

Country Note for Pakistan

I. Summary

In Pakistan, there exist several rules and regulations under which nonprofits may form and register themselves. Some of these Laws and Acts were prepared before the independence of Pakistan by the then British government. Despite the fact that there are nearly 22 laws which, by and large, impact the nonprofits' existence, registration, and operation¹, there is lack of legal definition of term 'NGO', 'charity', 'philanthropy', 'charitable purpose', or 'public benefit'. Generally, the terms 'charity' and 'philanthropy' are used interchangeably. Terms 'nonprofit organization' and 'charitable purpose' are addressed in Income Tax Ordinance, 2001. The definition and concept of a 'charity' is fairly dealt in the 'Charities - Taxpayers' Facilitation Guide' published by the Central board of Revenue in February 2004². This definition³ introduces the concept of 'humanitarian purposes' (which is much broader than mere acts of charity). In relevant part, it provides that a charity is an organization established and operated for humanitarian purposes. The humanitarian purposes set out in the guide are fairly broad covering from mere acts of piety and charity to the development of aviation and industries. However, an NGO is normally considered to be an organization not affiliated with the government that works for the welfare, benefit, or development of society or certain sections of the society. Each entity can draw up its own constitution, article, rules, by-laws, provided they comply with the law of the land. If the entity is registered under any Act or Ordinance, it is expected to follow the provisions of that particular Act or Ordinance. Article 17 of the Constitution of the Islamic Republic of Pakistan recognizes freedom of association as a fundamental right, guaranteed by the State and enforceable through judicial intervention⁴. This freedom is, however, subject to reasonable restrictions imposed by law in the interests of "sovereignty or integrity of Pakistan, public order or morality".

A. Types of organizations

Based on their activity areas, there are approximately 45000 organizations categorized according to the ICNPO classifications⁵. The nonprofit organizations are either unregistered⁶ or registered as Societies⁷, Social Welfare Agencies⁸, Trusts⁹, and Nonprofit

¹ Zafar Hameed Ismail and Qadeer Baig; page 315 "*Philanthropy and Law in Pakistan*" chapter in "Philanthropy and the Law in South Asia" Asia Pacific Philanthropy Consortium, 2004. (at page 252 it is mentioned that there are 18 federal acts)

² Available at the official website of the Central Board of Revenue official website <http://www.cbr.gov.pk/tpef/Brochure7.pdf#search='pakistan%20Charities%20%20Taxpayers%20Facilitation%20Guide'>

³ For the purposes of Income Tax Ordinance, 2001

⁴ Text available at the official web site of the Government of Pakistan Ministry of Law, Justice & Human Rights at http://www.pakistan.gov.pk/law-division/publications/constitution_of_pakistan.htm

⁵ Pasha, Jamal and Iqbal; SPDC working paper No. 1 "Dimensions of the nonprofit sector in Pakistan" 2002

⁶ 34% are unregistered, 4.1% applied for registration.

(Registration for NGO is not mandatory in Pakistan to carry out the charitable, development, and welfare activities. Registration gives certain advantages which unregistered would not have. For instance it gives them a legal status, can open a bank account, can sue and be sued in their own name, own property, and

Companies¹⁰. (Pasha, Jamal and Iqbal; SPDC working paper No. 1 “Dimensions of the nonprofit sector in Pakistan” 2002). Some are also recognized as Waqfs. One more concept is of Citizens’ Community Board (CCB) which is envisioned under the Local Government Ordinance 2001¹¹.

B. Tax laws

Special tax preferences, exemptions, concessions are available to NPOs and donors¹². There are considerable tax incentives for charitable giving. The relevant provisions having an impact on taxation of NPOs and donors are included in:

Income Tax Ordinance 1979

Income Tax Ordinance 2001

Income Tax Rules 2002

Sales Tax Act, 1990

Urban Immovable Property Tax Act, 1958

Pakistan Customs Tariff

Customs Act, 1969

II. Applicable Laws

The Constitution of the Islamic Republic of Pakistan, 1973

The Societies Registration Act, 1860

The Trusts Act, 1882

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

The Companies Ordinance, 1984

Religious Endowment Act, 1863

The Charitable Endowments Act, 1890

The Mussalman Wakf Validating Act, 1913; and Mussalman Wakf Validating Act, 1930

The Mussalman Wakf Act, 1923

The Charitable and Religious Trusts Act, 1920

The Income Tax Ordinance, 1979

The Income Tax Ordinance, 2001

The Cooperative Societies Act, 1925

The Industrial Relations (Trade Unions) Ordinance, 1969

The Registration Act, 1908

most importantly they become eligible for financial assistance from government agencies, national and international funding agencies. Also, certain type of activities can be carried out only by registered NGOs) “A study of NGOs - Pakistan” Asian Development Bank report 1999 available at

<http://www.adb.org/NGOs/docs/NGOPakistan.pdf>

⁷ 40.5%

⁸ 15.2%

⁹ 5.8%

¹⁰ 0.3%

¹¹ A part of governments’ decentralization process initiated in 2001. Current or future prospects of CCBs, however, is unclear.

¹² Individuals and corporates

The Charitable Funds (Registration of Collection) Act, 1953
Minimum Wages Ordinance, 1961
Employees' Social Security Ordinance, 1965
The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968
The West Pakistan Shops and Establishments Ordinance, 1969
Employees' Old Age Benefits Act, 1976
Local Government Ordinance, 2001

III. Relevant Legal Forms:

A. General Legal Forms

- **Societies**

A 'charitable society'¹³ or a society established for a 'charitable purpose'¹⁴ can be registered under the Societies Registration Act, 1860¹⁵. This is the oldest registration law that dates back to late 1800s (in pre-partition British India) and continues as a major source of registration for charitable, educational and social organizations. Though, it is an Act for the registration of literary, scientific and charitable societies, neither the term 'charitable society' nor 'charitable purpose' is specifically defined in the Act. Nevertheless, purposes for which a society can be established under the Act are numerous and broad and enfold almost all purposes that could possibly be charitable¹⁶. The registration procedure is pretty simple. Persons¹⁷ wishing to form a society¹⁸ under this Act may do so by signing a memorandum of association¹⁹ and filing the same with the Registrar of Joint-stock companies along with a copy of the rules and regulations of the society and nominal amount of registration fee of PKR 50²⁰ (equivalent to USD 0.842). Societies, associations, clubs, trusts, and even waqfs usually register under this Act.

- **Trusts**

A "trust" is an obligation annexed to the ownership of property, and rising 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. A trust may be created for any lawful purpose. The Trusts Act 1882 is an Act to define and amend the law relating to *Private Trusts* and Trustees. It provides legal protection to private acts of public charity. Though, very few active NGOs are trusts, the Act empowers the makers of the trust with

¹³ Article 20 of The Societies Registration Act, 1860

¹⁴ Article 1 of The Societies Registration Act, 1860

¹⁵ available at <http://punjablaws.gov.pk/laws/1.html>

¹⁶ purposes such as: promotion of science, literature, fine arts; dissemination of useful knowledge or political education; the foundation or maintenance of libraries or reading rooms for general use among the members or open to public; public museums and galleries; collection of natural history, mechanical and philosophical inventions, instruments or designs (Sec. 1 and 20 of the Societies Registration Act, 1860)

¹⁷ at least seven in number

¹⁸ charitable or non-charitable

¹⁹ containing the name of the society, objectives of the society, name and addresses and occupations of those who are entrusted with the management affairs of the society (Sec. 2 of the Societies Registration Act, 1860). A list of managing body is required to be submitted to the Registrar annually (sec. 4).

²⁰ Section 3 of The Societies Registration Act, 1860 (provincial government may decrease this amount)

vast authority, rights, control and flexibility. Trust could be of immovable or movable property. When the trust is of immovable property declared by a non-testamentary instrument in writing, it is required to be registered²¹. The trust deed through which a trust is created is not open to public scrutiny²². Under section 57 of the Act, the beneficiary has a right to inspect and take copies of the instrument of trust accounts, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty²³. There is no specific legislation covering the Public Charitable Trusts, but the provisions of some Acts such as the Charitable and Religious Trusts Act 1920, the Religious Endowment Act 1863, the Charitable Endowments Act 1890 recognize the foundation of Public charitable trusts for the benefit of the public at large²⁴. The provisions of the Trusts Act 1882 can also be applied. For a public charitable trust, an intention to declare a binding trust and the property bound by the trust need to be certain. As long as the charitable intent can be inferred, the failure to clearly identify the objectives of the trust does not fail the public charitable trust²⁵. Trusts are generally registered under the societies registration Act 1860²⁶.

- **The Voluntary Social Welfare Agencies**

Voluntary Social welfare agency (VSWA) is an organization, 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 below and depends for its resources on public subscriptions, donations or Government aid²⁷. VSWA is registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. The Ordinance prohibits the establishment or continuation of voluntary Social welfare agency without registration. The fields enumerated in the schedule²⁸ are: child welfare; youth welfare; women's welfare; welfare of the physically and mentally handicapped; family planning; recreational programs intended to keep people away from anti-social activities; social education of adults aimed to develop the sense of civic responsibility, welfare and rehabilitation of released prisoners; welfare of juvenile delinquents; welfare of the socially handicapped; welfare of the beggars and destitute; welfare and rehabilitation of patients; welfare of the aged and infirm; training in social work; and coordination of social welfare agencies. Thus, registration with the Social Welfare Departments of the Provincial government is mandatory for any such organizations that is engaged in any of the above welfare activity and depends for its resources on public subscriptions,

²¹ Sec.5 of The Trusts Act 1882 <http://www.pcp.org.pk/pdf/The%20Trusts%20Act%201882%20.doc>

²² "A study of NGOs - Pakistan" Asian Development Bank report 1999 available at <http://www.adb.org/NGOs/docs/NGOPakistan.pdf>

²³ Sec. 57 of The Trusts Act 1882 <http://www.pcp.org.pk/pdf/The%20Trusts%20Act%201882%20.doc>

²⁴ "Philanthropy and the Law in South Asia" Asia Pacific Philanthropy Consortium, 2004

²⁵ Zafar H. Ismail; Legal Framework of the nonprofit sector in Pakistan <http://www.pide.org.pk/pdf/psde%2018AGM/The%20Legal%20Framework%20Of%20The%20Nonprofit%20Sector.pdf>

²⁶ "Philanthropy and the Law in South Asia" Asia Pacific Philanthropy Consortium, 2004

²⁷ section 2(f) of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 <http://www.pcp.org.pk/pdf/1961%20Voluntary%20S.W%20agencies%20Ordinance%20.doc>

²⁸ Under Sec. 16 of the Ordinance, the Provincial Government has the power to amend the schedule from time to time

donations or Government aid. The Ordinance requires the registered agencies to: maintain audited accounts and other records such as members' book, Minutes book, inspection book; publish Annual Report and audited accounts to the Registration Authority and publish the same at the close of each financial year for general information²⁹. Contravention of any of the provisions of the Ordinance may cause imprisonment up to six months and/or fine up to PKR 2000³⁰ (equivalent to USD 34). The Ordinance gives wide powers to the Registration Authority such as:

- amendments to the constitution of the registered agency can be made only with the approval of the Registration Authority³¹; no voluntary dissolution of registered agencies is permitted, unless approved by the Provincial Government³²;
- suspension or dissolution of governing bodies of registered agencies (an order of dissolution can be appealed only to the Provincial Government and its decision on appeal shall be final and can not be questioned in any court of law³³);
- No Court of Law can take cognizance of an offense under this Ordinance except upon complaint in writing made by the Registration Authority³⁴;
- The widest power is through Section 17 which provides that the Provincial Government may exempt any agency or class of agencies from the operation of all or any of the provisions of this ordinance³⁵.

- **Waqf**

As the title demonstrates, the Mussalman Waqf Validating Act 1913 and 1930 endorse the system of “*Waqfs*”. ‘*Waqf*’ means the *permanent* endowment by a Muslim of any of his property for a purpose recognized by the Muslim Law as 'religious, pious or charitable'. It is in Muslim law what nearly is 'bequeath' and 'bequest' in the Roman law. Personal property is endowed in *waqf* for religious, educational, or any other benevolent purpose under specific terms and conditions. “Waqf can be created for personal benefit, or for the benefit of the descendants and eventually or specifically for charitable purposes³⁶”. Generally, it is a permanent arrangement, and cannot be done for a certain period; it becomes immediately effective, and cannot be kept in abeyance; is an irrevocable legal contract; *waqf* property is not subject to confiscation but in some circumstances government may take over the control of the property³⁷. The person who administers the waqf is called ‘mutawalli’. The Muslmaan Waqf Act 1923 and provincial Waqf Properties Ordinances 1979 provide for the management and administration of

²⁹ The Voluntary Social Welfare Agencies (Registration and Control) Rules, 1962

³⁰ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Sec.14 (1)

³¹ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Sec. 8

³² The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Sec. 11

³³ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Sec.9 (4)

³⁴ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; Sec.14

³⁵ <http://www.pcp.org.pk/pdf/1961%20Voluntary%20S.W%20agencies%20Ordinance%20.doc>

³⁶ Zafar Hameed Ismail and Qadeer Baig; “Philanthropy and Law in Pakistan” chapter in “Philanthropy and the Law in South Asia” Asia Pacific Philanthropy Consortium, 2004

³⁷ Section 7 of the provincial Waqf property ordinances of 1979 the government (govt. appointed chief administrator) may take over and assume the administration, control, management, and maintenance of any waqf property after the life time of person creating the waqf. The exercise of this power is not the confiscation of property but is merely an eviction of the Mutawallee from managing the affairs of the waqf. <http://punjablaws.gov.pk/laws/336.html>

waqf properties³⁸. The Act also requires that Waqf properties be registered³⁹. Under the 1923 Act mutawalli is required to file with the court a statement describing the waqf property, audited statement of the income and expenditures, payable taxes and rents.

- **Nonprofit Companies**

The Companies Ordinance, 1984 provides a special regime for establishment of non-profit companies for promoting commerce, art, science, religion, sports, social services, charity or any other useful object. Such a company must apply its profits, if any, or other income in promoting its objects, and should prohibit the payment of any dividend to its members. Although the companies incorporated under section 42 are limited liability companies, they are allowed to dispense with the use of the words "Limited", "Private Limited" or "Guarantee Limited" with their names. This essentially means that such companies do operate as limited liability companies and its members avail the benefit of the concept of limited liability. The advantage of having a non-profit company is that such associations are better managed as they must comply with the corporate regime established under the Ordinance. The tax laws of the country also recognize these companies for exemption of their income from the income tax subject to certain conditions to be incorporated in their constituent documents (Memorandum and Articles of Association). The conditions, if any, contained in the license granted by the SECP under section 42 of the Ordinance govern the activities of the company and these conditions are normally required to be incorporated in the constituent documents of the company. Non compliance with the conditions in the license may lead to its cancellation. All the provisions of the Ordinance concerning the management and even winding up apply to such companies subject to the general condition that upon winding up its surplus assets if any would be transferred to a company with similar objectives and nothing goes back to the members.

- **Citizen Community Board (CCB)**

Citizen Community Board is a nonprofit organization conceived to be setup under chapter X of the Local Government Ordinance 2001⁴⁰. The law provides legal cover to the formation of CCBs to enable citizens to actively participate in the development and non-development activities of the local government/council affairs⁴¹. Under the law the Boards are empowered to prioritize investments for up to certain percent of the local development budget for basic infrastructure and services⁴².

³⁸ Under the Provincial waqf Property Ordinances 1979 'Waqf property' is a property of any kind permanently dedicated by a person professing Islam for any purpose recognized by Islam as religious, pious or charitable, but does not include property of any such waqf as is described in section 3 of the Mussalman Waqf Validating Act, 1913 (VI of 1913), under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any member of his family or descendants.

³⁹ Waqf property ordinances of 1979 (section 6)

⁴⁰ text of the Ordinance available at http://www.lahore.gov.pk/The_Local_Government_Ordinance_2001-Promulgated_by_Provinces.doc

⁴¹ Zubair Bhatti; 'Governance, Organizational Effectiveness and the Nonprofit Sector' APPC Conference September 5-7, 2003 Pakistan background paper; National Reconstruction Bureau "Guidelines for Citizens Community Boards" provide good and comprehensive detail on CCB. available at http://www.nrb.gov.pk/publications/guidelines_citizen_community_boards.pdf

⁴² "condition was waived during early years of the Ordinance."

B. Public Benefit Status

The term ‘public benefit’ is not explicitly used or addressed in the legislation covering the nonprofit sector of Pakistan. Unlike other jurisdictions such as USA, Canada, or the UK, it is not explicitly required that charities or nonprofit organizations in Pakistan must meet the “Public Benefit” test. All major laws through which nonprofit institutions get themselves legally recognized, however, provide several purposes including ‘charitable’ ‘social welfare’ and ‘religious’ purposes for which such institutions may establish. However, the inspiration for charity and social welfare is deep rooted in Islam. The concept of social welfare is based on the Islamic doctrines of “Adl-o-Ehsan⁴³ and Haqooq-ul-Ibad⁴⁴, making the state and society together responsible for the welfare of the people⁴⁵.” The religion recognizes generosity and charity as admirable qualities. For instance, the concept of *Zakat*⁴⁶ (mandatory almsgiving or charity) makes it a religious duty of the wealthy to donate part of their possessions in public welfare to satisfy the needs of the poor, destitute, deprived, and less fortunate sections of the community. It endorses the belief that “a society can flourish only when its members do not spend all their wealth on the satisfaction of their own desires but reserve a portion of it for parents, relatives neighbors, the poor and the incapacitated.⁴⁷” Similar are the concepts of Sadaqah and Khairaat (voluntary almsgiving).

IV. Specific Questions Regarding Local Law

A. Inurement

Usually, the income of nonprofit institutions must be devoted to activities that advance the purposes for which it is established. The Societies Registration Act 1860⁴⁸ does not prohibit the inurement of any earning of the society to any private shareholder or individual, unless the governing documents of the society constitute such prohibition. In case of dissolution of a society, however, the property is not distributed among the members but is given to some other society determined by members or, in default, by the court. In case of nonprofit companies⁴⁹ their profits if any are not allowed to be distributed among the members and all incomes are required to be utilized for the promotion of their objectives. Under the Ordinance there is a general condition that even upon winding up its surplus assets, if any, would be transferred to a company with similar objectives and nothing goes back to the members. The Citizen Community Boards’ income and assets are to be used solely for the attainment of its objectives, and no portion of the income can be paid by way of dividend, profit or bonus to any of its members or contributors⁵⁰. In case of a public charitable trust the benefit should go to the public at

⁴³ ‘Adl-o-Ehsan’ means ‘justice and favor’

⁴⁴ ‘Haqooq-ul-Ibad’ means ‘rights of other human beings’

⁴⁵ Social Welfare Department of the Government of the Islamic Republic of Pakistan
http://www.punjab.gov.pk/socialwelfare/home_introduction.htm

⁴⁶ one of the mandatory tenet/pillar of Islam

⁴⁷ Maulana Wahiduddin Khan; ‘The Concept of Charity in Islam’

⁴⁸ Under which 40.5% of the nonprofit organizations are registered

⁴⁹ formed under the Companies Ordinance 1984

⁵⁰ Section 101 (1) Local Government Ordinance 2001

large or at least sufficient segment of the society. Except the Companies Ordinance 1984, the other relevant laws do not explicitly address the issues such as self dealing, conflict of interest, or personal benefit.

B. Proprietary Interest

The property of the society is vested 'in the governing body' or 'managing committee'. A Social welfare agency registered under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 is an artificial juridical person though, but it can not own property⁵¹. Prima facie, neither the Ordinance nor the Rules subsequent to it prohibit or limit the remuneration or inurement to the governing body and/or to private individuals. A waqf property or any income therefrom is used for the purpose for which it was dedicated or has been used, or for any purpose recognized by Islam as religious, pious or charitable⁵², as the Chief Administrator (the government appointed officer) may deem fit⁵³. In a Private Trusts, the benefit can be for the private persons including the one who creates the trust. Where it is a public charitable trust, the benefit or the proceeds is applied for the benefit of the society or certain section of the society. Trustees of a public charitable trust hold the trust assets on behalf of the trust. They have the legal title to the trusts' assets, but they hold these assets for the benefit of the beneficiaries and not for themselves. Under Charitable Endowment Act 1890, the property held in Trust may be may rest with the Treasurer of Charitable Endowments, but the administration complies with the wishes of the author. A Citizen Community Board may raise funds through voluntary contributions, gifts, donations, grants and endowments for its declared purposes without compromising the larger interest of the community. It may also receive project-based cost sharing support from any local government in accordance with the provisions of the Local Government Ordinance 2001⁵⁴.

C. Dissolution

Assent of at least three-fifth of the members is required for dissolution of a Society registered under the Societies Registration Act, 1860⁵⁵. If any government is a member, contributor, or otherwise interested in any society registered under the Societies Registration Act, 1860 such society can not be dissolved without the consent of the province of registration⁵⁶. Disposal and settlement of the property of the society is made according to the rules of the society. If no such rules are in place then as the governing body finds expedient. If any dispute arises among governing body or members of the society the adjustment of the affairs is referred to the principal court of original civil jurisdiction of the district where chief building of the society is situated⁵⁷. Upon dissolution, after the satisfaction of debt and liabilities of the society, the remaining

⁵¹ "Philanthropy and the Law in South Asia" Asia Pacific Philanthropy Consortium, 2004 (at page 269)

⁵² Relief of the poor and the orphan, education, worship, medical relief, maintenance of shrines or the advancement of any other object of charitable, religious or pious nature or of general public utility are deemed charitable purposes. The Punjab Waqf Properties Ordinance 1979 (section 2)

⁵³ The Punjab Waqf Properties Ordinance 1979 (section 17)

⁵⁴ Section 100 (1)(2) The Local Government Ordinance 2001

⁵⁵ The Societies Registration Act, 1860 (Sec. 13)

⁵⁶ The Societies Registration Act, 1860 (Sec. 13)

⁵⁷ The Societies Registration Act, 1860 (Sec. 13)

property (if any) is NOT distributed or paid to the members of the society. Any such remaining property is given to some other society determined by votes of at least three fifth members of the society. If the members fail to determine, then by such court as aforementioned⁵⁸. The “no member to receive profit’ clause does not apply to any society founded or established by the contributions of share holders in the nature of a joint stock company⁵⁹. Provincial government of registration has the authority to dissolve and reconstitute the governing body of any society registered under the Societies Registration Act⁶⁰. When proposed by the governing body and after the assent of three fifth members, the society can be amalgamated either wholly or partially with any other society⁶¹. In case of dissolution or de-registration of a Citizen Community Board, its assets, where a local government has contributed towards creation of any assets or funds, pass on to such local government. The assets, however, continue to be used for community welfare by the local government through any of its agencies or any other Citizen Community Board⁶². Trusts are not dissolved, they extinct. A trust is extinguished when the purpose for which it is created is completely fulfilled, when its purpose becomes unlawful, when the fulfillment of its purpose becomes impossible by destruction of trust property or otherwise, or when the revocable trust is expressly revoked. Waqfs are also not dissolved. But, under the Waqf Provincial Ordinances 1979, which deal with the management and administration of waqf properties, the government (govt. appointed chief administrator) may take over and assume the administration, control, management, and maintenance of any waqf property after the life time of person creating the waqf. When the government has taken over the property and the gross annual income from which exceeds certain threshold⁶³ may, settle a scheme for the administration and development of such waqf property⁶⁴. The wishes of the person dedicating the waqf property are taken into consideration. The government can also dispose of the property under certain circumstances and invest the proceeds in accordance with its directions⁶⁵. The sale-proceeds are first applied for satisfying the main purpose of the waqf. A waqf property or any income therefrom is used for the purpose for which it was dedicated or has been used, or for any purpose recognized by Islam as religious, pious or charitable, as the Chief Administrator may deem fit⁶⁶. The Provincial Government may dissolve the Social Welfare Agency (registered under the VSWA Ordinance 1961). It may do so upon the receipt of a report from the Registration Authority⁶⁷ (RA) that such agency is contravening its constitution, or the provisions of the VSWA Ordinance 1961 or the Rules thereunder, or is acting in a manner prejudicial to the interest of the public⁶⁸. No voluntary dissolution of registered agencies is permitted,

⁵⁸ The Societies Registration Act, 1860 (Sec. 14)

⁵⁹ The Societies Registration Act, 1860 (Sec. 14)

⁶⁰ The Societies Registration Act, 1860 (Sec. 16A)

⁶¹ The Societies Registration Act, 1860 (Sec. 12)

⁶² Section 101(2) Local Government Ordinance 2001

⁶³ PKR 5000; The Punjab Waqf Properties Ordinance 1979 (section 15)

⁶⁴ The Punjab Waqf Properties Ordinance 1979 (section 15)

⁶⁵ The Punjab Waqf Properties Ordinance 1979 (section 16)

⁶⁶ The Punjab Waqf Properties Ordinance 1979 (section 17)

⁶⁷ The registration authority may make such report upon reasonable belief of such acts of contravention. It must give the Agency an hearing opportunity before issuing such report

⁶⁸ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Section 10)

unless approved by the Provincial Government⁶⁹. Registration of the agency stands cancel upon dissolution. The government may⁷⁰ require the financial institution or other persons holding money or assets on behalf of the agency not to apportion, distribute or dispense with such assets without prior written permission of the Provincial Government. The government may also appoint a person to wind up the affairs of the agency. After satisfaction of all debts and liabilities of the agency the assets, money or securities of the society are generally paid or transferred to such other agency having similar objectives as those of the dissolved agency⁷¹. The RA is also empowered to suspend or dissolve the governing body of any registered agency on the grounds of financial irregularities, mal-administration, or contravention of the provisions of the Ordinance. Upon such suspension the RA appoints an administrator or caretaker with the powers of governing authority. Where such an order of suspension is confirmed by the Provincial Government there lies no appeal against such order in any court of law⁷².

D. Activities in General

General activities of the societies include charitable activities; promotion of science, literature, fine arts; dissemination of useful knowledge or political education; the foundation or maintenance of libraries, reading rooms for general use among the members or open to public; public museums and galleries; collection of natural history; mechanical and philosophical inventions, instruments or designs. A Social Welfare Agency can engage in activities rendering welfare services⁷³ enumerated in the schedule to the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961. The permitted activities under the schedule are: child welfare, youth welfare, women's welfare, welfare of the physically and mentally handicapped, family planning, recreational programs intended to keep people away from anti-social activities, social education of adults aimed at developing sense of civic responsibility, welfare and rehabilitation of the released prisoners, welfare of juvenile delinquents, welfare and rehabilitation of patients, welfare of the aged and infirm, training in social work, and coordination of social welfare agencies⁷⁴. Trusts can engage in any lawful activity for instance welfare, religious, charitable and for the benefit of the public. Waqf could be for any purpose recognized by Islam as religious, pious or charitable. Under the provincial Waqf Properties Ordinances 1979⁷⁵ the relief of the poor and the orphan, education, worship, medical relief, maintenance of shrines or the advancement of any other object of charitable, religious or pious nature or of general public utility are deemed to be charitable purposes. Nonprofit Companies can be established for promoting commerce, art, science, religion, sports, social services, charity or any other useful objective.

⁶⁹ The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Section 11)

⁷⁰ not 'shall'

⁷¹ Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 (Section 12)

⁷² Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 (Section 9)

⁷³ Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 [Section 2(f)]

⁷⁴ The provincial government has the power to amend the schedule (include or exclude any field of social welfare service): Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 [Section 16]

⁷⁵ Text available at <http://punjablaws.gov.pk/laws/336.html>

E. Political Activities

Nonprofit organizations are not prohibited from engaging in political activities, except those registered as Social Welfare Agency under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 which restricts the activities of the agencies to the list prescribed in the Ordinance.

A nonprofit organization can not claim exemption from income tax on the political campaign funds collected. Under the Income Tax Rules 2002, the Income Tax Commissioner may also refuse to approve the institution, fund, trust, society or organization as a nonprofit organization for Income Tax purposes if he is satisfied that such organization has been propagating the view of a particular political party⁷⁶.

F. Discrimination

The Fundamental Rights and Principles of Policy as enshrined in the Constitution of the Islamic Republic of Pakistan, guarantee the right to peaceful assembly and to 'associate' together and establish associations. Such right is not denied except in the interest of sovereignty or integrity of Pakistan, public order or morality. The relevant laws and legislation conferring or recognizing the legal existence of nonprofit entities do not discriminate one nonprofit entity over the other on the basis of the law of its registration. An entity's registration under a particular Act or Ordinance, however, obligates it to follow the provisions of that particular law. Thus, it may be possible that two entities with similar objectives and activity areas are regulated differently because they derive their legal existence under two different and independent laws and thus different set of regulations apply to them. This could also result in varying treatment among them for instance different reporting, book keeping, accounting and auditing requirements; more or less independence from governmental entities; access to government grants and funds, tax concessions and etc.

G. Control of Organization

Registered organizations are governed or regulated under the law through which they are registered. The book keeping, accounting and auditing requirements are generally expected of all entities. Almost every piece of legislation provides that there be a registration authority, and requires that certain documents be submitted by the applicant organization. For Societies, it is Registrar of Joint Stock Companies to issue the certificate to a society to the effect of its registration as a society. The Act itself does not seem to provide any power to the registrar to deny any such application provided that it is accompanied by the required documents as prescribed in the Act. The government, however, retains authority to a certain extent on some regulatory and registration aspects of the registered organizations that depend on governmental grants and funds.. The provincial government has considerable controls and regulatory measures in place for Voluntary Social Welfare Agencies. The Registration Authority (RA) in this case is the officer appointed by the provincial government. The RA can deny any application for registration. There are certain strict conditions required to be complied by the registered

⁷⁶ Rule 213 (2)(b)

agencies⁷⁷. Any amendment in the constitution of the agency can be made only with the approval of the RA. The RA has the power to inspect books, records, and accounts of the agency. The provincial government has the power to dissolve the agency. Voluntary dissolution of the agency is allowed only with the approval of the provincial government. The activities of the agencies are restricted only to those enumerated by the provincial government. The provincial government, however, does retain the power to consent or not to consent for dissolution of any such society where government is the member or a contributor or otherwise interested in such society⁷⁸. In case of *Waqf*, the government can take over the administration and management of the *waqf* property, but the wishes of the author are taken into consideration as to the purpose for which the *waqf* was created.

V. Tax Laws

‘Charities – Taxpayer’s Facilitation Guide’ issued by the Central Board of Revenue in February 2004 classifies charities into four categories.

- Informal
- Trusts and other legal obligations⁷⁹
- Approved by the commissioner of income tax
- Approved by the CBR

Applicability of special income tax concessions relating to exemption of certain incomes of the ‘charities’ depends upon the type of the ‘charity’. These are enumerated in the Guide.

Under Income Tax Rules 2002, for tax purposes a nonprofit organization is an organization approved⁸⁰, by the Central Board of Revenue (CBR) or Commissioner of Income Tax, as a nonprofit organization. Section 2 (36) of the Income Tax Ordinance, 2001 defines nonprofit organization as any person⁸¹ other than an individual, which is a)

⁷⁷ section 7 of the Voluntary Social Welfare Agencies (Registration and Control Ordinance), 1961; and section 8 and 9 of the Voluntary Social Welfare Agencies (Registration and Control) Rules, 1962

⁷⁸ this authority seems to be reasonable

⁷⁹ ‘includes Muslim Waqfs, charitable endowments or institutions formed or registered under the Societies Registration Act 1860, Charitable Endowment act 1890, Social Voluntary Agencies Ordinance 1961, or Companies Ordinance 1984’; Charities – Taxpayer’s Facilitation Guide 2004

⁸⁰ An institution, fund, trust, society or any other organization established in Pakistan for religious or a charitable and community services can apply for such approval. Rules 211 – 214 of the Income Tax Rules, 2002 deals with such approval and also set forth the prerequisites for such approval. Under Rule 213 of the Income Tax Rules 2002, the Commissioner may refuse to approve the institution, fund, trust, society or organization if the Commissioner is satisfied that the institution, fund, trust or society a) has been or is being used for personal gain of any particular person or a group of persons; b) has been propagating the view of a particular political party; c) has been or is being managed in a manner calculated to personally benefit its members or their families; or d) has not or will not be able to achieve its declared aims and objects in view of its set up, administrative or otherwise as evaluated and certified by an independent rating agency.

⁸¹ The definition of ‘person’ under section 80 of the Income Tax Ordinance 2001 includes a company or association of persons incorporated, formed, organized or established in Pakistan or elsewhere; the Federal Government, a foreign government, a political subdivision of a foreign government, or public international organization. “association of persons” includes a firm, a Hindu undivided family, any artificial juridical person and any body of persons formed under a foreign law. The section also provides the definition of a

established for religious⁸², educational, charitable⁸³, welfare or development purposes, or for the promotion of an amateur sport; b) formed and registered under any law as a non-profit organization; c) approved by the Commissioner for specified period, on an application made by such person in the prescribed form and manner, accompanied by the prescribed documents and, on requisition, such other documents as may be required by the Commissioner; and none of the assets of such person confers, or may confer, a private benefit to any other person⁸⁴. Though, a nonprofit organization is not prohibited from engaging in a profit making / income generating activities, but it must not distribute any such income, profit or surplus among staff, governing body or general body. It has to be invested back into the organization for the furtherance of same causes for which it was established.

There are tax concessions available to NPOs once these are approved for this purpose by the Commissioner of Income Tax or the Central Board of Revenue (as the case may be).

Any income of a religious or charitable institution derived from voluntary contributions applicable solely to religious or charitable purposes of the institution is exempt from tax⁸⁵. Where such institution is a private religious trust it must meet the public benefit test.

Any income which is derived from investments in securities of the Federal Government, profit on debt from scheduled banks, grants received from Federal Government or Provincial Government or District Governments, foreign grants and house property held under trust or other legal obligations⁸⁶ wholly, or in part only, for religious or charitable purposes and is actually applied or finally set apart for application to such purposes in Pakistan are exempt from income tax⁸⁷.

'company' which includes a body incorporated by or under the law of a country outside Pakistan relating to incorporation of companies; and a foreign association, whether incorporated or not, which the Central Board of Revenue has, by general or special order, declared to be a company for the purposes of this Ordinance.

⁸² Advancement of religion is one of the valid humanitarian purposes of a charitable organization as enumerated in the 'Charities – Taxpayer's Facilitation Guide' issued by the Central Board of Revenue in February 2004. Available on the official web site of Central Board Of Revenue (CBR) at <http://www.cbr.gov.pk/tpef/Brochure7.pdf#search='pakistan%20Charities%20%20Taxpayers%20Facilitation%20Guide'>

⁸³ Under Section 2 (11A) of the Income Tax Ordinance 2001, a 'charitable purpose' include includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The definition is broad enough. The use of words such as '*general public utility*' is synonymous to the term 'public benefit' – as used in countries having developed nonprofit sector such as USA, UK, and Canada.

⁸⁴ Except the salary and remuneration offered for professional services.

⁸⁵ Section 60 Second schedule Income Tax ordinance 2001
http://www.pakistanlawyer.com/TAXATION/ITAX/ORD_2001/sch2.htm#s2p1

⁸⁶ The four principal registration Acts

⁸⁷ Section 59 Second schedule Income Tax ordinance 2001
http://www.pakistanlawyer.com/TAXATION/ITAX/ORD_2001/sch2.htm#s2p1

Where the charity is approved by the central board of revenue, income derived from voluntary contributions including donations and subscriptions is exempt from income tax⁸⁸.

Income of a trust or welfare institution or non-profit organization approved by the Central Board of Revenue from donations, voluntary contributions, subscriptions, house property, investments in the securities of the Federal Government and so much of the income chargeable under the head "Income from business"⁸⁹ " as is expended in Pakistan for the purposes of carrying out welfare activities is exempt from income tax. Similar income of a trust⁹⁰ and established in Pakistan exclusively for the purposes of carrying out activities for the benefit and welfare of ex-servicemen and serving personnel, including civilian employees of the Armed Forces, and their dependents; or ex-employees and serving personnel of the Federal Government or a Provincial Government and their dependents is also exempt from income tax⁹¹.

There are certain exemptions that are available only to educational institutions. Income of educational institutions, including vocational training institutions, established solely for educational purposes and not for the purposes of profit is exempt from tax⁹². Such educational institutions of 'charities' equally qualify under the general exemption. "The words "*established solely for educational purposes and not for the purposes of profit*" do not mean that there should not be any profit or surplus. All it means that the profit or surplus, if any, must be applied for educational purposes and no portion thereof can be distributed, paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit or by any other means to the members or trustees or the relative or relatives of a member or members or to any other private person except as bonafide remuneration for services rendered or expenses incurred on behalf of the educational institution⁹³."

Pakistan Customs Tariff 2003-2004 chapter 99 sub-chapter III provides zero-rate and/or tax breaks on certain gifts or donations received or imported by charitable, educational,

⁸⁸ these are institutions (such as those enumerated in section 61 Second schedule Income Tax ordinance 2001) and are engaged in general welfare and charitable activities;

http://www.pakistanlawyer.com/TAXATION/ITAX/ORD_2001/sch2.htm#s2p1

'Charities- Taxpayers' Facilitation Guide 2004' published by CBR in February 2004

⁸⁹ "Provided that in the case of income under the head "Income from business", the exemption in respect of income under the said head shall not exceed an amount which bears to the income under the said head the same proportion as the said amount bears to the aggregate of the incomes from the aforesaid sources of income." Section 58 (1)(3) schedule II of Income Tax Ordinance 2001

http://www.pakistanlawyer.com/TAXATION/ITAX/ORD_2001/sch2.htm#s2p1

⁹⁰ Trust administered under a scheme approved by the Federal Government in this behalf and established in Pakistan

⁹¹ Section 58 (1)(2) II schedule of the Income Tax Ordinance 2001

⁹² Charities – Taxpayer's Facilitation Guide' published by CBR in February 2004 available at <http://www.cbr.gov.pk/tpef/Brochure7.pdf#search='pakistan%20Charities%20%20Taxpayers%20Facilitati%20Guide'>

⁹³ Charities – Taxpayer's Facilitation Guide' published by CBR in February 2004

scientific institutions and hospitals⁹⁴. Sixth schedule to the Sales Tax Act 1990 provides for certain kind of sales tax exemptions on certain imports and supplies⁹⁵.

Under the Urban Immovable Property Tax Act, buildings and lands used exclusively for public worship or public charity including mosques, churches, dharamsalas, gurdwaras, hospitals, dispensaries, orphanages, alms houses, drinking water fountains, infirmaries for the treatment and care of animals and public burial or burning grounds or other places for the disposal of the dead are exempt from property tax⁹⁶.

Tax deductions to donors

A person shall be entitled to a tax credit in respect of any sum paid, or any property given by the person in the tax year as a donation to –

- (a) any board of education or any university in Pakistan established by, or under, a federal or a provincial law;
- (b) any educational institution, hospital or relief fund established or run in Pakistan by Federal Government or a Provincial Government or a local authority; or
- (c) any non-profit organization.

VI. Knowledgeable Contacts

⁹⁴ Pakistan Customs Tariff 2003-2004 chapter 99 sub-chapter III; text available at CBR website <http://www.cbr.gov.pk/newcu/tariff/ch-99a.pdf>

⁹⁵ The Sales Tax Act 1990 <http://www.taxonline.com.pk/salestax/stax.htm> sixth schedule <http://www.pakistanlawyer.com/taxation/STAX/ACT-90/sections/THE%20SIXTH%20SCHEDULE.htm> provides ‘Goods imported or supplied under grants-in-aid for which a specific consent has been obtained from the Central Board of Revenue’; ‘import of all such gifts as are received, and such equipment for fighting tuberculosis, leprosy, AIDS and cancer and such equipment and apparatus for the rehabilitation of the deaf, the blind, crippled or mentally retarded as are purchased or otherwise secured, by a charitable non-profit institution solely for the purpose of advancing declared objectives of such institution, subject to the similar conditions as are envisaged for the purposes of applying zero-rate of customs duty under the Customs Act, 1969 (IV of 1969)’; ‘Import of all goods received, in the event of a natural disaster or other catastrophe.’

⁹⁶ For instance in the province of Punjab, the Punjab Urban Immovable Property Tax Act, 1958 (section 4 (f) provides for such exemptions. <http://punjablaws.gov.pk/laws/79.html> and http://www.punjab.gov.pk/e-t/time_mode_of_payment.htm#EXEMPTIONS: