



FORMS OF LEGAL ENTITY UNDER RERA AND ITS REGISTRATION UNDER MCS ACT, 1960 AND MOA ACT, 1970

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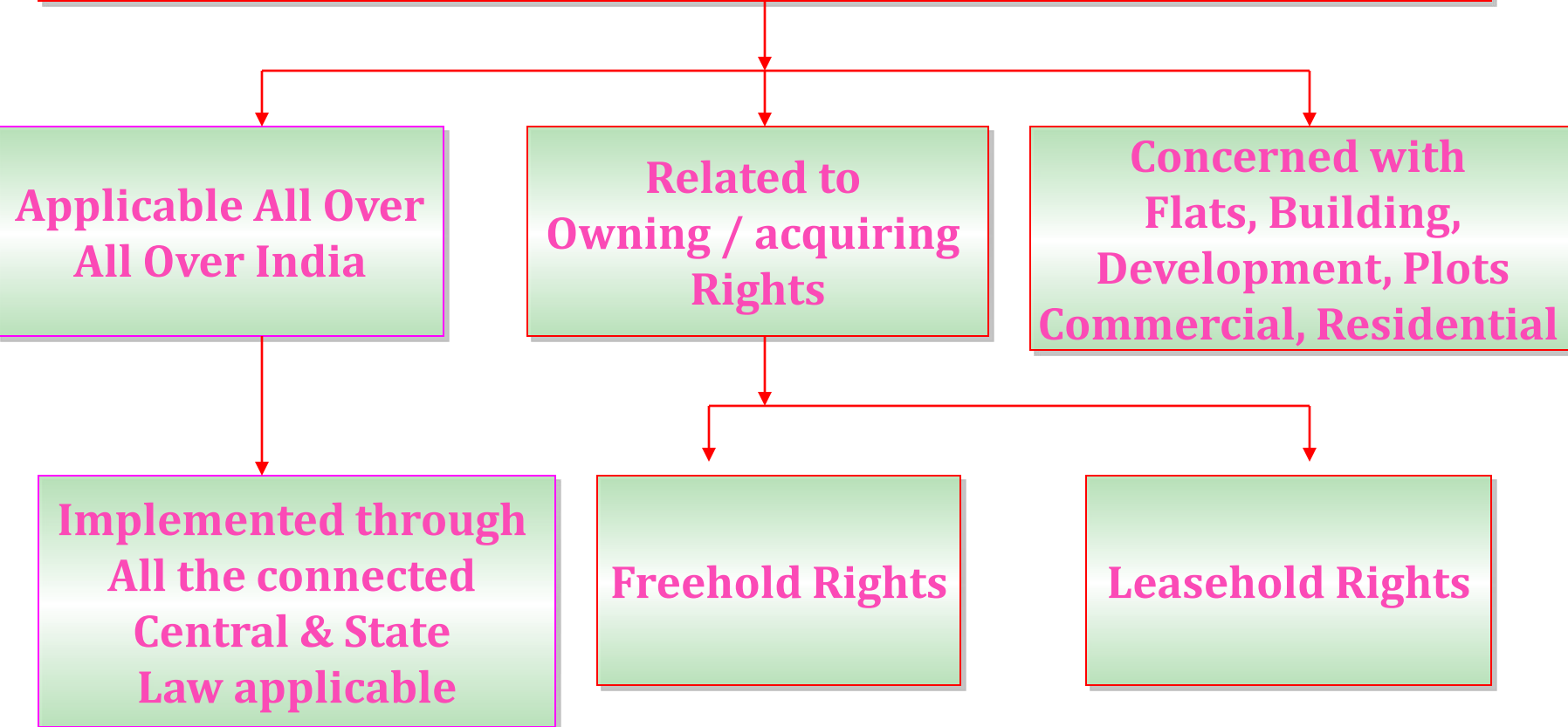
AGENDA

- Overview
- Legal Provisions
- Objectives of Formation of Legal Entities as Association of Allottees
- Formation of Legal Entities
- Societies, Salient Features, Types, Procedure of Formation under MCS Act, 1960, Registration
- Condominium, Salient Features, Types, Procedure of Formation under MAO Act, 1970
- Difference between Society and Apartment



MOTHER OF REAL ESTATE DEVELOPMENT LAW -

Real Estate (Regulation & Development) Act, 2016



LEGAL PROVISIONS

Sections involved

4 Information to be submitted at the time of registration of the project includes the form of association of allottees

7 Revocation and Lapse of Registration

8 Obligation of the Authority on lapse or revocation of registration

11 (4)(e) : Enable formation of association of allottees

17: Transfer of title

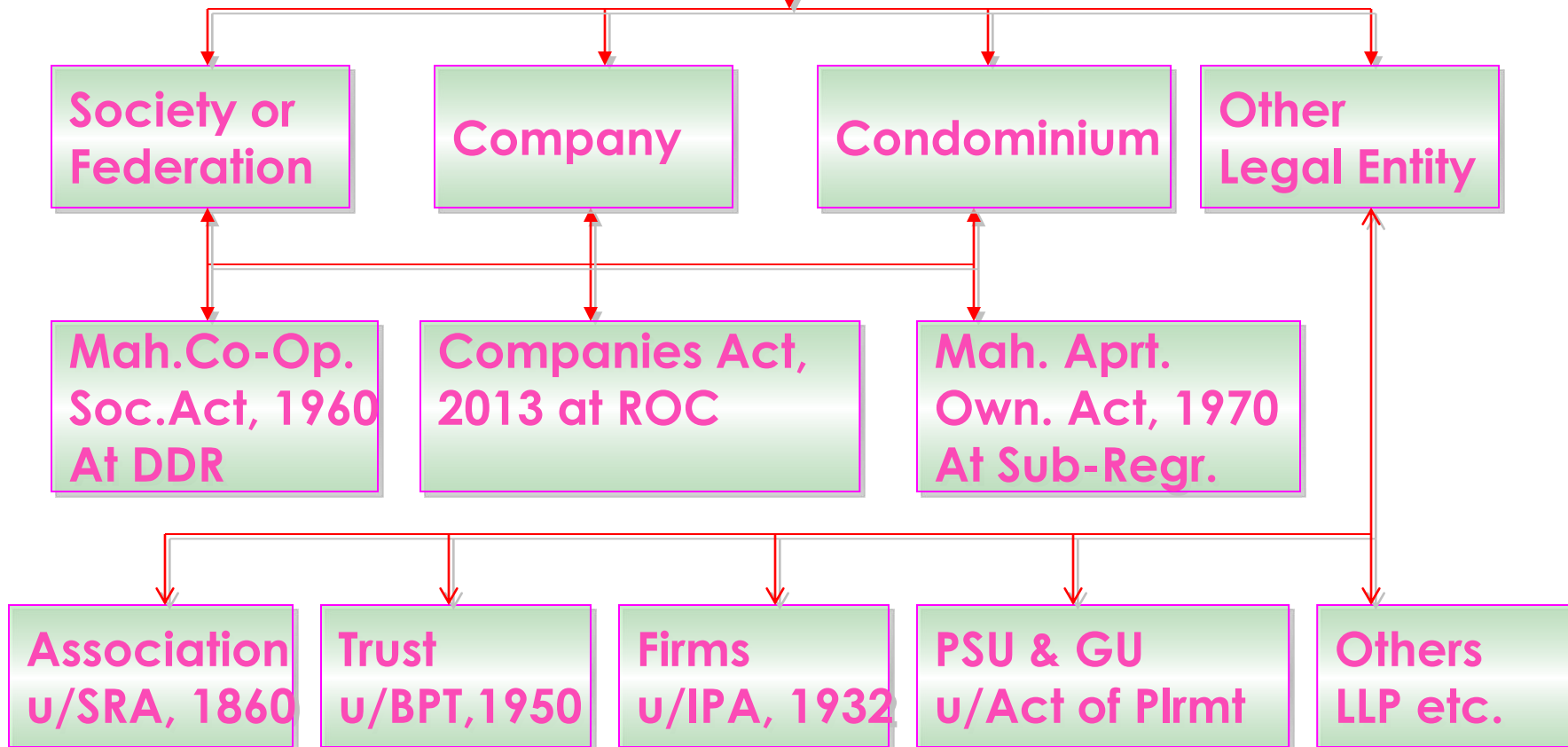
OBJECTIVES OF FORMATION OF LEGAL ENTITIES AS AOA

The objectives of the formation of the legal entity shall be as under :

- ❖ To complete the pending work related to construction
- ❖ To manage, maintain and administer the overall property
- ❖ To negotiate with the various agencies related to construction
- ❖ To get the pending approvals from various government departments
- ❖ To raise funds for achieving the objects from members and also from the banking /non-banking sector.
- ❖ To obtain conveyance from the Owner/ Promoter, in accordance with the provisions of the Act

**U/S.10. FORMATION OF LEGAL ENTITY .
(MOFA-1963) or U/s 11(4)(e) of RERA, 2016**

**TO MANAGE COMMON SERVICES,
AREA & FACILITIES AFTER DISPOSING 51% UNITS BY PROMOTERS**



FEATURES OF CO OPERATIVE SOCIETIES

- Voluntary association of persons for mutual benefit
- Minimum 5 persons are required for formation. Registered with Registrar of Societies under MCS Act, 1960 (w.e.f. 9th March, 2019 u/s. 154 B-2)
- Capital raised by way of share capital from members. Additional if any can be funded by banks.



ADVANTAGES OF A CO – OPERATIVE SOCIETY

- ❖ Easy Formation
- ❖ Open Membership
- ❖ Democratic Management
- ❖ Limited liability (to the extent of capital contributed by the members)
- ❖ Stability (as it enjoys separate legal existence)
- ❖ Perpetual Succession

TYPES OF SOCIETIES

A Society is registered and categorized on basis of its objectives. In the State of Maharashtra, a society is formed, regulated and controlled by the Maharashtra Co-operative Societies Act, 1960 (Act) and the Maharashtra Co-operative Societies Rules, 1961 (Rules).

Various types of Societies are:

- (a) Agricultural Marketing Societies
- (b) Consumer Societies
- (c) Co-operative Bank, Credit Societies
- (d) Irrigation Societies, Processing Societies
- (e) Crop Protection Societies, Producer Societies
- (f) Housing Societies, Other Societies

TYPE OF HOUSING SOCIETIES

- (a) Flat Owners Societies
- (b) Open Plot Societies
- (c) Tenants Societies
- (d) Housing Board Societies.
- (e) Premises Societies (General Type)

TYPE OF HOUSING SOCIETIES (CONTD.)

- **Flat Owners Societies:** A society formed by *different purchasers of the residential tenements* under MOFA [Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963]. The object of a flat owners society is to obtain the conveyance of the plot along with the building containing the tenements thereon and to manage, maintain and administer the same.
- **Open Plot Society:** A society formed by a group of individuals with the objective for *acquiring a plot of land*, constructing tenements thereon and administering, *maintaining & managing it*.
- **Tenants Societies:** A society formed by the *tenants of a building* with the objective of *acquiring a plot of land with an old building* thereon from the *landlord* and managing, *maintaining and administering it*.
- **Housing Board Society:** A society formed by *allottees of flats* in a building constructed by the *Maharashtra Housing and Area Development Board Society (Housing Board)*. Such a housing board society acquires the plot of land with a building thereon from the board and its objects include the management, maintenance and administration it.
- **Premises Society (General Type):** A 'General Society' is a type of society similar to a Housing Society. Commonly it is known as a '*Premises Society*'. The purchasers of commercial or industrial tenements under MOFA constitute a General Society. The objectives of a general society are similar to those of flat owners society.



NUMBER OF MEMBERS OF SOCIETY

Under section 6 of Maharashtra Co-operative Societies Act, 1960 minimum number of members required to form a Co-operative Society is 5. There is no upper limit on the membership of a Co-operative Society. However, to make a Society viable and to keep it free from disputes and differences by policy, different limits or maximum members for diverse kind of Societies have been evolved. For a Consumers Co-operative Society, normally a maximum limit of the members is about 200 and for a Housing Society, the limit of the maximum number is equal to the tenements in the building concerned.



JURIDICITION FOR REGISTRATION

For the purpose of registration of the Societies, the City of Mumbai has been divided as per the Municipal Wards. There is a Deputy or Assistant Registrar of Co-operative for each Ward who is the Registration Authority for the Co-operative Societies in that Ward. Normally the office of such Registering Authority (RA) is situated within the limits of such Ward. However, if no space is available for the office of the RA in any ward, the office of RA of such Ward is at the office of Deputy Registrar, Co-operative Societies, Malhotra House (India House), 6th floor opposite GPO Mumbai.

FEATURES OF CONDOMINIUM / ASSOCIATION OF APARTMENT OWNERS UNDER MAHARASHTRA APARTMENT OWNERSHIP ACT, 1970 (MAO Act)

In respect of apartment ownership, the legal title of the flat as an object, along with a proportionate share in the common areas of the building and also proportionate share in the land on which the building stands, vests in the apartment owner. That means, the building belongs to jointly but each apartment owner has an independent right to his apartment to the exclusion of others. Whereas, in the case of ownership flat, the title to the building and the land vests in a co-operative housing society or a limited company and the flat owner is not a owner of the flat in real sense but he has only a right to occupy the flat. This is a species of property, which is heritable and transferable.

Registration

The Declaration and all amendments thereto and Deeds of Apartment in respect of each Apartment and floor plans of the building are to be registered under Registration Act, 1908 with the Sub-Registrar of Assurances of respective jurisdiction prescribed by the Inspector General of Registrar and Chief Controlling Revenue Authority of Government of Maharashtra.

ADVANTAGES OF APARTMENTS / CONDOMINIUM

- Sharing of expenses according to value of apartment
- Voting as per % of holding of the area/undivided interest in the property.
- N.O.C. for sale not required
- Separate Conveyance in the name of legal entity not required

DISADVANTAGES OF APARTMENTS / CONDOMINIUM

- ❖ No proper Administrative Set up/authority
- ❖ Civil Court is the only forum solve problem
- ❖ No experts for guidance
- ❖ Only First Owner is allowed to attend and vote
- ❖ For Amendment of bye-laws Consent of all are required.
- ❖ Less judicial cases decided
- ❖ Few apartments formed
- ❖ Mortgagee has first charge on property

ADVANTAGES OF CO OPERATIVE SOCIETIES

- ✓ Proper Administrative Set up / Authority (Registrar)
- ✓ Co-op. Court –separate court to solve disputes
- ✓ Many experts/Association/Books for guidance
- ✓ Joint owner is allowed to attend and vote
- ✓ For Amendment of bye-laws $\frac{3}{4}$ majority required
- ✓ Democratic setup
- ✓ Society dues having first charge
- ✓ Better management like election, transfer, assignment etc.
- ✓ More than 1,25,000 co operative societies formed
- ✓ Easy disposal of complaints

DISADVANTAGES OF CO OPERATIVE SOCIETIES

- Sharing of common expenses equally and property charges as per area
- Voting Rights 1 per member
- For transfer the member has to approach society
- Separate Conveyance is Required
- Registrar intervention is possible
- Society office bearers may dictate terms

BASIC GUIDELINES FOR FORMATION OF SOCIETIES

The basic guidelines for the formation of Co-operative Society in Maharashtra State are as follows

- (1) There should be at least 5 persons or more as the Registrar may determine from time to time.
- (2) These persons should be from different families (except cooperative credit structure entity).
- (3) Such persons should be competent to enter into a contract under the Indian Contracts Act 1872
- (4) Such persons should reside in the area of operation of the Society.
- (5) Such persons should be eligible as per the bye-laws of the proposed Society.
- (6) Any individual, firm, company or any other body corporate, any Society registered under this Act or Societies registration Act 1860, State & Central Government , Public Trust, local authority can become member of the Society.
- (7) The object of the Society should be promotion of economic interests or general welfare of the members or the public, in accordance with the co-operative principles.
- (8) It should be economically sound, its registration should not affect adversely on the development of the co-operative movement
- (9) Its registration should not be contrary to the policy directives of the State government.

CHECKLIST FOR REGISTRATION OF CO-OP. SOCIETIES

1. Application for registration of society in form A along with statement A, Enclosure to application for registration as per rule 4 (1) of MCS rules, 1961. (4 copies)
2. Court fee stamp of Rs. 50/- to be affixed to application form 'A'.
3. Information about promoter members of the proposed society in statement 'B' (vide govt. circular dated 2-5-1980). (4 copies)
4. Information about promoter members of the proposed society in statement 'C' (vide govt. circular dated 2-5-1980). (4 copies)
5. Statements of accounts as per form D.
6. Model bye-laws. (4 copies)

7. Bank balance certificate from the district central co-op bank ltd./Maharashtra state co-op bank ltd
8. Detailed scheme of the working of the proposed society.
9. R.B.I /Treasury challan of payment of registration fee of Rs.2500/-For backward class co-op. housing society, Registration fee Rs.50/-
10. True certified copy of purchase deed of land/agreement for purchase of land/ agreement for development of land.
11. One copy of 7/12 extract or property card extract, where it is applicable.
12. N.O.C. from the competent authority about release of land under urban land ceiling act or certificate of non applicability of provisions of urban land ceiling act or undertaking from chief promoters.
13. In case of govt. land or land from semi govt. authorities, a copy of allotment letter from the authorities regarding grant of land.
14. No. Objection certificate from the charity commissioner, if the land belongs to the trust.

15. N.O.C. from the housing and area development board if the land or building is owned by the housing and area development board and list of flat purchases.
16. Certificate from the concerned authority that the land is in residential zone.
17. A true copy of the approved building plan.
18. Letter of authority granting permission to commence construction work/completion certificate (as applicable).
19. Certificate from a certified architect in support of construction work scheme.
20. Affidavit on Rs.100/- stamp paper from at least 10 promoter members to the effect that they are residing in the area of operation of the society (proposed) made before competent authority.
21. Affidavit from the chief promoter on stamp paper of Rs.100/- executed before the competent authority in form 'Y'.
22. Affidavit from the chief promoter on stamp paper of Rs.100/- duly made before the competent authority in form 'Z'

23. Certified true copy of agreement made on stamp paper and registered between the builder promoter and purchasers of flat.


24. A certified list from the builder of sold and unsold flats. If the flats have been sold, its cost and the names of purchasers and their addresses to be furnished by the builder promoter.

25. Where the promoter members are firms/ companies, a letter of authority from such firms/ companies authorising the promoter to sign on behalf of firm/company.

26. Affidavit from the chief promoter in lieu of undertaking by the builder in 'Z' form where the builder does not co-operate in respect of formation of a society to be given on Rs.100/- stamp paper, signed by the chief promoter and other promoters before the competent authority.

27. Along with an affidavit in lieu of 'Z' form, the chief promoter and other promoters who are signing the registration proposal should execute an indemnity bond on Rs.100/- stamp paper before the competent authority.

28. In case the promoter is not co-operating in forming the society, true copies of tax-bill from the local bodies or the corporation and receipt of payment thereof be attached, along with the registration proposal in place of architect certificate.



29. In case of such proposed societies names of 60% of the flat holders of the total number of flats constructed or proposed to be constructed as per the plan approved, must be included in statement 'A' to be attached to the registration proposal and out of these 60% promoters, 90% promoters must sign.

30. A copy of the order regarding reservation of name of proposed society is enclosed. If the period of reservation of name has expired, a copy of order extending the same is enclosed.

The estimated time for a society to get Registered is 2 – 3 months



THANK YOU