Declaration stating that the constitution of the organization does not include any legislation contradictory to MRA 2006 or any related rules, regulations, or directives;
- Attested copy of the Constitution of the organization;
- Biodata of the members of the general body according to the prescribed format duly signed, along with one copy of an attested photograph not more than six months old;

- Attested copies of the National ID Cards of the members of the general body with Bangladeshi nationality, and attested copies of the passports of members with foreign nationality;
- List of active members of the general body approved by the MRA;
- List of active members of the Council of Directors approved by the MRA;
- Organogram of the organization;
- Copy of the rental agreement or ownership deed of the head office;
- Copy of the existing branch expansion policy, if any;
- If the organization has been audited before, copies of audited consolidated financial reports of all programs for the past three years;
- Projected statements of income and expenditure and balance sheet for the first three years of operation of microfinance activities;
- If funds are provided by an entrepreneur or any other individual, a copy of the agreement between the entrepreneur or individual and the organization;
- Declaration by the entrepreneurs that the loan or grant provided to the microcredit organization came from legal sources of income.

All documents submitted should be original or officially attested copies.

After verification of the information and documents, the MRA issues the license for microcredit operation.

▶ **IS ELECTRONIC SUBMISSION POSSIBLE?**

Yes, an Online Expression of Interest Registration Form can be submitted through:

[http://www.mra.gov.bd/index.php?option=com_events&view=registration.](http://www.mra.gov.bd/index.php?option=com_events&view=registration)

▶ **ARE MICROFINANCE INSTITUTIONS REQUIRED TO HAVE AN OFFICE?**

Yes, an organization must possess a furnished office with a proper address and signboard to be eligible for registration as an MFI. A copy of the office lease agreement or ownership document of the office needs to be submitted to the registrar during the registration application.

▶ **ARE THERE ADDITIONAL ADMINISTRATIVE PROCEDURES RELATED TO REGISTRATION?**

Yes, MRA will evaluate and investigate the information provided with the application and upon satisfaction will request payment of the license fee.

▶ **WHAT ARE THE LEGAL GROUNDS FOR DENIAL OF REGISTRATION?**

Specific grounds for denial of registration include:

- The application is not submitted in the prescribed manner;
- The application does not contain all the prescribed information;
- The application is incomprehensible or vague;
- The application is not supplemented with the requested documents;
- The purpose of the organization is not in compliance with the schedule mentioned at the end

of the Ordinance, for activities to be undertaken by MFIs;

- The documents submitted do not comply with the requirements set by law.

The MRA must explain its decision in writing, including the grounds for denial, and provide advice on how to make the corrections with a time period for submission of a corrected application in case there was a lack of understanding or any unintentional mistakes.

If the MRA rejects an application for registration, the applicant can appeal the decision to the High Court within 30 days from the date of the rejection notice. The High Court's decision is final.

An organization that is denied registration as an MFI under this law still retains its legal status under any of the other aforementioned laws of incorporation.

► DOES REGISTRATION HAVE TO BE RENEWED?

No, but an annual license fee must be paid.

► WHAT ARE THE FINANCIAL REGULATIONS AND REPORTING REQUIREMENTS?

All MFIs must maintain their accounts in a prescribed manner directed by the MRA. Licensed MFIs must periodically submit required data online in order to comply with regulatory reporting requirements. Specific requirements include:

- Annually, before the end of the current fiscal year, an MFI must prepare its annual budget or financial description for the following fiscal year, as well as prepare their profit and loss accounts and balance

sheet in a prescribed manner and submit a copy to MRA.

- Each MFI must follow the directives issued by MRA from time to time about their financial activity.
- MFIs cannot use the amount of loans or grants received from donors for any purpose other than that approved by MRA.
- MFIs must submit reports to their donors in the timeframe and format prescribed by the donors and cooperate with inspections and examinations of any records or documents related to any loan or grant provided.
- The main task of all MFIs shall be to run microcredit programs under the conditions laid out in the MRA Act. Each institution shall have the authority and responsibility to provide loan support to poor people, provide them advice and support, accept deposits from members, receive loans or grants, invest surplus funds, receive service charges, and offer insurance services to loan recipients and members. Without the approval of MRA, no MFI shall undertake any program or enter into any transaction contrary to the provision or objectives of this clause, run businesses, or offer any other service [Section 24].
- In order to receive any foreign grants or donations, an MFI needs to get registration from NGOAB.
- Every MFI must have a reserve fund and the fund must be operated in a revolving manner and no amount can be spent from that reserve fund without prior approval of MRA.

- No MFI can offer any dividend without prior approval of the MRA. No MFI that received a tax exemption from the government or that receives any other financial assistance from the government can distribute any dividend.
- No MFI can receive any deposit from anybody other than its members. When a deposit is received from a member, s/he must be given instant acknowledgement with proper entry in the passbooks and issued a receipt.
- No MFI shall invest the deposit other than in the main lines in the budget approved by the MRA, or it can use or invest the members' deposit in any main budget lines linked to individual interest.

► **WHAT ARE THE BASIC REQUIREMENTS RELATED TO GOVERNANCE AND INTERNAL STRUCTURES?**

Specific rules for the formation of the general body and its functions:

- Every MFI will have a general body for its management.
- The general body will comprise of a minimum of 15 and a maximum of 31 members nominated from among the entrepreneurs of the organization out of which at least two will be females.
- The general body will finalize and approve the policies formulated by the Council of Directors for the MFI.
- The general body will approve the budget prepared by the Council of Directors and will employ external auditors for annual audits.

- The general body will accept, examine, and approve the audited accounts of the organization during its annual general meeting.

Formation of the Council of Directors and its functions:

- Every MFI will have a Council of Directors for its management.
- The duration of the Council of Directors will be for three years and will comprise of a minimum of five and a maximum of ten members, including at least two females.
- The members of the Council of Directors will be elected from among the members of the general body.
- A chairman will be elected from among the members of the Council of Directors who will also be the chairman of the general body by virtue of designation.
- No individual is allowed to hold membership in the Council of Directors for more than three consecutive terms.
- The Council of Directors will formulate policies that do not conflict with the laws and regulations governing the MFI.
- The Council of Directors will formulate a budget for the operations of the MFI and present it for approval in the annual general meeting of the general body.

Chief Executive Officer:

- The Council of Directors of an MFI must appoint a Chief Executive Officer (CEO) to act as the secretary

of the Board of Directors and the full-time prime executive officer of the organization.

- The CEO of the MFI will be entitled to a salary and allowances as per the specified pay scale of the organization.
- The CEO will carry out his or her duties and responsibilities, as specified by the Council of Directors, within the jurisdiction of the rules and regulations of the organization.
- The CEO will not enjoy salary and allowances or other financial benefits separately from the various projects of the organization.

The MRA license is not transferable either completely or partially. No MFI can change, amend, extend, or cancel its constitution without prior approval of the MRA.

Internal governance:

- If MRA determines that the chairman or any member of the Board of Directors or the Chief Executive Officer of a MFI needs to be removed to prevent any harmful activity against the clients and depositors of the institution or to ensure appropriate management of the institution, it can remove them from their post by an order at any time, writing down the reason behind the action.
- According to Section 35 of the Act, if any person is convicted for operating a microcredit program without a license or after cancellation of a license; or provides false or dubious information during the registration process; or fails to comply with the conditions stated in the license; or continues operating in violation of the rules of the Act or order

of the Authority; or abuses power for personal gain; or creates disturbance in the operation of MFI, said person may be punished with imprisonment of not more than one year, or a penalty not to exceed BDK 500,000.00, or both.

- During any inspection, investigation, or audit performed under this Act, if any official or employee of an MFI makes restrictions in questioning or provides false information, after giving him scopes of show cause, MRA can take action by imposing a fine in an amount not to exceed his/her monthly salary.
- If any person violates this Act or any rule framed under it, instead of filing a criminal case, MRA may impose administrative fines up to an amount of BDT 500,000.00.
- MRA can conduct an investigation in any MFI that engages in any suspicious activity. It can carry out searches and seize relevant documents, files, books of accounts, and records and enter into any premise from where such activities are being run.

► ARE THERE ANY ELIGIBILITY REQUIREMENTS FOR THE MEMBERS OF GOVERNING BODIES?

The members of the general body must be at least 18 years of age. A person cannot be a member of the general body for more than five MFIs simultaneously. No paid official or employee can be a member of the general body or Board of Directors [Section 27].

A person with a history of bankruptcy or having a criminal record or other conviction of misappropriation of funds is not eligible to be the chairman or member of the Board of

Directors or the Chief Executive or Chief Financial Officer of any MFI.

Parents, children, spouses, and siblings cannot be the Chairman and the CEO at the same time and also cannot be joint signatories of the bank account of the same organization.

Sources of Funding

► WHAT ARE THE POSSIBLE SOURCES OF FUNDING?

Permissible sources of funding for MFIs include:

- Grants received from members of the general body under well-defined contracts;
- Approved national or international grants (international grant must be registered with the NGOAB);
- Deposits received from loan borrowers;
- Loans obtained under official contracts from legally recognized local financial institutions and organizations (note: all loans from foreign sources subject to permission from the relevant government agencies);
- Income from service charges earned through the loan portfolio;
- Income from prescribed entry fees of the members of the MFI;
- Profits from other affiliated (sister concern) organizations;
- Interest earnings from deposits and long-term savings from the bank;

- Interest earnings from house loans and transport loans extended to employees;
- Income from recovery of loans written-off or the sale of any other assets; and
- Other income sources approved by the MRA.

Dissolution & Liquidation

▶ DOES THE LAW RECOGNIZE BOTH VOLUNTARY AND INVOLUNTARY DISSOLUTION?

Yes, but voluntary dissolution requires approval from MRA.

▶ WHAT ARE THE GROUNDS FOR INVOLUNTARY DISSOLUTION?

The MRA can cancel an MFI's license for the following reasons:

- violation of the terms and conditions mentioned in the license;
- liquidation of the MFI or closure of its microcredit activities;
- providing false or confusing information or documents in the process of obtaining the license;
- running the business in a manner that hampers the interest of the depositors;
- failure to comply with the directives given under section 44(2) of the Act; and
- conviction of the organization for any guilty act under the law.

If an MFI's license is cancelled and the MFI becomes unable to pay for its liabilities, or the MFI receives a penalty for violating any provision of the MRA 2006, the MFI can be

closed down by an order of the High Court Division based on a petition by the MRA.

A written show cause notice is given by MRA to the organization within a period not exceeding 15 days before cancellation of the license. Upon cancellation of the license, the relevant organization will not be allowed to carry out any microcredit activity.

► **CAN A MICROFINANCE INSTITUTION THAT HAS LOST ITS LICENSE APPEAL THE DECISION IN COURT?**

An MFI may appeal to the MRA within 30 days of issuance of the cancellation notice. The decision taken by the MRA in response to such an appeal will be considered final.

► **WHAT IS THE LIQUIDATION PROCEDURE IN THE CASE OF VOLUNTARY DISSOLUTION?**

In order to renounce its MFI license voluntarily, more than three-fifths of an MFI's members must apply to the MRA. After considering the application, the MRA may cancel the organization's MFI license.

In the event of closure of the activities of any MFI, the MRA will decide on the disposition of the MFI-related assets of the organization.



PART TWO

Other Laws Affecting Civil Society Organizations & Activities



Tax Laws

▶ DO CSOS HAVE TO PAY INCOME TAX?

In general, all CSOs are exempt from corporate income tax under the Income Tax Ordinance of 1984. Categories of exempt income includes income from grants, donations, and earned income, provided that the income is used to support an organization's not-for-profit or charitable activities. In addition, unless exempted by the government to specific MFIs, all income generated from profit-earning activities must be spent for charitable purposes and not distributed to any individual in the form of dividends.

Moreover, the following categories of income of a cooperative society will be exempted from income tax:

- income generated by selling goods or products, lending money, or renting property or land directly to members of that cooperative society and for the personal use of those members;
- total income of the cooperative society is generated by activities involving:
 - agricultural or rural credit;
 - cottage industry;
 - marketing of agricultural produced by the coop members;
 - purchase of agricultural implements, seeds, livestock or other necessities intended for agriculture for the consumption of coop members; or

- such products are not produced by technical and manufacturing operation but produced by simple cultivation for marketing agricultural production by the coop member;
- income from interest and dividends from investments within other cooperative society; and
- income from renting storage or warehouse to the members of the cooperative society for processing or facilitating the productions for sale to its members.

► WHAT IS THE VAT TREATMENT OF CSOS?

Generally, CSOs are required to pay VAT when they procure goods and services. If not exempted by NBR, all CSOs are required to deduct VAT at the source as per the applicable laws (the Value Added Tax and Supplementary Duty Act, 2012, the VAT Regulation 2015, and VAT SRO 2019) and submit a copy of the VAT receipt during submission of the annual audit. The general VAT rate is 15 percent.

Some donor funds (including those from USAID) are exempt from VAT in accordance with bilateral agreements between the two governments. NBR issues VAT coupons to the eligible donors which are given to CSOs receiving funding from these donors to use when purchasing supplies and services.

► DO DONORS RECEIVE ANY TAX DEDUCTIONS FOR DONATIONS TO CSOS?

Both corporations and individuals are able to claim tax deductions for donations made for 22 public benefit purposes designated by the National Board of Revenue (NBR) under the Ministry of Finance. Such purposes include

donations for old age homes, forestation, waste treatment plants, care of the disabled, education for orphans and street children, specialized hospitals for treatment of the extremely poor, public universities, and others. Corporate donors may deduct the amount of their donations up to 10 percent of their taxable income. Individual donors may deduct the amount of donations up to 20 percent of their taxable income, but not exceeding BDT 100,000.00. Claiming a tax deduction requires prior approval from the NBR.

Other National Laws & Guidelines Affecting Civil Society Organization Activities

Almost all national laws—including the labor law, immigration law, registration requirements, taxes, fundraising regulations, and criminal law—can have an impact, however indirect, on CSOs. The sections below examine some of the most common features of the legal and regulatory framework affecting CSOs in Bangladesh.

Chittagong Hill Tracts Regional Council

The government of Bangladesh has enacted special laws for three southeastern hill districts that have cultural and historical significance, leading to the formation of the three Hill District Councils and one Chittagong Hill Tracts (CHT) Regional Council. The Ministry of CHT Affairs is dedicated to this region. CSOs working in the CHT must register with the CHT Regional Council established under the CHT Regional Council Act 1998.

According to the CHT Regional Council Act 1998, a district-level committee supervises and assesses NGO activities, and provides No-Objection Certificates (NOCs) to work in the CHT. The Chairman of the concerned CHT District Council is the Convener, and the Deputy Commissioner is the

member secretary of the committee. NGOs must regularly submit progress and assessment reports of their activities to the convener of the committee.

The Foreign Donations (Voluntary Activities) Regulation Act, 2016 (FDRA 2016) also specifically addresses the issue of NGOs operating in CHT as follows:

- When registering NGOs in CHT, the Regional Council directed that the NGO Affairs Bureau (NGOAB) should consult with it as per CHT Regional Council Act, 1998. Local CSOs need to get approval directly from the CHT Regional Council for any intended implementation of activities.
- In the districts in the CHT, NGOs shall show respect and give importance to ethnic features, education, culture, environment, and religion and tradition of the areas where they conduct their activities and shall not undertake any campaign or activities that can hurt those areas; rather they shall conduct their activities by adjusting to these norms.
- The CHT Regional Council oversees the coordination of NGO activities in the CHT districts. The NGOAB, or the concerned government division/department, and the Ministry of CHT Affairs assesses NGO activities in the region periodically or after the completion of a project.

Money Laundering Prevention Act, 2012 (MLPA, 2012) & Money Laundering Prevention Rules, 2013

NGOs/NPOs (non-profit-organizations) were included as reporting organizations under the Money Laundering Prevention Act in 30/09/2010.

According to Section 2(r) of MLPA, 2012, “non-governmental organizations” (NGOs) are institutions authorized or registered under The Societies Registration Act, 1860; Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978; Foreign Contributions (Regulation) Ordinance, 1982; or Microcredit Regulatory Authority Act, 2006 which (i) receive funds (loans, grants, or deposits) from local sources or provide funds to others; and/or (ii) receive any kind of foreign donations or loans or grants.

According to section 2(e) of MLPA, 2012 and section 2(23) of the Anti-Terrorism Act (ATA), 2009, “non-profit Organization” (NPO) means any institution registered under section 28 of the Company Act, 1994.

Compliance requirements for reporting agencies including NGOs and NPOs under MLPA, 2012 are:

- Maintaining complete and correct information of customers;
- Preservation of records of transactions for at least five years after closure of the relationship;
- Providing information to Bangladesh Financial Intelligence Unit (BFIU) on demand; and

- Submission of Suspicious Transaction Report (STR) to BFIU.

Money Laundering Prevention Rules, 2013 were issued under the MLPA, 2012. The Rules describe detailed procedures for the proper implementation of the Act.

Under the Money Laundering Prevention Rules, 2013, each NGO/NPO shall [Rule 27]:

- Preserve detailed information relating to its goals, objectives, and functions;
- Collect and preserve correct and complete identification information about those who control or direct the activities of the organization and make such information publicly available;
- Preserve detailed information relating to the functions of its foreign branches (where applicable) and also preserve updated information about the officers/staff working there;
- Collect and verify the identification information, relevant experience, and other involvement of the selected candidates before recruitment;
- Collect correct and complete identifying information with supporting documents about its customers (any person, group of people, other NGOs/NPOs, or any other organization) and preserve records of transactions for at least five years from the date of closure of the relationship with the customer;
- Preserve audited annual financial statements with supporting documents for at least five years;

- Route financial transactions through banking channels;
- Ensure that all funds are spent in a manner that is consistent with the stated goals, objectives, and activities of the NGO/NPO. An annual independent audit shall be conducted in this regard;
- Conduct a quarterly meeting with the organization's officers on combating money laundering and financing of terrorism and also arrange a training program for all of its officers. Records shall be maintained of the meeting and the training;
- Not receive any funds from any person or organization listed under the resolutions of the United Nations (UN) Security Council (all other resolutions including UNSCR-1267 and UNSCR-1373);
- Conduct Enhanced Due Diligence (EDD) when receiving funds from any country or any person or organization from a country listed under the Public Statement of Financial Action Task Force (FATF);
- Collect the correct and complete identification information and supporting documents of their donors;
- If receiving foreign aid/grants/donations/loans, receive a clearance document from the appropriate authority, preserve the clearance document, and not return any amount to the donor without the prior approval of the appropriate authority.
- Each NGO/NPO shall:

- Ensure an appropriate monitoring system to ascertain that the funds given to their customers are not used for the purposes of money laundering and financing of terrorism. NPOs/NGOs shall report immediately to the BFIU any incident or transaction identified or appearing suspicious to them according to the instruction of BFIU;
- Report to the BFIU immediately if there is any suspicion or request by any donor in using them for activities that are contrary to the existing Anti-Money Laundering (AML)/ Combating Financing of Terrorism (CFT) regime
- Provide such information and any other papers/documents as may be asked for by Bangladesh Bank.

PENALTIES FOR NON-COMPLIANCE UNDER MLPA, 2012

According to section 25 (2) of MLPA, 2012, if any reporting organization violates the directions mentioned in sub-section (1) of Section 25 of MLPA, 2012, Bangladesh Bank may:

- impose a fine of at least BDT 50,000.00, but not exceeding BDT 2,500,000.00 on the reporting organization; and
- cancel the license or the authorization for carrying out commercial activities of said organization or any of its branches, service centers, booths or agents, or as the case may be, inform the registration or licensing authority about the fact so

the relevant authority may take appropriate measures against the organization.

In addition to the above-mentioned provisions there are also some provisions for penalties in Section 23 of MLPA, 2012. These are:

- If any reporting organization fails to provide the requested information in a timely manner under this section, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of BDT 500,000.00 at the rate of BDT 10,000.00 per day. If any organization is fined more than three times in one financial year, Bangladesh Bank may suspend its registration or license or any of its branches, service centers, booths, or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so the relevant authority may take appropriate measures against the organization.
- If any reporting organization provides false information or a false statement requested under this section, Bangladesh Bank may impose a fine on such organization not less than BDT 20,000.00 and not exceeding BDT 500,000.00. If any organization is fined more than three times in one financial year, Bangladesh Bank may suspend its registration or license or any of its branches, service centers, booths, or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so the relevant authority may take appropriate measures against the organization.

- If any reporting organization fails to comply with any instruction given by Bangladesh Bank under this Act, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of BDT 500,000.00 at the rate of BDT 10,000.00 per day for each instance of noncompliance. If any organization is fined more than three times in one financial year, Bangladesh Bank may suspend its registration or license or any of its branches, service centers, booths, or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so the relevant authority may take appropriate measures against the organization.
- If any reporting organization fails to comply with any order to freeze or suspend a transaction issued by Bangladesh Bank under clause (c) of sub-section 23(1) of MLPA, 2012, Bangladesh Bank may impose a fine on such organization not less than the balance held on that account, but not more than twice of the balance held at the time the order is issued.
- If any person or entity or reporting organization fails to pay any fine imposed by Bangladesh Bank under Sections 23 and 25 of this Act, Bangladesh Bank may recover the fine from accounts maintained in the name of the relevant person, entity, or reporting organization in any bank or financial institution or Bangladesh Bank, and in this regard if any amount of the fine remains unrealized, Bangladesh Bank may, if necessary, make an

application before the court for recovery and the court may pass such order as it deems fit.

- If any reporting organization is imposed a fine under sub-sections 23 (3), (4), (5) and (6), Bangladesh Bank may also impose a fine not less than BDT 10,000.00 but not exceeding BDT 500,000.00
- on the responsible owner, directors, officers, and staff, or persons employed on a contractual basis of that reporting organization and, where necessary, may direct the relevant organization to take necessary administrative actions.

Anti-Terrorism Act, 2009

NGOs/NPOs were included as reporting organizations under the Anti-Terrorism Act (ATA) in 17/01/2012. The legal definitions of “non-profit organization” and “non-governmental organization” under Section 2 (23) and 2(24) of ATA, 2009 are the same as those found in Section 2(e) and 2(r) of MLPA, 2012, respectively. (See page 57).

Compliance Requirements for Reporting Agencies including NGOs and NPOs under ATA, 2009 (Amendment in 2013) are:

- To take necessary measures and responsibility to prevent financing of terrorism;
- Submit Suspicious Transaction Report (STR) spontaneously to BFIU;
- The Board of Directors or appropriate authority shall issue directions regarding duties of its officers; and
- The Board of Directors shall ascertain the compliance of BFIU directions.

Anti-Terrorism Rules, 2013 have also been issued describing detailed procedures for the proper implementation of the Act. No additional instruction has been issued for the NGO/NPO sector specifically under the Anti-Terrorism Rules, 2013.

PENALTIES UNDER ATA, 2009

According to Section 16(3) of ATA, 2009, if any reporting agency fails to comply with the provisions under subsection (1) of section 16:

- the said reporting agency shall be liable to pay a fine, determined and directed by Bangladesh Bank, not exceeding BDT 2,500,000.00, and
- Bangladesh Bank may suspend the registration or license with intent to stop operation of said agency or any of its branches, service centers, booths, or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.

According to Section 16(4), if the Board of Directors, or in the absence of the Board of Directors, the Chief Executive Officer, by whatever name called, of any reporting organization fails to comply with the provision of subsection (2) of section 16:

- the Chairman of the Board of Directors, or the Chief Executive Officer, as the case may be, shall be liable to pay a fine, determined and directed by Bangladesh Bank, not exceeding BDT 2,500,000.00, and

- Bangladesh Bank may remove said person from his office or, as the case may be, shall inform the competent authority about the subject matter to take appropriate action against the person.

According to Section 16(5), if any reporting agency fails to pay or does not pay any fine imposed by Bangladesh Bank under sub-section (3), or if the Chairman of the Board of Directors, or the Chief Executive Officer, by whatever name called, fails to pay or does not pay any fine imposed by Bangladesh Bank under sub-section (4), Bangladesh Bank may recover the amount from the reporting agency or from the account of the concerned person by debiting any account maintained by him in any bank or financial institution or in Bangladesh Bank, and in case of any unrealized or unpaid amount, Bangladesh Bank may, if necessary, apply before the concerned court for recovery.

Right to Information Act, 2009

Bangladesh passed the Right to Information Act in 2009. This law lays out the rules by which citizens can request information, and an appeals procedure if they are not satisfied with the government response. The law allows citizens to make requests for information from every government office, from the President and Prime Minister down to the Upazila and Union. The law also compels disclosure by private organizations, such as companies, for the work they do with government funds. It also covers CSOs that receive funds from the government or foreign aid.

Under the Right to Information Act, any agency should disclose proactively its constitution, structure, and official activities, including any: memo, book, design, map,

contract, data, log book, order, notification, document, sample, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents, and any other documentary material regardless of its physical form or characteristics. Information does not include office notes or photocopies of notes.

Additionally, if an agency frames any policy or takes any important decisions, it must publish all such policies and decisions along with reasons for support. The Act also states that all publications of agencies shall be available to the public at a reasonable price and that the agencies shall publish and publicize matters of public interest through press notes or any other means. The reports that would be prepared by the public authorities shall be made available for free and its copies shall be stocked for sale at nominal price.

The Act further declares that information cannot be published or publicized if it is not stored or preserved properly and emphasizes the preservation of information to ensure that every authority prepares, catalogs, and indexes all information. The Act underlines the fact that information should be preserved on a computer that could be accessed by a maximum number of people within a reasonable time limit. In the Right to Information (Publication and Dissemination) Rules, there are clear guidelines on the timelines within which the information needs to be published and the means in which it needs to be disseminated.

Section 10 of the Act requires the appointment of a Designated Information Officer (DIO) to be nominated within 60 days from the notification of the Act by each

agency established before and after the enactment of this Act. Also, all offices created by authorities after the notification of the Act must nominate one DIO/ Responsible Officer in each office. Agencies should inform the Information Commission of the names, designations, addresses, and where applicable the fax numbers and e-mail addresses of the DIO within 15 days from the date of appointment.

Digital Security Act, 2018

The Digital Security Act, 2018 was enacted to enhance digital security in the country and to support digital crime identification, prevention, suppression, trial, and other related matters. This law could have a severe impact on the work of CSOs and could penalize the legitimate exercise of the right to freedom of expression by CSOs. The law contains provisions that could impose long-term prison sentences or fines for any statements posted online that might disrupt law and order in the country, hurt religious feelings, or ruin communal harmony.

Provisions laid down under the Act which could affect the freedom of expression of CSOs include:

- Section 21 authorizes sentences of up to 14 years in prison for spreading “propaganda and campaign against the liberation war of Bangladesh or spirit of the liberation war or Father of the Nation.”
- Section 25(a) authorizes sentences of up to three years for publishing information that is “aggressive or frightening,” terms are not defined in the law.

- Section 28 authorizes sentences of up to five years in prison for speech that “injures religious values or sentiments.”
- Section 31 imposes sentences of up to 10 years for any statement posted online that might disrupt law and order in the country.
- Section 31 also covers speech that “creates animosity, hatred, or antipathy among the various classes and communities.”
- Section 29 criminalizes online defamation as per provisions of the penal code of Bangladesh.

The law also grants law enforcement authorities wide-ranging powers to remove or block online information that “harms the unity of the country or any part of it, economic activities, security, defense, religious value or public order, or spreads communal hostility and hatred,” and to conduct warrantless searches and seizures if a police officer has reason to believe it is possible that “any offense under the Act” has been or is being committed.

The National Integrity Strategy

In order to achieve the Vision 2021 goals, the Government of Bangladesh adopted the 2nd National Integrity Strategy (NIS) 2017 - 2021, a collaborative initiative to fight against corruption (<https://cabinet.gov.bd/site/page/7d7633ee-62b1-4d12-8e14-6590ae973106/National-Integrity-Strategy->). The NIS is based on the belief that the issue of integrity should be addressed at all levels of all institutions.

Leading NGOs (coordinated by Transparency International Bangladesh), in collaboration with the NGOAB, developed a draft implementation plan of the NIS for NGOs, which was

awaiting adoption by the government at the end of 2019. In part, the implementation plan is also intended to be a navigation plan for NGOs in an increasingly challenging context.

The NGOAB has conducted a series of events to increase awareness of the NIS among NGOs and has drafted guidelines. The guidelines were drafted through dialogue with NGOs, the NGOAB, and the National Integrity Implementation Unit (NIIU) to sensitize NGOs towards the promotion of integrity within their own structures and to obtain input from participants on the formulation of NIS Guidelines for NGOs. The guidelines consist of six actions, namely:

- promotion of dialogue between the government and civil society about important policies and programs,
- increase in transparency in NGOs,
- introduction of an integrity pledge for NGOs,
- introduction of a standard accounting and audit system for NGOs,
- introduction of policies or rules on transparent appointment of staff and members of governing bodies, and
- avoidance of duplication between NGOs and the government.

UN Convention Against Corruption

Bangladesh became a state party to the UN Convention against Corruption (UNCAC) in 2007, and hence committed to creating space for citizens' participation in anti-corruption movements under Article 13 - Participation of Society. The government adopted a plan to implement the

UNCAC pledges in 2009 by addressing all actors (actors considered in the strategy include the national government, parliament, watchdog institutions, local government, political parties, civil society, the private sector, faith-based institutions, and even families) in the integrity system and reminding them of their roles and duties in improving governance and holding government to account. Thus, the inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Hence, CSOs are expected to contribute actively to this process in different ways.

The 2030 Agenda for Sustainable Development

The UN document titled *Transforming Our World: The 2030 Agenda for Sustainable Development* has one dedicated target (on stakeholder partnership) and one explicit paragraph (on review mechanism) on the role of CSOs in the implementation of the Sustainable Development Goals (SDG)

The Government of Bangladesh has also acknowledged the crucial role of CSOs in SDG implementation. The General Economics Division (GED), in its outcome document titled *Integration of Sustainable Development Goals (SDGs) into the 7th Five Year Plan* states that effective coordination among all stakeholders, including civil society, is key for SDG implementation.

The Citizen's Platform for SDGs, Bangladesh is a national civil society initiative focused on contributing to the implementation of the globally adopted 2030 Agenda for Sustainable Development. The Platform's objective has

been to track the achievement of SDGs in Bangladesh and enhance accountability in the implementation process.

The government has been following a “whole of society” approach in carrying out the task of SDG implementation by involving various stakeholders, including CSOs. Several consultations on Stakeholders’ Engagement on the SDGs Implementation in Bangladesh have been held with representatives from NGOs, CSOs, businesses, development partners, ethnic minorities, professional groups, labor associations, women’s networks, and the media. The consultations sought to raise more awareness, interest, and commitment in order to create more engagement from all stakeholders towards attaining SDGs.

Moreover, NGOs registered with NGOAB are required to submit annual SDG action plans to NGOAB using the prescribed template. The action plan should include all of the NGO’s activities that relate to the SDGs, irrespective of their source of funding.

Protection from Sexual Harassment

In the absence of an effective policy and legislative framework to combat sexual harassment, the High Court issued directives to educational institutions and workplaces in 2010 to form sexual harassment prevention committees and to set up complaint boxes for sexual harassment. All NGOs and other CSOs are required to set up a Sexual Harassment Complaint and Redress Committee, as per the directives of the High Court.

Almost all the major NGOs working in the field of human rights have formulated policies to this end and have drawn up awareness programs in their respective working areas.

The NGOAB has formed a compliance committee and placed a complaint box in its office.



PART THREE

International Laws & Standards
Affecting Civil Society
Organizations



CHAPTER THIRTEEN

Overview

Article 20 of the **Universal Declaration of Human Rights (UDHR)** (1948) enshrines the freedom of association:

- Everyone has the right to freedom of peaceful assembly and association.
- No one may be compelled to belong to an association.

Bangladesh acceded to the **International Covenant on Civil and Political Rights (ICCPR)** in 2000, making its provisions binding within Bangladesh. Article 22 of the ICCPR stipulates that:

- Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Other international treaties and mechanisms reinforce the right to freedom of association. Bangladesh has ratified a number of these. Notably:

- Bangladesh acceded to the **International Covenant on Economic, Social and Cultural Rights (CESCR)** in 1998. Article 8 of the CESCR establishes the right of everyone to form and join trade unions.
- Bangladesh acceded to the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** in 1979, which further protects the rights of individuals to freedom of association “without distinction as to race, colour, or national or ethnic origin” (Article 5).
- Similarly, the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** protects the right of women “[t]o participate in non-governmental organizations and associations concerned with the public and political life of the country” (Article 7). Bangladesh acceded to CEDAW in 1984.
- Bangladesh ratified the **International Labour Organizations (ILO) Convention (No. 87) on Freedom of Association and Protection of the Right to Organize (1948)** in 1972. The ILO Convention establishes the right of workers and employers to establish and join organizations of their own choosing without previous authorization, as well as to establish and join federations and confederations, which have the right to affiliate with international organizations of workers and employers (Article 2 and Article 5).
- The **Convention on the Rights of the Child (CRC)** further protects the right of children and youth to freedom of association (Article 15), while the

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) establishes that migrant workers and their families can join and participate in trade unions and any other associations established lawfully (Article 26). Bangladesh ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) on 2011, and the Convention on the Rights of the Child (CRC) in 1990.

- Finally, the **Convention on the Rights of Persons with Disabilities (CRPD)**, which Bangladesh ratified in 2007, protects the equal right of persons with disabilities to form, join, and participate in NGOs and associations (Article 29).

Taken collectively, international treaty law creates a robust regime for the protection of the freedom of association. Under international law, there is a presumption against any regulation that would amount to a restriction of recognized rights. Therefore, with respect to free association, a restriction is lawful only if it meets the following three conditions:

- It is “prescribed by law” – meaning the restriction is introduced by a legislative body, not an administrative order; and it is sufficiently precise for an individual or CSO to foresee violations of the provision;
- It is pursued in the interests of only four permissible grounds—national security or public safety, public order, protection of public health or morals, or protection of the rights and freedoms of others; and

- It is “necessary in a democratic society” – meaning that restrictions are proportional to the interests listed above and do not harm “pluralism, tolerance and broadmindedness.”

Based on international jurisprudence and the findings of UN special rapporteurs, several core principles give meaning to the scope of freedom of association. Among others, we note just a few:

- Individuals and groups should be free to carry out activities without being registered and should not be subject to criminal sanctions.
- At the same time, associations have the right to seek and secure legal entity status on a voluntary basis.
- The freedom of association is not limited to the founding of an association, but rather applies to an association’s entire life cycle. Indeed, once formed, associations have the right to operate free from unwarranted state intrusion or interference in their affairs.
- The freedom of association embraces the ability to seek and secure resources. This means that all associations, whether registered or unregistered, have the right to seek and secure funding and resources from domestic, foreign, and international entities.

There are a number of recourses and international mechanisms available to individuals and civil society groups who believe themselves subject to violations of these core rights. Foremost among these are the individual complaints mechanisms of UN treaty monitoring bodies.

The most well-known of these is the Human Rights Committee (HRC), the treaty-monitoring body of the ICCPR. The HRC accepts complaints from individuals of member states who have ratified the 1976 Optional Protocol to the ICCPR. Unfortunately, Bangladesh has not ratified the Optional Protocol, meaning this avenue is currently unavailable for individuals in Bangladesh.

On the other hand, Bangladesh has ratified the Optional Protocol to CEDAW, which allows individuals and groups to submit complaints alleging a violation of CEDAW to the Committee on the Elimination of Discrimination against Women.¹ The same is true for the Committee on the Rights of Persons with Disabilities (CRPD). It may also be possible to submit a complaint to the treaty-monitoring body of the Convention on the Rights of the Child (CRC).

Individuals and CSOs may also make submissions to the Human Rights Council Complaint Procedure,² as well as to the UN Special Rapporteurs, independent human rights experts who report and advise on human rights from a thematic or country-specific perspective. Individuals in Bangladesh could consider inviting letters of concern from the Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as the Special

¹ For more information, see CEDAW, UN OHCHR, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>; see also Human Rights Treaty Bodies, Procedure for complaints by individuals under the human rights treaties, UN OHCHR, <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#procedureOPCEDAW>.

² See, e.g., Human Rights Council Complaint Procedure, UN Human Rights Council, <https://www.ohchr.org/en/hrbodies/hrc/complaintprocedure/pages/hrccomplaintprocedureindex.aspx>

Rapporteur on the promotion and protection of the right to freedom of opinion and expression.³

Finally, CSOs could consider participating in Bangladesh's Universal Periodic Review (UPR), a Human Rights Council process which regularly reviews the human rights situation in every country. CSOs can submit information to be considered and referred to by other States during the review. They can also attend the UPR Working Group sessions and make statements at the regular session of the Human Rights Council when the outcome of the State reviews is considered.⁴

For more information on state obligations to protect the freedom of association under international law, please see the reports from the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association at: <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/AnnualReports.aspx>.

³ See, e.g., Guidelines for submitting complaints to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN OHCHR, <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/Complaints.aspx>.

⁴ For more, see 3rd UPR cycle: contributions and participation of "other stakeholders" in the UPR, UN Human Rights Council, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>.



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