

NON PROFIT ORGANIZATION

If I want to Form NPO commonly known as NGO, I have **three options**.

As **Trust** (Public Trust Act)

As **Society**(Society Registration Act 1860)

As **Section 8 Companies** (Companies Act 2013)

Meaning & Procedure of Registration

TRUST

Meaning

Trust is oldest form of charitable organization. These may be **private or public**. **Private** trust is **not charitable** and only for benefit of **Family member** or any other small group of known's. Private trusts are governed by Indian trust act 1882 and this act **does not apply to public trust** which can be a charitable trust.

No national law governs public charitable trust in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have public trust act.

A charitable trust formed anywhere in India can operate in all the states. In general trusts are easiest to form and run, as there is no regulatory oversight, disputes have to go to court.

Registration

Maharashtra & Gujarat - Bombay Public Trust Act 1950

In any other state - Governed by common law (Registration Act 1908)

1) Before you register your trust you will need to decide the following:

- a) Name of the trust
- b) Address of the trust
- c) Objects of the trust (charitable or Religious)
- d) One settler of the trust

- e) Two trustees of the trust
 - f) Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).
2. Prepare a Trust Deed on stamp paper of the requisite value.
3. Requirement for registration of Trust Deed with the Local Registrar under the Indian Trusts Act, 1882:
- a) **Trust Deed** on stamp paper of requisite value
 - b) One passport size **photograph**& copy of the **proof of identity** of the **settler**
 - c) One passport size **photograph**& copy of the **proof of identity** of each of the **two trustees**.
 - d) One passport size **photograph**& copy of the **proof of identity** of each of the **two witnesses**.
 - e) **Signature of settler** on all the pages of the Trust Deed
 - f) **Witness by two persons** on the Trust Deed.
4. Go to the **local registrar**& submit the Trust Deed, along with one Photocopy, for registration.
5. The Registrar retains the photocopy & returns the original registered copy of the Trust Deed.

SOCIETY

Meaning

Societies are membership organization that may be registered for charitable purpose. Societies are managed by managing committee and governed by society registration act 1860. However a number of states have passed their own laws for regulating societies, these laws have replaced the original society registration act 1860

A society formed in one state can usually operate in other states, if memorandum permits.

Registration

1) The main documents for registration are **Memorandum and Rules and Regulations**. These should be written on plain paper.

2) MOA must mention-

- Name of the society
- Address of registered office
- Name, designation, address and occupation of members of first governing body

- Objective of society
- 3) **No Stamp paper** is required for MOA & RR.
 - 4) **Related people cannot** be part of governing body.
 - 5) **Member** of society **cannot** draw any **remuneration** from the society.
 - 6) **Expenses** incurred by member **can be reimbursed** from the society fund.
- 2) The **Registrar shall certify** under his hand that the society is **registered** under this Act.
 - 3) There shall be paid to the Registrar for every such registration **a fee of fifty rupees**, or such smaller fees

SECTION 8 COMPANIES

Meaning

These are limited companies, Government grant them special license under section 8 of companies act 2013 to use the word private limited/limited

There are 3 conditions for this-

1. Must be formed for charitable purpose
2. Profit should be applied towards these objects
3. It Should not pay any dividend to its members

Such a company can operate in any state without any additional formalities .

Registration

- 1) Obtain a **Digital Signature Certificate** from authorized DSC issuing Company for at least one director to sign the E-forms

- 2) Every individual intending to be appointed as director of a company shall make an application for allotment of **Director Identification Number** in form **DIR.3** to the Central Government in such form and manner and along with such fees as may be prescribed.

- 3) Application for **the availability of name** shall be in **Form no. INC.1** along with prescribed **fee** of Rs. **1,000/- or as increased time to time.**

Before submission of e-Form INC.1 for availability of name, all the directors of the proposed company must ensure that they are having DIN and if they are not having DIN, it should be first obtained.

4) The **memorandum of association** and **Articles of association** of the proposed company shall be Prepared in **Form No.INC.13**

5) Make an application in **Form No.INC.12**, along with the prescribed fee, to the Registrar for a **license** under sub-section (1) of section 8.

Tax Benefit to NGO and its Donors

*Entity has to be **registered** under **respective Act** and get **certificate** of **Section 12A and 80G, 35ac etc** of income tax act 1961 for tax benefit.*

12A of Income Tax Act 1961 (For NGO)

When NGO organization gets registered with Income Tax department, to claim tax exemption for their income, it gets the **12 a certification**.

From the **Date of establishment** of NGO like trust, society or nonprofit company, it should apply for **registration with Income tax department** to get 12A certificate. If **delayed in applying** for registration then the NGO should **submit Audit Reports** for the **past three years** or as may be available.

To get registered NGO has to fill a **FORM 10A** and produced to the **Commissioner of Income Tax**, where your NGO is located. If your NGO established in **metropolitan cities like Delhi, Calcutta, Mumbai and Chennai**, then you have to produce the **FORM 10A to the Director of Income Tax (Exemption)**. Before submitting FORM 10a, please make sure that you have received **PAN CARD** for your NGO.

You have also required to **enclose the copies** of the following.

- 1. Original basic documents** of organization, which evidencing the creation of the NGO should be enclosed, like Trust deed / Bye laws / Rules and Regulations / Memorandum and Articles of Association
- 2. Two copies** of the **Accounts of Three previous years** or as may be available.

The **Income tax officers** have **the rights to grant or to refuse** registration to your application.

NOTE-Even a 12a certified NGO, shall be rejected or cancel the grant by the Income tax department, if it feels your organization is not fit as per law at any time.

80G(For Donors)

The Government has made two types of registrations necessary u/s. 12A & U/s. 80G. Only if the trust follows the registration U/s. 12A, they will get the tax exemption certificate, which is popularly known as 80G certificate.

Donations paid to specified institutions qualify for tax deduction under section 80G but is subject to certain ceiling limits. Based on limits, we can broadly divide all eligible donations under section 80G into four categories:

- a) 100% deduction without any qualifying limit (e.g., Prime Minister's National Relief Fund etc).
- b) 50% deduction without any qualifying limit (e.g., Indira Gandhi Memorial Trust etc).
- c) 100% deduction subject to qualifying limit (e.g., an approved institution for promoting family planning).
- d) 50% deduction subject to qualifying limit (e.g., an approved institution for charitable purpose other than promoting family planning).

Qualifying Limit:- The qualifying limits u/s 80G is 10% of the adjusted gross total income. The limit is to be applied to the adjusted gross total income. The 'adjusted gross total income' for this purpose is the gross total income (i.e. the sub total of income under various heads) reduced by the following:

- Amount deductible under Sections 80CCC to 80U (but not Section 80G)
- Exempt income
- Long-term capital gains
- Income referred to in Sections 115A, 115AB, 115AC, 115AD and 115D, relating to non-residents and foreign companies.

35AC(For Donors)

Deduction is available under section 35 ac at **100%** of the amount contributed from the taxable income of the assessee under the head profits and gains from business or profession for **promoting social and economic welfare**. Any taxpayer being a Company or a person other than a Company can claim deduction under Section 35 ac.

The claim for deduction should be supported by an audit certificate obtained from the approved NGO to whom the payment is made, in **Form No.58A**.

If the NGO is recognized under **Section 35 (i) (iii)**, that is, NGO engaged in **scientific research, research in social sciences and statistical research**, the donor gets **125% deduction** of the sum donated for donations made from ones business or professional income. No monetary ceiling with respect to the GTI is applicable for donations made under Section 35 ac one can donates up to 100% of one's income under this section.

Comparison

FACTORS	TRUST	SOCIETY	COMPANY
Members	Minimum 2 Maximum –No limit	Minimum 7 Maximum- No limit	Minimum 7 Maximum- No limit
Basic Document	Trust Deed	Memorandum of association Article of association Rules and regulation	Memorandum of association Article of association
Area of activities	All over India	Separate registration for each state	All over India
Legislation	Relevant state Trust Act	Societies Registration Act 1860	Indian Companies Act 1956
Modification of Objects	Alteration can be undertaken only by the Founder– Amend Trust deed	Easy Legal Procedures- Amend MOA	Complicated Legal Procedures
Name Availability	Easily available	Difficulty in availability	Difficulty in availability

Meetings	No provisions	Annual Meeting As per the rules of Society.	Quite Extensive as per the provision of Company Law
Legal status	Limited legal status	Limited legal status	Full legal status
Payment to Members	As notified in Trust deed	Not restricted	As approved by Company & State.
Nature of Control	One man control i.e. settler	Democracy system	-
Holding of office	Trustees (whole life)	Through Election (limited time)	Through Appointment (limited time)
Family members	Can become trustee	There is objection	Can become director
Govern by	Board of trustee.	Governing body	Shareholders
Objects	General objects	Specific object	General object

Which is Better

All three forms can be used for non-profit work. However, each form has its own advantages and disadvantages. Which form should you choose?

- Trusts are **easy to form and run** because only **2 members** can form the trust and can run with **no meeting requirement**, limited **legal formalities** and covers **all over India** with **general object** – but when it comes to **changing objects** or **settling disputes**, **settler's wishes will dominate**.
- Societies are designed as **democratic**. This form is **ideal** if your work is for **consultation** and equal **participation** of large number of people. You are **required 7 members** to form society and required **separate registration** with **specific objective**. **Legal formalities** are more than trust However; societies can also be **difficult to govern** unless you pack the membership with **trusted people** because all are having right to Affect decisions.

- A non-profit company is the **most difficult and expensive to form**. However, once formed, it is also the **easiest to control**. Firstly, you can form a company with just **two persons**. Secondly, if you choose a **share-capital based company**, you can **exercise control by keeping a majority** of shares with you. Management and control can be separated, as the directors need not be shareholders and can work for general object like trust.

CONCLUSION

Any one of the above can be selected as per their requirement and suitability and availability of time and resources.