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REGISTRATION OF CHARITABLE ORGANISATION

2

Maharashtra Public Trusts Act, 1950

Registration

Background

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- Ancient scriptures bears reference of collective social entrepreneurship
- Charity plays very important part in the life of Indian, irrespective of the faith he follows
- Corporate Social Responsibility has now been made part of the Corporate India under new Companies Act 2013
- NGO/VO/NPO/Charitable Organisations has been given legal recognition with the enactment of Societies Registration Act 1860

Regulatory framework

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- S. 18
- S. 19
- Rule 6
- Rule 7
- Rule 7A
- Rule 8
- Rule 8A
- Schedule II
- Schedule II-A

Regulatory framework

5

- Regulatory structure of the these organisation has been complicated and is regulated by multiple regulations
- 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
- Both Central as well as State Governments empowered to Legislate laws under Seventh Schedule to the Constitution
 - ▣ 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 - Trust and Trustees
 - Entry 28 - Charities & Charitable Institutions, Charitable and religious endowments and religious institutions

Major Laws

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- Major laws governing Charitable organisations
 - ▣ Public Trusts Acts of various states in India
 - ▣ The Societies Registration Act, 1860
 - ▣ The Companies Act, 1956 & The Companies Act, 2013

Laws Governing NPOs

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- Religious Societies Act, 1880
- Religious Institutions (Prevention of Misuse) Act 1988
- The Rajasthan Societies Registration Act, 1958
- The Karnataka Societies Registration Act, 1960
- The West Bengal Societies Registration Act, 1961
- The Madhya Pradesh Registration Adhiniyam, 1961
- The Tamil Nadu Societies Registration Act, 1975
- Manipur Societies Registration Act, 1989
- The Jammu – Kashmir Societies Registration Act, 1998
- Societies Registration (Uttar Pradesh Amendment) Act, 2000

Laws Governing NPOs

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- ❑ Charitable and Religious Trusts Act, 1920
- ❑ Religious Endowments Act, 1863
- ❑ Charitable Endowments Act 1890
- ❑ Hindu Religious and Charitable Endowments Act 1951
- ❑ Official Trustees Act, 1913
- ❑ Civil Procedure Code, 1908
- ❑ Registration Act, 1908
- ❑ Mussalman Wakf Act, 1923
- ❑ Mussalman Wakf Validating Act, 1913
- ❑ Mussalman Wakf Validating Act, 1930
- ❑ Wakf Act, 1995

Laws Governing NPOs

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- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- Bihar Hindu Religious Trusts Act, 1950
- Maharashtra Public Trusts Act, 1950
- Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- Orissa Hindu Religious Endowments Act, 1951
- Rajasthan Public Trust Act, 1959
- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

Laws Governing NPOs

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- ❑ The Madras Hindu Religious And Charitable Endowments Act, 1951
- ❑ Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950
- ❑ Charitable Endowments (U.P. Amendment) Act, 1952
- ❑ United Provinces Charitable Endowments Rules, 1943
- ❑ Religious Endowments (Uttar Pradesh Amendment) Act, 1951
- ❑ 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)

Legislative history in Maharashtra

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- Bombay Province / State was governed by various Act
 - ▣ The Bombay Public Trust Registration Act 1935
 - Earlier Applicable to Hindus & Jain, latter made applicable to other communities and cosmopolitan trusts
 - ▣ Mussalman Wakf (Bombay Amendment) Act 1935
 - ▣ Parsi Trust Registration Act 1936
 - ▣ The Baroda Public Institution Act (Baroda Act No. VI of Samvat 1961)
 - ▣ Jamkandi Act No. 1 of 1948
- Under Chairmanship of Justice S R Tendulkar Committee was formed to investigate into question of administration and management of trust and endowments in the Province of Bombay
- Considering various suggestions The Bombay Public Trust Act 1950 was passed

Broad categorizations of NPO

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- Trusts
 - ▣ Formed or Registered under Indian Trust Act or State Trust laws or Indian Registration Act
- Societies
 - ▣ Formed and Registered under Indian Societies Act with / without State Amendments
- Companies
 - ▣ Formed and Registered under Companies Act 1956 or Companies Act 2013

Registration – Duty & Responsibility

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- Duty of the trustee of a public trust to make an application for the registration of the public trust
- Registration of the trust is mandatory
 - ▣ Irrespective of size, income, any scheme framed by the Court
- Trust is not defined
 - ▣ the Indian Trusts Act defines a trust as “an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by him for the benefit of another”
- MPT Act S. 2(13) - Public Trust means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860

Means & Includes

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- The words “means” & “includes”
 - Definition is exhaustive as well as inclusive
 - The word ‘means’ restricts the meaning of the words “public trust to express or constructive trust for either public, religious or charitable purpose.
 - The word ‘includes’ is a word of extension and, therefore a temple, a math etc. are specified in the definition of public trust with the specific object of including them within the definition
 - Rev. Fr. Farcisus Mascarenhas v. State of Bombay 62 Bom LR 790
 - Expression ‘means and includes’ indicates exhaustive nature of the definition
 - Mahalakshmi Mills v State of A.P. AIR 1989 SC 335

Express and Constructive Trust

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- Trust which are
 - ▣ Expressly created by the actual terms of some instrument or declaration. It is either executed or executory
 - Rangacharya v Guru Revati Raman, AIR 1928 All. 689
 - ▣ Constructive or implied – arise when property to which no express trust is for the time being attached, is acquired or held by a person in circumstances which render him bound in equity to hold it in trust for the benefit of some other person or object as cestui qua trust or beneficiary. It arises by operation of law
 - Munshi Abdul Rahim Khan v. Fakir Mohammad Shah AIR 1946 Nag. 401
 - Shripadprasad Beharilalji Acharyashri v. Lakhmidas Dungarbhai Barot AIR 1924 Bom. 193

Public Purpose (1 / 3)

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- The word 'Public' is followed by the words 'religious or charitable purpose or both'
- Trust need to be public religious or public charitable purpose or both
- Facts of the case and circumstances will require to be closely examined to determine whether public purpose has been established or not
 - ▣ State of Bombay v. S. R. Nanji AIR 1956 SC 294
- A broad test has been formulated by judicial decisions i.e. whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purposes
 - ▣ Somawanti v State of punjab AIR 1963 SC 151
 - ▣ Musamiyan Imam Haidarbax Razvi v. State of Gujarat AIR 1971 Guj. 158

Public Purpose (2/3)

17

- Public purpose is not a constant. The scope of an expression which conjugates general interest of the public must necessarily depend inter alia on social and economic needs and broad interpretation of the democratic ideal. It must alter as social and economic conditions alter. The social and economic theorist may contend for an extremely wide application of this concept of public purpose and over-emphasise the element of the general interest of the public. The reactionary on the other hand may strive for stringent restraints on its shifting boundaries and oppose any shift in emphasis. The true rule of the matter would seem to lie midway.
 - ▣ Motilal Vithalbai v. State of Gujarat AIR 1961 Guj. 93
- It is not necessary that object should benefit the whole of mankind or all the persons living in a particular country or province. It is sufficient if the intention is to benefit a sufficiently large section of public as distinguished from specified individuals.

Public Purpose (3/3)

18

- Trust must be substantially for public purposes. Setting small or negligible amount for the purposes of the public is not suffice
 - ▣ Thakur Pratap Singh v Brijnath Dass AIR 1937 All. 786
- The substance of the trust & real intention of the author of the trust need to be looked into, to understand whether trust is purely for public purposes or not
 - ▣ Shabbir Husain v Ashiq Husain AIR 1929 Oudh 225 (F.B.)
- A trust is not charitable unless it is directed to the public benefit
 - ▣ Oppenheim v. Tobacco Securities Trust Co. Ltd (1951) 1 All R. R. 31

Refusal to register by Trustee

19

- In case trustee refuse to get trust register, Deputy Charity Commissioner or Assistant Charity Commissioner
 - ▣ Suo Motu inquiry under section 19, it is neither necessary nor desirable to record a finding in the first instance on the preliminary issue
 - ▣ Need to depute inspector to collect relevant information
 - ▣ Issue summon and enforce the attendance of any person, including the trustee, and examine him on oath
 - Non responding to the summons, or refusal to furnish particulars, trustees would be liable for penalties u/s 73.
 - If it is concluded that a trust exists and such trust is a public trust, the trustee concerned will also be liable to prosecution u/s 66
 - Circular No. 65 of February 1954

Registration Application - requirements

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- Covering Letter
- Duly filled application form in Schedule II
- Court fee stamp of Rs. 2/- to be affixed on application form
- Certified copy of the Trust Deed
- Stamp duty on trust deed
- 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 of Trustees
 - **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
- Payment of filing / registration fees

Registration fees

21

- The fee shall be in cash as under :

Particulars	Amount
When the value of property of a public trust does not exceed Rs. 2,000	Rs. 3
When the value of property of a public trust exceeds Rs. 2,000 but does not exceed Rs. 5,000	Rs. 5
When the value of property of a public trust exceeds Rs. 5,000 but does not exceed Rs. 10,000	Rs. 10
When the value of property of a public trust exceeds Rs. 10,000 but does not exceed Rs. 25,000	Rs. 20
When the value of property of a public trust exceeds Rs. 25,000	Rs. 25

Time limit for Application

22

- Application for registration shall made-
 - a public trust created before this Act was applied to it
 - within three months' from the date of the application of this Act
 - a public trust created after this Act comes into force
 - within three months' of its creation
 - a public trust created or arises out of will
 - Within one month from the date of grant of probate or
 - Within Six months from the date of death of the testatorwhich ever is earlier. For sufficient reasons date can be extended by Asst. Dy. Charity Commissioner
 - Society registered under Societies Registration Act 1860
 - Within three months from the date of registration of Society

Application (1 / 2)

23

- Application to be made before the Deputy or Assistant Charity Commissioner of the region or 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.
- Application cannot be made at both places
- Substantial portion can be decided on either two basis i.e. value or quantum. No guidance in Act or Rules. Its question of fact & evidence. Onus lies on applicant.
- The main or substantial property is situated out of the State but a portion of it is within the State, MPT Act will not apply
 - ▣ Administrator v. C.C. 1963 Mah. L. J. 704

Application (2/2)

24

- Whether trust is situated in a particular State, the law of that State will apply to the Trust, even though any part of the trust property, whether large or small, is situated outside the State where the trust is situated
 - Anand Prasad v State of A. P. AIR 1963 SC 853
- Primary and main institution is situated in Mysore territory and part of the property is situated in the State of Maharashtra, it was held that trust is not required to be registered under MPT Act
 - Abhinava Vidya tirth v. Charity Commissioner, AIR 1967 Bom. 194
- Where property is situated in more than one State it would be incorrect to state that Trust would be governed partly by laws of one State and partly by the laws of another State
 - Mahant Ramswarup v Motiram Khandu AIR 1968 SC 422

Application details (1 / 4)

25

- Designation by which the public trust is or shall be known i.e. the name of the public trust
- Full names and addresses of the trustees and the manager
- Mode of succession to the office of the trustee or manger
- Objects of Trust
- Information about documents creating trust
- Particulars of Scheme
 - ▣ Copy of trust deed or scheme to be attached along with application

Application details (2/4)

26

- Details of movable value along with estimated value
 - ▣ Assets may be broadly classified
- Details of immovable assets along with estimated value
 - ▣ Place of location, property card etc.
 - ▣ Rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein
- Facts pertaining to the history of title to the trust property do not find a place in these provisions, because they do not constitute particulars in the sense in which that word is used in Section 18(5) and Rule 6
 - ▣ Keki Pestonji Jamadar And Anr. vs Kohodadad Merwan Irani And Ors. AIR 1973 Bom 130

Application details (3/4)

27

- Estimated value movable and immovable property should be the present market value
 - ▣ Circular No. 1 – dated 28th January, 1952
- Full Bench of the Madras High Court in the case of Rajagopala Naidu V. Ramsubramania Ayyar and other reported in I.L.R., Madras Series, Vol. XLVI-1923 (pp. 782-791) held that no market value of Temple. Accordingly it was held that under the Bombay Public Trusts Act, 1950, as under the Court-fees Act and the Land Acquisition Act, there can be no market value of idols & temple.
- Lands and other immovable property attached to the temple, and the other movable property belonging to the temple, will have to be valued at the present or current market value.
 - ▣ Circular No. 25 – dated 16th September, 1952

Application details (4/4)

28

- Sources of income of the trust
- Average gross annual income
- Average annual expenditure
 - ▣ Estimated on the income / expenditure of three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter
- Amount of average annual expenditure on
 - ▣ Remuneration to Trustee / Manager
 - ▣ Establishment and staff
 - ▣ Religious / Charitable Objects
 - ▣ Miscellaneous items

Signature on application (1 / 2)

29

- Application shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf
- That the facts mentioned in the said application are true to the best of his information and belief
- Application to be signed before
 - ▣ Asstt. or Dy. Charity Commissioner or
 - ▣ Justice of Peace, an Executive Magistrate or Court Officer empowered to administer oath u/s 139 of Civil Procedure Code or
 - ▣ Notary appointed under Notaries Act 1952 for the State of Maharashtra

Signature on application (2/2)

30

- In case the original applicant dies, the inquiry may be made with the help of the remaining trustee(s), which term will include the manager, that is, the person who for the time being either alone or in association with some other person or persons administers the trust property.
- In case, there is neither a trustee nor a manager surviving the original applicant, the inquiry may be made with the help of, and after giving Notice to the legal representatives of the deceased applicant.
 - ▣ Circular No. 37 – dated 19th November, 1952

Incomplete Application (1 / 2)

31

- It is noticed that the application is incomplete in any particulars, or does not disclose full particulars of the public trust, the Deputy or Assistant Charity Commissioner may return the application to the trustee, and direct the trustee to complete the application in all particulars or disclose therein the full particulars of the trust, and resubmit it within the period specified in such direction; and it shall be the duty of the trustee to comply with the direction

Incomplete Application (2/2)

32

- Applications for registration should be rejected
 - ▣ where particulars required to be furnished in any of the paragraphs of the application for registration are omitted to be furnished or where the particulars furnished are found wrong.
 - ▣ Copies of original documents required to be annexed to the application must be invariably certified to be true; where the originals consist of public documents their copies must be so certified by or under the authority of the Officer empowered to furnish such certified copies. In other cases, the copies may be certified as true by the trustee in possession of them.
 - ▣ If certified copies of documents required to be annexed to the application are not so annexed, the application should be rejected.
 - Circular No. 9 – dated 24th March, 1952

Inquiry for Registration (1 / 4)

33

- On the receipt of an application
 - ▣ under section 18, or
 - ▣ upon on application made by any person having interest in a public trust or
 - ▣ on his own motion,
- the Deputy or Assistant Charity Commissioner shall make an inquiry to 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 situate within his jurisdiction

Inquiry for Registration (2/4)

34

- the names and addresses of the trustees and manager of such trust
 - Enquiry not to appoint any trustee.
 - Merely to give finding who are trustee as on date of registration
 - The death of a trustee does not affect the liability of a public trust to get itself registered.
 - Ref Shripad Prasad Beharilalji v Laxmidas Dungarshibhai Barot AIR 1924 Bom. 193
- the mode of succession to the office of the trustee of such trust
 - Every instrument need to provide mode of succession
 - Findings are required to be entered in the register and such entries are final and conclusive u/s 21(2)
 - Succession can be by way of election, co-option, nomination, succession or customs

Inquiry for Registration (3/4)

35

- ▣ the origin, nature and object of such trust
 - Objects to valid and legal. In case objects conflicts with existing law, law would prevail.
 - In case the Deputy/Assistant Charity Commissioner, after having recorded their findings, finds that the 'objects of the trust' mentioned by the trustees in their application are described 'vaguely' e.g. object of the trust is mentioned as "Religious and Charitable". This does not specify the particulars of religious or charitable objects.
 - He may start suo motu inquiry under Section 22-A of the Bombay Public Trusts Act, 1950, for particulars specifying distinctly as to what the objects are.
 - Circular No. 124 – dated 30th September, 1965.

Inquiry for Registration (4/4)

36

- Remuneration to Trustee
 - The trustee has shown in registration application certain amount of expenditure towards remuneration unwarrantedly and /or unreasonably and the Dy./Asstt.Charity Commissioner has either accepted this fact without any scrutiny or inquiry into or has overlooked the matter with the result that the expenditure has got a sort of sanctity in the accounts of the trust which may be detrimental to the trust.
 - The Regional officers are, therefore, directed to be more careful about this matter in future. They may either consider this matter fully and give a clear decision on the point while dealing with the statutory issue No.7 or they may reserve if necessary, the issue (as to the legality and propriety of the trustee's claim to remuneration) for future inquiry.
 - Circular No. 120 Dt 21-Sep-1962
- the amount of gross average annual income and expenditure of such trust, and
- any other particulars as may be prescribed under sub-section 5 of section 18.

Public Notice

37

- When on application enquiry is initiated as to whether public trust exists or whether property belongs to a public trust, the Asst. or Dy. Charity Commissioner shall give public notice of such enquiry
- Public notice can be given by
 - ▣ Advertisement in one or more local news paper having wide circulation in the region or
 - ▣ Beat of drums or
 - ▣ Any other method

To be considered adequate having regards to the value of the property and capacity of trust to bear cost of advertisement in news paper

 - ▣ By affixing copy of such notice on notice board of his office and also on some conspicuous part of property and
 - ▣ Issue of notice to the person in occupation of possession of such property
- No objection can be raised beyond the period of 30 days as specified in public notice

Information - immovable property

38

- The trustee of the public trust is required to send a memorandum in the form – Schedule IIA, containing the information
 - name and description of the public trust,
 - relating to the immovable property 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 Registration Act.
- Memorandum shall be sent within three months from the date of creation of the public trust
- Shall be signed and verified by the trustee or his agents specially authorized by him in this behalf in the manner as required for the purpose of filing registration application

Documents received during Registration

39

- Any copies documents copies of trust deed, scheme or certified copies of record of rights, produced along with the application shall be retained.
- Original trust deeds or wills are produced with the application for registration they should be returned and only copies would be held placed on record.
 - ▣ Circular No. 78 – dated 18th December, 1954.
- Usually original trust deed is stamped by the office of the registering authority

Certificate of Registration

40

- When a public trust is enrolled in the Register of Public Trusts a certificate in the following form shall be issued to the trustee in token of the registration. Such certificate shall be signed by the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office and shall bear the official seal.
- If any certificate of registration is lost, destroyed or defaced, the Deputy or Assistant Charity Commissioner may, on an application for the purpose, issue a duplicate thereof (the word “Duplicate” being clearly stamped in red ink) on payment of such charge therefore not exceeding ‘two rupees’ as the Deputy or Assistant Charity Commissioner may deem fit.

Date of Registration

41

- Date of application shall not be deemed date of registration
- Date of passing order is the date of Registration

Stamp Duty on Trust Instrument

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Description of the Instrument	Stamp Duty
(a) Where there is disposition of property -	
(i) Where the Trust is made for a religious or charitable purpose	Two percent of a sum equal to the amount settled or market value of the property settled
(ii) In any other case	It will be payable as per Article 25 – clause (a), (b) & (c) of Conveyance
(b) Where there is no disposition of property -	
(i) Where the trust is made for a religious or charitable purpose	Five Hundred rupees
(ii) In any other case	Five Hundred rupees

Effect of non-registration

43

- Trustee failing to apply for registration is liable for prosecution u/s 66
- No Suit to enforce a right on behalf of a Public Trust which is not registered shall be heard or decided in any Court – S. 31

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Societies Registration Act, 1860

Registration

Background

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- The concept of societies is not new to India.
- Like other social systems in India before the coming of the British, most of these societies were unorganized and operated in a haphazard manner. The Societies Registration Act, 1860 brought changes in the same and tried to consolidate the activities of a society in an organized manner.
- Until 1947, the Act did not undergo any major changes; registration remained largely a voluntary effort.

Regulatory framework

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- S. 2
- S. 3
- S. 3A
- S. 20
- Rule 4
- Rule 5
- Rule 6

Registration background (1 / 2)

47

- Section 2(13) of the Maharashtra Public Trust Act 1950 includes Societies registered under Societies Registration Act 1860 within the meaning of word 'Public Trust'
- S. 18 r.w.s. 2(13) mandates Societies registered under Societies Registration Act 1860 also to be registered, under the Maharashtra Public Trusts Act 1950, within three months from the date of registration
- Registration authority for the registration of Trust and Societies are same in the State of Maharashtra.
- There would be two registration numbers: one under the Maharashtra Public Trust Act and another under the Societies Registration Act.

Registration background (2/2)

48

- Without CC office is not in a position to know how their affairs and no supervision over these societies can be exercised. Further not contribution is also received.
- Regional Offices are required are entrusted to ensure that Societies are registered.
- Wherever the trustees, after two notices, fail to get the societies so registered, the Regional Officers should start suo motu inquiry for registration and proposal should be put up for the prosecution of such trustees.
- The notice to the trustees may be sent in the form of a letter. The date to be fixed in the letter should be within a month from the date of the letter.
 - ▣ Circular No 110 dt. 26-06-1959

Societies to be registered - Activities

49

The following societies may be registered under this 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,
- public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.

Registration – Documentation

50

- Letter requesting for registration stating in the body of the letter various documents annexed to it. The letter is to be signed by all the subscribers to the Memorandum or by a person duly authorised by all of them to sign on their behalf.
- Memorandum of Association, in duplicate, neatly typed and pages serially numbered.
 - ▣ It need not be executed on stamp paper
- Rules and Regulations in duplicate.
- Where there is a reference to any particular existing places of worship like temple, mosque, church, etc., sufficient documentary proof establishing legal competence and control of applicant society over such places should be filed.

Registration – Documentation

51

- An affidavit of the President or Secretary of the society, on a non-judicial stamp paper of prescribed value, stating the relationship between the subscribers, duly attested by an Oath Commissioner, Notary Public or First Class Magistrate.
- Proof of registered office, rent receipt or no objection from the landlord
- Authority letter duly signed by all the members of the managing committee
- 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.

Memorandum of Association– Section 2

52

- The memorandum of association shall contain the following things:
 - ▣ The name of the society
 - ▣ Registered Office
 - ▣ The Aims and object of the society
 - ▣ The names, addresses and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted
 - ▣ Declaration –

“We, the following persons, being desirous of forming ourselves into a society under the Societies Registration Act, 1860, have subscribed our names of this memorandum”.

Memorandum of Association – Rule 4

53

- Such declaration shall be signed by any seven or more persons associated with the society.
- It shall also be dated.

Rules & Regulations

54

- A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.
- Broad Contents of Rules & Regulations
 - Name of Society
 - Address
 - Membership
 - Meeting Members & Executive / Governing Committee
 - Accounts
 - Executive / Governing Committee, Officer bearers and their election
 - Dissolution
 - Various procedures concerning objects

Fees and Impact of Registration

55

- Fees for registration shall be Rupees Fifty payable in cash
- Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act.
- A society registered 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
- Society can sue and be sued in the name of President, Chairman etc. The suit may be regarded as being on behalf of the members who constitute society
 - *Styavrat Sidhantalanakar v Arya Samaj* AIR 1946 Bom. 516

Registration Societies Categorisation

56

- Societies formed for a religious or charitable purpose or for both and registered under the Societies Registration Act are required to be entered in Section (F) of the Public Trusts Register.
- Branches of such societies when registered as independent public trusts should also be entered in Section (F) of the Public Trusts Register.
 - Circular No. 39 – dated 9th December, 1952.

Registration with undesirable names

57

- No society shall be registered by a name which, in the opinion of the Registrar, which is undesirable,
 - ▣ identical with, or so nearly resembles the name by which any other existing society has been previously registered, or
 - ▣ likely to deceive the public or members of either society,
 - ▣ without the previous permission of the Government concerned, suggests or is calculated to suggest the patronage of the Government or connection with any body constituted by the Government or any local authority,
 - ▣ or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Registrar.

58

Section 8 Company - Companies Act, 2013

Registration

Introduction

59

- Main Instrument : For a section 8 company, the main instrument is a Memorandum and Articles of Association (no stamp paper required).
- Previously governed by Section 25 of Companies Act, 1956
- Section 8 company will enjoy all the privileges and be subject to all the obligations of Limited Company
- As per Section 2 (85) Proviso (B) – Section - 8 Company will not treated as Small Company.
- Section 8 Companies are exempted from adding the suffix ‘Limited’ or ‘Private Limited’ at the end of their name.
- Without Share Capital: These companies can be formed with or without share capital. In case they are formed without capital, the necessary funds for carrying the business are brought in form of donations , subscriptions from members and general public.

Application for Name with ROC

61

Application for Name with ROC – Rule 8(7)

- Every Section 8 Company applying for name shall include the words:
 - Foundation
 - Forum
 - Association
 - Federation
 - Chambers
 - Confederation
 - Council
 - Electoral Trust and the like etc.

Contents of Memorandum of Association

62

- Clauses of Memorandum of Association:
 - Name Clause
 - Registered office Clause
 - Registered Situated in the State of
 - Objects Clause
 - Object shall extend to State / States / Country / Countries
 - Profit to be utilised for the objects of Company
 - No remuneration paid to members / officer
 - No alternation in the MoA / AoA without prior approval of Registrar
 - Capital Clause
 - Liability Clause
 - Winding Clause
 - On winding of no distribution to members
 - Association Clause

Contents of Articles of Association

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- Broad contents of Articles of Association:
 - Capital
 - Transfer and Transmission of Shares
 - General Meeting
 - Proceedings at a General Meeting
 - Directors
 - Appointment of directors
 - Managing or Whole Time Director
 - Proceedings of the Board
 - Powers of Directors
 - Accounts and Audit
 - Operation of Bank Accounts
 - Indemnity
 - The Seal
 - Winding up

Comparison between Trust, Society & Section 8 company

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Points of Differences	Trust	Society	Section 8 Company
Governed by	Maharashtra Public Trust Act, 1950	Societies Registration Act, 1860	Companies Act, 2013
Authority	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 trust	As a company u/s 8 of the Companies Act.
Registration Document	Trust deed	Memorandum of Association and Rules and Regulations	Memorandum and articles of association. and regulations
Stamp Duty	Trust deed is to be executed on non-judicial stamp paper, varies 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 two for Private Ltd. Co. and 7 for Public Ltd. Co. No upper limit.
Board of Management Paras Savla	Trustees / Board of Trustees	Governing body or council / managing or executive committee	Board of Directors / Managing committee

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Comparison between Trust, Society & Section 8 company

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Points of Differences	Trust	Society	Section 8 Company
Legal Title	Legal title of the property of a trust vests in the hands of trustees.	In a society, all properties are held in the name of the society	In section 8 Company, all properties are held in the name of Company.
Revocable/ Irrevocable	Indian public charitable trusts are generally irrevocable.	Societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members.	A section 8 Company may be dissolved.
Annual Compliance	There is no requirement of annual return filing.	Societies must file annually, with the Registrar of Societies, a list of the names, addresses and occupations of their managing committee members	Need to file annual accounts and annual return of company with the RoC.
Online filing facility	Online filing facility is not available.	Online filing facility is not available. Everything has to be submitted in the office of Registrar of Societies in hard copy.	Online facility is available. The Compliances, like annual filing, appointment & removal of directors, shifting of registered office, & others can be done online at MCA portal.

Comparison between Trust, Society & Section 8 company

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Points of Differences	Trust	Society	Section 8 Company
Transparency	Low	Moderate	High
Name	Easy to choose	Easy to choose	Prior approval from Registrar of Companies
Foreign Contribution Regulation Act	Eligible	Eligible	Eligible

Questions

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