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4. REGISTRATION AS A NON-PROFIT COMPANY (UNDER SECTION 42 OF THE COMPANIES ORDINANCE OF 1984)

GUIDELINES

4.1 Associations which can register as non-profit companies

Any association formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful objective may be registered as a non-profit company with limited liability under Section 42 of the Companies Ordinance of 1984, provided that:

- It applies, or intends to apply, its profits, if any, or other income in promoting its objectives
- It prohibits the payment of any dividend to its members

In most cases, registered non-profit companies comprise residents of apartment buildings, owners of small shops, shopping centres and clubs/associations, but a number of welfare organizations are also registered.

4.2 Requirements relating to Membership and Management Committee

Under the Companies Ordinance, 1984, it is necessary that there be a minimum of two members if the registration of the association is on the pattern of a private limited company and a minimum of seven if the registration is on the pattern of a public limited company.

Similarly, if it is a private limited company, there must be a minimum of two directors and a maximum of six to manage the affairs of the company. And if it is a public limited company, there must be at least seven directors (who may also be called governors, executive councillors etc).

Non-profit companies are incorporated as companies limited by guarantee (and not having a share capital) which means that:

- None of the members is entitled to any share in the profits of the company
- The liability of its members is limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its winding up
- Non-profit companies cannot call themselves "private limited", nor can they later register themselves as private limited companies

4.3 Procedure for Registration

There are two different routes through which registration as a non-profit company can be achieved:

- Through an application made to the Assistant Registrar Joint Stock Companies at the Directorate of Industries (Provincial Level)
- Through an application made to the Corporate Law Authority (Federal Level)

If the association wishes to register itself at the provincial level, it will apply for registration to the office of Assistant Registrar, Joint Stock Companies, situated at the Directorate of Industries. The processing of the application will be done by the concerned section at the Directorate, and the license will be granted by the Secretary Industries. The Certificate of Incorporation will be issued by the Assistant Registrar.

If an association wishes to register itself at the federal level, it will apply to the Corporate Law Authority (CLA). The CLA will forward the documents to its federal office in Islamabad which will grant the license and issue a directive for its registration. The association will then apply to the Joint Registrar, Joint Stock companies at the CLA office in the relevant province who will issue the certificate of incorporation.

4.3.1 Through the Directorate of Industries

Where should the NGO/applicant go?

The applicant should go to the office of the Assistant Registrar Joint Stock Companies. The office is situated in the Directorate of Industries (Barracks 5, 22, 23, 24 and 25, Pakistan Secretariat, opposite the Sindh Assembly building - Tel: 510126).

How should the applicant approach the office?

The applicant may approach the department either directly or through a lawyer. The department prefers to be approached directly by the applicant.

Who will give the applicant information about registration?

When the applicant goes for information about registration requirements and procedures, he/she will be sent to the assistant of the section dealing with the registration of non-profit companies.

What information will the applicant be given and how?

The assistant will give the applicant all the information and details required about documentation and procedure orally. A short summary of requirements has now become available and contains a list of all the completed forms to be submitted with the application. If there is any confusion, the applicant will have to go back to the assistant for further help or advice.

What documentation will be required?

- A challan of the value of Rs 170/-, deposited into the Government Treasury under the following heads of account:
 - + 1390000 - Misc. Receipt Fee
 - + 1391018 - Receipt Fee for Registration of Society under the Companies Ordinance, 1984
- Three copies of the Memorandum of Association (printed/typed and bound)
- Three copies of the Articles of Association (printed/typed and bound)
- Three copies of the letter of authority or power of attorney by the subscribers to the memorandum authorizing a person to act on their behalf in the matter of incorporation
- Forms 1, 21, 27, 28, 29A. These are available from booksellers Pettiwalla, Firdaus Stationers, Law Book House etc
- + Form 1 (Declaration or Undertaking by a person prescribed on this behalf or by a person named in the Articles as a Director, or other officer of the company in compliance with all or any of the requirements of the Ordinance)
- + Form 21 (giving notice of the registered office of the company)
- + Form 27 (giving a list of persons who have consented to act as directors of the company)
- + Form 28 (consent of persons to act as director/chief executive of the company)
- + Form 29A (giving particulars of the directors)

- Undertaking by the subscribers and photocopies of the NICs of all subscribers
- Photocopy of the NIC of witnessing person to the signatures of all subscribers
- Photocopy of ownership documents of registered office including NOC from landlord
- In case of residential flats/shops, the full details should be provided such as total number of constructed or under construction flats/shops, and also whether they are occupied or unoccupied

How will the applicant complete the requirements?

To complete the requirements, the applicant will have to:

- Pay the amount of Rs 170/- in the prescribed bank and obtain the required challan
- Prepare a letter of authority addressed to the Registrar Joint Stock Companies or a power of attorney, authorizing a person to act on behalf of the subscribers to the memorandum in the matter of registration (a model of the authority letter and undertaking may be obtained from the office). The letter of authority must be signed by all the subscribers and contain a specimen signature of the nominee. If this is in the form of a power of attorney, it must be on a Rs 10 stamp paper and witnessed. The document must be duly attested before a notary public.
- Collect forms 1, 21, 27, 28 and 29A from Pettiwalla Corporation, Ismail Mansion, Strachen Road, Pakistan Chowk, Karachi-1 for about Rs 15/- to Rs 20/-
- Fill in these forms and have them signed by the authorized nominee. Form 1 will also have to be witnessed by one person other than an office bearer, while Form 28 will have to be signed by the persons who have consented to be directors/ chief executives
- Prepare the memorandum and articles of association either through the help of a lawyer or himself. If the applicant is doing so himself, he/she may need to get a model from someone or seek help from the official. The form of the memorandum and articles of association of a company limited by guarantee and not having a share capital, has to be in accordance with the form set out in Table C in the First Schedule of the Ordinance or as near as circumstances permit

Memorandum of Association: The memorandum of association has to end with a request for association signed by at least two members if it is on the pattern of a private limited company and at least seven if it is on the pattern of a public limited company. The memorandum must be:

- Printed
- Divided into paragraphs
- Numbered consecutively
- Signed by each subscriber with name, surname, occupation, father's or husband's name, nationality and residential address (signature should be attested by one witness who is not a member)
- Dated
- The memorandum must state:
 - + the name of the company
 - + the province or part of Pakistan in which the registered office of the company is to be situated
 - + the objects of the company and the territories to which they extend
 - + that the liability of each member is limited
 - + that each member undertakes to contribute a specified amount to the assets of a company in the event of its being wound up

Articles of Association: The Articles setting out the regulations for the company must also be signed by the subscribers to the memorandum and witnessed by one person other than an office bearer. The following steps will then need to be taken:

- + get the prescribed undertaking before a first class magistrate
- + get the copies of the memorandum printed, bound, signed and witnessed as required before submission
- + get photocopies of the National Identity Cards of all subscribers

(All documents will have to be attested by a notary public except the undertaking which will have to be done before a first class magistrate.)

Where will the application be submitted?

When the documentation has been completed, the applicant will have to submit the application to the diary clerk at the office who will give the applicant a receipt. If the papers are presented by an advocate, a vakalatnama duly signed by all the subscribers must be produced.

What happens after submission?

After submission, the applicant will have to wait till further intimation from the office. This is likely to take up to 4-6 weeks (in some cases much longer), as normal government procedure takes this long even if all the documents are in order. If there is some problem or objection, the applicant will be accordingly informed and will go back to the assistant to see how it can be overcome. It is also possible to see the Assistant Registrar or the Director Industries if there seems to be some serious problem.

If registration of the memorandum is refused, the subscribers or any one of them authorized may either supply the deficiency or remove the defect, or may prefer an appeal to the Registrar (if refused by the Assistant Registrar etc).

What happens after the application is approved?

If the documents are in order, the applicant will be informed accordingly and will now contact the assistant to arrange for a site inspection of the association's office. While there are no specific requirements relating to the office, the inspection proforma will require information such as the name of the organization, nature of work, office address, bank account, ownership or tenancy documents, no objection affidavit from landlord (if the premises are rented), whether any other office is also running in the same premises etc. Site inspection is usually carried out by the office superintendent and assistant, though the Assistant Registrar may visit the site if he wishes to.

What happens after site inspection?

After the site inspection and office formalities, a complete report is sent to the Director Industries, who approves it, after which a letter and copies of all documents are sent to the Secretary Industries. Once the license has been

received, the Director will get the certificate typed out and the applicant will be informed to come and collect the certificate of registration and the license.

4.3.2 Through the Corporate Law Authority

Where should the NGO/applicant go?

The applicant should go to the office of the Corporate Law Authority, situated at State Life Building No 2, 4th Floor, Wallace Road, (Off: I.I. Chundrigar Road), Karachi - Tel: 2415855 and 2415672.

How should the applicant approach the office?

The applicant may approach the department either directly or through a lawyer. Usually, the matter is handled through lawyers.

Who will give the applicant information about registration?

When the applicant goes for information about registration requirements and procedures, he/she will meet the CLA inspectors or other officials, who will give him the required information.

What information will the applicant be given and how?

The officials will give the applicant all the information and details required orally, since there are no written instructions, guidelines or models. However, the applicant will be guided to obtain the Rules & Regulations (1985) and the Companies Ordinance (1984) from specialized booksellers such as Pettiwalla, Firdaus Stationers, Law Book House etc, all located in and around Pakistan Chowk

If there is any confusion, the applicant will have to go back to the official for further help or advice.

Basically, the official will inform the applicant that he/she will have to fulfill the conditions relating to eligibility to the satisfaction of the CLA, after which the CLA will grant a license and direct that the association be registered as a company with limited liability. Thereafter, the applicant will have to apply for registration to the Joint Registrar, Joint Stock Companies.

What documentation will be required?

- For grant of licence:
- + covering letter to the Corporate Law Authority applying for a license
- + A challan of the value of Rs 100/- (head of account No. 1213400 - Economic Regulation Receipts under the Companies Ordinance, 1984). The cheque or cash is deposited in the name of Joint Registrar of Companies, Corporate Law Authority, Government of Pakistan, Karachi
- + three copies of memorandum and articles of association
- For registration:

The same as mentioned with regard to the Directorate of Industries. But additionally, a copy of the license granted by the CLA under Section 42 of the Companies Ordinance 1984 will also have to be submitted. An address for the office will also be required.

How will the applicant complete the requirements?

For grant of license, the applicant will have to complete the required documentation and make an application to the Corporate Law Authority.

Where will the application be submitted?

When the documentation for registration has been completed, the applicant will have to submit the application to the receptionist at the office, who will give a receipt for the same.

What happens after submission?

After submission, the applicant will have to wait till further intimation from the office. This is likely to take from two weeks up to one and a half months.

What happens after the application is approved?

If the documents are in order, the applicant will be informed accordingly and will then contact the office in

order to come and collect the Certificate of Incorporation which will be issued by the Joint Registrar, Joint Stock Companies.

4.4 Legal Status

Once a non-profit company is registered under Section 42 of the Companies Ordinance of 1984, and a Certificate of Incorporation issued by the Registrar, the legal status of the association becomes that of a body corporated, having perpetual succession and a common seal.

4.5 Functioning

There are certain basic rules that a company is legally bound to observe:

- A company must maintain a register of members with their particulars
- A company must hold an annual general meeting of its members within 18 months of its incorporation and then at least once every calendar year
- A company must keep at its registered office a register of all its directors and officers, including its chief executive etc
- A company must keep at its registered office proper books of account with respect to:
 - + all sums of money received and expended
 - + all sales and purchases of goods
 - + all assets
 - + all liabilities
 - + in case of a company engaged in production etc, particulars relating to utilisation of labour, materials, other inputs and items etc
- The directors of every company must lay an income and expenditure account before the annual general meetings for the period within 18 months of incorporation and at least once every calendar year thereafter.
- This must be accompanied by a directors' (or executive members') report on the state of the company's affairs

- Every company must appoint an auditor or auditors at every annual general meeting to hold office till the next annual general meeting and fix the remuneration
- The auditor's report shall be read out at the annual general meeting and shall be open to inspection

4.6 Requirements vis a vis registration authority and corporate law authority

Under the law, there are certain requirements that a company must fulfill after registration:

- Situation of the registered office and of any change must be given to the registrar within 28 days of incorporation or change of office
- The books of account and books and papers of every company must be open to inspection by the registrar or any officer authorized by the authority in this behalf
- A copy of the income/expenditure account must be forwarded to the registrar within 30 days of the meeting
- The memorandum and articles of association cannot be amended without approval of the Corporate Law Authority
- Where the registrar calls upon the company to furnish any information, explanation or document with respect to any matter, the officers, directors and auditors of the company are bound to supply it

4.7 Winding up and Dissolution

The winding up of a non-profit company may be either:

4.7.1 Through a Court

A company may be wound up through a court for a number of reasons. Some of most common reasons are:

- If a company, by special resolution, has resolved that it be wound up through court
- If a company does not commence its business within a year of incorporation or suspends its business for a whole year

- If the number of its members is reduced to less than the minimum requirements
- If the company is unable to pay its debts
- If the company has been carrying on fraudulent or unlawful activities, or business not authorized by its memorandum, or conducting it in a manner oppressive to its members
- If the court is of the opinion that it is just and equitable that the company be wound up

An application for winding up will be by petition presented either by the company, or creditor or contributory.

4.7.2 Voluntarily

A company may be wound up voluntarily on the following grounds:

- When the period, if any, fixed for the duration of the company by the articles expires or on the occurrence of which the articles provide the company is to be dissolved and the company in a general meeting resolves that the company be wound up voluntarily
- If the company resolves in a special meeting that the company be wound up voluntarily

4.7.3 Subject to the supervision of the Court

Where a company has passed a resolution for voluntary winding up, the court may of its own motion or on application by any person entitled to apply to court for the winding up of the company, make an order that the voluntary winding up will continue under supervision of the court.

4.7.4 Revoke of License

If the activities of the association are in violation of the provision of the Companies Ordinance, 1984, the license can be revoked by the CLA.

INFORMATION FROM THE OFFICIALS OF THE REGISTRATION AGENCY

(Office of the Directorate of Industries and office of the Corporate Law Authority)

4.8 Names/Designations of Respondents

- Mr K B Rind, Director
Department of Industries
- Mr Lala Qadir, Assistant Registrar
Department of Industries
- Mr Rana Mohammed Islam, Assistant
Department of Industries
- Mr Ataullah Khan, Joint Registrar
Joint Stock Companies, Corporate Law Authority
- Mr Chandio Diljan, Inspector
Corporate Law Authority
- Mr Abdul Bhojani, Senior Partner
Surridges & Beechano, Corporate Law Firm
- Ms Khurshid, Associate Lawyer
Suridge & Beecheno, Corporate Law Firm

4.9 Background information on department and respondents

The chapter in the Department of Industries dealing with the registration of non-profit companies at the provincial level was established in 1984 when the new Companies Ordinance of 1984 was introduced.

Officials working with the Department of Industries, as in most other government departments, are changed quite frequently, three years or less being spent in any one post. However, at a less senior level, many get rotated in different posts within the department. Mr K B Rind, the director, had been with the department for only one month at the time that he was interviewed, but had extensive dealings with NGOs in his previous position as DC Thatta, Larkana and Shakarganj. Mr Lala Qadir, the Assistant Registrar, had been working in his present capacity for six months. Mr Rana Mohammed Islam had also worked in the section for six months, but had previously worked in the section dealing with the registration of societies.

The other experts consulted were Mr Abdul Bhojani who is the senior partner in the corporate law firm of Surridges and Beecheno and Ms Khurshid, an associate lawyer in the same firm, who deals specifically with incorporation of companies, including non-profit companies. They were approached to clarify the applicable provisions of the Companies Ordinance as well as to double-check information obtained relating to registration procedures.

Mr Ataullah Khan is joint registrar Joint Stock Companies at the Corporate Law Authority who has been dealing with the incorporation of non-profit companies registered under the Companies Ordinance at the federal level since 1984, and Mr Chandio Diljan is an inspector and has been working with the Authority since 1986.

4.10 Eligibility for registration (based on the nature of activities)

4.10.1 From the Directorate of Industries

The eligibility for registration as a non-profit company is under section 42 of the Companies Ordinance and is almost the same as that of a society registered under the Societies Registration Act. Both types of NGOs work on a no profit no loss basis, so the activities of a non-profit company and society are similar. Mostly residents of apartment buildings, owners of small shops, shopping centres and clubs/associations are registered as non-profit companies. A number of welfare organizations are, however, also registered.

The eligibility for registration, according to the nature of activities of the NGO, is governed by the statute. There are no provincial rules or administrative directives regarding eligibility, nor has there been any new policy since the chapter began functioning.

The majority of NGOs applying for registration get registered. To date, 81 have been registered and two rejected. One of the rejected NGOs challenged the decision by appealing to the Director Industries. The case was restored and the chapter was asked to review the decision. The chapter asked the applicant to supply some further information, but this request has not so far been complied with.

4.10.2 From the corporate lawyers

Associations are registered as non-profit companies under Section 42 of the Companies Ordinance, which mentions the type of organizations eligible for registration.

4.10.3 From the Corporate Law Authority

Associations are eligible for registration under Section 42 of the Ordinance.

Non-profit companies are usually set up to act as lobby groups or forums to pressurize government or policy makers and provide information to members. These companies cannot use the term 'private limited'.

4.11 Eligibility for registration (based on membership and management committee requirements)

4.11.1 From the Directorate of Industries

According to the assistant, there is no clarification in the Act about how many members there must be for a non-profit company to get registered. The general practice followed by the chapter is that there must be seven members, as under the Societies Registration Act, but in some cases, five or even four members have been accepted.

There are no particular rules pertaining to minimum requirements for a management committee, nor any other special conditions.

4.11.2 From the corporate lawyers and the Corporate Law Authority

There have to be a minimum of two members if the company is sought to be registered as a private limited company and a minimum of seven members if it is a public limited company.

Similarly, there have to be a minimum of two directors and a maximum of six in the case of a private limited company and minimum of seven directors in the case of a public limited company.

Since non-profit companies registered under section 42 are companies limited by guarantee, the members and directors are not entitled to any share in the profits of the company

and their liability in the event of winding up of the company is limited to the extent that they have guaranteed at the time of joining.

All associations registered as non-profit companies are also listed with the Federation of Chambers of Commerce & Industry.

4.12 Procedure for Registration

Registration of non-profit companies can be done through two different government departments. It can either be done through the office of the Assistant Registrar Joint Stock Companies situated at the Directorate of Industries, which registers non-profit companies at the provincial level, the license being granted by the Secretary, Department of Industries. Or it can be done through the Joint Registrar, Office of the Corporate Law Authority, who registers non-profit companies at a federal level, after a license has been granted by the CLA from the federal office at Islamabad with the directive to register the company at the Karachi Office.

4.12.1 From the Directorate of Industries

When an applicant/NGO comes for information about registration, he/she is sent directly to the assistant of the concerned chapter. The assistant orally provides the applicant with the information and details required. There are no written instructions, guidelines or models (except for the authority letter and the prescribed undertaking) which can be given to the applicant. If there is any confusion, the applicant returns to the assistant.

The applicant is informed at this stage that he/she is required to pay Rs 170/- for the challan in the bank and that three sets of each of the following documents (printed and bound) are required for registration:

- Memorandum of Association ending with a request for association signed by seven (or less) members.
- Articles of Association witnessed by one person
- Forms 1, 21, 27, 28, 29 A etc which are not available at the office but can be obtained from Petiwala Corporation for about Rs 15/- to 20/-.
- Authority letter (for which a model is given)

- Prescribed undertaking (for which a model is given) duly attested by a first class magistrate
- National identity cards of the office bearers

When the formalities are completed, the application is submitted to the diary clerk who gives a receipt to the applicant. After submission, the following steps are usually undertaken which take at least one or two days each (and are considered normal government office procedure):

- The diary clerk collects all the applications for the day and sends them to the assistant registrar
- The assistant registrar marks them to the office superintendent who distributes them according to allocation after which the application reaches the assistant
- The assistant examines the documents to see if they meet the requirements or if there is any flaw and makes his objections/remarks in the file
- The assistant then sends the file to the office superintendent who makes his own remarks or merely initials it
- The file is then sent to the assistant registrar who issues an order on it
- The file goes back to the office superintendent
- The office superintendent sends it to the assistant
- If the application has been approved at every step without encountering any objections, the assistant prepares a hand-written draft letter addressed to the applicant
- The draft is given to the office superintendent
- The office superintendent sends the draft to the Assistant Registrar
- The assistant registrar approves the draft and sends it back to the office superintendent
- The office superintendent sends the draft back to the assistant
- The assistant gives the draft to the steno for a fair copy

- The steno sends the fair copy back to the assistant
- The assistant checks it and compares it to the original then signs the office copy and sends it to the office superintendent
- The office superintendent sends it to the Assistant registrar who signs it
- The signed letter is sent back to the office superintendent
- The letter is now given to the despatcher for mailing to the applicant
- After receiving the letter, the applicant contacts the office
- Arrangements are then made for a site inspection of the applicant's office. There is a proforma for site inspection which includes name, nature of work, office address, bank account, ownership or tenancy documents, no objection affidavit from landlord, whether any other office is also working at the same premises etc
- Site inspection is usually done by the office superintendent and assistant, though the assistant registrar may go if he wishes to. There are no particular requirements that an applicant has to fulfill regarding office premises, but the site inspector makes a note of the existing situation
- The inspection report, which includes personal observations, is signed by the visiting officials and sent to the assistant registrar
- A complete report is then sent to the Director Industries for approval
- The Director approves the report and sends it back to the assistant registrar
- Through the assistant registrar and office superintendent it returns to the assistant
- The assistant composes a draft letter to the Secretary Industries (who is the relevant authority) requesting that a license be issued under Section 42 of the Companies Ordinance
- The Assistant Registrar approves the draft received through the office superintendent

- A fair copy is made of the draft and signed by the assistant registrar
- The letter and the copies of all documents are sent to the Secretary Industries for approval
- The Secretary Industries approves the registration and informs the Director Industries accordingly
- The Director gets the certificate typed out
- The applicant is informed to collect the certificate of registration

4.12.2 From the Corporate Law Authority

The intending association can approach the Corporate Law Authority either directly or through a lawyer, but it is usually done through a lawyer. CLA inspectors give all the details and information to the applicant orally, as there are no written instructions, guidelines or models available.

The applicant is informed at this stage that the following documents are required for registration:

- Challan of Rs 170/-
- Three copies of the Memorandum of Association
- Three copies of the Articles of Association
- Forms 1, 21, 27, 28, 29 A which are not available at the office but can be obtained from Petiwala Corporation
- Authority letter or power of attorney
- Copy of license granted by the CLA under section 42 of the Companies Ordinance

The association has to fulfill the conditions relating to eligibility to the satisfaction of the CLA. The authority grants a license and directs that the association be registered as a company with limited liability. On compliance with the requirements of the law, the certificate of incorporation is provided by the Joint Registrar of Companies at Karachi.

The CLA officials provide the interviewers with a photostat copy of an association recently registered with them from which documentation for registration could be seen. They also give the following three documents:

- Table of fees
- Submission of different forms by joint stock companies to the CLA
- Lists of documents required to be filed with the company registration office in case a company is to be wound up.

4.13 Time taken by Registration Procedure

4.13.1 From the Directorate of Industries

The time taken for registration starting from the submission of application would be four to six months, if there are no problems or complications. This is largely due to the delay caused by normal government department procedures of dealing with a case file.

4.13.2 From the Corporate Law Authority

The time taken for registration is about six weeks or more because the permission for grant of license has to come from Islamabad.

4.14 Registration Fee

4.14.1 From the Directorate of Industries

The registration fee is Rs 170. Total cost of registration includes:

- Rs 170/- for the bank challan
- Rs 25/- for a certified copy of the memorandum and articles
- Rs 15/- to 20/- for the forms
- costs of printing and binding three copies
- costs of a lawyer, if hired

4.15 Rights/Obligations vis a vis Authority

4.15.1 From the Directorate of Industries

The company has to send information about their general body and governing body (Forms A and B) to the office every year. The annual bank account statement also has to be sent. If they do not send this information, the office sends notices to them, which can be followed up by legal proceedings if there is still no response.

The company has no rights upon the registration authority. However, they can consult the authority informally for help and advice if required.

4.15.2 From the Corporate Law Authority

The associations registered under Section 42 are required to submit a list of the members of the executive committee on Form B under Section 158 of the Companies Act, and annual statements of income and expenditure, duly audited.

4.16 Difficulties relating to Registration

4.16.1 From the Directorate of Industries

- Most of the applicants have problems with the drafting of the memorandum for which there is no format available to serve as a guide
- When the applicants hire lawyers, it invariably creates more problems. Lawyers tend to mishandle applications and cause the applicants greater expense
- Most NGOs do not know the importance of registration or the proper type of registration suitable for them, and this can become a problem for officials dealing with them

4.16.2 From the Corporate Law Authority

- Associations have a problem with documentation
- Because of the proliferation of non-genuine or non-active NGOs, there is a lack of credibility attached to NGOs and, therefore, the genuine ones suffer

4.17 Benefits of Registration to NGOs

4.17.1 From the Directorate of Industries

- They can collect cash donations and get funding
- It gives them publicity and prestige as an organization and raises their social status
- It gives them official recognition

4.17.2 From the Corporate Law Authority

- It gives associations a voice to influence policies

COMPANIES ORDINANCE, 1984

(Relevant Extracts pertaining to Non-profit Companies)

THE PURPOSE OF THE ACT

The purpose of the Act is to consolidate and amend the law relating to companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith (Preamble).

NOTE: While the Act deals with all types of companies, this study is restricted to associations referred to S.42 of the Act i.e. association which apply or intend to apply their profits and income in promoting their objects and prohibit the payment of any dividend to their member.

APPLICABILITY OF S.42 OF THE ORDINANCE

S.42 of the Ordinance applies to associations formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful object.

REQUIREMENTS RELATING TO MEMBERSHIP

Mode of forming a company

- 1) Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of this Ordinance in respect of registration, form a public company and any two or more persons so associated may, in like manner, form a private company.
- 2) A company formed under sub-section (1) may be a company with or without limited liability, that is to say:
 - a) a company limited by shares;
 - b) a company limited by guarantee; or
 - c) an unlimited company

Memorandum of company limited by guarantee

In the case of a company limited by guarantee:

- a) whether or not the company has a share capital, the memorandum shall state:
 - i) the name of the company with the parenthesis and word "(Guarantee) Limited" as the last words of its name;
 - ii) the Province or the part of Pakistan not forming part of a province, as the case may be, in which the registered office of the company is to be situated;
 - iii) the objects of the company, and, except in the case of a trading corporation, the territories to which they extend;
 - iv) that the liability of the members is limited;
 - v) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he/she is a member, or within one year afterwards, for payments of the debts and liabilities of the company contracted before he/she ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustments of the rights of the contributories among themselves, such as may be required, not exceeding specified amount.

Printing, signature etc of memorandum

- 1) The memorandum shall be:
 - a) printed;
 - b) divided into paragraphs and numbered consecutively;
 - c) signed by each subscriber who shall add his present name and surname in full, any former name or surname in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, in the presence of at least one witness who shall attest the signature and shall likewise add his father's name or, in the case of a married woman or widow her husband's name, in full, as the case may be, address and occupation; and
 - d) dated

*[(2) Notwithstanding anything contained in this Ordinance or in any other law for the time being in force or the memorandum and articles, the memorandum and articles of a company shall be deemed to include, and always to have included, the power to enter into any arrangement for obtaining loans, advances or credit, as defined in the

Banking Company's Ordinance, 1962 (LLVII of 1962), and to issue other securities not based on interest for raising resources from a scheduled bank or a financial institution].

REQUIREMENTS RELATING TO MANAGEMENT DIRECTORS

Minimum number of directors

Notwithstanding anything contained in any other law for the time being in force, every private company shall have not less than two directors and every public company not less than seven directors appointed and elected in the manner provided in this Ordinance.

Only natural persons to be directors

Only a natural person shall be a director and no director shall be the variable representative of a body corporate.

First directors and their terms

- 1) In default of and subject to any provisions in the articles of a company and section 174, the number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum, and until so determined, all the subscribers of the memorandum who are natural persons shall be deemed to be the directors of the company.
- 2) The first directors shall hold office until the election of directors in the first annual general meeting.

Requirements of directors

On the date of the first annual general meeting of a company all directors of the company for the time being who are subject to election shall stand retired from office and thereafter all such directors shall retire on the expiry of the term laid down in section 180.

Consent to act as director to be filed with Registrar

- 1) No person shall be appointed or nominated a director or chief executive of a company or represent as holding such office, nor shall any person describe or name any other person as a director or proposed director or chief executive or proposed chief executive of any company, unless such person or such other person has given his consent in writing to such appointment or nomination and that consent has been filed by the company with the registrar before such

appointment or nomination or being described or named as a director or proposed director or chief executive or proposed chief executive of the company, as the case may be.

- 2) Within seven days of issue of certificate of incorporation of a company, the subscribers to the memorandum of association shall file with the registrar a list of persons who have consented to act as directors of the company along with their consent to do so.
- 3) This section shall not apply to a private company, not being a private which is a subsidiary of a public company.

Ineligibility of certain persons to become directors

No person shall be appointed as a director of a company if he:

- a) is a minor;
- b) is of unsound mind;
- c) has applied to be adjudicated as an insolvent and his application is pending;
- d) is an undischarged insolvent;
- e) has been convicted by a court of law for an offence involving moral turpitude;
- f) has been debarred from holding such office under any provision of this Ordinance;
- g) has betrayed lack of fiduciary behaviour and a declaration of this effect has been made by the court under section 217 at any time during the proceeding five years;
- h) is not a member; provided that clause (h) shall not apply in the case of:
 - i) a person representing the government or an institution or authority which is member
 - ii) a whole-time director who is an employee of the company
 - iii) a chief executive
 - iv) a person representing a creditor

Vacation of office by the directors

- 1) A director shall ipso facto cease to hold office if:
 - a) he becomes ineligible to be appointed a director on any one or more of the grounds enumerated in clauses (a) to (h) of section 187;
 - b) he absents himself from three consecutive meetings of the directors or from all the meetings of the directors for a continuous period of three months, whichever is longer without leave of absence from the directors;
 - c) he or any firm of which he is partner or any private company of which he is a director:
 - i) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of chief executive or a legal or technical advisor or a banker
 - ii) accepts a loan or guarantee from the company in contravention of section 195

Registration of Articles

- 1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or an unlimited company, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and setting out regulations for the company.
- 2) Articles of association may adopt all or any of the regulations contained in table A in the First Schedule.
- 3) In the case of unlimited company or company limited by guarantee, the articles, if the company has share capital shall state the amount of a share capital with which the company proposes to be registered.
- 4) In the case of an unlimited company or company limited by guarantee, if the company has not the share capital, the articles shall state the number of members with which the company proposes to be registered.
- 5) In the case of a company limited by shares and registered after the commencement of this Ordinance, if articles are not registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the

regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

- 6) The articles of every company shall be explicit and without ambiguity and, without prejudice to the generality of the foregoing, shall list and enumerate the voting and other rights attached to the different classes of shares and other securities, if any, issued or to be issued by it.

Forms of Memoranda and Articles etc

The forms of memoranda and articles of the company limited by guarantee and not having a share capital.

Registration of Memoranda and Articles etc

- 1) The memoranda and the articles, if any, shall be filed with the registrar in the province or the part of Pakistan not forming part of province, as the case may be, in which the registered office of the company is stated by the memorandum to be situated.
- 2) A declaration by such persons as may be prescribed in this behalf, or by a person named in the articles as a director, or other officer of the company, of compliance with all or any of the requirements of this Ordinance and the rules made thereunder shall be filed with the registrar and the registrar may accept such a declaration as sufficient evidence of such compliance.
- 3) If the registrar is satisfied that the company is being formed for the lawful purposes, that none of its objects stated in the memorandum is inappropriate or deceptive or insufficiently expressive and that all the requirements of this Ordinance and the rules made thereunder have been complied with in respect of registration and matters precedent and incidental thereto, he shall retain and register the memoranda and articles, if any.
- 4) If registration of the memorandum is refused, the subscribers of the memorandum or any one of them authorized by them in writing may supply the deficiency and remove the defect pointed out, or within thirty days of the order of refusal prefer an appeal:
 - a) where the order of refusal has been passed by an additional registrar, or a joint registrar, a deputy registrar or an assistant registrar, to the registrar

- b) where the order of refusal has been passed, or upheld in appeal by the registrar, to the authority
- 5) An order of the authority under sub-section (4) shall be final and shall not be called in question before any court or other authority.

Power of dispense with "limited" in the name of charitable and other companies

The association shall, on registration, enjoy all the privileges of a limited company and shall be subjected to all its obligations, except those of using the word or words "Limited" or "Private Limited" or "(Guarantee Limited)", as the case may be, as part of its name.

LEGAL STATUS

Effect of Memoranda and Articles

- 1) The memoranda and articles shall, when registered, bind the companies and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe and be bound by all the provisions of the memorandum and of the articles, subject to the provisions of this Ordinance.
- 2) All the money payable by any member to the company under the memorandum or articles shall be debt due from him to the company.

Effect of Registration

- 1) On the registration of the memorandum of the company, the registrar shall certify under his hand that the company is incorporated and, in the case of limited company, that the company is limited by shares or guarantee, as the case may be.
- 2) From the date of the incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Ordinance.

FUNCTIONING

Registered Office of a company

- 1) A company as shall from the day or which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, has a registered office to which all communications and notices may be addressed.
- 2) Notice of the situation of the registered office and of any change therein shall be given within twenty-eight days after the date of incorporation of the company or of the change as the case may be, to the registrar who shall record the same.
- 3) The inclusion in the annual return or any other document of a company of the statement as to the address of its registered office shall not be taken to meet the requirements of the sub-section (2).
- 4) If a company fails to comply with the requirements with the sub-section (1) or (2), it shall be liable to a fine which may extent to two hundred rupees for every day during which such non-compliance continues, and every officer of the company who knowingly and willfully authorizes or permits the defaults shall be liable to the like penalty.

Register of Members and Index

- 1) Every company shall keep in one or more books a register of its members and enter therein the following particulars namely:
 - i) the name in full, father's name (in case of a married woman or widow, the name of her husband or deceased husband), nationality, address, and the occupation, if any, of each member, and, in the case of company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the share of each member
 - ii) the date at which each person was entered in the register as a member
 - iii) the date at which any person ceased to be a member and the cause for ceasing to be a member
- 2) Every company having more than fifty members shall, unless the register is in such a form as to constitute in itself an index, keep an index of the names of the members of the

company and shall, within fourteen days after the date at which any alteration is made in the register of members, make the necessary alteration in the index.

- 3) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that number in register to be readily found.
- 4) If default is made in complying with the requirements of sub-section (1) or unnecessary delay takes place in entering the register of members the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, he shall be liable to a fine not exceeding two hundred rupees for every day during which the default continues; and every officer of the company who knowingly or willfully authorizes or permits the default the name and particulars of any person who has become or ceased to be a member of a company, as the case may be, shall be liable to the like penalty.
- 5) If the default is made in complying with the requirements of the sub-section (2) or sub-section (3), the company and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to a fine not exceeding two thousand rupees.

Annual General Meeting

- 1) Every company shall hold, in addition to any other meeting, as its annual general meeting, within eighteen months from the date of its incorporation and thereafter once at least in every calendar year within a period of six months following the close of its financial year and not more than fifteen months after the holding of its last preceding annual general meeting provided that, in the case of the listed company, the authority, and in any other case, the registrar may, for any special reason, extend the time within which any annual general meeting, not being the first such meeting, shall be held by a period not exceeding ninety days.
- 2) An annual general meeting shall, in the case of a listed company, be held in a town in which the registered office of the company is situated provided that the authority, for any special reason, may, on the application of such company to hold a particular meeting at any other place.
- 3) The notice of an annual general meeting shall be sent to the shareholders at least twenty-one days before the date fixed for the meeting and, in the case of a listed company, such notice, in addition to its being despatched in the normal course, shall also be published at least in one issue of

each of the daily newspaper in English language and a daily newspaper in Urdu language, having circulation in the province in which the stock exchange on which the company is listed is situated.

- 4) If default is made in complying with any provisions of this section, the company and the every officer of the company who is knowingly and willfully a party of the default shall be liable:
 - a) if a default relates to a listed company, to a fine not less than thousand rupees and not exceeding twenty thousand rupees for every day after the first during which the default continues; and
 - b) if the default relates to any other company, to a fine exceeding five thousand rupees and to a further fine not exceeding two thousand rupees for every day after the first during which the default continues

Calling of extraordinary meetings and votes

- 1) All general meetings of a company, other than the annual general meeting referred in the section 158 and the statutory meeting mentioned in section 15, shall be called extraordinary meetings.
- 2) The directors may, at any time, call extraordinary general meeting of the company to consider any matter which requires the approval of the company in the general meeting, and shall, on the requisition of members representing not less than one-tenth of the voting power on the date of deposit of the requisition, forthwith proceed to call an extraordinary general meeting.
- 3) The requisition shall state the objects of the meeting be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.
- 4) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months of the date of the deposits of the requisition.
- 5) Any meeting called under section (4) by the requisitionists shall be called in the same manner, as nearly as possible as that in which meetings are to be called by the directors.

- 6) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sum due from the company by way of fees or directors as were in the default.
- 7) Notice of extraordinary general meeting shall be sent to the members at least twenty-one days before the date of meeting, and in the case of a listed company shall also be published in a manner provided for in sub-section (3) of section 158 provided that in the case of an emergency effecting the business of the company, the registrar may, on the application of the directors, authorize such meeting to be held at such shorter notice as he may specify.
- 8) Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable:
 - a) if the default relates to listed company, to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees and in the case of continuing defaults to a further fine which may extend to two thousand rupees for every day after the first during which the default continues; and
 - b) if the default relates to any other company, to a fine which may extend to two thousand rupees and in the case of continuing defaults to a further fine which may extend to two hundred rupees for every day after the first during which the default continues

Provisions as to meetings and votes

- 1) The following provisions shall apply to the general meetings of the company or the meetings of a class of members of the company, namely:
 - a) notice of the meeting specifying the place and the day and hour of the meeting along with the statement of the business to be transacted at the meeting shall be given to:
 - i) every member of the company;
 - ii) any person entitled to a share in consequence of death of a member if the interest of such person is known to the company; and

iii) the auditor or auditors of the company

in the manner in which the notices are required to be served by section 50, but the accidental omission to give notice to or the non-receipt of the notice by any member shall not invalidate the proceedings at any meeting

- b) where any special business, that is to say business other than considerations of the accounts, balance sheets and the reports of the directors and the auditors, the declaration of a dividend, the appointment and fixation of remunerations of the auditors, and the election or appointment of directors, is to be transacted at the general meeting. There shall be annexed to the notice of the meeting a statement setting out all material facts concerning such business including, in particular, the nature and the extent of the interest, if any, thereof. Every director, whether directly or indirectly, and where any item of business consists of the according of an approval to any document by the meeting, the time when and the place where the documents may be inspected shall be specified in the statement
 - c) subject to the provisions of this Ordinance so far as the relate to the election and appointment of directors, the provisions of the clause (b) shall apply mutatis mutandis to a meeting where ordinary business, being business other than special business, is to be transacted
 - d) all the members may participate in the meeting either personally or through proxy
- 2) The quorum of a general meeting shall be:
- a) in the case of a public company, unless the articles provide for a larger numbers, not less than three members present personally who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies; and
 - b) in the case of a private company, unless the articles provide for a larger number, two members present personally who represent not less than twenty-five percent of the total voting power, either of their own account or as proxies

Provided that, if within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if called upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not

present within half an hour from the time appointed for the meeting, the members present being not less than two, shall be a quorum, unless the articles provides otherwise.

- 3) The chairman of the board of directors, if any, shall preside as chairman at every general meeting of the company, but if there is no such chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, any one of the directors present may be elected to be the chairman, and if none of the directors is present or is unwilling to act as chairman the members present shall choose one of their members to be the chairman.
- 4) In the case of a company having a share capital, every member shall carry voting rights held by him according to the entitlement of the class of such shares or securities, as the case may be provided that, at the time of voting, fractional votes shall not be taken into account.
- 5) No member holding shares or other securities carrying voting rights shall be debarred from casting his vote, nor shall any thing contained in the articles have the effect of so debarring him.
- 6) In the case of a company limited by guarantee and having no share capital, every member thereof shall have one vote.
- 7) On a poll, votes may be given either personally or by proxy.
- 8) Every officer of the company who knowingly or willfully fails to comply with any of the provisions of this section shall be liable:
 - a) if the default relates to a listed company, to a fine which may extend to twenty thousand rupees and in the case of continuing default to a further fine which may extend to two thousand rupees for every day after first during which the default continues; and
 - b) if the defaults relates to any other company, to a fine not exceeding to five thousand rupees and in the case of a continuing default further fine which may extend to two hundred rupees for every day after the first during which the default continues

Register of directors, officers etc

- 1) Every company shall keep at its registered office a register of its directors and officers including the chief executive,

managing agent, secretary, chief accountant, auditor and legal advisor containing with respect to each of them the following particulars, that is to say:

- a) in the case of an individual, his present name in full, any former name, or surname in full, his father's name (in the case of a married woman or a widow, the name of her husband or deceased husband), his usual address, nationality and if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, and if he holds any other directorship or other office, the particulars of such directorship or office;
 - b) in the case of a corporation, its corporate name and registered principle office, and full name, address, and nationality of each of its directors; and
 - c) in the case of a firm, the full name, address and nationality of each partner, and the date on which each became a partner
- 2) Every person referred to sub-section (1) shall within a period of ten days of his appointment or any change therein, as the case may be, furnish to the company the particulars specified in sub-section (1) and within the periods respectively mentioned in this section. The company will file with the registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and notification in the prescribed form of any changes among the officers or in any of the particulars contained in the register.
 - 3) The period within which the said return is to be filed with the registrar shall be a period of fourteen days from the date of incorporation of the company and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.
 - 4) The register to be kept under this section shall during business hours, subject to such reasonable restriction as the company may, by its articles or in general meetings, impose so that not less than two hours in each day allowed for inspection of any member of the company without charges and of any other person on payment of the prescribed fee or such lesser sum as the company may specify for each inspection.
 - 5) If any inspection required under this section is refused or if default is made in complying with sub-section (1) or sub-section (2) or sub-section (3) the company and every officer of the company or the other person who is knowingly and

willfully in default shall be liable to a fine which may extend to five hundred rupees and to a further fine which may extend to fifty rupees for every day after the first during which the default continues.

231. Inspection of books by registrar etc

- 1) The books of account and books and papers of every company shall be open to inspection by the registrar or by any officer authorized by the authority in this behalf if, for reasons to be recorded in writing, the registrar or the authority considers it necessary to do so.
- 2) It shall be the duty of every director, officer or other employees of the company to produce to the person making inspection under sub-section (1) all such books of account and books and papers of the company in his custody or under his control, and to furnish him with any such statement, information or explanation relating to the affairs of the company, as the said person may require of him within such and at such place as he may specify.
- 3) It shall also be the duty of every director, officer or other employee of the company to give the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.
- 4) The person making the inspection under this section may, during the course of inspection:
 - i) make or cause to be made copies of books of account and other books and papers, or
 - ii) place or cause to be placed by marks of identification thereon in token of the inspection having been made
- 5) Where an inspection of the books of account and books and papers of the company has been made under this section by an officer authorized by the authority, such officer shall make a report to the authority.
- 6) Any officer authorized to make an inspection under this section shall have all the power that the registrar has under this Ordinance in relation to the making of inquiries.

242. Copy of balance sheet to be forwarded to the registrar

- 1) Without prejudice to the provisions of sub-section 233, after the balance sheet and profit and loss account or the income and expenditure account, as the case may be, have been laid before the company at the annual general meeting, such number of copies thereof along with the reports and documents required to be annexed to the same, not being less than five in the case of a listed company or three in the other cases.