

PHILANTHROPY AND THE LAW IN SOUTH ASIA

A research project sponsored by
Asia-Pacific Philanthropy Consortium (APPC)

GUIDE FOR CONTRIBUTORS

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Amended and finalized based on discussions at the PALISA Planning Workshop
organized by the **Bangladesh Freedom Foundation**
Dhaka, Bangladesh, January 19-20, 2002.

I. **THE PROJECT**

Introduction. The Asia-Pacific Philanthropy Consortium (APPC) is sponsoring a research project on *Philanthropy and the Law in South Asia*, with the objective of addressing issues of regulation, taxation, accountability and a range of other legal issues relevant to the philanthropic sector in the countries of the region. In this connection a planning workshop was held in Dhaka, Bangladesh on January 19-20, 2002. The workshop participants deliberated on issues related to the project and reached a common analytical outline and a timeframe for producing chapters in the forthcoming volume on *Philanthropy and the Law in South Asia (PALISA)*, a key goal of the project. The planning workshop was organized by the Bangladesh Freedom Foundation. This Guide for Contributors is an outcome of that planning workshop, intended to facilitate the writing of country chapters by the country teams.

Origins and Framework for this Project. This project focuses on description, analysis, and recommendations for reform of the legal regimes governing philanthropy in Bangladesh, India, Nepal, Pakistan and Sri Lanka. After the planning meeting in Dhaka, the initial product of this collaboration will be country reports drafted in accordance with the outline and analytical framework presented below. After a review and discussion meeting, scheduled for the second half of 2002, the legal specialists/chapter authors will revise their country reports for inclusion in a book titled Philanthropy and the Law in South Asia, one of the intended products of the project.

* This Guide for Contributors is adapted by Prof. Mark Sidel from an earlier Draft Guide for Contributors prepared for the planning workshop held in Dhaka in January 2002 (deferred from May 2001), revised by Dr. Iftekharuzzaman, and from an earlier Draft Guide for Contributors prepared by Prof. Sidel. It is the result of extensive discussions and comments at the January 2002 Dhaka planning workshop. The Guide draws upon and is adapted from the Nonprofit Law Analytical Framework and the Field Guide for Legal Specialists prepared by Thomas Silk for *Philanthropy and the Law in Asia* (Jossey-Bass, 1998), which was also a project of the Asia-Pacific Philanthropy Consortium. Prof. Sidel and the participants in the PALISA project are grateful to Tom Silk for the use of the earlier documents and for advice in the early stages of the project.

Administrative and Editorial Coordination of the Project. The participants in the Dhaka planning workshop agreed that the project will be coordinated by an Administrative and Editorial Coordination Group consisting of one representative of each country team, and Ms. Yoshiko Wakayama, Executive Director of APPC; Dr. Iftekharuzzaman, Executive Director of the Bangladesh Freedom Foundation and a member of the Governing Council of APPC; Prof. Mark Sidel, academic adviser to the project; and Ms. Julie Wang, Program Officer and APPC liaison officer at The Asia Foundation (San Francisco). The full Administrative and Editorial Coordination Group is listed at Appendix A.

The administrative and editorial coordination group will contact and hold discussions with potential publishers in South Asia and the United States, in a process to be fully coordinated. Dr. Iftekharuzzaman and Ms. Wang will maintain administrative coordination for the project. Ms. Watanabe, Dr. Iftekharuzzaman and Ms. Wang will maintain contact with APPC.

Legal Specialists/Chapter Authors. Two or more legal specialists/chapter writers have been selected for each country based on their knowledge of the laws, regulations, and governmental policies affecting philanthropy and the nonprofit sector in their country, embracing both theory and practice, and their commitment to analysis and reform of the legal regimes affecting philanthropy and the nonprofit sector. They are listed at Appendix B.

Each country team of two legal specialists/chapter authors will prepare a 70-90 page country report in accordance with the outline and analytical framework presented below. After a review and discussion workshop scheduled for the second half of 2002 (tentatively in October 2002 in Dhaka, the chapter authors will revise their country reports for inclusion in the book titled Philanthropy and the Law in South Asia.

Expenses and Honoraria. Each legal specialist/chapter author will be reimbursed or provided airfare to the regional meetings, accommodations at those meetings, meals, and other reasonable expenses. Each team of legal specialists/chapter authors will also receive a US\$2,000 honorarium for the completed country chapter.

Country Reports/Chapters – Goals. Nonprofit law reform is an ongoing effort, and thus a central assumption of this project is that the nonprofit legal system of every country, including the countries of South Asia, is subject to continuing development. No country claims to have perfected the laws and administration of a nonprofit system. Improvements can be made in the nonprofit legal system of every country, to encourage the growth of indigenous philanthropy and resource mobilization, and the development and continued vitality of a nonprofit sector that is contributory to national and sustainable development.

In order to provide some coherence to comparisons across national borders and to enable readers to follow complex legal and regulatory developments in and across the various countries, each country

report and then the chapter that results, will follow the outline and framework below. The outline and framework below is designed to accommodate widely different legal, cultural, religious and other traditions. The legal specialists/chapter authors are urged to follow a process of description, analysis, and recommendations with respect to each of the five themes and, ten] legal topics listed and discussed in the outline and framework.

Because the outline and framework is reasonably comprehensive and the nonprofit legal systems of the countries of South Asia differ from each other, not all the major legal issue categories may be applicable to the same extent in each country. Despite extensive discussion at the Dhaka planning workshop, the outline and framework may also be under-inclusive, in the sense that it may fail to include one or more major legal issue categories that have distinctive relevance to a particular country. If that is the case, legal specialists/chapter authors are strongly encouraged and urged to include discussion, description, analysis and recommendations on those issues in the country chapters.

Country Chapters: Format. Each of the five subthemes and, within those, the major legal topics should be addressed in a three-part format: Description, Analysis, and Recommendations.

The first part is **descriptive**, and it should be unbiased and objective. It should describe the nonprofit laws and procedures of the country, including governmental policies, discretionary measures and differences between written law and law as it is implemented and practiced. The goal is to convey a clear and accurate sense of the existing nonprofit legal structure.

From the process of writing the first part of the country chapter -- an accurate description of the existing nonprofit laws and procedures in a particular country -- the second part emerges: a clear sense of what works and should be retained, what does not work and is in need of improvement, and the reasons for these conclusions. That appraisal or **analysis**, in turn, becomes the source for the third part of the country chapter: the recommendations for law reform.

The purpose of the country chapter is not simply to establish a baseline of information about the existing nonprofit legal structure. It is also, and importantly, to provide a basis for subsequent law reform efforts. The country chapter, thus, should contain **recommendations** for improvements. The recommendations should be subjective, conveying the value judgments and opinions of the authors. Those recommendations should also be written with the goal in mind of their suitability as a basis for future nonprofit law reform efforts.

Finally, these reports are meant to be read. Therefore, we encourage the use of examples, brief case studies, colorful and illustrative detail, graphs, diagrams, and other techniques designed to bring life to the reports and to make them vivid and interesting to the reader.

The law reform goal of this project will best be served if the recommendations of the country authors are given particular prominence in each country chapter. Accordingly, the recommendation portion of each country chapter should make up no less than 20-30 percent of the total of the chapter.

At all three stages of that process – *description, analysis, and recommendations* -- the choices made by the country authors should and will reflect the values of that particular society, its customs and traditions.

Country Chapters: Length and Transmission. The length of each country chapter should be between 70 and 90 double-spaced A4 (or 8 ½ x 11 inch) pages.

The draft chapter and final chapter should be typed or generated by computer. A readable email attachment (in MS Word) or a readable diskette (Word) must be provided along with the hard copy.

Timeframe. The following dates and deadlines, agreed to by participants at the January 2002 Dhaka planning workshop, shall apply to the project:

Dhaka planning workshop : 19-20 January 2002
[completed]

Revision/distribution of Guide for Contributors : 1 March 2002
[to be undertaken by Prof. Sidel]

Drafts of country chapters due : 15 August 2002
[to be undertaken by country teams]

Chapter review workshop : October 2002
[all participants]

Final drafts of country chapters due : 15 January 2003
[all participants]

II. COUNTRY CHAPTERS OUTLINE AND FRAMEWORK

Introduction and Structure. The purpose of this outline and framework is, first, to serve as a helpful guide and organizing device to the country chapter authors who will write the country chapters analyzing the nonprofit legal structure of a particular society and, second, to provide a uniform format to assist in the comparison of the nonprofit legal systems in South Asia.

The analytical methodology followed by the outline and framework consists of three stages. Those stages -- *description, analysis, and recommendations* -- are followed in each of five subthemes,

within those, the major legal issue categories that follow. In all three stages, attention should be paid to actual implementation and practice and contemporary interpretation as well as to the texts of nonprofit laws and procedures.

The *descriptive* section should describe the relevant nonprofit laws and procedures of the particular country. This portion of the country chapter should be unbiased and objective, conveying a clear and accurate sense of the existing nonprofit legal structure. The subsequent stages, those containing the *analysis* and *recommendations* of the Legal Specialist, should be subjective. They should express the value judgments, the reasoning, and the opinions of the writer.

Each chapter shall be organized in the following structure:

I. The legal context for philanthropy and the law (8-10 double-spaced pages)

Background, history, forms, origin and evolution of nonprofit law

II. Legal regime (25-30 double-spaced pages)

Status and registration

Purposes (required and limited/prohibited)

Dissolution, termination, and management takeover, voluntary and involuntary

III. Fiscal regime (25-30 double-spaced pages)

Tax exemptions

Tax deductibility and credits for contributors

Resource mobilization and capital formation issues (including funding)

IV. Governance and accountability (20-25 double-spaced pages)

Statutory (legally-mandated) governance

Accountability issues

Self-regulation

V. Conclusions and recommendations (5-15 double-spaced pages)

The key legal issue areas are discussed within the broader subthemes (legal context, legal regime, fiscal regime, and governance and accountability) outlined above. They are:

Under the *Legal Regime* heading:

- (1) Status and registration
- (2) Required and prohibited or limited purposes and activities
- (3) Dissolution, termination, and management takeover

Under the *Fiscal Regime* heading:

- (4) Tax exemptions
- (5) Tax deductions or credits for contributors
- (6) Resource mobilization and capital formation (including funding)

Under the *Governance and Accountability* heading:

- (7) Legally-mandated internal governance
- (8) Issues in self-regulation
- (9) Issues in accountability

The outline and framework is intended to serve as a helpful guide to the country authors in organizing the country chapters and also as a uniform format for comparative law purposes. Nevertheless, the outline and framework is subject to the following limitations and flexibilities.

First, the outline and framework may be *overinclusive*. Because the outline and framework is reasonably comprehensive and the nonprofit legal systems of the countries of South Asia differ from each other in certain respects, not all of the major legal issue categories will necessarily be applicable to the same extent in each country, although we anticipate that each will be fully addressed in each country chapter. If a certain specific legal issue is inapplicable, country authors should so indicate. The outline and framework may be *underinclusive* as well. In the event that it fails to include one or more major legal issues that have distinctive relevance to a particular country, the country authors should certainly add additional material.

The purpose of the country chapters is not simply to establish a baseline of information about the existing nonprofit legal structure. It is also, and importantly, to provide a starting point or continuation point for law reform efforts. In writing the recommendations, the country authors should be mindful of their suitability for future nonprofit law reform efforts.

COUNTRY CHAPTER CONTENTS

Part 1: LEGAL CONTEXT (8-10 double-spaced pages)

Description

In many Asian countries, the context of traditional law was changed abruptly in the modern era with the introduction of western legal principles derived either from civil law or common law systems, either through colonialism or other processes. Did that change happen in your country?¹

If so, please describe that process, including the history, nature, and content of the relevant traditional nonprofit legal principles, of the relevant imported nonprofit legal principles, and of the relevant resulting nonprofit legal principles in operation today.

If not, please describe the origin of the current legal system applicable to foundations, associations, and other elements of the nonprofit sector today.

As discussed at the Dhaka planning workshop, this section should clearly describe the history of development of nonprofit law in your country, with due attention given to traditional and faith-based philanthropy as well as other types of philanthropic and nonprofit activity.

As appropriate, a broad interpretation of philanthropy (to include, for example, cooperatives and membership and mutual benefit organizations) may be used. Terminology to be used should be that most relevant in the domestic country context.

This section should include some sense as to whether the law as implemented (law in action) accurately represents or executes the law as it is written. Is the written law accurately, fairly, and fully implemented?

Analysis

In what ways does the legal context and history in this country result in nonprofit legal principles and procedures that *work well*?

In what ways does the legal context and history in this country result in nonprofit legal principles and procedures that are *in need of substantial improvement*?

¹ References to “your country” mean the country that each team of country authors is writing about.

Recommendations

In considering the current nonprofit legal system, should the current mix of the traditional, the imported, the hybrid, and the distinctive nonprofit legal principles and procedures be changed? If so, in what direction?

Do you have any other recommendations to offer regarding the legal context and history of this country regarding the future development of nonprofit legal principles and procedures?

Part 2: THE LEGAL REGIME (25-30 double-spaced pages)

Subpart 2.1: Status and registration

Subpart 2.2: Purposes (required and limited/prohibited)

Subpart 2.3: Dissolution, termination, and management takeover, voluntary and involuntary

Subpart 2.1: Status and registration² (8-10 double-spaced pages)

Description

Describe the legal forms (legal status) by which nonprofit organizations are formed in your country (ie society, trust, nonprofit corporation or other forms).

Describe the national context and the national rationales for requiring nonprofit organizations to register in your country (if they are required to register).

Describe the registration process for nonprofit organizations (for each form of nonprofit – society, trust, nonprofit corporation, cooperative or other form -- by discussing each of the following issues:

- What are the qualifications for registration?
- Is registration a mere formality -- a ministerial act on the part of the registering agency – or is it a discretionary act? If discretionary, what are the limits (if any) on discretion?
- Do the registration laws and procedures distinguish between associations and foundations with regard to registration requirements? If so, what are those distinctions?
- Do the registration laws and procedures distinguish between other types of nonprofit organizations? If so, what are the other types and what are the distinctions?
- Which government agencies serve as registration offices and for which types of nonprofit organizations?

Must the registering agency accept or refuse registration within a specified period of time? If so, what are the consequences if the agency does not act in a timely manner?

If the registering agency refuses registration, what are the rights, including any rights of appeal, of the nonprofit applicant?

Describe the sources of each of the rules discussed above.³

² The term "registration" should be used in its broadest sense, to encompass any process by which a nonprofit organization is created or becomes recognized as a legal person or entity. That term, thus, applies to nonprofit corporations and charitable trusts, as well as to foundations and associations.

³ For example, are the rules found in written laws promulgated by a legislative body? Written decrees promulgated by the executive? Written rules and regulations of governmental agencies? The unwritten and informal exercise of discretion by government agencies and officials? Decisions by judicial or administrative tribunals? Custom and

Analysis

In what ways do the availability of legal forms (legal status) for nonprofit organizations and the registration laws and procedures *work well*, in your judgment, and *for what reasons*? In what ways do the legal forms (legal status) and registration laws and procedures *fall short*, in your judgment, and *for what reasons*?

Is information about such laws and procedures *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are these laws and procedures *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from registering?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures provide *adequate protection to nonprofit organizations and associated individuals against abuse of discretion by government agencies or officials*?

Do the registration laws *strike a proper balance between the competing values of order and freedom*?

Recommendations

What *improvements*, in your judgment, could be made in the registration laws and procedures that you have just described?

What *specific recommendations for change (law reform)* would you make in those law and procedures?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 2.2: Required and Prohibited or Limited Purposes and Activities

(8-10 double-spaced pages)

Description

tradition? Other sources?

Describe the *required purposes and/or activities* of the various types of nonprofit organizations⁴ by addressing each of the following issues:

- Of all of the purposes and activities of a nonprofit organization, what portion must consist of the *required* purposes and activities? Must they be the exclusive purposes and activities or may they be merely the primary or even just substantial purposes and activities?
- If the purposes and activities of a nonprofit organization fail to meet the mandatory standard, what is the result
 - If that failure occurs *at or before* the time of registration?
 - If the failure occurs *after* registration and after classification as a tax exempt organization?

Describe any *limitations or prohibitions* on the purposes and/or activities of the various types of nonprofit organizations:

- Describe the legal limitations, if any, on personal economic benefits from the organization.
- Describe the legal limitations, if any, on business or commercial purposes or activities of the nonprofit organization.
- Describe the legal limitations, if any, on purposes or activities of nonprofit organizations pertaining to the influencing of legislation or the outcome of elections to public office, if any.
- Describe other categories of legal limitations on the purposes or activities of nonprofit organizations.
- Describe limitations that may be imposed by custom, tradition, or discretionary practice on the business or commercial purposes or activities of nonprofit organizations.

Describe the sources (as defined in footnote 3) of the rules discussed above.

Analysis

In what ways do the laws pertaining to required and prohibited purposes and activities of nonprofit organizations *work well*, in your judgment, and *for what reasons*? In what ways do those laws *fall short*, in your judgment, and *for what reasons*?

Is information about these laws *widely available to the public without charge or at a modest charge*

⁴ The term "nonprofit organization" should also be used in its broadest sense to include all organizations that are neither part of a governmental unit nor organized and operated for profit. The following types of organizations are often included within the reach of that term: temples and other religious organizations; foundations, charities, and other philanthropic endeavors; labor organizations; burial societies, clubs, and other associations; local affiliates of foreign philanthropic organizations; literary and scientific societies; non-commercial research institutions.

and in a form that can be readily understood?

Are these legal requirements *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from qualifying for or retaining classification as a nonprofit organization?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures *provide adequate protection to nonprofit organizations and associated individuals against abuse of discretion by government agencies or officials?*

Recommendations

What *improvements*, in your judgment, could be made in the content and administration of the laws that you have just described?

What *specific recommendations for change (law reform)* would you make with regard to the content and the administration of those laws?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 2.3: Termination, Dissolution, and Management Takeover

(8-10 double-spaced pages)

Description

Describe the law and procedures that apply to the various types of nonprofit organizations which decide *voluntarily* to end their legal existence (that is, to *terminate or dissolve* the nonprofit organization).

Describe the laws and procedures that apply to the various types of nonprofit organizations that are required, *involuntarily*, to *terminate or dissolve* (including organizations required to terminate or dissolve that may be unregistered, and such special circumstances as termination or dissolution for political reasons, terrorism, or other issues).

Describe the laws and procedures that apply to *takeover of the management* of a nonprofit (short of termination or dissolution) by any appropriate level of government authority.

Are the decisions of governmental authorities to *terminate, dissolve, or takeover the management* subject to any criteria or standards? Are they reviewable by other governmental bodies, or by the

courts? If so, under what criteria or standards?

What happens to the organization's remaining *assets*, if any, upon voluntary or involuntary termination or dissolution, or upon management takeover? Are those assets returned to the donors, distributed to other similar organizations, or distributed to one or more government agencies? If the decision as to the remaining assets is discretionary, identify the decision makers and describe the decision process.

Describe the sources (as defined in footnote 3) of each of the rules discussed above.

Analysis

In what ways do the termination, dissolution and management takeover provisions regarding nonprofit organizations *work well*, in your judgment, and *for what reasons*? In what ways do those provisions *fall short*, in your judgment, and *for what reasons*?

Is *information* about termination, dissolution and management takeover *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are termination, dissolution and management takeover requirements *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from formally ending their legal existence?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures *provide adequate protection to nonprofit organizations and associated individuals against abuses of discretion* by government agencies and officials? Is the reviewability of such decisions adequate, either through administrative appeal to other governmental authorities or judicial appeal to the courts?

Do the laws regarding termination, dissolution and management takeover *strike a proper balance between the competing values of order and freedom*?

Recommendations

What *improvements*, in your judgment, could be made in the content or administration of the laws and procedures related to termination or dissolution that you have just described?

What *recommendations for change (law reform)* would you make with regard to such laws and procedures?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Part 3: THE FISCAL REGIME (25-30 double-spaced pages)

Subpart 3.1: Tax exemptions

Subpart 3.2: Tax deductibility and credits for contributors

Subpart 3.3: Resource mobilization and capital formation issues (including funding)

Subpart 3.1: Tax Exemptions (8-10 double-spaced pages)

Description

Are taxes, customs duties, or similar charges imposed by any level of government? (Please include all taxes, charges, fees, customs duties or similar charges applicable to the nonprofit sector, including but not limited to taxes on revenues, income, sales, professions, payroll, tax deducted at source, and voluntary or voluntary fees to central, state or local authorities.) If not, please so indicate and go on to the analysis and recommendations section.

If there is an income tax:

- Are any nonprofit organizations generally exempt from that tax? If not, please so indicate and go on to the questions on other forms of taxation below.
- Describe the process of obtaining tax-exempt status:

How is qualification for exemption determined?

Which government agencies determine qualification?

Is approval by more than one agency required in order for a nonprofit organization to be determined to be exempt?

Does exemption differ depending on the type of nonprofit organization?

When may a nonprofit organization qualify for exemption?

What is the fee, if any, for filing an application for exemption?

How prompt is the application process?

Is there a right of appeal or other protection against abuse of discretion by a government agency or administrator in denying or proposing to deny a tax exemption?

Describe the types of income received by nonprofit organizations that are exempt from income tax, including any exceptions that may be applicable:

Contributions and gifts

Passive investment income (dividends, interest, rents, royalties)

Business or commercial income from activities whose conduct is directly related to the achievement of one or more of the organization's required purposes

Business or commercial income from activities whose conduct is not so related

Other

If the nonprofit organization must re-qualify for its tax exemption due to the passage of time or other events, please describe the re-qualification process.

- Describe the grounds on which the government may revoke the exemption of a nonprofit organization.
- What are the rights of a nonprofit organization in the event of a proposed revocation of its exemption?
- May a nonprofit organization appeal from any governmental decision to revoke its exemption? If so, please describe the nature and procedure of that appeal.

If there is a value added tax, are any types of nonprofit organizations exempt? If so, please describe the scope and content of that exemption and the procedure for obtaining it.

Describe the scope and content and the procedure for obtaining any preference or exemption given to any nonprofit organization by any level of government authority with regard to any other tax, customs duty, or similar charge.

Are nonprofit organizations separately liable for payment of taxes at the province, state, local or other sub-national level? If so, please describe as fully as possible. Is tax exemption separately available at the province, state, local or other sub-national level? Describe.

Describe the sources (as defined in footnote 3) of each of the rules discussed above.

Analysis

In what ways do the tax exemption provisions regarding nonprofit organizations *work well*, in your judgment, and *for what reasons*? In what ways do tax exemption provisions regarding nonprofit organizations *fall short*, in your judgment, and *for what reasons*?

Is information about tax exemption laws and procedures *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are tax exemption requirements *difficult to meet or unduly burdensome*, serving to discourage

legitimate organizations from qualifying for or retaining an exemption?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures *provide adequate protection to nonprofit organizations and associated individuals against abuse of discretion* by government agencies or officials?

Recommendations

What *improvements*, in your judgment, could be made in the content or administration of the nonprofit laws and procedures related to tax exemption that you have just described?

What *recommendations for change (law reform)* would you make with regard to the content or the administration of nonprofit laws and procedures related to tax exemption?

What do you regard as the *main obstacles* to the adoption of the law reforms you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 3.2: Tax Deductions or Credits for Contributors (8-10 double-spaced pages)

Description

If there is an income tax, does the law encourage contributions to nonprofit organizations by providing any kind of tax deductions or tax credits to individual or corporate contributors? If not, please so indicate and go to the analysis and recommendations section.

Describe the laws and procedures relating to income tax deductions or income tax credits for contributions by *individuals* to nonprofit organizations.

- Does the tax benefit to donors differ depending on the type of the nonprofit organization donee? Please describe.
- Does the tax benefit to donors differ depending on the type of property contributed? Please describe.
- Is the tax benefit to donors limited to a percentage of the donor's income? Please describe.
- Describe the laws and procedures intended to prevent tax fraud or similar abuse of the tax benefits available to donors. For example, are donors required to obtain independent appraisals to substantiate the value of contributed property?
- Must the nonprofit donee organization give the donor a written receipt in order to allow the donor to take the tax deduction or credit?

Describe how the laws and procedures differ if the donor is a *corporation* rather than an individual.

May donors obtain tax deductions or credits with regard to other taxes? If so, please describe.

Describe the sources (as defined in footnote 3) of each of the rules discussed above.

Analysis

In what ways do the tax deductions and credits for contributors to nonprofit organizations *work well*, in your judgment, and *for what reasons*? In what ways do tax deductions and credits for contributors to profit organizations *fall short*, in your judgment, and *for what reasons*?

Is *information* about such tax benefits *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are the laws and procedures about such tax benefits *difficult to meet or unduly burdensome*, serving to reduce the benefit to nonprofit organizations?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures provide *adequate protection to nonprofit organizations and associated individuals against abuse of discretion* by government agencies and officials?

Recommendations

What *improvements*, in your judgment, could be made in the laws and procedures governing tax deductions or credits for contributors to nonprofit organizations?

What *recommendations for change (law reform)* would you make with regard to those laws and procedures?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 3.3: Resource Mobilization and Capital Formation (including funding)

(8-10 double-spaced pages)

Description

Describe any laws or rules that compel a nonprofit organization to spend or distribute a minimum percentage of its income, contributions, or assets (payout or spending requirements).

Describe any laws or rules that restrict the types of investments that may be made by a nonprofit organization:

- Are permissible investments limited by any standard; that is, must all investments satisfy a standard of reasonableness or prudence? If so, how is that standard defined?
- Are permissible investments limited by type of investment; that is, may the organization invest only in government bonds or may it also invest in corporate bonds and shares of stock of domestic or foreign business corporations, real estate, and other investment opportunities?

Describe any laws or rules pertaining to foreign funding of nonprofit organizations:

- Are special approvals required to enable a nonprofit organization to receive foreign funds?
- Which government agencies are vested with authority to grant approval?
- What are the criteria for approval?
- What is the extent of the discretion involved?
- How are the laws and rules implemented in practice?

Describe the laws or rules relating to domestic fundraising for nonprofit organizations, if any such laws or rules exist.

Describe any laws or rules affecting the formation or operation of endowments (corpus funds) by nonprofit organizations.

Describe the sources (as defined in footnote 3) of each of the rules discussed above.

Analysis

In what ways do the capital formation/resource mobilization laws and procedures *work well*, in your judgment, and *for what reasons*? In what ways do such provisions *fall short*, in your judgment, and *for what reasons*?

Is *information* about those provisions *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are those provisions *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from qualifying for or from operating as a nonprofit organization?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures *provide adequate protection to nonprofit organizations and associated individuals against abuse of discretion* by government agencies and officials?

Recommendations

What *improvements*, in your judgment, could be made in the laws and procedures relating to capital formation that you have just described?

What *recommendations for change (law reform)* would you make with regard to those laws and procedures?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Part 4: Governance and Accountability (20-25 double-spaced pages)

Subpart 4.1: Legally-mandated internal governance requirements and practices

Subpart 4.2: Accountability

Subpart 4.3: Self-regulation in the nonprofit sector

Subpart 4.1: Legally-mandated internal governance requirements and practices (8-10 double-spaced pages)

Description

Describe the internal governance structure applicable to each type of nonprofit organizations (ie society, trust, nonprofit corporation, as well as unregistered organizations if appropriate).

- Must each organization have a single internal governing body or are there multiple internal governing bodies in certain instances?
- Describe the selection process for the members of the governing body/bodies.
- Do the members of such bodies serve a limited term of office? May they be removed from office? By what process? By whom? For what reasons? Subject to what review?

What are the duties of the members of the governing body of a nonprofit organization, described by type of nonprofit organization?

- Are the members of the governing body obligated to manage the organization or, if they delegate management power to others, to supervise the management of the organization?
- Are the members of the governing body obligated by law to act in the best interests of the organization rather than in their personal interests?
- Does the law provide any further guidance as to what other standards the members of the governing body must observe in carrying out their official duties?
- Are members of the governing body held personally responsible if they fail to carry out their obligations? What penalties may apply?

If the merger, amalgamation or splitting of nonprofits and philanthropic institutions is an issue in your country, please discuss the relevant legal provisions.

Describe the sources (as defined in footnote 3) of each of the rules discussed above, carefully taking into account the various sources of governmental or internal legal documents relating to governance (ie statutes, regulations of various forms, internal organizational memoranda, articles, bylaws, etc., as well as actual practice where that differs from formal law or legal documents).

Analysis

In what ways do the internal governance provisions *work well*, in your judgment, and *for what reasons*? In what ways do they *fall short*, in your judgment, and *for what reasons*?

Is *information* about laws and procedures relating to internal governance of nonprofit organizations *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are those requirements *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from qualifying for or from operating in nonprofit form?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures *provide adequate protection to nonprofit organizations and associated individuals against abuses of discretion* by government agencies and officials?

Do the laws regarding internal governance *strike a proper balance between the competing values of order and freedom*?

Recommendations

What *improvements*, in your judgment, could be made in the content or administration of the nonprofit laws and procedures that you have just described?

What *recommendations for change (law reform)* would you make with regard to the content or the administration of nonprofit laws and procedures related to internal governance?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 4.2: Accountability (8-10 double-spaced pages)

Description

If there is a requirement for each nonprofit organization to file annual tax or information returns with one or more government agencies, please describe that requirement.

If the books and records of the nonprofit organization must be made available in the event of a government audit, please describe the audit process.

Must a nonprofit organization demonstrate on a regular basis that it continues to meet the requirements to qualify for tax-exempt status? If so, what information must the organization provide, and to whom? How often must this process occur?

Must a nonprofit organization make its records available for public inspection? If so, must the organization disclose the names of its donors? The names of those who participate in its activities or benefit from its services? The names of its grantees? The salaries and benefits provided to its employees? The names of the members of its governing body and any benefits or compensation provided to them? Financial statements? Tax or other returns?

Are nonprofit organizations required to issue a public annual report? If so, are there specific requirements for the content or format of such reports? Must annual reports be made public, and, if so, on what conditions?

Are nonprofit organizations required to be audited on a regular basis? If so, describe fully, including the bases, format and content of any required audit. Would you characterize your country's system as a strong or weak audit system, and strong or weak in what specific ways?

What constitutes public disclosure in your country (how wide is disclosure mandated, and in what forms or languages)?

Describe the sources (as defined in footnote 3) of each of the rules discussed above.

Analysis

In what ways do the accountability provisions regarding nonprofit organizations *work well*, in your judgment, and *for what reasons*? In what ways do those provisions *fall short*, in your judgment, and *for what reasons*?

Is *information* about accountability *widely available to the public without charge or at a modest charge and in a form that can be readily understood*?

Are the accountability requirements *difficult to meet or unduly burdensome*, serving to discourage legitimate organizations from qualifying for or operating in nonprofit form?

Do these laws *adequately protect the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Do existing laws and procedures provide *adequate protection to nonprofit organizations and associated individuals against abuses of discretion* by government agencies and officials?

Do the laws regarding accountability of nonprofit organizations *strike a proper balance between the competing values of order and freedom*?

Recommendations

What *improvements*, in your judgment, could be made in the content or administration of the laws and procedures related to accountability that you have just described?

What *recommendations for change (law reform)* would you make with regard to such laws and procedures?

What do you regard as the *main obstacles to the adoption of the law reforms* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

Subpart 4.3: Self-regulation (6-8 double-spaced pages)

Describe any systems of nonprofit self-regulation that are currently practiced in your country, on an experimental, voluntary, partial, sectoral or any other basis. These may include certification systems, ratings systems, common standards (ie accounting for the nonprofit sector), validation systems, accreditation systems, informal systems of mutual visits and consultancy, or any other

self-regulation mechanisms.

Indicate whether these systems are mandated by law, or intended to assist in the government's implementation of law (ie validation within the nonprofit sector to assist government's validation responsibilities), or independent of government and law.

Describe any self-regulatory mechanisms that relate to the development of common or consistent standards, ie standards for nonprofit accounting, or standards for training.

Describe any discussions and dialogues underway within your country on self-regulation mechanisms.

Analysis

In what ways do the current mechanisms, systems or experiments in self-regulation *work well*, in your judgment, and *for what reasons*? In what ways do they *fall short*, in your judgment, and *for what reasons*?

Is *information* about these mechanisms or experiments *widely available to nonprofits and the public without charge or at a modest charge and in a form that can be readily understood*?

Are these mechanisms or experiments *difficult to implement or unduly burdensome*? Do they assist in *adequately protecting the public from fraud or similar abuse* on the part of nonprofit organizations and those associated with them?

Recommendations

What *improvements and recommendations for change*, in your judgment, could be made in the mechanisms, systems or experiments in self-regulation that you have just described?

What do you regard as the *main obstacles to the adoption of those improvements* you have recommended? Do you think that those obstacles can be *overcome*? What would be your advice to accomplish that result?

V. Conclusions and recommendations (5-15 double-spaced pages)

Because analysis and recommendations have been included for each legal issue area in the country chapter, this section should be reserved for comprehensive or particularly serious issues, and to review particularly important recommendations arising out of the key legal issue areas.

If it is particularly important in your country to revise and reform a particular law or laws (ie tax, registration, sector-specific statutes (such as trusts or societies), that might be mentioned here. If implementation is a particular issue, or access to legislation, or language availability, or corruption, or other comprehensive and overarching issues, those might be mentioned here as well.

Country chapter one page matrix of contents

[as requested by participants at the Dhaka planning workshop]

I. The legal context for philanthropy and the law (total 8-10 double-spaced pages)

Background, history, forms, origin and evolution of nonprofit law

II. Legal regime (total 25-30 double-spaced pages)

Status and registration

Description, analysis, and recommendations (subtotal 8-10 pages)

Purposes (required and limited/prohibited)

Description, analysis, and recommendations (subtotal 8-10 pages)

Dissolution, termination, and management takeover, voluntary and involuntary

Description, analysis, and recommendations (subtotal 8-10 pages)

III. Fiscal regime (total 25-30 double-spaced pages)

Tax exemptions

Description, analysis, and recommendations (subtotal 8-10 pages)

Tax deductibility and credits for contributors

Description, analysis, and recommendations (subtotal 8-10 pages)

Resource mobilization and capital formation issues (including funding)

Description, analysis, and recommendations (subtotal 8-10 pages)

IV. Governance and accountability (total 20-25 double-spaced pages)

Statutory (legally-mandated) governance

Description, analysis, and recommendations (subtotal 8-10 pages)

Accountability issues

Description, analysis, and recommendations (subtotal 8-10 pages)

Self-regulation

Description, analysis, and recommendations (subtotal 6-8 pages)

V. Conclusions and recommendations (total 5-15 double-spaced pages)