



Compliances under
Maharashtra
Public Trust Act,1950

(MPT Act)



- 1) Trusteeship is a voluntary acceptance of responsibility. You cannot get away from it by any pretend.
- 2) Trust is put on you hence you have to act in such a manner that there should not be breach of trust and you do not fail in this entrusting of trust.(Vishwas)

- 3) As section 36A(1) a trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the trust deed and lawful directions issued by the C.C. or a court may issue in this respect. The trustees exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property if they were his own.

- 4) As per section 36A(2) the trustees shall, subject to provisions of the MPT Act and the instrument of the trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust and to do all things necessary for the due performance of the duties imposed on him.
- 5) He is further expected to be vigilant about the spending of the public money.

- 6) He has to be careful about the handling of the trust finances and investments. Trustees act should as per the decision taken by the Board of the Trustees (BOT)/ Managing Committee (MC), as the case may be, generally by rule of majority. All important decisions should be taken by the BOT/MC and should be backed by appropriate resolution.
- 7) The decisions of the BOT/MC should not be contrary to provisions of the MPT Act and should be within the preview of the Trust deed/ Constitution.

- 8) He must see that the investments and deposits of the surplus funds as per the modes prescribed u/s 35 of MPT act and the permission granted by Charity Commissioner or by State Govt. either by special permission or general permission. At the same time he has to see that he is not violating the permitted modes under u/s 11(5) of the I T Act.
- 9) Loss due to negligence or misconduct can be recovered from him except if it is proved that he has acted in a good faith and was as per the decision taken by BOT/MC.
- 10) The trustees can be personally penalized for the default conducted by them.

- 11) Proper books of accounts to be maintained as prescribed under the law.
- a) All payments should be authorized appropriately
- b) Proper supporting evidences and payment vouchers and proofs are to be maintained.
- c) All proofs for the income and donation letters specifically for corpus donations are to be maintained.
- d) All payments including purchases are to be done through banking system. No cash payments to be done in excess of Rs.10,000/- to one person in a day.
- e) Appropriate TDS is to be done as applicable.

- 12) The accounts of the trust are required to be audited if the gross receipts of the trust is exceeding Rs. 5000/- from certified auditor or from a practicing C.A. The audit is required to be done within 6 months from the end of the year i.e. by 30th September.
- The balance sheet and income & expenditure a/c are to be prepared in prescribed format in schedule – viii and ix respectively.

- 13) The audited accounts of the trust are to be submitted by the auditor (Rule-21) shall forward a copy within 15 days from the date of the audit, online and the accounts filing acknowledgement is to be filed with the office of the Charity Commissioner duly signed by the two or three trustees, as the case may be, along with auditor's signature and stamp.
- In case if the trust has received corpus donations than the auditor has to issue a certificate in this regard and this certificate is to be attached along with acknowledgement.
- In case of a delay in filing of the accounts within prescribed time than an affidavit for condonation of delay is to be submitted
- 14) The audit report is to be obtained in the prescribed format under sub sec (2) of section 33 & 34 and rule 19 of the MPT Act. Commonly known as Yes / No report.

15) Audit report Points

There are 20 points in the audit report. The auditor has to reply each one of them. These points in fact are questions which in turn relates to the various compliances under MPT.

(a)	Whether accounts are maintained regularly and in accordance with the provisions of the Act and the rules ;
(b)	Whether receipts and disbursements are properly and correctly shown in the accounts;
(c)	Whether the cash balance and vouchers in the custody of the manager or trustee on the date of audit were in agreement with the accounts;
(d)	Whether all books, deeds, accounts, vouchers or other documents or records required by the auditor were produced before him;
(e)	Whether a register of movable and immovable properties is properly maintained, the changes therein are communicated from time to time 'to the regional office, and the defects and inaccuracies mentioned in the previous audit report have been duly complied with ;

(f)	Whether the manager or trustee or any other person required by the auditor to appear before him did so and furnished the necessary information required by him ;
(g)	Whether any property or funds of the Trust were applied for any object or purpose other than the object or purpose of the Trust;
(h)	The amounts of outstanding's for more than one year and the amounts 'written off, if any;
(i)	Whether tenders were invited for repairs or construction involving expenditure exceeding Rs.5000/- ;

(j)	Whether any money of the public trust has been invested contrary to the provisions of Section 35 ;
(k)	Alienations, if any, of the immovable property contrary to the provisions of Section 36 which have come to the notice of the auditor;
(l)	All cases of irregular, illegal or improper expenditure, or failure or 'omission to recover monies or other property belonging to the public trust or of loss or waste of money or other property thereof, and whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust of misapplication or any other misconduct on the part of the trustees or any other person while in the management of the trust ;

(m)	Whether the budget has been filed in the form provided by rule 16A;
(n)	Whether the maximum and minimum number of the trustees is maintained;
(o)	Whether the meetings are held regularly as provided in such instrument;
(p)	Whether the minute books of the proceedings of the meeting is maintained;
(q)	Whether any of the trustees has any interest in the investment of the trust;
(r)	Whether any of the trustees is a debtor or creditor of the trust ;
(s)	Whether the irregularities pointed out by the auditors in the accounts of the previous year have been duly complied with by the trustees during the period of audit ;
(t)	Any special matter which the auditor may think fit or necessary to bring to the notice of the Deputy or Assistant Charity Commissioner.

- **16) Contribution payable to Public Trust Administration Fund**
- Every public trust has to pay to the PTAF annually such contribution at the rate notified by the State Govt. Not exceeding 5% of the amount calculated in form Schedule-IXC vide rule -32 signed by the auditor. It is calculated on Income shown in the income & expenditure A/C (Corpus donations are not to be added)) minus items not chargeable to contribution u/s 58 and Rule-32.
- The present rate for the contribution notified is 2%.

- **The Bombay High Court has presently stayed this contribution by its interim order passed on 25-09-2009 vide PIL – 40/2007.**
- The contribution amount is automatically calculated while uploading the accounts. However it is presently not recovered.
- As per rule 32(3) following deductions mainly are allowed to calculate the amount liable for contribution.
- (i) Exclusively for the purpose of advancement and propagation of secular education.
- (ii) Medical relief.
- (iii) Veterinary treatment.
- (iv) Donations received from another trusts.
- (iv) Expenditure incurred from donations for relief of distress caused by scarcity, drought, flood, fire or other natural calamity.
- (v) Grants received from Government or local authority.

- There are other deductions given in schedule IXC.

- **There is penalty and recovery procedure for the contribution money payable by the trust.**

- **17) Change reports (C/R) (Section -22 vide rule 13(1))**
- As per section 17 vide Rule – 5, the public trust registration office shall maintain a register of public trusts in the form of Schedule - I in respect of public trusts registered or deemed to be registered.
- This register mainly contains- Registration number, Trust and trustees name and address, mode of succession of trusteeship and managership, objects, particulars of documents creating the trust, movable property, immovable property, average annual income and expenditure (At the time of registration), particulars of any scheme framed, particulars of encumbrances on trust property, particulars of title deeds and name of the trustee in possession and remarks.
- Where any change occurs in any entry recorded in schedule –I, the trustees shall file C/R, **within 90 days** and report such change in the prescribed form alongwith the required documents with the office of Charity Commissioner. The delay in filing C/R may extend/condone by authority on the ground of sufficient cause subject to payment of cost.
- The Dy / ACC may make any inquiry in this regard and pass an order either to accept or reject the change. The said authority has also power in certain cases where no one appears on hearing dates or not providing further required details instead of passing an order he can file the case and send it to record room without any decision .However the said C/R can be brought back for hearing with the approval of concern officer.

- **18) De- registration of the trust. Sec. 22(3A) (w.e.f. 23-02-2016)**
- The Dy/Asst CC may after such detailed and impartial enquiry and following such procedure de-register the trust in following grounds –
 - a) when its purpose is completely fulfilled, or
 - b) when purpose becomes unlawful, or
 - c) when its purpose becomes impossible, or
 - d) when the trust being revocable, is expressly revoked, or
 - e) when trustees are found not doing any act for fulfilling object of the trust, or
- Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change in sch.-I, in submission of audited accounts or in making other compliance prescribed under this act, for a period of 5 years, from the last date of reporting the change.

19) Prior permission for alienation of immovable property (Sec.36)

- Any sale, exchange or gift of any immovable property and lease for a period exceeding 10 years for agriculture land and a period exceeding 3 Years non-agricultural land or a building belonging to the trust shall be not be valid without the previous sanction of the Charity Comm.
- The Charity Comm. shall not sanction any lease for a period exceeding thirty years under this act. (w.e.f.10-10-2017)
- There is a set prescribed procedure for the application to obtain the sanction.
- The sanction may be subject to such conditions as may be imposed by C.C.
- The Charity Comm. may modify any condition including extension of time condition, if any.
- The Charity Comm. may revoke the sanction on the ground that such sanction was obtain by fraud or misrepresentation made to him or by concealing facts material for the purpose of giving sanction.
- Provided, no sanction shall be revoked after the execution of the conveyance except on the ground that such sanction was obtained by fraud and a reasonable opportunity to be given to the person to whom the sanction was granted.

- **20) Prior permission to borrow money - Sec.36A(3)**
- No trustee shall borrow money without prior sanction from Charity Comm. whether by way of mortgage or otherwise and the said sanction will be subject to conditions and limitations as may be imposed.
- No trustee shall borrow money for his own use from any property of the public trust of he is a trustee.
- Provided in the case of borrowing from the Bank or financial institution the C.C. shall decide preferably within a period of 15 days if bank or F.I. has provisionally sanctioned the loan.
- The C. C. may grant *ex-post facto* sanction to borrow the moneys from any nationalized or scheduled bank in exceptional and extraordinary situation where the absence of previous sanction results in hardship to the trust, or beneficiary or *bona fide* third party.

- **21) Purchase of property**

- The purchase of property for the furtherance of the objects of the trust there is no need to take any prior permission but if the purpose of the purchase of the property is an investment then prior permission is required.

- **22) Insurance of the trust building (Rule-65)**

- As per rule 65 all the buildings constructed , purchased or otherwise acquired shall be insured with an insurance concern approved by the state Government.

- **23) Maintenance of register by medical Centre (Sec 41AA)**

Every Medical Centre shall maintain a register for recoding the category of a patient in the prescribed form in schedule-XAAA.



“THANK YOU”

CA. VIPIN BATAVIA

