

Marudhar Kesari Jain College for Women (Autonomous)

Vaniyambadi

Class: I M.Com

Subject: Setting Up of Business Entities

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UNIT-II

Not-for-Profit Organisations

Formation and registration of NGOs – Section 8 Company – Definition – Features – Exemptions – Requirements of Section 8 Company – Application for incorporation – Trust: Objectives of a trust – Persons who can create a trust – Differences between a public and private trust – Exemptions available to trusts – Formation of a trust - Trust deed–Society–Advantages–Disadvantages–Formation of a society–Tax exemption to NGOs.

Section 8 Company

A company incorporated under Section 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956) Company incorporated for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, provided the profits, if any, or other income is applied for promoting only the objects of the company. Such a company is a non-profit body and is akin to a NGO. In some respects, they are similar to a Trust or Society, except that such companies are incorporated under the Companies Act, whereas a Trust or Society is registered under the regulations of the respective State Government where it is located.

Section 8 of the Companies Act, 2013 reads as under:

(1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company –

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

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, , and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited” , and thereupon the Registrar shall, on application, in the prescribed register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to

Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Features of a Section 8 Company

Certain features of a Section 8 company can be summarized as under:

1. It is formed for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2. The profits, if any, are applied in promoting its objects;
3. It prohibits the payment of dividends to its members.
4. The name of the Company can be incorporated without using the word “Limited” or “Private Limited” as the case may be.
5. There is no requirement of any minimum paid up capital.
6. It is exempted from stamp duty registration.
7. Many privileges and exemptions are available to such a company . Section 8 companies have been granted total/partial exemptions from various sections of the Companies Act, 2013 vide Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015.
8. A One Person Company cannot function as a Section 8 Company.
9. Section 8 company has its independent corporate legal entity, similar to private company, public company or a Limited Liability Partnership and hence enjoys credibility in the eyes of the public.

Exemptions available to Section 8 Company

By Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015, the Central Government has granted various exemptions, either in full or in part from the provisions of the Companies Act, 2013. The key exemptions are summarized below:

(a) Company Secretaries no longer mandatory

Section 8 companies are no longer required to appoint a company secretary to ensure compliance with the provisions of the Companies Act 2013. This exemption will result in cost reduction for the section 8 companies.

(b) No need for minimum share capital

In line with the relaxation announced for private limited companies, section 8 companies too are no longer required to maintain a minimum share capital.

(c) Shorter notice period for AGMs

By amendment to section 101, it is proposed that only 14 days' notice shall be required to convene an annual general meeting of a section 8 company. This is in contrast to the earlier limit of 21 days. Provisions which pertain to sharing of financials and other associated documents before the meetings have also been amended to reflect such new timelines.

(d) No necessity to record minutes of meetings, unless required, etc.

Section 118 which requires recording of minutes of proceedings of general meetings, board meetings and other resolutions including those passed by way of postal ballot, shall now no longer apply to non profit enterprises. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.

(e) Despatch of financial statements and other documents {Section 136(1)}

Instead of twenty one days prescribed under the section, Section 8 companies are allowed to despatch the said documents not less than fourteen days before the date of the meeting.

(f) Only two directors required

Section 149(1) shall no longer apply to section 8 companies; implying that such companies shall not be required to have a minimum number of directors on its board. However quorum for board meetings has been fixed at 2.

(g) Independent Directors not required

Clauses requiring and governing appointment of independent directors have been waived and section 8 company is not required to appoint independent directors.

(h) exemption regarding first meeting and board meetings

Further, section 8 companies shall no longer be required to hold the first meeting of the board within 30 days of incorporation of the company. A meeting of the directors shall however still be required once every six months.

(i) Right of persons other than retiring directors to stand for directorship (Section 160)

This right shall no longer be enforceable in section 8 companies, similar to an exemption provided to private limited companies. However this exemption shall not apply to companies whose articles provide for election of directors by ballot.

(j) Directorship in more than 20 companies

The bar on taking up directorship in more than twenty companies (section 165) has been relaxed in the case of section 8 companies. Therefore an individual, if he is eligible, can be a director in more than 20 section 8 companies.

(k) Meetings of the Board (section 173)

The Board of Directors of a section 8 company may hold at least one meeting within every six calendar months.

(l) Relaxation in formation of certain Committees referred to in Section 178 of the Act

Section 8 companies shall not be required to form the Nomination and Remuneration Committee and the Stakeholders Relationship Committee as provided in Section 178 of the Act, as the section has been exempted from compliance for such companies.

(m) Certain decisions by circulation instead of at a meeting

By modification to Section 179, the board has been empowered to take decisions pertaining to borrowing, investments and granting of loans and advances by way of circulation as compared to taking such decisions by calling a meeting of the board.

(n) Disclosure of interest in related party transactions in some cases only {section 184(2) and section 189}

A director shall be required to disclose his interest in any firm with which the company is making a transactions, and the company shall be required to maintain a register of all such transactions in which its director are interested only and only if with reference to section 188 (related party transactions) , the contract or arrangement exceeds one lakh rupees in value.

PROCEDURE FOR REGISTRATION OF NGO'S

Section 8 Company

The procedure for registration of a Section 8 company is slightly different than incorporation of a private or public company. It involves two steps, namely:

- (i) obtaining of licence under section 8(1) of the Companies Act, 2013 and
- (ii) obtaining certificate of incorporation

Before formation of the company, the promoters must decide on the following:

- (a) the proposed name to be applied;
- (b) objects to be carried by the Company;
- (c) proposed registered office address;
- (d) authorized capital;
- (e) number of promoters, number of directors, and number of shares to be subscribed by each promoter. In deciding the proposed name, the following rules have to be borne in mind:
 - (i) The name of the company should be in consonance with the principal objects of the company as set out in the memorandum of association. Every name need not be necessarily indicative of the objects of the company, but when there is some indication of objects in the name, then it

shall be in conformity with the objects mentioned in the memorandum. [Rule 8(2)(b)(ii) of Companies (Incorporation) Rules, 2014].

(ii) The proposed name should not fall in the ambit of undesirable names specified in Rule 8 of Companies (Incorporation) Rules, 2014

(iii) Name of Section 8 Company shall include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral trust and the like words. [Rule 8(7) of the Companies (Incorporation) Rules, 2014].

(iv) There is no requirement to add the word Limited or Private Limited to its name. [Proviso to Section 4(1)(a) and Section 8(1)]

After deciding on the name and the structure of the proposed company, the following steps will be taken:

1. It has to be ensured that all the proposed directors should have valid DIN. If not, steps are to be taken for applying for DIN and obtaining the same.

2. Digital Signature for any one of the Directors is required to digitally sign the E-Forms to be submitted with the Registrar of Companies.

3. Memorandum of Association and Articles of Association have to be drafted. Care must be taken to ensure see that:

(a) Objects of Section 8 Company must be the promotion of Commerce, Art, Science, Sports, Education, research, social welfare, religion, Charity, protection of environment or any such other object [Section 8(1)(a)]

(b) the proposed company should intend to apply its profits, if any or other income in promoting its objects. [Section 8(1)(b)]

(c) It should intend to prohibit the payment of dividend to its members. [Section 8(1)(c)].

4. The following provisions have to be noted before incorporation:

(a) There must be at least 2 or 3 subscribers to the memorandum in case company is proposed to be incorporated as private company or public company respectively. [Section 3(1)(a) and Section 3 (1)(b)]

(b) Minimum number of Directors required is 2 Directors or 3 Directors, in case company is proposed to be incorporated as private company or public company respectively with a maximum limit of up to 15 Directors. A Company may appoint more than 15 directors after passing a special Resolution in a general Meeting. [Section 149(1)(a) (b)]

(c) Section 8 company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. [(Section 149(3)]

[The procedural aspects for incorporating a Section 8 company are as under:](#)

1. The promoter of the proposed entity will apply to the Ministry of Corporate Affairs for reservation of name in Form RUN.

2. Once name is reserved, an application will be made for obtaining licence under sub-section(1) of Section 8 of the Act in Form No. INC12. The application shall be accompanied by the following documents:

(a) The draft memorandum and articles of association of the proposed company (Form No. INC-13)

(b) the declaration in Form No. INC-14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

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

(d) the declaration by each of the persons making the application in Form No. INC. 15.

3. After obtaining the license number, applicant can proceed further to incorporate a company by filing e-forms SPICe along with linked forms as the case may be.

Application for Incorporation

The incorporation procedure can be carried out through eForm SPICe (INC-32) deals with the single application for reservation of name, incorporation of a new company and/or application for allotment of DIN and/or application for PAN and TAN. This eForm is accompanied by supporting documents including details of Directors & subscribers, MOA and AoA etc.

Once the e-Form is processed and found complete, company would be registered and CIN would be allocated. Also DINs gets issued to the proposed Directors who do not have a valid DIN. Maximum three Directors are allowed for using this integrated form for filing application of allotment of DIN while incorporating a company. Also PAN and TAN would get issued to the Company.

Incorporation application is filed in Form e forms SPICe along with the following attachments:

1. Memorandum of Association;
2. Article of Association;
3. Declaration by professional in Form INC 8;
4. Declaration by each subscriber of the memorandum in Form INC 9;
5. Address Proof of the subscribers;
6. Identity proof of subscribers;
7. Specimen Signature in Form INC 10;
8. PAN card;
9. NOC if there is any change in the name of promoters after name approval;

10. Board Resolution authorizing the subscription to MOA;

11. The verification of the registered office shall be filed in Form No. INC. 22 (when address for correspondence is the address of registered office of the company) and the following documents shall be attached thereto:

(a) the registered document of the title of the premises of the registered office in the name of the company; or

(b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

(c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

(d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

12. Appointment of directors of the company in Form DIR - 12 along with the following attachments:

- Consent to act as Directors in Form DIR- 2.
- Affidavit by the Directors for Not accepting Deposits (On Non- judicial stamp paper of Rs. 100/- and duly notarised).
- Declaration by each Subscriber to Memorandum of Association (On Non- judicial stamp paper of Rs. 100/- and duly notarised) in Form INC-9

Certificate of Incorporation

If the Concerned Registrar of Companies is satisfied that all the requirements of the Companies Act, 2013 have been complied with, a Certificate of Incorporation is issued which carries a unique Company Identification Number (CIN).

TRUST

A Trust is a relationship in which a person or entity holds a valid legal title to a certain property which is known as the Trust property. The Trust is bound by a fiduciary duty to exercise that legal title for the benefit of any one or more individuals or group of individuals or organisations, who are known as the Beneficiaries. The Trust shall be governed by the terms of the Written Trust agreement.

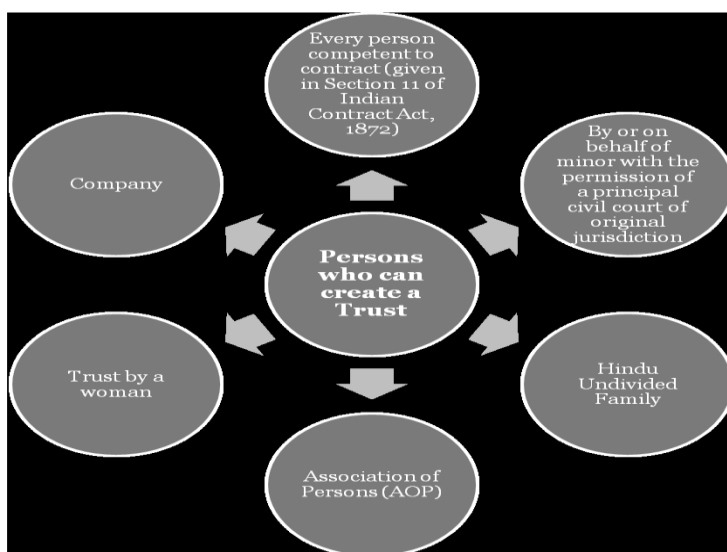
Trust is defined in section 3 of the Indian Trust Act, 1882 as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner. In other words, it is simply a transfer of property by one person (the settlor) to another (the “trustee”) who manages that property for the benefit of someone else (the “beneficiary”). The settlor must legally transfer ownership of the assets to the trustee of the trust.

The statutory basis governing Trusts, in general, under Indian law is the Indian Trusts Act, 1882. Generally, there are two types of trusts in India: private trusts and public trusts. Private trusts are regulated by the Indian Trusts Act, 1882, whereas Public trusts are classified as Charitable and religious trusts. The Charitable and Religious Trust Act, 1920, the Religious Endowments Act, 1863, the Charitable Endowments Act, 1890, the Societies Registration Act, 1860, and the Bombay Public Trust Act, 1950 are the relevant legislations for the recognition and enforceability of public trusts. Moreover, in recent times, trusts can also be used as a vehicle for investments, such as mutual funds and venture capital funds. These trusts are governed by Securities and Exchange Board of India (SEBI).

In India, there are thousands of trusts created by the owner of industrial houses and rich individuals and their families. Under Indian laws, Public Charitable Trusts are treated as organisations with charitable purpose entitling all the tax benefits applicable. Examples of Public Charitable Trusts promoted by business families are Paragon Charitable Trust, Sir Dorabji Tata Trust, etc. Private trust or family trust is not a Public Charitable Trusts and hence does not enjoy the privileges entitled to a trust with charitable purpose.

Persons who can create a Trust

According to Section 7 of Indian Trusts Act, 1882, a trust may be created by the following persons:



Persons who can be a Trustee

As per Section 10, any person who is capable of holding property may be a trustee; except to the condition of discretion of trust, in that case, he cannot execute it unless he is competent to contract.

Difference between Public Trust and Private Trust

(a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a board of trustee. If,

however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.

(b) in a Public Trust, the interest is vested in an uncertain and fluctuating body . They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (Supreme Court in *Deoki Nandan v. Murlidhar* 1957 AIR 133 1956 SCR 756)

(c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

A trust for the benefit of employees of a company however numerous would not be considered as public charitable. For example, an industrialist who creates a trust for the benefit of his 5,000 people, their spouses and children is considered private because who the beneficiaries are known.

While a public trust is set up for what is called ‘uncertain and fluctuating body of persons’ , it is possible to create a sectarian or communal trust as a public charitable trust. There are trusts which are only for specific religious communities. However, such trusts may not be tax-exempt.

Exemptions available to Trusts

Exemptions available to Trusts are primarily governed by the provisions of the Income Tax Act, 1961. The exemption has to be read keeping in mind whether the Trust is a Public Charitable Trust, Private Trust, Religious Trust, etc.

Certain key exemptions are listed below:

Tax exemption under Section 10 of the Income Tax Act, 1961

Total tax exemption is available for certain types of trusts which include those which are formed for any of the activities related to sports, education, scientific research, professions, or promotion of khadi and village based industries, hospitals etc. and are notified as charitable or religious institutions.

Tax exemption under Section 11 of Income Tax Act, 1961

As per Section 11, any income, profits or gains obtained by a trust from a property held by the trust established wholly for the purposes of religious or charitable nature shall not be included in the total income of the trust. Since such income shall not constitute to be a part of the trust’s income, therefore, it is not taxable. However, as per section 13, there are certain situations where the tax exemptions under section 11 are not applicable.

Such instances include where

(a) income earned from the property held under the trust of private religious nature and does not endure benefit for the public, or

(b) the entire income of a charitable trust which is established for a particular religion, community or caste, income of those charitable trust whose funds do not get invested in the modes specified under section 11(5).

Tax exemption under Section 12 of the Income Tax Act, 1961

The incomes that are excluded from the computation of taxable income of trust or society are as follows:

1. Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.
2. Income which is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.
3. In cases of charitable trusts, specifically those formed before 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India
4. In furtherance of the above case, the income which is set apart to a certain extent and which does not exceed twenty five percent of the total income.
5. In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposes and spent outside India.
6. Income made by way of voluntary contributions towards the corpus of the trust.
7. Charitable trusts created for the benefit of any of the socially and economically backward castes such as Scheduled Castes, Scheduled Tribes or women or children.

Trusts are allowed to set apart or accumulate some of the funds received from voluntary contributions for certain specific purposes. The resultant benefit obtained by the trust is that amount so deducted is not considered as forming part of income of the previous year and therefore not taxed.

Tax exemption for a Private Trust

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate.

Section 161(1A) of the IT Act provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust including any profits and gains from business would be liable to income tax at the maximum marginal rate.

Thus, tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

FORMATION OF TRUST

A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding.

Before registration of a trust, the following aspects have to be decided:

- (a) Name of the trust
- (b) Address of the trust
- (c) Objects of the trust (charitable or Religious)
- (d) One settler of the trust
- (e) Two trustees of the trust
- (f) Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

1. Creation of a Trust Deed

A trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust are present. Though the use of the word 'trust' is not needed to create a valid trust, the terms of the grant or will make it clear that an obligation is actually annexed to the ownership of the trust property.

A trust-deed, generally, incorporates the following:

- (i) the name(s) of the author(s)/settlor(s) of the trust;
 - (ii) the name(s) of the trustee(s);
 - (iii) the name(s) if any, of the beneficiary/ies or whether it shall be the public at large;
 - (iv) the name by which the trust shall be known;
 - (v) the place where its principal and or other offices shall be situate;
 - (vi) the property that shall devolve upon the trustee(s) under the trust for the benefit of the beneficiary/ies;
- Note: In terms of section 21 of the Indian Registration Act, a deed of trust relating to immovable property, must contain a description of the property sufficient to identify it for the purposes of registration.
- (vii) an intention to divest the trust property upon the trustee(s); Note: The intention should be expressed in unequivocal language and with a reasonable degree of certainty. Though no particular or technical words are necessary, yet the words used must be capable of definite meaning.
 - (viii) the object and purpose of the trust;
 - (ix) the procedure for appointment, removal or replacement of a trustee, their rights, duties and powers, etc;
 - (x) the rights and duties of the beneficiary/ies;
 - (xi) the mode and method of determination of the trust.

(2) **Obtain the signatures of Settlor**, Trustees and Witnesses at the appropriate places. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.

(3) **Print the Trust Deed** on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

(4) **Register the Original deed** in a Sub-Registrar office paying registration charges. A photocopy of the Deed is also required to be submitted. The photocopy of the Deed should also contain the signature of settlor on all the pages.

(5) At the time of registration, the settlor and witnesses must be personally present with their identity proof in original.

(6) The Sub- Registrar retains the photocopy and returns the original copy of the Trust Deed.

(7) Thereafter, the Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

SOCIETY

Definition

A society is an association of persons united together by mutual consent to deliberate, determine and act jointly for some common purpose. Societies are usually registered for promotion of charitable activities like education, art, religion, culture, music, sports, etc., In India, The Societies Registration Act, 1860 lays down the procedure for society registration and operation in India. The Act has been adopted by most of the State Governments with/without modifications as considered by the respective State Governments.

According to Section 20 of the Societies Registration Act, 1860, societies can be formed for the following purposes:

- (i) Charitable societies,
- (ii) the military orphan funds or societies established at the several presidencies of India,
- (iii) societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge,
- (iv) The diffusion of political education,
- (v) the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public
- (vi) public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Besides these purposes, the respective State Governments may provide for any other objects by their legislations.

Advantages of Society

- The process of formation and registration is simple.

- Record-keeping requirements are minimum and compliance with regulations is easy.
- Cost of compliance is low.
- Least possibility of interference by the regulator.
- Exemption from tax due to charitable nature of operations.

Disadvantages of Society

- Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable.
- Since such institutions are of charitable nature, it is an inappropriate form of a commercial venture;
- The concept of equity investment or ownership is virtually absent; Hence, it is not attractive for commercial investors interested in microfinance;
- Commercial investors regard the investments in such entities as risky mainly on account of their lack of professionalism and managerial practices and political leanings(in some cases) and are, therefore, reluctant to provide large scale funding to such bodies;
- In accordance with Section 45S of the RBI Act, 1934, no unincorporated bodies are allowed to accept deposits from the public. Organisations registered under the Societies Registration Act and the Trust Act are considered unincorporated bodies. Hence, legally speaking, they are not allowed to collect savings from their clients; and
- It is vulnerable to the implication under the Money Lenders Acts s (prevention of usurious interest rates) of various State Governments.

Consequences of Registration / Non-Registration of a Society

The Societies Registration Act, 1860 lays down procedure for registration of societies for various bonafide purposes. The registration gives the society a legal status and is essential for :

- obtaining registration and approvals under Income Tax Act;
- lawful vesting of property in the societies;
- provides authenticity and recognition to the society before all authorities and the world at large; and
- for opening bank accounts and transaction of business.

When the society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum.

Once registered under the Societies Registration Act, the society must restrict its activities to the objects contained in its Memorandum.

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 entity/person similar to an individual but with

no physical existence. As such it can acquire and hold property and can sue and be sued in its own name.

The society should be registered under the Act to acquire the status of juridical person.

In the absence of registration, all the trustees in charge of the fund have alone a legal status and the society has no legal status, and, therefore, it cannot sue and be sued. If a society is not registered, it may exist in fact and theory, but not in the eyes of law. If benefits are to be claimed, the registration of society under the Act is required. An unregistered society cannot claim benefits under the Income-tax act.

Accounts and Audits

The societies are in possession of funds and properties provided to them by the members or by other persons (by way of donation etc.). The funds and properties are to be applied in furtherance of its objects, for which the society was formed. The members of the governing body are the trustees who apply the funds.

Therefore, it becomes necessary for societies to maintain proper and regular account books and get them audited and present them to the members at the general meeting and file the same with the Registrar of Societies (of the respective State where it is located) for scrutiny.

Every society should get its accounts audited once a year by duly qualified auditor and have balance sheet prepared by him.

Litigation

As every society is a legal entity distinct from its members . It is capable of filing suits against any person or any member. Similarly, suits can also be filed against the society.

A registered society can file a suit anywhere in India and in any State although it may not be registered in that particular state.

Benefits of forming a Society

1. Under Income Tax Act, and subject to fulfilment of certain conditions, a society can avail of exemption from income tax , if it obtains registration under Section 12A/12AA of the Income Tax, 1961.
2. Donors to societies may claim a rebate under Income Tax Act for donations made to the Society, provided the society has applied and obtained approval under Section 80G. Registration under section 12A is one-time registration. Once the registration is granted to the trust, it will be hold good till the cancellation of registration. There is no provision which requires any renewal of registration. Thus, the benefits of registration can be claimed for lifetime by NGO.
3. Societies, being NGO's receive various grants from government and other agencies. They are eligible to get grants and financial funding from various agencies. These agencies generally make grants to societies registered under Section 12A.
4. Societies are run on democratic principles and ensures wider participation by members in the activities.

5. In view of the election process, there is scope for removing inefficient management and effect changes in the management to ensure better governance.

FORMATION OF A SOCIETY

Under Section 1 of the Societies Registration Act, 1860, any seven or more persons who have come together for any legal pursuits, including literary, scientific, charitable or social pursuits, may subscribe their names to a memorandum of association and file the same with the Registrar and form themselves into a society under this Act.

The memorandum of association filed with the Registrar should contain details such as the name and objectives of the society, names, addresses and occupations of the members of the governing body with which the management of the affairs of the society is entrusted.

A copy of the rules and regulations of the society should be provided.

With the completion of these processes, the society could be registered with the Registrar after payment of a fee, which will be specified by the State Government from time to time. As per Section 4 of the Act, once in every year, an annual general meeting of the society should be conducted.

If the rules do not provide for an annual general meeting, a list of the names, addresses and occupations of the members of the governing body should be presented to the Registrar, every year.

- 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)
- Memorandum of association and rules and regulations
- Consent letters of all the members of the managing committee
- Authority letter duly signed by all the members of the managing committee
- An affidavit sworn by the president or secretary of the society on non-judicial stamp paper of Rs.20-/, together with a court fee stamp
- 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.

• The documents needed to be submitted to the Registrar are:

1. A letter requesting registration, signed by founding members. This letter will state the purpose of formation of the society and a requisition indicating that the society is registered under the Act. The signature of all members is mandatory.
2. A certified copy of the MoA, signed by the founding members, with a duplicate.
3. A certified copy of the rules and regulations, signed by the founding members, along with a duplicate copy.
4. A table with the names and address and occupation of all members of the society with their signatures

5 Minutes of the meeting (general body meeting conducted to set the rules and regulations)

6. Declaration by the president of the society

7. A sworn affidavit from the President or Secretary, declaring the relationship between the subscribers.

8. Address proof of registered office and no-objection certificate from the landlord.

The documents are to be filed with the Registrar along with the fees, and a suitable name (which should be unique and not suggest a relationship with the government or violate the provisions of the Emblem and Names Act, 1950). If the Registrar is satisfied with the application, the society will be registered.

Steps for Registering a society In India

A Society can be created by a minimum of 7 or more persons. Apart from persons from India, companies, foreigners, as well as other registered societies can also register for the Memorandum of the society.

Society registration is maintained by state governments. Thus, the application for society registration must be created to the specific authority of the state, where the registered office of society is situated.

For Society registration, the establishing members must agree with the name of society first and then prepare for the Memorandum, followed by Rules & Regulations of the society.

and signed for the sake of registration:

- Requesting society registration by providing covering letter, signed by all establishing members
- Duplicate copy of memorandum of association of society along with certified copy
- Duplicate copy of Rules & Regulations of society along with duplicate copy duly signed by all establishing members
- Address proof of registered office of society as well as no-objection certificate (NOC) issued by landlord.
- Affidavit by secretary or president of society declaring relationship among subscribers
- Few minutes of meeting regarding the society registration along with providing some essential documents.

Following are the documents required for the Society Registration in India:

1. PAN Card of all the members of the proposed society has to be submitted along with the application.

2. The Residence Proof of all the members of the society also has to be submitted. The following can be used as a valid residence proof:

- Bank Statement
- Aadhaar Card

- Utility Bill
- Driving License
- Passport

3. Memorandum of Association has to be prepared which will contain the following clauses and information:

The work and the objectives of the society for which it is being established

- The details of the members forming the society
- It will contain the address of the registered office of the society

4. Articles of Association also have to be prepared which will contain the following information:

• Rules and regulations by which the working of the society will be governed and the maintenance of day to day activities

- It will contain the rules for taking the membership of the society

The details about the meetings of the society and the frequency with which they are going to be held is to be mentioned

- Information about the Auditors
- Forms of Arbitration in case of any dispute between the members of the society
- Ways for the dissolution of the society will also be mentioned

Once the rules have been formed, they can be changed but the new set of rules will be signed by the President, Chairman, Vice President and the Secretary of the Society.

5. A covering letter mentioning the objective or the purpose for which the society is being formed will be annexed to the beginning of the application. It will be signed by all the founding members of the society.

6. A copy of the proof of address where the registered office of the society will be located along with a NOC from the landlord if any has to be attached.

7. A list of all the members of the governing body has to be given along with their signatures.

8. A declaration has to be given by the president of the proposed society that he is willing and competent to hold the said post.

All the above documents have to be submitted to the Registrar of Societies along with the requisite fees in two copies. On receiving the application, the registrar will sign the first copy as acknowledgment and return it while keeping the second copy for approval. On proper vetting of the documents, the registrar will issue an Incorporation Certificate by allotting a registration number to it.

The signed Rules & Regulations, as well as Memorandum, has to be filed with concerned society or registrar of state with a mentioned fee. If the registrar is fulfilled with society registration application, then they will certify that the society is registered.