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REPORT
ON
BANGLADESH CORPORATE LAW

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INTRODUCTION

Several major laws and ordinances govern the formation and registration of organizations and corporations under Bangladesh law. Sections I, II, and III below summarize the major provisions of the most important laws: The Companies, Societies Registration, and Partnership Acts. Section IV presents brief descriptions of several other laws applicable to specific types of organizations.

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	i
I. <u>THE COMPANIES ACT OF 1913</u>	1-12
A. THUMBNAIL SKETCH OF PROVISIONS	1
B. INCORPORATION	1-4
1. Memorandum of Association	1-3
a. Company Limited by Shares	2
b. Company Limited by Guarantee	2
c. Company with Unlimited Liability	2
d. Nonprofit Companies	3
2. Articles of Association	3
3. Company Management	3
a. Directors and Managing Agents	3-4
b. Contracts	4
C. PROSPECTUS	5
D. SHARE STRUCTURE	5
E. STATEMENTS, BOOKS AND ACCOUNTS/INSPECTION AND AUDIT	5
F. SERVICE AND AUTHENTICATION OF DOCUMENTS	5-6
G. ARBITRATION AND COMPROMISE	6
H. WINDING UP	6-10
1. Liability Upon Winding Up	6-7
a. Contributories	6-7
b. Directors	7
2. Winding Up By the Court	7-8
3. Voluntary Winding Up	8-9
a. By Members	8-9
b. By Creditors	9
c. Provisions Applicable to Every Voluntary Winding Up	9
4. Winding Up Subject To Supervision of the Court	10
5. Winding Up of An Unregistered Company	10
6. Supplemental Provisions	10
I. HIGHLIGHTS OF REMAINING COMPANIES ACT PROVISIONS	10-12
1. Part VI - Registration Office and Fees (Secs. 248-249B)	10
2. Part VII - Application of Act to Companies Formed and Registered Under Former Companies Act (Secs. 250-252)	10
3. Part VIII - Companies Authorized to Register Under This Act (Secs. 253-269)	11-12
4. Part IX - Winding Up of Unregistered Companies (Secs. 270-276)	12
5. Part X - Companies Established Outside Bangladesh (Secs. 277-277E)	12
6. Part XI - Supplemental (Secs. 278-289)	12

Continued....

	<u>PAGE</u>
II. <u>THE SOCIETIES REGISTRATION ACT, 1860</u>	13-15
A. SOCIETIES FORMED BY MEMORANDUM OF ASSOCIATION AND REGISTRATION	13
B. MEMORANDUM OF ASSOCIATION	13
C. MEMBERS AND GOVERNING BODY	13
D. VESTING OF SOCIETY PROPERTY	14
E. SUITS BY AND AGAINST SOCIETIES	14
F. ENFORCEMENT OF JUDGMENT AGAINST SOCIETY/ RECOVERY OF PENALTY ACCRUING UNDER BYE LAW	14
G. MEMBERS LIABLE TO BE SUED AS STRANGERS	14
H. PROCESS TO ALTER, EXTEND OR ABRIDGE SOCIETY PURPOSES	14
I. DISSOLUTION OF SOCIETY	15
1. Adjustment of Society Affairs	15
2. Disposal of Property or Proceeds	15
3. Government Consent	15
III. <u>PARTNERSHIP ACT</u>	16-18
A. PARTNERSHIP DEFINED	16
B. REGISTRATION OF THE FIRM	16
C. RELATIONS OF PARTNERS TO ONE ANOTHER	16-17
D. PROPERTY OF THE FIRM	17
E. RELATION OF PARTNERS TO THIRD PARTIES	17
F. INCOMING AND OUTGOING PARTNERS	18
G. DISSOLUTION OF THE FIRM	18
IV. <u>SUMMARY OF OTHER LAWS CONCERNING ORGANIZATION AND REGISTRATION OF CORPORATIONS OR ASSOCIATIONS</u>	19-20
A. THE REGISTRATION ACT, 1908	19
B. THE VOLUNTARY SOCIAL WELFARE AGENCIES (REGISTRATION AND CONTROL) ORDINANCE, 1961	19
C. THE FOREIGN DONATIONS (VOLUNTARY ACTIVITIES) REGULATION ORDINANCE, 1978	19-20
D. THE FOREIGN CONTRIBUTIONS (REGULATION) ORDINANCE, 1982	20
E. CONTRACT ACT, 1872	20
F. CO-OPERATIVE SOCIETIES ACT, 1912	20
G. CO-OPERATIVE SOCIETIES (REPAYMENT OF LOANS) ORDINANCE, 1960	20
H. TRADE ORGANIZATIONS ORDINANCE (1961)	20
I. THE TRUST ACT (1882)	21
J. THE CHARITABLE ENDOWMENTS ACT, 1890	21
K. CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920	21
L. RELIGIOUS SOCIETIES ACT, 1880	21

SECTION I. THE COMPANIES ACT OF 1913

The Companies Act of 1913 is the central corporate law of Bangladesh. Both for-profit and non-profit companies may be incorporated under the Act, though it was designed primarily for formation of the former. The Act makes a distinction between public and private companies,¹ but the majority of its provisions apply to both types.

A. THUMBNAIL SKETCH OF PROVISIONS

To form a company under the Companies Act, promoters with sufficient funds must prepare a memorandum of association and articles of association. Subscribers to the memorandum are deemed to be "members" and are entered as such on the company's register of members. The name of every person who later agrees to become a member must also be entered on this register. These documents are registered with the Registrar of Joint Stock Companies (Ministry of Commerce) who issues a Certificate of Incorporation. The promoters (for a public company with share capital) then issue a prospectus which invites the public to buy shares. When sufficient funds are obtained, the company applies to the Registrar for permission to "commence business". If he determines that legal formalities have been fulfilled, the Registrar issues a Certificate of Commencement of Business and the company starts regular business. The company acquires its legal existence after registration and is recognized by its common seal.

Every company must maintain a registered office to which all communications and notices may be addressed. A company may be managed by its board of directors (BOD), managing director, manager or managing agents. Each public company is required to hold a statutory meeting after incorporation and to file with the Registrar a statutory report containing key incorporating information. Thereafter, the company conducts its regular business at annual general meetings, ordinary or extra-ordinary general meetings (called on requisition) and meetings convened by the court. A company may be wound up by three means: voluntarily (by members or by creditors), by the court, or subject to supervision of the court. Commencement of winding up stays all other legal proceedings by or against the company (See Sec. 269 below).

B. INCORPORATION

1. Memorandum of Association

All associations, partnerships (See Sec. III. PARTNERSHIP ACT), or companies with 20 or more members carrying on business with the object of gain must be registered under the Companies Act (PART II CONSTITUTION and INCORPORATION, Sec. 4(2)). In addition, any 7 or more persons (or 2 or more persons in a private company) associated for any lawful purpose may by subscribing their names to a Memorandum of Association (MOA) (and by fulfilling other requirements of the act for registration) form an incorporated company.

¹/ The articles of association of a private company restrict the right to transfer shares (if any), limit the number of company members to fifty (not including persons who are employed by the company), and prohibit any invitation to the public to subscribe to shares or debentures. A public company is defined as any corporation formed under the Act which is not a private company.

The MOA must be printed, divided into paragraphs numbered consecutively, and signed by each subscriber in the presence of at least one witness who attests signature (Part II, Sec. 8). The MOA is the company's charter. It defines the limits of the company's power and contains the fundamental conditions for incorporation. The company cannot enter into a contract or engage in any trade or business beyond the powers conferred on it by the MOA. It can be altered only by procedures prescribed under the Act.

a. Company Limited by Shares (CLBS)

The limitation to a company's liability is established in its MOA. Liability can be limited by two means -- by shares or by guarantee.² In a company limited by shares (CLBS), (Part II Sec. 5(i)), the liability of an individual member is limited to the amount, if any, unpaid on the shares held by him. The MOA for a CLBS must state (i) the name of the company with Limited (Ltd.) as the last word in the name, (ii) the objects of the company, and (except for trading companies) the territories to which its objects extend, (iii) that the liability of its members is limited and (iv) the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount (Part II Sec. 6(1)(i)-(v)). Each subscriber to the MOA must take one or more shares, and must record opposite his name the number of shares he takes (Part II Sec. 6(2) and (3)).³

b. Company Limited by Guarantee (CLBG)

The MOA for a company limited by guarantee (CLBG) contains the same basic information as for a CLBS, but the members' liability is limited by a clause that states that each member undertakes to contribute a specified amount to company assets only in the event of a winding up while he is a member (or within one year thereafter). The contribution is earmarked for payment of debts and liabilities contracted while he is a member, for the costs and charges of winding up and for adjustment of rights between contributors (members). In addition, the MOA of a CLBG with share capital states the amount of share capital with which the company proposes to be registered and the division into shares of fixed amount. Each subscriber must take at least one share and must record the number of shares he takes next to his name (Part II, Sec. 7(2)(i)-(iii)).

c. Company with Unlimited Liability

A company with unlimited liability may also be formed under the Act. Its MOA must state the name of the company, its objects, and its territory if not a trading company. If the company has a share capital, each subscriber must take at least one share and must record opposite his name the number of shares he takes.

^{2/} An unlimited company can later be re-registered as limited, but all liabilities and debts incurred before the change remain valid.

^{3/} Under Sec. 69 of the Act, a limited company can put part of its share capital out of bounds (i.e., it can't be called up) unless the company is being wound up.

d. Nonprofit Companies

Associations "not for profit" may be incorporated under Section 26 of the Act. That section states that when it is proved to the satisfaction of the government that an association capable of being formed as a limited company (limited by shares or by guarantee) has been or is about to be formed for nonprofit⁴ purposes (promoting commerce, art, science, religion, charity, or any other useful object) it may direct that the company be registered with limited liability. The nonprofit company acquires all the privileges, obligations, etc. of a limited company, but is not required to use "Ltd." as part of its name. A Section 26 company is registered at the pleasure of the government and is subject to all conditions and regulations the government thinks fit. This license can be revoked at any time by the government. Upon revocation, the Registrar enters the word "Limited" at the end of the association's name.

2. Articles of Association

The second most important document required for registration of a corporation is its Articles of Association (AA). The AA contains the internal regulations of a company. It states the business of the company, the amount of capital issued, the classes of shares into which capital is divided and the methods adopted for transfer of shares and appointment of directors. The AA of an unlimited company or a CLBG with share capital must state the amount of share capital with which the company proposes to be registered. If an unlimited company or a CLBG has no share capital, the AA must state the number of members with which the company proposes to be registered. The AA must be written, divided into paragraphs numbered consecutively, and signed by each subscriber in the presence of at least one witness who attests the signature. CLBSs may, and CLBGs or unlimited companies must, register their AAs with the MOA.

3. Company Management

a. Directors and Managing Agents

Every public company, and every private subsidiary of a public company, must have at least three directors. MOA subscribers are deemed to be the original directors until members appoint a board of directors

^{4/} "...applies or intends to apply its profit (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members..." (Sec.26).

-4

(BOD) at the first general meeting. A register of the BOD, managers, and managing agents⁵ must be maintained at the company's registered office.

A limited company may retain one or more directors with unlimited liability if authorized by the AA and approved by special resolution (Secs. 70, 71). No company may, however, exempt a director, manager, officer or auditor from liability or indemnify the same against liability for neglect, default, or breach of duty or trust in relation to the company. If such a person is later found innocent or acquitted by the court, however, he may be indemnified (Sec. 86C).

b. Contracts (Secs. 88-91D)

The law of private contract applies to contracts entered into by corporations. The key concept here is that a contract (promissory note, etc.) entered into by any person acting under company authority, express or implied binds the company. When a company enters into a contract which, if between private parties would be required to be in writing and signed by the parties to be charged therewith, it may be signed, modified or discharged by any person acting under the company's authority, express or implied (Sec. 88(1)(i)). Under subsection (ii), oral contracts may be valid as well. All contracts made according to Section 88 are effective in law and bind the company, its successors and all other parties thereto, their heirs or legal representatives. A company may also authorize any person to act as its attorney to execute deeds binding on the company, in writing under common seal.

Agents for a company may enter into contracts in which the company is an undisclosed principal, but to do so the agent must make a written memorandum of the terms of and parties to the contract and submit it at the BOD's next meeting (Sec. 91(D)(1)). If the manager or agent defaults in complying with the requirements of Sec. 91(D), the company can declare the contract void as against the company.

The members of a company's BOD must disclose any interest they have in a pending contract. They may not vote on any contract in which they are either directly or indirectly concerned or interested, except for contracts for indemnity against loss when a director acts as surety for the company (Secs. 91A-91B). The BOD's sanction, by vote of disinterested directors, is required to approve any contract made with a director (Sec. 87F).

5/ "Manager" is defined as a person who, subject to the control and direction of the directors directs management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not.

"Managing Agent" is defined as a person, firm or company entitled to the management of the whole affairs of the company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called (Secs. 2(1)(9) and (9A)). A company's managing agent may not issue debentures and may only invest funds (and to such an extent) as authorized by the BOD (See Secs. 83A-87I for further details).

C. PROSPECTUS (Secs. 92-100)

After the formation and registration of a public company, it may issue a prospectus inviting public subscription to its shares. If it does not do so, the company must file a statement in lieu of prospectus with the Registrar. A prospectus must be dated and a copy filed with the Registrar. It must contain basic information about the company's share structure contained in the AA.⁶ The BOD, promoters or any other person who authorizes the release of the prospectus may be liable for misleading or untrue information contained in it, with a myriad of exceptions (Sec. 100). For example, a director will not be liable if he believed that a prospectus statement was true and that it was based on expert opinion (unless he knew that the expert was not an expert), or if the prospectus was issued without his consent or knowledge and he gives public notice to that effect upon discovery. Section 100, subsection (4) provides for rights of contribution and indemnification between responsible parties in litigation concerning issuance and contents of the prospectus.

D. SHARE STRUCTURE (Secs. 101-126)

Sections 101-126 govern stock structure, issuance of shares and debentures, and floating charges. Though too detailed for this report, the sections provide in general that under specified conditions registered companies may issue common or preferred stock or offer stock at a discount. Sections 109-125 also contain elaborate regulations governing security interests. Other titles in this section are Allotment (Secs. 101-104), Commissions and Discounts (Secs. 105-106), Payment of Interest Out of Capital (Sec. 107), Certificate of Shares, etc. (Sec. 108), and Debentures and Floating Charges (Secs. 126-129).

E. STATEMENTS, BOOKS AND ACCOUNTS/INSPECTION AND AUDIT (Secs. 130-146)

Sections 130-135 establish requirements for a company's statements, books and accounts. These sections require that a company keep "good books" and issue an annual balance sheet. A company's records may be inspected either by the Registrar under Section 137 (which grants him power to request information supplemental to that in a company's registered forms) or by inspectors and auditors ordered by the government (Secs. 138-146).

Company members may be severally liable for repayment of the whole debts of the company contracted during any period exceeding 6 months during which the company carries on business with fewer than 7 (or in the case of a private company, fewer than 2) members. Members may be sued without joinder in the suit of any other member. To be liable, members must be cognizant that the company is functioning with less than the required number of members (Sec. 147).

F. SERVICE AND AUTHENTICATION OF DOCUMENTS (Secs. 148-150)

Documents may be served on a company or on the Registrar either (1) by post or (2) by delivering it to the appropriate registered office. Legal

^{6/} For example, requirements for directors, numbers of shares and debenture underwriters, sufficient resources of the underwriters, structure and voting rights of shares, etc.

documents may be authenticated by signature of the Director, Secretary or any other authorized official of the company.

G. ARBITRATION AND COMPROMISE (Secs. 152-153)

A company may by contract refer existing or future disputes to arbitration. When a company and its creditors reach a compromise, the court can make it binding if 3/4 in value of the creditors or members agree to it. The court's decision can be appealed.

H. WINDING UP (Part V)

A company may be wound up by (a) the court, (b) voluntarily or (c) subject to supervision of the court (Sec. 155). Winding up is defined as the process of collection of assets and payment of debts which results in a company's dissolution. Thereafter the residue, if any, is distributed to company members as reimbursement for their contributions. To cease to function, a registered company must follow the procedures established in Part V of the Companies Act.

1. Liability of Contributories and Directors Upon Winding Up (WU) (Secs. 156-161)

a. Contributories

In the event of winding up, past and present members are liable to contribute to company assets (1) in an amount sufficient to satisfy its debts and liabilities (including WU costs) to the extent of their liability and (2) for the adjustment of rights between contributories.⁸ The liability of a contributory creates a debt payable upon liquidator call (Sec. 159). Neither death nor insolvency relieves this liability (See Secs. 160 and 161).

Present members of an unlimited company are liable to the full extent of a company's debts upon WU. Liability of members is limited, however, if the company is a CLBS or a CLBG to the amount unpaid on shares held by them or to the amount specified to be paid in the event of WU, respectively. Members of a CLBG with share capital are additionally liable to contribute to the extent of amounts unpaid on shares held by them.

^{7/} For a nonprofit company registered under Sec. 26, the residue is distributed to another nonprofit company with a similar purpose.

^{8/} "Contributories" are defined as persons "... liable to contribute to the assets of a company in the event of its being WU, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are deemed contributories, includes any person alleged to be a contributory" (Sec. 158).

^{9/} Under Sec. 160, the heirs and legal representatives of a deceased contributory become liable to contribute to the assets of the company. If they default, proceedings may be taken to administer the property of the deceased to satisfy the debt. Under Sec. 161, the assignees of an adjudged insolvent represent him for the purpose of WU and become contributories accordingly. They may be called upon to satisfy the debt out of the insolvent's assets.

Past members are liable to contribute only if a court determines that present members are unable to satisfy necessary contributions. Despite such a determination, however, a past member will not have to contribute (a) if he ceased to be a member at least one year prior to the WU or (b) for debts or liabilities contracted after he ceased to be a member.

Sums due any past or present member by way of dividend, profits or otherwise are taken into account only in the final adjustment of rights among (member) contributories. They are not deemed to be debts of the company in any case of competing claims between members and creditors (Secs. 156(1)(i)-(viii)).

b. Directors

Directors of an unlimited company are liable for all debts of the company. Their liability can be limited, as explained above for members, if the company is a CLBS or a CLBG. A director of a limited company whose liability is unlimited may be liable as if he were a member of an unlimited company, however, unless (a) he ceased to be a director at least one year prior to the WU, or (b) the debts or liabilities of the company were contracted after he ceased to hold office. In addition, subject to company articles, the court may hold him further liable in order to satisfy the company's debts and liabilities (Sec. 157(i) - (iii)).

2. Winding Up By the Court (Secs. 162-203)

A company may be wound up by the court if (1) the company passes a special resolution to that effect, (2) the (public) company defaults in filing a statutory report or holding a statutory meeting, (3) the company fails to commence business within one year of incorporation or suspends business for one year, (4) the number of members is reduced below two (for a private company)¹⁰ or seven (for a public company), (5) the company is unable to pay its debts¹⁰ or (6) the court thinks it just and equitable (Sec. 162). Where the High Court Division has original jurisdiction, it can refer a winding up order to the district court.

The court is granted broad powers during winding up. It may draw up lists of contributories, determine what each must contribute, adjust claims between contributories, etc. A winding up order operates in favor of all company creditors and contributories as if they were joint petitioners. Any disposal of property, transfer of shares or alteration in status of company members made after the commencement of a winding up order is void unless a court otherwise directs. When an order is made, or a provisional liquidator appointed by the court, he takes control of all property.

The court issues a winding up order upon presentation of a petition (Sec. 168). The petitioner or company must file a certified copy of the order with the Registrar within one month of the order. The Registrar then places a notice in the official Gazette which serves as notice of discharge to company servants.

^{10/} See Sec. 163 for definition of when a company is to be decreed unable to pay its debts.

Next the court appoints a liquidator¹¹ who conducts the winding up. Duties and powers of liquidators under Bangladesh law are similar to those under U.S. law: they take all necessary actions to wind up a company's business, settle debts and distribute assets. A liquidator can carry on the company's business, but in doing so he acts as the company's agent. He incurs¹² no personal liability nor is he trustee for creditors or contributories.

During winding up the court can make a call, which is a court order directing contributories to pay to the extent of their shares or guarantees towards satisfaction of the company's debts, for the costs of winding up and for the adjustment of the rights among themselves (Sec. 187). The court may, if assets are insufficient to pay liabilities, make an order to pay costs out of company assets in such priority as it thinks fit (Sec. 193). When the affairs of the company are wound up, the court makes an order that the company be dissolved (Sec. 194). The official liquidator must report the dissolution to the Registrar within 15 days thereafter.

3. Voluntary Winding Up

a. By Members (Secs. 208A - 208E)

The process for a voluntary winding up is similar to that outlined above. The Board of Directors directs the process, initially passing a resolution that the company be wound up. The Board must make a declaration by affidavit, that it made a thorough enquiry and determined that the company will be able to pay its debts in full within a period not to exceed three years from commencement of winding up.¹³ This declaration must be supported by a report of company auditors and be delivered to the Registrar. Winding up commences at the time of the resolution; the company must then cease to carry on business.

The BOD appoints a liquidator to direct the WU. He has powers similar to a court appointed liquidator. Under Section 208(c), a liquidator may be additionally empowered by the Board to accept shares, interests, etc. in another company (transferee company) in exchange for the sale of shares, assets, etc. in his company (transferor company). This action is subject to objection by any member of the transferor company. A member may object in writing to the liquidator (if he did not vote to approve the transaction) and either require the liquidator to stop the transfer or to purchase his interest.

^{11/} The court can appoint an official liquidator other than the official receiver (following appropriate notice). A committee of inspection composed of creditors and contributories of the corporation (or their general or special attorneys) may also be appointed. The task of such a committee is to inspect the accounts of the liquidator at all reasonable times.

^{12/} He may be liable, however, in damages to creditors or contributories for injury caused as a result of a breach of statutory duty.

^{13/} A voluntary winding up not supported by such financial affidavit is termed a CREDITOR'S VOLUNTARY WINDING UP (see next section).

When company affairs are wound up, a general meeting is called by advertisement. The liquidator must send an account of this meeting to the Registrar and must make a return to him of the holding of the meeting within one week thereafter. Three months after receipt of such notice and return the company is deemed dissolved.

b. By Creditors (Secs. 209-209H)

For a voluntary winding up (WU) by creditors, a company's BOD must call a meeting of its creditors for the day of, or the day following, the general meeting where the winding up resolution is considered. A winding up becomes a "creditor's winding up" when the Board is unable to make a declaration, supported by affidavit, that the company is able to pay its debts in full within a period not to exceed three years from the commencement of the winding up. Creditors must receive notice of this meeting by post and by advertisement. Creditors can appoint a liquidator, and their choice supercedes that of the company unless a court determines otherwise. The creditors can also appoint a committee of inspection,¹⁴ which has powers similar to a court appointed committee of inspection (see Sec. 178A above). The liquidator can accept shares, etc. as consideration for sale of company property (as under Sec. 208(c) above) but to do so he must receive the sanction of the court or of the committee of inspection. The liquidator must call a general meeting at the end of each year of the WU and must call a final meeting when winding up is complete. Final meeting and dissolution requirements are as outlined for members voluntary WU above.

c. Provisions Applicable to Every Voluntary Winding Up (Secs. 210-218)

Subject to provision of the Companies Act governing preferential payments (See Supplemental Provisions below), company assets are applied in satisfaction of liabilities in proportion equal to the debt during winding up. Subject to such application, assets are then distributed among members according to their rights and interests in the company, unless the AAs provide otherwise (Sec. 211).

The liquidator in a voluntary winding up can exercise all powers outlined under Section 179 above for court ordered WU so long as whomever initiates the WU approves his actions (Sec. 212). The court retains power, however, to appoint or to remove any liquidator. Creditors, contributories or the liquidator can apply to the court to determine questions or to review acts of winding up (Sec. 216). Arrangements reached between a company being wound up and its creditors are binding on the company if passed by extraordinary resolution, and binding on all creditors if acceded to by 3/4 in number and value of them. Creditors or contributories can appeal to the court within 3 weeks of any arrangement. The costs of winding up are paid in priority to all other claims except these of secured creditors (Sec. 217).

^{14/} The creditors can appoint up to 5 members. The company can also appoint 5 members, but creditors can disqualify these members unless a court determines otherwise.

4. WINDING UP SUBJECT TO SUPERVISION OF THE COURT (Secs. 221-226).

The court can order court supervision of a voluntary winding up. When this occurs, the liquidator continues to function as if under a voluntary winding up, but his actions are subject to court supervision. Often supervision is ordered when an insolvent company is being wound up, in which case the rules applying to insolvent individuals also apply (Sec. 229).

5. WINDING UP OF AN UNREGISTERED COMPANY (See Part IX, Secs. 270-276 below).

An unregistered company (defined as a partnership, company or association not registered under this Act) may also be wound up under these provisions (Secs. 270 - 271).

6. SUPPLEMENTAL PROVISIONS (Secs. 227 - 245)

These sections mandate that a company maintain the status quo during winding up and that any transfer of assets, property, etc. subsequent to a WU order is void (Sec. 227). In winding up, all debts payable on a contingency and all claims of any sort are admissible to proof against the company and can be determined by the court (Sec. 228). There may be exceptions to this when an insolvent company is wound up. In WU debts are paid in the following order of priority,¹⁵ subject to retention of sufficient funds to pay costs: (a) all taxes and other payments due to the government, (b) certain wages and other benefits to clerks and servants of the company (Tk 1000/per person limit), (c) wages and other payments to laborers and workmen (Tk 500/per person limit), (d) workman's compensation payments, (e) pension fund payments to employees, and (f) expenses of government ordered investigations. Debts in each category rank equally among themselves, and are paid in full or abate in equal proportion (Sec. 230).

Under Section 231, the fraudulent preference rules for insolvent persons also govern the winding up of a company. The court may assess damages against any director, promoter, contributory, etc., of a company who is found to be civilly delinquent. It may fine or imprison any such person found guilty of fraudulent falsification of books or deception. Under Section 237, delinquent (defined here as criminally liable) directors, promoters or contributories, can be prosecuted, and Section 238A contains penal provisions for various offences.

I. HIGHLIGHTS OF COMPANIES ACT REMAINING PROVISIONS

1. Part VI - Registration Office and Fees - (Secs. 248-249B).

2. Part VII - Application of Act To Companies Formed and Registered Under Former Companies Act - (Secs. 250-252).

^{15/} Including priority over holders of debentures under any floating charge created by the company.

3. Part VIII - Companies Authorized to Register Under This Act (Secs. 253-269)

Sec. 253 - A company whose liability is limited by an Act of Parliament may not register under the Companies Act unless it is a joint stock company registered as a Company limited by shares. The voting requirements to register as a limited company are 3/4 of members present at a meeting, in person or by proxy.

Sec. 254 - Definition of Joint-Stock Company (as relates to CLBS)
 "...company having a permanent paid up or nominal share capital of fixed amount divided into shares, also fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock and no other person ..."

Sec. 255 - Requirements for registration of joint stock companies -- Describes documents required to be filed.

Sec. 256 - Requirements for registration by other than joint stock companies - (same as above).

Secs. 257 - 261 - Other requirements of registration.

Sec. 262 - Registrar certifies company is incorporated when all requirements of registration are fulfilled. Corporation has perpetual succession and permanent seal.

Sec. 263 - Title to all property of any kind (rights of action, etc.) vests in company upon registration.

Sec. 264 - Registration does not effect company's (pre-registration) rights and liabilities.

Sec. 265 - Effect of Registration On Continuation Of Existing Suits. All law suits pending by or against a company, public officer or member continue as before registration but later court orders are executed against company, not individual property. If company assets are insufficient to satisfy decree or order, an order may be obtained to wind up the company.

Sec. 266 - Effects of Registration Under Act. Specific provisions of this Act apply to registered companies notwithstanding any provisions in Acts of Parliament, or any instrument constituting or regulating the company.

Sec. 268 - Power of Court to Stay or Restrain Proceedings. Court can stay proceedings against company or contributory after presentation of petition for WU and before order is issued. Must be petitioned to do so by company creditor.

Sec. 269 - Suits Stayed on Winding Up Order. No suit can commence or proceed against a company or any contributory without leave of the court once a WU order is issued.

4. Part IX - Winding Up of Unregistered Company (Secs. 270-276)
Details on how, when, and why nonregistered companies may be wound up under this Act.

5. Part X - Companies Established Outside Bangladesh (Secs. 277-277E) Requirements for registration and operation of companies established outside Bangladesh which operate within Bangladesh.

6. Part XI - Supplemental (Secs. 278-289) - Legal Proceedings, Offenses, etc.

Sec. 280 - Court can require limited company to advance security for costs when it is plaintiff or petitioner in a suit, if there is reason to believe the company will not be able to pay defendant's costs.

Sec. 281 - Court can relieve director, manager or managing agent, officer or auditor of company from liability for negligence, default, breach of duty or breach of trust if it appears to the court that defendant acted honestly and reasonably and that it is equitable to do so.

Sec. 282 - Penalty for false statement.

Sec. 282A - Penalty for wrongful withholding of property.

Sec. 282B - Penalty for misapplication of securities by employers.

II. THE SOCIETIES REGISTRATION ACT (Act No. XXI of 1860 - an act for Registration of Literary, Scientific and Charitable Societies) as amended by The Societies Registration (Amendment) Ordinance, 1978, Ordinance XXXIII of 1978.

A. SOCIETIES FORMED BY MEMORANDUM OF ASSOCIATION AND REGISTRATION

Any seven (7) or more persons associated for literary, scientific or charitable purposes (explained below), may form a society under the Societies Registration Act. They must subscribe their names to a memorandum of Association (MOA) and file it with the Registrar of Joint-Stock Companies, Ministry of Commerce (Sec.1). Societies that may be registered include "societies established for the promotion of science, literature or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation and maintenance of libraries or reading rooms for the general public, or public museums and galleries of painting or other works of art, and collections of natural history, mechanical and philosophical inventions, instruments or designs."

B. MEMORANDUM OF ASSOCIATION

The MOA must contain the name and objects of the society, and the names, addresses and occupations of the governors, council, directors, committee or other governing body. The MOA must be certified by three or more members of the governing body, and must be filed with a copy of the society's rules and regulations (Sec. 2). Once these documents are filed, the society is officially registered (Sec. 3). A society's rules and regulations completely determine its organizational structure. The Act contains no sections governing their contents nor the contents of a society's byelaws. Thus, a very flexible organization can be formed under this Act.

C. MEMBERS AND GOVERNING BODY

A member is admitted to the society according to its rules and regulations. He or she must pay a subscription fee or sign a roll or list of members. He or she may not vote or in any way be considered a member if (s)he falls in arrears in payment of subscription fees for a period of 3 months or more (Sec. 15).

A society is governed by governors, council, directors, committee, trustees or any other body to whom the society's rules and regulations entrust its management (Sec. 16).¹⁶ Once a year, on or before the 14th day succeeding the day of the society's annual general meeting (or if no such meeting, in January), the society must file a list of the addresses and occupations of its governing body with the Registrar. Anyone can inspect documents filed with the Registrar (Sec. 19).

^{16/} The Societies Act contains no definitions of the term "governors", "council", "committee", or "trustees", although they are used throughout the Act to refer to a society's governing body.

D. VESTING OF SOCIETY PROPERTY

All society property, movable and immovable, if not vested in the trustees,¹⁷ is deemed to be vested in the society's governing body. It may be described as the property of the governing body in all legal proceedings (Sec. 5).

E. SUITS BY AND AGAINST SOCIETIES

Every society registered under the Act can sue or be sued in the name of its president, chairman, principal secretary or trustees, as is determined by its rules and regulations. If an appropriate body is not specified, a society may be sued in the name of such person as is appointed by the governing body for the occasion. In default of appointment, any above named officer may be sued (Sec. 6). If the named official dies or vacates his office, the suit continues in the name of or against the officer's successor (Sec. 7).

F. ENFORCEMENT OF JUDGMENT AGAINST SOCIETY/RECOVERY OF PENALTY ACCRUING UNDER BYELAW

Judgments are enforced against society property. The application for execution sets forth the fact of the judgment, and that the person against whom the judgment was entered participated in the suit on behalf of the society only (Sec. 8). Any penalty accruing for breach of a society rule or byelaw (made in accordance with the rules and regulations of the society or as adopted by 3/5 of the society's members at a meeting convened to adopt a byelaw) can be recovered in any court having jurisdiction where the named defendant resides or the society is situated (Sec. 9).

G. MEMBERS LIABLE TO BE SUED AS STRANGERS

A member may be sued by the society as a stranger if he fails to pay his required dues or takes, or damages, society property. If successful in defending himself however, he can recover adjudged costs from either the officer in whose name the suit was brought or from the society (Sec. 10). Members may be prosecuted under the Act for named crimes against the society, (such as embezzlement, theft, malicious destruction of property or forgery) and can be punished as if they were not members (Sec. 11).

H. PROCESS TO ALTER, EXTEND OR ABRIDGE SOCIETY PURPOSES

A society may alter, extend or abridge its purposes under Section 12 of the Act. If a governing body wants to change the society's purpose, or to merge with another society, it must submit the proposition to members in a written or printed report. A special meeting is then convened according to society rules. The report must be delivered or be sent by post to members ten days prior to the meeting. The proposition may be passed by a 3/5 vote of members present at the meeting (in person or by proxy). A similar vote must be achieved at a second meeting called for the same purpose one month following the first. The results of any change are then forwarded to the Registrar within 21 days of the event.

^{17/} The use of the term trustee is not consistent. It sometimes refers to the governing body (as in Sec. 16) and it is sometimes differentiated from the governing body (as above).

I. DISSOLUTION OF THE SOCIETY

Society members can vote to dissolve the society in a general meeting called for dissolution. A 3/5 membership vote is required (in person or by proxy). Upon such a vote, the society is dissolved forthwith or at the time then agreed upon.

1. Adjustment of Society Affairs

Disposal and settlement of property, claims and liabilities during dissolution are established by a society's rules and regulations. If no rules pertain, these matters are determined by the governing body. If the governing body cannot reach consensus, however, the adjustment of affairs is referred to the principal court of original civil jurisdiction in the district where the society's chief building is situated (Sec. 13).

2. Disposal of Property or Proceeds

No society member may receive any profits or other distribution upon dissolution. Any residue remaining after satisfaction of all debts is transferred to another society similar in nature. The recipient society is designated by the 3/5 vote of society members present at the meeting to dissolve or in default thereof by the court. This provision does not apply to a joint-stock society (any society founded or established by the contributions of shareholders) (Sec. 14).

3. Government Consent

A society registered under this Act must obtain government consent for dissolution if the government is a member of, contributor to, or in any way interested in the society.

III. THE PARTNERSHIP ACT (Act IX of 1932 as modified up to 1975)

The law of partnership in Bangladesh is based on the principles of agency and authority. Great emphasis is placed on the intention and the relation of the parties. Most provisions in this Act are qualified by the statement "subject to contract between the parties."

A. PARTNERSHIP DEFINED

A partnership is defined as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. The test of partnership is not whether a person receives a share of profits but whether the business is being carried on by him or by another on his account so that he becomes a principal. Persons who have entered into a partnership with one another are called individually "partners" and collectively a "firm".

The relation of partnership arises from contract and not from status (thus a Hindu family firm is not a partnership).¹⁸ The characteristic feature of a partnership is that the authority to act for the firm is conferred on every member by the partnership agreement. A mere sharing of business profits is not sufficient.

B. REGISTRATION OF THE PARTNERSHIP FIRM

To be properly registered, a partnership must file a statement with the Registrar of Firms containing (a) the firm name, (b) the principal place of business, (c) the names of other places the firm carries on business, (d) the date each partner joined the firm, (e) the names and addresses of the partners and (f) the duration of the firm. The statement must be signed by all partners or their specified agents (Sec. 58). The Registrar files this statement in the Register of Firms (Sec. 51). Subsequently, the firm must notify the Registrar of any (1) alteration in the firm's name or principal place of business, (2) the closing or opening of branches of the business, (3) any change in the names or addresses of partners, (4) any change in or dissolution of a firm or (5) the withdrawal of a partner from the firm (Secs. 60-63). Any fact, statement, or notice recorded in the Register of Firms is considered conclusive against the person who signed it (Sec. 68).

C. RELATIONS OF PARTNERS TO ONE ANOTHER

Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other and to render true accounts and full information of all things affecting the firm to any partner or his legal representative (Sec. 9). A partner must indemnify the firm for any loss caused to it by his fraud in the conduct of the firm's business (Sec. 10). The mutual rights and duties of partners are determined by contract, express or implied by course of dealing. Partners, by contract, may restrict the ability of a partner to carry on any business other than that of the partnership (Sec. 11).

^{18/} The rights and liabilities of the copartners in a joint Hindu family are governed by Hindu Law.

Subject to a contract between the partners: (a) partners are not entitled to remuneration, (b) they are entitled to share profits and losses equally, (c) the interest payable to a partner is payable out of profits, and (d) the firm must indemnify a partner for payments made and liabilities incurred by him if (i) in the ordinary and proper conduct of business and (ii) in emergencies, under a prudent person test. A partner must indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm (Sec. 13).

D. PROPERTY OF THE FIRM

Subject to a contract between the parties, the firm's property includes all property and rights and interest in property originally brought into the stock of the firm or acquired by purchase or otherwise, and includes the firm's "goodwill"¹⁹ (Sec. 14). This property is to be held and used by partners exclusively for the purposes of the business. Partners are responsible to the firm for any personal profits earned through any connection with the firm or its property (Secs. 15 and 16). The rights and duties of the partners remain the same after a change in the firm. A firm continues to function on the same terms (1) after the death of a partner or partners or (2) when the business continues after the expiration of the original contract (Sec. 17).

E. RELATIONS OF PARTNERS TO THIRD PARTIES

A partner acts as the firm's agent (Sec. 18). Generally, each partner has full authority (called implied authority) to deal with partnership property for partnership purposes and may by his actions bind the firm. Unless altered by contract, limits on this authority are contained in Section 19(2).²⁰ Any act by a partner within his implied authority on behalf of the firm binds it unless the third party involved knows of the restriction or does not believe the partner to be a partner (Sec. 20). An admission or representation made by a partner about the firm's affairs, if made in the ordinary course of business, is evidence against the firm (Sec. 23). Notice to a firm is effective if it is served upon a partner who habitually acts for the partnership (Sec. 24).

Every partner is jointly and severally liable for all acts of the firm done while he is a partner (Sec. 25). The firm is also liable (to the same extent as the partner) for any wrongful act or omission of a partner acting with the authority of all partners or in the ordinary course of business (Sec. 26). This liability extends under Section 27 to the misapplication by a partner or by the firm of the money or property of a third party. Under Section 28, a person who is not a partner can also be held liable to third parties as a partner if he acts as if he were a partner in specified ways.

^{19/} Defined as the "...whole advantage, whatever it may be, of the reputation and connection of the firm."

^{20/} A partner cannot (unless usage or custom of trade are otherwise): (a) submit a dispute to arbitration, (b) open a bank account in his own name for the firm, (c) compromise or relinquish any partnership claim or part of it, (d) withdraw a suit or proceeding, (e) admit any liability in any proceeding against the firm, (f) acquire immovable property belonging to the firm, or (g) enter into another partnership on behalf of the firm.

F. INCOMING AND OUTGOING PARTNERS

A partner may transfer, by sale or mortgage, his interest in the firm. His transferee, however, is only entitled to the transferor's share of profits. He acquires no right to interfere in the conduct of business.

The consent of all partners is required to introduce a new partner into the firm. The liability of the new partner arises from the date he is admitted as a partner (Sec. 31).

A partner may withdraw from the firm either by retirement (Sec. 32) or by expulsion (Sec. 33). The rights and liabilities of all parties upon withdrawal are detailed in those sections.

A partner automatically ceases to be a partner on the date he is adjudged an insolvent (Sec. 34). The firm may then be dissolved by agreement of the partners. The estate of a deceased partner is not liable for any acts done by the firm after his death (Sec. 35).

G. DISSOLUTION OF THE FIRM

A firm may be dissolved by agreement of all partners or in accordance with a contract between them (Sec. 50). A firm may compulsorily be dissolved due to insolvency or by the happening of any event that makes it unlawful for the partnership to carry on business (Sec. 41). It may also be dissolved by the occurrence of contingencies provided for by contract and will be treated as a partnership at will²¹ if it continues to carry on business beyond that point (Sec. 42). In certain circumstances, a partnership may be dissolved by the court upon suit by a partner (Sec. 44).

Partners remain liable to third parties for acts of their partners performed after dissolution, until public notice is given (Sec. 45). Notwithstanding dissolution and public notice, partners may bind the firm and their mutual rights and obligations continue as far as necessary to wind up the firm (Sec. 47).

Upon dissolution losses, including deficiencies of capital, are paid first out of profits, next out of capital, and lastly by the partners individually in the proportions to which they are entitled to share profits. The assets of a firm are used to pay the firm's debts to third parties and the residue to settle accounts between partners. The firm's property is applied first to satisfy firm debts and any residue to satisfy debts of an individual partner.

^{21/} Partnerships at will have special notice and other requirements under this Act.

IV. SUMMARY OF OTHER ACTS CONCERNING ORGANIZATION AND REGISTRATION OF CORPORATIONS OR ASSOCIATIONS

This is just a general listing of Acts that may be applicable to corporations or associations. Updates and revisions will be performed as needed.

A. THE REGISTRATION ACT, 1908 (93 Sections/pp.99-149 Vol. VII, Bangladesh Code).

Act consolidates enactments relating to registration of documents (broad range). Covers (1) office(s) of registration, (2) registerable (and optionally registerable) documents, (3) time, place, procedure, etc. of registration, (4) duties and powers of registering officers, etc., and (5) effects of registration and non-registration. Contains special section on wills.

B. THE VOLUNTARY SOCIAL WELFARE AGENCIES (REGISTRATION AND CONTROL) ORDINANCE, 1961 (19 Sections/pp. 324-331, Vol. XIV Pakistan Code 1961-62).

Ordinance requires registration of and provides control for voluntary social welfare agencies. Prohibits establishment or continuance without registration (after 1961) of any voluntary social welfare agency, defined as any organization, association or undertaking (1) established by persons of their own free will for the purpose of rendering welfare services in one or more of the fields mentioned in the Act's schedule, and (2) depending for its resources on public subscriptions, donations or government aid. The Act grants the government broad powers over creation, registration, operation and dissolution of voluntary social welfare agencies. Fields mentioned in the schedule: (i) child welfare, (ii) youth welfare, (iii) women's welfare, (iv) welfare of the physically and mentally handicapped, (v) family planning, (vi) recreational programs intended to keep people away from anti-social activities, (vii) social education, that is, education of adults aimed at developing a sense of civic responsibility, (viii) welfare and rehabilitation of released prisoners, (ix) welfare of juvenile delinquents, (x) welfare of the socially handicapped, (xi) welfare of the beggars and destitutes, (xii) welfare and rehabilitation of patients, (xiii) welfare of the aged and infirm, (xiv) training in social work, and (xv) coordination of social welfare agencies.

C. THE FOREIGN DONATIONS (VOLUNTARY ACTIVITIES) REGULATION ORDINANCE, 1978, (Ordinance No. XLVI of 1978), as amended by Ordinance No. XXXII of 1982, The Foreign Donations (Voluntary Activities) Regulation (Amendment) Ordinance, 1982.

Ordinance regulates the receipt and expenditure of foreign donations for voluntary activities. It provides that no person or organization may undertake or carry on any voluntary activity, nor receive or utilize any foreign donation for the purpose of undertaking or carrying on any voluntary activity, without prior approval of the Government. A voluntary activity is defined here as, "any activity undertaken or carried on partially or entirely with external assistance by any person or organization of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and development services and shall include any such activity as the government may, from time to time, specify to be a voluntary activity."

The ordinance requires registration of organizations with such authority and in such manner as the government shall require. An organization must show (1) the foreign donation received, (2) the source from which it was received and (3) the manner in which it has been used. Act does not apply to any Government organization. It gives the government broad powers of inspection over applicable organizations and imposes harsh penalties for failure to register or for submission of false or fraudulent information.

D. THE FOREIGN CONTRIBUTIONS (REGULATION) ORDINANCE, 1982
(Ordinance No. XXXI of 1982).

This ordinance regulates receipt of foreign contributions. It provides that no citizen of, or organization in, Bangladesh can receive any foreign contribution (defined as any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, made by any government, organization or citizen of a foreign State) without the prior permission of the government. In addition, no foreign government organization or citizen of a foreign State may bestow such a "foreign contribution" on any citizen of or organization in Bangladesh without prior permission of the Government.

E. CONTRACT ACT, 1872, (Vol. II, pp.76-139 Bangladesh Code, 238 Sections): Basic contract law, too complex to discuss in this report.

F. CO-OPERATIVE SOCIETIES ACT, 1912 (Act No. II of 1912, Vol. VI, Pakistan Code, pp. 56-71: 49 Sections); effective in Bangladesh under President's Order No. 48 of 1972.

A society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles may register under this Act, with or without limited liability. (This Act may be worth exploring further).

G. CO-OPERATIVE SOCIETIES (Repayment of Loans) Ordinance, 1960, (Pakistan Code, Vol. XIII, p. 502; Ord. No. XXXIV of 1960, effective in Bangladesh under President's Order No. 48 of 1972).

This ordinance provides for the repayment of certain unsecured loans or loans insufficiently secured (not secured by mortgage, pledge, hypothecation, or assignment of property of the borrower or his surety...), taken from co-operative banks or co-operative societies.

H. TRADE ORGANIZATIONS ORDINANCE, 1961, (Pakistan Code, Vol. XIV, 311-324, 23 sections, Ord. No. XLV of 1961); as amended by Ordinance No. XV of 1984.

Ordinance to provide for the regulation and control of trade organizations (defined in Sec. 12 as any association capable of (1) being formed as a limited company under the Companies Act, and (2) formed or intended to be formed with the object of promoting any trade, commerce or industry (or any group or class thereof, etc.)). Prohibits payment of any dividend to members. Organization may only use its profits or other income to achieve its purposes. An Organization must obtain a license from the government in order to register under this Act. Organizations may register as limited companies, but are not required to use "Ltd." as part of their names. Such an organization has all other rights and obligations of a limited company.

I. THE TRUST ACT, 1882 (96 Sections plus Schedules, pp. 52-87, Vol. III Bangladesh Code)

General statute covering creation of trusts, duties and liabilities of trustees, rights and powers of trustees, disabilities of trustees, rights and liabilities of beneficiaries, vacation of office of trustee, extinction of trusts, and obligations in the nature of trusts. Provisions appear quite similar to U.S. trust law. Broad in coverage but does not cover (1) rules of Muslim law as to Waqf, (2) the mutual relations of the members of an undivided family as determined by any customary or personal law (e.g., Hindu Law), (3) public or private religious or charitable endowments, or (4) trusts to distribute prizes taken in war among the captors (Chap 1, Sec.1).²²

J. THE CHARITABLE ENDOWMENTS ACT, 1890 (Act No. VI of 1890, Vol. III, Bangladesh Code, pp. 287-291).

An act to provide for the vesting and administration of property held in trust for charitable purposes (relief of poor, education, radical relief, and advancement of any other object of general public utility, but not any purpose that relates exclusively to religious teaching or worship). Under this Act, the Government may order that property held in a charitable trust be transferred to the "Treasurer of Charitable Endowment."

K. CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920 (Act No. XIV of 1920 Pakistan Code, Vol. VII, p. 57, 12 sections); applied to Bangladesh under Act No. LIII, 1974.

An act to provide more effective control over the administration of charitable and religious trusts. It provides means to obtain information about such trusts through the courts and allows trustees to seek direction from the court.

L. RELIGIOUS SOCIETIES ACT, 1880 (Act No. I of 1880, Bangladesh Code Vol. II, pp. 368-372, 9 sections plus schedules).

Act confers certain powers on religious societies. It covers how religious societies can hold property, be dissolved, and how their affairs may be settled (does not apply to Hindus, Mohammadans or Buddhists). Largely concerned with providing new trustees for religious trust of property.

^{22/} In discussion, Barrister Nazmul Huda indicated that public trusts are created by government ordinance with appropriate publication in a Gazette. The constitution grants the government the power to create such trusts, but there is no general law to govern them. Mr. Huda also indicated that charitable trusts are often organized under Islamic law and that family firms carry on business under trade licenses issued by municipalities or other government bodies. They are registered as "proprietorship firms" (briefcase traders) and can be proceeded against as a firm or individually against the family members.