

LICENCING & REGISTRATION

OF

ASSOCIATIONS NOT-FOR-PROFIT

(Section 42 of the Companies Ordinance, 1984)



SECURITIES AND EXCHANGE COMMISSION

OF PAKISTAN

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1. AIMS AND OBJECTIVES

This booklet is a simple guide for those who intend to get registered an Association Not-for-Profit, existing or to be set up, under the provisions of the Companies Ordinance, 1984 (the Ordinance). Such registration entails a two fold process i.e.:

- i. to obtain licence under section 42 of the Ordinance from Securities and Exchange Commission of Pakistan (the Commission); and thereafter,
- ii. 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.

This guide summarizes the steps, procedure and information that is required for obtaining licence by an Association under section 42 of the Ordinance, and thereafter having its registration. It also provides information regarding post incorporation statutory requirements. This booklet should be read with the relevant legislation i.e. the Ordinance, and the Companies (General Provisions and Forms) Rules, 1985 (the Rules).

2. ASSOCIATIONS NOT-FOR-PROFIT

An Association Not-For Profit is an organization formed for the purpose of serving a purpose of public or mutual benefit other than the pursuit or accumulation of profits. The main and basic objects of Associations are precisely provided in section 42 of the Ordinance, which are for promoting commerce, art, science, religion, sports, social services, charity or any other useful object. An Association after it has been incorporated in the Ordinance becomes a body corporate just like any other company. The Association is generally a guarantee limited company having no share capital.

3. LAWS FOR REGISTRATION OF NOT-FOR-PROFIT ASSOCIATIONS

In Pakistan, there are a number of laws for registration and regulation of Non-profit Associations, including the following prominent Acts/Ordinances.

- i. The Societies Registration Act, 1860.
- ii. The Trusts Act, 1882.
- iii. The Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961.
- iv. The Trade Organization Ordinance, 1961.
- v. The Companies Ordinance, 1984.

4. LICENCING OF AN ASSOCIATION UNDER THE COMPANIES ORDINANCE, 1984

The Ordinance is one of the principal laws, which governs the conduct of companies established for commercial objects. Nonetheless, this law also provides for and facilitates the registration of Associations Not-For-Profit. Section 42 of the Ordinance and Rule 6 of the Rules provide the legal framework for licencing of such associations.

In terms of aforesaid section 42, and Rule 6, an Association may be registered under the Ordinance, if it fulfills the following requirements:

- (i) It is capable of being formed as a public limited company. According to the law, any three persons or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and complying with the requirements of the Ordinance in respect of registration, may form a public company.
- (ii) It is established for the promotion of any or all of the following objects:
 - (a) Commerce
 - (b) Art
 - (c) Science
 - (d) Religion
 - (e) Sports
 - (f) Social Services
 - (g) Charity
 - (h) Any other useful object
- (iii) It applies or intends to apply its profit, if any, or other income in promoting its objects.
- (iv) It prohibits the payment of any dividend to its members.

Note: If an association is a Trade Organization as defined in sub-section (12) of Section 2 of the Trade Organization Ordinance, 1961 (TOO) and fulfills any condition mentioned in sub-section (2) of section 3 of TOO, then such Association shall seek licence under TOO, prior to registration under the Ordinance.

4.1 LICENCING TO EXISTING REGISTERED COMPANIES

The Ordinance also provides for grant of licence to an existing company, if it fulfils the requirements as given above, and such company will enjoy all the privileges of a limited company and be subject to all its obligations,

except those of using the word or words "Limited", "(Private) Limited" or "(Guarantee) Limited", as the case may be, as part of its name. For this purpose the company is required to pass a special resolution:

- ◆ for change of name of the company, if required; and apply to registrar for approval as provided under section 39 of the Ordinance;
- ◆ for alteration of Memorandum and Articles of Association to make it suitable for Associations Not for Profit and file a petition for confirmation of alteration in Memorandum and Articles of Association of the company as provided under section 21 of the Ordinance.
- ◆ for change of status of the company;

After completing the aforesaid requirements, the company may apply for grant of licence under section 42 of the Ordinance to the Commission.

4.2 CONDITIONS OF THE LICENCE

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.

The above as well as the following other conditions are 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.

5. BENEFITS OF REGISTRATION AS AN ASSOCIATION NOT-FOR-PROFIT

- Enjoy all the privileges of a company limited by guarantee and is subject to all its obligations, except the use of the word "Limited" in its name.
- Avail certain tax advantages.
- Enhance credibility with responsibility and accountability.
- Elevate entity status.
- Work under defined legal frame work.
- Have compact organizational structure.
- Make simple corporate record.
- Become a part of documented and regulated sector.
- Work with full peace of mind with no internal strife and dispute.

6. STEP-WISE PROCEDURE FOR LICENCING AND REGISTRATION OF ASSOCIATIONS NOT-FOR-PROFIT

The following three steps are involved in registration of association not-for-profit with the Commission.

Step - 1. Availability of Name

The first step is to seek the availability of the proposed name for the association/company from concerned CRO. For this purpose, an application is required to be made and a fee of Rs.200/- is to be paid for seeking availability for each name. The proposed name should not be otherwise inappropriate, deceptive or designed to exploit or offend the religious susceptibilities of the people and neither be identical nor closely resemble with the name of an existing company. The requisite fee may be paid to the Commission through any of the below means:-

- Through Bank challan, which are available with authorized branches of Habib bank Limited. Copy of paid challan shall be enclosed with the application; or
- Through Bank Draft/Pay Order drawn in favour of the Securities and Exchange Commission of Pakistan which shall be enclosed with the application.

Step - 2.

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

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

- i. Application to the Commission.
- 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 Securities and Exchange Commission of Pakistan
- iii. Copy of letter of availability of name.
- iv. Documents required under the Rules.
 - a. Three (3) copies of the draft Memorandum and Articles of Association.

Specimens of Memorandum and Articles of Association have been placed on the Commission's website under the linkage of http://www.secp.gov.pk/MemoAndArticle/PDF/Spec_MemArticles.pdf which may be downloaded and modified according to the requirements of the proposed company. The promoters must ensure that conditions of licence are mentioned in the Memorandum of Association.

- b. A list of promoters of the association with their occupations and addresses.
- c. 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 licence laid therein and the rules.
- d. 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.
- e. 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.
- f. An estimate of the future annual income and expenditure of the proposed company, specifying the sources of income and objects of expenditure.
- g. A brief statement of the work already done by the association or proposed to be done after it being granted the licence 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 Commission.
- 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.

Step - 3. **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.

The procedure for such incorporation is given in the Promoters guide as placed on Commission's website under the linkage of <http://www.secp.gov.pk/Guides/PromotersGuide.pdf>

7. POST REGISTRATION REQUIREMENTS

7.1 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.

7.2 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.

7.3 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.

7.4 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.

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

7.6 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.

7.7 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.

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

7.9 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.

7.10 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.

7.11 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.

7.12 Yearly requirements:

7.12.1 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.

7.12.2 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.

7.12.3 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.

Note: Requirements at paras 7.8, 7.10 and 7.11 may also be seen

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

7.13.1 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.

7.13.2 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.

7.14 Whenever required:

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

7.14.2 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.

8. Further information

The Commission is publishing a series of its Guides. These Guides briefly describe procedures of important matters relating to the Ordinance, and the rules and regulations made thereunder.

Statutory forms and guidance booklets are available from the SECP Headquarters and the Companies Registration Offices. The quickest way to get these is through our website, <http://www.secp.gov.pk/>.

You may file documents to the concerned Registrar, by hand, personally or by post or through courier to one of the following Company Registration Offices concerning your company:

1. Company Registration Office,
State Life Building, 7-Blue Area, Islamabad
Phone: 051-9208740, Fax 051-9208740
Email: croislamabad@secp.gov.pk
2. Company Registration Office,
4th Floor, SLIC Building No.2, Karachi.
Phone: 021-9213272, Fax 021-9213278
Email: croukarachi@secp.gov.pk
3. Company Registration Office,
3rd & 4th Floors, Associated House,
7-Egerton Road, Lahore.
Phone: 042- 9200274, Fax 042-9202044
Email: crolahore@secp.gov.pk

4. Company Registration Office,
63-A, Nawa-i-Waqt Building, Abdali Road, Multan.
Phone: 061-9200920 Fax 061-9200920
Email: cromultan@secp.gov.pk
5. Company Registration Office,
356-A, Al-Jamil Plaza,
1st Floor, Peoples Colony, Small D Ground, Faisalabad.
Phone: 041-9220284 Fax: 9220284
Email: crofsb@secp.gov.pk
6. Company Registration Office,
1st Floor, State Life Building,
The Mall, Peshawar Cantt.
Phone: 091-9213178, Fax 091-9213178
Email: cropeshawar@secp.gov.pk
7. Company Registration Office,
382/3, (IDBP House), Shahrah-e-Hali, Quetta Cantt.
Ph: 081-2844136
Email: croqta@qta.paknet.com.pk
8. Company Registration Office,
House # 28, Hamdard Housing Society,
Airport Road, Sukkur.
Ph: 071-5633757
Email: croskr@hotmail.com

PUBLIC CONSULTATION

If you have any suggestions for the development in the legal framework or otherwise, please let us know about your opinion/comments on the following address:

Registrar of Companies,
Securities and Exchange Commission of Pakistan,
NIC building, Jinnah Avenue, Blue Area,
Islamabad, Pakistan.

Comments can also be sent via electronic mail at the following address:

headquarters@secp.gov.pk

DISCLAIMER

The booklet has been published with the intention to create an awareness of the concept of the relevant matters. However, the booklet does not tell everything and the opinions or legal interpretations, contained in the booklet are circumstantial and may vary under different situations. If the reader is in doubt or dealing with any specific condition, it is recommended to refer to the Companies Ordinance, 1984 and allied laws and consult an adviser for seeking professional advice.

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