

**PROCEDURE TO APPLY FOR A LICENCE UNDER SECTION 34 OF THE
COMPANIES ACT No 7 of 2007**

1. Subsection (1) of Section 34 provides – “Where the Registrar is satisfied that an association about to be formed as a company limited by guarantee is to be formed for promoting commerce, art, science, religion, charity, sport, or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividends to its members –
 - (a) the Registrar may by licence direct that the association be registered as a company limited by guarantee, without the addition of the word ‘Limited’ to the name; and
 - (b) the association may be registered accordingly, and shall on registration enjoy all the privileges and subject to the provisions of this section, be subject to all the obligations of a limited company.
2. The grant of a licence under these provisions is entirely within the discretion of the Registrar.
3. In the exercise of his discretion the Registrar reserves to himself the right to call upon the association seeking registration for evidence of its ability to carry out its objects and sustain itself financially.
4. The applicants should in the first instance:
 - (a) make an application for approval of the company name on the prescribed form together with the search fees payable. Approval of a name is subject to the restrictions in section 7(1) and where applicable subject to the consent of the Minister as provided for in subsection (2).
 - (b) In the case of names requiring the Ministers’ consent applications for approval must be supported by a written request giving reasons for the use of any of the words listed in Section 2(a), (b), (c), or (d).
 - (c) submit a draft of the proposed Articles of Association which set out the objects of the company and the amount which each member undertakes to contribute to the assets in the event the company is put into liquidation
5. The draft Articles of Association (Model Articles in the First Schedule may be adopted with appropriate changes) must include
 - (a) the objects of the company;
 - (b) the rights and obligations of the members of the company; and
 - (c) the management and administration of the company.

If investment powers are to be included it should be in the form of the following standard clause appropriately numbered.

- ❖ To invest the moneys or funds of the Company not immediately required for its purposes in or on such investments, securities and/or property as may be thought fit subject nevertheless to such conditions as may for the time being be imposed by law.

Provide that –

- i) the Company shall not support with its funds or otherwise any object of a partisan political nature;

- ii) the Company shall deal with or invest in any property devolving upon it from a trust solely in a manner allowed by the terms of the trust and the relevant provisions of the law, having regard to such trusts;
- iii) the Company shall not support with its funds any object or endeavour to impose on its members or others any regulation, restriction or condition which if an object of the company would make it a trade union.
- iv) the Company shall not sell, mortgage, charge or lease any immovable property which it may hold without the written consent of the Registrar and without such authority, consent or approval as may otherwise be required by law and as regard such property the directors of the company or other governing body shall be chargeable for any such property that may come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults and for the due administration of such property in the same manner and to the same extent as such directors or body would have been if no incorporation had been effected.

The following terms and conditions subject to which a Licence is granted shall also be included in the articles and appropriately numbered.

- ❖ The company shall apply the income and property when so ever derived solely towards the promotion of the objects of the Company as set forth in these Articles of Association, and no portion thereof shall be paid to or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the Company.
Provided that nothing herein shall prevent the payment in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any member of the Company, in return for any services actually rendered to the Company, but so that no member of the Board of Directors or Governing Body (by whatever name called) of the Company shall be appointed to any salaried office of the Company or any office of the Company paid by fees; and that no remuneration or other benefit in money or moneys worth shall be given by the Company to any member of the Board of Directors or Governing Body for such office except repayment of out of pocket expenses or reasonable and proper rent for premises demised or let to the company provided that the provision last aforesaid shall not apply to any payment to any company of which a member of the Board of Directors or Governing Body may be a member and in which such member shall not hold more than one hundredth part of the capital and such member shall not be bound to account for any share of the profits he may receive in respect of such payment.
- ❖ Liability is limited
- ❖ No addition, alteration or amendment shall be made to or in the provisions of the Articles of Association for the time being in force, unless the same shall have been previously submitted to and approved by the Registrar.
- ❖ The above two paragraphs (appropriately numbered) of these Articles of Association contain conditions subject to which a Licence is granted by the Registrar in pursuance of Section 34(1)(a) of the Companies Act No 7 of 2007.

The Articles must include the following clauses:-

- Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being put into liquidation while he/she is a member, or within one year after he/she ceases to be a member for payment of the debts and liabilities of the Company contracted before he/she ceased to be a member, and of the costs, charges and expenses of winding up, and for the

adjustment of the rights of the contributories among themselves such amount as may be required not exceeding Rupees (State the amount)

- If upon the dissolution of the Company there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company. Such institution or institutions to be determined by the members of the Company at or before the time of dissolution and if and so far as effect cannot be given to such provision, then to some charitable object.

If the company is an organization formed by a group of persons on a voluntary basis and :

- (a) is of a non government nature;
- (b) is dependent on public contributions, charities, grants payable by the government or donations local and foreign, in carrying out its functions;
- (c) has as its main objectives, the provisions of such relief and services as are necessary for the mentally retarded or physically disabled, the poor, the sick, the orphans and the destitute, and the provisions of relief to the needy in times of disaster;

and includes a community hostel.

the following clause must also be included and appropriately numbered

- *The Company / association being a 'voluntary social service organization' as defined under the Voluntary Social Service Organisation (Registration and Supervision) Act, shall take steps to register under the said Act after incorporation.*
6. On approval of the draft by the Registrar the applicants will be required to publish a notice in a national daily newspaper (on a given format) at their expense stating the objects and inviting objections, if any, to be forwarded to the Registrar before a given date not less than 3 weeks from the date of publication.
 7. Acceptance of the application for registration will thereafter depend on whether or not objections have been received and subject to disposal of such objections.
 8. The application for registration must be made on the prescribed form [FORM 5] together with the registration fees payable, to which must be attached :
 - (a) **2 bound copies** of the Articles of Association which should be typed or printed as specified in the regulations;
 - (b) a consent under section 203 on the prescribed form [FORM 18] from each of the initial directors to act as a director; and
 - (c) a consent under section 221 on the prescribed form [FORM 19] from the initial secretary to act as secretary of the company.

Issued by the Registrar General of Companies,
400, D.R.Wijewardena Mawatha,
Colombo 10

Dated