

**HANDBOOK ON LAWS GOVERNING FORMATION AND ADMINISTRATION  
OF NON PROFIT ORGANISATIONS IN INDIA**

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## 1. INTRODUCTION

India has an ancient history of society based on the concept of philanthropy. Vedas, a large body of texts originating in ancient India are the oldest scriptures of Hinduism. The Rig Veda, one out of the four Vedas, refers to some elements of collective social entrepreneurship which manifested in the form of charity as a duty and responsibility

of a conscious human being. During the reign of the Mauryas and Guptas (4th century BC to 5th century AD) and even later, a strong village community based on collective entrepreneurship and social collectiveness was in existence across the country. These practices of philanthropy and a strong and collective community life transformed into the modern concept of social capital.

The word "charity" entered the English language through the Old French word "*charité*" which was derived from the Latin word "*caritas*". Originally in Latin the word *caritas* meant preciousness, dearness, high price. From this, in Christian theology, *caritas* became the standard Latin translation for the Greek word *agape*, meaning an unlimited loving-kindness to all others, such as the love of God. Agape was not primarily about good works and giving to the poor, although in English the word 'charity' has steadily acquired this as its primary meaning, wherein it was first used in Old French at least since the year 1200 A.D.

Charity is giving voluntarily to those in need. It covers the giving of both money, and of the self through service to the needy. Charity is defined as - relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit. The term is also used to denote an institution or organization, which helps those in need.

## **2. EVOLUTION AND GROWTH OF NON PROFIT ORGANISATIONS IN INDIA**

Though the roots of charity are to be found in religious belief and practice, charitable trusts and voluntary organizations are India's secular and institutional manifestation.

India has a long history of civil society. Voluntary organizations were active in cultural promotion, education, health, and natural disaster relief as early as the medieval era. Religious organizations also took up work to help the poor to improve their condition.

Towards the end of the 19th century the corporate community in India also began setting up organizations dedicated to the welfare and development of the underprivileged and a large number of Corporate Trusts and Societies came into existence.

During the 19th and early 20th century these voluntary organizations received legal recognition as the Government enacted various laws such as the Societies Registration Act of 1860, The Religious Endowments Act of 1863, The Indian Trusts Act of 1882 and the Charitable Endowments Act of 1890. Such enactments gave public recognition to the intention of the founders and extended the protection of the law to their income and property, however these enactments were rather mild and did not impose strong regulatory controls. The British Government later added two more legislations i.e. the Charitable and Religious Trusts Act, 1920 and (ii) the Trade Unions Act, 1926.

The Income Tax had been introduced in 1860, and in 1922, the government granted 50% tax exemption to individuals on donations for charitable purposes. The Government of independent India continued and extended the tax concessions given earlier only to individuals, to companies making charitable contributions. The Income Tax Act of 1961 further broadened the definition of charitable purpose. Section 2(15) of the Act defines the expression "charitable purpose".

All Charitable organizations may exist as non-profit companies, societies or trusts. However, structure or management is not the essence of the charitable organization. It is the objectives, which distinguish a charitable organization from a business organization.

### 3. MEANING OF NON PROFIT ORGANISATION

Non-profit organization is an organization which has an objective of charitable purpose. Trusts, foundations, unincorporated associations and in some jurisdictions specific types of companies, may be established for a charitable purpose or may acquire such purpose after establishment. Charitable organisations are non-profit organizations; however, not all non-profit organizations are charitable organizations. Some charitable organizations may be established by companies as part of tax planning strategies.

The primary function of a charitable organisation is to give benefit to the public by performing worthy causes that helps the public at large. Also all the operations performed by those organizations are legal and their policy goes in tune with the general public policy.

Charitable organisations usually have an active way to raise funds through a campaign or conducting programmes. Its functions can range from helping others in times of disaster, giving financial aid, medical services, public works and conducting human right activities. They generally function as a welfare organisation and work for the improvement of the society through their charitable function.

#### **Definition of Charitable Purpose**

Public charitable trusts, by definition, must be created for the benefit of the public. Societies likewise may be registered for charitable purposes. Section 25 companies are formed for the limited purposes of "promoting commerce, art, science, religion, charity or any other useful object."

In law, the concept of "charitable purpose" has a meaning which is not quite the same as in normal language.

According to Section 2(15) of the Income Tax Act, 1961, Charitable purposes include "relief of the poor, education, medical relief, and the advancement of any other object of general public utility." Finance (No.2) Act, 2009 added the "preservation of environment (including watersheds, forests, and wildlife) and preservation of monuments or places or objects of artistic or historic interest" to the list of charitable purposes. Finance Act, 2008 limited the definition of "charitable purpose," by stating that if the "advancement of any other object of general public utility" involves undertaking any trade, commerce, or business activities, or rendering any related service for a fee or any other condition (irrespective of use, application, or retention of income arising from such activities), it will not be considered a "charitable purpose." The Finance Act 2010, retrospectively effective from April 1, 2009, provided some relief by exempting the aggregate value of receipts from such activities up to one million rupees. Organizations established for and running programs for relief of poverty, education, and medical relief are not affected by the amendments of 2009 or 2010.

Section 2(15) defines the expression "charitable purpose" in an inclusive manner. The aforesaid definition is not exhaustive and, therefore, purposes similar to the purposes mentioned in the aforesaid definition will also constitute charitable purposes. Further, the words "any other object of general public utility" are of wide import. However, the object should not be of utility for only a few persons.

According to Section 9(1) of the Maharashtra Public Trusts Act, 1950, "charitable purpose includes: 1) relief of poverty or distress 2) education 3) medical relief 3A) provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit 4) the advancement of any other object of general public

utility, but does not include a purpose which relates exclusively to religious teaching or worship.”

The definition of charitable purpose is broad enough to cover activities other than direct relief of distress due to poverty or calamities. It includes education, medical relief, and the advancement of any other object of general public utility such as promotion and preservation of the arts.

### **Characteristics of a Charitable Organisation**

1. Formal:

A charitable organisation should be institutionalized and registered, and should have well defined program objectives as well as rules and regulations of governance.

2. Private:

It is important that a charitable organisation be institutionally separate from the Government.

3. Self-governing:

A charitable organisation is usually managed by ‘Board of Trustees’ or ‘Governing Council’ and not controlled from the outside. Key participants in the management of a charitable organisation are supposed to act in fiduciary capacity.

4. Not for profit:

A charitable organisation cannot distribute profits. It can earn and retain a profit, which is referred to as surplus.

5. Voluntary:

Some meaningful voluntary participation in the activities and management of the organization is important for an organization to be classified as charitable organisation.

6. Non-religious:

A charitable organisation should not be involved in promoting religious worship or religious education. However, pure service oriented organizations affiliated to religious organizations can be covered.

7. Non-political:

A charitable organisation cannot be affiliated to any political party.

8. Works for public benefit:

A charitable organisation should not serve private cause and public element for its activities is very important.

### **Important Points to Remember**

There are Alternative names used for referring to Charities in India

- NPO - Not for Profit Organisation
- NGO - Non-governmental organization
- VO - Voluntary organization
- CSO - Civil society organization
- CBO - Community based organization
- Charitable organization
- TSO - Third sector organization

However, whatever the term used to describe a charitable organization, a few important points must be remembered with regard to the charity sector:

- There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists in India, in contrast to other countries where a Charity Commissioner regulates the individual organizations on nationwide basis.
- Charities can be formed in multiple ways and may be subject to various acts of legislation. It is the choice of the persons forming the charity to decide which form to take.
- Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.
- Nonprofit organizations are not permitted to be involved in any 'political activity'. Bombay Public Trusts Act even puts 'political education' outside the scope of 'charitable purpose'. However Section 20 of the Societies Registration Act, 1860 allows registration of a society whose object may be 'diffusion of political education'.
- India, being a secular state, does not allow distinction of caste, colour and creed in formation of a charity. However, it is possible to create a valid trust for the benefit of a particular section of the community. Although, this kind of trust would not enjoy income tax exemption.
- Religious trusts established for the benefit of a particular religious community are also not exempt from income tax.

### **Forms of Activities of Charity**

Non-profit organizations in India today encompass a wide-range of activities, including designing and implementing innovative programs in various sectors of development, research, documentation, and training and advocacy. They range from very small

people's organizations to highly sophisticated and technologically advanced research and health care or educational institutions.

Some form of activities of charitable organizations include:

1. Advocacy - Charitable organisations working on advocacy or campaigning on issues or causes and they do not implement programs.
2. Consultancy / Research Organizations - Charitable organisation working on social and development research as well as consultancy.
3. Training / Capacity Building Organizations - Charitable organisation helping other charity organizations by training & capacity building.
4. Networking Organizations - Charitable organisations providing networking opportunities in a specific field.
5. Mother NGOs - These charitable organisations have a work focus, but instead of implementing projects, they identify projects and monitor, evaluate and build capacities of participating NGOs.
6. Grass root Organizations -Charitable organisations working directly with the community
7. City Based Organizations - These Charitable organisations restrict their focus to cities.
8. National Organizations - Charitable organisations with national presence.
9. Self Help Groups - Formed by beneficiary communities, typically women who come together in a group of 10 plus.
10. Religious NGOs

#### **4. LAWS GOVERNING CHARITABLE ORGANISATIONS IN INDIA**

Charities can be formed in multiple ways and may be subject to various acts of legislation. The right of all citizens to form associations or unions is guaranteed by the Constitution of India, Article 19(1)(c). “Charities and charitable institutions, charitable and religious endowments and religious institutions” is a subject of the Concurrent list of the Seventh Schedule to the Constitution of India, where both the Centre and the States are competent to legislate and regulate charitable organisations. Under Schedule VII of the Indian Constitution, the subject ‘Trust and Trustees’ finds mention at Entry No.10 in the Concurrent List and ‘Charities & Charitable Institutions, Charitable and religious endowments and religious institutions’ find place at Entry No.28 of this list.

The legal framework for the charity sector in India is quite complex with a number of different acts of legislation governing it in their own way. There are three basic legal forms of charitable entities under Indian law: trusts, societies, and section 25 companies. The legal framework governing the charitable institution will depend on the form of business organization the charitable institution takes. There is no comprehensive central law for legal incorporation of nonprofit organizations which applies to trusts, registered societies and section 25 companies alike.

If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act 1882. Indian Trusts Act 1882 deals with private family trusts and becomes applicable where there is no State act.

If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section 25 of the Companies Act, 1956.

Apart from the above legislations, the Income Tax Act 1961 will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable. Apart from the above, various laws are applicable to Trusts, Societies and Wakfs.

Also, various State Laws are applicable to Charitable Institutions. For example, all public charitable trusts in the state of Maharashtra are governed by the Maharashtra Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. Rajasthan, too, has a Trusts Act of 1959, while Madhya Pradesh had an Act of 1951. In certain southern states like Andhra Pradesh, there are endowment Acts, while a number of northern and north-eastern states in India have no trust Act at all. Even the capital of India- New Delhi-has no trust Act.

Moreover, many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all not-for-profit organizations are required to file annual tax returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (referred to in some states by different titles, including the Registrar of Joint Stock Companies), and the Registrar of Companies (for section 8 companies). At the national or federal level, the regulatory bodies include the income tax department and Ministry of Home Affairs (only for not-for-profit organizations receiving foreign contributions).

### **Main laws governing the charity sector**

- 1) Constitution of India Article 19(1)(c)
- 2) Indian Trusts Act, 1882 (applicable for private trusts)
- 3) Public Trusts Acts of various states in India.
- 4) The Societies Registration Act, 1860
- 5) The Companies Act, 2013
- 6) Income Tax Act, 1961
- 7) Foreign Contribution (Regulation) Act, 2010

### **Other Laws governing Charity Sector**

#### **Societies**

- 8) Religious Societies Act, 1880
- 9) Religious Institutions (Prevention of Misuse) Act 1988
- 10) The Rajasthan Societies Registration Act, 1958
- 11) The Karnataka Societies Registration Act, 1960
- 12) The West Bengal Societies Registration Act, 1961
- 13) The Madhya Pradesh Registration Adhiniyam, 1961
- 14) The Tamil Nadu Societies Registration Act, 1975
- 15) Manipur Societies Registration Act, 1989
- 16) The Jammu - Kashmir Societies Registration Act, 1998
- 17) Societies Registration (Uttar Pradesh Amendment) Act, 2000

## **Trusts**

- 18) Charitable and Religious Trusts Act, 1920
- 19) Religious Endowments Act, 1863
- 20) Charitable Endowments Act 1890
- 21) Hindu Religious and Charitable Endowments Act 1951
- 22) Official Trustees Act, 1913
- 23) Civil Procedure Code, 1908
- 24) Registration Act, 1908
- 25) Indian Stamp Act, 1899

## **Wakfs**

- 26) Mussalman Wakf Act, 1923
- 27) Mussalman Wakf Validating Act, 1913
- 28) Mussalman Wakf Validating Act, 1930
- 29) Wakf Act, 1995

## **State Acts**

- 30) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- 31) Bihar Hindu Religious Trusts Act, 1950

- 32) Maharashtra Public Trusts Act, 1950
- 33) Bombay Public Trusts Rules, 1951
- 34) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- 35) Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002
- 36) Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- 37) Orissa Hindu Religious Endowments Act, 1951
- 38) Rajasthan Public Trust Act, 1959
- 39) Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- 40) The Madras Hindu Religious And Charitable Endowments Act, 1951
- 41) Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950
- 42) Charitable Endowments (U.P. Amendment) Act, 1952
- 43) United Provinces Charitable Endowments Rules, 1943
- 44) Religious Endowments (Uttar Pradesh Amendment) Act, 1951
- 45) Uttar Pradesh Hindu Religious Institutions (Prevention of Dissipation of Properties) (Repeal) Act, 2000

The Madhya Pradesh Public Trusts Act, 1951 has been repealed by the Bombay Public Trusts (Unification and Amendment) Act, 1959-(Bombay Act No. VI of 1960).

## **Constitutional Provisions with regard to Charitable Organisations**

The Indian Constitution provides a distinct legal space to social capital / civil society institutions (a) through its Article on the right to form associations or unions - Article 19 (1)(c);

(b) through Article 43 which talks of States making endeavor to promote cooperatives in rural areas; and

(c) through explicit mention in entries made in the Seventh Schedule.

The Relevant Entries in the Seventh Schedule to the Constitution are as follows:

- The Union list (List I)
  - Entry 43 - "Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies".
  - Entry 44 - "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities".
- The State list (List II)
  - Entry 32 - "Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies".
- The Concurrent List (List III)
  - Entry 10 - "Trusts and Trustees"
  - Entry 28 - "Charities and charitable institutions, charitable and religious endowments and religious institutions".

Since forming Associations is a Constitutional right under Article 19(1)(c) of the Indian Constitution, it is quite feasible to set up a non-profit/voluntary organisation without any kind of registration or recognition under any of the entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many Resident Welfare Associations function in this manner. However, when it comes to claiming exemptions under the Income Tax Act, 1961 and for availing of other benefits from the Government, there is insistence on formal registration.

#### **5. FORMATION AND REGISTRATION OF THE VARIOUS FORMS OF CHARITABLE ORGANISATIONS**

There are three types of legal forms of charitable organisations under Indian law: trusts, societies, and section 8 companies: -

- Charitable Trust settled by a settlor by a Trust Deed or under a Will - Trusts and charitable institutions registered under the Indian Trusts Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trusts Act, 1950; and similar other State Acts.
- Charitable institution can be formed by registering as a company u/s. 8 of the Companies Act, 2013, as non-profit company (without addition to their name, the word "Limited" or "Private Limited") - Non-profit companies incorporated under Section 8 of the Companies Act, 2013.
- Charitable or religious institution / association can be formed as a society - Societies registered under the Societies Registration Act, 1860.

Public charitable trusts, by definition, must be created for the benefit of the public. Societies likewise may be registered for charitable purposes. Section 8 companies are formed for the limited purposes of "promoting commerce, art, science, religion, charity or any other useful object."

## **I. PUBLIC CHARITABLE TRUST UNDER THE STATE TRUSTS ACT**

Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. The beneficiary group must be substantially public and if the trust is formed to benefit a select group, then it cannot be classified as 'public charitable trust'. Similarly, in case of a trust formed for educational purposes should also satisfy the 'public' element. While a college or university will fall under the definition of public charitable trust, trusts formed for education of own family will not be considered a public charitable trust. There is no central law governing public charitable trusts, although most states have "Public Trusts Acts." In the absence of a Trusts Act in any particular state or territory, the general principles of the Indian Trusts Act 1882 are applied.

Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption.

### **Formation of Public Trust**

Like the private trusts, public trusts may be created inter vivos or by Will. In the case of Hanmantram Ramnath (Bom) it was held that “Although the Indian Trusts Act, 1882 does not specifically apply to public charitable trusts, there are three certainties required to create a charitable trust. They are:

(i) a declaration of trust which is binding on settlor,

(ii) setting apart definite property and the settlor depriving himself of the ownership thereof, and

(iii) a statement of the objects for which the property is thereafter to be held, *i.e.* the beneficiaries.

It is essential that the transferor of the property *viz.* the settlor or the author of the trust must be competent to contract. Similarly, the trustees should also be persons who are competent to contract. It is also very essential that the trustees should signify their assent for acting as trustees to make the trust a valid one.

In general, trusts may register for one or more of the following purposes:

- Relief of Poverty or Distress;
- Education;
- Medical Relief;
- Provision for facilities for recreation or other leisure -time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and
- The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

When once a valid trust is created and the property is transferred to the trust, it cannot be revoked, If the trust deed contains any provision for revocation of the trust,

provisions of sections 60 to 63 of the Income-tax Act, 1961 will come into play and the income of the trust will be taxed in the hands of the settlor as his personal income.

Public trusts can be formed by any person under general law. Under the Hindu Law, any Hindu can create a Hindu endowment and under the Muslim law, any Muslim can create a public wakf. Public Trusts are essentially of charitable or religious nature, and can be constituted by any person.

As a general rule, any person, who has power of disposition over a property, has capacity to create a trust of such property. According to Section 7 of the Transfer of Property Act, 1882, a person who is competent to contract and entitled to transfer the property or authorized to dispose of transferable property not his own, either wholly or in part and either absolutely or conditionally, has 'power of disposition of property'. Thus, two basic things are required for being capable of forming a trust - power of disposition over property and competence to contract.

### **Who can be a Trustee?**

Every person capable of holding property can become a trustee. However, where the trust involves the exercise of discretion, he can accept or act as a trustee only if he is competent to contract. No one is bound to accept trusteeship. Any number of persons may be appointed as trustees. However, no trust is defeated for want of a trustee. Where there is no trustee in existence, an official trustee may be appointed by the court and the trust can be administered. An executor of a Will may become a trustee by his dealing with the assets under the provisions of the Will. When an executor is functus officio to any of the assets and yet retains them, he becomes a trustee in respect of those assets.

### **Who can be a Beneficiary?**

In a private trust the beneficiaries are one or more ascertainable individuals. In a public trust the beneficiaries are a body of uncertain or fluctuating individuals and may consist of a class of the public or the whole public. Generally, a private trust is not a permanent one. But a public trust is of a permanent nature. If properties are dedicated to temples and mosques or gifts are made to religious or charitable institutions they create a trust.

The beneficiary has the right to:

- i. Enjoy the rents and profits of the trust property.
- ii. Expect the trustee to transfer the trust property to one or more beneficiary.
- iii. Inspect and take copies of the instrument of trust, the documents relating to trust property and the accounts of the trust property.
- iv. If for any reason the execution of the trust by the trustee becomes impracticable the beneficiary may institute a suit for execution of the trust.
- v. To expect the trustee to properly protect and administer the trust property.
- vi. To compel the trustee to perform his duty properly.
- vii. To transfer the benefits arising out of the trust to any other person after the beneficiary attains majority.

### **Requisites of a Trust**

- ✓ The existence of the author/settler of the trust or someone at whose instance the trust comes into existence.
- ✓ Clear intention of the author/settler to create a trust.
- ✓ Purpose of the Trust.
- ✓ The Trust property
- ✓ Beneficiaries of the Trust.
- ✓ There must be divesting of the ownership by the author / settlor of the trust in favour of the beneficiary or the trustee.

- ✓ The main instrument of any public charitable trust is the trust deed, wherein the aims and objects and mode of management (of the Trust) should be enshrined.
- ✓ Unless all these requisites are fulfilled a trust cannot be said to have come into existence.

### **Important elements of a charitable trust**

- ✓ The object or purpose of the trust must be a valid religious or charitable purpose according to law.
- ✓ The founder or settlor should be capable of creating a trust and dedicating his property to that trust.
- ✓ The settlor should indicate precisely the object of the trust and the property in respect of which it is made. The property should be dedicated to the trust and the owner must divest himself of the ownership of that property.
- ✓ The trust or its objects must not be opposed to the provisions of any law for the time being in force.

### **Registration of Public Charitable Trust**

The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered. In states or Union Territories where there is no Trusts Act, the general principles of the Indian Trusts Act 1882 will apply.

Public Trusts can submit an application for registration to the deputy / assistant Charity Commissioner having jurisdiction over the region / sub region in which the trust is sought to be registered. The office of the charity commissioner is situated in

Mumbai (Bombay) for Maharashtra, and in a Lower Registry Court in other major cities (including Delhi, Chennai and Calcutta).

While states like Maharashtra and Gujarat have a Charity Commissioner much of North and North-East India does not have a Charity Commissioner. The Maharashtra Public Trusts Act, 1950 is applicable only in the states of Maharashtra and Gujarat. Rajasthan, Gujarat and Tamil Nadu have their own Trust Acts. Most charities have to be registered as a Charitable Trust. Only the state of Maharashtra has a Charity Commissioner and a Charity Administration Fund helps support the office of the charity commissioner in the state.

A Public Charitable Trust can be legally created by executing a 'Trust Deed' on stamp paper and obtaining the signatures of all the 'Settlers/Founders' and the 'Trustees'. This legal document is then registered with the Sub-Registrar's Office. After this, the trust may proceed to obtain tax exemptions with the Income Tax authorities.

### **Procedure for Registration of Public Charitable Trust - Section 18 of the Maharashtra Public Trust Act, 1950.**

The application for registration of a public charitable trust should be submitted (under Section 18 of the Bombay Public Trusts Act, 1950) to the deputy/assistant Charity Commissioner having jurisdiction over the region / sub region within the limits of which the trustee has an office for the administration of the trust or the trust property or substantial portion of the trust property is situated, as the case may be.

Such application shall be in writing, shall be in such form and accompanied by such fee as may be prescribed. The application should be made in the prescribed form i.e. Schedule II of Bombay Public Trusts Rules, 1951, which is available from the office of the Charity Commissioner.

After providing details (in the form) regarding designation by which the public trust shall be known, names of trustees, mode of succession, etc., the applicant has to affix a court fee stamp of Rs. 2/- to the form and pay in cash, registration fee that may range from Rs. 3/- to Rs. 25/-, depending on the value of the trust property. The application form should be submitted, together with a copy of the trust deed (the original may be produced, later, for verification) which is the main instrument of the trust.

According to article 61 of Schedule I of the Maharashtra Stamp Act, 1958, "where there is disposition of property" and "where the Trust is made for a religious or charitable purpose", the stamp duty is "the same duty as a Bond (article 13) for a sum equal to the amount settled or market value of the property settled". On reading the aforesaid article 61, together with article 13, of the Maharashtra Stamp Act, we understand that for "every rupees five hundred or part there of the stamp duty (w.e.f. 1-5-1993) is "rupees twenty". If one decides to start a trust with a token amount of Rs. 1,000/-, the trust deed should be executed on a non-judicial stamp paper of Rs. 40/-. It is advisable to use both sides of the paper, and the pages, other than the stamp paper, are of a variety known as "ledger paper". Both the settler/s and trustee/s in the presence of a witness should sign the trust deed. The witness may be a friend or relative. Some even prefer to sign before a notary.

Every application made shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf. It shall be accompanied by a copy of an instrument of trust, if such instrument had been executed and is in existence.

The application in addition to a copy of the instrument of trust, shall be accompanied by a copy of the scheme, if any, in operation in regard to the public trust. Two other documents which should be submitted at the time of making an application for registration is

- **Affidavit** which must be sworn (by the trustees making the application) before a notary and executed on non-judicial stamp paper of Rs 10/- .
- **Consent letter**, which may be prepared on an ordinary sheet of paper and signed by the trustee/s other than the trustee making the application.

In the absence of a consent letter from the remaining trustees, the deputy/assistant charity commissioner can insist on the presence of all the remaining trustees for the hearing.

It shall also be the duty of the trustee of the public trust to send a memorandum in the prescribed form (Schedule IIA of Bombay Public Trusts Rules, 1951) containing the particulars, including the name and description of the public trust, relating to the immovable property of such public trust, to the Sub-Registrar of the sub-district appointed under the Indian Registration Act, 1908, in which such immovable property is situate for the purpose of filing in Book No. 1 under section 89 of that Act.

Processing the application usually takes about six to eight weeks. A notice informing the applicant about the day and time fixed for a formal hearing is dispatched usually 10 to 15 days in advance. The applicant generally has to appear in person or depute his / her lawyer. The original trust deed should be produced for verification at the time of the hearing.

The deputy / assistant charity commissioner before whom the enquiry is held will ascertain:

- Whether a trust exists and whether such trust is a public trust;
- Whether any property is the property of such trust;
- Whether the whole or any substantial portion of the subject matter of the trust is situated within his jurisdiction;
- The names and addresses of the trustees and managers of such trust;

- The mode of succession to the office of the trustee of such trust;
- The amount of gross average annual income and expenditure of such trust;
- Any other particulars as may be prescribed under sub-section (5) of section 18.

After making inquiries on the aforesaid issues, the deputy/assistant charity commissioner makes entries in the Register and issues a certificate of registration which bears the official seal and registration number of the trust.

If the certificate of registration is lost or damaged over the years, a duplicate certificate can be obtained from the department, on application and payment of a nominal fee.

## **II. SECTION 8 COMPANY UNDER THE COMPANIES ACT 2013**

The Central Government may permit companies to be incorporated as Companies with Charitable Objects etc. The Government grants them a special license under sec. 8 to drop the words 'Private Limited' or 'Limited' from their name subject to the following conditions:

- a. The Company must be formed for the following objects - Promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object
- b. Income and profits, if any, should be applied towards promotion of these objects
- c. It should not pay dividend to its members

A Section 8 company cannot be treated as a small company. (under clause (B) of proviso to section 2(85))

Procedure for Incorporation - Section 8 read with Rule 19 & 20 of Companies (Incorporation) Rules 2014

1. Obtain Digital Signatures of the Managing Director or Director or Manager or Secretary

2. Obtain Director Identification Number (DIN) of the Directors of the proposed company by application in Form DIR-3 with the prescribed fee of Rs.500/-

3. Application for Name Availability

Application for reservation/availability of name shall be in Form INC-1 along with prescribed fee of Rs.1000/-. (Section 4(4) and Rule 9 of Companies (Incorporation) Rules 2014)

The name should not be undesirable as given in Rule 8 of the Companies (Incorporation) Rules 2014.

After approval, ROC will issue an approval letter w.re.to name availability. The name will be valid for a period of 60 days from the date of the application for reservation.

4. Preparation of Memorandum and Articles of Association

The Memorandum of Association of the proposed company shall be in Form INC-13.

5. Satisfaction of the 3 basic Conditions

Any company can apply for registration as a limited company for charitable purpose viz. Section 8 Company subject to the satisfaction of the following 3 conditions:

(a) its objects includes promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) the company on incorporation intends to apply its profits, if any, or other income in promoting such object; and

(c) the company intends to prohibit the payment of any dividend to its members.

After perusal, the Central Government may issue license with such conditions as it deems fit and allow the registration of such person or association of persons as a limited company without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited"

#### 6. Application for License u/s 8

The Application is to be made in Form INC-12 along with the requisite fee to the Registrar of Companies having jurisdiction over the area where the Registered Office of the Company is proposed to be situated

Application shall be accompanied with following documents:

(i) draft Memorandum of Association in Form no. INC.13 and Articles of association of the Company;

(ii) Declaration (in Form no. INC.14) by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and all the requirements under section 8 have been complied with;

(iii) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure; and

(iv) A declaration (in Form no. INC.15) by each of the persons making the application

## 7. Application for license u/s 8 for existing companies

Hold Board Meeting and approve Notice, time & place for EGM for passing special resolution for approving such conversion.

a. The Application is to be made in Form INC-12 along with the requisite fee to the Registrar of Companies having jurisdiction over the area where the Registered Office of the Company is proposed to be situated

Application shall be accompanied with following documents:

(i) draft Memorandum of Association in Form no. INC.13 and Articles of association of the Company;

(ii) Declaration (in Form no. INC.14) by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and all the requirements under section 8 have been complied with;

(iii) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure; and

(iv) A declaration (in Form no. INC.15) by each of the persons making the application

(v) The Financial Statements, Board's Report and Audit Reports, for each of the 2 Financial years immediately preceding the date of application (if company has functioned only for 1 FY, then for that year)

(vi) Statement showing Assets & Liabilities as on the date of application or within 30 days preceding that date

(vii) Certified True Copy of resolution passed in general/board meeting

b. Give notice in newspapers.

Within a week from the date of making the application to the Registrar of Companies, the applicant shall publish a notice, in Form no. INC-26, at his own expense:

1. At least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated, and circulating in that district, and

2. at least once in English language in an English newspaper circulating in that district; and

3. On the websites as may be notified by the Central Government. Copy of such notice in newspapers shall be submitted to the Registrar of Companies immediately after their publication.

The Registrar will wait for 30 days for objections, if any, of any person pursuant to notice published in newspapers. Thereafter, the Registrar of Companies at its discretion, may grant the licence subject to such conditions as it deems necessary and may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as it may specify in this behalf.

## 8. Effect of Registration

The Section 8 Company shall enjoy all the privileges and be subject to all the obligations of limited companies. (Section 8(2))

9. A firm can be a member of a section 8 company. (Section 8(3))

#### 10. Alteration of Memorandum

To alter the provisions of its memorandum or articles of association, section 8 company will have to obtain the previous approval from the Central Government. (Section 8(4)(i))

#### Forms:

Form no. INC.12 - for application to be made for obtaining the license.

Form no. INC.13 - for Memorandum of Association of the proposed company.

Form no. INC.14 - for declaration about compliance of section 8 and rules made there under by any of the prescribed professionals.

Form no. INC.15 - for a declaration by each person making the application.

Form no. INC-26 - for notice to be published in the newspaper.

Form no. INC.16 and form no. INC.17 as applicable - for the form of license to be granted by the Registrar

Form no. MGT14 - for filing certified true copy of the special resolution along with a copy of the Notice and the explanatory statement with the Registrar.

Form No. INC.18 - for filing an application for approval for converting itself into a company of any other kind with the Regional Director.

Form No. INC.19 - for publishing a copy of the notice shall be sent immediately to the Regional Director.

Form No. INC.20 - for intimating to the Registrar by the company to convert its status and change of name accordingly in case of revocation of license.

### **III. SOCIETY UNDER THE SOCIETIES REGISTRATION ACT, 1860**

A society may be defined as a company or an association of persons united together by mutual consent to deliberate, determine and act jointly for same common purpose.

Minimum seven persons, eligible to enter into a contract, can form society. When a charitable organisation intends to have an open participation of large number of people in its functioning and decision making, it must be registered as a Society. Societies have been envisaged as welfare and charitable associations of people having a broad based membership and comparatively more democratic and transparent set up as compared to such set ups as public charitable trusts.

According to Section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: 'charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.'

The chief advantage of forming a society is that it gives a corporate appearance to the organization, and provides greater flexibility as it is easier to amend the memorandum and bye laws of the society than in case of trust, terms of which are strictly manifested

in the trust deed. However, formation of a society requires more procedural formalities than in case of a trust.

The main instrument of any society is the memorandum of association and rules and regulations (no stamp paper required). All promoters should sign each page of the memorandum and the signature should be witnessed by an Oath Commissioner, Notary Public, Gazetted Officer, Advocate, Chartered Accountant or Magistrate First Class with their rubber/official stamp and complete address.

The Memorandum should contain name, registered office, area of operation, objects, name of members of governing body and names of promoters. The Rules and Regulations should include all the provisions that would regulate functioning of the proposed Society; it should comprise membership, powers and responsibilities of office-bearers, meetings, quorum of meetings, termination of membership, operation of bank account and financial year, procedure of dissolution or merger of Society if so required, and other general rules required to manage the society.

According to the provisions of Societies Registration Act, 1860, minimum seven or more adult persons can form a Society. For a national level Society eight persons from seven different states would be required as promoters. An authorised person from among the promoters must apply to the concerned Registrar with preferably three alternative names of the proposed Society so as to avoid any inconvenience if the envisaged name has already been allotted to some other Society. Individuals (excluding minors but including foreigners), partnership firms, companies and registered societies are eligible to form a Society.

Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies).

### **Procedure for registration of society**

Societies are registered under the Societies Registration Act, 1860, which is a federal act. In certain states, which have a charity commissioner, the society must not only be registered under the Societies Registration Act, but also, additionally, under the Bombay Public Trusts Act. The procedure varies from state to state. However generally the application should be submitted together with:

- a) Covering letter requesting for registration stating in the body of letter various documents annexed to it;
- b) Memorandum of association;
- c) Rules and regulations / Bye-laws;
- d) An affidavit of the President/Secretary on a non-judicial stamp paper of prescribed value, stating the relationship between the subscribers/ promoters, duly attested by an Oath Commissioner/Notary Public or First Class Magistrate;
- e) Proof of registered office, rent receipt or no objection from the landlord;
- f) Authority letter duly signed by all the members of the managing committee;
- g) A declaration by the members of the managing committee that the funds of the society will be used only for the purpose of furthering the aims and objects of the society.

All the aforesaid documents which are required for the application for registration should be submitted in duplicate, together with the required registration fee. Unlike the trust deed, the memorandum of association and rules and regulations need not be executed on stamp paper.

If the registrar is satisfied with the documents filed, then the applicant should deposit the registration fee, normally it is Rs. 50, payable in cash or by demand draft. On

completion of all the formalities the Registrar will issue a Certificate of Registration and copies of the Memorandum and Rules & Regulations certified.

### **Effect of registration of a society**

A society registered under the Act enjoys the status of a legal entity apart from the members constituting it. A society so registered is a legal person just as an individual but with no physical existence. As such it can acquire and hold property and can sue and be sued. The society should be registered under the Act to acquire the status of juridical person.

When the society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum. A society, registered under this Act, must confine its activities to the sphere embraced by its objects. An unregistered society cannot claim benefits under the Income-tax act.

All societies in India have to be registered under the Societies Registration Act 1860. By and large, the registration and filing procedures are similar in all the states. The only difference is that in some states there is a little more paperwork than the others.

It is possible to register a society in New Delhi under the Central Act, or register in any state capital or district headquarters with the Local Registrar of Societies. In the states of Gujarat and Maharashtra, under the provisions of the Bombay Public Trust Act, 1950 all societies that have a charitable purpose have to be registered with the Charity Commissioner. Although societies are registered by the Charity Commissioner's office as trusts, they are given two registration numbers: one under the Bombay Public Trust Act and another under the Registrar of Societies.

Under the Societies Registration (Uttar Pradesh) Act, 1974 there is a stipulation of renewal after a period of two years and in the Societies Registration (Kerela) Act,

registration is valid for 18 months and thereafter the registration is to be renewed. In the state of Tamil Nadu, as per the provisions of the Tamil Nadu Societies Registration Act, 1975 societies have to renew their registration every five years. Renewal of registration has not been provided for under Societies Registration Act, 1860.

**Specimen format of Memorandum of Association and Rules and Regulations of Charitable Society**

**MEMORANDUM OF ASSOCIATION OF ----- CHARITABLE  
SOCIETY**

**1. Name of the Society:**

The name of the society shall be.....

**2. Registered Office:**

Registered office of the society shall remain in the ..... (Mention the state) and at present it is at the following address:

\_\_\_\_\_  
\_\_\_\_\_

**3. Aims and Objects:**

The aims and objects for which the society is established are as under:

- (a)
- (b)
- (c)

(d) and so on.....

**4. Governing Body:**

The names, addresses, occupation and designation of the present members of the governing body to whom the management of the society is entrusted as required under the Societies Registration Act, 1860, are as follows:

S.No.	Name (full in capital)	Addresses	Occupation	Designation in the society
1				
2				
3				
4				
5				
6				
7 and so on				

**5. Desirous person**

We the undersigned are desirous of forming a society namely “.....” under the Societies Registration Act, 1860 in pursuance of this Memorandum of Association of the Society.

S.No.	Name (full in capital)	Addresses	Occupation	Designation in the society
1				
2				
3				



Certified that this is the true (2)  
and correct copy of the Memorandum

Signatures of any three members of the Governing Body

**President**

**Secretary**

**Treasurer**

---

**RULES AND REGULATIONS OF ----- CHARITABLE SOCIETY**

**1. NAME OF THE ASSOCIATION:**

**2. ADDRESS OF THE ASSOCIATION:**

**3. MEMBERSHIP:**

a. The association membership fee shall be follows:-

- i. Life Membership fees Rs.-----
- ii. Annual Membership Rs.-----
- iii. Monthly subscription Rs.-----

b. The admission fee for each member shall be Rs.----- only.

c. Any person who has attained above the age of 18 years will be allowed to become a member of the association. All the members of the association is eligible to vote and contest to the managing committee in the General Body Meeting.

d. If the subscription of the member is in arrears for more than three months without satisfactory explanation to the General Secretary, his/her name will be removed and the Executive Committee may reconsider his/her application for re-admission subject to all the arrears including the admission fee being paid. The termination of membership maybe on death, the member acting against the objects of the association, unsound mind and other reasons stated by Executive Committee.

#### **4. INFORMATION REQUIRED BY THE MEMBERS:-**

Any member of the association may apply to the General Secretary for any information as may be required or any matter of the subjects or rules and regulations of the association.

#### **5. GENERAL BODY AND OTHER MEETINGS:-**

a. The report of the Management of the previous years and the audited accounts for the present period and proceedings year shall be discussed and submitted for confirmation.

b. A general body meeting of the association will be held annually during the month of -----.

c. An Executive committee consisting of ..... members shall be elected in the general body meeting once in a year.

d. An authorised officer bearer may call for a general body meeting for which 21 days notice shall be given to the members.

- e. The executive committee shall generally meet once a month for which notice of 7 days shall be given to the members by the General Secretary,
- f. Voting shall be conducted by show of hands or secret Ballot.
- g. 21 days clear notice for the Annual General Body meeting and 21 days notice for a special General body meeting shall be given.
- h. A special General Body Meeting shall be conveyed as per the provisions of the Societies Registration Act, 1860.

#### **6. QUORUM:-**

The quorum of the General body meeting shall be 1/3 rd of the total membership of the Association.

#### **7. ACCOUNTS:-**

- a. Official year: - The official year of the Association shall be from 1st April to 31st March every year.
- b. The assets and liabilities and the balance sheet of the Association shall be laid before the Annual General body Meeting for confirmation.
- c. Such a balance sheet and the List of Committee Members shall be filed with the Registrar of Societies as per the provisions of the Societies Registration Act, 1860.

#### **8. AUDITOR:-**

An auditor shall be appointed annually and the remuneration shall be fixed by the members in the Annual General Body meeting.

#### **9. EXECUTIVE COMMITTEE:-**

- a. To ensure and promote the primary aim and objectives of the academy.
- b. To publish Annual report/accounts.

- c. To operate funds and manage the property of the association and to present the duly audited accounts at annual general body meeting.
- d. To form regional centres wherever deemed fit/feasible.
- e. In the event of any office bearer laying down office for whatever reasons, the managing committee can co-opt any member consider suitable for the office for the remaining period of the tenure or till elections are held.
- f. To ensure that all monetary transactions are through objectives of the association.
- g. To ensure that all monetary transactions are through objectives of the Association.
- h. May decide to expel a member of managing committee or a member of the association in case anyone is convicted or any criminal offence, or prove insanity or any member's action in contravention to the Bye-laws.
- i. Managing Committee shall have power to appeal and raise funds and fulfill all formalities incumbent upon it.
- j. To accept from Government, Non-Government, Local bodies, organisation and individuals Grants, donations, Subscriptions or any property movable/immovable for furtherance of the objectives of the Association.
- k. At any meeting of the Executive committee each member present will have one vote except the president who shall have in addition a casting vote. Voting may be by raising of hands or secret ballot.
- l. Executive committee may appoint committee, Sub-Committee with such powers as deemed fit by this body for the purpose that is commensurate with the objectives of the society. The committee, Sub-Committee may co-opt persons who are members of the Association.
- m. Executive committee may invite to their meetings not more than two specialists/experts who may be non members of the Association whose presence with the deliberations is considered useful.
- n. Executive Committee shall arrange for the publication in any manner, documents as may be considered fit in the furtherance of its objectives.

o. To retain, appoint, promote, dismiss any employees for managing and functioning of the Association and to regulate their terms and conditions of employment including remuneration.

p. To make the rules and bye-laws and get approval.

10. Any vacancy that may arise in the Executive Committee may be filled in by the remaining committee members.

11. Any member of the executive committee being absent for three successive meetings without proper cause shall cease to be a member of the executive committee. However he/she is eligible to be re-elected.

12. The executive committee is to meet every month or earlier if there is any business to consider and General Secretary shall convene such meetings with 1/3rd quorum.

### **13. PROVISION:-**

Provided that no amendments to the memorandum of association, rules and regulations of the association shall be made which may prove to be repugnant to the provisions of the Income Tax Act 1961 as amended from time to time. Further any amendment carried out shall be forthwith reported to the Commissioner of Income Tax.

14. The Executive committee in its meeting shall consider all the questions affecting business that may be of interest to the members of the association and they shall inform and circulate any information which may be of use to the members.

15. There shall be maintenance of accounts of the Association. The accounts shall be duly audited by a Chartered Accountant. Every year the Accounts shall be closed by 31st March every year.

16. The funds of the association shall be invested in the modes specified under the provisions of the Income Tax Act, 1961 as amended from time to time.

**17. DISSOLUTION:-**

In the event of dissolution or winding up of the Society the assets remaining as on the date of dissolution shall under no circumstances be distributed among the members of the managing committee/Governing body but the same shall be transferred to another Charitable Society/ Association whose objects are similar to those of this Society and which enjoys recognition u/s 80G of the Income tax Act 1961 as amended from time to time.

18. The association formed shall be irrevocable.

19. The benefits of the association shall be open to all irrespective of the caste creed or religion.

20. The funds and the income of the association shall be solely utilised for the achievement of its objectives and no portion of its shall be utilised for payments to the members by way of profit, interest and dividends.

21. Alteration or amendment of the memorandum of association shall be made as per the provisions of the Societies Registration Act, 1860.

22. Change of Name, Rules and regulations shall be made as per the provisions of the Societies Registration Act, 1860.

23. The working hours of the association shall be from:-

Morning: 10.00 A.M. to Evening: 7.00 P.M.

24. For matters which have not been specified provided for therein above, the provisions of the Societies Registration Act, 1860 and the rules made there under shall apply.

**25. EXECUTIVE POWERS OF THE COMMITTEE:**

The administration and management of the association shall vest in the executive committee consisting of 7 members including President, General Secretary of the association.

**PRESIDENT:-**

- a. He / She shall be in over all charge of the association and the General body meetings. All the policies and programmes shall be formulated and implemented only through him/her.
- b. He / She shall operate bank account jointly with the General Secretary.

**GENERAL SECRETARY:-**

- a. He / She shall call for all meetings of the General body meeting as and when deemed necessary and the General body meetings and the Special body meeting as per the rules with the previous approval of the president and maintain the minutes book and record of all the proceedings of the meetings.
- b. He / She shall be the correspondent of the association and shall be in-charge of the office with all the record of the association.
- c. He / She shall be the custodian of all articles and belonging both movable and immovable of the Association.
- d. He / She shall operate bank account jointly with the president.

S.No.	Name (full in capital)	Addresses	Occupation	Designation in the society
1				
2				
3				
4				
5				
6				
7 and so on				

Signatures of any three members of the Governing Body

**President**

**Secretary**

**Treasurer**

#### **IV. NON TRADING CORPORATIONS**

Non-trading corporations (NTCs) appear in The Constitution of India under Schedule VII - List II - State List under the entry 32.

Non Trading Corporation, being covered under the List II are under the state level Acts, and are monitored by Registrar of firms. NTC impart Non Trading activities for the benefit of its member, without carrying commercial or profit making activities.

Under Income Tax NTC is considered as Association of Persons (A.O.P.), taxed at maximum marginal rate if there is a surplus or the surplus is allocated to the member and in the hands of the member such surplus is taxable.

A few acts related to NTCs can be listed as under:

- The West Bengal Non-Trading Corporations Act, 1965
- The Orissa (Non-Trading) Companies Act, 1959
- The Rajasthan Non-Trading Companies Act, 1960
- The Kerala Non-Trading Companies Act, 1961
- The Tamil Nadu Non-Trading Companies Act, 1972
- The Maharashtra Non-Trading Corporations Act, 1959
- The Punjab Non-Trading Companies Act, 1960

**Comparison between Trust, Society and Non-profit Company**

**COMPARISON - TRUST, SOCIETY AND SECTION-8 COMPANY**

POINT OF COMPARISON	TRUST	SOCIETY	SECTION - 8 COMPANY
1. Meaning & Purpose	Trust is a special form of organization	Society can be formed for any literary, scientific,	Section 8 Companies are limited companies

	<p>which emerges out of a will. The will maker exclusively transfers the ownership of a property to be used for a particular purpose.</p> <p>Trusts may be private or public. Private Trusts are formed for the benefit of family members, or a very small set of known persons. Private trusts are governed by Indian Trusts Act, 1882. This Act does not apply to public trusts.</p> <p>If the purpose of the Trust concerns some purpose of the common public or the community</p>	<p>or charitable purpose or for any such purpose.</p> <p>These are formed when about seven persons come together for a common purpose in a general body. These may be Indians or foreigners. You can add more members. Each general body member has one vote. The general body then elects a governing board (usually 5-7 persons) from among the members. The governing board manages the organisation directly or through</p>	<p>formed under the Companies Act 2013. The Government grants them a special license under sec. 8 to drop the words 'Private Limited' or 'Limited' from their name subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The Company must be formed for charitable objects (Promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object).</li> <li>2. Income and</li> </ol>
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	at large, it is called a Public Trust.	executive employees.	<p>profits should be applied towards these objects.</p> <p>3. It should not pay any dividend to its members.</p> <p>Members may be Indian or foreigners. It should have at least two directors, who need not be members. The company can be formed with shares - each member gets votes in proportion to their shares. If the company is formed with guarantee, then each member gets one vote.</p>
2. Governing Statute	Indian Trusts Act 1882 (Applicable for Private Trusts)	Societies Registration Act 1860.	Companies Act 2013

	and both Indian Trusts Act 1882 & State Trusts Acts for Public Trusts.	However, a number of states have passed their own laws for regulating societies	
3. Jurisdiction	Deputy Registrar/ Charity Commissioner	Registrar of Societies	Registrar of Companies
4. Registration Document	Trust Deed	Memorandum of Association and Bye-Laws of Society (Rules & Regulations)	Memorandum of Association & Articles of Association
5. Members Required	Minimum - 2 Maximum - No upper limit Every person competent to contract can create a Trust. There is no prohibition on Non-natural legal persons or foreign nationals from becoming	Minimum- 7	Minimum - 2 for Private Company and 7 for Public Company.

	Trustees.		
6. Management	Trustees / Board of Trustees	Governing Council / Managing Committee	Board of Directors
7. Foreigners as Members/Directors	No Restriction	Not Prohibited by Law	Allowed
8. Payments to Members/Directors	Allowed	Allowed in most States for actual services.  In most states, members and office bearers can be paid employees of the society.	Allowed to pay prudent remuneration for actual services (clause 6 of INC-16)
9. Legal Title of Property	Legal title of the property of a trust vests in the hands of trustees	All properties held in the name of the Society	All properties held in the name of the Company
10. Formalities & Compliances	No Annual Return Filing Required	Governance and public filing requirements vary from one state to another. In general, every	There is requirement of annual compliance by filing of annual accounts and return of company

		society has to file a list of governing body members annually. Many states ask for filing of audited accounts as well. The main Societies Registration Act, 1860 itself does not have any provision for filing of audited accounts.	with the RoC.
11. Online Filing	Not Available	Not Available	Available
12. Time period for Formation	Approx 15 days	Approx 1 month	Approx 3-4 months
13. Cost of Formation	Low	Medium	High
14. Registration u/Income Tax Act 1961 u/s. 12A & 80G as NGO	Trust, Society and Section-8 Company - All are At Par	Trust, Society and Section-8 Company - All are At Par	Trust, Society and Section-8 Company - All are At Par
15. From the point of view of Grant	Less Preferred	Less Preferred	Most Preferred

of subsidy by the government			
16. From the point of view of Foreign Contribution Regulation Act, (FCRA) registration	Less Preferred	Less Preferred	Most Preferred
17. Transparency in working	Low	Low	High. As all information is available online
18. Change in board of directors/ trustees Members	Easy	Complex	Easy
19. Change of Registered office	Difficult	Difficult	Easy
20. Inactiveness	If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner	Upon dissolution, and after settlement of all debts and liabilities, the funds and	Upon dissolution and after settlement of all debts and liabilities, the funds and

	<p>may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of cy pres, meaning "as near as possible," may be applied to change the objects of the trust. Thus, it appears that grantors can feel fairly secure that the charitable nature of a trust will be honored, even if the original, specific purposes of the trust cannot be carried out.</p>	<p>property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity</p>	<p>property of the company may not be distributed among the members of the company. Rather, the remaining funds and property must be given or transferred to some other section 8 Company, preferably one having similar objects as the dissolved entity or to the credit of the Rehabilitation and Insolvency Fund</p>
<p>21. Extinction / Dissolution</p>	<p>The registration as a trust provides perpetual existence.</p>	<p>Societies may be dissolved. Dissolution must be approved by at</p>	<p>May be Dissolved</p>

	<p>A trust is extinguished--</p> <p>(a) when its purpose is completely fulfilled; or</p> <p>(b) when its purpose becomes unlawful; or</p> <p>(c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or</p> <p>(d) when the trust, being revocable, is expressly revoked.</p>	<p>least three-fifths of the society's members.</p>	
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**6. MULTI-STATE SOCIETIES REGISTRATION BILL 2012**

The Ministry of Corporate Affairs had constituted an Expert Group on 11th May, 2011 to study the legislative and regulatory architecture of The Societies Registration Act, 1860 governing the functioning of societies in India and also to study the ground situation with respect to the operation of the said Act so as to identify the regulatory gaps and oversight mechanism with a view to formulate a Model Law on the subject as well as a Model legislative framework for the societies having multi-state operations.

The Expert Group had submitted its first report to the Ministry on 5.07.2012 proposing a legislation titled as 'Multi-State Societies Registration Bill, 2012' (MSSR 2012). The Report and the proposed Bill had been uploaded on website of Ministry of Corporate Affairs for comments/suggestions till 15th September, 2012. Thereafter, the suggestions would be examined for conceptualizing the bill.

### **MSSR 2012 and Charitable Institutions**

The MSSR Bill, 2012 is about Societies having Multi State operation. The issue however, is about having a common law and framework for entire country.

Some important points with respect to MSSR Bill and Not-for-Profit Organisations (NPOs):

1. Currently NPOs can be registered as Societies, Trust and Section 8 Company. In all the 3 forms there is no legal bar in having branches for activities outside the state. Each state provides the registration for its own jurisdiction which cannot exceed the state territory. However, any charitable organisation whether registered or unregistered can work anywhere in the country subject to any compliances applicable in the state or place of activity. The Multi State Societies Registration Bill will add yet another form of registration.

2. The MSSR Bill, 2012 is silent about the existing Trust, Section 8 Company & various Waqf Board, Religious Endowments etc. which implies that it will not be a Central Body for the entire range of charitable or religious organisations.

3. The MSSR Bill, 2012 is taking geographical presence as a yard stick for organisation of National Importance. The geographical yard stick will create problems such as; (i) If an organization donates for a calamity in another state does it become multi state. (ii) If an organisation is doing research of national importance in one state does it become ineligible for registration under MSSR Bill, 2012. (iii) An organisation working at a mass scale or with huge turn over in one state will it become ineligible for registration under MSSR Bill, 2012.

4. There is a need for a single regulatory authority for all the charitable and religious societies of the country. All the existing Societies, Trust, Section 8 Company should be asked to apply for registration under the proposed MSSR Bill, 2012.

The MSSR Bill, 2012 may provide a financial limit beyond which an charitable organisation shall be entitled to register under MSSR Bill, 2012. Otherwise all NPOs which have registration under Central Statutes such as Income Tax Act, 1961 and Foreign Contribution Regulation Act, 2010 should be asked to get themselves registered under a Central Statute.

### **Significance of the Bill**

If the 'Multi-State Societies Registration Bill, 2012' becomes a law, all societies, either registered under the old law, or the new ones, will have to mandatorily register themselves in accordance with the provisions of the proposed law. Also, all such societies will have to file annual reports, balance sheet and details of office bearers

among others particulars with the Ministry of Corporate Affairs as the Bill proposes to treat all multi-state societies as corporate bodies. The proposed Bill will also strengthen the inflow of funds to such societies including those received from overseas.

The Bill will impact a whole host of societies including religious societies, sporting bodies, NGOs among others.

The Bill, which has been floated by the ministry of corporate affairs (MCA) for comments and suggestions from the stakeholders, proposes power to the central government to cancel registration of societies if any multistate society registered under this Act has furnished false or misleading documents for obtaining registration or has failed to comply with the provisions of this Act. However, the draft Bill states: “No cancellation shall be done by the central government without affording the multi-state society an opportunity of being heard”.

The Bill makes it clear that all accounts of a multi-state society shall be audited by the auditors if the gross receipts or expenditure in a financial year exceeds Rs. 5 lakh.

### **About The Societies Registration Act, 1860**

- Societies are governed by the Societies Registration Act 1860, which is an all-India Act. Many states, however, have variants on the Act.
- Societies are similar in character to trusts, although there a few essential differences. While only two individuals are required to form a trust, a minimum of seven individuals are required to form a society.
- The applicants must register the society with the state Registrar of Societies having jurisdiction in order to be eligible to apply for tax-exempt status.

- Societies are legal entities and the assets of members can not be confiscated to meet its liabilities.
- Apart from welfare and development oriented non profit organizations, most clubs, cultural associations, professional associations, educational institutions, and scientific institutions are formed as societies.
- Societies have a democratic setup requiring the election of a governing council.
- Societies can be wound up following certain procedures specified in the law.

Until 1947, the Societies Registration Act 1860 did not undergo any major changes; registration remained largely a voluntary effort. Most of the Societies constituted during those periods had a poor financial standing and were driven primarily by the strong intent and tenacity of the founding members.

Post-Independence, as a consequence of Article 372 of the Constitution, the Act remained in force, but legislative competence to enact law of 'societies' was passed on to the State Legislatures by virtue of Entry 32 of List II of Seventh Schedule to Constitution, i.e., 'unincorporated literary, scientific, religious and other societies and associations'.

This provision enabled a number of States to repeal the said Act or introducing multiple amendments to the Act in a short time.

The said Act was amended in its application by almost all the States and some of the Union Territories, e.g. the long title and the preamble were amended in its application to the National Capital Territory of Delhi and the State of Gujarat; provisions were inserted by the State Amendment Acts for the appointment of Registrar of Societies by the State legislatures of Orissa, Punjab and Haryana, U.P., Gujarat and Maharashtra.

Section 3 of the Act dealing with the registration of societies was amended comprehensively in Uttar Pradesh, Assam, Maharashtra, Goa and in Union territory of Daman and Diu. Penal provisions have been inserted in the Act in its application to the States of Gujarat, Maharashtra, Goa and Union territory of Daman and Diu. Some states replaced the entire Act with cognate legislations, e.g. in Madhya Pradesh, Manipur, Karnataka, Rajasthan, Tamil Nadu and West Bengal.

The number of registered societies has also increased manifold in the last twenty years. Another development was that societies started acquiring economic significance by way of their multi-state operations. Since inception, societies predominantly restricted themselves to charitable objects within the State and were organized for community-based objectives. As a result, societies started operating across several States spanning multiple legal jurisdictions across India and, in certain cases, even outside the country. The Act had not envisaged this development. On the contrary, the entire basis of regulation under the Act was premised on the assumption that activities carried out by societies would be local in nature.

In most of the states, the provision of submitting financial statement is not enforced. Many of the Non-Profit Institutions (NPIs) traced had poor employment and financial records and, even if they did, often refused to furnish their audited accounts, especially if they did not receive funds from statutory bodies. Even if the societies file their financial statements with Registrar's office, there is no mechanism to maintain this database.

### **Need for the Proposed MSSR Bill, 2012**

The Expert Group constituted by the Ministry of Corporate Affairs in May 2011, recognizes the need for a new and comprehensive regulatory framework for registered societies in the light of the following developments:

1. The activities undertaken by societies have acquired economic significance and larger public interest;
2. the activities of societies have become multi-jurisdictional in nature and in some cases, also in foreign jurisdictions;
3. the present regulatory framework does not contain a centralized oversight or reporting mechanism for societies operating in multiple jurisdictions;
4. there is an urgent need to align the societies to the governance requirements akin to Companies/LLP, including consequent reporting/ disclosure requirements in a manner similar to the MCA 21 egovernance platform for Companies and LLP's in India.
5. the present regulatory framework does not provide for an enabling framework to ensure transparency and accountability in governance of societies; and
6. the present regulatory framework does not provide for universally acceptable self-regulatory standards which are critical for the governance of societies operating in the new economic environment.

Some of the additional concerns highlighted by the MOSPI Report [A recent Report on Non Profit institutions in India (March 2012) by the National Accounts Division, Central Statistics Office, Ministry of Statistics and Programme Implementation, Government of India ("MOSPI Report")] were as follows:

- 1) most of the states do not have computerized records of the registered societies;
- 2) in most states submitting of financial statements is not enforced strictly;
- 3) shifting of societies from its registered offices, registered societies have different popular names or have changed their names later; and

4) no provisions have laid down under the present act for renewal or deregistration of societies.

The new regulatory framework should aim at providing an enhanced support framework which would bring a new approach to governance of registered societies.

### **Background to the MSSR Bill 2012**

- The Societies Registration Act, 1860 is a pre-independence era legislation that envisaged the incorporation, management and dissolution of societies incorporated under the said Act.
- The Societies which are to be registered under the said Act were mainly for non-profit making and for benevolent purposes. The nature and character of a modern society is vastly different from what was envisaged under the said Act.
- Societies today have acquired economic significance by the nature of their activities. Modern societies aspire to be pan-national bodies operating in larger public interest while being financially independent.
- It was felt that the present regulatory framework did not provide for an enabling framework to multi-state societies operating across India. Therefore, the Central Government constituted this Expert Group in May, 2011 to frame a Model Law in place of Societies Registration Act, 1860, to be followed by the states and to tackle the issues relating to societies whose operations are restricted to a particular state and also to suggest a more scientific and rational regulatory environment for multi-state societies.
- Preparing a new Model Law to replace, Societies Registration Act, 1860 will require a wide consultation with all states of India

- At present there is no law governing societies whose operations are spread over in more than one State which requires to be administered by the Central Government
- The Expert Group has come out with the draft Multi-State Societies Registration Bill, 2012 (Bill) and the Model Law will be prepared and discussed in the second report of the Group after receiving comments/suggestions from all the states and to be titled as “Societies Registration Bill” which would replace the Societies Registration Act, 1860.
- The main objective of the Proposed Bill is to provide for more enabling regulatory environment for multi-state societies with transparency and accountability in the governance of multi-state societies as its ultimate objectives.
- The Proposed Bill also emphasizes on the self-regulation of societies, which the Expert Group views as critical for the governance of societies operating in the new economic environment. The Expert Group hopes that the proposed Bill will usher in a new era of transparency and accountability in the regulation of multi-state societies and enable them to meet their organizational objectives consistent with national policy on voluntary sector.

## **MULTI-STATE SOCIETIES REGISTRATION BILL, 2012**

The MSSR Bill 2012 contains - 8 Chapters, 63 Sections and 2 Schedules

### **Chapter : I - Preliminary**

1. Short title, extent commencement and application
2. Definitions

3. Applicability

4. Multi-state society not to carry on inter-state activity without registration

5. Application for emergent cases

## **Chapter : II - Registration of Multi-State Societies and matters incidental thereto**

6. Mode of forming a Multi-State Society

7. Materials required for registration

8. Name

9. Reservation of name

10. Registration process

11. Reporting change in particulars

12. Power to cancel registration

13. Annual reporting requirements

14. Maintenance of books of accounts

15. Multi-state society a body corporate

16. Property of multi-state society how vested

17. Suits by and against multi-state societies

18. Suits not to abate

19. Enforcement of judgment against multi-state society

20. Recovery of penalty accruing under bye-law

21. Members liable to be sued as strangers
22. Members guilty of offences punishable as strangers
23. Multi-state societies enabled to alter, extend or abridge their purposes
24. Circumstances in which a multi-state shall dissolve
25. Voluntary dissolution of a multi-state society
26. Dissolution on an order made by the Central Government
27. Cessation of existence of a society
28. Upon a dissolution no member to receive profit
29. Member defined
30. Multi-state society to have citizens as officers
31. Right of members to inspect books and records

### **Chapter : III - Inspection, Inquiry and Investigation**

32. Power to call for information and inspect books
33. Power to call for information relating to the affairs of a multi-state society
34. Report on inspection
35. Search and seizure
36. Investigation by Central Government
37. Investigation into affairs of the multi-state society
38. Protection of employees, members and officers during investigation

- 39. Freezing of assets of a multi-state society on inquiry or investigation
- 40. Penalty for furnishing false statement, mutilation, destruction of documents
- 41. Compounding of certain offences

**Chapter : IV – Power of the Central Government to take over the affairs of a multi-state society**

- 42. Power of the Central Government to take over the affairs of a multi-state society

**Chapter : V – Offences and Punishment**

- 43. Improvement Notices for contraventions
- 44. Offences and punishment
- 45. Interpretation of the First Schedule
- 46. Power of the Central Government to revise orders prejudice to public interest
- 47. Amounts recoverable as arrears of land revenue

**Chapter : VI – Governing Body Identification Number**

- 48. Application for allotment of Governing Body Identification Number
- 49. Allotment of Governing Body Identification Number
- 50. Obligation to intimate Governing Body Identification Number

- 51. Obligation to indicate Director Identification Number
- 52. Penalty for contravention of provisions of this Chapter

### **Chapter : VII - Foreign Societies**

- 53. Foreign Societies
- 54. Accounts of Foreign Societies
- 55. Display of name and other matters relating to a foreign society
- 56. Service on Foreign Societies

### **Chapter : VIII - Miscellaneous**

- 57. Maintenance of records and right of public to inspect
- 58. Power of the Central Government to make rules
- 59. Publication of name and multi-state nature
- 60. Power to remove difficulties
- 61. Act to have overriding effect
- 62. Protection of acts done in good faith
- 63. Power of Central Government to direct multi-state societies to furnish information or statistics

### **First Schedule - Offences and Penalties**

**Second Schedule** - Form 1 in Table A of Schedule-II of this Act shall form the baseline for the memorandum of association and rules and regulations for all multi-state societies.

### **Salient Features of the Bill**

1. The proposed Bill will not substitute or supersede the existing framework regulating societies, i.e., the Societies Registration Act, 1860. The present statutes will continue to govern societies which are not engaged in inter-state activity and have local operational characteristics. The proposed Multi-State Societies Bill after being enacted as a Central Act will cover societies which have multi state operations or pan-national characteristics.
2. The proposed Bill provides for a centralized registration and reporting mechanism under the jurisdiction of the Ministry of Corporate Affairs. The multi-state nature of the business entities is determined by the scope of their activities. The legislation also contains provisions relating to protection of rights of members and provides the institutional basis for good business governance structures ensuring that businesses utilize their resources for the common good.
3. The Proposed Bill propose to provide an enabling framework for the registration and functioning of the multi-state societies. The definition of what constitutes a '*multi-state society*' would be determined by the objective and nature of their activities as per the provision of the Proposed Bill. The term '*inter-state activity*' has been defined under the Proposed Bill as '*any activity carried on by a society...outside its place of origin, including territories outside India.*'

The definition further specifies that certain activities shall on their own give rise to a presumption of '*inter-state activity*' irrespective of whether the society concerned carries out its activity outside its place of origin/incorporation.

Such societies have been categorized as follows:

- a. Societies receiving foreign contribution exceeding such an amount as may be prescribed, as defined under the Foreign Contributions (Regulation) Act, 2010, or applying to receive such foreign contribution;
- b. Societies receiving grants/funds/donations in excess of amount as may be prescribed by the Central Government from a Non-Resident Indian;
- c. Societies receiving grants/funds/donations in excess of amount as may be prescribed directly from the Central Government;
- d. Societies receiving immovable property in excess of the value as may be prescribed by the Central Government or State Government or any agency thereof;
- e. Societies funding another society or obtaining membership of another society outside the place of origin by any society;
- f. Societies admitting persons who are not citizens of India or Non-Resident Indians as members;

As per Clause 2 (1) (n) the definition of '*inter-state activity*' also encompasses 'receipt of foreign contribution', as defined under the Foreign Contribution (Regulation) Act, 2010 ('FCRA'). An important point to consider is whether a society whose operations are limited only to its place of origin be deemed a multi-state society by virtue of the fact that it receives foreign grants. This issue has been examined in great depth and it is pertinent to point out that granting approval for receiving foreign grants under the FCRA is purely in the domain of the Central Government. The Ministry of Home Affairs under Section 11 of the FCRA grants a 'certificate of registration' and subsequently gives 'prior permission' for receiving foreign grants. In light of the

foregoing, it is submitted that the societies receiving foreign grants can be subject to a 'Central Law' such as the Multi-state Societies Registration Act.

The definition further goes on to clarify that certain activities such as becoming a party to a legal proceeding or holding a meeting outside the place of origin are not considered inter-state activities per-se. The justification for providing a wide definition of '*inter-state activity*' is to ensure that there are adequate safeguard mechanisms for ensuring accountability and transparency in societies that receive foreign funding or receive funds directly from the Central Government. This has been further enabled by providing for compulsory registering and reporting mechanisms for the societies that conduct inter-state activities.

#### **Other key provisions of the proposed Bill:**

**a. Chapter II provides for Mode of formation of Multi-State Societies:** Like the present Act, i.e. Societies Registration Act, 1860, clause 6 of the Proposed Bill provides that any seven or more persons associated for any literary, scientific or charitable purpose and who conduct or plan to conduct inter-state activity may form a multi-state society. A multi-state society is a body corporate (Clause 15) capable of suing and being sued in its own name (Clause 17). Clause 8 provides every multi-state society must have either the words: a) "multi-state society"; or the acronym b) "MULTI-STATE SOCIETY" or MSS as the last words of its name along with the name of the state. This would enable a multi-state society to be distinguished from other kinds of societies.

**b. Chapter II provides for Mode of Registration of Multi-State Societies:** Clause 4 of the Proposed Bill provides for compulsory registration of multi-state societies. Failure to obtain registration is an offence punishable under the proposed Bill. A provision has been introduced in the Proposed Bill which empowers the Central Government to

cancel registration on grounds of noncompliance with its directions or submission of false document or for making misleading statements.

**c. Transition:** A transition provision of twelve months has been prescribed to all multi-state societies registered under the Societies Registration Act, 1860 for registration under the proposed bill (Clause 4). Failure to fulfill this requirement would be a punishable offence. It is also important to note that no existing multi-state society can utilize its funds unless it is registered under this bill. This is a mandatory requirement, non-fulfillment of which would be a punishable offence (Clause 5).

**d. Chapter II provides for Mode of reporting activities by Multi-State Societies to the Registrar:** The Proposed Bill also establishes an elaborate reporting mechanism whereby every multi-state society has to report its change in name, address or the type of activity to the Registrar (clause 11). Clause 13 requires every multi-state society to annually report a list of the names, addresses and occupations of the members of its governing body and a report on their activities indicating the nature and extent of inter-state activities. Clause 14 requires every multi-state society to maintain books of account in the prescribed form.

**e. Chapter II provides for Mode of dissolution of Multi-State Societies:** The Proposed Bill provides for two modes of dissolution for a multi-state society viz, a) voluntary; and b) compulsory. As per Clause 25, voluntary dissolution may be ordered, if, a registered multi-state society makes an application to the Central Government signed by not less than three-fifths of the members of that multi-state society. Compulsory dissolution may occur if the Central Government has reason to believe that the society is being used for unlawful purposes or for purposes prejudicial to national security, peace, welfare or public order, or if the registration of any multi-state society has been procured by fraud or misrepresentation, or if the society is being used for the purposes incompatible with its objects or if the society becomes dormant (Clause 26). Under Clause 27, the registrar may order dissolution, if he has reason to believe that the society has ceased to exist or

is not carrying on any business.

**f. Chapter III provides for Mode and manner of conduct of Inspection or enquiry into affairs of the Multi-State Societies:** In what represents a departure from the Act, Chapter III of the Proposed Bill provides the power to the Central Government to call for information, or order inspection of the society in public interest or when such information/inspection is necessary for the purpose of enforcement. Clause 35 also provides that the power to conduct search and seizure of premises, if the Central Government has reason to believe that books of account or prescribed information are not being maintained in the manner provided under the Proposed Bill. It is submitted that the powers to inspect or call for information are likely to bring in much needed transparency and accountability in the functioning of the societies.

**g. Chapter III provides for Mode and manner of conduct of Investigation into the affairs of a multi-state society :** As per Clause 36, the Central Government has the power to investigate into the affairs of a multi-state society on receipt of a report of the inspector appointed under the Act or on receipt of a complaint from a member or key managerial personnel officers of the multi-state society or a member of the public that the multi-state society is not conducting its affairs in accordance with its Memorandum of Association and/or rules or in a manner oppressive to its members. It is submitted that these provisions will ensure protection of rights of members in a society and ensure that the affairs of the society are conducted in accordance with its objects.

**h. Chapter IV provides for Central Government power to take over the affairs of a multi-state society:** As per Chapter IV, the Central Government has the power to take over the affairs of a multi-state society, if it is of the opinion that the affairs of a multi-state society are being conducted or are proposed to be conducted against public interest. In such circumstances, the Central Government may take control over the

affairs of the multi-state society or appoint a new Governing Body altogether.

**i. Habitual Offenders:** Under Clause 12, if a society has furnished false or misleading documents for obtaining registration or has failed to comply with the provisions of this act an 'improvement' notice will be served on it. Failure to comply with the 'improvement notice' will result in suspension of registration. Finally if a multi-state society fails to comply with the 'improvement notice' even during the period of suspension, it's registration will be cancelled.

**j. Chapter V provides for the penalties provided for offences:** The Proposed Bill adopts a graded approach to offences, providing regulators with the ability to issue 'improvement notices' or 'suspend registration' for non-compliance and prescribing penalties as a last resort.

**k. Chapter VII provides for Mode of formation of foreign society:** The Proposed Bill contains provisions on foreign societies under Chapter VII. A foreign society is defined as a society or other association of individuals incorporated outside India within the meaning of Foreign Exchange Management Act, 1999. Foreign societies are required to furnish information – copies of their charter documents, address, a list of their governing board of officer's, address, particulars of opening and closing of a place of business in India and a declaration that none of the officers of the society or their authorized representative have been convicted or debarred from formation of companies or societies and management in India or abroad. They are also required to maintain books of account in the prescribed manner.

## **1. REPORTING REQUIREMENTS FOR A CHARITABLE ORGANISATION**

## A. Society

The Societies Registration Act, 1860 provides that each society has to submit an annual report to the Registrar of Societies in the state in which it is registered. Also, in terms of the Societies Registration Act, 1860, an annual list is supposed to be filed with the Registrar containing the names, addresses and occupations of the Governors, Councils, Directors, Committee or other Governing Body entrusted with the management affairs of the Society. The list has to be filed on or before the fourteenth day succeeding the day on which annual general meeting of the society is held. However, if the rules of the society do not provide for an annual general meeting, the list is to be filed in the month of January. The list should contain the names, addresses and occupations of the members of governing council or other governing body entrusted with the management of the affairs of the society. With regard to financial reporting, societies in majority of the states do not need to file audited or even un-audited accounts. Only in the states of Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Pondicherry, Tamil Nadu and in parts of Kerala societies have to file audited accounts. In other states either they have to file unaudited accounts or there are no reporting requirements at all. The following table provides details about state wise requirements for filing of accounts -

State	Filing of accounts
Andhra Pradesh	No requirement
Arunachal Pradesh	No requirement
Assam	Balance sheet and audited report need to be filed
Bihar	Audited balance Sheet, Income and expenditure statement and annual activity report
Chhattisgarh	Audited balance Sheet, Income and expenditure statement and annual activity report

Delhi	No requirement
Gujarat	Audited accounts along with audit report need to be filed
Goa, Daman and Diu	Audited accounts need to be filed
Haryana	No requirement
Himachal Pradesh	No requirement
Jammu and Kashmir	No requirement
Jharkhand	Audited balance Sheet, Income and expenditure statement and annual activity report
Karnataka	Audited accounts along with audit report need to be filed
Kerala - Malabar region	No requirement
Rest of Kerala	Audited accounts to be filed
Madhya Pradesh	Audited balance Sheet, Income and expenditure statement, audit report and report on financial activities to be filed
Maharashtra	Audited balance Sheet, Income and expenditure statement and audit report to be filed
Manipur	No requirement
Meghalaya	Balance Sheet, financial report and audit report to be filed
Mizoram	No requirement
Nagaland	No requirement
Orissa	No requirement
Pondicherry	Audited balance Sheet, Receipts and expenditure

	statement to be filed
Punjab	No requirement
Rajasthan	No requirement
Sikkim	No requirement
Tamil Nadu	Audited balance Sheet, Receipts and expenditure statement, and audit report to be filed
Tripura	No requirement
Uttar Pradesh	Balance Sheet to be filed
Uttaranchal	Balance Sheet to be filed
West Bengal	Balance Sheet and audit report to be filed

## **B. Trust**

In case of Public trusts, Annual report and annual return of income should be filed with the authorities having jurisdiction over the region where trust is registered.

Audited accounts and income and expenditure statements need to be submitted to the Charity Commissioner's office. All trusts have to file annual reports. Notices are sent to defaulters. In cases of persistent default and in case of mismanagement and misuse of funds, the Charity Commissioner is empowered to sanction prosecution. If sanction is granted then a complaint is lodged with the metropolitan magistrate according to the jurisdiction.

## **C. Company**

All section 8 companies have to adhere to the following legal requirements and report in accordance to the Registrar of Companies.

- Board meetings must be held regularly, normally once a quarter. Proper detailed minutes should be maintained.
- The shareholders or members of the company must meet each year in the Annual General Meeting. At these meetings they are expected to review annual accounts, elect some of the Directors and also appoint auditors. It is compulsory for companies to give copies of the audited accounts to the members. Proper notices and minutes of the meetings are also required.
- If there is any change in the directors or office addresses, the ROC has to be informed.
- The audited accounts, annual report and an annual return have to be filed with the ROC. Important resolutions also have to be filed.
- All directors and important stakeholders have to disclose names of their relatives each year. They also have to give names of other companies or concerns of which they are directors or shareholders.
- They cannot vote on any contract in which they may be interested. All such contracts have to be entered into a register.
- If directors borrow some money from the company it has to be disclosed in the balance sheet, if it is above the stipulated amount. Even if it is settled within the same year.
- Any other payment to the directors, their relatives or their firms has to be disclosed. Similarly payments to highly paid employees also need to be disclosed.

Alteration of Memorandum:

- A company registered under section 8 can alter the provisions of its memorandum with respect to its objects only with the prior approval of Central government obtained in writing.
- The Central Government may revoke the licence of such body if alteration is made without its approval.

All section 8 companies have to submit a balance sheet at the end of every year. The same is scrutinized and reveals mismanagement of funds if any. The ROC also has the power to call for information from any organization and also to cancel the registration on grounds of misuse and mismanagement of funds.

## **8. OVERVIEW OF PROVISIONS OF MAHARASHTRA PUBLIC TRUST ACT, 1950**

In the State of Maharashtra, the legislation governing Public Trust is Maharashtra Public Trusts Act, 1950 (MPT Act) and Bombay Public Trusts Rules, 1951. Similar legislation by the same name prevails in the State of Gujarat also. This is because; the Act was passed when Maharashtra and Gujarat were one. Gujarat State after its separation has made certain variations according to their requirements. But more or less both the states have similar provisions. Earlier known as the Bombay Public Trusts Act 1950, the name of the Act was changed to Maharashtra Public Trusts Act vide the Maharashtra (Change of Short Titles of certain Bombay Acts) Act, 2011 which brought changes in titles of 84 Acts that were in force in the erstwhile Bombay Presidency prior to the formation of the state in 1960 in which Bombay was replaced with Maharashtra.

Under the MPT Act, the Charity Commissioner is the guardian of the trusts. The office of the Charity Commissioner has been given the powers of supervision, regulation and

control of public trusts. It is compulsory for every public trust to register with the charity commissioner so as to ensure proper administration and management.

### **Important Definitions**

**Sec. 2(13):** Public Trust: means an express or constructive Trust for either public or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or any other religious or charitable endowment and a society formed either for religious or charitable purpose or both and registered under the Societies Registration Act, 1860.

**Sec. 9(1):** Charitable Purpose: a charitable purpose includes

- a. Relief of poverty or distress
- b. Education
- c. Medical relief
- d. Provision for facilities for recreation or other leisure time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit, and
- e. The advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

In order to be a public trust, it is not essential that the trust should benefit the whole of mankind or all the persons living in a particular state or city. It is said to be a public trust if it benefits a sufficiently large section of the public as distinguished from specified individuals. Also if the beneficiaries of the trust are uncertain or fluctuating,

then the fact that the beneficiaries belong to a certain religion/caste does not make any difference.

### **Registration of Trust**

- i. Apply to Asst. /Deputy Charity Commissioner of the region in Schedule II (prescribed form) Affix court fees stamp of Rs. 100.
- ii. Application to be made within 3 months of creation of the trust.
- iii. Documents to be submitted at the time of registration
  - a. Covering letter
  - b. Schedule II (the signatory to the application to affirm & subscribe before appropriate authority)
  - c. Trust deed certified copy/memorandum of association and rules & regulations (in case of society)
  - d. Affidavit in prescribed format.
  - e. Consent letter signed by the remaining trustees and stating that they hereby allow the applicant trustee to represent on their behalf and complete all registration formalities and obtain the certificate of registration
  - f. Prescribed application fees based on value of the property.

Memorandum of particulars of immovable property to be filed within 3 months of creation of trust in Schedule IIA. Application for registration of a public trust created by will has to be made within 1 month of granting of probate (i.e., copy of will certified under the seal of the Court) or within 6 months of testator's death, whichever is earlier. In case of a society, it will have to be registered under the Societies Registration Act as well as with the Charity Commissioner. Unlike trusts, societies have a more democratic

set up. There is usually a scheme of election for members of the governing council/managing committee. In case of trust, generally new trustees are appointed by invitation of the sitting trustees.

### **Register under Section 17/ SCHEDULE I**

The office of the Charity Commissioner maintains a register in Schedule I containing all details of the Trust viz. Registration No., details of trustees, trust property etc. A copy of the same can be obtained by filing an application along with the prescribed fees.

### **Intimation of Change: Sections 22 & 22(1A)**

Where any change occurs in any of the entries recorded in Schedule I, the same has to be intimated to Charity Commissioner within 90 days of occurrence of change in Form "Schedule III" along with relevant documentary evidence. Intimation of change relating to any immovable property has to be given in Form 'Schedule IIIA' (change report).

### **Immovable property (Section 36)**

Investment in immovable property requires Charity Commissioner's permission. Prior permission of Charity Commissioner is required for sale, exchange, gift of any immovable property, lease exceeding a period of 3 years in case of non-agricultural land/building, lease exceeding 10 years in case of agricultural land

### **Borrowing Powers of Trustees (Section 36A)**

No trustees should borrow money for the purpose of or on behalf of trust except with previous sanction of the Charity Commissioner.

### **Contribution to Charity Commissioner (Section 58) (Schedule IXC)**

A public trust (other than one which is exempt) having gross annual income (from all sources) exceeding Rs. 25,000 has to pay contribution to the Public Trust Administration Fund @2%. Gross annual income excludes corpus donations. Contribution is payable @2% on the gross annual income after making the deductions prescribed in Rule 32 which are stated hereunder:

### **Deductions**

- a. Donations received from other public trusts and dharmadas
- b. Grants received from government & local authorities
- c. Interest on sinking and depreciation fund
- d. Amount spent for secular education/ medical relief/veterinary treatment of animals
- e. Expenditure incurred from donations for relief of distress caused by natural calamity
- f. Deduction of land revenue, rent payable to landlord, cost of production out of income from land used for agricultural purpose
- g. Deductions of municipal taxes, ground rent, cesses, insurance premia, repairs @10% of gross rent of let out buildings out of income from land used for non agricultural purposes
- h. Cost of collection of income or receipts from securities, stock etc. @1% of such income
- i. Deduction in respect of repairs of building (yielding no income) @10% of estimated gross annual rent.

The following trusts are exempt from payment of contribution –

- a. Public trusts having gross annual income of Rs. 25000 or less.
- b. Public trusts exclusively for advancement/propagation of secular education/medical relief/veterinary treatment.
- c. Recognized public libraries and reading rooms.
- d. Public trusts exclusively for the purpose of relief of distress caused by natural calamity.

### **Investments (Section 35)**

A public trust can invest its funds in any of the following modes:

- a. Scheduled bank as defined in RBI Act, 1934
- b. Postal savings bank
- c. Co-operative bank approved by State Government
- d. Public securities being securities of Central/State government (includes Units of UTI)
- e. First mortgage of immovable property situated in India provided the property is not leasehold for a term of 99 years and the value of the property exceeds by one half of the mortgage money.
- f. Any other investment permitted by Charity Commissioner, not exceeding 50% of total investment

### **Budget (Section 31A & Rule 16A)**

Trustee of every public religious trust having annual income exceeding Rs. 5,000 and Rs. 10,000 in case of other trusts has to prepare and submit the budget to the Charity

Commissioner, one month before the commencement of the accounting year. The budget has to be prepared as per format given in Schedule VIIA.

### **Accounts and Audit (Sections 32, 33 & 34)**

Regular accounts should be maintained. Balance sheet should be prepared as per Schedule VIII and Income and Expenditure account as per Schedule IX. If the trust/society operates in more than one city or geographical region with separate branch or project offices, the accounts of all such branches or project offices should be consolidated. However it is permissible to file separate accounting returns if filed at one time. Contribution under Section 58 has to be made as per consolidated income. In case of religious trusts, gold, silver and other valuable articles should be valued after every 10 years and a footnote as to such value should be given in the balance sheet. Accounts shall be balanced on 31st March every year or on such other day as may be fixed by the Charity Commissioner. Audit should be completed within 6 months of the completion of the accounting year. The auditor should forward a copy of the Balance Sheet and Income & expenditure account along with his Audit report to the Deputy or Assistant Charity Commissioner within a fortnight of the audit. Trust having an annual income of Rs. 15,000 or less is exempt from audit. Trust exempted from audit is required to file affidavit as to the extent of their income and also has to file accounts in Schedule IX-A and IX-B within 3 months of the completion of the accounting year.

### **Changing the objects of the trust**

Sometimes, a trust created for certain specific objects fails due to unforeseen circumstances. In such cases the doctrine of cy pres comes into play. The meaning of the phrase 'cy pres' is as near as possible i.e. the trust can change its objects and the funds can be used for a similar other purpose. For this an application has to be made to the Charity Commissioner who in turn may further require the trust to take sanction from the Court.

## **Amalgamation of Trusts**

To rescue financially weak trusts Section 50A(2) lays down the provisions for legally amalgamating two or more trusts with similar objects.

## **Penalties (Section 66)**

Maximum fine of Rs. 1,000 is payable on failure to apply for registration within time, failure to keep regular accounts, failure to pay contribution, failure to invest money in public securities, failure to report a change. Failure to send memoranda of immovable property within time attracts penalty of Rs. 200. Failure to apply in time under Section 22B or failure to send memoranda within time under Section 22C attracts penalty of Rs. 100. Failure without reasonable cause to comply with Section 41AA (i.e., reserving hospital beds for poor patients) attracts penalty of Rs. 2,000.

## **9. TRUST IS CONCEPT UNDER COMMON LAW**

A trust is an obligation annexed to the ownership of property and arising 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. (Section 3 para 1 of Indian Trusts Act, 1882)

The person who reposes the confidence is called 'author of trust' (testator), the person who accepts the confidence is called 'trustee' and the person for whose benefit the confidence is accepted is 'beneficiary'. The subject matter of trust is called 'trust property' or 'trust-money'. The 'beneficial interest' or 'interest of the beneficiary' is his

right against the trustee as the owner of trust-property. The instrument by which trust is declared is called as 'instrument of trust'. [Section 3 para 2 of Indian Trusts Act, 1882]

Trust is a special form of organisation which emerges out of a Will. The Will maker exclusively transfers the ownership of a property to be used for a particular purpose. If the purpose is to benefit particular individuals, it becomes a **Private Trust** and if it concerns some purpose of the common public or the community at large, it is called a **Public Trust**. The first law on Trusts came into force in India in 1882 known as the Indian Trusts Act, 1882; it was basically for management of Private Trusts.

Trust and trustees is a concurrent subject [Entry 10 of List III of Seventh Schedule to Constitution]. Thus, the Indian Trusts Act, 1882 will apply all over India except when specifically amended / altered by any State Government. The Indian Trusts Act was passed in 1882 to define law relating to private trusts and trustees.

The amended Civil Procedure Code, 1908 also took cognizance of the emerging charity scenario through Sections 92 and 93. In terms of Section 92 of the Civil Procedure Code, 1908, interference of Civil Courts could also be invoked for laying down schemes for governing a Trust, if a breach of original trust conditions is alleged. This can be done by way of a suit filed by either the Advocate-General or two or more persons having an interest in the Trust. While deciding such suits, the Court is empowered to alter the original purposes of the Trust and allow the property or income of such Trusts to be vested in the other person or Trustee for its effective utilisation in the manner laid down by the Court. Section 93 empowers the Collector to exercise these powers in a district with prior approval of the State Government.

### **Formation of Private Trust**

A Private Trust may be created *inter vivos* or by Will. If a trust is created by Will it shall be subject to the provisions of Indian Succession Act, 1925.

The following are required for forming a private trust –

- i. The existence of the **author/settlor** of the Trust or someone at whose instance the Trust comes into existence and the settlor to make an unequivocal declaration which is binding on him.
- ii. There must be a **divesting of the ownership** by the author of the trust in favour of the trustee for the beneficial enjoyment by the beneficiary.
- iii. **A Trust property.**
- iv. The **objects** of the trust must be precise and clearly specified.
- v. The **beneficiary** who may be a particular person or persons.

Unless all the above requisites are fulfilled, a trust cannot be said to have come into existence.

A trust can be created for any lawful purpose. [Section 4 of Indian Trusts Act, 1882] A trust can be created by deed, will or even word of mouth. However, trust of immovable property can be created only by non-testamentary instrument signed by author of trust and is registered, *or* by will of author. [Section 5] Thus, 'Will' is not required to be registered, even if it pertains to immovable property.

The main instrument of declaring a trust is the Trust Deed, which should be made on non-judicial stamp papers of, prescribed fee and signed by the trustee or trustees for submission to the Registrar concerned. In case of trust the registrar or sub-registrar having authority to register properties has the authority to register the Trust Deed. Therefore, Trust Deed of the proposed Trust may be registered with Tahsildar, or registrar properties and endowment at the district collectorate. In metropolitan cities separate offices of registrar of properties and endowments do function.

The Trust Deed should contain name(s) of the author(s), settler(s) of the trust; the name(s) of the trustee(s); the name(s) if any, of the beneficiary/ies or whether it shall be public at large; name of the trust; address of the trust; objects of the trust; procedure of appointment, removal or replacement of a trustee, their rights, duties and powers, etc; the mode and method of determination of the trust etc.

### **Rights of a Trustee**

- i. To have possession of the trust property.
- ii. To get reimbursement of expenses incurred in maintaining the trust property.
- iii. To apply to the court, for its opinion, advice or direction in the management of the trust property.
- iv. To have the accounts of the trust property examined and settled on completion of the duties.
- v. On completion of his duties, to have a written acknowledgement from the beneficiaries saying there are no dues from him to the beneficiaries.

### **Powers of Trustee**

The trustee is empowered to take action for the welfare of the trust property to:

- i. Sell the trust property together or in lots, by public auction or private contract.  
This can be sold together or at different times.
- ii. Do the above within a reasonable time, i.e. sell the property and invest the trust money to purchase any other property.
- iii. Convey the trust property through a valid and registered sale deed.
- iv. Invest the trust money and monitor the investments.
- v. Use the trust property for the maintenance, education or advancement of a minor beneficiary, if any.

- vi. Give a written receipt for any money, securities or other movable property, which is paid, transferred or delivered, to him.
- vii. When there are two or more trustees, any one may be authorized to execute the trust. In that case the authorized trustee can:
  - a. Accept security for a debt,
  - b. Allow time for payment of a debt,
  - c. Compromise, abandon, submit to arbitration or settle any debt relating to the trust.

### **Disabilities of Trustees**

The disabilities of a trustee are:

- i. Once he has accepted the trust; he cannot refuse to act as a trustee.
- ii. A trustee cannot delegate his duties to another or a co- trustee.
- iii. A trustee should not use the trust property for his own profit or any other purpose, unconnected with the trust.
- iv. A trustee cannot buy the trust property on his own account or as an agent of a third person.
- v. A trustee cannot act unilaterally but must consult his co-trustees, if any.
- vi. Co-trustees should not lend the trust money to each other.

## **10. TRUST DEED**

A Trust Deed is an instrument in writing executed by a settlor used to constitute a trust.

It is well settled that no formal document is necessary to create a Trust as held in *Radha Soami Satsung vs. CIT-* (1992) 193 ITR 321 (SC). But for many practical purposes a written instrument becomes necessary under following cases -

1. When the trust is created by a will irrespective of whether the trust is public or private or it relates to movable or immovable property. This is because as per Indian Succession Act, a will has to be in writing.
2. When the trust is created in relation to an immovable property of the value of Rs.100 and upwards, in case of a private trust. In case of public trusts, a written trust deed is not mandatory, even in respect of immovable property, but is optional.
3. Where the trust/association is being formed as a society or company, the instrument of trust; i.e., the memorandum of association, and Rules and Regulations has to be in writing.

### **Benefits of a Trust Deed**

- i. a written trust deed is a prima facie evidence of existence of a trust ;
- ii. it facilitates devolution of trust property to the trust;
- iii. it clearly specifies the trust-objectives which enables one to ascertain whether the trust is charitable or otherwise;
- iv. it is essential for registration of conveyance of immovable property in name of the Trust;
- v. it is essential for obtaining registration under the Income-tax Act and claiming exemption from tax;
- vi. it helps to control, regulate and manage the working and operations of the trust;
- vii. it lays down the procedure for appointment and removal of the trustee(s), his/their powers, rights and duties; and

- viii. it prescribes the course of action to be followed under any eventuality including dissolution of the trust.

### **Requisite clauses of a Trust Deed**

While drafting a trust deed, several enactments must be taken into consideration, for e.g. - the Indian Trust act, 1882, state trust acts like Bombay Public Trusts Act, 1950 and the Income Tax act, 1961.

The Trust Deed should contain the following clauses -

- i. Preamble
- ii. Trust name by which Trust shall be known
- iii. Place where its office shall be situated
- iv. Author or settlor of the trust
- v. Names of the Trustees
- vi. Beneficiaries
- vii. The property settled, for Trust - In case of immovable property, it should contain full description of the property sufficient to identify it.
- viii. An express intention to direct the trust property from the trustees.
- ix. Objects of the Trust
- x. Minimum and maximum number of Trustees
- xi. Procedure for appointment, removal, replacement of trustees
- xii. Trustees rights, duties and powers
- xiii. Administration of trust
- xiv. Provision for maintenance of accounts, auditing etc.
- xv. Clause enabling, spending and utilization of the Trust funds or corpus.
- xvi. Bank Account operations

- xvii. Borrowing money on security for the purpose of the Trust
- xviii. Investment of the Trust funds and dealing with Trust properties
- xix. Alienation of immovable property of the Trust
- xx. Amalgamation clause
- xxi. Dissolution of Trust
- xxii. Irrevocable nature of the trust.

**Specimen format of a Trust Deed**

**TRUST DEED**

**THIS INDENTURE OF TRUST** executed on this ----- day of ----- 20----

**BY** ....., son / daughter / wife of -----, aged ---, residing at ----- (hereinafter referred to as the **SETTLOR** which term wherever the context so requires or admits shall mean and include his legal heirs, successors, executors, administrators and assigns of **ONE PART**

**IN FAVOR OF**

**1.** ----- son/daughter of ----- , aged --, residing at -----  
-----

**2.** ----- son/daughter of -----, aged --, residing at -----  
-----

3. ----- son/daughter of ----, aged --, residing at -----  
-----

4. ----- son / daughter of ---- , aged --, residing at -----  
-----

5. ----- son/daughter of ----, aged --, residing at -----  
-----

(hereinafter referred to as 'THE TRUSTEES' which expression wherever the context so requires or admits shall mean and include their legal heirs, successors, executors, administrators and assigns of the **SECOND PART**).

**WHEREAS THE SETTLOR** above named has been desirous of creating and establishing a spiritual, educational and a charitable Trust.

**AND WHEREAS THE SETTLOR** above named has settled a sum of Rs.----- (Rupees ----- only) as a fund,

**AND WHEREAS THE SETTLOR** above named has settled the assets and properties mentioned in the Schedule hereunder,

in favour of the **TRUSTEES** upon Trust with a view to give effect to his desire of creating and establishing a Trust for the purpose of undertaking charitable and religious activities for the benefit the public, for the objects set out in this trust deed and for fulfillment of which, the terms and conditions are more particularly set out hereunder.

**AND WHEREAS THE TRUSTEES** named are willing to accept the office of the Trustees for the purpose of carrying out the wishes of the **SETTLOR** of the Trust under the provisions and directions set forth herein, so as to enable to pursue its vowed objects.

**THIS INDENTURE WITNESSETH AS FOLLOWS**

- 1) The **SETTLOR** above named hereby establishes a Public Charitable Trust by the name of ----- for the purpose and upon the conditions set forth hereunder.
- 2) The **TRUSTEES** named above shall be the first trustees and have given their consent to be appointed as the trustees and as token thereof, they have set their hands to this instrument.
- 3) The **SETTLOR** hereby conveys, transfers and assigns to the **TRUSTEES** the above referred sum of Rs. ---- (Rupees ----- only) as corpus to the **TRUST**, the receipt of which, the **TRUSTEES** do hereby admit and acknowledge.

- 4) The **SETTLOR** of the Trust hereby conveys, transfers, assigns to the **TRUSTEES** the assets and properties mentioned in the Schedule hereunder, the possession of which the Trustees hereby admit and acknowledge, to have and to hold the same in trust as corpus of the Trust, to be used by the Trustees to carry out and fulfill the objects of the Trust set forth herein, and the **SETTLOR** of the Trust hereby relinquishes for all time any claim to or interest in the said assets and properties or fund forming the subject matter of the Trust.
  
- 5) The office of the Trust for the time being shall be at -----, with the power given to the Trustees to shift the same to any other place as they may mutually agree upon.
  
- 6) The **TRUSTEES** do hereby agree that they shall hold and stand possessed of the said trust assets, properties and funds (which expression shall include all investments in cash or kind or in any nature whatsoever into and for which, the said property or a part or parts thereof may from time to time be converted, varied or exchanged) and/ or such investments as may be held by the **TRUSTEES** from time to time in relation to these presents together with all income, profits, additions and accretions thereof, upon trust for the object set out herein with and subject to the provisions and conditions hereinafter contained in these presents.

#### **I. OBJECTS:**

The objects of the Trust are:

1. Construction and running of Schools, colleges, education institutions, free dispensaries, Centres for poor feeding and homes for the aged for the benefit of the public.
2. Providing for grants, scholarships, fellowships and other forms of financial assistance to the needy and deserving students for pursuing education, vocational training, skill development etc.
3. Granting of financial assistance to any educational institution for granting scholarships, prizes, medals, awards for excellence in studies, sports and scientific research, distribution of books and note books for poor and deserving students.
4. Establishment, conduct, maintenance of clinical laboratories, hospitals, nursing homes, dispensaries and institutions of similar nature and providing financial assistance to the deserving persons for medical treatment, in any medical institution.
5. Providing financial assistance for feeding the poor directly and through other institutions.
6. Establishment, conduct, maintenance of old age homes, homes for physically challenged men, women and children and persons with similar disabilities and also for granting financial assistance to institutions performing similar activities.
7. Grant of donation to any Temple, Mosque, Church, Gurudwara and other places of worship and / or religious institutions. However, the Trust shall not undertake any religious activities.
8. Providing for or contributing to education and scientific research and development.
9. Providing relief to the poor and advancing any other object of general public utility.
10. The Trust will not carry out any activities with the intention of earning profit and will perform with service motive only.
11. No activities of the Trust will be carried out outside India.

## **II. BENEFICIARIES OF THE TRUST:**

The Trust is established for the benefit of citizens of India and the class of people mentioned above without discrimination of caste, religion, creed or sex.

### **III. PROPERTIES:**

The Trust properties shall consist of

1. The amount Transferred by the **SETTLOR** as mentioned above, towards the Corpus fund of the Trust.
2. The immovable properties and other assets transferred by **SETTLOR** as mentioned above.
3. Any cash, kind, properties, movable and immovable that may be acquired by purchase or otherwise or all manner of rights, title or interest in or over any property movable or immovable.
4. All additions and accretions to the Trust properties and the income there from.
5. All donations, gifts, legacies or grants, in cash or kind accepted by the Trustees upon Trust.

The properties of the Trust shall be utilized for the objects set forth herein above and subject to the provisions and conditions herein mentioned.

### **IV. NUMBER OF TRUSTEES, THEIR TERM AND POWER TO CO-OPT:**

The Trust will be managed by a **Board of Trustees** consisting of not less than 3 trustees and not more than 9 trustees. The parties of the Second Part will be First Trustees and they shall automatically form the Board of Trustees

The first **Managing Trustee** shall be the **SETTLOR** and he will hold office for his life time. After the demise or relinquishment of office of the Managing Trustee or in the event of the first Managing Trustee failing to nominate his successor in office, the remaining trustees shall elect one of the other Trustees as Managing Trustee.

The term of office of First Trustees shall be for their respective lives. The Board of Trustees shall have the power to increase the total number of Trustees upto the maximum number stated above and fix their term as per provisions contained herein.

Any Trustee, including the Managing Trustee may retire from the Trusteeship hereof by giving two calendar months notice in writing of his or her intention to do so, to the Board of Trustees and after the expiry of the period of notice, the Trustee giving the notice shall ipso facto cease to be a Trustee of these presents.

Any vacancy caused by death of any one of the First Trustees, or any vacancy caused by the resignation of any of the Trustees, may be filled up by co-option by the Board of Trustees.

The Trustees who are not First Managing Trustee or First Trustees shall hold office for a period of one year from their date of appointment by the Trustees. At the end of this one year period, the Board of Trustees may reappoint them for subsequent term or appoint other persons as Trustees in such a manner that the total number of Trustees does not exceed the approved maximum number of Trustees.

The Managing Trustee shall have the power to remove a Trustee suffering from physical or mental disability or if he is accused of misfeasance of trust funds or property or misconduct, after satisfying himself on enquiry and such action of the Managing Trustee shall be final.

The proceedings of the Board of Trustees shall not in any way be invalidated due to any post or posts remaining vacant. During the time when a vacancy is yet to be filled up,

the remaining Trustees shall act as “Full Board”, subject to the presence of Quorum in the meetings. Any vacancy in the Board of Trustees or illegality in the appointment of Trustees or their proceedings shall not invalidate any prior act or decision of the Board.

## **V. TRUST ADMINISTRATION AND POWER TO THE BOARD:**

### **A. The Board of Trustees shall have power to:**

1. To administer the Trust, its properties and affairs and do all the things which will fulfill the performance of the objects for which the Trust is established and for this purpose the Board can apply the whole or any part of the Trust property towards the payment of the expenses of the Trust.
2. The income and the properties of the Trust will be solely utilized towards the objects of the Trust and no portion of it will be utilized for payment to the Settler, or Trustees or their relatives by way of salary, allowances, profit, interest, dividend etc.
3. To open one or more bank accounts and operate the same or provide for operation of the said accounts by any two among them authorized on their behalf.
4. To invest the Trust funds in the manner not prohibited by any provisions of the Income Tax Act, 1961.
5. To buy, sell, mortgage, grant, lease, hire or otherwise alienate all or any of the properties of the Trust in its discretion for adequate consideration, so however any sale or alienation of immovable properties of the trust can be done only after obtaining the prior approval of the Commissioner of Income Tax.
6. To execute power of attorney or powers of attorney to any person for the purpose of executing, administering or managing the whole or any part of the Trust for the purpose of all or some among the objects of the Trust.
7. To borrow money with or without security and to repay the same.

8. To receive, collect and enforce recovery of all monies due or payable to the Trust and grant receipts and discharges therefore.
9. To settle, compromise or compound any disputes or refer the same to arbitration or litigation.
10. To receive voluntary contributions from any person or persons from India or outside, after complying with the statutory formalities, by way of donation, gifts or in any other manner and to hold the same upon Trust for the objects set forth herein.
11. To appoint, suspend, dismiss or otherwise deal with the staff required for the administration of the Trust, to frame rules relating to their salaries and other benefits and generally to exercise all powers ancillary and incidental to effectively carry out the objects of the Trust.
12. The Board shall have power to make and rescind rules and regulations for the management and administration of the Trust.
13. No Trustee shall commit any act or breach of Trust of the Trust fund or property or cause any loss to the Trust property or commit fraud in the administration of the Trust fund / property.
14. The Trustees shall hold honorary office and shall not be entitled to any Salary, allowances or perquisites, except for the reimbursement of actual expenses incurred in connection with attending to the Trust matters.
15. The Board of Trustees will follow the instructions given by any donor who makes substantial contribution towards furtherance of the objects of the Trust, so long as such instructions are not detrimental to the attainment of the objects of the Trust and are in conformity with the provisions of the Income-tax Act, 1961.
16. For the management and administration of the Trust, the Trustees shall elect one amongst themselves for each of the offices of Vice President, Secretary and Treasurer. The term of office for Vice President, Secretary and Treasurer shall be for a period of one year from their date of appointment and they may be reelected for further terms. No Trustee including the Managing Trustee shall hold more than one

of the above offices at the same time. The persons holding these offices of Vice President, Secretary and Treasurer shall be under the administrative guidance and supervision of the Managing Trustee and will report to him directly.

## **B. ROLES AND RESPONSIBILITIES AND POWERS**

The Roles, Responsibilities and powers of all these officers is defined below. In addition to these, the Managing Trustee may grant additional roles, responsibilities and powers to any of the Trustees.

### **a) MANAGING TRUSTEE:**

In addition to discharging normal duties of a trustee, the Managing Trustee shall preside over meeting of the Board of Trustees. The Managing Trustee is authorized to sign all documents, including bank documents, acknowledgements for the contributions received, and agreements with individuals, Government Institutions and other organizations, on behalf of the Board of Trustees. The Managing Trustee shall have all the residuary powers, not explicitly assigned to any of the other officers in these presents.

The Managing Trustee is authorized to sign along with the Treasurer bank cheques, deposit release vouchers etc. The Managing Trustee is empowered to remove any Trustee from the Trust and its offices, if he/she finds that his/her activities are not congenial to the activities of the Trust.

The Managing Trustee is responsible for ensuring that the Trust pursues its Objects and for maintaining the dignity of the Trust organization and shall use his/her influence to promote the activities of the Trust.

**b) VICE PRESIDENT:**

The Vice President shall discharge the duties of the Managing Trustee, in the absence of the Managing Trustee of the Trust and shall have the power and authority delegated and assigned to him/her by the Managing Trustee.

**c) SECRETARY:**

The Secretary shall maintain the records of the organization prepare and circulate agenda and minutes of Board of Trustee meeting for the approval of the Managing Trustee.

The Secretary shall be also responsible for the day to day administration activities of the Trust. The Secretary shall deal with correspondence received by the Trust, send replies in consultation with the Managing Trustee, Vice President and/or the Treasurer where necessary. He/she is responsible for the safe custody of all the properties and records of the Trust. The Secretary shall represent the Trust in all legal matters, sign the papers related to legal cases, attend to courts or represent the Trust in Government offices.

**d) TREASURER:**

The Treasurer will prepare Annual Budget, monthly and yearly expenditure statements get the expenditure audited by auditor duly appointed by the Board of Trustees and place them before the Board of Trustees for approval. The Treasurer is responsible to maintain cash book and prepare vouchers for the payments made, receive contributions, sign acknowledgements for the amounts or articles received by the Trust and prepare monthly and yearly statements of revenue and expenditure, as well as, the register of assets of the Trust and place them before the Board of Trustees for their approval.

The Treasurer is authorized to sign bank cheques, application for drafts and payment instructions jointly with the Managing Trustee and draw money from the bank, upto the limits defined by the Board of Trustees in their meetings. The Treasurer is responsible for safe custody of cash, bonds, securities etc. of the Trust.

## **VI. MEETING OF THE BOARD OF TRUSTEES:**

The Board of Trustees should meet atleast once in every calendar quarter and may meet more often when required.

- 1) The meeting of Board of Trustees shall be convened by the Managing Trustee and he shall preside over the meetings. In his absence, the Managing Trustee may authorize the Vice President to be the Chairman of such meetings. In the event the Managing Trustee or Vice President are not able to attend the meeting already convened, any of the Trustees present in the meeting may elect one amongst themselves to be the Chairman of the meeting.
- 2) One half of the Board of Trustees or a minimum of two trustees, whichever is higher, shall constitute the QUORUM for the Board of Trustee meetings.
- 3) All decisions shall be carried out by the majority decision of the Board but in the event of equality of votes, the Chairman presiding over the meeting shall have a casting vote.
- 4) Any resolution in writing signed by all the Trustees by circulation shall have equal force as though it has been passed at a meeting of the Board of Trustees.
- 5) The meeting of the Board shall be conveyed after giving at least a week's notice unless all the Trustees agree to accept a shorter notice.

- 6) The Board of Trustees may invite other persons interested in the objects and functioning of the Trust to attend the meetings of the Board, but they shall not be entitled vote in the meetings of the Board.

#### **VII. BANK ACCOUNT:**

The Managing Trustee and the Treasurer shall jointly operate Bank Accounts on behalf of the Trust. In their absence, any of the Trustees may be authorized by the Board of Trustees, by a resolution, to operate the bank accounts. One or more Bank Accounts may be opened in any Bank and or Banks in the name of the Trust.

#### **VIII. INVESTMENT OF TRUST FUNDS:**

- 1) The Board of Trustees shall have the power to invest the funds, assets and properties of the Trust at their discretion in accordance with the provisions of the Income Tax Act, 1961.
- 2) The Board shall also determine from time to time, the amount it shall spend on the various activities of the Trust.

#### **IX. ACCOUNTS AND AUDIT:**

- 1) The financial year of the Trust shall be from 1<sup>st</sup> April to 31<sup>st</sup> March of the following year, unless otherwise decided by the Board of Trustees.
- 2) The Board of Trustees shall maintain true and correct accounts of the Trust.
- 3) The accounts of the Trust shall be annually audited by a Chartered Accountant appointed by the Board of Trustees and the audited statement of account shall be

placed before the Board for its approval within three months of the close of the financial year.

#### **X. AMENDMENTS:**

- 1) While this Trust shall be irrevocable, the Board of Trustees may amend any of the clauses except those relating to objects of the Trust, the First Managing Trustee and First Trustees, at a duly convened meeting of the Board with at least 2 weeks' notice, and by a resolution passed by at least three-fourths majority of the Board of Trustees present and voting. The amendments to the Trust deed can only be passed by a resolution of the Board of Trustees in an actual meeting and not by circulation.
- 2) If any alteration or amendment is necessary, the same shall be affected through supplementary deed/deeds with the previous approval of the Commissioner of Income Tax and these shall be read together with the main Trust deed.

#### **XI. INDEMNITY:**

The Board of Trustees shall be indemnified for any act done by them in good faith in the course of the administration of the Trust.

#### **XII. SETTLOR AND THEIR RELATIVES:**

Notwithstanding the powers vested with the Trustees under the proceeding clause, no part of the income of the Trust shall benefit directly or indirectly the trustees and no part of the income of the property of the Trust shall be used or applied directly or indirectly for the benefit of:

- (a) **SETTLOR, Managing Trustee, Trustees** or any person who makes a substantial contribution to the Trust or of any relative of the **SETTLOR, Managing Trustee, Trustees** or the person who makes a substantial contribution.
- (b) Any “**related concern**” in which any of the above persons has substantial interest.
- (c) For the purpose of this clause, the word “**relative**” and the phrases “**related concern**”, “**substantial interest**” and “**substantial contribution**” shall have the meanings assigned to them in the Income Tax Act, 1961.

### **XIII. APPLICABILITY OF TRUST ACT:**

The provisions of the Indian Trust Act 1882 shall apply to all matters not specifically mentioned in these presents.

### **XIV. APPLICATION OF INCOME TAX ACT:**

All clauses herein are intended to secure exemption from Income Tax on the income of contributions and donations to the Trust and any clause or portion of this Deed of Trust which is inconsistent with or repugnant to the sections of the Income Tax Act, 1961 as amended, substituted or modified from time to time, shall be deemed to be deleted or modified with effect from the date on which the sections to which the clause or part of a clause is repugnant or inconsistent comes into force.

### **XV. THIS TRUST IS DECLARED IRREVOCABLE**

### **XVI. DISSOLUTION:**

In the event of dissolution of the Trust, the entire Trust funds shall be realized and first be used for payment of liabilities of the Trust. The assets left if any, shall be disbursed to other Trusts or Associations having similar objectives after obtaining previous approval of Commissioner of Income-tax and in no event it shall be distributed in any manner, to any of the Board of Trustees or their relatives or related concerns.

### SCHEDULE

At present, the Trust has no property or assets, either movable or immovable, other than the Trust Fund and the immovable properties, donated by the SETTLOR, as described in the Schedule below:

1. Cash contribution to the Corpus Fund of the Trust of Rupees -----  
(Rupees ----- only)
  
2. Properties of -----
  
3. Assets of -----

IN WITNESS WHEREOF THE SETTLER AND THE FIRST TRUSTEES here to have set their hands on the day, month, and year first above written.

SIGNATURE OF SETTLOR

SIGNATURE OF FIRST TRUSTEES

Signature: -----

Name:

Address:

1. Signature: -----

Name:

Address:

2. Signature: -----

Name:

Address:

3. Signature: -----

Name:

Address:

**Witnesses:**

1) Signature: -----

Name and address

4. Signature: -----

Name:

Address:

2) Signature: -----

Name and address

5. Signature: -----

Name:

Address:

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## **10.FOREIGN CONTRIBUTIONS TO CHARITABLE ORGANISATIONS**

Organizations having a definite cultural / social/ educational religious /economic object were allowed to accept foreign contribution only after registering itself with the Central Government as per the provision of the Foreign Contribution (Regulation) Act, 1976 (FCRA). The main purpose of the Act was to curb the use of foreign funds and hospitality for nefarious and anti-national purposes.

However, th Foreign Contribution (Regulation) Act 2010 (FCRA 2010) was passed o replace the Foreign Contribution (Regulation) Act 1976. The FCRA 2010 was passed by Rajya Sabha on 19th August 2010 and received the assent of the President on 26<sup>th</sup> September, 2010.

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011. The Ministry of Home Affairs has issued the necessary Gazette Notification vide S.O. 999 (E) dated the 29th April, 2011 in this regard. Consequently, the earlier Act, viz., the Foreign Contribution (Regulation) Act, 1976 has been repealed.

The Ministry of Home Affairs has also issued a Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011 made under section 48 of FCRA, 2010. The FCR Rules, 2011 have come into force simultaneously with FCRA, 2010 i.e w.e.f 1st May, 2011.

The new FCRA, 2010 has a much broader applicability; it is applicable to individuals, Hindu Undivided Family (HUF), Association and a section 8 company.

### **Salient Features of the Act**

Any association granted prior permission or registered with the Central Government under Section 6 or under the repealed FCRA, 1976, shall be deemed to have been granted prior permission or registered, as the case may be, under FCRA, 2010 and such registration shall be valid for a period of five years from the date on which the new Act has come into force.

While the provisions of the repealed FCRA, 1976 have generally been retained, the FCRA, 2010 is an improvement over the repealed Act as more stringent provisions have been made in order to prevent misutilisation of the foreign contribution received by the associations.

Any organisation of a political nature and any association or company engaged in the production and broadcast of audio or audio visual news or current affairs programme have been placed in the category prohibited to accept foreign contribution.

A new provision has been introduced to the effect that no person who receives foreign contribution as per provisions of this Act, shall transfer to other person unless that person is also authorized to receive foreign contribution as per rules made by the Central Government.

Another new provision has been made to the effect that foreign contribution shall be utilized for the purpose for which it has been received and such contribution can be used for administrative expenses up to 50% of such contribution received in a financial year. However, administrative expenses exceeding fifty per cent of the contribution to be defrayed with the prior approval of the Central Government.

New provisions have been made for suspension as well as cancellation of registration granted for violation of the provisions of the Act. Such provisions did not exist in the repealed Act.

New provision has also been made for management of foreign contribution and assets created out of such contribution of persons whose certificates have been cancelled.

Under the repealed Act, there was no time limit regarding the validity of registration certificate granted to the associations etc. for accepting foreign contribution. FCRA, 2010 provides that the certificate granted shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution for which permission was granted. Further, every person who has been granted a certificate shall renew it within six months before the expiry of the period of certificate.

No funds other than foreign contribution shall be deposited in the FC account to be separately maintained by the associations etc. Every bank shall report to such authority, as may be prescribed, the amount of foreign remittance received, sources and manner and other particulars.

Provision has been made for inspection of accounts if the registered person or person to whom prior permission has been granted fails to furnish or the intimation given is not in accordance with law.

A new provision has been introduced to the effect that the assets of any person who has become defunct shall be disposed of in such manner as may be, specified by the Central Government.

A new provision has been introduced to the effect that any person, who knowingly gives false intimation and seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by Court, would be liable to imprisonment for a term which may extend to six months or fine or with both.

Any person contravening the provisions of the Act shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

### **Salient Features of the Rules**

Guidelines for declaration of an organisation to be of a political nature, not being a political party have been prescribed.

Activities to be treated as speculative activities have been defined.

Expenditure constituting 'Administrative expenses' has been clearly defined.

Modalities for submission of application for obtaining registration or prior permission to receive foreign contribution have been given in detail in the Rules and Forms for filing the applications.

The applications for obtaining registration or prior permission shall have to be made electronically on-line, and shall have to be followed by forwarding the hard copy of the on-line application, duly signed, together with the required documents within thirty

days of the submission of the on-line application, failing which the request of the person shall be deemed to have ceased.

Any person whose request has ceased shall be able to prefer a fresh on-line application only after six months from the date of cessation of the previous application.

No person would be permitted to prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

A new provision has been made for submission application fee. The fee for obtaining registration or prior permission would be Rs. 2000/- and Rs. 1000/- respectively.

Applications made for registration or prior permission under the repealed FCRA, 1976 but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under the new Rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

Every person who has been granted registration or prior permission shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.

Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application and application for its renewal shall have to be made in the prescribed form accompanied by a fee of Rs.500/- six months before the date of expiry of the certificate of registration. A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.

In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration. If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of the Rules.

In case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain. Besides, the Central Government shall also display or upload the summary data of such persons on its website for information of the general public.

In case the certificate of registration is suspended under the relevant provisions the Act, up to twenty-five per cent of the unutilised amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received. The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

The amount of foreign contribution lying unutilised in the exclusive foreign contribution bank account of a person whose certificate of registration has been cancelled shall vest with the banking authority concerned till the Central Government issues further directions in the matter.

If a person whose certificate of registration has been cancelled transfers/has transferred the foreign contribution to any other person, the provisions of sub-rule (1) of this rule shall apply to the person to whom the fund has been transferred.

Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance. The report shall contain the details regarding name and address of the donor, name and address of the recipient, account number, name of the Bank and Branch, amount of foreign contribution (in foreign currency as well as Indian Rupees), date of receipt, manner of receipt of foreign contribution (cash/cheque/electronic transfer etc.).

The bank shall also send a report containing the above details to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within a duration of thirty days, by any person, whether registered or not under the Act.

Every person who receives foreign contribution under the Act shall submit a report, duly certified by a chartered accountant, in the prescribed Form, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi. The annual return in the prescribed Form shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation. If the foreign contribution relates to articles or foreign securities, the intimation shall be submitted in the prescribed Forms.

Every such return in shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the

person, duly certified by an officer of such bank. The accounting statements referred to above shall be preserved by the person for a period of six years. A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year.

Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in the prescribed Form within forty-five days from the date on which he is duly nominated as a candidate for election.

An application for revision of an order passed by the competent authority under the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper. It shall be accompanied by a fee of Rs.1000/-

An application for the compounding of an offence may be made to the Secretary, Ministry of Home Affairs, on a plain paper and shall be accompanied by a fee of Rs.1000/-.

The Central Bureau of Investigation or any other Government investigating agency that conducts any investigation under the Act shall furnish reports to the Central Government, on a quarterly basis, indicating the status of each case that was entrusted to it, including information regarding the case number, date of registration, date of filing charge sheet, court before which it has been filed, progress of trial, date of judgment and the conclusion of each case.

Any information or intimation about political or speculative activities of a person shall be furnished to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such information or intimation shall be sent by registered post.

Any person intending to transfer the foreign contribution may make an application to the Central Government in the prescribed Form. The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or

prior permission under, in case the recipient person has not been proceeded against under any provision of the Act. Any transfer of foreign contribution shall be reflected in the prescribed returns by the transferor and the recipient.

In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilised. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer.

## **11. RELIGIOUS AND CHARITABLE ENDOWMENTS**

Religious Endowments and Waqfs are variants of Trusts which are formed for specific religious purposes e.g. for providing support functions relating to the deity, charity and religion amongst Hindus and Muslims respectively. Religious endowments and Waqfs generally arise from dedication of property for religious purposes.

### **Hindu Religious and Charitable Endowments**

From the earliest times Hindus have been dedicating property for religious and charitable purposes. This has been mainly under two heads: Ishta and Pushta. The former indicates the Vedic sacrifices and rites and gifts associated with such sacrifices.

The latter stands for all other religious and charitable acts and purposes unconnected with the vedic sacrifices. The Ishta -Pushta have been considered as means for going to heaven. Various types of gifts were emphasized, but merely by making gifts or performing sacrifices, a charitable or religious endowment doesn't come into existence. It will come into existence only when some property or fund is dedicated for a religious or charitable purpose or object.

It is to be noted that definition of the phrase "charitable purpose" is inclusive and it covers a wider field than the field covered by the words "religious purpose". Further, in some cases, even a religious activity by a particular sect would be a charitable activity; for some, supply of fodder to animals and cattle is a religious object, while to others it may be a charitable purpose, according to Hindu religious activity. Similarly, Khairat under the Mohamedan law would be considered to be a religious activity. The said activities may be for a charitable purpose to some. Hence, in many cases, both the purposes may be overlapping. The purposes may have both the elements, charity as well as religious.

While dealing with what is "religious" or "charitable purpose" it is observed by the Supreme Court in the case of *Ramchandra Shukla v. Shree Mahadeoji*, (AIR 1970 SC 458) that there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion. While discussing this aspect, the Supreme Court has further observed as under:

"Hindu piety found expression in gifts to idols to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. Therefore, although courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the courts in England have placed upon the term 'charity' in the Statute of Elizabeth, and, therefore, all purposes which according to English law are charitable will be charitable under

Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognised as charitable purposes. Hence, what are purely religious purposes and what religious purposes will be charitable purposes must be decided according to Hindu notions and Hindu law."

### **Essentials of a valid endowment**

1. The dedication must be complete,
2. The subject matter must be specific,
3. The object must be definite,
4. The settler must have the capacity to make the endowment.

### **Math and Mahant**

In the ordinary parlance, Math means an abode or residence of ascetics. In its legal connotation, it is a monastic institution presided over by its head, known as Mahant, a superior ascetic, and established for the use and benefit of ascetics generally or of ascetics belonging to a particular order, ordinarily, the disciples of Mahant. The basic purpose of a math is to encourage and foster spiritual learning and knowledge, by maintenance of a competent line of teachers who impart religious instruction to disciples and followers of the Math and to strengthen the doctrines of the sect or school to which Math subscribes. There can be sudra maths also. Although, the Mahant is the head of the math, but the property dedicated to a math doesn't vest in him, but it vests in the math itself as a juristic person.

The Mahant is neither a trustee nor a corporate sole. He is just the manager of the math, with wider powers than those possessed by a manager, trustee or dharmakarta of a

temple. He has a dual capacity as he is the manager of the properties, and the spiritual head of the math.

### Wakf

Under Section 3(r) of the Wakf Act 1995:

“Wakf” means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes -

(i) a Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) “grants” , including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a Wakf-al-al-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable,

and ‘Wakif’ means any person making such dedication;

Under Section 2(19) of the Bombay Public Trusts Act 1950, “Wakf” means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes a wakf by user and grants (including mashrutulkhidmat) for any purpose recognised by the Muslim Law as pious, religious or charitable and a wakfallalaulad to the extent to which the property is dedicated for any purpose so recognised; but does not include a wakf such as is described in Section 3 of the Mussalman Wakf Validating Act, 1913,

under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants.

Wakf is a permanent dedication of movable or immovable properties for religious, pious or charitable purposes as recognized by Muslim Law. The Wakf Institutions deal with the religious, social and economic life of Muslims. They not only support Mosques, Dargah etc. but many of them support Schools, Colleges, Hospitals and Musafirkhanas which are meant for social welfare.

### **Administration of wakf**

The Central Government is responsible for the implementation of the Wakf Act. The Wakf Act, 1954 had provisions for survey of Wakfs, constitution of Central Wakf Council and State Wakf Boards etc. For better interpretation of the provision of the Act keeping in view the objective of the legislation, the Wakf Act, 1954 was amended many times. Finally a comprehensive and land mark legislation i.e. Wakf Act, 1995 was enacted by the Government of India in November, 1995, which became effective from 01.01.1996. In contrast to the previous Act, this Act is applicable throughout the country except for Jammu & Kashmir and Dargah Khwaja Saheb, Ajmer.

### **Essentials of Wakf**

- Wakf has to be a permanent endowment in perpetuity.
- It cannot be either contingent or revocable.
- No instrument in writing is required to create a wakf. An oral dedication can as well create a wakf.
- Neither delivery of possession nor appointment of mutawallis is required. But the subject of wakf must be clearly defined.
- A wakf can also be made by a will or by long user.

- Any Muslim who has attained majority and is of sound mind can make a wakf. A minor or his guardian as on behalf of the minor cannot make a wakf. A wakf cannot be made for an illegal object.
- A wakf nama by which immovable property of value of Rs.100 as more is dedicated by way of wakf requires registration.
- The property which is either capable of being used without being consumed or which is though consumable in itself but is capable of being converted into property of a permanent nature can form the subject matter of a wakf.
- A wakf can be created for any purpose which is considered religious, pious, or charitable by the Mohammadan law.
- Any wakf created with the object of obtaining the approval of the almighty or a reward in the next world is pious as per Mohammadan law.
- Few instances of a pious or a religious purpose may be mosques, provisions for imams, colleges, bridges, assistance to poor people to perform pilgrimage to Mecca, and distribution of alms to the poor.
- Wakf may be made for the rich as well poor people alike or for the affluent and thereafter for the poor or for the poor people alone. All persons regardless of their financial status can be made beneficiaries of a wakf.
- Even family members and descendents of the wakif, that is the person creating the wakf, can be made beneficiaries. Under Hanafi law, the wakif himself can also be a beneficiary.
- Under Muslim law, the administration of a wakf is vested in the Mutawalli but since 1923 a number of Central and State Acts have restricted and regulated the administration powers of a mutawalli so as to ensure transparency and proper execution of a wakf. For instance the Wakf Act, 1954 makes registration of a wakf, whether created before or after the commencement of the Act, at the office of a wakf commissioner mandatory.

- Thereafter, the Mutawalli's of these registered wakfs are required to prepare budget and accounts of the wakf for the appraisal of the wakf commissioner and the wakf board.
- In certain cases, the wakf board can assume direct Management of the wakf.

## **12. AUTHORITIES REGULATING CHARITABLE ORGANISATIONS**

### **Charity Commissioner**

A Charity Commissioner with headquarters at Bombay has been appointed to administer the Bombay Public Trusts Act, 1950. The first Charity Commissioner was appointed on the 14th August 1950. An Assistant Charity Commissioner has been appointed for Aurangabad region which is composed of the districts of Aurangabad, Parbhani, Nanded, Bhir and Osmanabad. The Assistant Charity Commissioner is directly responsible to the Charity Commissioner.

The State Government may, by notification in the Official Gazette, appoint an Officer to be called the Charity Commissioner who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State of Maharashtra.

In the state of Gujarat as also in Maharashtra, the Charity Commissioner is also the Registrar of Societies and the Administrator General under the Administrator Generals Act.

Section 69 of the Bombay Public Trusts Act, 1950 deals with the duties, functions, and powers of the Charity Commissioner.

For purposes of this Act, the following shall be the duties to be performed and powers to be exercised by the Charity Commissioner, namely -

- (a) the general superintendence of the administration and carrying out the purposes of this Act under Section 3;
- (b) power to entertain and dispose of appeals from the findings of a Deputy or Assistant Charity Commissioner under Sections 20, 22 or 28;
- (c) power to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry relating to the registration of any public trust under Section 8;
- (d) power to direct a special audit of the accounts of a public trust under Section 33;
- (e) power to require an auditor to forward to him a copy of a Balance Sheet and Income and Expenditure Account under Section 34;
- (f) power to permit a trustee to invest money of a public trust in any manner other than in public securities under Section 35;
- (g) power to sanction a sale, mortgage, exchange, gift or lease of immovable property belonging to a public trust under Section 36;
- (h) power to enter on and inspect any trust property, to call for and inspect any proceedings of a trustee, and to call for any return, statement, account or report from trustees or any person connected with a public trust under Section 37;
- (i) power to hold an inquiry in regard to any loss caused to a public trust under Section 40, and to order a surcharge under Section 41;

- (j) power to the Charity Commissioner, to act as the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890, under Section 43;
- (k) power to act as trustee of a public trust;
- (l) power to file suit under Section 50;
- (ll) power to frame, or modify scheme under Section 50A;
- (m) power to give or refuse consent to the institution of a suit under Section 51;
- (n) power to give notice to trustee for the Cypres application of the trust money and to make an application to the Court under Section 55;
- (o) Deleted;
- (p) to exercise such other powers and perform such other duties and functions as many be prescribed.

The State Government may, by notification in the Official Gazette appoint one or more Officers to be called Joint Charity Commissioners who shall subject to the control of the Charity Commissioner and to such general or special orders, as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions of the Charity Commissioner.

The State Government may, by general or special order, declare a Joint Charity Commissioner to be the regional head to superintend, subject to the control of the Charity Commissioner, the administration in one or more regions or sub-regions, as may be specified in such order.

### **Registrar of Societies**

Registrar of Societies is the officer appointed by the respective State Governments to perform the duties and functions of the Registrar under the Societies Registration Act of states. In case no such officer is appointed, the Inspector General of Registration will be regarded as the Registrar of Societies.

The Registrar or the person authorized by him generally has the following powers –

(a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;

(b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;

(c) he may, notwithstanding anything contained in any Act or in any rule or regulation prescribing the period of notice for a general meeting of the society, require the governing body of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him. If the governing body of the society refuses or fails to call a meeting, he shall have power to call it himself.

### **Registrar of Companies (ROC)**

Registrars of Companies (ROC) appointed under Section 609 of the Companies Act, 1956 covering the various States and Union Territories are vested with the primary duty of registering companies floated in the respective states and the Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as registry of records, relating to the companies registered with them, which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

### **13. TAXATION ASPECTS OF CHARITABLE ORGANISATIONS**

The Income Tax Act, 1961 is a federal / central piece of legislation, which affects all charitable organizations (trust, society or company) uniformly throughout India.

India's tax laws affecting not-for-profit organizations (NPOs) are similar to the tax laws of other Commonwealth nations. The income of certain NPOs carrying out specific types of activities is exempt from corporate income tax, with the caveat that unrelated business income is subject to tax under certain circumstances. The income tax law and the corporate tax law provide tax benefits for donors. Additionally, NPOs involved in relief work and in the distribution of relief supplies to the needy are 100% exempt from Indian customs duty on the import of items such as food, medicine, clothing and blankets. Other exemptions may also be available.

To be eligible for tax-exemption under the Income Tax Act, 1961, a not-for-profit entity must be organized for religious or charitable purposes. What is conceived as 'charitable purpose' is defined under section 2(15) of the Income Tax Act, 1961.

## Registration of Charitable Organisations

The legal frame work, granting exemption to a public charitable Trust, a company registered under section 8 of the Companies Act, or a society registered under the Societies Registration Act, 1860, or any other institution is contained in one or more of the following sections of Act:-

- (i) Section 2(15) – definition of charitable purpose;
- (ii) Section 2(24) (ia) – income includes voluntary contributions;
- (iii) Section 10 – incomes not included in total income;
- (iv) Sections 11,12, 12A – income from property held for charitable purposes and income of trusts or institutions from contributions;
- (v) Sections 12AA and 13 – Procedure for registration and non-applicability of Section 11 in certain cases; and
- (vi) Sections 35(1)(ii) and 35(i)(iii) – Expenditure on scientific research.

According to **Sec.2(15) of Income Tax Act, 1961**, “charitable purpose” includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:

**Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year.

According to **Sec.2(24)(iia) of Income Tax Act, 1961**, income includes - “voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iii ae) or sub-clause (via)] of clause (23C) of section 10 or by an electoral trust. *Explanation.*— For the purposes of this sub-clause, “trust” includes any other legal obligation.

According to Section 12A of Income Tax Act, 1961, provisions of section 11 and section 12, regarding exemption of income, will not be applicable to an institution etc., unless an application for its registration is made to the Commissioner of Income Tax within a period of one year from the date of its creation.

According to Rule 17A of Income Tax Rules, 1962, an application for registration of a charitable or religious trust or institution should be made in duplicate in Form No. 10A and should be accompanied by the following documents, namely :—

- (a) where the trust is created, or the institution is established, under an instrument, the instrument in original, together with one copy thereof; and where the trust is created, or the institution is established, otherwise than under an instrument, the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof : Provided that if the instrument or document in original cannot conveniently be produced, it will be open to the Commissioner to accept a certified copy in lieu of the original;
- (b) where the trust or institution has been in existence during any year or years, prior to the financial year in which the application for registration is made, two

copies of the accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up.]

On receipt of the application, the Commissioner will pass an order either registering the trust etc. or rejecting the application. The registration may be rejected on the ground that the trust or its activities are not genuine. Such an order has to be passed within a period of six months from the end of the month in which the application is made. [Section 12AA (2)]

Section 12A(b) also requires that if income of a trust etc. in any previous year exceeds the maximum amount which is not chargeable to income-tax in any previous year before giving effect to provisions of section 11 and section 12, then its accounts are required to be audited by an accountant and his report has to be filed along with the return of income.

While making an application for registration, the following points should be kept in mind –

- i. there should be a legally existent entity, which can be registered;
- ii. it should have a written instrument of its creation or written document evidencing its creation;
- iii. all its objects should be charitable or religious in nature;
- iv. its income and assets should be made applicable towards objects only, mentioned in the object clauses, and Rules and Regulations;
- v. no part of its income should be distributable or distributed, directly or indirectly, to its members, directors or founders, related persons or relatives etc. claiming through them; and

- vi. in case of dissolution, its net assets after meeting all its liabilities, should not be revertible or reverted to its founder, members, directors or donors etc., but used for the objects.

### **Assessment of Charitable organisation**

The concept of income, for assessment of religious or charitable trusts, etc., is somewhat different from assessment of other entities. This is because of provisions of section 2(24)(ii), under which voluntary contributions are also taken as income.

Section 11 of Income Tax Act, 1961 permits deduction of expenditure from income. The expenditure incurred by a trust or institution by way of application of income in India towards religious or charitable purposes, as per its Memorandum, is deductible from the income. The assessee may also set apart and accumulate 15% of income for such application and such amount will also be taken as expenditure of the year. These provisions are applicable mutatis-mutandis to a partly religious or charitable trust. This section also permits deduction of expenditure incurred outside India provided that such application of income promotes international welfare in which India is interested. However, for deduction of such expenditure, prior approval of the Board is required.

Section 11(1A) of Income Tax Act, 1961 deals with Capital Gains arising or accruing to a charitable trust or institution. If the whole of the net consideration (Consideration minus the expenditure incurred in connection with transfer) is applied towards acquiring a new capital asset, then, the capital gains is taken to have been applied for charitable or religious purpose. However, if only a part of the net consideration is applied for acquiring a new capital asset, then, the capital gains to the extent of differences between amount so applied and original cost of the asset is taken to be applied for religious or charitable purpose. The provision applies mutatis-mutandis where the capital asset is held partly for religious or charitable purpose.

Section 11(4A) of Income Tax Act, 1961 deals with income of a trust or institution by way of a business, which is incidental to attainment of its objects. The income of such a business will be entitled to exemption u/s 11 if separate books of account are maintained, otherwise, the income will not be entitled to benefit of exemption under section 11 and section 12.

The modes of investment in respect of income accumulated and set apart under Section 11(2) of Income Tax Act, 1961 are:

- (i) Investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government.
- (ii) Deposit in any account with the Post Office Savings Bank.
- (iii) Deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank.)
- (iv) Investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963.
- (v) Investment in any security for money created and issued by the Central Government or a State Government.
- (vi) Investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government.
- (vii) Investment or deposit in any public sector company - Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector

company,- (A) Such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company; (B) Such other investment or deposit shall be deemed to be an investment made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;

- (viii) Deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long term finance for industrial development in India and which is eligible for deduction under clause (viii) of sub-section (1) of section 36 of Income Tax Act, 1961.
- (ix) Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36 of Income Tax Act, 1961.
- (x) Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.
- (xi) Investment in immovable property.
- (xii) Deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act., 1964.
- (xiii) Any other form or mode of investment or deposit as may be prescribed.
  - a. Investment in the units issued under any scheme of the mutual fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961.
  - b. Any transfer of deposits to the public Account of India.

- c. Deposits made with an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.
- d. Investment by way of acquiring equity shares of a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996.

### **Forfeiture of exemption**

Section 13 of Income Tax Act, 1961 mentions the circumstances in which benefit of provisions of section 11 and section 12 shall not be available in respect of application of income or part thereof. These circumstances are listed as under:-

- (i) The income is for private religious purpose and not for the benefit of public.
- (ii) The income is for the benefit of any particular religious community or caste.
- (iii) The income is for the benefit of any interested person mentioned in section 13(3) or Explanation I to Section 13(6) respectively.
- (iv) The income is invested or continues to be invested in forms other than the forms specified in section 11(5) of Income Tax Act, 1961.

### **Deduction in respect of donations to certain funds, charitable institutions etc. - Sec.80G of Income Tax Act, 1961**

A donor (whether an individual, association, company, etc.) is entitled to a deduction (in computing his total income) if he makes a donation to a nonprofit organization enjoying exemption under section 80G of the Income Tax Act, 1961. The amount donated, however, should not exceed 10% of the donor's gross total income as reduced

by the deductions (other than the deduction under section 80G) for the purpose of rebate. If the donation is in excess of 10% of the donor's gross total income, the amount in excess of 10% cannot be considered for deduction under this section.

Donations in kind (such as computers, medical equipment, vehicles, etc.) are not eligible for deduction under section 80G. The donation must be a certain sum of money.

While donations made to various funds set up by the National or State Government (like the National Defence Fund, the Jawaharlal Nehru Memorial Fund, the Prime Minister's Drought Relief Fund and the National Foundation for Communal Harmony) qualify for 100% tax rebate (i.e., the whole of the amount donated is allowable as a deduction) donations made to nongovernmental, non-profit organizations exempt under section 80G (5) of the Income Tax Act qualify for only 50% tax rebate.

With an 80G certificate donors can claim 50% deduction from their taxable income (as distinct from the tax payable) almost any Non Profit Organisation (NPO) who is exempt from income tax can be approved under this section. The organisation should obtain the approval of the Commissioner of Income Tax (CIT). The CIT issues a letter granting approval under section 80G, with a number and period of approval (can be upto 5 years at a time).

To obtain approval, an NPO should:

- Make an application in form 10G in triplicate.
- The application should be accompanied by the following documents:
  - Copy of registration granted under section 12A or copy of notification issued under section 10(23) or 10(23C);
  - Notes on activities of institution or fund since its inception or during the last three years, whichever is less;

- Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.
- The commissioner may call for further documents or information if necessary. If all is in order the certificate is given specifying the year or years for which the approval is valid. If the application is rejected the reasons for the same will be recorded in writing and a hearing will be given prior to rejection.

The time limit for the approval/rejection is 6 months from the date of application.

### **Expenditure on scientific research**

Donors to a scientific research association, a university, college or other institutions are entitled to weighted deduction of one and one fourth times of the donations paid by them, provided that, - (i) the association, university, college or the institution, as the case may be, is notified by the Central Government for the purpose of clause (ii) or (iii) of sub-section (1) of section 35, and (ii) the institution etc. uses the donations for the research purposes. Sub-clause (ii) deals with scientific research, while sub-clause (iii) deals with research in social science or statistical research. In order to get the aforesaid benefit, the institution etc. has to made an application in Form no. 3CF to the Central Government for its notification in official gazette. The income of an institution notified under section 35(1)(ii) is also exempt from tax under Section 10(21) subject to fulfillment of conditions regarding application of its income for scientific research purposes; its accumulation and use under Section 11(2) and 11(3); and its investment as per modes prescribed Section 11(5). If exemption is sought under Section 10(21) also, then, annex to Form 3CF has also to be filled up by the assessee.

### **Compliances under Income Tax Act, 1961 and Income Tax Rules, 1962**

## **Compulsory Audit**

- If the total income of a non-profit organisation as computed exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts are to be audited by a Chartered Accountant.
- The audit report in Form No.10B duly signed and verified and setting forth such particulars as may be prescribed, is to be submitted along with the return of income for the relevant assessment year.

## **Submission of Annual Return**

Every charitable organisation is required to file a return of income in the prescribed **Form ITR 7** every year on or before the due date if the total income exceeds the maximum amount, which is not chargeable to income tax.

## **Permanent Account Number**

All charitable organisations should apply for a permanent account number, if they have not already been allotted such number. The application should be made to the assessing Officer, in duplicate, in Form No. 49A.

## **Certificate for Tax Deducted at Source**

Every non-profit organisation deducting tax at source shall furnish to the person on whose behalf tax is deducted, a certificate to the effect that the tax has been deducted. The certificate should specify the amount so deducted, the rate at which tax has been deducted, and such other particulars as prescribed in Form No.16 for salaries and Form No.16 A for other deductions. These certificates can be issued by the employer/payer on his letterhead or on an ordinary paper.

### **Procedure for appeals under Income Tax Act, 1961**

The Chief Commissioner or Commissioner shall call for the documents and information and hold enquiries regarding the genuineness of the trust / institution. In case he is satisfied about the charitable / religious nature of the objects and the genuineness of the activities of the trust or institution, he will pass an order granting registration. However, if he is not satisfied he will pass an order refusing registration. However, ample opportunity has to be provided to hear the applicant trust / institution.

The organisation that has been refused registration may ask for a reasoned order. The case is reviewed by officials different from those that took the initial decision of not registering the organisation. In case of continued dissatisfaction an appellate commission and the IT tribunal may be approached. The High Courts can be approached only on issues of interpretation of the law.

### **15. PROFESSIONAL OPPORTUNITIES IN THE CHARITY SECTOR**

1. Conceptualizing - Deciding form of organization of the charity on the basis of need of the client and drafting documents for the same
2. Formation of organization - Drafting of Trust deed, Bye Laws of Society etc.
3. Registration
4. In case of Registration as Section 8 Company under the Companies Act, 1956 - A declaration by an advocate or a chartered accountant that the memorandum and articles of association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the rules made thereunder have been duly complied with, in respect of registration or matters incidental or supplementary thereto
4. Channelising funds
5. Audit

6. Taxation

7. Compliances under the Foreign Contribution (Regulation) Act, 1976 if receiving any foreign contribution from a foreign source

8. Compliances under various legislations and State Laws applicable to the charitable organisation

9. Maintenance of Books and Accounts

## **16. LAWS GOVERNING CHARITABLE ORGANISATIONS IN OTHER COUNTRIES**

The United Kingdom, United States of America (USA), Canada, France and some European countries have a fairly well developed system for regulation and promotion of the Charitable sector.

- In a majority of these countries, revenue officials initially decide whether an organisation is charitable. This approach is based on the assertion that revenue officials are non-partisan in their determination of charity registrations and that the tax authority is in the best position to administer the system of tax deductibility, including determining which organisations are eligible for tax exemption.
- The Charity Commission administers the Charities Act in England and Wales. The Act empowers the Commission to exercise regulatory jurisdiction over all matters concerning charities.
- In the USA and Canada, registration of a charity is a State responsibility but financial and tax regulation is through the Inland Revenue, which is a federal agency.

- There is easy access to data on charities: (i) there is a Public Register of charities and (ii) it is mandatory for a voluntary organisation to supply information on demand.
- An effective grievance redressal system is in place. There are provisions for appeals against decisions, and graded sanctions for violation of laws.

### **Charity laws of USA**

In the United States a charitable organization is an organization that is organized and operated for purposes that are beneficial to the public interest; however a distinction is made between types of charitable organizations. The definition of public charities has 2 components - (1) purpose = public benefit; and (2) benefit = to indefinite class of beneficiaries not specific individuals.

In the United States, charities are created under the State Law but they are subject to control by both Federal and the State Governments. The charity administration is managed at the Federal level under the Federal Tax Code by way of preferential tax treatment. Charities are granted tax exemption status under Section 501(c)(3) of the Federal Tax Code subject to organisational and operational conditions. Organisations claiming tax exemption must adhere strictly to their intended charitable objectives as provided in the governing document. The Tax Code makes a distinction between Public Charities and Private Foundations for the purpose of regulations. Private Foundations are more strictly regulated as compared to the Public Charities. The Internal Revenue Service (IRS) is responsible for enforcing federal regulations with regard to the administration and governance of charitable organisations.

The State laws are mainly concerned with (a) the purpose of charities, (b) their organisational structure, and (c) their internal governance. The definition of charitable purposes under State laws is by and large aligned with the definition provided under

the Federal Tax Code. State Attorney Generals have been given powers to enforce laws relating to charitable organisations.

### **Charity laws of UK**

In England and Wales, the process of charity law reform began with publication of a report by the National Council of Voluntary Organisations in 2001. The recommendations initially proposed in the Cabinet Office's Review of the Legal Framework for the Voluntary Sector were accepted by the government after a period of public consultation. The resulting Charities Bill was introduced to the Houses of Parliament in May 2005, received the Royal Assent in November 2006 and the first part of the Charities Act 2006 duly came into force in February 2007

The Charities Act, 2006 provides for the establishment of an autonomous body called Charity Commission to regulate and support the functioning of Charity organisations across England and Wales. There is also a Charity Tribunal to entertain appeals against the orders of the Charity Commission. The law has prescribed guidelines with regard to formation and registration of charities, their fund raising activities, accounting procedures and submissions of returns.

The UK Act defines a 'Charity' as a 'body or trust which is for a charitable purpose that provides benefit to the public'. It lists 13 activities which come under the definition of a charitable purpose.

The list describes the following activities as charitable:

- prevention or relief of poverty;
- advancement of education;
- advancement of religion;

- advancement of health or the saving of lives;
- advancement of citizenship or community development;
- advancement of the arts, culture, heritage or science;
- advancement of amateur sport; advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity;
- advancement of environmental protection or improvement;
- relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- advancement of animal welfare;
- promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services; and
- other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognized as charitable.

As of 2011, there are a number of types of legal structure for a charity in England and Wales viz Unincorporated association, Trust, Company limited by guarantee, Other incorporation, such as by Royal Charter.

### **Charity laws of Australia**

To publicly raise money, charities in Australia are required to register under the State jurisdiction within which they intend to raise funds and must be registered in each and any State within which they intend to publicly raise funds. For example, in Queensland charities must register with the QLD Office of Fair Trading. Charities in Western Australia need to be licensed with the Charitable Collections Advisory Committee under the Charitable Collections Act 1946.

Many Australian charities are calling on Federal, State and Territory governments to unify legislation to allow registration in a single State or Territory to allow charities to raise funds in all eight Australian States and Territories.

### **Charity laws of Canada**

Charities in Canada must be registered with the Charities Directorate of the Canada Revenue Agency. A registered charity is an organization established and operated for charitable purposes, and must devote its resources to charitable activities. The charity must be resident in Canada, and cannot use its income to benefit its members. A charity also has to meet a public benefit test.

To register as a charity, the organization has to be either incorporated or governed by a legal document called a trust or a constitution. This document has to explain the organization's purposes and structure.

### **17.USEFUL WEBSITES**

1. <http://charity.mah.nic.in/index.php> - Charity Commissioner, Maharashtra
2. <http://www.incometaxindia.gov.in/> - Income Tax Department, India
3. [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) - Charity Commission, UK
4. <http://www.cra-arc.gc.ca/> - Canada Revenue Agency

5. <http://www.irs.gov/> - Internal Revenue Service, US

## Dr. Rajkumar Adukia Profile

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Dr. (CA) Rajkumar S. Adukia is an eminent independent director ,international forensic expert Business Advisor, Author, Speaker and an authority in Indian GAAP, IFRS and Ind AS. He has been conducting seminar and lectures across various countries. Having graduated from Sydenham College of Commerce & Economics in 1980 as **5th rank** holder in Bombay University, he received a Gold Medal for highest marks in Accountancy & Auditing. Passed the Chartered Accountancy with **1st Rank** in Inter CA and **6th Rank** in Final CA examination. He also secured **3rd Rank** in Final Cost Accountancy Course in 1983. He has been awarded G.P.Kapadia prize for best student of the year 1981. Besides, he holds Degree in law, PhD in Corporate Governance in Mutual Funds, MBA, **Diploma IFRS (UK)**, Diploma in Labour law and Labour welfare, Diploma in IPR, Diploma in Criminology.

He has be Hon. Sec. of Western India Regional Council of Institute of Chartered Accountants of India in 1991-92 and Chairman of WIRC in 1997-98, International Member of Professional Accountants in Business Committee (PAIB) of International Federation of Accountants (IFAC) from 2001 to 2004. He has been Chairman of Research Committee, Board of Studies, Public Relation Committee, Members in Industry, University & Higher Secondary Board Liaison Committee, Peer review Board & International Trade Law & WTO OF ICAI, Member of Inspection Panel of Reserve Bank of India, Member of J.J. Irani committee which drafted Companies Bill 2008, Member of Secretarial Standards Board of ICSI, Member

of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc. He has also been Independent Director of Mutual Fund Company and Asset Management Company.

He has written more than 100 books on wide variety of topic ranging from those dealing with Trade, Taxation, Finance, Real Estate to topics like Time Management and Professional Opportunities. He is Successful Practicing Chartered Accountant since last 30 years in varied field of Financial Planning, Taxation and Legal Consulting. He has been a business advisor for various companies on varied subjects and has travelled across the globe for his professional work and knowledge sharing. He has widely travelled three fourth of globe addressing international conferences and seminar on various international issues like Corporate Social Responsibility, Corporate Governance, Business Ethics etc.

He is currently Member of Bombay stock exchange audit committee, Quality Review Board under Chartered Accountants Act 1949, Member of CAG Advisory Audit Committee, **Member of International Financial Reporting Standards Foundation SME Group.**

He has been actively involved with ICAI as a Central Council Member during the period when the convergence to IFRS was conceptualized in India and has been instrumental in materializing the idea. He has written two books on IFRS viz. Encyclopedia on IFRS and Handbook on IFRS. He has given Lecture on IFRS at various prestigious forums including National Academy of Audit and Accounts. He has been associated with numerous corporate and banks (like DENA Bank & Central Bank of India) in their convergence procedure both directly and by giving training on Ind AS to their staff members. He has also trained staff members of various regulatory bodies like Regional Director and Registrar of Companies, Western Region, Ministry of Corporate Affairs, CBDT and CBEC.

He has won numerous awards like The Jeejeebhoy Cup for proficiency and character, State Trainer by the Indian Junior Chamber, "Rajasthan Shree" by Rajasthan Udgosh, a noted Social Organization of Rajasthan and many other awards as a successful leader in various fields.