CHANGE THE GAME (PHASE 2)

Scaling up to India

Analysis of laws and regulations

Final Report

Logo Name

FUNDRAISING

Things you need to know

Different forms of registration and their registration requirements

Bodies Governing NGO/CBO Operations

Regulations governing NGOs/CBOs

Where to get relevant information in NGO/CBO activities

Options for Registration of an NGO/CBO:

	Registration Entity	Governing Act	Registration Point
1.	Society	Societies Registration Act, 1860	Issuance of Registration Certificate
2.	Trust	Public Trusts Act	Registration of Trust Deed
3.	Section 8 Company	Companies Act, 2013	Issuance of Registration Certificate

Things to do After Registration

1. Apply for a PAN Card
   (for the Society/Trust/Company from the Income Tax Department)
2. Open a bank account
   (in the name of the Society/Trust/Company)
3. Apply for Exemption of Income Tax
   (under Section 12A of the Income Tax Act)
4. Apply for obtaining exemption of donation from taxation
   (under Section 80 (G) of the Income Tax Act)
5. Obtain clearances from Reserve Bank of India (RBI) for receipt of foreign funds
   (by registering under the Foreign Contribution Regulation Act (in case of foreign funding))

Some of the Additional Licenses:

1. If the NGO is working in a restricted area (like a tribal area or a border area) a special permit – the Inner Line Permit is required. This is issued either by the Ministry of Home Affairs or by the relevant local authority (i.e., district magistrate)

2. Registration of the NGO under the Shop and Establishment Act to open an office and employ people

3. A foreign non-profit setting up an office in India and wanting staff from abroad will need to be registered as a trust/society/company, needs permission from the Reserve Bank of India and also a No Objection Certificate from the Ministry of External Affairs

NB: It is advisable to obtain the services of a lawyer to understand the benefits and disadvantages for each option and its suitability for the proposed venture.

Comparative Analysis of Trust, Society and Section 8 Company

Description	Public Trust	Society	Section 8 company
Legislation/ Statute	Relevant state trust act (e.g., Bombay Trust Act,1950, Madhya Pradesh Public Trust Act, 1951)	The Societies Registration Act, 1860	Companies Act, 2013
Purpose	Generally, it is created for charitable, educational or socially beneficial activities.	Created for literary, scientific, or charitable purpose or 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 members or public etc.	Promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.
Modification of objects	Alteration can be undertaken only by the founder or settler	Easy, legal procedures	Complicated, legal procedures
Ease of formation	Relatively simple	Slightly complex as compared to Trust	Cumbersome
Time frame for registration (approx.)	4-6 weeks	6-8 weeks	1-2 months
Registration procedure	Registration of Trust deed under Indian Registration Act, 1908 or as prescribed under the respective state trust act	Registration under Societies Registration Act, 1860 or the relevant state act with the Registrar of Societies of the concerned state	Registration under Companies Act, 2013 and a license to be obtained from Registrar of Companies of the concerned state
Authority with whom to be registered	Sub-registrar of registration department in respective states	Registrar of Societies of concerned state	Registrar of Companies of concerned state
Minimum/maximum	2/no limit	7/no limit	• 2/200 (for a private

number of trustees/ subscribers			limited company • No limit for a public limited company
Stamp Duty	4% of trust property value will be executed in non-judicial stamp paper with the registrar	No stamp paper required for memorandum of association, and rules and regulations	No stamp paper required for memorandum and articles of association
Name	Easy to choose. Separate application not required.	Easy to choose. Separate application not required.	Specific application for name approval required before initiating incorporation process
Governing structure	Single tier - Trustees are the ultimate authority	Two tier - General Body & Governing body	Two tier – Shareholders & Board of Directors
Management board	Trustees	Governing body	Board of directors and management committee
General & Board meetings	No provisions are laid down. Adequate rules should be provided in trust deed	General & Board meetings are required to be held as prescribed in the bye-law/ memorandum of the society	Specific provisions requires holding at least 1 Annual General meeting and 4 Board meetings every year
Statutory regulations	Nominal	Limited	Exhaustive
Membership transfer	Not possible	Not possible	Free or control as per desire
Member admission	Not applicable	Governing body control	General body or board control through issue of capital
Payment to members	As notified in trust deed	Not restricted	As approved by company and state
Tax Implications in hands of entity running the institution	Tax exemption can be sought after obtaining requisite registration and satisfying prescribed conditions. Donations made to institutions running approved projects/ schemes or those registered under Section 80G of ITA are exempt from tax in the hands of donors	Same as Trust	Same as Trust
Annual compliance Requirements (for maintaining Registration)	• Annual audit requirement as prescribed under ITA for the purpose of availing tax exemption. • Annual tax filing	• Same as Trust • In addition, annual statutory audit requirement as may be prescribed under the respective state Societies Registration Act	• Same as Trust • In addition, annual statutory audit requirement as prescribed under the Companies Act, 2013

	• Withholding tax compliances	• Annual filing of list of names, addresses and occupations of the governors, council, directors, committee, or other governing body to be filed annually with the Registrar of Societies	• Annual filing compliance requirements with Registrar of Companies • Mandatory Board Meetings • Maintenance of minutes and other secretarial records • Necessary filings with the Registrar of Companies in case of change of address / directors and any other modification

What should you know about registration with the Registrar of Societies as a Society?

Registration process

1. Choosing the Name of the Society
   The chosen name should not be similar or in resemblance with the name of an existing registered society.

2. A Covering/Request letter for registration of the society along with the following documents:
   - Memorandum of Association subscribed by members of society containing name and objects of the society along with names, addresses and occupations of the governors, councils, directors, committee or the governing body to whom by the rules of the society, management of its affairs is entrusted
   - Bye laws or Rules and regulations of the society
   - Duly notarized affidavit from the President or Secretary of the society stating that
     - There is no dispute between the office bearers/members of the Society
     - There is no other Society having similar name as that of the applicant society existing in the area
     - No member of the Society shall derive any financial benefit out of the income/funds of the Society in any manner
     - No member/office bearer of the Society can sell or dispose of the property of the Society in any manner
   - Documentary evidence of the premises of the society
   - Copy of residence proof of all founder members

The above documents along with the prescribed fee are required to be submitted to the Registrar of Societies and upon examination of the above documents, the Registrar provides a certificate of registration being an evidence of formation of the society.

Governance framework

A society typically has two set of committees or governing bodies – the General Body and the Governing Body. General Body comprises of the all the members of the society. General members of a society are permanent in nature subject to certain disqualifications as may be provided under the constitution of the society. In addition, a Governing Body is constituted by electing members out of the general members of the society. The management of the affairs of the society is entrusted with the Governing Body. The Governing Body is generally elected for a period of 1-3 years.

Compliance requirements – Reporting formalities

The Societies Registration Act 1860 (the central act) requires an annual filing of a list containing names, addresses and occupation of members of the governing body of the Society with the Registrar of Societies. Such filing is required to be done on or before the 14th day succeeding the day on which the annual general meeting of the society is held as may be prescribed under the rules of the society, or if its rules do not provide for an annual general meeting, such list is required to be filed in the month of January. Where a society is registered under the State At of a particular state the reporting requirement would be guided by such State Act. For e.g.: Andhra Pradesh Societies Registration Act prescribes an annual filing of the above-mentioned list within 45 days of the annual general meeting of the society.

With regard to financial reporting, most of the state acts prescribe a requirement of audit of accounts of the society. Further, such audited statements are required to be filed with the Registrar or any other authority as may be prescribed under the relevant State Act.

What are the Benefits?

Several benefits accrue to Societies i.e.

- Registration gives the Society a legal status and is necessary to open Society Bank accounts and to register the Society under the Income Tax Act
- 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 the Act enjoys the status of a legal entity apart from the members constituting it
- Registration allows Societies to be eligible to apply for tax exempt status

What should you know about registration as a Public Trust?

The essential ingredients of a valid Trust:

1. There must be an author or settlor of the trust.
2. Minimum 2 trustees are required.
3. There must be at least one beneficiary.
4. There must be clearly delineated trust property.
5. The object of the trust must be specific.

The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries. It may be noted in this respect that only a person competent to make a contract and competent to deal with property can create a trust. Besides individuals, an artificial person such as an association of persons, an institution, a limited company, a Hindu Undivided Family though its Karta can also form a trust. Trustees are persons who manage the trust property for the benefit of beneficiaries as per the trust deed. The author himself may or may not become a trustee.

Thus, a trust is formed out of will whereby the author or the settlor exclusively transfers the ownership of a property to be used for a specific purpose. The purpose drives the form of Trust which if meant for the benefit of particular individuals becomes a Private Trust and if meant for common public or community at large, is referred to as Public/Charitable Trust.

Registration process

As stated earlier, there is no central legislation governing the registration of a Public Trust. However, there are few states which have set up their own State Trust Acts and the process of registration in such states is guided as per the State Trust Act.

Generally, the first step towards setting up a trust is through preparation of a trust deed. While there is no statutory requirement under the Trust laws to have a trust deed, it is always desirable to prepare a trust deed. The trust deed once registered becomes the charter document of the Trust and should accordingly enshrine the objects and manner of administration and management of the trust.

Important administrative contents of a Trust Deed:

- Holding of meetings
- Quorum of meeting

- Chairman of meeting
- Adopting a resolution
- Delegation of functions
- Fixing of accountability
- Sources of income, including receipts of grants
- Modes of investment
- Mode of application of funds, towards attainment of the objectives
- Prohibition on use of funds in the event of winding-up
- Statutory audit and other legal formalities
- Opening and operation of bank accounts etc.

As mentioned above, once a trust deed has been prepared, it must also be registered. Though there is no mandatory requirement for registration of Trusts or the Trust deed under the Indian Trust Act, 1882, given that NGOs shall require tax registration or Permanent Account Number ('PAN') under the ITA for availing tax exemptions, registration of trust deed with government authorities (Sub-registrar of registration department in respective states) under the Indian Registration Act, 1908 becomes an important step in set up of an NGO. It may be noted that it is the trust deed and not the trust which is registered under the Indian Registration Act, 1908. The deed has to be registered with the Sub-registrar of the registration department of the respective State Governments.

However, it may be noted that few states such as Maharashtra, Gujarat and Madhya Pradesh have enacted State specific Public Charitable Trust Acts. Accordingly, as stated above, registration and operation of public trusts under such states is guided by the respective state act. Thus, registration of Public Trust deed may be undertaken as per the provisions of Indian Registration Act only if no specific state law has been enacted in the State in which such trust is proposed to be set up.

Governance Framework

A public trust is essentially guided by its Trust deed which should prescribe in addition to the administrative provisions set out above, particulars relating to the following:

- Constitution of the Board of trustees, their appointment, removal process, rights, duties, powers and liability of trustees
- Manner of conducting meetings of the Board,
- Manner of monitoring receipt and utilization of corpus, income of the trust etc.

All trustees are the ultimate authorities of a trust and form part of the Governing body of a trust. However, trustees may among themselves elect office bearers at periodic intervals to oversee the functioning/ operation and management of the trust. This understanding may be captured under the Trust deed appropriately.

Compliance requirements – Reporting formalities

A Trust is not regulated by any authority; therefore, no annual returns are required to be filed with the registering authority except where a Trust is governed by a State specific Public Charitable Trust Act. For instance, as per Bombay Trust Act, 1950 and rules thereunder, a public trust having annual income exceeding prescribed limits is required to prepare and submit with the Charity commissioner, a budget of probable receipts and disbursements in prescribed form at least one month prior to commencement of each accounting year. Similarly, the said state Act/rules requires trustees of a registered public trust, to keep regular accounts as well as to get the same audited and file the same with the Charity commissioner.

What are the Benefits?

Several benefits accrue to Trusts:

- Ease of formation as only a minimum of 2 individuals are required to form a Trust
- Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust
- If it becomes too difficult to carry out the objectives of a trust, the doctrine of *cy pres*, meaning "as near as possible," may be applied to change the objectives of the trust

What are the Constraints?

Services of a Lawyer/advocate may be required to draw up the Trust Deed. Moreover, public charitable trusts are highly regulated. For instance, in many states, purchases or sales of property by a trust must be approved in advance by the Charity Commissioner.

What should you know about registration as a Section 8 Company with the Registrar of Companies?

Another alternate legal form of entity set up available to NGOs in India, is a company registered under Section 8 of the Companies Act, 2013.

A section 8 company may be a preferred form of an NGO where the members would like to retain control of the affairs and utilization of the corpus and activities of an NGO. This is generally exercised by availing the benefit of shareholders' protection rights as provided under the provisions of Companies Act, 2013 e.g., rights of shareholders in case of oppression and mismanagement of business. A section 8 company is barred from distributing profit/income in any form to its members and is mandatorily required to apply its profits for promotion of its objects.
The pre-requisites for formation of a section 8 company are similar to that of a regular company formed under the Companies Act, 2013 as follows:

- Minimum 2 members in case of Private company and 7 in case of public company
- Minimum 2 directors in case of Private company and 3 in case of public company
- Minimum paid-up capital of INR 100,000 in case of private company and INR 500,000 in case of public company

A section 8 company can be registered for limited objects of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.

Registration process

1. Obtaining Director Identification Number (' DIN') and Digital Signatures (' DSC') of the proposed directors
2. Reservation of appropriate name by filing RUN (Reserve Unique Name) form on MCA website.
3. Obtaining license under Section 8 by filing prescribed form INC-12 with the concerned Registrar of Companies alongwith required documents.

Governance framework

The day to day affairs of a Section 8 company are managed by Board of Directors ('the Board') through Board meetings. The Board is generally entitled to exercise all powers, and to do all such acts, as the company is authorized through its Memorandum of Association. However, the Board is not authorized to exercise any powers or perform any acts which can be exercised or done by the Company in General Meetings only i.e., through the shareholders.

The Companies Act, 2013 prescribes for at least four meeting of the Board to be held in a year in such a manner that the gap between two such consecutive meetings should not exceed 120 days. Proper written notices should be given prior to conducting such Board and general meetings. Further, such meeting should be held at the time and place mentioned in the notice of the meeting and in the presence of the Chairman of the meeting with adequate quorum (minimum number of directors and shareholders respectively).
The Central Government has powers to grant certain exemptions to section 8 Company in respect of holding meetings, maintenance of records like minutes, registers etc. though, till date, no such exemptions have been notified.

Compliance requirements – Reporting formalities

In addition to the above, a Section 8 company is required to undertake the following compliances:

- Filing of audited accounts of the company (audited by statutory auditors and considered by members in annual general meeting) to be filed annually with the Registrar of Companies
- Filing of annual return of shareholders' and directors' report with the Registrar of Companies
- Filing of prescribed forms and resolutions with the Registrar of Companies as and when any change is made to the composition directors or office addresses etc.
- Maintaining minutes of the meeting of Board and shareholders prepared and signed within prescribed timelines
- Maintaining statutory registers like register of members, directors, contract in which directors are interested, register of investments etc.

What should you know about tax regulations and benefits?

The Income Tax Act governs the direct tax framework in India and provides for an exemption of income of Trusts or institutions set up for charitable purposes (being donees) and a deduction to donors with respect to their contributions to such institutions. For this purpose, entities eligible for tax exemption must obtain registration as an institution set up for charitable purposes from the Income Tax authorities.

Tax Deduction at Source (TDS)

1. Tax is needed to be deducted while making specified payments at applicable rates
2. Obtaining TAN (Tax Deduction Account Number) in case of applicability
3. Monthly requisition of tax deposition with the government
4. Quarterly submission of return

Annual Income Tax Return (ITR)

1. Obtaining PAN (Permanent Account Number)
2. Furnishing of Annual Income Tax Return on prescribed timelines

Specific tax benefits for organisations engaged in Charitable activities (Donees)

As mentioned above, organisations set up for undertaking specific charitable activities are eligible for tax exemption with respect to the income received in the form of donations or otherwise, subject to meeting certain prescribed criteria. In this regard, Section 12A enacts provisions relating to exemption of income, under provisions of Section 11 and Section 12 and provides that such exemption will not be provided unless an application for registration under Section 12A has been made to the Commissioner Income Tax /Director Income Tax (Exemptions) within a period of one year from the date of creation of such institution.

Trust or institutions created wholly for charitable purposes and upon registration with tax authorities as such are allowed to exclude the following income streams from their taxable incomes subject to satisfying the basic criteria for exemption viz., application of at least 85 percent of the Trust/ Institution's Income towards charitable purposes during a particular financial year:

- Income derived from property held under Trust wholly for charitable purposes to the extent to which such Income is applied to such purposes in India *(Section 11(1)(a)&(b)of ITA)*
- Income derived from property held under Trust where -
  - Trust was created on or after April 1952 for a charitable purpose which tends to promote International Welfare in which India is interested to the extent to which such Income is applied to such purposes outside India, and
  - For Charitable purposes created before 1st April 1952 for a charitable purpose which tends to promote International Welfare in which India is interested to the extent to which such Income is applied to such purposes outside India, and *(Section 11(1)(c) of ITA)*
- Income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution *(Section 11(1)(d) of ITA)*
- Capital gains utilized for the acquisition of another capital asset *(Section 11(1A) of ITA)*
- Accumulations of such institutions up to a period of 5 years *(Section 11(2))*

Other important points for eligibility for tax exemption

In addition to the income streams held as exempt and set out above, the following conditions merit consideration by charitable organisations in order to avail tax benefits:

- Not more than 15% of the income of the institution should be accumulated without prior permission of the concerned Commissioner of Income Tax
- No part of the income or property of the organization is used or applied for the benefit of the founder, trustee, relative of the founder or trustee or a person who has contributed in excess of INR 50,000 to the organization in a financial year
- The money so accumulated in India or set apart is invested or deposited in the forms or modes as specified in section 11(5) of the ITA
- The ITA further provides for the grounds/circumstances under which tax exemptions available to an institution may be denied *(Section 13 of ITA)*. Private religious trusts / charitable trusts or organizations created after April 1, 1962, and established for the benefit of any particular religious community or caste are specifically disqualified for seeking tax exemption.

Tax benefit for Donors

- Tax benefit may be availed by donors (being corporate entities or individuals) making contribution to specified funds such as Prime Minister Relief Fund etc. and eligible for 100%/50% deduction depending on the type of fund to which contribution is made under section 80G of ITA. Donors can claim a 50% deduction of the total amount contributed to registered charitable and religious organisations, subject to certain limits and conditions.

There are a few more exemptions available to Donors subject to certain conditions on the Donor and the Donee.

Key Sources of Information and Assistance

Which institutions can offer more information?	What the Institution offers NGOs/CBOs	Visiting address & contact
Voluntary Action Cell	Interface between VOs and Key ministries/departments/government bodies through the NGO Partnership System	**Voluntary Action Cell Planning Commission** Room No. 316 Yojna Bhavan, Sansad Marg New Delhi-110 001 Tele: 011-23042324 / 011-23042326 Email: ngos@india.gov.in Website: http://ngo.india.gov.in/auth/default.php
Ministry of Corporate Affairs	Rules, regulations and services related to establishing and maintaining an entity as a Section 8 company	Information And Facilitation Center Garage No.14, "A" Wing, Shastri Bhawan, Rajendra Prasad Road New Delhi - 110001. Phone : 011-23386110 http://www.mca.gov.in/MinistryV2/contactus.html
Income Tax Department	Indian government's site - Income Tax Department. Provides all the Direct tax acts and rules e.g., sections of Income tax Act (ITA) and rules thereunder	Directorate of Income - Tax (Systems) A R A Center, E-2, Jhandewalan Extn, New Delhi http://www.incometaxindia.gov.in/
Maharashtra Charity Commissioner's Office	Providing details related to trusts Act in Maharashtra e.g., Bombay Trust Act, 1950 and its rules, Societies Registration Act, 1860 and rules thereunder, FAQs on trust etc.	Office of the Charity Commissioner, Maharashtra State, Mumbai, 3rd floor, 83, Dr. Annie Besant Road, Worli, Mumbai 400 018. Tel. No. 24976421/2/3. http://mahacharity.gov.in
Give India	GiveIndia is a donation platform that allows companies to support a cause of choice from about 200 NGOs that have been scrutinised for transparency and	http://www.giveindia.org/

	credibility	
Voluntary Action Network India (VANI)	Works towards building a society where voluntarism and voluntary organisations play a dominant role in social cohesion, economic empowerment and nation-building	BB-5, 1st Floor, Greater Kailash Enclave - II New Delhi - 110048 Tel : +91-11-29226632, 29228127 Fax : +91-11-41435535 E-mail: info@vaniindia.org Website:www.vaniindia.org
Credibility Alliance	Works on promotion of the norms of good governance and public disclosure	**Head Office** Credibility Alliance, 214, Second Floor, DDA-1 Building, District Centre, Janakpuri, New Delhi-110058 Phone No 011 64722849 Email: tejinder@credibilityalliance.org Website: www.credibilityalliance.org Mumbai Office Third Floor, West Khetwadi Municipal School, Lane # 5 Back Road, Khetwadi, Mumbai – 400 004 INDIA Phone No.: 022 - 23894046 / 23894047
Financial Management Service Foundation (FMSF)	Financial Management Service Foundation (FMSF) is a development resource organization involved in the Financial Management, Legal Issues and Governance of Development Organizations in South Asia.	**Financial Management Service Foundation** ACCOUNTABILITY HOUSE A-5, Sector 26, NOIDA 201 301 **Tel:** 91-120-4773200 **email:** fmsf@fmsfindia.org **website:** www.fmsfindia.org, www.incometaxforngos.org, www.legalissuesforngos.org; www.socialaccountability.net
Samhita	Samhita provides a platform for NGOs to showcase their work and attract donation	Address B-305, Cello Triumph, I B Patel Road, Goregaon East, Mumbai 400 063 INDIA - http://samhita.org/
GuideStar India	GuideStar India is India's leading provider of NGO information. Their portal provides a fully searchable database of reliable and comparable information on over 3,500 NGOs	http://www.guidestarindia.org/
DASRA	Provides a platform for knowledge, funding and people to come together to create social impact	Dasra - India: M.R.Co-op Housing Society Bldg No. J/18, 1st floor Opposite Raheja College of Arts and Commerce Relief Road, Off Juhu Tara Rd Santa Cruz (West), Mumbai 400 054. Phone: +91 22 6120 0400 Email: info@dasra.org

Centre for Advancement of Philanthropy (CAP)	Helps philanthropic organisations comply with legal issues governing charitable giving in India. CAP specialises in all legal matters concerning the Trusts/Societies Act, Income Tax Act, Foreign Contributions Regulations Act (FCRA), and a host of allied laws and good governance and management practices.	Centre for Advancement of Philanthropy, 4th Floor, Mulla House, 51 M.G. Road, Flora Fountain, Mumbai – 400 001. Tel: (022) – 22846534 Email : connect@capindia.in

Useful Sources of Information

For information on registration and regulations related to Societies and Trusts: log on to http://www.mca.gov.in/MinistryV2/societiesregistrationact.html
http://mahacharity.gov.in/static_pages/ccacts&rules.php

- For access to registration process and forms under the Companies Act: Logon to
http://www.mca.gov.in/MinistryV2/RegisterNewComp.html
http://www.mca.gov.in/MCA21/dca/downloadeforms/Download_eForm_choose.html
- To access the companies act
http://www.mca.gov.in/MinistryV2/companiesact.html
To access the contact details at Ministry of Corporate Affairs and Registrar of Companies in various states http://www.mca.gov.in/MinistryV2/contactus.html
- To register under the Income tax act http://law.incometaxindia.gov.in/DIT/Income-tax-acts.aspx
- Tax Payers Information Series 37 – Assessment of Charitable Trusts and Institutions– This provides a guide to Income Tax assessment for NGOs/ CBOs
http://www.incometaxindia.gov.in/archive/assessment_charitabletrusts_institutions.pdf