

Choosing the Type of Nonprofit Organization in India Trust, Society or Section 25 Company?

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Enabling Legal Environment

The laws applicable to nonprofits in India only recognize “charitable purposes” and “religious purposes.”

“Charitable purpose” as defined under the federal Income tax Act is fairly comprehensive and covers, besides relief of the poor, education and medical relief, “any other object of general public utility.” The law in India adequately enables nonprofits to be registered for “charitable purposes” and implement welfare and development activities.

The terms “not-for-profit” and “nonprofit/s” do not exist in Indian statute books. Many voluntary organizations in India feel uncomfortable with the term “charity” or to be registered for “charitable purposes.” Perhaps, substituting the term “charitable purpose” with “not-for-profit purpose” would be more in keeping with modern international trends in philanthropy.

While the legal environment for promoting ‘charitable purposes’ in India is quite enabling, one often encounters problems in convincing the registering officers whether objects like “income generation programs for disadvantaged groups”, or “empowerment of women” are charitable. Registering officers are often known to go by the “letter” and not the “spirit” of the law. Registering officers should be given clear guidelines by the Ministry of Finance regarding what is a “charitable purpose” and acquaint all registering officers with some of the new development terminology.

As long as the nonprofit is not established for or carries out any “unlawful activity,” the law in India provides a fairly conducive environment for the development and growth of all lawful charitable purposes.

The Choice

The legal framework in India gives nonprofits a choice to register either as a trust, society or company. The question is which one is good? How should a new nonprofit make an “enlightened choice”?

In states like Maharashtra and Gujarat where a Public Trusts Act is in force, trusts offer simplicity and ease in registration procedures. Two trustees are required to found a trust, while societies require a minimum of seven founders. The paperwork to establish a trust is less elaborate and in certain states or in New Delhi where there is no charity commissioner the trust deed can be easily registered with the sub-registrar’s office. The sub-registrar simply registers the Deed of Trust and unlike the charity commissioner he does not have the power or authority to exercise superintendence over trusts.

Trusts also offer autonomy in management and administration. An individual may remain a trustee for life and new trustees may be selectively appointed over a period of time. In a society or section 25 company there are requirements for a general body of members, periodic elections and annual general meetings. The setup is more

democratic. However here again there are instances where the general body of a society is restricted to just seven members and as such the management becomes as autonomous as in a trust.

Generally schools, colleges and hospitals established by wealthy families or corporate houses are founded as trusts. These educational or medical institutions are usually built on private and family lands and from private and family wealth for public good. Trusts offer them greater control and autonomy in management and administration. Members of the family may remain on the board for as long as they may want to. New trustees may be selectively appointed from time to time and there is no requirement of a general body of members or annual general meetings.

Usually grassroots level organizations, which require greater public participation and involvement by way of membership, are registered as societies. And societies become a natural choice in states where there is no Public Trusts Act in force.

Very few opt for the section 25-company format. Many are not even aware that this choice exists.

Registering A Trust

The application for registration of a public charitable trust should be submitted at the office of the charity commissioner having jurisdiction over the region/sub-region of the state in which the trust is to be registered. The application should be made in the prescribed form providing details regarding name of the trust, names and addresses of the trustees, mode of succession, and other key matters defined by law. The trust deed should be executed on non-judicial stamp paper.

In some states, the trustee applying for registration is also required to submit an affidavit, and all co-trustees are required to sign a consent letter. A nominal registration fee is also charged.

Registering A Society

The application for registration of a society should be made to the registrar of societies having jurisdiction over the region/sub-region of the state in which the society is to be registered. The application should be submitted together with the memorandum of association and rules and regulations. In addition to the above, different states require additional documents such as consent letters of all members of the managing committee, affidavit, etc. A registration fee is also charged. In states like Maharashtra and Gujarat all societies registered under the Act of 1860 are also required to register under the Bombay Public Trusts Act 1950.

Registering A Company

The first step towards registration of a company (under section 25 of the Indian Companies Act) is the application for availability of name to the registrar of companies, which must be made in the prescribed form, together with a certain fee. It is advisable to suggest a choice of three other names by which the company may be called, in case the first name, which is proposed, is not found acceptable by the registrar.

Once the availability of name is confirmed, an application should be made in writing to the regional director of the company law board. The application should be accompanied by three printed copies of the memorandum and articles of association of the proposed

company, duly signed by all the promoters with full name, address and occupation. Various other declarations and statements are required to be furnished for the purpose of registration:

Registration for Tax Exemption

Once the nonprofit organization is registered as a trust, society or section 25 company, the next logical step is to apply for tax exemption with the income tax authorities. In order to qualify for exemption u/s 11 of the Income Tax Act (i.e., to exempt the income of the organization from tax) the nonprofit organization must apply to the concerned income tax authority in the prescribed form.

The application must be submitted, together with the certified copies of the trust deed or memorandum and articles of association, certified copies of the registration certificate obtained from the charity commissioner's office or the registrar of societies/companies.

80G Certificate under the Income Tax Act

A donor is entitled to a 50% tax rebate for donations made to a nonprofit organization having 80G(5) certificate. The application for approval of a nonprofit organization u/s 80G(5) of the Income Tax Act should be made in the prescribed form, together with copies of the registration certificate and the trust deed/memorandum and articles of association.

Approval under Section 35AC of the Income Tax Act

Contribution(s) made to a project/scheme notified as an eligible project or scheme for the purpose of section 35AC of the Income Tax Act, would entitle the donor to a 100% deduction of the amount of such contribution. Unlike the certificate granted under section 80G (wherein donations made to a qualifying organization entitles a donor to a 50% deduction), the certificate u/s 35AC is generally not given to any organization, but usually for an eligible and approved project.

The application for approval of an association or institution for the purpose of section 35AC should be forwarded to the secretary of the National Committee for the Promotion of Social and Economic Welfare. The application in the prescribed proforma should be submitted in two sets written either in English or Hindi and accompanied with details about the name, address and status of the applicant.

The National Committee usually recommends to the Central Government, a project or scheme for notification as an eligible project or scheme (u/s 35AC) for an initial period of three financial years. Approved projects/schemes are generally for rural development, urban slums, etc.

Permanent Account Number

Every nonprofit organization which is required to file the return of income under section 139(4A) of the Income Tax Act, has to apply for allotment of permanent account number (PAN). The application should be made in the prescribed form to the income tax officer.

Registration for Seeking Foreign Funds

All nonprofit organizations in India, whether registered or not, come under the purview of the Foreign Contribution (Regulation) Act. The application for obtaining prior permission of the Central Government to receive foreign contribution should be made in the

prescribed form FC-1A. The application for registration of a nonprofit organization for acceptance of foreign contributions should be made in the prescribed form FC-8.