

# NGO Formation

Source: Mukeshraj and Co. , Chartered Accounts

A Non Governmental Organization is perceived to be an association of persons or a body of individuals. An association of persons with non-profit motive may be registered under any of the following Indian Acts:

1. As a Charitable Trust
2. As a Society registered under the Societies Registration Act
3. As a Company licensed under section 25 of the Companies Act

## **Procedures of Formation:**

**Trust:** "Trust" is defined as 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.

A Trust may be created by any language sufficient to know the intention and no technical words are necessary. A trust deed, generally, incorporates the following:

- i. The name(s) of the author(s)/settlor(s) of the trust;
- ii. The name(s) of the trustee(s);
- iii. The name(s) if any, of the beneficiary/ies or whether it shall be the public at large;
- iv. The name by which the trust shall be known;
- v. The name where its principal and/or other offices shall be situate;
- vi. The property that shall devolve upon the trustee(s) under the trust for the benefit of the beneficiary/ies;
- vii. An intention to divest the trust property upon the trustee(s);
- viii. The objects of the trust;
- ix. The procedure for appointment, removal or replacement of a trustee. Their rights, duties and powers etc;
- x. The rights and duties of the beneficiary/ies;
- xi. The mode and method of determination of the trust.

A charitable trust is not required to obtain registration under the Indian Registration Act.

**Society:** A society may be defined as a company or an association of persons united together by mutual consent to deliberate, determine and act jointly for same common purpose. Minimum seven persons, eligible to enter into a contract, can form society. When an NGO is constituted as a society, it is required to be registered under the Societies Registration Act, 1860.

The chief advantage of forming a society are that it gives a corporate appearance to the

organization, and provides greater flexibility as it is easier to amend the memorandum and bye laws of the society than in case of trust, terms of which are strictly manifested in the trust deed. However, formation of a society requires more procedural formalities than in case of a trust.

A Society for its inception requires:-

- I. Memorandum of Association, and
- II. Rules and Regulations

For the purpose of registration, following documents are required to be filed with the registrar of Societies:

- a) Covering letter requesting for registration stating in the body of the letter various documents annexed to it. The letter is to be signed by all the subscribers to the memorandum or by a person duly authorised by all of them to sign on their behalf.
- b) Memorandum of Association, in duplicate neatly typed and pages serially numbered.
- c) Rules and Regulations/Bye-Laws, in duplicate, certified by at least three members of the governing body.
- d) An affidavit of the president/Secretary of the society, on a non-judicial stamp paper of prescribed value, stating the relationship between the subscribers, duly attested by an oath commissioner, notary public or 1st class magistrate.
- e) Documentary proof such as house tax receipt, rent receipt in respect of premises shown as registered office of the society or no objection certificate from the landlord of the premises.
- f) An authority duly signed by all members of the managing committee.
- g) A declaration by the members of the managing committee that the funds of the society shall be used only for the purpose of furthering the aims and objects of the society.

Company: Under Section 25 of the company's act, an association formed or to be formed:

- a) For the purposes of promoting commerce, art, science, religion, charity to any other useful object
- b) With intention to apply its profits or other income for promoting its objects, and
- c) Which prohibits payment of any dividend to its members,

Is permitted to be incorporated without addition of the word "Limited" or "Private Limited". Procedure for applying is same as applicable in the case of all companies.

If the registrar is satisfied that all formalities have been complied with, he will issue a certificate of incorporation from which date the company comes into existence.

**Note: An association already registered as a company, may also apply for a licence u/s 25.**

## **INCOME TAX EXEMPTION FOR NGO TRUSTS:**

Under section 11(1)(a) to (c), income derived from property held under trust is exempt if the following conditions are satisfied:

- a) The property should be held under trust wholly for charitable or religious purposes.
- b) Income from such property should be applied to charitable or religious purposes. (Exemption is available to the extent of such application)
- c) Income should be applied in India
- d) At least 85% of the income derived from property held under trust, should be applied to charitable or religious purposes in the relevant previous year in order to claim full tax exemption.

### **Note :**

1. The assessee is to apply for registration in Form No. 10A in duplicate before the expiry of 1 year from the creation of trust.
2. Under Section 11(4) property held under trust includes a business undertaking held under trust.
3. Any voluntary contribution received by a trust or institution is exempt if (a) the trust is created wholly for charitable purposes and (b) contribution is not made with a specific direction that it shall form part of the corpus of the trust.

## **SOCIETY:**

Societies are taxable in the status of AOP and different rates of tax are applicable to the income of an AOP in different circumstances:

### **A. Individual shares of members in AOP are not determinate:**

- i. Where the total income of any member of the AOP is taxable at a rate higher than the maximum marginal rate-Rate of tax is such higher rate.
- ii. Otherwise-30%

### **B. Individual shares of members in AOP are determinate:**

- i. If total income of any member is not higher than Rs 50000/- (excluding share from AOP) and no member is taxable higher than 30%- Rate of tax on total income of AOP is the rate applicable to individuals.
- ii. If total income of any member is higher than Rs 50000/- (excluding share from AOP) and no member is taxable higher than 30%- Rate of tax is 30%
- iii. If any member is taxed higher than 30%, then (a) Tax on the portion of total income of AOP that is relatable to the share of such member is levied at such rate higher than the 30%, (b) tax on the balance total income will be 30%.

## **TAX EXEMPTION FOR NOTIFIED CHARITABLE SOCIETIES U/s 10(23C) (iv) and (v)**

Any income of any institution established for charitable purposes is exempt. For getting exemption under these clauses, following requirement must be completed:

- i. Making an application in Form No. 56
- ii. Applying its income or accumulating it for application, wholly & exclusively to its objects;

iii. Notice of accumulation u/s 11(2) will have to be given to the assessing officer in Form No. 10

## Requirements Of Society Formation

**1 - Name of the Society (3 Names)**

A.

B.

C.

**2 - Registered Office of the Society**

### Requirements:

- Memorandum and Rules & Regulations in Duplicate duly signed by Minimum Three persons of society (Each page on bottom).
- Ownership Proof of Registered Office. (Electricity Bill/Sale Deed/ GPA/Water Bill etc.)
- Residential/Office address Proof of the all members of the Society. Such as Voter ID/ Telephone Bill/ Electricity Bill/Pass Port/Driving License etc. etc.
- NOC from Owner of premises on Rs.10/- Stamp Paper.
- Affidavit from President (for Blood Relation) on Rs.10/- Stamp Paper.
- List of Desirous person should be signed by all members of the society.
- Desirous persons or the persons subscribing the name to the Memorandum should not be (in any case) less than seven. If it is proposed to give All India character to the society there must be minimum of eight different persons from different States of Indian Union to the Memorandum.

**1 - Name & Address**

**Occupation**

**Designation**

Service/Business/Housewife

President

Service/Business/Housewife

Gen  
Secretary

Service/Business/Housewife

Treasurer

Service/Business/Housewife

Ex. Member

Service/Business/Housewife

Ex. Member

Service/Business/Housewife Ex. Member

Service/Business/Housewife Ex. Member

## Requirements Of Trust Formation

**1 - Name of the Trust  
(3 Names)**

A.

B.

C.

**2 - Registered Office  
of the Trust**

### Requirements:

- Main Objectives/ vision?
- Two photograph and ID proof of Settler.
- Detail of Trustees (Name, Father's Name, Address and age)

### Trustees Detail:

**1 - Name & Address**

**Father's Name**

**Designation**

President

Gen Secretary

Treasurer

Trustee

## Operational Requirements For A Society

An annual list of members of the management committee shall be filed to Registrar of society within 30 days of the AGM. However if no AGM is held for any reason as per

society Registration Act 1860, section whatsoever, than an annual list of members of the managing Committee as on 31st December each year shall be submitted to the office of the Registrar of societies. Non submission of the list attracts a financial liability of Rs.50/- for the list of each year

Once in every year a list of the office bearers and members of the Governing Body shall be filled with the Register of Societies, N.C.T of Delhi as required under Section 4 of The Societies Registration Act 1860 and applicable to the National Territory of Delhi.

### **Minutes**

#### **A : Governing Body Meetings**

There shall be minimum four meetings of the Governing Body each calendar year, i.e. one meeting in every three calendar months.

#### **B : Annual General Meetings**

There shall be minimum one Annual General Meeting (AGM) of all the Members of the Society every year.

The AGM can be held at any time between April 1 to December 31 after the end of the financial year each year.

- 1 - Adoption of Annual Accounts.
- 2 - Admission/Resignation/ other matters of the members of the society.
- 3 - Investment of funds of the society.
- 4 - IAppointment of the members of Governing Body on every expiry of its tenure

#### **C : Extra Ordinary Annual General Meetings**

For any urgent or emergent matter like Admission/Resignation/Death of the Member / Change of Name/change of address /change of objectives /change of Rules & Regulation or any other major issue of the society.

### **Notice & Quorum**

#### **A Governing Body Notice**

Minimum 10 days clear notice or as per Rules & Regulation of the society and the quorum shall be 1/3rd members of the Governing Body or as per Rules & Regulation.

#### **B :Annual General Meetings**

Minimum 21 days clear notice or as per Rules & Regulation of the society and the quorum shall be 3/5th members of the General Body or as per Rules & Regulation.

#### **C :Extra Ordinary Annual General Meetings**

Minimum 10 days clear notice or as per Rules & Regulation of the society and the quorum shall be 3/5th members of the Governing Body or as per Rules & Regulation.

### **Register Of Members**

The Society shall maintain at its registered office a register of its members and shall enter therein the following particulars:

- 1 - The names & addresses of the members.
- 2 - The date on which the member was admitted.
- 3 - The date on which a member ceased to be a member.
- 4 - Particulars of Admission fees received.
- 5 - Particulars of Annual Subscription received.
- 6 - Any other information required from time to time.

### **Election**

The General Body in its meeting shall elect all the office bearers after Five years or as per Rules & Regulation of the society by show or by secret ballot papers as required. The Quorum of the General Body shall be 2/3rd members of the Governing Body present or as per Rules & Regulation of the society.

### **Admission To Membership Of The Society:**

A member shall fill the membership form to become a member of the society. The Membership shall be initially dealt with in 2 meetings of the Management Committee, One accepting it and the second confirming it, all the members of the society added/left during the year are to be discussed in the AGM also. A Register of member of the society has also to be maintained.

### **Calendar Year:**

The financial year of the Society shall start from the 1st day of April and end on the 31st day of March in the following year.

### **Financial Year**

The accounts of the Society shall be audited at least once in a year by a qualified firm of Chartered Accountant appointed by the Governing Body.

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### **Amendment**

Any amendment in the Memorandum of Association and rules and regulation will be carried out in accordance with the section 12 & 12A of the Societies of Registration Act, 1860, as applicable to the National Capital Territory of Delhi.

### **Documents for amendments**

- Amended Copy of MOA & R.R of the Society in duplicate.
- Copies of Special Resolution in duplicate (General Body).
- Copies of Notice in duplicate.
- Copies of Minute of Society Governing Body).
- List of Governing Body. f. Copy of Comparative List of Amendment.

- Copy of Election proceedings with Notice. h. Proof of Notice received.
- Copies of application form for new membership.
- Copies of resignation letter. k. Annual List of Governing Body (Sec.4).
- N.O.C. from owner of the new registered office of the Society.
- Ownership proof of new registered office of the Society. n. 'No Dispute' affidavit from President.