# Terms of Reference

**Background**

Civil Society Organizations in various forms have existed for the benefit of the society in Bhutan for many years. Therefore, in recognition of the important role played by the CSOs the National Assembly in June 2007 enacted the Civil Society Organizations Act of Bhutan, 2007. One of the principle objectives of the CSO Act 2007 is to facilitate the establishment and growth of Civil Society Organizations (CSO), which aspires to venture in various programs such as; promoting social welfare, strengthening the civil societies, improving the conditions and quality of life in Bhutan.

The CSO Act also aims to protect national and public interest through constructive partnership between the government and the CSOs. The Act was enacted to ensure a system of public accountability by providing a framework for responsible and effective self-regulation of CSOs and to promote compliance by CSOs. To this effect, The Civil Society Organization Authority (CSOA) was established on 20th March 2010 as an appropriate regulatory agency to implement the Civil Society Organization Act 2007. Since the establishment of the CSO Authority there have been important shifts in the Civil Society landscape in the country; today, there are 48 CSOs which are legally registered and numerous voluntary groups and associations. The registered CSOs are distinguished by their differing objectives as one of the two categories set in the CSO Act;

1. Public Benefit Organizations (PBOs) - those are engaged in social welfare, providing services to the vulnerable groups, advancing knowledge and learning, supporting environmental and cultural causes, and promoting social harmony and Gross National Happiness; and
2. Mutual Benefit Organizations (MBOs) - those that are member based and advance the shared interest of their members. MBOs are organized around specific trades such as associations of industries, tourism operators and artists.

Of the total registered CSOs; currently there are 38 PBOs and 10 MBOs. Presently, the CSOA as the regulatory authority of the CSO’s plays the crucial role in;

1. Facilitating communication between Civil Society Organizations and the Government, particularly in advising the Government about the general activities and roles of CSOs;
2. Encouraging and facilitating the CSOs to inform, promote, connect and strengthen individual Civil Society Organizations;
3. Reviewing and approving all applications for registration of CSOs which satisfy the requirements of this Act;
4. Approving the accreditation of foreign CSOs within the provisions of the laws of Bhutan and this Act;
5. Monitoring the activities of CSOs to ensure their compliance with this Act and with their own Articles of Associations or Charters, and the purposes for which they have been established;
6. Liaising with other agencies of the Government and interested parties;
7. Exercising other related powers and carry out responsibilities prescribed in the Civil Society Organizations Act and these regulations.

**Purpose** One of the important functions of CSOA is to review and approve all applications of CSOs. Since 2010, all review and scrutiny of CSO applications have been outsourced to a legal consultant due to non-availability and absent of a regular legal personnel in the organization. Currently with the expiry of the contract with the serving legal firm the registration process has been temporary halted. There is a continual inquiry into the status of the registration services with more pending application mounting over a period of time. As such, the CSOA is in the process of finding a regular legal personnel to support the organization to carry out the registration services. Until such time the CSOA, all the back log of registration applications and new applications needs to be officially processed. The CSOA in its 20th Meeting decided to open the registration services to clear all back logs of application and continue processing all future applications. One such measure is to float an open tender to all legal firms for the purpose of securitizing and review all CSOs registration applications.

However the lack of legal personnel in the CSOA Secretariat for exercising legal expertise to scrutinize, verify and determine the eligibly of CSO applications received based on criteria provided in the CSO Rules and Regulations 2017 and in line with the CSO Act 2007.

**Objective**

The main objective of the consultant is to assist CSOA in scrutinizing, verifying and determine the eligibility of the new CSOA applications and documents in accordance with the CSOA Act and CSO Rules and Regulations 2017.

**Scope of Work**

The legal consultant shall scrutinize and review the following documents as per the CSO rules and regulations 2017 and determine the eligibility of the CSO as per the CSO Act 2007.

1. a copy of the board resolution authorizing the registration of the Organization by the founder;
2. two copies of detailed Memorandum of Association and Articles of Association along with the duly filled ***forms 3 and 4***;
3. asset declaration of the founder in the prescribed ***form 5;***
4. a detailed three-year plan in the prescribed ***form 6***,in case of Public Benefit Organization and Foreign Civil Society Organization;
5. commitment by all its Trustees and senior staff to operate within the law in pursuit of its stated purpose and objectives in the prescribed ***form 7***, in case of Public Benefit Organization and Foreign Civil Society Organization;
6. a declaration in ***form 8***stating that the Memorandum of Association and Article of Association made there under have been made in compliance with the Act and this Regulation;
7. code of ethics for all its Trustees and employeesin the prescribed ***form 9***;
8. Such other documents as specified in ***form 2***.

**Process description**

* 1. **Name and Symbol Clearance**

Prior to reviewing of an application documents the legal consultant shall verify and review the CSO’s name and its symbol. For this purpose the legal Consultant shall checks if the name and the logo of the CSO are in compliance with the law. The legal consultant shall review the name and symbol and considering that a CSO shall not be approved on the ground of the following:

1. makes a reference to the institution of monarchy;
2. is similar to the name and/or logo of another institution, organization or entity and is likely to mislead the public as to its true identity;
3. offends generally accepted standards of public morality;
4. offends national symbols; or
5. Resembles the name or symbol of a political party.

Provided that a name making reference to the institution of monarchy may be used by an Organization subject to clearance issued by the Privy Council.

* 1. **Review of the application documents**

After the approval of the Name and Symbol by the CSOA, the CSO application’s document shall be subjected to Content quality checks by the legal consultant.

The Content quality serves to make sure that the submitted application is materially compliant with the requirements prescribed.

*Content quality* consists of five sub-steps:

1. Check of the Articles of association
2. Check of the Memorandum of association
3. Check of the Rules and regulations
4. Check of the Three-year plan
5. Request external expert opinion, if necessary
6. Return documents for revision, if necessary)
	1. **Review the Articles of Association**

The Consultant shall check the submitted Articles of association (AoA) to make sure they are in compliance with legal minimum standards. The Articles of Association should contain the following elements in addition to section 46 of the Act.

(1) The name of proposed Civil Society Organization indicating the type of the Civil Society Organization;

1. the purpose, objectives and scope of activity;
2. a register of members duly signed by the members, mandatory for Mutual Benefit Organization;
3. grounds for admission of members and the rights, privileges and duties of members including admission and subscription fee;
4. grounds of termination or cessation of membership;
5. appeals against loss of benefits of membership or against termination of membership and specify the procedure for those appeals and determine the body to which those appeals may be made:
6. procedures for nomination and election of Trustees including vacancy of office and terms of office;
7. functions and powers of Board and its constituents;
8. the organizational structure, accountability and reporting responsibilities of its officials and key personnel and its decision-making system;
9. conflict of interest and document retention and periodic destruction policy;
10. staff strength, making clear distinction between program and finances, mandatory for Public Benefit Organization;
11. internal service regulations in line with the labor legislations; and
	1. **Review Rules and Regulations**

The legal Consultant shall check the submitted Rules and regulations to make sure they are in compliance with legal minimum standards. Rules and regulations should contain elements that govern its day-to-day affairs, such as:

1. Organs of the organization, their functioning, operations, roles and responsibilities (i.e. board of trustees, director, accountant (if applicable), etc.)
2. Accountability mechanisms (towards the board, members, the CSOA, and beneficiaries)
3. Financial management (sources, use, accounting, inventory, reporting etc.)
4. Personnel management (incl. hiring, dismissal, leave, pensions etc.)
5. Document retention and destruction policy (can also be in separate document)

Rules and regulations can make reference to other key documents of the CSO (such as AoA or MoA), and other legal provisions (such as Labour Act, Immigration Act, etc )

* 1. **Review the Memorandum of Association**

The legal Consultant shall review the submitted Memorandum of Association (MoA) to make sure it is in compliance with legal minimum standards. The Memorandum of Association should contain the following elements:

* 1. the name of proposed Civil Society Organization;
	2. type of the civil society organization;
	3. purpose, objectives and scope of activity;
	4. postal address of its registered office;
	5. the proposed location of its registered office;
	6. the intended geographical area of operation;
	7. a description of the beneficiaries; and
	8. Names, nationality and occupation of its first Trustees.

A Memorandum of Association shall, in addition to section 83 of this regulation, contain a declaration that all incomes, earnings, movable or immovable properties of the Organization shall be solely utilized for the promotion of its purpose and objectives. Memorandum of Association can make reference to further key documents of the CSO, such as the Articles of Association or internal Rules and Regulations.

* 1. **Review Three-Year Plan**

A detailed three-year plan shall incorporate programme of activities with annual work plans and measurable performance indicators, demonstrating the Public Benefit Organization’s conformity with the purpose and objectives stated in its Memorandum of Association.

The legal consultant shall review the submitted Three-year programme of PBOs to make sure it is in compliance with the stated objectives of the organization, aligned with the government agencies plans and programs and legal provisions.

The Three-year programme should contain the following elements:

1. Programme of activities
2. Annual work plan
3. Measurable indicators
	1. **Request external expert opinion, if necessary**

If the legal consultant deems it necessary, through the CSOA it may request the opinion of external experts.

External expert opinion may be requested:

1. From legal experts to assure that provisions in the Articles of Association, Memorandum of Association, or Rules and Regulations are compliant with legal provisions
2. From concerned ministries or governmental agencies if the CSO’s intended work needs to be coordinated with such ministries or agencies
	1. **Return documents for revision, if necessary**

If one or several conditions are not met fully, the documentation may be returned to the applicant for revision. The legal consultant through the CSOA should provide reasons in written why the application is being returned (Indicating what parts of the documents do not meet the quality criteria).

**Approach**

The legal consultant shall work in close collaboration with CSOA and all applications should be process through the CSOA secretariat.

 **Timeline and Deliverables**

The contract with the lawyer consultants will be valid from 26th February 2019 to 26th November 2019 for the period of 10 Months during which period, it is anticipated that a minimum of 10 CSO applications would be received, scrutinized, verified and qualified by the consultant.

**Minimum Requirements of the consultant**

 Preference will be given to legal consultants having relevant skills, expertise and past experience gained in doing similar tasks and works. Due consideration will also be given to consultants having the academic qualification of Bachelor’s Degree with background in legal and relevant professional experience. The consultant should have a high standard of professionalism, able to work independently with a variety of stakeholders and should be proficient in both Dzongkha and English.

Curriculum Vitae (CV) of the consultant should be submitted along with the bid documents. The consultant shall have a valid business license of consultancy. For the purpose of awarding the bid the lowest quoted rate will be evaluated.

**Evaluation Criteria**

**Technical Proposal**

The evaluation committee appointed by the client will carry out the evaluation applying the evaluation criteria and point system as below. Each responsive proposal will be attributed a technical score (St.). The points given to evaluation criteria are:

Points

|  |  |  |
| --- | --- | --- |
| 1 | The qualification and experience of the consultant  | **50** |
| 2 | Overall experience/credibility of the firm  | **50** |
|  | **Total** | **100** |

The technical proposal should score at least 75 points out of 100 to be considered for financial evaluation. For the technical evaluation, bidders should submit the relevant certificates, certificate of past experience, Certificate of Competency or awards, CV of resource personnel, etc.

**Financial Proposal**

1. The Financial proposal will based on per CSO application reviewed.
2. The evaluation committee will determine if the financial proposals are complete and without computational errors. The lowest financial proposal (Fm) will be given a financial score (SF) of 100 points. The financial scores of the proposals will be computed as follows: SF=100 x Fm/F (F-amount of financial proposal)
3. Proposals will finally be ranked according to their combined technical (St) and financial (SF) scores using the weights indicated below in serial number (III) S=St x T% + SF x F%.
4. The weight (T %) given to the Technical proposal is 70 percent. The weight (F %) given to the financial proposal is 30 percent.

**Award of Contract**

The contract will be awarded after successful negotiations with the winning bidder. If negotiations fail, the client will invite the consulting firm having obtained the second highest score for contract negotiations. Upon successful completion, the client will promptly inform the other firms that their proposals have not been selected.

The selected consulting firm is expected to commence the assignment within two week after the award of the contract.

**Payment of Professional Fees**

The modality of the payment for the consultancy will be decided once the contract is being signed between the Secretariat and the consulting firm.

**Submission of Bid**

The bid should be submitted in a seal envelope and marked as “Bid to review CSOs application documents” and addressed to Member Secretary, CSO Authority, Thimphu.

Civil Society Organizations Authority