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LEGAL OPTIONS FOR INDIGENIZATION OF FOREIGN NGO PROJECTS

Fida M. Kamal
Barrister at Law

Legal Options for Indigenization of Foreign NGO Project

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Prepared by

Fida M. Kamal

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Preface

PACT Bangladesh/PRIP and Lutheran World Service/RDRS are both intending to become Bangladeshi organisations. Before doing so they took the advice of a lawyer about the options that existed for registering themselves as Bangladeshi organisations.

Having received the legal opinion, it seemed to them both that others may well be interested in the information that the lawyer had assembled. They have therefore decided to make the document available to other organisations which may be interested in local incorporation in Bangladesh, and to funding agencies which may be interested in helping them to do so. The opinions expressed here are, however, the lawyer's own.

Whereas the initial impetus for the study was the need to know the options for a foreign organisation wanting to incorporate locally, the information is also useful for a Bangladeshi NGO which is looking for the most suitable kind of incorporation for itself.

PACT/PRIP and RDRS thus offer this document as a help to the NGO Sector to help them avail themselves of the information it contains, and to help them make the best choices of the legal options available to Bangladeshi non-profit and non-government organisations. The NGO Bureau from time to time modifies its rules and regulations through Circulars and these may affect some of the detail of Barr. Kamal's document .

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LEGAL OPTIONS FOR INDIGENIZATION OF FOREIGN NGO PROJECTS

INTRODUCTION

This paper has been commissioned for the reference of the Private Rural Initiative Project (PRIP) under the Private Agencies Collaborating Together (PACT) and Rangpur Dinajpur Rural Services (RDRS) - under Lutheran World Service (LWS), two foreign agencies working in the field of development in Bangladesh. Reference is to be specifically for the purpose of indigenizing the organisations into the local community and research will be made keeping in view the options of financial sustainability within Bangladesh.

In the process of apprising the range of legal and financial options open to PRIP/PACT and RDRS/LWS in their desire to become Bangladeshi organisations, this paper will cover the following:

- The various legal options for the registration of a non-profit, non-government development agency in Bangladesh involved in the kind of work undertaken by PRIP/PACT and RDRS/LWS;
- The specific legislation they would fall under; including the option and possibilities for establishing an endowed foundation and creating a specific framework for it;
- The various options open to attract funds under the recommended legislation ;
- The procedure to be followed in applying under that legislation; including costs; money, time, and labour;
- The different needs of both PRIP/PACT and RDRS/LWS in customising recommendations suited to their separate cases.

LEGAL OPTIONS FOR THE REGISTRATION OF NGOS

Since PRIP/PACT and RDRS/LWS are both Non Government Organisations (NGOs) this study will examine the legal and constitutional framework within which the NGOs in Bangladesh operate. In addition it will also explore the various options for registration with a view to the indigenization of the two abovementioned NGOs.

The Constitutional and Statutory Framework

The constitution of the People's Republic of Bangladesh enshrines the Fundamental Rights. The Constitution protects and guarantees freedom of association (Article 36), freedom of movement (Article 36), freedom of assembly (Article 37), freedom of thought and conscience (Article 39), freedom of occupation or profession (Article 40), Although these protections and guarantees are available to the citizens of Bangladesh, the right to equality before law (Article 27), the right to protection of law (Article 31) and the right to life and liberty (Article 32) are applicable to all persons in Bangladesh. Some of the Fundamental Rights are subject to reasonable restrictions imposed by law. In the case

of freedom of association, such restriction may be imposed only in the interests of morality or public order.

There is no legal definition of the term "NGO" in any of the statutes in force in Bangladesh. However the commonly accepted view is that an NGO is a non-profit voluntary organisation or association of persons which may or may not be registered for the purpose of acquiring a legal character, having a distinct entity/status. In other words, NGOs which work for the welfare, benefit and/or development of the community or a certain section of the society may or may not be a juristic person.

Constitutional documents of at least six NGOs other than PRIP/PACT and RDRS/LWS were examined. They are; the Bangladesh Rural Advancement Committee (BRAC); the Friends in Village Development, Bangladesh (FIVDB); the Goroashasthaya Kendra; the Grameen Bank; the North South University, and the Palli Karma Sahayak Foundation. By the ease with which they and a considerable number of other NGOs operate in Bangladesh it would appear that the legal and administrative environment appears to be an enabling ambience which allows the development NGOs to operate effectively and with reasonable independence from government controls.

In actual fact, although there is no legally recognised term for NGOs and therefore no specific law regarding the organisations, there are in existence many statutory and administrative restrictions imposed upon NGOs. These render the organisations to be accountable to the Donors, the Government, and their constituents. The restrictions are not with regard to their legal form but rather with their mode and manner of operation and to a greater extent, their funding arrangements. With the increasing utilisation of NGOs by the donors for implementation of donor designed programs and projects, and the consequent utilisation of foreign donations by NGOs, the Government instituted approval procedures for NGO projects. Such restrictions and constraints are increasingly becoming more complex with the increasing professionalization in the management and administration of NGOs.

Government Policy and Administration

The Bangladesh government has encouraged NGOs by stating that projects within the National Development Plan are as far as possible to be carried out through NGOs. Administration at all levels have been directed to facilitate NGO activities. This has involved establishing the NGO Affairs Bureau to centralize organisation of NGOs which receive external funds. But NGO activities are being encouraged only where they are carried out within the parameters and framework of law and government rules and regulations. It is carefully observed that government policies are not contravened or that national security interests are not prejudiced. While encouraging a degree of relative autonomy the Government has nevertheless, under existing legislations, retained its powers of ultimate sanction, registrations and approvals of NGOs, their projects, personnel and funds.

In 1990 that the Government overhauled the administrative machinery for NGO activities and, in response to a collective demand raised by the NGOs, established the NGO Affairs Bureau. It is now directly under the Prime Minister's Secretariat and housed in a separate building outside the Secretariat, so as to allow ease of access. The Bureau provides a one-stop service for the registration of NGOs which are, or

intend to be in receipt of external funds, and the approval of their projects, funds and appointments of personnel. All project proposals are now to be approved by the NGO Affairs Bureau, in consultation with the relevant Ministries. NGOs may not undertake any activity except within the terms of projects approved by the NGO Affairs Bureau.

While the Director of Social Welfare does deal with the registration of NGOs involved in certain voluntary social welfare activities under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance (Ordinance No.XLVI of 1961), the NGO Affairs Bureau is responsible for all matters falling within the terms of the Foreign Donations (Voluntary Activities) Regulation Ordinance (Ordinance No.XLVI of 1978) and the Foreign Contributions (Regulation) Ordinance 1982 (Ordinance No.XXXI of 1982). All appointments of foreign personnel are subject to clearance by the NGO Affairs Bureau and the prior approval of the Home Ministry.

The consent of the Home Ministry remains mandatory before registration of an NGO. The process of registration should be completed within a period of 90 days from the date of application. The authorities will in urgent cases draw the attention of the Home Ministry to the need to expedite their approval. No contracts or understandings are to be entered into between any Government Organisation and an NGO pending registration. Such registration shall be valid for a period of five years.

The NGO Affairs Bureau deals with the registration of NGOs for the purpose of obtaining foreign donations, the approval of foreign donations and of foreign contributions. NGOs may accept foreign funds for any incidental expenses arising with regard to the operation of the various institutions/physical structures which may be created as a result of the implementation of projects, e.g. educational institutions, hospitals, training workshops, etc. It has been suggested by the Government that NGOs should gradually develop their own sources of income to cover the administrative costs of such institutions, on a similar principle to the allocation of governmental expenditure between the development and revenue budgets.

Government officers may hold honorary posts in religious, social or charitable institutions under the Government Servant (Conduct) Rules, 1979. This provision had been intended to encourage participation in welfare activities. However with the increasing professionalization of NGOs and in particular given their dependence on foreign assistance, it is no longer thought appropriate by the Government for its officers to be involved in such activities. Indeed, it has been proposed that the above Rules should be amended to require officials of Government, semi-government and autonomous institutions to obtain Government permission for undertaking activities in any foreign funded NGO.

More stringent legal checks relate to the employment of foreign nationals by NGOs. All foreign nationals have to submit information regarding their nationality, remuneration, period of employment to the Home Ministry and the Department of Social Welfare. No foreign national may be employed by any NGO without the prior clearance from both of these agencies. Also, immigration requirements act as an effective check on the over-involvement of foreign nationals in NGO activities. Leave to remain in the country may be withdrawn at any time on charge of anti-national and/or anti-state activities. The traditional bogeyman of "preaching, proselytising and conversion" is called up to

explain the increasing inflexibility in Governmental attitudes to sanctioning new appointments or the extension of the visas of foreign missionaries.

The Legal Environment

For the purpose of taking on charitable, welfare or development activities a group of people may organise themselves into an association and regulate their conduct and affairs in accordance with their agreed and subscribed constitutional documents. If such a group of persons undertake their charitable, welfare, or development activities on a voluntary basis then registration for the purpose of incorporation is not compulsory under any of the statutes. Voluntary activities may be undertaken by any group(s) or person(s) either incorporated and registered as a corporate body or by any group which is an unincorporated association of persons.

The vast majority of development NGOs in Bangladesh are in fact registered as voluntary Social Welfare agencies. Although they do not require legal entities, they have to register with the Directorate of Social Welfare under the provisions of the Voluntary Social Welfare Agencies(Registration and Control) Ordinance,1961, if they are " an organisation, association or undertaking established by persons of their own free will for the purpose of rendering welfare services in any one or more of the fields mentioned in the Schedule and depending for its resources on public subscriptions, donations or Government aid." The Schedule contains the following:

- (i) Child welfare
- (ii) Youth welfare
- (iii) Women's welfare
- (iv) Welfare of the physically and mentally handicapped
- (v) Family planning
- (vi) Recreational programmes intended to keep people away from anti-social activities
- (vii) Social education; education 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
- (xv) Co-ordination of social welfare agencies

If any NGO does not engage in the above welfare activities or if it does not receive subscriptions, donations or Government aid, it escapes the net cast by the Ordinance No.XLVI of 1961.The NGO may then be registered under the Societies Registration Act,1860 or any other appropriate enactment.

Recent trends regarding registration requirement of development NGOs.

During the eighties and nineties the apparent major concern of the Bangladesh Government regarding the NGOs have been the disbursement and utilization of the inflow of foreign assistance into the country. As donors increasingly began to utilize

NGOs as a channel for development assistance, laws were enacted to regulate the receipt of foreign donations for welfare activities, among them;

The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 [as amended by Ordinance No. XXXII of 1982] (FDO);

The Foreign Donations (Voluntary Activities) Regulations Rules, 1978 [as amended by S.R.O. 352-1/82 dated 6.10.1982] (FDR);

The Foreign Contributions (Regulation) Ordinance, 1982 (FCO);

The last of the above three enactments imposed further controls on the receipts of foreign funds by prohibiting receipts of foreign contributions without Government permission. That legislation contains penal provisions for violating its law.

The FDO and FCO are regulatory legislations which require registration of any person, whether incorporated or not, who is engaged in or undertakes voluntary work with foreign donation/contribution as defined in these enactments. Foreign donations are defined widely to include donations both by any foreign government, organisation or citizen and also by any Bangladeshi citizen living or working abroad, excluding in the latter case, specified donations for charity. Donations in cash or in kind and especially air tickets for journey abroad may not be presented to any citizen or organisation in Bangladesh without Government permission.) These legislations provide for furnishing of information in the prescribed forms from time to time and are purely regulatory.

Thus it is mandatory for the majority of NGOs to be registered under both the 1961 and the 1978 Ordinance mentioned above, and also to comply with the FCO 1982, although none of these statutes require or provide for legal status as a juristic person.

OPTIONS FOR REGISTRATION

Apart from the Ordinance No. XLVI of 1961, the FDO and FCO, all of which are purely regulatory enactments, other legislations - including the Societies Registration Act - in force in Bangladesh, which pertain to the NGO indigenization issue are the following :

The Societies Registration Act, 1860 (Act No. XXI of 1860)

This is a facilitative statute which permits societies established and registered thereunder to own property and otherwise function as juristic persons having quasi-legal entity. Suits by and against the society may be instituted in the name of the president, chairman or principal officer of the society. There are provisions for enforcement of judgement and for dissolution of the society, but members of the society are not allowed to receive any profit. On winding up or liquidation, any property remaining in excess after meeting all liabilities of the society may be distributed to another society (having similar objections) as may be determined by 3/5th of the society members.

The Trusts Act, 1882 (Act No. II of 1882)

Under this act a trust, which may be called a foundation or by any other appropriate nomenclature, is an obligation annexed to the ownership of property (both moveable and immoveable), and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. The Trust Act, with a component for Public Trusts, provides legal cover for the private acts of public charity and allows the creators of the trust tremendous flexibility in how to manage, operate and realise the objects of the trust.

A charitable trust may be created by the author of the trust, naming several trustees who will administer the trust according to the terms and conditions set out in the trust deed in order to achieve the objects of the trust. Registration of a trust deed is optional under the Registration Act, 1908. However, registration of the trust deed as a document will provide greater formality and sanctity. The Registrar will register the document setting up the trust in the circumstances there will be no requirement of "scrutiny and approval" by the Registration Authority. The registration in this case will be a registration of the document and not that of the organisation. There is no requirement of membership of the trust and no requirement of a minimum or a maximum number of trustees who will be vested with the management of the trust. In this regard there is greater flexibility of organisation and management. The trustees however cannot act in "a conflict of interest" situation. They may not also be beneficiaries of the trust unless the trust is a private trust and the beneficiaries are provided for specifically therein.

The advantages of registration of a trust as opposed to other types of registration for an NGO are manifest. There is no interference from any other outside body. The management and administration of the trust are quite independent and autonomous, so long as the trustees are seen to be acting within the terms and conditions of the trust deed. All through this the trust remains an unincorporated amalgam of persons; in other words it is not a juristic person.

The Charitable Endowments Act, 1890 (Act No. VI of 1890)

This act makes provision for the vesting and administration of property held in trust for charitable purposes. The government, under this enactment, is empowered to appoint an officer called the Treasurer of Charitable Endowments, who may be vested with the property of the trust and also the administration and management of the trust in accordance with the schemes for administration thereof as may be applied for by persons interested in the trust. It may be pointed out that the legal provisions under this enactment find expression in the statute book only.

The Companies Act, 1913 (Act No. VII of 1913)

There may be various kinds of companies; public, private, wholly owned government, joint venture, foreign company, limited by shares, limited by guarantee, non-profit or government licensed company.

Under the provisions of the Companies Act any number of persons may join hands keeping their liability limited to the amount of shares agreed to be taken by each

member. In the case of a private limited company, however, the number of persons who may join hands to form a company is limited as follows: a minimum of two and a maximum of fifty members. A share, however, may be held by one person or jointly by two or more. For a public company the minimum number is seven members but there is no limitation regarding the maximum number. In a private limited company the right to transfer shares is restricted, membership is limited to fifty members and there is a prohibition for invitation to the public to subscribe for shares in the company. Companies may also be limited by guarantee under the provisions of Section 27 of the Act. Guarantee companies are more suitable for clubs, societies and association. Non-profit companies may be incorporated after obtaining a license from the government under the provisions of Section 26 of the Act. This provision dispenses with the obligation to use the word 'limited' as the last word in the company name. This type of company is generally formed for charitable and other welfare purposes. A non-profit company may conveniently be incorporated as a company limited by guarantee under Sections 26 and 27 of the Act. The Memorandum of Association prohibits the payment of any dividend to its members - as in the case of the Kumudini Welfare Trust of Bengal and the Palli Karma Sahayak Foundation.

The Charitable and Religious Trust Act, 1920 (Act No. XIV of 1920)

This Act is largely procedural. It lays down provisions for making applications enabling the trustees to obtain directions from court. There are also provisions which facilitate obtaining of information regarding trusts created for public purposes of a charitable or religious nature.

The Co-operative Societies Ordinance 1984 (Ordinance No.I of 1985)

The registration of a co-operative society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings, and to do all the things necessary for the purposes for which it is constituted.

A co-operative society is a form of organisation where persons join together for common economic need. Producers association like the Bangladesh Milk Producers' Co-operative Union Limited - the producers of Milk Vita - or the Kotwali Thana Central Co-operative Association Ltd., of Comilla, which has over the years served as a model co-operative farm, are examples. These were formed with the objective of producing and/or disposing of goods as the collective property of or the collective disposal of labours of the co-operative society members. The consumers society are formed with the objective of obtaining and distributing goods or performing services. Co-operative banks or credit societies, housing societies and multi-purpose co-operatives are other classes of co-operative societies that can be formed. Any ten or more adults may form a co-operative Society.

Most of these legislations are enabling enactments which provide for registration resulting in the formation of a juristic person or conferring a quasi-legal status to the association of persons, Registration under these legal regimes require 1) well - defined objects in a legal document known as Memorandum of Association and 2) the management and administrative functioning of the organisations set out and clearly

stated in either Articles of Association (in the case of a Company) or Rules and Regulations (in the case of Societies) and Bye-Laws (in the case of Co-operative Societies). For the registration of a Trust a Trust Deed - a legal document naming the Trustees, defining the objects of the Trust and providing for the management and administration of the Trust property - is required to be registered as a document in the Office of the District or the Sub-Registrar, under the Registration Department of the Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh. There are a number of factors which an NGO must consider before it decides which form of registration is most suitable for it. An NGO will have to see if the objectives and activities it intends to pursue will be realistic within the ambit of the form of registration it is considering. Under most forms of registration, the NGO have some basic obligations with regard to the registration or other relevant authority. The NGO should consider if it is able and willing to fulfill these obligations before it registers. Each type of registration offer some benefits. The NGO has to be sure that these benefits are valuable to it, and whether there is balance between the benefits to be derived and the obligations and accountability due to the registration authorities.

Many of the forms of registration have some minimum requirement with regard to members and lay down rules for membership. Most of the forms have some basic rules for the functioning of the organisation while some of the qualifications for registration also require that there be a minimum number of persons for managing the affairs of the organization.

The trend of seeking registration as NGOs has much to do with current trends in the development sector. Increasingly, government and international donor agencies pressurize NGOs to seek registration under one or more of the aforementioned available laws in order to avail themselves of the financial assistance they are offered. Many donors also make technical assistance, e.g. training and equipment, and consultancies conditional upon registration.

Many non-registered NGOs have functioned well and achieved commendable goals, but often they are called upon to explain and prove their legal status.

Many NGOs apply for registration under a particular law because one or more of their members know of it, either through previous experience - like being involved in the registration of another NGO - or because they know of the particular registration office and/or law. Many others do so on the advice of friends, another NGO or a lawyer. Sometimes an NGO may end up applying for registration under one law, when another one may have been more appropriate.

Existing NGO's use of these Options

Successful NGO's constitution documents were examined and their chosen legal registrations were called. The are listed as:

The Bangladesh Rural Advancement Committee (BRAC), registered as a society under the Societies Registration Act, 1860; although some of its projects, like the printing press and the garments factory, are commercial organisations set up as private limited companies.

Friends in Village Development, Bangladesh (FIVDB), registered as a society under the Societies Registration Act, 1860. The Gonoshastha Kendra, a trust created by a Trust Deed registered as a document with the District Registrar, Dhaka.

The Grameen Bank, a statutory corporation set up by the Grameen Bank Ordinance, 1983 (Ordinance No. XLVI of 1983).

The North South University, a project of the Foundation for Promotion of Education and Research, registered as a society under the Societies Registration Act, 1860.

The Palli Karma-Sahayak Foundation, a licensed non-profit company limited by guarantee registered under the provisions of Sections 26 and 27 of the Companies Act, 1913.

RECOMMENDATIONS FOR THE REGISTRATION OF PRIP/PACT AND RDRS/LWS AS INDIGENOUS ORGANISATIONS IN BANGLADESH

As NGOs involved in social welfare, receiving foreign donations, PRIP/PACT and RDRS/LWS will already have been registered under the Ordinance No. XLV of 1961 and their funds would have been channeled through the FDO of 1978 and FCO of 1982. Registration of an organisation accepting foreign aid is all dependent on these three laws. The amendment of the constitution of an NGO is conditional partly on its legal form, e.g. whether it is a registered society or a limited company. Over and above this, however, an NGO registered as a Voluntary Social Welfare Agency, as provided by the Ordinance No. XLVI of 1961, may amend its constitution only with the approval of the Registering Authority.

Since the Ordinance No. XLVI of 1961, the FDO and the FCO are purely regulatory measures implemented to satisfy the requirements of the Government mechanism, NGOs wishing to indigenise themselves in Bangladesh may avail themselves of one of several other enactments which provide registration and the consequent provision for legal character/status. The registered person is then considered a distinct and separate legal entity, independent of the members making up the organisation. Thus an artificial juristic person is created by virtue of registration under these legislations.

Interested NGOs may wish to apply for registration under one of the following legislations:

The Societies Registration Act of 1860: societies registered under this Act acquire a quasi-legal status. Although the registered society does not have a corporate legal persons similar to a company registered and incorporated under the Companies Act, 1913, for many purposes the registered society, by virtue of the registration, is enabled to sue in the name of the person as shall be determined by the Rules and Regulations of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body. The property, both moveable and immovable, belonging to the Society registered under this Act, if not vested in trustees shall be to be vested for the time being in the governing body of such society. In these matters the Act has made provisions for improving the legal conditions of the societies registered thereunder.

The Trust Act, 1882: a public charitable trust is a trust which is not created for the benefit of specific individuals, but for the benefit of society generally or for certain sections of the society. Although a trust will not set up an organisation and will not give it a legal entity, a trust is a legal mechanism whereby some property is pledged to benefit persons or a defined group of persons. Only the declaration of this intent in the trust deed, a document - is registered. A trust is an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another. It is in effect the gift of property to a person or institution through the intervention of another. The person who reposes the confidence is the creator or author of the trust, the person in whom the confidence is reposed is called the trustee and the person for whose benefit the trust is created is called the beneficiary. A trust may be created for any lawful purpose. It can be revocable or irrevocable. The main benefit to be derived from this type of registration apart from legal status, is the great flexibility inherent in its shape and functioning. Those who wish to set up a trust are independent in choosing a desirable way to manage, operate and realise the objects of the trust and there are no requirements of eligibility, except being an adult.

The Companies Act, 1913: a non-profit company may be registered under Section 26 of this Act. With a Certificate of Incorporation issued by the Registrar, the legal status of the association becomes that of a body corporate, having perpetual succession and a common seal. It is empowered to hold property and enter into contracts as well as to institute and defend suits and other legal proceedings. Any association formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful objects may be registered as a non-profit company with limited liability under the Section 26 provided that 1) it applies or intend to apply its profits, if any, or other income in promoting its objects and 2) it prohibits the payment of any dividend to its members.

The Co-operative Societies Ordinance, 1984: registration under this Ordinance provides for a form of organisation where persons join together voluntarily on a basis of equality because of a common economic need. A society which has as its objects the promotion of the common interests of its members in accordance with co-operative principles or a society established with the object of facilitating the operation of such a society including a society formed by the division of an existing co-operative society or amalgamation of existing co-operative societies, may be registered under this Ordinance with or without limited liability. The registration of a co-operative society shall render it to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings (much like a registered company incorporated under the Companies Act, 1913) and to do all things necessary for the purposes for which the co-operative society was registered. Although co-operative societies are profit-making ventures much like many businesses, they may be classified as NGOs because of their concern for equality in the distribution of profits and because theoretically they support workers. The following classes of co-operative societies may be registered under the Ordinance:

- i) Agricultural co-operative society
- ii) Auto-drivers co-operative society

- iii) Bittaheen samabaya samity - co-operative society of assetless persons
- iv) Central co-operative bank
- v) Consumers co-operative society
- vi) Credit co-operative society
- vii) Employees co-operative
- viii) Fishermen co-operative society
- ix) General purposes co-operative society
- x) Hawkers co-operative society
- xi) Housing co-operative society
- xii) Industrial co-operative society
- xiii) Labourers co-operative society
- xiv) Landless co-operative society
- xv) Krishi samabaya samity - agricultural co-operative society
- xvi) Mahila samabaya samity - women's co-operative society
- xvii) Mahila bittaheen samabaya samity - co-operative society of assetless women
- xviii) Multi-purpose co-operative society
- xix) Mutual benefit co-operative society
- xx) National co-operative bank
- xxi) Non-agricultural co-operative society
- xxii) Potters co-operative society
- xxiii) Production and sale co-operative society
- xxiv) Purchase and sale co-operative society
- xxv) Thrift and savings co-operative society
- xxvi) Transport co-operative society
- xxvii) Weavers co-operative society

The procedures for registration, including the minimum and specific requirements, for the various legislations explained above are given in the following Registration Procedures.

REGISTRATION PROCEDURES

I. Registration as a Voluntary Social Welfare Agency (under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961

A voluntary social welfare agency means an organisation, association or undertaking established by persons of their own free will for the purpose of rendering welfare services in any one or more of the following fields and depending for its resources on public subscriptions, donations or government aid:

- + child welfare
- + youth welfare
- + women's welfare
- + welfare of the physically and mentally handicapped
- + family planning
- + recreational programmes intended to keep people away from anti-social activities
- + social education, that is, education of adults aimed at developing a sense of civic responsibilities

- + welfare and rehabilitation of released prisoners
- + welfare of juvenile delinquents
- + welfare of the socially handicapped
- + welfare of beggars and the destitute
- + welfare and rehabilitation of patients
- + welfare of the aged and infirm
- + training in social work
- + co-ordination of social welfare agencies

Although usually NGOs with one or more of the above aims are registered under this Ordinance, sometimes other categories of work are also admissible as long as it can broadly register itself under the Ordinance, and its aims must be broadly defined as "social welfare".

Membership/Management Committee

The minimum number of members an NGO must have to apply for registration as a voluntary social welfare agency is 7. It must also have a minimum of 7 or a maximum of 21 persons on its Management Committee, following a model set by the social welfare department. Furthermore, a member of a social welfare agency must be a person:

- who is above 18 years of age
- who resides in the area of operation of the organisation
- who has a reputable character and a sound mind
- who agrees to abide by the constitution and bye-laws of the organisation and supports its aims and objectives
- who agrees to pay the prescribed fees of the organisation
- who is not an employee of the organisation

Procedure for Registration

If the NGO does not want to conform to stereotyped welfare work, it is advisable to seek registration elsewhere. If it wants to avail of support from the Government (Social Welfare Department/Ministry) then the organisation must register under this Ordinance. The registration authority for a voluntary social welfare agency is the Directorate of Social Welfare, Government of Bangladesh. The applicant should go to the office of the Directorate of Social Welfare, situated at 59, Purana Paltan Line, Dhaka. The applicant can also approach the social welfare officers in their respective locality outside Dhaka. The applicant may approach the Directorate either directly or through a lawyer.

When the applicant goes for information about registration requirements and procedures to the Directorate, any of the officials can give the applicant the relevant information. But it is not necessary to go to the Directorate. The social welfare officers in each district can provide them with the necessary information. The departmental clerks are the best-informed people in this respect and often it is they, rather than the officials,

who provide the written and oral guidelines. Very rarely is initial contact made with mid-level officers - the field officers and inspectors - who process the application later, and on whose reports, decisions on registration are usually taken. It may be useful for the NGO seeking registration to ask to see the inspectors for pertinent details, but this may not always be possible.

The officers will give the applicant all the information and details required by him orally and will also inform him that the Department has prescribed application forms, guidelines for registration which list the documentation required, as well as a model constitution. The model constitution can be obtained from the social welfare officer of the district. If there is still any confusion after obtaining these documents, further help or advice may be obtained from the social welfare officers at the offices. The guidelines (containing the model constitution and other details) are available in Bangla.

Sometimes the officers of the main office may run out of copies. In that case some other NGO may be approached for their copy. Oral guidelines alone are usually not enough for completing the formalities.

Basically, the social welfare officer will inform the applicant that he/she is required to complete and submit the following documents :

- Five typed copies of the application for registration of a voluntary social welfare agency on prescribed application forms
- Five typed copies of the constitution of the agency
- Copies of the minutes of the meeting under which the group of persons have decided to form the agency
- Brief statement about the agency, its activities and plans, and its personnel.

These documents are not difficult to prepare if the written guidelines are used. However, non-familiarity with legal terms may require that the people involved in the preparation seek help from other NGOs or from lawyers or from the officials of the Social Welfare Department.

To complete the requirements, the applicant will have to:

- Get a copy of Form B Schedule II from the Social Welfare Officers of the Directorate of Social Welfare and prepare five copies of an application for registration accordingly. The application must contain :
 - + name of the agency
 - + address of the agency
 - + aims and objectives
 - + area of operation
 - + plan of operation
 - + how proposed to be financed
 - + names, occupations and addresses of founder members
 - + names of the banks in which funds will be kept

The application must be certified to be correct, signed by all the founder members and witnessed by two persons

Prepare a draft of the constitution of the agency either by the applicant or through a lawyer. If the constitution is being prepared by the applicant, he/she should refer to the model constitution or see the model of some recently registered agency. The constitution should contain the following provisions :

- + name of the agency
 - + area of operation
 - + address of the principal office
 - + aims and objectives
 - + membership
 - + branches
 - + organisational structure
 - + meetings
 - + financial administration
 - + amendment of constitution
- Prepare five copies of the constitution and get them duly signed and stamped by the president or secretary of the association.
 - Prepare minutes of the meeting at which it was decided that an agency would be formed and prepare five copies for submission.
 - Prepare a brief statement giving the following information:
 - + accomodation for the services to be rendered
 - + list of qualified persons working in the agency with names and qualifications
 - + sources of income
 - + future plan in brief
 - + details of equipment and records
 - + statement of activities undertaken

The application when completed should be submitted to the office of the Directorate or anyone of the district offices.

When the applicant has completed the formalities and submitted the application, he/she will have to wait till intimation from the department. This is likely to take up to one month. If there is some problem or objection, the applicant will have to meet the concerned officer to see how this can be overcome. Corrections and amendments may have to be made. Sometimes this can take many weeks or months.

If the documents are in order, the applicant will be accordingly informed and will then contact the Social Welfare Officer to arrange for a site inspection of the agency's office. The site inspection is usually carried out by a social welfare officer. Sometimes, the officer may give advice before hand to the NGO being visited so that they may have the relevant requirements fulfilled.

The following are checked during the inspection:

- No objection certificate from landlord, if the office premises rented
- The 'official' set-up of the office
- Correct address
- Correct declaration of activities and aims
- Genuine members
- Sometimes more than one visit may be made, or until the officer is satisfied.

After the site inspection and office formalities, a complete inspection report is sent to the Director Social Welfare who approves it after which a Certificate of Registration is prepared. The applicant is then notified to come and collect the Certificate of Registration.

Expenses

Fee for registration under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961, is Tk.25.00.

Costs associated with the preparation of documents for this registration are generally low and may include some or all the following:

- Typing or wordprocessing
- Photocopying
- Paper and Stationery
- Cost of hiring a lawyer or a consultant

Legal Status

Registration under this Ordinance does not confer any legal status to the organisation. However all organisations undertaking voluntary social welfare activity and wishing to avail Government grants must register under this Ordinance.

Functioning/Obligations

There are certain basic rules that a voluntary social welfare agency is legally bound to observe when it is registered under this Ordinance. These may be called the obligations of the NGO to the registration authority:

- Every registered agency must:
 - + maintain audited accounts
 - + publish its annual report and audited accounts for general information
 - + pay all money received by it into a separate account kept in its name at such bank or banks as may be approved by the registration authority. All nationalized banks are approved by the Department of Social Welfare.

- The agency should also maintain the following records:
 - + a cash book entering all amounts paid or received supported by necessary vouchers;
 - + a ledger containing all accounts;
 - + an income and expenditure account to be audited each financial year by a chartered accountant or auditor approved by the Registration Authority, and submitted to the Authority within six months of the close of the financial year;
 - + a membership book with the names and addresses of the members;
 - + a minutes book containing records of the meetings of the agency;
 - + every agency must publish an annual report at the end of each financial year containing the following details:
 - general management
 - nature and extent of services rendered in detail
 - programme for the next year
 - audited accounts

Every agency must:

- Submit its annual report and audited accounts to the registration authority and publish the same for general information
- Furnish to the registration authority such particulars with regard to accounts and other records as may from time to time be required by the registration authority
- Submit a copy of the annual report to the registration authority immediately on publication
- Communicate any change of address of the agency to the registration authority
- Obtain the approval of the registration authority before amending its constitution
- The registration authority may at all reasonable times inspect the books of accounts and other records of the agency, the securities, cash and other properties held by the agency and all related documents.

Winding up and dissolution

If the registration authority has reason to believe that a registered agency is acting in contravention of its constitution or contrary to the ordinance or rules, or in a manner prejudicial to the interests of the public, it may, after giving the agency an opportunity to be heard, make a report to the government and the government, if it considers it proper, may dissolve the agency with effect from a specified date.

A registered agency cannot be dissolved by the governing body. But if more than three-fifths of the members of an agency apply to the Government for dissolution of the agency, the Government may order such dissolution from a specified date if it considers it proper to do so.

Suspension or Dissolution of governing body

If, after inquiry, the registration authority believes that an agency has shown irregularity in respect of its funds or maladministration of its affairs or failed to comply with the provisions of the Ordinance, it may suspend the governing body and appoint an administrator or caretaker body in its place. This suspension order will be placed before a Board constituted by the Government which can order dissolution or re-constitution of the governing body. The dissolved governing body can appeal against such an order within 30 days.

Benefits of Registration under this Ordinance

NGOs receive Government funds after registration. Registration under this Ordinance is, however, compulsory for any organisation undertaking voluntary social welfare activity.

II. Registration as a Society under the Societies Registration Act of 1860

The following types of societies may be registered under this Act:

- Charitable societies
- Societies established for the promotion of sciences, literature or the fine arts
- Societies established for instruction, the diffusion of useful knowledge, the diffusion of political education
- Societies established for educational and medical services
- Societies established for the foundation or maintenance of libraries or reading rooms for general use among members or open to the public
- Public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs

Although the Act specifically mentions the types stated above, a very large range of NGOs are actually registered under this Act, in particular religious societies and those which run private schools and colleges.

Requirements relating to Membership and Management Committee.

Under the law, it is necessary that there be a minimum of seven members to form a Society under this Act.

There must also be a minimum of three members on the governing body (governors, council, directors, committee, trustees or other body to whom, by the rules and regulations of the Society, the management of its affairs is entrusted).

If an existing society or association wishes to register itself under this Act, an assent to its members being so registered has to be given by three-fifths of the members present at a general meeting convened for that purpose by the governing body.

Procedure.

Under this Act, a Society has to register with the Registrar of Societies who is for the present moment the same person holding the post of Registrar, Joint Stock Companies, Government of Bangladesh, having office at 24-25, Dilkusha Commercial Area, Dhaka.

The applicant may approach the office either directly or through a lawyer.

When the applicant goes for information about registration requirements and procedures, he will be sent by the Registrar directly to the assistant (or some other official) of the section dealing with the registration of societies.

The assistant is likely to be more informed than the Assistant Registrar (who are frequently changed on transfer being Government officers) and can usually provide the necessary details.

The assistant will give the applicant the information and details required about registration procedures and documentary requirements orally. The assistant has a document containing instructions for registration which he may refer to in giving the information. These instructions cover the following;

- Preparation of Memorandum of Association
- Preparation of Articles of Association
- Forms required to be filed

In some cases he may provide a copy. If there is any confusion, the applicant will have to go back to the assistant for further help or advice.

Since written instructions are not usually handed over, the applicant should take notes carefully. It may be useful to then show this to the officer so he can ensure that nothing has been left out.

The assistant will inform the applicant that he is required to submit:

- Memorandum of Association (three copies, duly signed by all office bearers)
 - + this includes the name of the society, its registered address, aims and objectives, name, father's /husband's name, address, designation and occupation of each present member of the governing body, etc
- Rules and Regulations of the Society or Articles of Association (three copies, duly signed by all office bearers)

- + this includes the membership, general body, meetings, notices, quorum of the meetings, managing committee, election, powers and duties of each office bearer, fund, audit, dissolution, etc.
- Payment of Tk.250.00 at the time of applying for registration.
- Name clearance letter
- Rent agreement of the office premises
- If the papers are presented by a lawyer, a *vakalatnama* duly signed by all the subscribers must be produced.

The papers in three sets must be typed on ledger/offset paper and each set must contain original signatures of office bearers.

To complete the requirements, the applicant will have to:

- Prepare the Memorandum and Rules and Regulations either through the help of a lawyer or himself/herself. If it is being done by the applicant himself/herself, he/she may use the form given in the Act, or get a model from someone, or seek help from the assistant at the Societies Registration office. The Memorandum must be signed by at least seven members of the society. The signatures must be witnessed. The Memorandum must be dated and must contain:
 - + the name of the society
 - + its registered office address
 - + the aims and objectives of the society
 - + the names, addresses and occupations of the members of the governing body. (the form of memorandum is given in the Act, but more details are available with the office)

The Rules and Regulations of the Society must be certified to be a correct copy by not less than three members of the governing body. The Rules and Regulations must contain clauses relating to:

- + membership
- + general body and managing committee
- + meetings and quorum
- + notices
- + elections
- + accounts and audit
- + dissolution

Registration fee of Tk.250.00 is required to be submitted to the Registrar.

The documents may be drafted bearing in mind the objectives of the Society. Any doubts may be cleared by visiting the assistant (or other concerned official), rather than having to amend the papers after submission.

When the documentation has been completed, the applicant will have to submit these documents along with an application letter addressed to the Registrar), along with the Rules and Regulations.

After this, the applicant will have to wait till receiving some notification from the office. This is likely to take some time, because normal government procedure takes time, even if all the documents are in order. If there is some problem or objection, the applicant will be informed accordingly and will go back to the assistant to see how this can be overcome. It may also be possible to see the Assistant Registrar if there appears to be some serious problem.

After the documents have been found to be in order, the applicant will be informed accordingly and will then have to make arrangements with the office for the site inspection of the society's office. After the site inspection, the Registrar will certify that the society is registered under this Act and the applicant may obtain the Certificate of Registration from the office. This Certificate is stamped and signed by the Registrar, Joint Stock Companies, Government of Bangladesh.

Although officials state that it usually takes one and a half months to obtain this registration, experience of NGOs has shown that it may take up to six months under normal circumstances and more if the NGO's constitution and objectives are a little different from those normally submitted.

The NGO needs to be prepared to make several visits between collection of information and grant of Certificate of Registration.

Expenses

The registration fee is Tk.250.00 (payable at the time of submitting documents for registration).

Other costs associated with this registration may be one or more of the following:

- Typing or wordprocessing
- Photocopying
- Paper and stationery
- Cost of hiring a lawyer or consultant

Legal Status

Once the NGO receives its Certificate of Registration, its legal status is that of a registered society, which means that it can:

- Enforce its rules against its members
- Sue and be sued in its own name
- Keep accounts in banks in the name of the Society

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Also if any judgement is passed against a person or officer on behalf of the society, the judgement can only be enforced against the property of the society, not against the person or officer.

Functioning/Obligation

There are certain basic rules that a society is legally bound to observe once it is registered under this Act:

- When the governing body of a society considers it advisable to alter, extend or abridge the purposes of the society or to amalgamate the society with any other society, it may submit the proposition to the members in a report, but the proposition cannot be carried into effect unless:
 - + it has sent the report to every member 10 days before a special meeting convened to consider it
 - + the proposition must be agreed to by three-fifths of the members
 - + it must be confirmed by three-fifths of the members present at a second special meeting held one month after the first meeting.
- While the Act does not lay down any other specific provisions relating to the functioning of societies, the society is legally bound to hold meetings and follow procedures as laid down in its own Rules and Regulations.

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

- Once in every year, either within 14 days of the annual general meeting or, if the rules do not provide for an annual general meeting, in the month of January each year, a list of the names, addresses, and occupations of the governing body must be filed with the Registrar of Joint Stock Companies.

Winding Up and Dissolution

A Registered Society may be dissolved if at least three-fifths of the members of the Society decide that it will be dissolved. They may decide that it should be dissolved immediately or at a time agreed upon. But it is necessary that at least three-fifths of its members must express a wish for such dissolution at a general meeting called for that purpose.

Whenever the Government is a member of, or a contributor to, or otherwise interested in any Registered Society, such Society cannot be dissolved without the consent of the Government.

If upon dissolution, and after the payments of debts and liabilities, any property remains, this must be given to some other similar society as may be decided by at least three-fifths of the members present at the time of dissolution.

Benefits of Registration

Societies registered under this Act, acquire a quasi-legal status. Although the Registered Society does not have a corporate legal persona similar to a Company registered and incorporated under the Companies Act, 1913, for many purposes, the Registered Society by virtue of the registration, is enabled to sue in the name of the President, Chairman, Principal Secretary or Trustee, as shall be determined by the Rules and Regulations of the Society, and in default of such determination, in the name of such person as shall be appointed by the Governing Body. The property, both moveable and immoveable, belonging to the Society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the Governing Body of such Society. In these matters, the Act has made provisions for improving the legal conditions of the Societies registered thereunder.

III. Registration as a Co-operative Society under the Co-operative Societies Ordinance, 1984.

Although Co-operative Societies are profit-making commercial ventures (much like many businesses) they may be classified as NGOs because of their concern for equality in the distribution of profits, and because theoretically they support workers.

Organizations which can be registered as Cooperative Societies

A Co-operative Society is a form of organization where persons join together voluntarily on a basis of equality because of a common economic need. A society which has as its objects the promotion of the common interests of its members in accordance with co-operative principles or a society established with the object of facilitating the operation of such a society including a society formed by the division of an existing Co-operative Society or amalgamation of existing Co-operative Societies, may be registered under this Ordinance with or without limited liability.

The following classes of Co-operative Societies may be registered under the Ordinance:

- i. Agricultural Co-operative Society.
- ii. Auto-drivers Co-operative Society
- iii. Bittaheen Samabaya Samity (Co-operative Society of Assetless Persons)
- iv. Central Co-operative Bank
- v. Consumers Co-operative Society
- vi. Credit Co-operative Society
- vii. Employees Co-operative
- viii. Fishermen Co-operative Society
- ix. General Purposes Co-operative Society
- x. Hawkers Co-operative Society
- xi. Housing Co-operative Society
- xii. Industrial Co-operative Society
- xiii. Labourers Co-operative Society.
- xiv. Landless Co-operative Society
- xv. Krishi Samabaya Samity (Agricultural Co-operative Society)
- xvi. Mahila Samabaya Samity (Women's Co-operative Society)

- xvii. Mahila Bittaheen Samabaya Samity (Co-operative Society of Assetless Women)
- xviii. Multi-purpose Co-operative Society
- xix. Mutual Benefit Co-operative Society
- xx. National Co-operative Bank
- xxi. Non-Agricultural Co-operative Society
- xxii. Potters Co-operative Society
- xxiii. Production and Sale Co-operative Society
- xxiv. Purchase and Sale Co-operative Society
- xxv. Thrift and Savings Co-operative Society
- xxvi. Transport Co-operative Society
- xxvii. Weavers Co-operative Society

The registration of a co-operative society shall render it to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings (much like a registered company incorporated under the Companies Act, 1913) and to do all things necessary for the purposes for which the co-operative society was registered.

Requirements relating to membership and management committee

There must be at least 10 members for the formation of a cooperative society. However, if one or more of the members is itself a cooperative society, this minimum rule does not apply. This is intended to provide for the registration of unions of societies.

The only basic qualification for belonging to a cooperative society is that the members must be above 18 years of age. But if the objective of the cooperative society is the creation of funds for its members, the members must also reside in the same town or village, or the same group of villages and must be members of the same class, or occupation unless the registrar directs otherwise.

Furthermore, a person who is a member of a credit society cannot be a member of another similar cooperative society without the permission of the registrar.

The Committee is defined as the committee of management or other directing body to whom the management of the affairs of the society is entrusted. However, the Act does not lay down any minimum number of persons required to be on the committee. It is presumed that there would have to be a minimum of two members on the committee. In practice, the registrar's office accepts that a cooperative society may have between five and 11 members on the committee. The model bye-laws provide for a minimum of five and a maximum of nine members on the Board of Directors.

No person can be on the management committee who has defaulted in repayment of any loan taken or payment of the price of any goods taken on credit.

Procedure for Registration

Registration of a society under this Act is granted by the Registrar of Co-operative Societies, Government of Bangladesh having office at Samabaya Sadan, 9/D, Motijheel Commercial Area, Dhaka.

The office or concerned officials of the department can be approached by the applicants directly or through a lawyer. Even if the applicants approach the matter themselves, model bye-laws for some types of cooperative societies and help from the officials for all is always available. Model bye-laws (with blank spaces) for name of cooperative, list and addresses of members, designations and signatures) are available for housing, credit, welfare and multipurpose cooperative societies.

The applicants will have to meet the assistant registrar who will provide them all the basic information about registration requirements, procedures and documentation. Thereafter, the co-operative inspector, sub-inspector and district registrar will be involved in the process of registration and its follow up. They are very knowledgeable and can usually provide detailed assistance.

Basically the applicant will be given all the information and details required by him/her orally. There are no written guidelines, but the applicant will be informed that he/she will be required to submit four copies of the bye-laws of the cooperative society (made according to a written model available for some types of cooperatives) along with an application for registration. The applicant will have to make a written application to the registrar or deputy registrar to obtain the application form.

If there is any confusion, the applicant can go back to the assistant registrar for further help or advice.

Special assistance is available for women's groups seeking to set up cooperatives.

Documents will be as follows:

- An application for registration as a cooperative society under this Ordinance.
- Four copies of the proposed bye-laws of the society
- A copy of the resolution of the general body of the cooperative society, where it was resolved that the cooperative society be registered.
- Four sets of particulars of the signatories (promoters)

To complete the requirements, the applicants will have to:

- Make a written application to obtain the application form.
- Prepare the application for registration in the prescribed form signed by at least 10 promoters and witnessed by two of the promoters (from among the founders). But if one of the members of the cooperative society to be registered is already a member of a registered cooperative society, another member of the managing committee of such a registered cooperative society must sign the application on its behalf, and a resolution by the committee authorising him/her to sign must also be attached. The application must contain:
 - + the name of the cooperative society
 - + the address to be registered

- + whether liability is limited or unlimited
 - + area of operation
 - + objectives of the cooperative society
 - + the number and value of the shares (if the capital is to be raised through shares)
 - + in other cases, the amount proposed to be raised by loan or deposit
- Prepare a list of particulars of the signatories, including father's name, age, profession and address
 - Get a copy of the resolution of the general body meeting at which the members of the cooperative society resolved to register the cooperative society
 - Obtain the model bye-laws (where available) approved by the Registrar, Co-operatives, Government of Bangladesh
 - Prepare the bye-laws either in accordance with the model given, or from some other model of a registered cooperative society, or get a lawyer to do so. The bye-laws must contain the following information.
 - + the name and address of the society and its branches, the class, or occupation of its members if the membership is proposed to be so restricted, and the area for which it is to be registered
 - + the objectives of the cooperative society, the purposes to which its funds are applicable, admissions, rights and liabilities of members, consequences of default in payment in liabilities of members, consequences of default in payment in credit societies, loans, interest, mode of conducting business etc
 - + the mode of holding meetings and altering bye-laws
 - + mode of appointing and removing officers and members of the managing committee, as well as their powers and duties
 - + manner of raising capital
 - + mode of custody and investment of funds and of keeping accounts
 - + the distribution of profits

After completion of the documentation the same will be submitted to the Registrar, Co-operative Societies, Government of Bangladesh.

After submission, the documents will be checked and approved. This is likely to take some time if there are no objections. If there is some problem or objection, the applicant will have to go back to the assistant registrar to see how this can be overcome.

If the documents are in order, the applicant will be informed and will then contact the concerned official to arrange for a site inspection of the office. An inspector or sub-

inspector visits the office and may attend a meeting with promoters, check administration records and look through procedures and documents. The site inspection covers the verification of name and address, the scrutiny of administrative and procedural records, tenancy documents etc.

After the site inspection and office formalities, a complete report is sent to the assistant registrar, who approves it and sends it to the deputy registrar. A Certificate of Registration is then prepared which can be collected upon intimation from the office.

Although officials state that it usually takes three to 10 weeks to obtain this registration, experience of NGO's having constitution and objectives a little different from those normally submitted, takes a little longer.

The NGO needs to be prepared to make three to 10 visits between collection of information and grant of registration (certificate).

Expenses

The costs associated with this registration are minimal and limited to purchase of model bye-laws (for some types of cooperatives) and other incidental costs (photocopying and stationery).

Legal Status

A registered cooperative society has the following privileges:

- It is a body corporate by the name under which it is registered
- It will have perpetual succession
- It is empowered to hold property and enter into contracts
- It is empowered to institute and defend suits and other legal proceedings

Functioning

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

- Every cooperative society must call a general meeting of its members within a period of three months after the date fixed for making up its accounts for the year
- Every cooperative society must have a registered address
- Every cooperative society must keep the following at its registered office open to inspection:
 - + a copy of the Ordinance.
 - + a copy of the rules
 - + a copy of the bye-laws
 - + a register of its members

- The accounts of the society must be audited at least once every year.
- No member can transfer his/her share or interest in the cooperative society unless he/she has held it for at least one year and the transfer is made either to the society or to a person whose membership application has been accepted by the society
- A cooperative society cannot pay a dividend to its members at a rate exceeding 10 percent.
- Every cooperative society which does or can derive a profit from its transactions must maintain a reserve fund
- Distribution of profit must be done strictly according to the rules and bye-laws and with the necessary permission
- Every credit society must keep detailed accounts and books in accordance with the rules

Under the law, there are certain basic requirements with regard to the registration authority that a Cooperative Society must fulfill:

- A cooperative society cannot amalgamate with another cooperative society without the approval of the Registrar
- A cooperative society cannot amend its bye-laws unless approved by the Registrar and such an amendment is registered under this Ordinance.
- The registrar may, of his own volition, hold an inquiry into the constitution, working and financial condition of a cooperative society
- Change of address of registered office must be intimated to the registrar
- A cooperative society cannot make a loan to any person other than a member, except with the permission of the Registrar
- No member of a cooperative can become its paid employee
- Annual progress reports and audited accounts have to be submitted to the Registrar, Co-operative Societies, Government of Bangladesh.

The Registrar of Co-operative Societies and the Government have very extensive powers to dissolve the Managing Committee and re-constitute and nominate members in the Management Committee. Members of the Managing Committee may be removed and/or disqualified to become members of the Managing Committee for such period not exceeding five years on grounds of the members abusing his/her position as such members.

Duties and Obligations of Co-operative Societies :

The registered address of the Co-operative Society and any change thereon shall be notified to the Registrar, Co-operative Societies of Bangladesh.

The following shall be kept open for inspection free of charge

- (a) A copy of this Ordinance
- (b) A copy of the rules;
- (c) A copy of the bye-laws of the society;
- (d) A register of members; and
- (e) Such other documents as may be prescribed

The balance sheet duly audited must be annually published in the prescribed manner. There are also certain restrictions on borrowing from persons not members of the Co-operative Society.

Winding up and Dissolution

If the Cooperative Society has not commenced working, or has ceased working or possesses shares or members deposits not exceeding Rs 500/- , the Registrar may, after an inquiry inspection or on receipt of an application made by three-fourths of the members of a Cooperative Society present at a special meeting called for that purpose, issue an order directing that the Cooperative Society be wound up and may appoint a liquidator for the purpose. When the affairs of the Cooperative Society have been wound up or two months after the order of winding up, the registrar shall cancel the registration of the Cooperative Society and dissolve it.

If the membership of a Cooperative Society has been reduced to below the minimum membership which is a condition of registration, the registrar may order that the Cooperative Society be wound up.

The surplus assets of a cancelled Cooperative Society after all liabilities have been met will be devoted to the objectives described in the bye-laws, and when no objectives have been described, will be devoted to any object of public utility determined by a general meeting and approved by the Registrar.

Benefits of registration

Once a cooperative has been set-up, the main benefit derived is that it can have access to the group of institutions that serve cooperatives specifically - e.g. the Co-operative Ministry, and to the cooperative members directly, by eliminating or minimizing the role of the middle man.

IV. Registration as a Non-profit Company (under Section 26 of the Companies Act,1913.

Very few NGOs register themselves as Non-Profit Companies. The main reason may be lack of knowledge about this available option.

Any association formed for promoting commerce, art, science, religion, sports, social services, charity or any other useful objects may be registered as a Non-profit Company with limited liability under Section 26 of the Companies Act, 1913, 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.

Requirements relating to Membership and Management Committee

Under the Companies Act, 1913 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, under Section 27 of the Companies Act of 1913, there must be a minimum of two directors (who may also be called governors, executive directors, etc) to manage the affairs of the company. There is no maximum number but a reasonably small number is practical.

- 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 such amount as the members may respectively undertake to contribute to the assets of the company in the event of its winding up

Procedure for Registration

The association wishing to register itself under this provision of law will apply for registration to the office of Registrar, Joint Stock Companies, situated at 24-25, Dilkusha Commercial Area, Dhaka and will also apply for licence from the Government. The processing of the application will be done by the concerned section at the Ministry of Commerce, after which the licence will be granted by the Secretary, Ministry of Commerce, Government of Bangladesh. The Certificate of Incorporation will be issued by the Registrar, Joint Stock Companies, Government of Bangladesh.

The applicant should go to the office of the Registrar, Joint Stock Companies. The applicant may approach the department either directly or through a lawyer.

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.

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. It may be useful for the NGO seeking information to note down details about each requirement. If requested, the assistant may permit the review of existing documents of a registered NGO in the registration office for guidance. Since heavy documentation is required for application under this Act (forms and others), it will be of use to the NGO to ensure that the procedure for preparing and completing the documents is fully understood on the initial visits (more than one may be required on this stage). If there is any confusion, the applicant will have to go back to the assistant for further help or advice.

Fee for Registration Tk.820.00

- Three copies of the Memorandum 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 I,VI,IX,X, XII. These are available from the Registrar's office.
 - + 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 Act)
 - + Form VI (giving notice of the registered office of the company)
 - + Form IX (giving a list of persons who have consented to act as directors of the company)
 - + Form X (consent of persons to act as director/chief executive of the company)
 - + Form XII (giving particulars of the directors)
- Photocopy of ownership documents or tenancy agreement or registered office including NOC from landlord

To complete the requirements, the applicant will have to

- 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 Tk.5.00 stamp paper and witnessed. This document must be duly attested before a notary public.
- 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 IX & X 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 him/herself. If the applicant is doing so him/herself, 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 in the First Schedule of the Act or as near as circumstances shall permit

Memorandum of Association: The memorandum of association has to end with a subscription and association clause 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 and dated 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)
- The memorandum must state:
 - + the name of the company
 - + the registered office of the company is to be situated in Bangladesh.
 - + the objects of the company.
 - + that the liability of each member is limited
 - + that each member undertakes to contribute a specified amount to the assets of the company in the event of its being wound up

Articles of Association: The Articles setting out the regulations of the company must also be signed by the subscribers to the memorandum and witnessed by one person other than a member.

The following steps will then need to be taken:

- get the copies of the memorandum printed, bound, signed and witnessed as required before submission.

The documents required for registration as Non-profit Companies are quite technical. It may, therefore, be useful to work with a lawyer or take a lawyer's advice before submission.

When the documentation has been completed, the applicant will have to submit the application to the Registrar's office. The office who will give the applicant a receipt. If the papers are presented by an advocate, *avakalatnama* duly signed by all the subscribers must be produced.

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 if there seems to be some 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).

The applicant may approach the department either directly or through a lawyer. Usually, the matter is handled through lawyers. When the applicant goes for information about registration requirements and procedures, he/she will meet the inspectors or other officials, who will give him the required information.

The officials will give the applicant all the information and details required orally, since there are no written instructions, guidelines or models.

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

The official will inform the applicant that initially he/she will have to fulfill the conditions relating to eligibility to the satisfaction of the Secretary, Ministry of Commerce, after which the Secretary 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 Registrar, Joint Stock Companies, Government of Bangladesh.

- For grant of licence the following will be required :
 - + covering letter to the Secretary, Ministry of Commerce, Government of Bangladesh applying for a license
 - + three copies of memorandum and articles of association
- For registration:

Registration fee of Tk.820.00 paid to the Registrar, Joint Stock Companies, Government of Bangladesh who will grant a receipt.

 - Three copies of the Memorandum 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 I, VI, IX, X and XII of the Companies Act, 1913. These are available from the office of the Registrar, Joint Stock Companies, Government of Bangladesh.
 - + Form 1 (Declaration of compliance on registration of company.)
 - + Form VI (Notice of situation of registration office of the company)
 - + Form IX (Consent of Director to act)
 - + Form X (List of persons consenting to be Director of the company)
 - + Form XII (Particulars of Directors)
 - Photocopy of ownership documents of registered office including NOC from landlord

Additionally, a copy of the license granted by the Government under Section 26 of the Companies Act, 1913 will also have to be submitted.

For grant of license, the applicant will have to complete the required documentation and make an application to the Secretary, Ministry of Commerce, Government of Bangladesh.

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.

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 Registrar, Joint Stock Companies.

Although officials state that it usually takes three to 10 weeks to obtain this registration, experience of NGOs has shown that it may take up to six months under normal

circumstances and up to a year or more if the NGOs constitution and objectives are a little different from those normally submitted

The NGO needs to be prepared to make three to 10 visits between collection of information and grant of registration (certificate).

The costs associated with registration as a Non-Profit Company are low: Tk. 820/- as registration fee for registration. Other costs may include photocopying and stationery etc.

Legal Status

Once a non-profit company is registered under Section 26 of the Companies Act, 1913, and a Certificate of Incorporation issued by the Registrar, the legal status of the association becomes that of a body corporate, having perpetual succession and a common seal. It is empowered to hold property and enter into contracts. It is empowered to institute and defend suits and other legal proceedings.

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 accounts 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
- This must be accompanied by a director's ("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

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- 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 him in this behalf
- A copy of the income/expenditure account must be forwarded to the Registrar within 21 days of the meeting
- The memorandum of association cannot be amended without approval of the High Court Division of the Supreme Court of Bangladesh.
- 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.

Winding up and Dissolution

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

- + Through a Court

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

- If a company, by special resolution, has resolved that it be wound up through court
- 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 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.

- + 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

- + 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.

+ **Revocation of License**

If the activities of the association are in violation of the provision of the Companies Act, 1913, the license can be revoked by the Government, after after affording an opportunity to be heard.

Benefits of Registration

Here the chief benefit perceived is usually a legal status and flexibility to engage in commercial-type activities, with the profits being used to advance the objectives of the Non-profit Company.

V. Registration as a Public and Charitable Trust

A trust is an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another. It is in effect the gift of property to a person or institution through the intervention of another. The person who reposes the confidence is the creator or author of the trust, the person in whom the confidence is reposed is called the trustee and the person for whose benefit the trust is created is called the beneficiary. A trust may be created for any lawful purpose. It can be revocable or irrevocable.

A public charitable trust is a trust which is not created for the benefit of specific individuals, but for the benefit of society generally or for certain sections of society.

Trusts can be set up having the following objectives:

- Advancement of religion
- Advancement of knowledge
- Advancement of commerce, health and safety of the public
- Advancement of any other object beneficial to mankind.

Some of the essentials of a public charitable trust are:

- There must be a creator or author of the trust
- There must be a trustee or trustees who become responsible for the administration of the trust
- There must be some trust property, whether in cash, assets, land or buildings

- The beneficiaries must be society generally or particular sections of society
- The objectives of the trust must be charitable or for the benefit of mankind

Requirements relating to Membership and Management Committee

There is no membership requirement in a trust. And if the trustees can be construed to mean the management committee, there is no minimum or maximum number of trustees. This would all depend on the terms of the Trust Deed that has been drawn up.

Procedure for Registration

The procedure for the creation of a trust is very simple. A public and charitable trust can be created merely by a declaration to that effect on Tk.33.75 stamp paper.

For certified copy of the Trust Deed Stamp fee of Tk.10.00 is required. Registration fee of Tk.21.00 is required when no valuation of the trust properties is given and when there is a valuation given to the Trust Property, Registration fee is at the rate of Tk.25.00 per Tk.1000.00 of the value of the property.

Registration of the Trust Deed is optional, not mandatory, but it is advisable to give the document greater legal sanctity in case any dispute arises later. The registration would be merely as a document.

To create and register a trust, a person would have to take the following steps:

- Decide what the purposes/objectives of the trust are going to be;
 - + who the trustees are going to be, (the creator may also be a trustee); how many trustees there will be; whether they can be changed and how; what will be the terms of their service and what will be their powers and duties.
 - + who the beneficiaries of the trust are going to be;
 - + what the trust property is going to be. There is no minimum value of property for starting a trust. The property can be in any form. It can also be increased later. But if there is a transfer of immovable property to the trust, this will have to be done on stamp paper on the value of the property and will have to be registered.
- Prepare the Trust Deed (declaration of creating a public and charitable trust). This can be done through a lawyer or by the author himself. If it is being done by the author himself, it is advisable to have a model of a public and charitable trust deed.
- Get the document registered with the sub-registrar of the Registration District on payment of the prescribed fees.

The time taken for registration once the document has been prepared is a couple of days.

Expenses

There is a Registration fee of Tk.21 (when there is no valuation of Trust Property) or Tk.25.00 per 1000.00 of the value of the Trust Property. Stamp duty of the value of Tk.33.75 is paid on the document of the Trust Deed the duty. Other costs may include photocopying and stationery etc.

Legal Status

The legal status of a trust is that some property is pledged to benefit people or a defined group of people. Only the declaration of this intent (the trust deed) is registered.

Functioning

The actual functioning of a trust would be dependent on the terms of the Trust Deed. So long as the Trustees abide by the terms and conditions laid down in the Trust Deed and are not in contravention of any law, interference in the day to day affairs and functioning of the Trust will not be possible. But trustees are in principle bound to:

- Fulfill the purpose of the trust and obey the directions of the author
- Inform themselves about the state of the trust property
- Protect the title to trust property
- Take care of the trust property
- Prevent wastage
- Invest trust money which cannot be applied immediately for the purpose of realising the objects of Trust.

Since a trust is registered as a document, not as an organization, there is no official authority to which it is responsible. As such, there are no requirements which have to be fulfilled.

Winding up and Dissolution

A trust may be extinguished:

- When its purpose is fulfilled
- When its purpose becomes unlawful
- When the fulfillment of its purposes becomes impossible because of destruction of the trust property or otherwise
- When the trust, being revocable, is expressly revoked

Benefits of Registration

The main benefit to be derived from this type of registration (apart from legal status), is the great flexibility inherent in its shape and functioning. Those who wish to set up a trust are independent in choosing a desirable way to operate the trust and there are no requirements of eligibility (except being an adult).

RECOMMENDATION AND CONCLUSIONS

Registrations under the 1961 Ordinance and the FDO and the FCO are mandatory for any organisation/person undertaking voluntary social welfare activity. Generally the activities of NGOs fall within the definitions of "voluntary activity" as defined in these legislations. NGOs getting registrations under these enactments do not acquire any legal status. The 1961 Ordinance and the FDO and the FCO are regulatory enactments. Registrations effected under these enactments satisfy the requirements of the regulatory mechanism of the Government.

Apart from the above mentioned mandatory registrations, there are several other enactments which provide for registration. Legal character/status is acquired as a consequence of registrations under these enactments. In the eye of law, the registered organisation/person is considered a distinct and separate legal entity quite independent from the persons making up the organisation. An artificial juristic person is created by virtue of registration under these legislations.

A Company registered under the Companies Act, 1913 is the most formal organisation. The Memorandum of Association and the Articles of Association together with the provisions of the Companies Act, 1913, provide the legal framework within which the registered company has to function and administer its affairs.

For the purpose of realising the stated objects of PRIP/PACT and RDRS, a company under the provisions of Sections 26 and 27 of the Companies Act, 1913 may be considered the best option to adopt. A non-profit company may be established, licensed by the Government under Section 26 of the Companies Act, 1913 where the members liability will be limited to the amount guaranteed and mentioned in the Memorandum of the Company under the provisions of Section 27 of the Companies Act, 1913.

The Memorandum sets out the objects for which the proposed Company is sought to be established. Great care should be taken to draft the Memorandum of Association of the proposed Company. The activities of the Company will have to be limited within the stated objects. Any activity not so included in the Memorandum cannot be undertaken by the Company. Such activity will be deemed unauthorised because of the doctrine of ultra vires. The Memorandum of Association, may be amended subject to approval of the Supreme Court of Bangladesh, High Court Division. Such approval procedures may be time consuming and expensive.

Subject to the above, the framework of the Companies Act, 1913, is the recommended and preferred option because of the following: The Company has a distinct and

separate legal personality, with a seal and perpetual succession, enabled to hold property and sue and be sued in its own name, regardless of the members and any change thereto. The management and administration of the Company is transparent. The accounts are required to be audited by Chartered Accountants. The Management Board (called by whatever name, Executive Board, Board of Governors / Councillors, etc.) is required to answer to the Members of the Company (who are similarly placed and also considered as shareholders of the Company) in the Annual General Meeting or any other General Meeting that may be called from time to time. The framework of the Companies Act, 1913 provide the formal legal environment. The Members of the Company, some of whom will be elected to the Board of Directors, will have to be volunteers. They cannot make any profit out of the income of the Company. The Company will have an income and expenditure account and may be a profit making enterprise. It is non-profit so far as the Members of the Company are concerned. Examples of Non-profit Companies registered under the Companies Act, 1913, are Kumudini Welfare Trust, Palli Karma-Sahayak Foundation, MIDAS.

The next option that may be considered is the formation of a Society registered under the Societies Registration Act, 1860. Here the objects set out in the Memorandum of Association are the only activities that may be undertaken by the Society. Anything undertaken outside the stated objects will be unauthorised. Instead of the Articles of Association (as in the case of a Company,) a registered Society is required to have its Rules and Regulations for the administration and management of the Society. These Rules and Regulations provide for the annual elections to the Board of Governors, placing of accounts and the report of the affairs of the Company. Although this is similar to the case of the Company, the affairs of the Society are less formal and rigid. In comparison there is more flexibility in this case. This is primarily because the Societies Registration Act, 1860 does not provide as elaborate a framework as the Companies Act, 1913. The Rules and Regulations, if drafted carefully providing in detail (perhaps replicating some of the provisions of the company legislations) the management and administration of the Society may be suitable for your purpose.

A registered Society may sue and be sued in the name of the President, General Secretary or the Principal Officer of the Society and the Society's property (all kinds of properties) will be held in trust in the name of the Board of Governors. In this respect, the registered Society does not have a distinct legal personality as is the case of a Company. The registered Society therefore has this legal limitation.

In the case of a registered Society also the members composing the Society will have to render voluntary service. They cannot be seen to be earning any profit out of the income of the Society.

In the circumstances, a combination of the provisions of the two enactments, e.g. Societies Registration Act, 1860 and the Companies Act, 1913 may be useful. Some of the provisions of the Companies Act may be adopted for a suitably drafted Memorandum of Association and Rules and Regulations of a registered Society.

I do not propose to recommend the formation of a Co-operative Society because the members thereof are organised for the purpose of making profit. A Co-operative Society is an economic and legal entity. This type of business organisation is suitable for producers and manufacturers of marketable commodities who wish to organise

themselves into a business organisation on co-operative and participatory principles. In your case this may not be considered suitable. Your members will most likely be volunteers and profit making may not be an appropriate motive.

The other option that remains to be considered is the creation of a Trust. This may not be suitable for your purpose. A Trust is created by declaration made in a legal document duly registered as a document in the Office of the Registrar/Sub-Registrar. This type of registration does confer any legal status/character in as much as the Trust is not a separate and distinct legal entity as is the case of a Company or a Co-operative Society or even a registered Society, which has a quasi-legal personality. The organisation is very nebulous and a lot depends on the naming of Trustees and equally important is the acceptance of the position of such Trustees. So long as the creator or author of the Trust is alive, problems of administration/management of the Trust may be effectively tackled. After the death of the author of the Trust and the original (named in the Trust Document) Trustees, problems of administration and management surface which may even lead to litigation. There is no question of perpetual succession and/or being able to sue and be sued and to hold property in the name of the organisation as is the case of a Company.

Subject to the foregoing, a Trust Document may be very carefully drafted which takes care of all administrative and management aspects. This document may be drawn up replicating some of the provisions generally found in a registered Company, providing for annual elections to the Management Board, audit of the accounts by a Chartered Accountant and furnishing of reports to the Trustees who may be considered as co-equal to members/shareholders of a registered Company. Even if all this is accomplished by careful drafting, the Trust remains an unincorporated body or association of persons having no legal entity. This may not be considered satisfactory.