

Pakistan Centre for Philanthropy (PCP)

GUIDE BOOK
ON
CIVIL SOCIETY ORGANISATIONS (CSOS)
REGISTRATION LAWS

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INTRODUCTION

The Pakistan Centre for Philanthropy seeks to empower Civil Society Organisations (CSOs) to become credible and effective partners for the government, donors and the private sector in the important domain of social development. It is now an accepted fact that social sector development can no longer be the sole responsibility of the public sector. Civil society has to rise and shoulder its responsibilities for filling the development gap which increases by the day due to the financial crunch in the public sector and the lack of adequate expertise to meet the needs of the expanding population. CSOs by their nature are well attuned to the stakes and problems that face communities, especially at the grass roots level from where they originate. Their knowledge base and their attitudinal empathy is thus an important asset.

However, the CSOs need support in streamlining their governance systems including financial management, programme delivery and administrative systems. PCP steps in as a facilitator and evaluates the CSOs thereby increasing their credibility through a “seal of good house keeping”. Being such a facilitator, the PCP is an organization receives queries which may not be directly related to its work. One such important query is regarding the process through which a CSO can be established. The PCP has prepared this compendium to provide its users both present and prospective with the information required to facilitate the establishment of a CSO.

A Civil Society Organisation (CSO) or Not for Profit Organisation (NPO) is an organization established for humanitarian purposes. It may make a profit but all profits should be utilized to further the charitable intention of the organization. The owners, members, trustees or other private persons who may control or influence the organization may not use the profit of the charitable organization for their personal gain.

The key interface between the Government and CSO is registration. It provides the opportunity for CSOs to spell out their role and objectives and inform the Government of their activities. On the other hand, registration is also viewed as an endeavor by the Government to regulate and control CSOs. There is no legal definition of the term CSO in Pakistani law. Each CSO can draw up its own constitution, articles, rules and by-laws in the conformity with the law of the land. A CSO is expected to observe the provisions of the concerned Act or Ordinance under which it is registered.

A CSO does not have to register itself to perform charitable, welfare or development activities. However, some specific types of activities can only be carried out if the CSO is registered under a particular Act or Ordinance. Registration carves advantages which the CSO may not be able to obtain otherwise. To secure the status of an NPO, an entity has to be registered under one of several laws. The legal framework for NPOs contains laws that either require registration or confer registration by virtue of the organisation's creation, or that grant tax concessions or exemptions.

Most NPOs are registered under four laws: The Societies Registration Act, 1860, The Trust Act 1882, The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and The Companies Ordinance, 1984. Other than the Companies Ordinance 1984, all the above laws are implemented by the provinces.

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General Legal Regime for CSOs

The general legal regime which impacts philanthropic organizations consists of more than 12 Federal Acts. In the larger framework these laws can be categorized into:

- Registration
- Recognition or regulation and
- Fiscal regime

Laws governing CSOs that either explicitly require registration or implicitly confer recognition include:

- ❖ The Societies Registration Act, 1860
- ❖ The Religious Endowments Act, 1863
- ❖ The Trusts Act (II OF 1882)
- ❖ The Charitable Endowments Act (VI OF 1890)
- ❖ The Mussalman Wakf Validating Act, 1913
- ❖ The Charitable and Religious Trusts Act, 1920
- ❖ The Mussalman Wakf Act, 1923
- ❖ The Cooperative Societies Act, 1925
- ❖ The Mussalman Validation Act, 1930
- ❖ The Voluntary Social Welfare Agencies (Registration And Control Ordinance 1961)
- ❖ The Companies Ordinance 1984
- ❖ The Local Government Ordinance, 2001
- ❖ Income Tax Ordinance 2001

The four laws under which most nonprofit organizations register are the following:

Societies Registration Act, 1860

A CSO may be established for the promotion of literature, science, or the fine arts; the diffusion of useful knowledge, political education; or charitable purposes and funds.

The Trust Act, 1882

A CSO registers under this act as an obligation pertaining ownership of property gifted to a person or institution that benefits both parties. Three entities are needed to create a trust: a creator or author of the trust; a person in whom the confidence is placed (i.e., the trustee); and a person for whose benefit the trust is created (i.e., the beneficiary). The Trust Act provides legal protection for private acts of public charity and allows the creators of the trust tremendous flexibility in their operations. There are two types of trusts: public charitable trusts and private trusts. A private trust can be established for the benefit of an individual or a group of persons. A public charitable trust, unlike a private trust, benefits all or certain sections of society.

Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961

This ordinance is based on a concept of social welfare that recognizes the “poor and destitute” of society who need institutional, rather than merely charitable, support. It requires that all organizations engaged in social welfare or charitable works be registered with the social welfare departments of the provincial governments. It states that a voluntary social welfare agency is an organization or undertaking established by people, of their own free will, to solely provide welfare services in any one of various specific fields.

The Companies Ordinance (Section 42),1984.

Any association formed to further the development of commerce, art, science, religion, sports, social services, charity, or any other “useful” objective may be registered as a nonprofit company, with limited liability, under Section 42 of the Companies Ordinance of 1984. It must direct, or intend to direct, its profits, if any, or any other form of income, in advancing its objectives; and prohibit the payment of any returns to its members. In most cases, registered nonprofit companies are organizations engaged in research with donor funding, clubs, and very large organizations engaged in delivering social and welfare services.

1. Legal snapshot of activities permissible under CSO registration laws

The following activity matrix explains the nature of activities conducted under four CSO registration laws.

Activity Matrix

Nature of Registration Regime	The Companies Ordinance, 1984	The Societies Registration Act, 1860	The Trust Act, 1882	The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961
Permissible activities	<ul style="list-style-type: none"> ❖ Commerce ❖ Art ❖ Science ❖ Religion ❖ Sports ❖ Social services ❖ Charity ❖ Any other 'Useful' objective. 	<ul style="list-style-type: none"> ❖ Science ❖ Literature ❖ Fine arts ❖ Instruction and the diffusion of useful knowledge ❖ Diffusion of political education ❖ Foundation or maintenance of libraries or reading rooms for use among members or open to the public ❖ Public museums and galleries of paintings ❖ Work of art ❖ Collection of natural history ❖ Mechanical and philosophical inventions ❖ Instruments or designs ❖ Educational and medical services. 	<ul style="list-style-type: none"> ❖ Advancement of religion ❖ Advancement of knowledge ❖ Advancement of commerce, health and safety of the public ❖ Advancement of any other object beneficial to mankind. 	<ul style="list-style-type: none"> ❖ Child, youth and women's welfare ❖ Welfare of the physically and mentally challenged ❖ Family planning ❖ Social education ❖ Rehabilitation and welfare of patients ❖ Welfare of juvenile delinquents ❖ Rehabilitation and welfare of released prisoners ❖ Welfare of socially handicapped ❖ Welfare for the elderly and destitute ❖ Recreational programmes to ward off people from anti-social activities ❖ Training in social work ❖ Coordination of social welfare agencies.

2. Registration Procedures/Essential Documents: Under the Regulatory Framework

The following procedures for registration of a CSO have been described in the concerned laws.

2.1 The Companies Ordinance, (TCO) 1984

Registration of a not for profit association has two relevant legislation i.e., the provisions of the Companies Ordinance, 1984 and the Companies (General Provisions and Forms) Rules, 1985. The two fold process entails such registration:

- (a) To obtain license under section 42 of the Ordinance from the Securities and Exchange Commission of Pakistan (SECP) and

- (b) To register the association as a public company with limited liability with any of the Company Registration Office (CRO) of the Commission relevant to the Registered Office of the Association.

Pre-conditions to be considered by CSOs for registration under TCO

- ❖ While granting licence to an association, the Commission also imposes the following conditions and these are mentioned in the licence:-
 - i. No change in the Memorandum and Articles of Association shall be made except with the prior approval of the Commission.
 - ii. The subscribers to the Memorandum and Articles of Association of the company shall continue to be the members of the company unless allowed by the Commission, on application, to quit as members.
 - iii. The limit of liability of its members shall not be less than a reasonable amount for each member.
 - iv. Patronage of any government or authority, express or implied, shall not be claimed unless such government or authority has signified its consent thereto in writing.
 - v. The company shall not itself set up or otherwise engage in industrial and commercial activities or in any manner function as a trade organization.
 - vi. Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, shall be prohibited.
 - vii. The company in all its letterheads, documents, signboards, and other modes of communication shall, with its name, state the phrase "A company set up under section 42 of the Companies Ordinance, 1984".
 - viii. The company shall comply with such conditions as may be imposed by the Commission from time to time.
- ❖ In addition to above, the following conditions are also required to be mentioned in the Memorandum of Association of the proposed company/Association.
 - i. The company shall not exploit or offend the religious susceptibilities of the people.
 - ii. The income and any profits of the company, shall be applied solely towards the promotion of objects of the company and no portion thereof shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the company or their family members.
 - iii. The Company shall not appeal, solicit, receive or accept funds, grants, contributions, donations or gifts, in cash or in kind, from foreign sources except with the prior permission, clearance or approval from the relevant public authorities as may be required under any relevant statutory regulations and laws.
 - iv. Notwithstanding anything stated in any object clause, the company shall obtain such other licenses, permissions, or approvals of the relevant public authorities as may be required under any relevant statutory regulations and laws for the time being in force, to carry out any particular object.

- v. The company shall not undertake any substantial permanent trading activities and shall conform to relevant statutory regulations and laws.
- vi. The company shall comply with such conditions as may be imposed by the Commission from time to time.

Procedure for licensing and registration under TCO

Three steps are involved in registration of a not-for-profit association with SECP.

Availability of Name

The first step is to seek the availability of the proposed name for the association/company from the concerned CRO, by applying for the purpose and deposit a fee of Rs.200. The proposed name should not be otherwise inappropriate, deceptive or designed to exploit or offend the religious susceptibilities of people and neither be identical nor closely resemble with the name of an existing company. The requisite fee may be paid to the SECP through any of the following means:-

- ❖ Through a Bank Challan, available with authorized branches of Habib Bank Limited. A copy of the paid challan has to be enclosed with the application; or
- ❖ Through a Bank Draft/Pay Order drawn in favour of the Securities and Exchange Commission of Pakistan, attached with the application.

Application to the Commission for grant of licence under section 42 of the Ordinance

The following documents are required to be submitted with the SECP at its Headquarters Office, Islamabad.

- i. Application to the SECP.
- ii. A copy of the original Bank Challan of licence fee of Rs. 5,000/- paid in the authorized branches of Habib Bank Limited or a Bank Draft/Pay Order of the same amount drawn in favour of the SECP.
- iii. Copy of letter of availability of name.
- iv. The following documents are required under the Rules.
 - ❖ Three (3) copies of the draft Memorandum and Articles of Association.
 - ❖ A list of promoters of the association with their occupations and addresses.
 - ❖ A declaration by a person to the effect that he has scrutinized the application and the accompanying documents, and that he is satisfied that the same are drawn up in conformity with the provisions of the Ordinance and fulfill the conditions for the grant of license laid therein and the rules.
 - ❖ The names of companies, associations and other institutions in which the promoters of the proposed association hold any office stating the office held in each case.
 - ❖ If the association is already in existence, a copy each of the audited balance sheet, income and expenditure account and the annual report on the working of the association for the financial year immediately preceding the date of the application.
 - ❖ An estimate of the future annual income and expenditure of the proposed company, specifying the sources of income and objects of expenditure.
 - ❖ A brief statement of the work already done by the association or proposed to be done after it being granted the license and registration.

- v. Power of Attorney or Authority Letter on Stamp Paper of appropriate value duly attested by Notary Public, made by all promoters in favour of a person to present the application before the Commission on their behalf, making additions, corrections etc. in the documents and to collect the licence issued by the SECP.
- vi. Bio-data of all promoters.
- vii. Affidavit on Stamp Paper of appropriate value duly attested by an Oath Commissioner made by all the promoters affirming that they are not defaulters of loans, etc.
- viii. Affidavit on Stamp Paper of appropriate value duly attested by an Oath Commissioner affirming contents of the Application.

A copy of application alongwith above documents shall also be sent to the CRO concerned. The Commission on being satisfied, after such enquiry and after obtaining such further information as it may consider necessary that it shall be in the public interest to grant the licence applied for.

A copy of licence so granted, and approved copy of Memorandum and Articles of Association are sent to the promoters with the advice to take further steps for registration/ incorporation of the association.

Registration of Association as a company limited by guarantee

After obtaining licence from the Commission or any other authority, steps are taken for incorporation of the association under the Ordinance. The following documents are required to be submitted with the CRO concerned for this purpose:

- i. Copy of national identity card or passport, in case of foreigner, of each subscriber and witness to the memorandum and articles of association.
- ii. A copy of licence issued by Commission or any other authority.
- iii. Four printed copies of Memorandum and Articles of Association duly signed by each subscriber in the presence of one witness.
- iv. Form – 1 i.e. Declaration of compliance with the pre-requisites for formation of the company.
- v. A copy of the original paid Challan in the authorized branches of Habib Bank Limited or a Bank Draft/Pay Order drawn in favour of the Securities and Exchange Commission of Pakistan of the prescribed amount of Rs.25,000/- as registration fee and filing fee for each prescribed Form and Articles of Association @ Rs. 200/- per document.
- vi. Power of Attorney or Authority Letter on Stamp Paper of appropriate value duly attested by Notary Public, made by all promoters in favour of a person to present the documents for registration of the company, on their behalf, making additions, corrections etc. therein and to collect the Certificate of Incorporation issued by the Registrar.

2.2) The Trust Act, 1882

A trust is the easiest to get started with as the minimum strength required to form a trust is just two—the author and the trustee. And the author could also be the trustee. So, if you want to start small or if you do not have many people who share your vision or objectives, then a trust is your best bet. Between a trust and a society, a trust offers:

- ❖ a high level of control over the administration and management of the CSO - there is a succession in place and there are no members;

- ❖ little to no interference from the outside;
- ❖ a simple registration procedure;
- ❖ irrevocability; and
- ❖ eligibility for income tax exemption.

For a trust, the three conditions of a creator, trustee and beneficiary being present, are requirements. A public charitable trust is a trust which is established for the benefit of the society or at least a certain section of society. There are no particular laws relating to public trusts. However, the rules in the Trust Act of 1882 can be applied to both public and charitable trusts. In the case of public charitable trusts, the conditions governing private trusts are equally applicable. If the objectives are not clear, unlike the private trusts, these trusts can be sustained as long as there is an intention of charity. The conditions given below are informative.

- There must be some trust property, whether in cash or capital assets (land or buildings)
- The objectives of the trust must be charitable or for the benefit of society

Although a mere declaration on a stamp paper ensures creation of a Trust, the application for the registration of a trust requires the following:

- Particulars of documents creating the trust.
- Particulars of the trustees and the beneficiaries.
- Details of what the trust property is going to be. There is no minimum value of property for starting a trust. If the property is an immovable property then the transfer deed shall be on a stamp paper on the value of the property and it shall be registered.
- Preparation of the trust deed, that is, i.e. declaration of having created a public charitable trust.

2.3) The Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961

This law was conceived for documenting the grass roots level organisations providing welfare services. The registration authority lies with the Directorate of Social Welfare, which may be approached either directly or through a lawyer. This law is based on the premise that the “poor and destitute” in society need institutional, rather than only charitable, support. The law requires that all organisations engaged in social welfare or charitable works must be registered with the Social Welfare Departments of the provincial governments. Registration is mandatory for organisations working in, and seeking funds from the government for any one of the specified areas. The government has the discretionary right to dissolve an agency through due process or replace the governing body arbitrarily. The reporting requirements are stringent. The organizations are required to submit:

- ❖ annual reports
- ❖ audited accounts
- ❖ statement of receipts and
- ❖ list of members.

The following procedure has been provided for registration of a CSO under this law.

Section 4: Application for registration

- (1) Any person intending to establish an agency and any person intending that an agency already in existence should be continued as such, shall, in the prescribed form, and on payment of the prescribed fee, made an application to the Registration Authority, accompanied by a copy of the constitution of the agency, and such other documents as may be prescribed.

- (2) The Registration Authority may, on receipt of the application, make such enquiries as it considers necessary, and either grants the application, or, for reasons to be recorded in writing, reject it.
- (3) If the Registration Authority grants the application, it shall issue, in the prescribed form, a certificate of registration to the applicant.
- (4) The Registration Authority shall maintain a register, containing such particulars as may be prescribed, of all certificates issued under sub-section (3).

Section 5: Establishment and continuance of agency

- (1) An agency not in existence on the coming into force of this Ordinance shall be established only after certificate of registration has been issued under sub-section (3) of section 4.
- (2) An Agency already in existence shall not be continued for more than six months from the date on which this Ordinance comes into force, unless an application for its registration has, within thirty days of such date, been made under sub-section (1) of section 4.
- (3) Where an application as aforesaid has been made in respect of an existing agency, and such application is rejected, then notwithstanding the period of six months provided in sub-section (2), the agency may be continued for period of thirty days from the date on which the application is rejected, or if an appeal is preferred under section 6, until such appeal is dismissed.

Section 6: Appeal

If the Registration Authority rejects an application for registration, the applicant may, within thirty days from the date of the order of the Registration Authority, prefer an appeal to the Provincial Government, and the order passed by the Provincial Government shall be final and given effect to by the Registration Authority.

Section 7: Conditions to be complied with by registered agencies.

- (1) Every Registered Agency shall-
 - (a) maintain audited accounts in the manner laid down by the Registration Authority.
 - (b) at such time and in such manner as may be prescribed, submit its Annual Report and audited accounts to the Registration Authority and publish the same for general information;
 - (c) pay all moneys received by it into a separate account kept in its name at such bank or banks as may be approved by the Registration Authority; and
 - (d) furnish to the Registration Authority such particulars with regard to accounts and other records as the Registration Authority may from time require.
- (2) The Registration Authority, or any officer duly authorised by it in this behalf, may at all reasonable times inspect the books of account and other records of the agency, the securities, cash and other properties held by the agency, and all documents relating thereto.

2.4) The Societies Registration Act, 1860

A society may be established under the Societies Registration Act, 1860, if seven or more persons join together of whom at least three are the members of the Managing Committee. To establish a Society, a Memorandum and Rules and Regulations of Association must be printed. These documents must contain clauses which not only state the objectives for which the society is being established, but also how it will operate. This is also considered to be one of the more lenient Acts with respect to registration requirements and to accounting and audit regulations. The following sections of the Societies Act explain the registration requirements.

Section 1: Societies formed by memorandum of association and registration

Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies form themselves into a society under this Act.

Section 2: Memorandum of association

The memorandum of association shall contain the following things (that is to say)

the name of the society:

the objects of the society:

the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

Section 3: Registration fee

Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the Society is registered under this Act. There shall be paid to the Registrar for every such registration such fee as the Provincial Government may direct, and all fees so paid shall be accounted for to the Provincial Government.

In addition to the Memorandum of Association, the Rules and Regulations for governing the society must be set out and filed with the Registrar of Societies. The Rules and Regulations are certified by not less than 3 members of the Managing Committee. It must contain obligatory clauses relating to:

- Membership
- General Body and Managing Committee
- Meetings and quorum
- Notices for meetings
- The manner of elections and removal of officers
- Procedures relating to accounting and audit
- Dissolution

3. Post Registration: Reporting Requirements

The laws dealing with CSOs registration require that CSOs operate as stipulated by the terms set out in the law under which they are registered. Except for the Trust Act (which operates under the terms and conditions laid down in the Trust Deed) all other types of CSOs are required to submit periodic audit reports (in some cases annual activity reports), hold regular elections and keep the registration authorities informed of their activities. The following post-registration requirements have been elaborated in the concerned laws.

3.1) The Companies Ordinance, (TCO) 1984

The number and names of first directors are determined by the majority of subscribers of memorandum in writing and until so determined, all the subscribers of the memorandum who are natural persons, shall be deemed to be directors of the company. The appointment of first directors is required to be notified to the registrar concerned on Form '29' within 14 days from the date of incorporation.

The directors of every company are required to appoint the first chief executive not later than fifteen days from the date of incorporation. The appointment of first chief executive is required to be notified to the registrar concerned on Form '29' within 14 days from the date of appointment.

A company is required to notify the registered office of the company on Form-21 within 28 days from the date of its incorporation. This form is normally submitted with the registration documents to facilitate communication. Change of registered office is also notified on the same Form within the same period.

The first auditor, being Chartered Accountants, is required to be appointed by the directors within sixty days from the date of incorporation and within four months of closure of its accounts.

First Annual General Meeting (AGM) of the company is required to be held within eighteen months from the date of incorporation.

Directors of every company are required to lay before the company, in its AGM, the first accounts (audited balance sheet and profit and loss accounts) made up since incorporation to a date not earlier than the date of the meeting by more than four months. In other words, the period between the closing date of the accounts and the date of AGM should not be more than four (04) months.

The first election of directors is required to be held at the first Annual General Meeting of the company. The directors so elected are to hold office for a period of three years. However, casual vacancy occurring on account of death, resignation or removal of any director may be filled up by the other directors for the remainder of the term of the outgoing director.

The auditors, being Chartered Accountants, are required to be appointed in the each AGM of the company. The retiring auditors may be re-appointed.

Any appointment, election or change in the Directors, Chief Executive, Auditors, Chief Accountant, legal adviser etc is required to be notified to the registrar concerned on Form '29' within 14 days of the said election, appointment or change.

Annual return on prescribed Form 'B' is required to be filed within 30 days of the first Annual General Meeting, with the registrar concerned, made as on the date of Annual General Meeting. Where no such meeting is held, then the Form 'B' made on the last day of the calendar year, may be filed within 30 days of the last day of the calendar year.

Two copies of the audited balance sheet and income and expenditure accounts signed in the prescribed manner are required to be filed with the registrar concerned within 30 days from the date of their AGM.

Yearly requirements:

Annual General Meetings are required to be held at least once in every calendar year, within a period of four months following the closure of its financial year and not more than fifteen months after holding of its last preceding AGM.

Directors of every company are required to lay before the company in its AGM audited balance sheet and income and expenditure accounts made up to a date not earlier than the date of the meeting by more than four months.

Any appointment or change in the Directors, Chief Executive, Auditors, Chief Accountant, legal adviser etc is required to be notified to the registrar concerned on Form '29' within 14 days of the said election, appointment or change.

After every third year after 1st election at 1st Annual General Meeting:

The election of directors is held after three years of the last election of directors. The directors so elected are to hold office for a period of three years. However, casual vacancy occurring on account of death, resignation or removal of any director may be filled up by the other directors for the remainder period of the term. The election of directors is required to be notified to the registrar concerned on Form '29' within 14 days from the date of appointment.

The directors of every company are required to appoint the chief executive not later than fifteen days from the date of election of directors. The appointment of chief executive is required to be notified to the registrar concerned on Form '29' within 14 days from the date of appointment.

Whenever required:

Change of registered office is to be notified on Form 21 within 28 days of any change.

Particulars of every mortgage or charge created by the company on its property or undertaking and every modification therein or satisfaction thereof are required to be filed and registered with the registrar concerned within 21 days after the date of its creation, modification or satisfaction.

3.2) The Trust Act, 1882

A trust has three conditions of a creator, trustee and beneficiary being present as requirements. A public charitable trust is a trust, which is established for the benefit of society at large or at the very least for a certain section of society. There are no particular laws relating to public trusts. However, the rules in the Trust Act of 1882 can be and have been applied to public charitable trusts, and the conditions governing private trusts are equally important. A Trust, in order to be valid, must fulfill these conditions or 'certainties'. The procedure for the creation of a trust is rather basic. A public and charitable trust can be created merely by a declaration to that effect on a non-judicial stamp paper of a value (which differs across provinces) stated in the Stamp Act.

Registration is optional. The legal status of a trust is that some property is pledged for the benefit of a prescribed group of people. Only the actual declaration of this intent (the trust deed) is registered. There is no membership in a trust. The Trustees of every Trust constitute the management committee. There is no bar on the minimum or maximum number of trustees. However, the terms of the trust govern this aspect.

Duties and Liabilities of a Trustee

- ❖ Trustees are in principle bound to:
- ❖ Fulfill the purpose of the trust and obey the directions of the author (i.e the person who reposes the confidence).
- ❖ Inform themselves about the state of the trust property. This may enable the trustee to obtain, when required, the transfer of the trust property to himself, and to obtain for the trust, the funds that are invested on insufficient or hazardous security.
- ❖ Protect the title to trust property and defend all suits that are required for the preservation of the trust property, and therefore, the protection of the title.
- ❖ Take care of the trust property. However, in the absence of a contract, a trustee managing such property is not answerable for any loss or deterioration of the trust property.
- ❖ Prevent wastage. If the trust property is prone to be wasted, or is of future or reversionary interest, then the trustee shall convert the property to a permanent and profitable nature.
- ❖ Invest trust money which cannot be applied immediately. Further, proper accounts of the trust property must be maintained, and all information in this regard kept available at the request of any beneficiary.

A Trustee may be discharged from office if any one of the following conditions occur:

- a) the extinction of the trust,
- b) the completion of the duties under the trust,
- c) appointment of a new trustee in his place,
- d) by a voluntary consent, and
- e) on account of a petition for his discharge by the court.

3.3) The Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961

Every registered agency under the Voluntary Social Welfare Agencies Registration and Control Ordinance, 1961 must:

- a) Submit its annual report to the registration authority and maintain audited accounts; these records must be made public.
- b) Obtain approval of the registration authority before making any amendments in the constitution.
- c) Grant due authority to the registration authority to inspect the books of accounts, and other records with respect to securities, cash and other properties held by the agency.
- d) Obtain approval of the registration authority before amending its constitution.

The relevant section states:

Section 8: Amendment of the constitution of registered agency

- (1) No amendment of the constitution of a registered agency shall be valid unless it has been proved by the Registration Authority, for which purpose a copy of the amendment shall be forwarded to the Registration Authority.
- (2) If the Registration Authority is satisfied that any amendment of the constitution is not contrary to any of the provisions of this Ordinance or the rules made thereunder, it may, if it thinks fit, approve the amendment.
- (3) Where the Registration Authority approves an amendment of the constitution, it shall issue to the agency a copy of the amendment certified by it, which shall be conclusive evidence that the same is duly approved.

There are certain fundamentals with regard to the functioning of a voluntary social welfare agency. It must make public its annual reports and audited accounts. It is required to pay all funds received into a separate account at a nationalized commercial bank, all of which have been approved by the Department of Social Welfare for this purpose.

Once registered under this Ordinance, the welfare agency is legally established, but does not enjoy the status of an “*artificial juridical person*.” While it has the authority to institute and defend suits, and other legal proceedings, it cannot own property under this Ordinance. Further, it has the protection from suit, prosecution, or legal proceedings for anything done in ‘good faith’. Under the Ordinance the Department of Social Welfare can make funding arrangements with the Social Welfare Councils. Therefore, it would be in the interest of the Social Welfare agencies not only to maintain contact with the relevant authorities but to be registered under them as well. The main role of the registration authority, vis a vis a registered CSO, is that it can act as an arbitrator in the case of disputes or winding up of the organisation. This is an important advantage.

3.4) The Societies Registration Act, 1860

The registrar of Joint Stock Companies is responsible for regulating the activities of the society. He scrutinises the Memorandum of Association prior to registration and can suggest modifications. The Registrar must first satisfy himself that all the documents are complete and meet the criteria specified for registration. Following this, the applicant is informed accordingly, and a site inspection is carried out. Once such formalities are completed, a report is sent to the Director of Industries who approves it. Only then, will the Assistant Registrar certify that the society is registered under the Act. The Registration Certificate, after being signed by the provincial assistant registrar Joint Stock Companies, will be handed over to the applicant.

The Act does not provide for maintenance of accounts or their audit in any specific form or manner. Every society needs to keep correct and updated books of accounts containing information with respect to:

- a) all sums of money received and all sums of money disbursed by the society
- b) all sales and purchases of the society
- c) all assets and liabilities of the society.

Furthermore, it is in the interest of the society to maintain the following books of accounts:

- i. Cash Book, showing daily income and expenditure.
- ii. Vouchers for contingent and other expenditure incurred by the society.
- iii. Ledger showing consolidated and separate accounts of all items of receipts, expenditure member wise, as well as item wise.
- iv. Monthly register of receipts and disbursement.
- v. Every society is required to get its accounts audited once a year by a qualified auditor. The report should indicate the exact financial affairs of the society.

The following provisions speak about the post registration amendments and dissolution of societies.

Section 12: Societies enabled to alter, extend or abridge their purposes.

Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society.

But no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Section 13: Provision for dissolution of societies and adjustment of their affairs – Assent required – Government consent

Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the

district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite:

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Provided that [whenever any Government] is a member of or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved [without the consent of the Government of the Province of registration].