

LAWS GOVERNING FORMATION AND ADMINISTRATION OF CHARITABLE 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 CHARITABLE 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 CHARITABLE ORGANISATION

Charitable 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 Bombay 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.

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 Bombay 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 endowments 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 25 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) Indian Trusts Act, 1882 (applicable for private trusts)
- 2) Public Trusts Acts of various states in India.
- 3) The Societies Registration Act, 1860
- 4) The Companies Act, 1956
- 5) Income Tax Act, 1961
- 6) Foreign Contribution (Regulation) Act, 2010

Other Laws governing Charity Sector

Societies

- 7) Religious Societies Act, 1880

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

Trusts

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

Wakfs

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

State Acts

- 29) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- 30) Bihar Hindu Religious Trusts Act, 1950
- 31) Bombay Public Trusts Act, 1950
- 32) Bombay Public Trusts Rules, 1951
- 33) Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- 34) Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002
- 35) Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- 36) Orissa Hindu Religious Endowments Act, 1951
- 37) Rajasthan Public Trust Act, 1959
- 38) Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- 39) The Madras Hindu Religious And Charitable Endowments Act, 1951
- 40) Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950

- 41) Charitable Endowments (U.P. Amendment) Act, 1952
- 42) United Provinces Charitable Endowments Rules, 1943
- 43) Religious Endowments (Uttar Pradesh Amendment) Act, 1951
- 44) 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 25 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. 25 of the Companies Act, 1956, as non-profit company (without addition to their name, the word "Limited" or "Private Limited") - Non-profit companies incorporated under Section 25 of the Companies Act, 1956.
- 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 25 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

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.

Public Charitable trust

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 Mumbai, 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 Bombay 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 Bombay 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 Bombay 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 Bombay 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 25 COMPANY UNDER THE COMPANIES ACT 1956

According to Section 25(1)(a) and (b) of the Companies Act, 1956, a Section-25 company can be established 'for promoting commerce, art, science, religion, charity or any other useful object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members. At least three individuals are required to form a Section 25 company. The internal governance of a Section 25 company is similar to that of a society. It generally has members and is governed by directors or a managing committee or a governing council elected by its members.

Advantage of Section 25 Company

A Section 25 company enjoys all advantages that any other limited company registered under companies act enjoys. But apart from these advantages there are some specific privileges conferred upon them that distinguish them from other companies. These privileges are in nature of exemptions from some provisions of the companies act or application of provisions with some modifications to a Section 25 company.

- Section 25 Companies have been exempted from requirement regarding minimum share capital. As such they can be registered even if they have share capital less than the statutory minimum.
- A section 25 company has been exempted from the provisions of Section 147 of Companies Act, 1956 and as such is not required to mention its name and address as required in case of all other companies.
- Section 25 Company has been exempted from this provision regarding time, place and date of Annual General Meeting (AGM) provided the time, place and date of the AGM has been decided before hand by the

Board of Directors having regard to the direction given by the company in a General Meeting. As such they are free to determine the date, place and time of its AGM according to their convenience and feasibility.

- Section 25 Company can hold an AGM after giving a notice of 14 days instead of 21 days as required by Section 171(1) of Companies Act, 1956. Therefore they can call an AGM at a short notice of 14 days instead of 21 days.
- Every company is required by section 209(4-A) of Companies Act, 1956 to maintain books of accounts relating to a period of eight years immediately preceding current year along with its vouchers. However a Section 25 Company is required to maintain books of account relating to a period of only four years instead of eight years immediately preceding the current year.
- A Section 25 Company is allowed to send the required documents at least fourteen days before the date of meeting instead of 21 days.
- Section 25 Companies are exempted from Section 259 of Companies Act, 1956 and are thus free to increase the number of its directors without seeking approval of central Government.
- Section 25 companies are exempted from the applicability of Companies Auditor's Report Order, 2003 (CARO).

Obligations

- A Section 25 Company has to ensure that its profits and all other incomes are utilized only for the purpose of promoting its objects and not for any other purpose.

- It should also ensure that its profits are not distributed as dividend among its members.
- Section 25 Company cannot alter its objects clause in its Memorandum without seeking the written approval of central government.
- If the Central Government has imposed some conditions and regulations upon the company for granting a licence under section 25 then such a company is bound by such conditions and has to ensure adequate compliance with them.
- Section 25 Company is regarded as a 'company' within the meaning of the Income Tax Act, 1961 and as such its income is taxable according to the applicable rates similar to those applying to other companies.
- If an existing company obtains a licence under section 25 it has to ensure that its objects are confined to those mentioned in section 25 itself and if not, make proper alteration to its memorandum and articles.

Procedure for Registration of a Charitable Organisation as a Section 25 company

Application for Name -

According to Section 25 of the Companies Act, 1956 "where it is proved to the satisfaction of the Central Government that an association is to be formed as a limited company for promoting, Commerce, Art, Science, Religion, Charity or any other useful purpose, and it intends to apply its profits, if any, or other income in promoting its objects and prohibits the payment of any dividend to its members, then the government may, by a licence, direct that the association be registered as a Company with limited

liability without the addition to its name, of the word, "Limited" or call it "Private Limited".

The first step towards registration of a company (under section 25 of the Companies Act, 1956) is the application for availability of name to the Registrar of Companies, which must be made in the prescribed Form no. 1A, together with a fee of Rs 500/-.

Application for licence under Sec.25 -

Once the availability of name is confirmed, an application should be made in writing to the Regional Director. A license under this section can be granted by the Central Government through four Regional Directors namely, Regional Director (Eastern Region) at Kolkata, Regional Director (Northern Region) at Kanpur, Regional Director (Western Region) at Mumbai and Regional Director (Southern Region) at Chennai. The application for grant of licence is to be made to the Regional Director of the region, in case of proposed companies in the State where the registered office is proposed to be situated and in case of existing companies in the State where its registered office is situated, falls.

The application should be accompanied by the following documents:

- Three printed or typewritten copies of the memorandum and articles of association of the proposed company duly signed by all the promoters with full name, address and occupation.
- 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.

- Three copies of a list of the names, addresses and occupations of the promoters (and where a firm is a promoter, of each partner in the firm), as well as of the members of the proposed board of directors, together with the names of companies, associations and other institutions in which such promoters, partners and members of the proposed board of directors are directors or hold responsible positions, if any, with description of the positions so held.
- A statement showing in detail the assets (with the estimated values thereof) and the liabilities of the association, as on the date of the application or within seven days of that date.
- An estimate of the future annual income and expenditure of the proposed company, specifying the sources of the income and the objects of the expenditure.
- A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration, in pursuance of section 25.
- A statement specifying briefly the grounds on which the application is made.
- A declaration by each of the persons making the application that he/she is of sound mind, not an undischarged insolvent, not convicted by a court for any offence and does not stand disqualified under section 203 of the Companies Act, 1956, for appointment as a director.
- The applicants must also furnish to the Registrar of Companies (of the state in which the registered office of the proposed company is to be, or is situate) a copy of the application and each of the other documents which had been filed before the regional director of the company law board.
- The applicants should also, within a week from the date of making the application to the regional director of the company law board, publish a notice in the prescribed manner at least once. This should be done in a newspaper in the

principle language of the district in which the registered office of the proposed company is to be situated or is situated and circulating; and at least once in an English newspaper circulating in that district.

The regional director shall, after considering the objections, if any, received within 30 days from the date of publication of the notice in the newspaper, and after consulting any authority, department or ministry, as he may, in his discretion, decide, determine whether the licence should or should not be granted.

The regional director may also direct the company to insert in its memorandum, or in its articles, or in both, such conditions of the licence as may be specified by him in this behalf.

It generally takes about 8 to 12 weeks after application to receive the licence under Section 25 of the Companies Act, 1956.

The Government by issue of licence allow an association be registered as a company with limited liability for the members, without the addition to its name of the word "Limited" or the words "Private Limited".

Registration with Registrar of Companies -

After receiving the licence / approval an application is to be made to the Registrar of Companies (ROC) along with following documents:

1. Printed copy of the Memorandum and Articles of Association.
2. The licence granted by the Regional Director.
3. One copy of Form 1
4. One copy of Form 18
5. Two copies of Form 32

6. The requisite amount of fees payable which is Rs. 50 plus Rs. 10 per document; i.e., Form1, Form 18, Form 32.

The Registrar of Companies after scrutinizing the requisite documents shall issue a Certificate of Incorporation.

Specimen format of Memorandum of Association and Articles of Association of Section 25 company

MEMORANDUM OF ASSOCIATION

1. The name of the company is "_____".
2. The registered office of the company will be situated in the State of _____.
3. The objects for which the company is established are:

the doing of all such other lawful things as are incidental or conducive to the attainment of the above objects:

Provided that the company shall not support with its funds, or endeavor, to impose on, or procure to be observed by, its members or others, any regulation or restriction which, if an object of the company, would make it a trade union.

4. The objects of the company extend to the _____

[Here enter the name of the State or States, and country or countries]

5. (1) The income and property of the company, whatsoever derived, shall be applied solely for the promotion of its objects as set forth in this memorandum.

(2) No portion of the income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to persons, who at any time are, or have been members, of the company or to any one or more of them or to any persons claiming through any one or more of them.

(3) Except with the previous approval of the Central Government, no remuneration, or other benefit in money or money's worth shall be given by the company to any of its members, whether officers or servants of the company or not, except payment or out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the company.

(4) Except with the previous approval of the Central Government no member shall be appointed to any office under the company which is remunerated by salary, fees or in any other manner not exempted by sub-clause (3).

(5) Nothing in this clause shall prevent the payment by the company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member), in return for any services actually rendered to the company.

6. No alteration shall be made to this memorandum of association or to the articles of association of the company which are for the time being in force, unless the alteration has been previously submitted to and approved by the Regional Director.

7. The liability of the members is limited.

8. (For companies limited by guarantee).

Each member undertakes to contribute to the assets of the company in the event of its being wound-up while he is a member or within one year afterwards, for payment of

the debts or liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding-up, and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a sum of Rs. _____

(For companies limited by shares)

The share capital of the company will consist of Rs. _____ divided into _____ shares of _____ rupees each.

9. True accounts shall be kept of all sums of money received and expended by the company and the matters in respect of which such receipts and expenditure take place, and of the property, credits and liabilities of the company; and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the company for the time being in force the accounts shall be open to the inspection of the members. Once at least in every year, the accounts of the company shall be examined and the correctness of the balance sheet and the income and expenditure account ascertained by one or more properly qualified auditor or auditors.

10. If upon a winding-up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof by the High Court of Judicature that has or may acquire jurisdiction in the matter.

11. We, the several persons whose names, addresses, descriptions and occupations are hereunto subscribed are desirous of being formed into a company not for profit, in pursuance of this Memorandum of Association.

Names, addresses, descriptions and occupations of subscribers:

1. _____ of _____ *
2. _____ of _____ *
3. _____ of _____ *
4. _____ of _____ *
5. _____ of _____ *
6. _____ of _____ *
7. _____ of _____ *

Dated this _____ day of _____ 19____

Witnesses to the above signatures of

*If the association is a company limited by shares, here enter "number of shares" taken by each subscriber.

ARTICLES OF ASSOCIATION OF.....

1. The regulation contained in the Table A of the First schedule to the Companies Act, 1956 shall apply to the company so far as applicable to a Private Company except as otherwise provided/modified impliedly or expressly by the following Articles.

INTERPRETATION

2. In the interpretation of these Articles, the following expressions shall have the following meanings, unless repugnant to the subjects or context.

“THE ACT” means the Companies Act, 1956, with all modifications or amendments thereof.

“THE COMPANY” or this company means “Name of the Company”.

“MEMORANDUM & ARTICLES” means the Memorandum of Association and Articles of Association respectively of the Company.

“DIRECTOR” means and include all Directors of the Company and except where the context otherwise requires for those Articles shall mean the Board of Directors of the Company, or a properly constituted committee thereof.

“THE OFFICE” means the Registered Office for the time being of the company.

“THE REGISTRAR” means the Registrar of Companies,

“SEAL” means the common seal of the Company.

“MONTH” means Calendar Month.

“ PROXY” includes Attorney duly constituted under a power of attorney.

“IN WRITING OR WRITTEN” includes printing, lithography, and other modes of reproducing works in a visible form, which also include thumb impression properly attested.

Words importing persons includes corporation, Firms and Association.

Words importing singular number include the plural and vice-versa.

Words importing masculine gender include the feminine gender and vice-versa.

3) The exemptions granted by the Central Government vide So. No. 1578 and So. No.2767 dated 8th July, 1961 and 5th August, 1964 respectively and exemptions that may be granted in future shall be applicable to the Company.

II. PRIVATE COMPANY

4) The Company is a “Private Company” within the meaning of Section 3 (1) (iii) of the said Act and accordingly the following provisions shall have effect namely.

a) No invitation shall be issued to the public to subscribe for any shares in or debentures of the Company.

b) The number of members of the Company (exclusive of persons who are in the employment of the company and persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be the members after the employment ceased) shall be limited to fifty.

Provided that for the purpose of these provisions where two or more persons hold one or more shares jointly in the Company, they shall be treated as single member.

c) The right to transfer the share of the Company shall be and is restricted in the manner and to the extent as may be decided by the Board of Directors from time to time.

5) The Company may at any time by a special resolution convert itself into a public company within the meaning and subject to the provisions of the Companies Act, 1956.

III. SHARE CAPITAL

6) The Authorised Share Capital of the Company is Rs. 1,00,000/- (Rupees One Lakh Only) divided in 10,000 (Ten Thousand Only) Equity Shares of Rs. 10/- (Ten Only) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit, as per the provisions of the Companies Act, 1956.

IV. VOTE OF MEMBERS

7) Subject to any right of restriction attached to any class by term of its issue or otherwise :

a) On show of hands, every member (holder of equity shares) present in person shall have one vote and;

b) On poll the voting right of every member holder of Equity Shares present in person or by proxy shall be in proportion to his holding of Equity Shares in the paid up Equity Capital of Company.

V. GENERAL MEETING

8) All General Meeting other than Annual General Meeting shall be called Extra Ordinary General Meeting

9) General Meeting may be convened on not less than Fourteen days notice to the members.

10) The board may, wherever it thinks fit, call an Extra Ordinary General Meeting.

11) The Chairman of the Board shall be the Chairman of the General Meeting.

12) If the Board is unable to call an Extra-Ordinary General Meeting for want of quorum or otherwise, any two members of the Company may call such a meeting in the same manner as nearly as possible, as that by which such a meeting may be called by the Board.

VI. PROCEEDING AT GENERAL MEETING

13) a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

b) One-third of the total number of members shall form the quorum subject to a minimum of two members.

14) a) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of member shall be dissolved.

b) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at other time and place as the Board may determine.

c) If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

15) The Chairman, if any, of the Board shall preside as Chairman at every general meeting.

16) If there is no such Chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their members to be chairman of the meeting.

17) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their member to be chairman of the meeting.

18) a) The Chairman may, with the consent of any meeting, at which a quorum is present and shall if so directed by the meeting, adjourn the meeting, from time to time and from place to place.

b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

d) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

19. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

20. Any business other than that upon which a poll has been demanded may be proceeded upon, pending poll.

VII. DIRECTORS

21. Subject to the provisions of Section 259 of the Act, unless and until otherwise determined by the Company in General Meeting the number of Directors shall not be less than two and not more than twelve.

22. The following persons shall be the first Directors of the Company.

a) xxxxx

b) xxxxx

c) xxxxx

23. No remuneration shall be paid to any director for attending the Board, Committee or General Meeting of the Company.

24. The directors may however be paid all travelling, hotel and other expenses properly incurred by them.

a) In attending and returning from meetings of the Board or any committee thereof or General Meeting of the Company ; or

b) In connection with the business of the Company.

25. Subject to the provisions of the Act, any vacancy caused by the Board of Directors by resignation, or death of any Director, or by any other reason may be filled in by the Board of Directors by appointing someone they so choose. The Board of Directors have powers to appoint, additional and alternate Directors, but in no case the number of Directors should exceed the maximum fixed by clause 21 thereof.

26. At each Annual General Meeting of the Company one third of the Directors for the time being shall retire by rotation and the vacancy so caused may be filled up by appointing the retiring director or some other person thereto.

27. The directors shall not be required to hold any qualification shares.

VIII. PROCEEDING OF DIRECTORS

28. The Board of Directors shall meet at least once in every Six Calendar months to conduct its business.

29. A resolution in writing circulated amongst all the Directors and passed in accordance with Section 289 of the Companies Act, 1956 shall be valid and effected as if it has been passed at a meeting of the Directors duly called and constituted.

30. The quorum for transacting any business of the meeting of the Board of Directors shall be one-fourth of the total strength provided the quorum shall not be less than two members in any case.

31. Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes and in case of equality of votes the chairman shall have a second or casting vote.

32. The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their member to be chairman of the meeting.

33. A Manager or Secretary being not a member of the Company may be appointed by the Board on such terms, at such remuneration and upon such conditions as it may think fit, and manager or secretary so appointed may be removed by the Board.

34. a) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.

b) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulation that may be imposed on it by the Board.

35. a) A committee may elect a chairman of its meetings.

b) If no such chairman is elected or in any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.

36. a) A committee may meet and adjourn as it think proper.

b) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of any equality of votes, the chairman shall have a second or casting vote.

37. Save as otherwise expressly provided in the Act, a resolution in writing signed by all the members of the Board or Committee thereof for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it has been passed at a meeting of the Board or Committee, duly convened and held.

IX. SEAL

38. The Board shall provide for the safe custody of the seal of the company. The seal shall not be affixed to any instrument except by the authority previously given by Resolution of the Board in presence of one of the Directors who shall sign every instrument to which the seal of the Company shall be so affixed in his presence.

X. ACCOUNTS

39. a) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the Company or any of them shall be open to the inspection of members (not being Directors).

b) No member (not being a Director) shall have any rights of inspection any accounts or books of accounts of the Company except as conferred by the law or authorised by the Board or by the Company in General Meeting.

40. The Directors shall in all respects comply with the provisions of Sections 209, 210, 211, 215, 216, 217, 220 and 221 of the Act, so far as they are applicable to a Private Company and the Profit & Loss Accounts, Balance Sheet and Auditors Report and every other documents required by law to be annexed or attached, as the case may be, to the Balance Sheet shall be sent to every member of the Company at least 14 days before the date of the General Meeting of the Company at which they are to be laid.

XI. AUDIT

41) a) The first Auditors of the Company shall be appointed by the Board of Directors within one month from the date of Registration of the Company and the Auditors appointed shall hold office until conclusion of first Annual General Meeting.

b) At each Annual General Meeting the Company shall appoint an auditor to hold office from the conclusion of the meeting until the next Annual General Meeting.

XII. INDEMNITY

42. Subject to the provisions of the Act, every Director, Managing Director, Manager, Secretary or other officer or servant of the Company shall be indemnified by the Company against any liability arising out of the Act done by him or them in the bonafide discharge of their duties and shall be the duty of the Board of Directors to pay out of the funds of the Company all costs, losses and expenses which such director, officer or servant may incur or become liable to, by reason of any contract entered into, act, or deed done by him as such officer, servant or in any way in the discharge of his duty. The Board of Directors may execute in the name and on behalf of the Company, in favour of any director or other person who may incur or be about to incur, any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit, and any such other powers as shall be agreed upon.

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 (Kerala) 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				
4				
5				
6				
7 and so on				

All the incomes, earnings, movable, immovable properties of the Society shall be society utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no profit on there of shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or past members of the Society or to any person claiming through anyone or more of the present or the past members. No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, by virtue of his membership.

Attested the signatures from No. 1 to 7 (or more) Signatures of Two witnesses
other than the members of the society
with Addresses

Signature of the Attesting Officer (1)
with Official Seal

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 of 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

Comparison between Trust, Society and Non-profit Company

	Trust	Society	Section-25 Company
Statute/Legislation	Relevant State Trust Act or Bombay Public Trusts Act, 1950	Societies Registration Act, 1860	Companies Act, 1956
Jurisdiction	Deputy Registrar/Charity commissioner	Registrar of societies (charity commissioner in Maharashtra).	Registrar of companies
Registration	As trust	As Society (In Maharashtra, both as a society and	As a company u/s 25 of the Companies Act.

		as a trust)	
Registration Document	Trust deed	Memorandum of association and rules and regulations	Memorandum and articles of association and regulations
Stamp Duty	Trust deed to be executed on non-judicial stamp paper, vary from state to state.	No stamp paper required for memorandum of association and rules and regulations.	No stamp paper required for memorandum and articles of association.
Members Required	Minimum - two trustees. No upper limit.	Minimum - seven managing committee members. No upper limit.	Minimum three trustees. No upper limit.
Board of Management	Trustees / Board of Trustees	Governing body or council/managing or executive committee	Board of directors/ Managing committee
Mode of Succession on Board of Management	Appointment or Election	Appointment or Election by members of the general body	Election by members of the general body

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 25 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 25 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 25 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 e-governance 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.

7. 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
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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 25 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 25 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 25 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 BOMBAY PUBLIC TRUST ACT, 1950

In the State of Maharashtra, the legislation governing Public Trust is Bombay Public Trusts Act, 1950 (BPT 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. Under the BPT 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 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 1st April to 31st 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 atleast 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: -----

1. Signature: -----

Name:

Name:

Address:

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:

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, the Foreign Contribution (Regulation) Act 2010 (FCRA 2010) was passed to 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 26th 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 25 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 25;
- (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 or 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 25 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 Twenty five lakh rupees or less in the previous year.

Case Laws

Andhra Chamber of Commerce (1965) 55 ITR 722 (SC)

The word ‘charity’ connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself. The word ‘charity’ connotes altruism in thought and action. It involves an idea of benefiting others rather than oneself.

Sole Trustee, Lok Shikshana Trust (1975) 101 ITR 234 (SC)

The word ‘Education’ means training and development of mind, skill and knowledge and it has character of schooling etc. of children. Travelling also enhances knowledge but that would not amount to ‘education’ in the context of section 2(15).

Ahmedabad Rana Caste Association (1971) 82 ITR 704 (SC)

The words are quite wide in their ambit. However, the beneficiaries should be well defined and identifiable by some common quality of public or impersonal nature.

According to **Sec.2(24)(ia) 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 (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiia) 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 12 makes some changes in the aforesaid "income". Firstly, it excludes corpus donations from the ambit of income. Thus, voluntary contributions received with a specific direction that they shall form part of the corpus are to be excluded from the definition of the term income. It may be noted here that these contributions have to be used in accordance with the directions of the donor. And secondly, the value of any medical or educational service, by a trust etc. running an educational institution or a hospital, to a person referred to in section 13(3) of the Act will be deemed to be the income of the trust or institution. If the beneficiary has made any payment for such service, then such payment shall be deducted from the value of the service in arriving at the 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.

Kannika Parameswari Devastham & Charities 133 ITR 779 (Mad.)

If the expenditure is on capital account on object(s) contained in the object clause, the expenditure will amount to application of income.

Janmabhumi Press Trust 242 ITR 457 (Kar)

The assessee constructed a building out of accumulated and borrowed funds. The building was later rented out. A part of the rent was used for repayment of loan. Such repayment of loan was treated as application of income.

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.

Section 11(4) states that a business as a going concern can be held as property under trust. Therefore, a legitimate claim can be made that the income of such business may not be included in the total income of the person receiving such income. In such a case, the assessing officer is required to assess the income of such business under the provisions of the Act. The difference between income so determined and the income shown in accounts shall not be deemed to have been applied towards religious or charitable purpose, but applied to other purposes. The point to be noted is that the income of the business has to be calculated under usual provisions contained in Chapter IV-D and not as per Chapter III of the Act, applicable to income of charitable trusts and institutions.

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.

Assessment of charitable organization in case commercial receipts exceed the specified threshold [S. 10(23C), 13, 143] for F.Y 2012-13 (A.Y 2013-14)

- An activity in the nature of trade, commerce or business in the sphere of the advancement of the general public utility carried out by a charitable organization is not regarded as charitable purpose if the gross receipts from such activities exceed Rs.25,00,000 in that financial year.
- It is now proposed to be provided that such a charitable trust or institution as referred above will not be entitled to a tax exemption in such financial year, even if the approval granted to the charitable organization is not withdrawn.
- Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities

**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.

East India Industries (Madras) Pvt. Ltd. (1967) 65 ITR 611 (SC)

The question whether donation to an institution are deductible u/s 80G has to be decided with reference to all the object of the institution. If some

objects are non charitable, the institution is not eligible for approval.

Upper Ganges Sugar Mills Ltd. 227 ITR 578 (SC)

Even if one object is wholly or substantially wholly religious in nature, the institution is not eligible for approval u/s 80G. No appeal is provided against an order under this section. Thus, an assessee can only challenge the order by way of Writ Petition.

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.

Rate of tax for F.Y 2012-13 (A.Y 2013-14)

The charitable trusts etc. are liable to tax at the normal rate applicable to A.O.P.s
However, in case of default u/s 11(5) or 13, the income is liable to tax at maximum marginal rate under section 164(3)

Taxable Income	Tax Rates (%)
Upto Rs.2,00,000	Nil
Rs. 2,00,00 1 to Rs. 5,00,000	<u>10%</u>
Rs. 5,00,00 1 to Rs.1 0,00,000	<u>20%</u>
Rs. 10,00,000 and above	<u>30%</u>

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.

FORM NO. 10A

[See rule 17A]

**Application for registration of charitable or religious trust or institution
under section 12A(a) of the Income-tax Act, 1961**

To
The Commissioner of Income-tax,

Sir,

I _____ on behalf of
_____ [name of the trust or institution] hereby
apply for the registration of the said trust/institution under section 12 A of the
Income-tax Act, 1961. The following particulars are furnished herewith:

1. Name of the * trust/institution in full [in block letters]
2. Address
3. Name(s) and address(es) of author(s)/founder(s)
4. Date of creation of the trust or establishment of the institution
5. Name(s) and address(es) of author(s)/manager(s)

I also enclose the following documents:

1. (a) * Original/Certified copy of the instrument under which the trust/institution was created/established, together with a copy thereof.
(b) * Original/Certified copy of document evidencing the creation of the trust or the establishment of the institution, together with a copy thereof.

2. Two copies of the accounts of the * trust/institution for the latest * one/two/three years.

I undertake to communicate forthwith any alteration in the terms of the trust, or in the rules governing the institution, made at any time hereafter.

Date _____

Signature

Designation

Address

* Strike out whichever is not applicable.

FORM NO. 10B

[See rule 17B]

Audit report under section 12A(b) of the Income-tax Act, 1961 in the case of charitable or religious trusts or institutions

* I/We have examined the balance sheet of _____

_____ [name of the trust or institution] as at _____

_____ and the Profit and loss account for the year

ended on that date which are in agreement with the books of account maintained by the said Trust or institution

* I/We have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purposes of the audit. In *my/our opinion, proper books of account have been kept by the head office and the branches of the above-named * trust/institution visited by * me/us so far as appears from * my/our examination of the books, and proper Returns adequate for the purposes of audit have been received from branches not visited by * me/us, subject to the comments given below:

In * my/our opinion and to the best of * my/our information, and according to information given to * me/us the said accounts give a true and fair view

(i) in the case of the balance sheet of the state of affairs of the above named * trust/institution as at _____ and

(ii) in the case of the profit and loss account, of the profit or loss of its accounting year ending on _____

Place _____

Date _____ Signature

Accountant †

Notes:

*Strike out whichever is not applicable.

FORM NO. 10G

[See rule 11AA]

Application for grant of approval or continuance thereof to institution or fund under section 80G(5)(vi) of the Income-tax Act, 1961

1. Name of the institution/fund in full (in block letters) :

2. Address of the registered office of the institution/fund :

3. Legal status :

Please specify whether the institution/fund is

(i) constituted as public charitable trust;

(ii) registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(iii) registered under section 25 of the Companies Act, 1956 (1 of 1956);

(iv) a University established by law;

(v) any other educational institution recognised by the Government or by

any University established by law or affiliated to any University established by law;

(vi) an institution wholly or partly financed by the Government or a local authority;

(vii) an institution established with the object of controlling, supervising, regulating or encouraging games or sports and is approved for this purpose under section 10(23), or ;

(viii) a Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of past or present members of such forces or their dependants.

4. Objects of the institution/fund and geographical area over which its activities are undertaken.

5. Names and addresses of trustees/office bearers of the institution or fund

6. (i) If registered under section 12A(a) of the Income-tax Act, the registration number and date of registration

(ii) If notified under section 10(23) or under section 10(23C) of the Income-tax Act, the details thereof

(iii) If responses to (i) & (ii) are negative, whether any application for the same has been filed? If yes, enclose a copy of the same.

7. (a) Period of last approval, if any. Please enclose a copy of the approval

(b) If any change in the aims and objects and the rules and regulations have been made since the last approval, the details thereof.

8. Assessment particulars :-

(a) Ward/Circle where assessed and permanent account number/GIR number 4545

(b) Is the income exempt under section 10(22), 10(22A), 10(23), 10(23AA), 10(23C) or 11?

(c) Whether any arrears of taxes are outstanding? If so, give reasons

9. Amount accumulated for the purposes mentioned in item (4) above.

10. (i) Details of modes in which the funds are invested or deposited, showing the nature, value and income from the investment;

(ii) Whether any funds have not been invested in the modes specified in section 11(5)?

11. (i) Is the institution/fund carrying on any business? If yes, give details.

(ii) Is the business incidental to the attainment of its objects?

12. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilised.

13. Details of shares, security or other property purchased by or on behalf of the trust from any interested person as specified in sub-section (3) of section 13.

14. Whether any part of the income or any property of the association was used or applied in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13? If so, details thereof.

I certify that information furnished above is true to the best of my knowledge and belief. I undertake to communicate forthwith any alteration in terms or in the rules governing the institution/fund made at anytime hereafter.

Place

Date

Signature

Designation

Address

Notes : The application form (in triplicate) should be sent to the CIT/DIT(E) having jurisdiction over the institution or fund along with the following documents :

(i) Copy of registration granted under section 12A or copy of notification issued under section 10(23) or section 10(23C).

(ii) Notes on activities of institution or fund since its inception or during the last three years, whichever is less.

(iii) Copies of accounts of the institution or fund since its inception or during the last three years, whichever is less.

14. DIRECT TAX CODE BILL AND CHARITABLE ORGANISATIONS

The New Direct Tax Code (DTC) is said to replace the existing Income Tax Act of 1961 in India. DTC bill was tabled in parliament on 30th August, 2010 and was to come into force from 1st of April, 2011, but same could not be fulfilled. The Bill was then meant to be passed in April, 2012. However, in view of the non-receipt of the report from the Parliamentary Committee, the implementation of the Direct Tax Code stands postponed to 2013.

Chapter IV of the DTC deals with special provisions relating to computation of total income of Non Profit Organisation. Reference to charitable trusts and institutions will be replaced by the expression non-profit organisation in the Code. But definition of charitable purpose in Sec. 2(15) of the Income-tax Act is the same under Sec. 103 of the Direct Taxes Code, 2010. Sec. 2(15) of the Income-tax Act, 1961, had undergone drastic amendment by the Finance Act, 2008, primarily intended to bar exemption for those charitable institutions with the objects of “advancement of any other object of general public utility”, if they are in an activity charging cess, fee or any other consideration presumed to be business, even though such activity may be incidental to its objects.

Under the DTC charitable purpose has been renamed as “permitted welfare activity”. As per clause (g) of section 96 of the DTC, the term “permitted welfare activity” means any activity, –

- (i) involving the relief of the poor;
 - (ii) for the advancement of education;
 - (iii) for providing medical relief;
 - (iv) for the preservation of environment (including watersheds, forests and wildlife);
 - (v) for the preservation of monuments or places or objects of artistic or historic interest;
- or
- (vi) for the advancement of any other object of general public utility;

As per clause (b) of section 96 “advancement of any other object of general public utility” shall not be a permitted welfare activity 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, fee or any other consideration, irrespective of nature of use, application or retention, of the income from such activity.

The definition thus covers almost similar activities as provided in definition of the term “charitable purpose” under section 2(15), though name has now been changed to “permitted welfare activities”.

Key Features of Non-Profit Organizations Taxation under DTC:

- The regime will uniformly apply to all non-profit organizations irrespective of the nature of their activities
- The Code replaces the phrase "charitable purpose" by the phrase "permitted welfare activities". Permitted welfare activities has been defined on lines of earlier section 2(15) in section 96(g) (six limbs)
- The tax liability of a non-profit organization shall be 15% of the aggregate of the following:-
 - (i) the amount of surplus generated from the permitted welfare activities; and
 - (ii) the amount of capital gains arising on transfer of an investment asset, being a financial asset.

The amount of surplus generated from the permitted welfare activities shall be the "gross receipts" as reduced by the "outgoings". The surplus generated from permitted welfare activities will be determined on the basis of cash system of accounting

- Conditions Precedent for Treatment as Non-Profit Organisation:
 - (i) it is established for the benefit of the general public;

- (ii) it is established for carrying on permitted welfare activities;
- (iii) it is not established for the benefit of any particular caste;
- (iv) it is not established for the benefit of any of its members;
- (v) it actually carries on the permitted welfare activities during the financial year and the beneficiaries of the activities are the general public;
- (vi) it does not intend to apply its surplus or other income or use its assets or incur expenditure, directly or indirectly, for the benefit of any interested person;
- (vii) any expenditure by the organisation does not enure, directly or indirectly, for the benefit of any interested person;
- (viii) the funds or assets of the organisation are not used or applied, or deemed to have been used or applied, directly or indirectly, for the benefit of any interested person;
- (ix) the surplus, if any, accruing from its permitted activities does not enure, directly or indirectly, for the benefit of any interested person;
- (x) the funds or the assets of the non-profit organisation are not invested or held in any associate concern or in any prescribed form or mode;
- (xi) it maintains such books of account and in such manner, as may be prescribed;
- (xii) it obtains a report of audit in the prescribed form from an accountant before the due date of filing of the return in respect of-
 - (A) the accounts of the business, if any, carried on by it; and
 - (B) the accounts relating to the permitted welfare activities; and
- (xiii) it is registered with the Income-tax Department

- **Registration:**

It will be mandatory for every non-profit organization to register u/s 93 of the Code with the Income-tax Department by making an application to the Chief Commissioner or Commissioner concerned. The Chief Commissioner or Commissioner will be required to pass an order within three months from the

end of the month in which the application is received. If the order is not passed within three months or registration is refused, the applicant shall have the right to appeal before the Income Tax Appellate Tribunal.

- Non-Applicability of Chapter IV of DTC:

The new regime shall not apply to any person who-

(a) holds any business under trust, notwithstanding a specific direction that the business shall form part of the corpus of such person or a specific direction that the income from the business shall be applied only for permitted welfare activities;

(b) carries on the permitted welfare activity involving the relief of the poor, advancement of education, provision of medical relief, preservation of environment or preservation of monuments or place or objects of artistic or historic interest and also carries on a business which is not incidental to the aforesaid permitted welfare activity; and

(c) ceases to be a non-profit organisation at any time during the financial year

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 25 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 - Charity Commission, UK
4. <http://www.cra-arc.gc.ca/> - Canada Revenue Agency
5. <http://www.irs.gov/> - Internal Revenue Service, US
6. <http://www.charity-charities.org>