

# TOPIC

## Overview on compliance of NON GOVERNMENTAL ORGANISATION

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# NGO Registration Methods

- In India non profit organisations/ public charitable organisations (NGO) can be registered as **trusts, societies, or a private limited non profit company, under section-25 companies.**
- Non-profit organisations in India
  - (a) exist independently of the state;
  - (b) are self-governed by a board of trustees or ‘managing committee’/ governing council, comprising individuals who generally serve in a fiduciary capacity;
  - (c) produce benefits for others, generally outside the membership of the organisation; and
  - (d), are ‘non-profit-making’, in as much as they are prohibited from distributing a monetary residual to their own members

# What is NGO

- ✓ NGO is a social voluntary organization of social activist, group of persons, community, persons, volunteers, civilians and citizens who are working or associated for social welfare social development and social change.
- ✓ NGO can be registered or cannot be registered

# Types of NGO

✓ Trusts

✓ Societies

✓ Section 8 Companies

# TRUSTS

- ✓ Trust can be independent not depend on government programs.
- ✓ Trust cannot receive financial assistance from the government.

# **Trust Registration - Legislation**

Different states in India have different Trusts Acts in force, which govern the trusts in the state; in the absence of a Trusts Act in any particular state or territory the general principles of the Indian Trusts Act 1882 are applied.

# Main Instrument

- ✓ Prepare **Trust Deed** on non judicial stamp paper
- ✓ Paid stamp duty according with value of properties of trust or according with receipts of donation
- ✓ Make an appointment with sub-registrar office (registered office depends on jurisdiction)

- ✓ Present a trust deed on appointment date in two copies in presence of two witness along with their sign
  - a. Original copy of trust deed
  - b. Photo copy of trust deed with signs of all the trustees along with passport size photo
- ✓ Sub registrar collect the trust deed within one week
- ✓ Trust registration fee
  - a. 100/- registration fee
  - b. 1000/- for keeping trust deed by sub-registrar



# Registration process

Selection the name (name should be unique)



Drafting of trust deed



Registration of trust with sub-registrar



Apply for PAN, TAN, BANK A/C of trust

# Types of trust

## ✓ Private trust

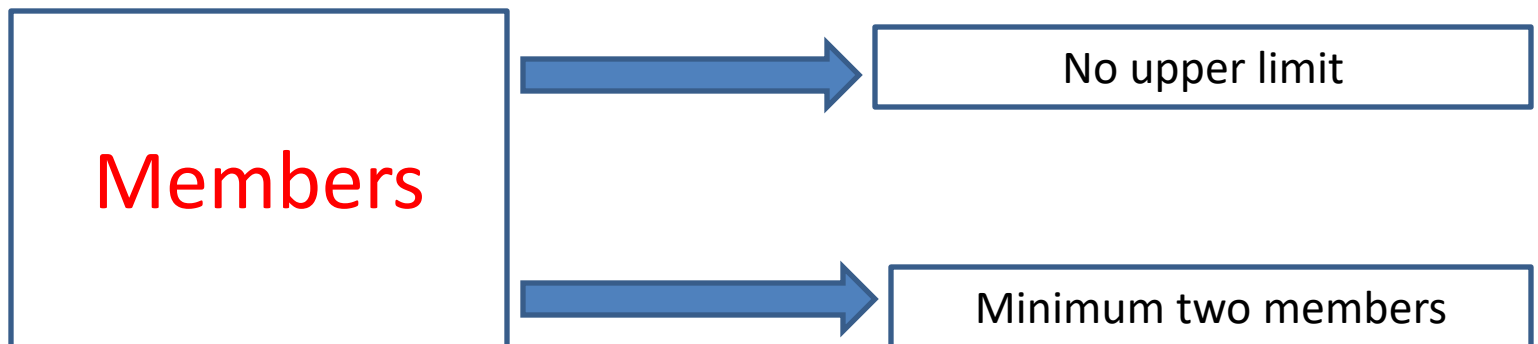
- a. It governs/direct the functioning by Indian trusts act, 1882
- b. No benefit is available in income tax act,1961

## ✓ Public trust

- a. It governs/direct the functioning by public trust itself (except Maharashtra & Gujarat state)
- b. Where governed by **Bombay public trust act,1950**
- c. Certain tax exemptions are available in income tax act,1961

# Trust deed

- ✓ It is a important document/instrument
- ✓ It prescribes main objectives of the trust
- ✓ It defines its beneficiary
- ✓ It prescribes powers of the trustee



# Document requirement

- ✓ Trust deed on proper stamp value
- ✓ Two witness
- ✓ Self attested documents of the author, trustee
  - a. Two photograph author and trustee
  - b. Copy of Pan card
  - c. Valid ID proof
  - d. Latest Address Proof

# Societies

It has been described as a company or association of persons united together by mutual consent to deliberate, determine and act jointly for common purpose

# Purpose

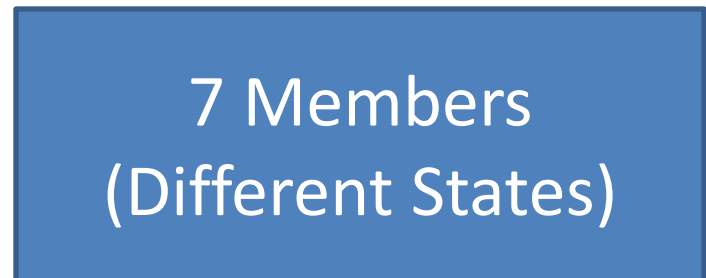
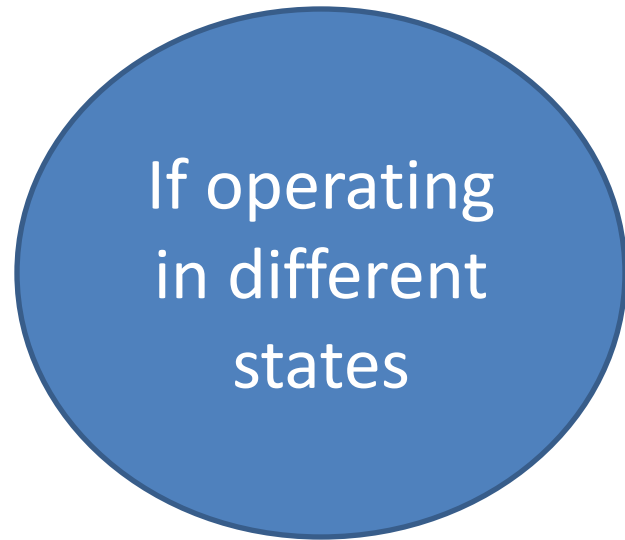
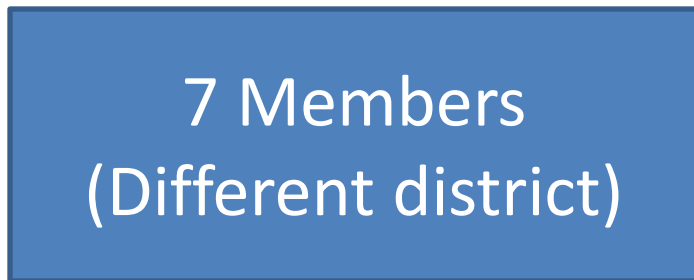
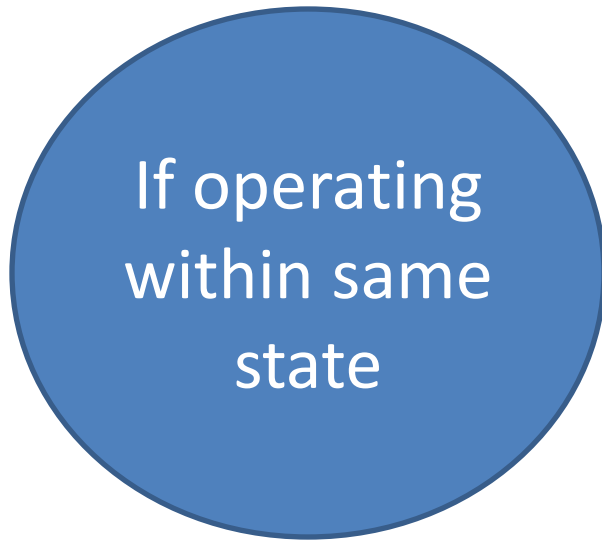
- ✓ Educational
- ✓ Charitable
- ✓ Religious
- ✓ Welfare
- ✓ Art
- ✓ Music
- ✓ Culture etc.

# Registration

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The Societies  
Registration  
Act, 1860

# Members Requirement





# Documents Required

- ✓ PAN Card (all members)
- ✓ Residence Proof of all members (like Aadhar Card, Voter ID etc.)
- ✓ MOA
- ✓ AOA

- ✓ A covering letter – Requesting society registration signed by all establishing members
- ✓ Proof of Address of Society along with NOC from the land lord
- ✓ List of all members
- ✓ Declaration – by the President that he is willing and competent to hold the said post

# Memorandum of Association

Memorandum of society along with rules & regulations of society must be signed by every establishing member, witness by Gazetted officer, Notary Public, Oath Commissioner, Advocate, Magistrate first class or CA with their official stamping and complete address.

# Contents of MOA

- ✓ Name of society
- ✓ Objective of society
- ✓ Name, addresses and occupation of Governors, Director, Trustees or Members of Council
- ✓ Copy of the rules and regulation of the society, certified by not less than three of the governors, directors, trustees or members of the governing body.

# Section 8 Companies

Section 8 company is a Company that is licensed under Section 8 of the Companies Act, 2013, before this the act, this act was known as Section 25 Company under the Companies Act, 1956.

# Main Objectives

- ✓ In promoting art, commerce, sports, science, education, social welfare, religion, charity, research or protection of the environment
- ✓ The profit gained should only be used to promote the activities of the organization or to achieve the objectives of the organization
- ✓ No part of the profit is paid to its members.

# Registration

- ✓ PAN of all the Directors/Promoters
- ✓ Address Proof
- ✓ A Latest passport size photographs of all the Directors/Promoters
- ✓ A Rent Agreement or a Leave & License Agreement, if the registered office premise is taken on rent
- ✓ The Utility Bills of the proposed registered office
- ✓ The Consent to act as a Director in Form DIR-2
- ✓ The Directors Directorship details in other Companies/LLPs, if any.

- ✓ The second step is to apply for the DSC which is required for filling the forms electronically to the Ministry of Corporate affairs which can be obtained from certified agencies.
- ✓ The businessman is then required to Obtain the Digital Signature Certificate (DSC) for the proposed Directors not having the Directors Identification Number (DIN). Obtaining the DIN from the Ministry of Corporate Affairs by filing Form DIR-3, if the businessman does not have DIN.
- ✓ the most important step is to apply for the name of the company which is a crucial step in company registration.
- ✓ The next step is to draft the Memorandum of Association and Articles of Association of the proposed company in Form INC – 13



- ✓ The next step is to obtain the license under section 8 of new companies with a charitable objective. The person who is desirous to incorporate a company under section 8 is required to file an application in form INC 12 along with the prescribed fees to register for a license.
- ✓ Certificate of incorporation – If after the filing of the requisite forms that is INC 7, INC 22 and DIR 12 for the incorporation with the registrar of the companies along with the prescribed fees, ROC gets satisfied with the contents of the documents that are filed. Thus after that, the company will issue Certificate of Incorporation in Form INC 16

# Statutory Obligations

- ✓ The revenue of the company shall only be applied for the promotion of the main objective
- ✓ Sharing the profit with the promoters is strictly prohibited
- ✓ The company registered under Section 8 of the company shall not alter the provisions of its memorandum or articles except the previous approved by the Central Government
- ✓ The income tax rates are applicable at the same rates as they applicable to other companies
- ✓ No member of the company should be appointed as a remunerated officer
- ✓ No incentives

# Benefits Enjoyed by a Section 8 Companies

- ✓ Many privileges and exemptions under the Company Laws.
- ✓ Exemption from stamp duty for registration
- ✓ Tax deduction to the donors of the company
- ✓ These companies can be formed without share capital, the funds are brought in the form of donations
- ✓ The shares of the company can be transferred easily
- ✓ These companies exempt from keeping any titles or suffix

# COMPLIANCES IN NGO

## ✓ Audit Compliance In trust

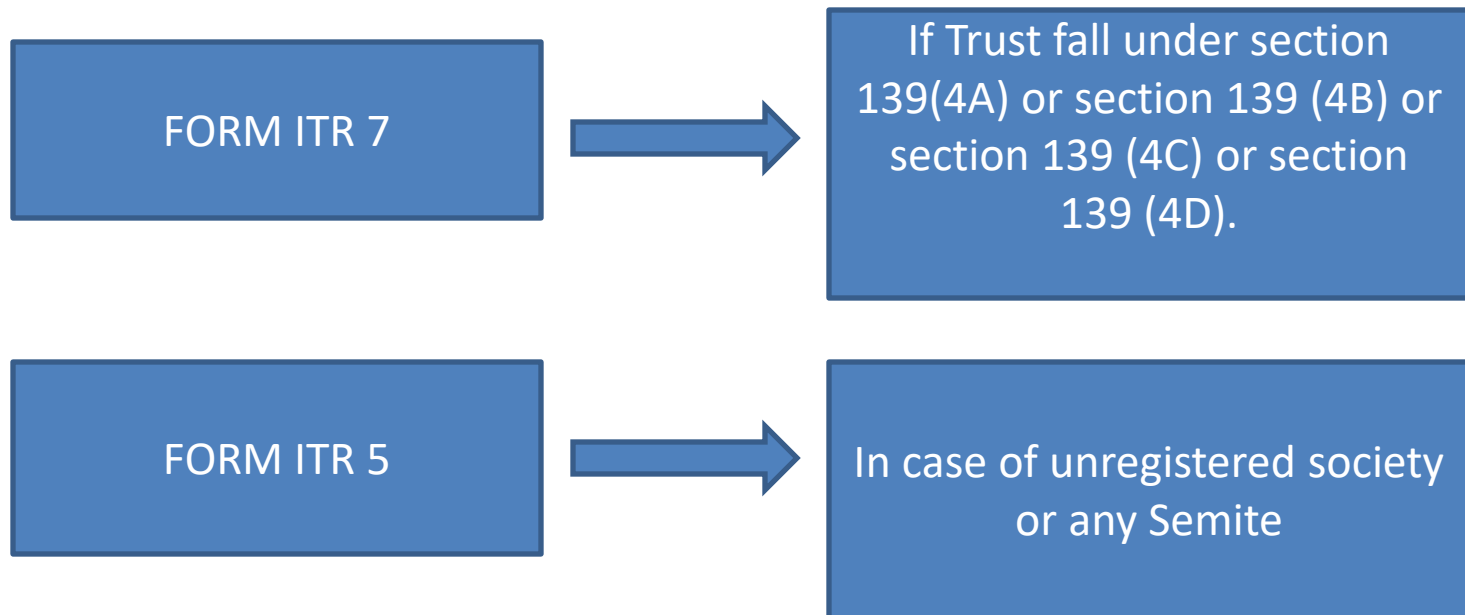
- a. Where the total income of the trust or institution, exceeds the basic exemption limit, that is, Rs.2, 50,000/- in any previous year, the accounts of the trust or institution is required to be audited by a qualified Chartered Accountant, and the audit report in Form No. 10B is required to be furnished electronically before filing the e-return of income
- b. section 12A lays down that the exemption under section 11 and 12, shall not be available if books of accounts are not audited.

## Section 10(23C)

- Incomes which not included in total income
- Government fund [like Prime Minister's National Relief Fund; Prime Minister's Fund (Promotion of Folk Art) etc]
- Audit is compulsory in this Section.
- If total receipts of any trust not above 1cr. then total incomes of the trust automatically exempt.

# ITR, TDS, Sec. 44AB

- Every trust, shall, if the total income before exemption under section 11 and 12 exceeds **the maximum amount which is not chargeable to income-tax**, furnish a return of such income of the previous year.



# TDS

- ✓ TDS is applicable to the NGOs. There is no general exemption that Trust, Society or Non Profit Organizations are exempt from deducting and paying TDS. It depends on the Financial Transactions and limits of TDS specified every year in the Financial Act. Thus if NGOs makes payments to specific persons above specific limits, needs to deduct and pay TDS within time line specified.

# Anonymous donations [Sec. 115BBC]

- ✓ It is a voluntary contribution and person receiving such contribution does not maintain any record of identity indicating name and address of person making such contribution.
- ✓ Voluntary contributions being anonymous donations are also eligible for exemption in case of –
  - a. wholly religious trust,
  - b. partly religious and charitable trust (except when such anonymous donations are made specifically for an educational/medical institution run by the trust)
- ✓ Voluntary contributions being anonymous donations are taxable in case of
  - a. wholly charitable trust,
  - b. partly religious and charitable trust ( when such anonymous donations are made specifically for an educational/medical institution run by the trust).
- ✓ Anonymous Donation is taxable @30% +SC+EC .Further exemption is available upto 5% of the total donations or Rs. 1 Lakh whichever is higher.



# FCRA (Foreign Contribution Regulation Act)

- ✓ Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through “prior permission” route. It is preferable for an FCRA applicant to be a Trust or Society or a Section 8 Company. The not-for-profit entity must have also been in existence for **a minimum of three years while making the FCRA** application and should not have received any foreign contribution prior to that without the Government’s approval. Additionally, the entity seeking registration should have **spent at least Rs.10,00,000/- over the last three years** on its aims and objects, excluding administrative expenditure. Statements of Income & Expenditure, duly audited by Chartered Accountant, for last three years are to be submitted to substantiate that it meets the financial parameter.
- ✓ If any NPO receive foreign contributions without obtaining FCRA registration then the NPO must return the contribution with penalty.

“Thank You”

