

THOUGHTS ON CHARITABLE ORGANIZATIONS

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INTRODUCTION

Non-profit organizations (NPOs) are known by various names like Charitable Organizations, Voluntary Sector/Organizations, Non-Profit Institutions, Non-Government Organisations (NGOs), Civil Society Organisations (CSOs) and is often referred to as the 'Third Sector' of the economy, the other two sectors of the economy being the primary sector and the secondary sector. NPOs are seen across various classifications of activities namely culture and recreation, education and research, health, social services, environment, development and housing, law etc. Some charitable organisations are engaged in the creation and management of monuments, public buildings or works. Many charities work to enhance social services, lessen government burden and combat community deterioration. Public safety, child welfare, civil rights, and elimination of prejudice and discrimination are some other social centric activities that charities concern themselves with. A non-profit organization is an entity organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers. These NPOs take the form of Trusts, Societies, Section 8 Companies and Non trading corporations.

A Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. Public charitable trusts may be established for a number of purposes, including poverty relief, education, medical relief, the provision of facilities for recreation, and any other objective of general public utility. The Public Trusts are primarily

governed by the State Public Trusts Act. The Indian Trusts Act, 1882 governs the Private Trust. A Society has a more democratic set up with membership and an elected body to manage the society. A minimum of seven members are required to form a Society. One can set up a registered Society under the Societies Registration Act of 1860. The Societies Registration Act, 1860, is a central legislation, with each state adopting certain modifications. Section 8 of the Companies Act, 2013 deals with the formation of companies with charitable objectives. Any person or an association of persons intending to register a limited liability company for objects specified in section 8 of the Companies Act 2013, can opt to apply for registration as Section 8 Company.

In addition to registration as a society, trust or Section 8 Company, a nonprofit organization engaged in certain activities might also require special license/permission from the Government. In addition, various legislations are applicable to the sector.

MEANING & OBJECTIVES OF CHARITABLE ORGANIZATIONS

A non-profit or not for profit is a tax-exempt organization that serves the public interest. In general, the purpose of this type of organization must be charitable, educational, scientific, religious or literary. The structure or management is not the essence of the charitable organization, rather it is the objectives, which distinguish a charitable organization from a business organization. Non-profit organizations in India today encompass a wide-range of activities, including designing and implementing innovative programs in various sectors of development, research, documentation, and training and advocacy.

The activities which constitute 'charitable purpose' is defined in various acts and the concept of "charitable purpose" may be defined differently in different acts.

Section 8 companies under the Companies Act 2013 are formed for the limited purposes of "promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object".

According to Section 2(15) of the Income Tax Act, 1961, Charitable purposes include "relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds,

forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility”. Section 2(15) defines the expression “charitable purpose” in an inclusive manner. The aforesaid definition is not exhaustive and, therefore, purposes similar to the purposes mentioned in the aforesaid definition will also constitute charitable purposes. Further, the words “any other object of general public utility” are of wide import. However, the object should not be of utility for only a few persons.

Whatever the meaning of charitable purpose as defined by their regulatory act, a charitable organization may be known by different names in India and they may take up a variety of activities. Activities generally undertaken by charitable organizations include the following:

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

CONSTITUTION PROVISIONS PERTAINING TO CHARITABLE ORGANISATIONS

The Seventh Schedule to the Constitution of India specifies the distribution of powers and functions between the Union and the State legislatures with respect to certain matters. It embodies three lists; namely, the Union List, the State List, and the Concurrent List; List I (Union list) of Seventh schedule of the Constitution of India, contains subjects for which the Parliament is empowered to make laws, List II (State list) contains subjects for which states are competent to legislate and List III (Concurrent List) contains subjects that both the Union Parliament and state legislatures can legislate on.

The subjects pertaining to Trusts, Charities and Charitable Institutions fall under the Concurrent List in the Seventh Schedule to the Constitution of India.

The other relevant Entries in the Seventh Schedule to the Constitution of India are as follows:

- The Union list (List I) - Exclusive power of the Union to make laws
 - Entry 44 – “Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities”.
- The State list (List II) – Exclusive power of the State to make laws
 - 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) – Both Union and State have power to make Laws
 - Entry 10 – “Trusts and Trustees”
 - Entry 28 – “Charities and charitable institutions, charitable and religious endowments and religious institutions”.

LAWS GOVERNING CHARITABLE ORGANIZATIONS

Charities can be formed in multiple ways and may be subject to various acts of legislation. There is no single piece of legislation, which comprehensively governs the sector and similarly no single regulator exists in India, in contrast to other countries where a Charity Commissioner regulates the individual organizations on nationwide basis. Different legal provisions exist at the national and state level. Some states in India have enacted their own law to govern certain forms of charities.

No national law governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts. If the charitable institution is formed as a Public Trust, it will be governed by the Public Trust Act applicable in the relevant State. However, if no Public Trust Act exists in that state, then the applicable legislation will be the Indian Trusts Act 1882. Indian Trusts Act 1882 is a national law and deals with private family trusts and becomes applicable where there is no State act for public trusts. Various State Laws are applicable e.g. all public charitable trusts in the state of Maharashtra are governed by the Maharashtra Public Trusts Act, 1950. The same Act, with minor changes, is also operational in the state of Gujarat. In Rajasthan, The Rajasthan Public Trust Act 1959 applies, while in Madhya Pradesh, The Madhya Pradesh Public Trusts Act 1951 applies. In certain southern states of India, there are endowment Acts, while a number of states in India have no trust Act at all.

If the charitable institution is formed as a Society, it will be governed by the Societies Registration Act, 1860. The charitable institution can also be formed as a non-profit company under section 8 of the Companies Act, 2013. Apart from the above legislations, the Income Tax Act 1961 will be applicable to charitable institutions. And in the case of foreign contributions to these charitable institutions, the Foreign Contribution (Regulation) Act, 2010 will be applicable.

Moreover, many state and central government agencies have regulatory authority over these not-for-profit entities. For example, all not-for-profit organizations are required to file annual tax

returns and audited account statements with various agencies. At the state level, these agencies include the Charity Commissioner (for trusts), the Registrar of Societies (for societies) and the Registrar of Companies (for section 8 companies). At the national or federal level, the regulatory bodies include the Income tax department and Ministry of Home Affairs.

Main laws governing Charitable Organizations:

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

Other Laws governing charitable organizations:

- 8) The Religious Societies Act, 1880
- 9) The Religious Institutions (Prevention of Misuse) Act 1988
- 10) The Charitable and Religious Trusts Act, 1920
- 11) The Religious Endowments Act, 1863
- 12) The Charitable Endowments Act 1890
- 13) The Code of Civil Procedure, 1908
- 14) The Registration Act, 1908
- 15) The Indian Stamp Act, 1899
- 16) The Waqf Act, 1995

State Laws relating to Charitable Organizations:

- 17) The Rajasthan Societies Registration Act, 1958
- 18) The Karnataka Societies Registration Act, 1960
- 19) The West Bengal Societies Registration Act, 1961
- 20) The Madhya Pradesh Registrikaran Adhiniyam, 1973
- 21) The Tamil Nadu Societies Registration Act, 1975
- 22) The Manipur Societies Registration Act, 1989

- 23) The Jammu and Kashmir Societies Registration Act, 1998
- 24) The Societies Registration (Extension To Arunachal Pradesh) Act, 1978
- 25) The Meghalaya Societies Registration Act, 1983
- 26) The Mizoram Societies Registration Act, 2005
- 27) The Andhra Pradesh Societies Registration Act, 2001
- 28) The Himachal Pradesh Societies Registration Act, 2006
- 29) The Haryana Registration and Regulation of Societies Act, 2012
- 30) The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955
- 31) The Mysore Societies Registration Act, 1960
- 32) The Hindu Religious Institutions and Charitable Endowments Act, 1997
- 33) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
- 34) The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- 35) The Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987.
- 36) The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997
- 37) The Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950
- 38) The Orissa Hindu Religious Endowments Act, 1951
- 39) The Bihar Hindu Religious Trusts Act, 1950
- 40) The Maharashtra Public Trusts Act, 1950
- 41) The Rajasthan Public Trust Act, 1959
- 42) The Madhya Pradesh Public Trusts Act 1951

PUBLIC CHARITABLE TRUSTS

A Trust is a relationship whereby property is held by one party for the benefit of another. A trust is created by a settlor, who transfers some or all of his or her property to a trustee. The trustee holds that property for the trust's beneficiaries. The maker of the Trust exclusively transfers the

ownership of a property to be used for a particular purpose. If the purpose is to benefit particular individuals, it becomes a Private Trust and if it concerns some purpose of the common public or the community at large, it is called a Public Trust. Public charitable trusts, as distinguished from private trusts, are designed to benefit members of the public. There is no central law governing public charitable trusts, although most states have "Public Trusts Acts." In the absence of a Trusts Act in any particular state or territory, the general principles of The Indian Trusts Act 1882 are applied. Apart from that, the Charitable and Religious Trusts Act, 1920, The Charitable Endowments Act, 1890, The Wakf Act 1995 and the State Public Trust Acts are the relevant legislations for the recognition and enforceability of public trusts. All public trusts should also be registered under The Registration Act, 1908. If the trust intends to receive foreign contribution, then it must also register under the Foreign Contribution (Regulation) Act 2010.

Formation

A trust can be established by two or more individuals and registered under the Trusts Act of the State. The main instrument of trust is the trust deed which is executed on non-judicial stamp paper. Trustees generally hold office for life, unless otherwise provided in the trust deed. New trustees are generally appointed by invitation by the surviving trustees. The minimum and maximum number of trustees should be specified in the trust deed. A trust is generally irrevocable.

Like the private trusts, public trusts may be created *inter vivos* or by Will. In the case of *Hanmantram Ramnath vs Commissioner Of Income-Tax Bombay*, it was held that "Although the Indian Trusts Act, 1882 does not specifically apply to public charitable trusts, there are three certainties required to create a charitable trust. They are:

- (i) a declaration of trust which is binding on settlor,
- (ii) setting apart definite property and the settlor depriving himself of the ownership thereof, and
- (iii) a statement of the objects for which the property is thereafter to be held, *i.e.* the beneficiaries.

It is essential that the transferor of the property *viz.* the settlor or the author of the trust must be competent to contract. Similarly, the trustees should also be persons who are competent to

contract. It is also very essential that the trustees should signify their assent for acting as trustees to make the trust a valid one.

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

When once a valid trust is created and the property is transferred to the trust, it cannot be revoked, If the trust deed contains any provision for revocation of the trust, provisions of sections 60 to 63 of the Income-tax Act, 1961 will come into play and the income of the trust will be taxed in the hands of the settlor as his personal income.

Public trusts can be formed by any person under general law. Under the Hindu Law, any Hindu can create a Hindu endowment and under the Muslim law, any Muslim can create a public Wakf. As a general rule, Public Trusts can be constituted by any person, who has power of disposition over a property and has capacity to create a trust of such property.

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

Who can be a Trustee?

Every person capable of holding property can become a trustee. However, where the trust involves the exercise of discretion, he can accept or act as a trustee only if he is competent to contract. No one is bound to accept trusteeship. Any number of persons may be appointed as trustees. However, no trust is defeated for want of a trustee. Where there is no trustee in existence, an official trustee may be appointed by the court and the trust can be administered.

Who can be a Beneficiary?

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

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

Requisites of a Trust

- i. The existence of the author/settler of the trust or someone at whose instance the trust comes into existence.
- ii. Clear intention of the author/settler to create a trust.
- iii. Purpose of the Trust.
- iv. The Trust property
- v. Beneficiaries of the Trust.
- vi. There must be divesting of the ownership by the author / settlor of the trust in favour of the beneficiary or the trustee.
- vii. The main instrument of any public charitable trust is the trust deed, wherein the aims and objects and mode of management (of the Trust) should be enshrined.
- viii. Unless all these requisites are fulfilled a trust cannot be said to have come into existence.

Important elements of a charitable trust

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

Registration of Public Charitable Trust

Typically, a public charitable trust must register with the state Charity Commissioner having jurisdiction over the trust. The registration process for trusts varies from state to state. In states where there is no state Trusts Act or Charity Commissioner, the trustees may register the Deed of Trust with the office of the Registrar or Sub-Registrar established by the State Government under The Registration Act 1908. The key registration document is the Deed of Trust. The Deed must specify the name of the trust, the names of its founders and trustees, the purposes of the trust, and how the trust should be governed. The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered. After this, the trust may also register with the Income Tax authorities under The Income Tax Act 1961 so that it becomes eligible to obtain tax exemptions under that Act. If the trust intends to receive foreign contribution, then it must also register under the Foreign Contribution (Regulation) Act 2010.

Registration of Trust Deed Procedure in India

For a public trust, whether in relation to a movable property or an immovable property, the registration is optional but always desirable. A registered Trust Deed has the following advantages:

- a) A registered Trust Deed becomes an official document which carries support and force of law.
- b) A registered Trust Deed effectuates transmutation of possession

c) A conveyance of trust property to the trustee under a registered deed is generally not open to challenge.

However, in case of a charitable or religious trust, in relation to an immovable property, for claiming exemption U/s. 11 of the Income Tax Act, it is essential that the instrument of trust is duly registered [CIT v. Trustees of Dr. Divekar Charity Trust {1977} 110 ITR 227 (BOM.)]

Reporting Requirements

In case of Public trusts, Annual report and annual return of income should be filed with the authorities having jurisdiction over the region where trust is registered. Audited accounts and income and expenditure statements need to be submitted to the Charity Commissioner's office. All trusts have to file annual reports. Notices are sent to defaulters. In cases of persistent default and in case of mismanagement and misuse of funds, the Charity Commissioner is empowered to sanction prosecution.

SOCIETIES

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

Seven or more persons may come together for a common purpose in a general body and form a society. Unlike trusts, a society has a more democratic set up with membership and an elected body to manage the society. The original members of a society can continue to remain in control as long as they are elected to the managing committee, but at the same time can opt out of the society if they wish, which trustees cannot. The society can exist as long as the members wish, but there is always a possibility of complete renewal of members and objects can be modified easily. It is easier to wind up a society than it is to wind up a trust.

A minimum of seven members are required to form a society. They have to file a memorandum of association on non-stamp paper, setting out the objectives of the society before the registrar of societies in the state in which the society is set up.

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

Formation

A society can be established by seven or more individuals and registered under the Societies Registration Act, 1860. In some states like Maharashtra and Gujarat, all societies must also simultaneously be registered as trusts under the Maharashtra Public Trusts Act, 1950. The main instrument of a society is the memorandum of association and rules and regulations which need not be executed on stamp paper. The Memorandum should contain name, registered office, area of operation, objects, name of members of governing body and names of promoters. The Rules and Regulations should include all the provisions that would regulate functioning of the proposed Society; it should comprise membership, powers and responsibilities of office-bearers, meetings, quorum of meetings, termination of membership, operation of bank account and financial year, procedure of dissolution or merger of Society if so required, and other general rules required to manage the society. Members of the managing committee/governing body generally hold office for a certain period of time and may stand for re-election, if necessary. A society may also be wound up if three-fifths of the members of the general body of the society so desire.

Registration and its Procedures

Societies are registered under the Societies Registration Act, 1860, which is a federal act. Section 20 of the said Act specifies the types of societies that can be registered. 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).

The procedure of registration varies from state to state, however, generally the application should be submitted together with:

- Decide upon the name of the society
- Memorandum of Association and signatures on the same
- Rules and Regulations/Bye-laws of the society and signatures on the same
- All the subscribers (minimum seven) should sign each page of the memorandum and the signatures should be witnessed by Oath Commissioner/ Notary Public or First Class Magistrate with their rubber / official stamp and complete address.
- Persons desirous of forming a society should also become members of the first governing body. An outsider cannot become member of the governing body in the first instance.
- 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.
- Following certificate should be given at the end of the rules and regulations: ""Certified that this is the correct copy of rules and regulations of the Society"".
- File the required documents with the Registrar of Societies

All the documents which are required for the application for registration should be submitted in duplicate, together with the required registration fee. Unlike the trust deed, the memorandum of association and rules and regulations need not be executed on stamp paper. On completion of all the formalities the Registrar will issue a Certificate of Registration and copies of the Memorandum and Rules & Regulations certified.

Effect of registration of a society

A society registered under the Act enjoys the status of a legal entity apart from the members constituting it. As such it can acquire and hold property and can sue and be sued. The society should be registered under the Act to acquire the status of juridical person.

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

All societies in India have to be registered under the Societies Registration Act 1860. By and large, the registration and filing procedures are similar in all the states.

Reporting Requirements

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

COMPANIES REGISTERED UNDER SECTION 8 OF THE COMPANIES ACT, 2013

The Central Government may permit companies to be incorporated as Companies with Charitable Objects etc. The Government grants them a special license under section 8 of the Companies Act 2013, to drop the words 'Private Limited' or 'Limited' from their name subject to the following conditions:

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

Profit generated by Section 8 Companies cannot be used for purposes other than charitable objectives and cannot be distributed among shareholders. They are mandated to comply with the provisions of the Companies Act 2013, require consent for changes to the charter documents like the Articles of Association and Memorandum of Association, required to maintain books of accounts, file returns with the Registrar of Companies (ROCs) and comply with all laws like Goods and Services Tax Act, Income Tax Act etc.

Registration and its Procedures

Any person or an association of persons intending to be registered as a section 8 company may apply to the Central Government for registration as such if it satisfies the conditions for registration as mentioned herein above.

The following documents and procedure are required to complete the incorporation process for a Section 8 company in India:

- Digital Signature Certificate (DSC) for the proposed directors of the Section 8 Company. Form DIR-3 is used for obtaining the DIN and should be filed along with the DSC of the proposed directors.
- Director Identification Number (DIN) for the proposed directors. The DIN number is a unique identification number issued by the MCA to individuals who wish to be directors of a company in India.
- Reserve the name of the proposed Company with the Ministry of Corporate Affairs (MCA). The name should be unique and not be similar to any existing company name. Form INC-1 is used for reserving the company name.

- Application for Incorporation along with the Company's Memorandum of Association (MOA) and Articles of Association (AOA). Declaration by the first subscriber(s)
- Obtain a license for the Section 8 Company by filing Form INC-12 and it should be filed along with the necessary documents.
- Proof of office address, such as a copy of utility bills like electricity, water, or gas bill
- Residential and identity proof of nominees and subscribers
- Applicant's identity and residential proof
- Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN), and Bank account details

After obtaining the license, the MCA issues a Certificate of Incorporation in Form INC-16. This certificate confirms the incorporation of the Section 8 Company.

In addition to registration, a non-profit engaged in certain activities might also require special license/permission. Some of these include (but are not limited to):

- A place of work in a restricted area (like a tribal area or a border area requires a special or by the relevant local authority (i.e., district magistrate).
- To open an office and employ people, the NGO should be registered under the Shop and Establishment Act.
- To employ foreign staff and to receive foreign contribution, it needs to be registered under the Foreign Contribution (Regulation) Act 2010
- A foreign non-profit setting up an office in India and wanting staff from abroad needs to be registered as a trust/society/company and also needs permission from the Reserve Bank of India and a No Objection Certificate from the Ministry of External Affairs. The intended employee also needs a work visa.

Reporting Requirements

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

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

Further to note:

1. 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.
2. 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.

3. The Central Government may, by order, revoke the licence granted to a company registered under section 8 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
4. A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
5. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

NON-TRADING CORPORATIONS

Non-trading corporations (NTCs) appear in The Constitution of India under Schedule VII - List II – State List under the entry 32. Non Trading Corporation, being covered under the List II are under the state level Acts, and are monitored by Registrar of firms. NTC impart Non Trading activities for the benefit of its member, without carrying commercial or profit making activities.

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

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

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

- The Punjab Non-Trading Companies Act, 1960

GOVERNANCE OF CHARITABLE ORGANIZATIONS

Corporate Governance is a simple task of running an organization in a more efficient and transparent manner. It is all about ethical conduct in business. It is beyond the realm of Law. It stems from the culture and mindset of Management and cannot be regulated by legislation alone. Organizations can become “Winners” by building on Attitude, Leadership, Motivation and Values.

In a broader sense, good corporate governance is the extent to which companies are run in an open and honest manner- is important for overall market confidence, the efficiency of international capital allocation, the renewal of countries’ industrial bases, and ultimately the nations’ overall wealth and welfare.

Good governance requires the leadership of a competent and committed governing body. It is advisable for NGOs to incorporate in their Memorandum and Articles of Association or Constitution the key elements of the governance structure (e.g. methods for election of Board members, terms of office, meeting arrangements and rules governing declaration of conflict of interest). The Board has the duty to ensure the laid down policies and procedures are complied with.

Principles of Corporate Governance

Studies have found that corporate governance developments bode well for both organisations and their internal audit staffs. A strong governance record increases the trust and creates a good reputation which increases its appeal to investors and others in the financial community. In addition, research suggests that governance-related investments can have a positive bottom-line impact as the heightened awareness and disclosures leads to avoidance of legal liabilities, preservation of organisation’s reputation and prevention of lost productivity.

A strong system of corporate governance is usually marked by the following fundamental principles:

- Ethical and disciplined corporate behavior
- Independent and considered judgment
- Parity between accountability and responsibility
- Transparency and effective and adequate disclosures.
- Success of a good governance culture depends upon the perpetual existence and effective and, most important, ethical interplay of these planks not only by themselves, but also with other variables in the social and economic environment (i.e., the stakeholders) of the company

Good Corporate Governance Framework

Good Corporate Governance serves important objectives like:

- It enhances the performance of corporations - Improved governance structures and processes help ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance.
- Longevity and growth of the corporation - Longevity is the best index of success of a corporation, and good governance is a necessary condition for longevity and growth
- Creates an environment that motivates managers to maximize returns on investment, enhance operational efficiency and ensure long-term productivity growth.
- Ensures the conformance of corporations with the interests of investors and society, by creating fairness, transparency and accountability in business activities among employees, management and the board

- Improves access to capital - Corporate growth requires investment. Good corporate governance increases public confidence in a corporation, and lowers the cost of capital for investment.
- Attracts Global Investment - Today, global capital is not constrained by national boundaries, and flows where it finds a hospitable climate. There is tremendous competition among all nations – developed and developing – to attract global entrepreneurs to create high-quality, high-income jobs. These entrepreneurs require massive inflows of capital. They realize that an effective governance model is a big plus in attracting investment
- Adds value to clients. In addition to the benefits to individual client companies, working to improve corporate governance contributes more broadly to promote sustainable investment
- Reduces investment risk.
- Avoids reputational risk for involvement with companies with poor governance or, in the worst cases, corporate scandals.

Corporate governance mechanisms differ as between countries. The governance mechanism of each country is shaped by its political, economic and social history as also by its legal framework. The mechanism could also vary depending on the organization structure and the size of the organization.

Corporate Governance philosophy must be based on the principles of Openness, Trust, Integrity and Accountability. The following is an outline of a sound corporate governance framework:

I. Supervisory Board/ Governing Board/ Board of Governance- At the core of any corporate governance practice should be the Supervisory Board, which should oversee how the management serves and protects the long-term interests of all the stakeholders of the company. An active, well-informed and independent Board is necessary to ensure the highest standards of corporate governance

II. Special Purpose Board Committees - The Board committee consists of Audit committee, Nomination Committee, Remuneration (Compensation) Committee, Shareholders (Investor grievance) committee

III. Internal Control System and Risk Management Framework - Internal control system and risk management system are essential not only for the existence and day-to-day functioning, but also an optimum growth and development of an organisation. The significance of internal control and risk management systems can be judged from the fact that it also has wider implications for the external reporting and audit process of the company.

IV. Strong Internal Audit System - Internal auditing helps the organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes

V. Whistle Blower Mechanism - The organization may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

VI. Performance evaluation of Supervisory Board/ Governing Board/ Board of Governance. The evaluation of the performance of independent directors and supervisors should be conducted through a combination of self-review and peer review

VII. Disclosure of Information - It is important not only to adopt a good governance culture, it is equally important to apprise the stakeholders as to what the management has done towards embracing good governance practices.

VIII. Code of Conduct for all employees –The code of conduct has to be designed to assist in defining appropriate personal and professional conduct, to provide guidance in the identification and resolution of ethical issues, and to help the members of the Board, members of the Senior

Management and officers of the Company to maintain the culture of honesty, integrity, transparency and accountability.

FOREIGN CONTRIBUTIONS:

Organizations having a definite cultural / social/ educational religious /economic object were allowed to accept foreign contribution only after registering itself with the Central Government as per the provision of the Foreign Contribution (Regulation) Act, 2010 (FCRA).

The FCRA Wing of the Ministry of Home Affairs (MHA) – deals with foreign contributions to NGOs. Under FCRA, 2010, Charitable organization has to seek prior permission from MHA for foreign contributions. The Ministry of Home Affairs requires that all FCRA bank accounts wherein foreign contributions are to be received, are to be hosted solely by the State Bank of India, New Delhi Main Branch.

All FCRA services like registration, prior permission, renewal of registration, change of details of NGOs, grant of foreign hospitality were made online with effect from 14.12.2015.

(<https://fcraonline.nic.in/home/index.aspx>). Currently, there are a total of 332 FCRA registered Associations.

The FCRA 2010 was passed by Rajya Sabha on 19th August 2010 and received the assent of the President on 26th September, 2010 and came into effect from May 1, 2011. The Foreign Contribution (Regulation) Rules, 2011 (FCRR) came into effect with effect from 1st May, 2011 vide gazette notification G.S.R. 349 (E) dated the 29th April, 2011.

The Foreign Contribution (Regulation) Amendment Act, 2020 was passed by the Parliament in September 2020 and was notified on 28.09.2020. Key amendments include a. Provision of Aadhar numbers of all key functionaries; b. Inflow of FC only through designated; c. FCRA account opened at SBI main branch, New Delhi; d. Complete ban on transfer of foreign contribution, and e. Reduction in limit of administrative expenses from 50% to 20%

In order to facilitate smooth transition to the amended regime, the Foreign Contribution (Regulation) Rules, 2011 were amended through the Foreign Contribution (Regulation) (Amendment) Rules, 2020 and the same was notified on 10.11.2020

With an aim to reduce burden of compliance, the Foreign Contribution (Regulation) Rules 2011 were amended vide notification published in the Gazette of India on 01.07.2022

NGO DARPAN Portal of NITI AAYOG (<https://ngodarpan.gov.in/>)

NGO Darpan Portal is a platform, wherein Non-Profit Organizations (NPOs), can register themselves to obtain a Unique Identity Number. This number is mandatory for all NPOs who are seeking grants from the Ministries/Departments of Government of India. As per the prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023, all financial institutes have been mandated to ensure NGO Darpan Unique ID for NPOs for opening and operating accounts in any Bank. Similarly, Darpan Unique ID is also required for registration/renewal of FCRA, seeking tax exemptions under 80-G of Income Tax.

- 265368 NGOs with Unique ID enrolled as on 18.11.2024
- Types of NGO registered include – 46.9% Registered Societies (Non-Govt.), 41.7% Trusts (Non-Govt.), 8.3% Private Sector Companies, 1.5% Academic Institutions (Private), 1.5% Other Registered Entities (Non-Govt.)
- Niti Aayog maintains a NGO Darpan Portal – for charitable organizations to enroll centrally and thus creates a repository of information.
- The portal facilitates entities to obtain a system generated NGO Darpan Unique ID, as and when signed up with all requisite information and documents.
- NGO Darpan Unique ID is mandatory to all entities seeking registration under:
 - Foreign Contribution Regulation Act (FCRA),
 - Prevention of Money Laundering (Maintenance of Records) Amendment Rules,
 - Income Tax Act for seeking income tax exemption etc.
 - For Government Grants under various schemes of the Government.

PROFESSIONAL OPPORTUNITIES IN CHARITABLE ORGANIZATIONS SECTOR

We can perform a number of professional services in this sector, which inter-alia may include:

1. Advisory and conceptualization of form of charitable organization
2. Formation and registration procedures w.re.to various forms of organization
3. Documentation with regard to different forms e.g. Trust deed, Society bye-laws, Memorandum & Articles etc.
4. Regulatory compliances & Reporting requirements
5. Assistance w.re.to various Legislations and State Laws applicable to the charitable organizations
6. Accounting & Audit
7. Internal control systems
8. Taxation aspects, tax exemptions for Charitable organizations and tax deductions for donor
9. Voluntary contribution to/from Charitable organizations
10. Foreign contribution compliances and formalities
11. Government grants and Funding from National Agencies
12. International Funding
13. Corporate Social Responsibility (CSR) spending
14. Social Audit

USEFULL WEBSITES

A few useful websites pertaining to the field of charitable organizations are:

- Ministry of Home Affairs - <https://www.mha.gov.in/en>
- Office of Charity Commissioner, Maharashtra - <https://charity.maharashtra.gov.in/en-us/>

- Office of Charity Commissioner, Gujarat - <https://charitycommissioner.gujarat.gov.in/>
- Online services w.re.to Foreign Contributions & Foreign Hospitality - <https://fcaonline.nic.in/home/index.aspx>
- NGO DARPAN Portal of Niti Aayog - <https://ngodarpan.gov.in/>
- Income Tax Department - <https://www.incometax.gov.in/iec/foportal/>

SPECIMEN FORMAT - Memorandum of Association and Rules and Regulations of Charitable Society

MEMORANDUM OF ASSOCIATION OF ----- CHARITABLE SOCIETY

1. Name of the Society:

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

2. Registered Office:

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

3. Aims and Objects:

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

- (a)
- (b)
- (c)
- (d) and so on.....

4. Governing Body:

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

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

5. Desirous person

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

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

President

Secretary

Treasurer

RULES AND REGULATIONS OF ----- CHARITABLE SOCIETY

1. NAME OF THE ASSOCIATION:

2. ADDRESS OF THE ASSOCIATION:

3. MEMBERSHIP:

a. The association membership fee shall be follows:-

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

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

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

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

member acting against the objects of the association, unsound mind and other reasons stated by Executive Committee.

4. INFORMATION REQUIRED BY THE MEMBERS:-

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

5. GENERAL BODY AND OTHER MEETINGS:-

- a. The report of the Management of the previous years and the audited accounts for the present period and proceedings year shall be discussed and submitted for confirmation.
- b. A general body meeting of the association will be held annually during the month of -----.
- c. An Executive committee consisting of members shall be elected in the general body meeting once in a year.
- d. An authorised officer bearer may call for a general body meeting for which 21 days notice shall be given to the members.
- e. The executive committee shall generally meet once a month for which notice of 7 days shall be given to the members by the General Secretary,
- f. Voting shall be conducted by show of hands or secret Ballot.
- g. 21 days clear notice for the Annual General Body meeting and 21 days notice for a special General body meeting shall be given.
- h. A special General Body Meeting shall be conveyed as per the provisions of the Societies Registration Act, 1860.

6. QUORUM:-

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

7. ACCOUNTS:-

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

8. AUDITOR:-

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

9. EXECUTIVE COMMITTEE:-

- a. To ensure and promote the primary aim and objectives of the academy.
- b. To publish Annual report/accounts.
- c. To operate funds and manage the property of the association and to present the duly audited accounts at annual general body meeting.
- d. To form regional centres wherever deemed fit/feasible.
- e. In the event of any office bearer laying down office for whatever reasons, the managing committee can co-opt any member consider suitable for the office for the remaining period of the tenure or till elections are held.
- f. To ensure that all monetary transactions are through objectives of the association.
- g. To ensure that all monetary transactions are through objectives of the Association.
- h. May decide to expel a member of managing committee or a member of the association in case anyone is convicted or any criminal offence, or prove insanity or any member's action in contravention to the Bye-laws.
- i. Managing Committee shall have power to appeal and raise funds and fulfill all formalities incumbent upon it.
- j. To accept from Government, Non-Government, Local bodies, organisation and individuals Grants, donations, Subscriptions or any property movable/immovable for furtherance of the objectives of the Association.

k. At any meeting of the Executive committee each member present will have one vote except the president who shall have in addition a casting vote. Voting may be by raising of hands or secret ballot.

l. Executive committee may appoint committee, Sub-Committee with such powers as deemed fit by this body for the purpose that is commensurate with the objectives of the society. The committee, Sub-Committee may co-opt persons who are members of the Association.

m. Executive committee may invite to their meetings not more than two specialists/experts who may be non members of the Association whose presence with the deliberations is considered useful.

n. Executive Committee shall arrange for the publication in any manner, documents as may be considered fit in the furtherance of its objectives.

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

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

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

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

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

13. PROVISION:-

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

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

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

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

17. DISSOLUTION:-

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

18. The association formed shall be irrevocable.

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

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

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

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

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

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

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

25. EXECUTIVE POWERS OF THE COMMITTEE:

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

PRESIDENT:-

a. He / She shall be in over all charge of the association and the General body meetings. All the policies and programmes shall be formulated and implemented only through him/her.

b. He / She shall operate bank account jointly with the General Secretary.

GENERAL SECRETARY:-

a. He / She shall call for all meetings of the General body meeting as and when deemed necessary and the General body meetings and the Special body meeting as per the rules with the previous approval of the president and maintain the minutes book and record of all the proceedings of the meetings.

b. He / She shall be the correspondent of the association and shall be in-charge of the office with all the record of the association.

c. He / She shall be the custodian of all articles and belonging both movable and immovable of the Association.

d. He / She shall operate bank account jointly with the president.

| S.No. | Name (full in capital) | Addresses | Occupation | Designation in |
|-------|------------------------|-----------|------------|----------------|
|-------|------------------------|-----------|------------|----------------|

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

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

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

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

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

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

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

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

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

THIS INDENTURE WITNESSETH AS FOLLOWS

- 1) The **SETTLOR** above named hereby establishes a Public Charitable Trust by the name of ----- for the purpose and upon the conditions set forth hereunder.
- 2) The **TRUSTEES** named above shall be the first trustees and have given their consent to be appointed as the trustees and as token thereof, they have set their hands to this instrument.
- 3) The **SETTLOR** hereby conveys, transfers and assigns to the **TRUSTEES** the above referred sum of Rs. ---- (Rupees ----- only) as corpus to the **TRUST**, the receipt of which, the **TRUSTEES** do hereby admit and acknowledge.
- 4) The **SETTLOR** of the Trust hereby conveys, transfers, assigns to the **TRUSTEES** the assets and properties mentioned in the Schedule hereunder, the possession of which the Trustees hereby admit and acknowledge, to have and to hold the same in trust as corpus of the Trust, to be used by the Trustees to carry out and fulfill the objects of the Trust set forth herein, and the **SETTLOR** of the Trust hereby relinquishes for all time any claim to or interest in the said assets and properties or fund forming the subject matter of the Trust.

- 5) The office of the Trust for the time being shall be at -----, with the power given to the Trustees to shift the same to any other place as they may mutually agree upon.

- 6) The **TRUSTEES** do hereby agree that they shall hold and stand possessed of the said trust assets, properties and funds (which expression shall include all investments in cash or kind or in any nature whatsoever into and for which, the said property or a part or parts thereof may from time to time be converted, varied or exchanged) and/ or such investments as may be held by the **TRUSTEES** from time to time in relation to these presents together with all income, profits, additions and accretions thereof, upon trust for the object set out herein with and subject to the provisions and conditions hereinafter contained in these presents.

I. OBJECTS:

The objects of the Trust are:

1. Construction and running of Schools, colleges, education institutions, free dispensaries, Centres for poor feeding and homes for the aged for the benefit of the public.
2. Providing for grants, scholarships, fellowships and other forms of financial assistance to the needy and deserving students for pursuing education, vocational training, skill development etc.
3. Granting of financial assistance to any educational institution for granting scholarships, prizes, medals, awards for excellence in studies, sports and scientific research, distribution of books and note books for poor and deserving students.
4. Establishment, conduct, maintenance of clinical laboratories, hospitals, nursing homes, dispensaries and institutions of similar nature and providing financial assistance to the deserving persons for medical treatment, in any medical institution.
5. Providing financial assistance for feeding the poor directly and through other institutions.

6. Establishment, conduct, maintenance of old age homes, homes for physically challenged men, women and children and persons with similar disabilities and also for granting financial assistance to institutions performing similar activities.
7. Grant of donation to any Temple, Mosque, Church, Gurudwara and other places of worship and / or religious institutions. However, the Trust shall not undertake any religious activities.
8. Providing for or contributing to education and scientific research and development.
9. Providing relief to the poor and advancing any other object of general public utility.
10. The Trust will not carry out any activities with the intention of earning profit and will perform with service motive only.
11. No activities of the Trust will be carried out outside India.

II. BENEFICIARIES OF THE TRUST:

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

III. PROPERTIES:

The Trust properties shall consist of

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

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

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

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

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

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

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

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

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

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

The proceedings of the Board of Trustees shall not in any way be invalidated due to any post or posts remaining vacant. During the time when a vacancy is yet to be filled up, the remaining Trustees shall act as “Full Board”, subject to the presence of Quorum in the meetings. Any vacancy in the Board of Trustees or illegality in the appointment of Trustees or their proceedings shall not invalidate any prior act or decision of the Board.

V. TRUST ADMINISTRATION AND POWER TO THE BOARD:

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

1. To administer the Trust, its properties and affairs and do all the things which will fulfill the performance of the objects for which the Trust is established and for this purpose the Board can apply the whole or any part of the Trust property towards the payment of the expenses of the Trust.
2. The income and the properties of the Trust will be solely utilized towards the objects of the Trust and no portion of it will be utilized for payment to the Settler, or Trustees or their relatives by way of salary, allowances, profit, interest, dividend etc.
3. To open one or more bank accounts and operate the same or provide for operation of the said accounts by any two among them authorized on their behalf.
4. To invest the Trust funds in the manner not prohibited by any provisions of the Income Tax Act, 1961.
5. To buy, sell, mortgage, grant, lease, hire or otherwise alienate all or any of the properties of the Trust in its discretion for adequate consideration, so however any sale or alienation of immovable properties of the trust can be done only after obtaining the prior approval of the Commissioner of Income Tax.

6. To execute power of attorney or powers of attorney to any person for the purpose of executing, administering or managing the whole or any part of the Trust for the purpose of all or some among the objects of the Trust.
7. To borrow money with or without security and to repay the same.
8. To receive, collect and enforce recovery of all monies due or payable to the Trust and grant receipts and discharges therefore.
9. To settle, compromise or compound any disputes or refer the same to arbitration or litigation.
10. To receive voluntary contributions from any person or persons from India or outside, after complying with the statutory formalities, by way of donation, gifts or in any other manner and to hold the same upon Trust for the objects set forth herein.
11. To appoint, suspend, dismiss or otherwise deal with the staff required for the administration of the Trust, to frame rules relating to their salaries and other benefits and generally to exercise all powers ancillary and incidental to effectively carry out the objects of the Trust.
12. The Board shall have power to make and rescind rules and regulations for the management and administration of the Trust.
13. No Trustee shall commit any act or breach of Trust of the Trust fund or property or cause any loss to the Trust property or commit fraud in the administration of the Trust fund / property.
14. The Trustees shall hold honorary office and shall not be entitled to any Salary, allowances or perquisites, except for the reimbursement of actual expenses incurred in connection with attending to the Trust matters.
15. The Board of Trustees will follow the instructions given by any donor who makes substantial contribution towards furtherance of the objects of the Trust, so long as such instructions are not detrimental to the attainment of the objects of the Trust and are in conformity with the provisions of the Income-tax Act, 1961.
16. For the management and administration of the Trust, the Trustees shall elect one amongst themselves for each of the offices of Vice President, Secretary and Treasurer. The term of office for Vice President, Secretary and Treasurer shall be for a period of one year from their date of appointment and they may be reelected for further terms. No Trustee including the Managing Trustee shall hold more than one of the above offices at the same time. The persons holding these offices of Vice President, Secretary and Treasurer shall be under the

administrative guidance and supervision of the Managing Trustee and will report to him directly.

B. ROLES AND RESPONSIBILITIES AND POWERS

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

a) MANAGING TRUSTEE:

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

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

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

b) VICE PRESIDENT:

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

c) SECRETARY:

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

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

d) TREASURER:

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

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

VI. MEETING OF THE BOARD OF TRUSTEES:

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

- 1) The meeting of Board of Trustees shall be convened by the Managing Trustee and he shall preside over the meetings. In his absence, the Managing Trustee may authorize the Vice

President to be the Chairman of such meetings. In the event the Managing Trustee or Vice President are not able to attend the meeting already convened, any of the Trustees present in the meeting may elect one amongst themselves to be the Chairman of the meeting.

- 2) One half of the Board of Trustees or a minimum of two trustees, whichever is higher, shall constitute the QUORUM for the Board of Trustee meetings.
- 3) All decisions shall be carried out by the majority decision of the Board but in the event of equality of votes, the Chairman presiding over the meeting shall have a casting vote.
- 4) Any resolution in writing signed by all the Trustees by circulation shall have equal force as though it has been passed at a meeting of the Board of Trustees.
- 5) The meeting of the Board shall be conveyed after giving at least a week's notice unless all the Trustees agree to accept a shorter notice.
- 6) The Board of Trustees may invite other persons interested in the objects and functioning of the Trust to attend the meetings of the Board, but they shall not be entitled vote in the meetings of the Board.

VII. BANK ACCOUNT:

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

VIII. INVESTMENT OF TRUST FUNDS:

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

IX. ACCOUNTS AND AUDIT:

- 1) The financial year of the Trust shall be from 1st April to 31st March of the following year, unless otherwise decided by the Board of Trustees.
- 2) The Board of Trustees shall maintain true and correct accounts of the Trust.
- 3) The accounts of the Trust shall be annually audited by a Chartered Accountant appointed by the Board of Trustees and the audited statement of account shall be placed before the Board for its approval within three months of the close of the financial year.

X. AMENDMENTS:

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

XI. INDEMNITY:

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

XII. SETTLOR AND THEIR RELATIVES:

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

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

XIII. APPLICABILITY OF TRUST ACT:

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

XIV. APPLICATION OF INCOME TAX ACT:

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

XV. THIS TRUST IS DECLARED IRREVOCABLE

XVI. DISSOLUTION:

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

SCHEDULE

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

**1. Cash contribution to the Corpus Fund of the Trust of Rupees -----
(Rupees ----- only)**

2. Properties of -----

3. Assets of -----

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

SIGNATURE OF SETTLOR

SIGNATURE OF FIRST TRUSTEES

Signature: -----

1. Signature: -----

Name:

Name:

Address:

Address:

2. Signature: -----

Name:

Address:

3. Signature: -----

Name:

Address:

Witnesses:

1) Signature: -----

Name and address

4. Signature: -----

Name:

Address:

2) Signature: -----

Name and address

5. Signature: -----

Name:

Address:
