

# REFRESHER COURSE ON MAHARERA

6th, 7th, 8th, 9th & 10th July, 2021

THE AUTHORITIES TO IMPLEMENT  
THE ACT  
&  
FORMS OF LEGAL ENTITIES AND ITS  
REGISTRATION PROCESS





Western India Regional Council of  
The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)

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On 7<sup>th</sup> July 2021

**Refresher Course on MAHARERA Practice &  
Professional Opportunities (Virtual)**



**TOPIC –  
FOR DISCUSSION**

**THE AUTHORITIES TO  
IMPLEMENT THE ACT**



**FORMS OF LEGAL  
ENTITIES AND ITS  
REGISTRATION PROCESS**



# OVERVIEW

- (1) The promoters undertake a real estate project as a business venture. The Act provides for various compliances by the promoter.
- (2) One of the compliances is to enable the formation of association of allottees to manage the real estate project after the possession of apartment, plots or the building, as the case may be are handed over to the allottees.
- (3) The association of allottees requires to be registered under any one of the local laws for its formation, management and proper working.

## Information to be submitted at the time of registration of the project includes the form of association of allottees

Under section 4 of RERA , while submitting the information for registration of the project with Authority, the promoter has to disclose the legal entity to be registered as association of allottees.

### Obligation of the Promoter to register the Association of the Allottees:

As per Section 11(4) the act enables the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the association of allottees in accordance with the applicable laws shall be formed within a period of **three months of the majority of allottees** having booked their apartment or building or plot, as the case may be, in the project.

## **Association of allottees to carry out the remaining development work**

Section 7 of the Act provides for the cancellation of the registered real estate project by the Authority on receipt of a complaint or Suo-motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that the promoter has really done serious violations or for unfair trade practices. The Authority, upon the revocation of the registration, shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8 and as per Section 8 , it is an obligation on the Authority upon lapse of the registration or on revocation of the registration under this Act, to consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority.

# OBJECTIVES

**The objectives of the formation of the legal entity shall be as under :**

1. To obtain conveyance from the Owner/ Promoter, in accordance with the provisions of the Act and the Rules made there under, of the right, title and interest, in the land with building/buildings thereon.
2. To manage, maintain and administer the overall property of the real estate project.
3. In case of Section 7, Section 8 situation -
  - a. To complete the pending work related to construction of real estate project.
  - b. To negotiate with the various agencies related to construction of real estate project.
  - c. To get the pending approvals from various government departments related to construction of real estate project.
  - d. To raise funds for achieving the objects from members and also from the banking/non-banking sector..
4. To do all things, necessary or expedient for the attainment of the objects specified.



# TYPES OF LEGAL ENTITIES

Considering the objectives of the formation of the legal entity the types of legal entity could be as under:

1. Co-operative Housing Society under the Maharashtra Co-operative Societies Act, 1960
2. Society under the Societies Registration Act, 1860.
3. Trust under the Maharashtra Public Trust Act, 1950.
4. Non registered association of persons.
5. Partnership Firm under the Partnership Act, 1932.
6. Limited Liability Partnership Firm under the Limited Liability Partnership Act, 2008.
7. Company (Private / Public) under the Companies Act, 2013





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## PRACTICAL ASPECTS TO CHECK WHILE FORMATION OF LEGAL ENTITY

While formation of legal entity one should check all practical aspects during and after formation of a legal entity to achieve its ultimate objective of formation of legal entity. The applicability of provisions, cost of formation, cost of compliance under various laws could be same for most of the types of the legal entities, hence, while formation of the legal entity the main focus should be on the differentiating points during and after formation of a legal entity such points are as follows :

1. Compliance of Act under which the entity is registered.
2. Liability under Income Tax Act, 1961.
3. Transfer of membership in the legal entity.
4. Process of taking decisions in the legal entity.
5. Process of changes in the management of the entity.
6. Process of application for approval to the regulator under which the entity is registered.
7. Limitations while raising funds from financial/non-financial sectors.
8. Liability of the member of the entity.

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## COMPARATIVE CHART

Type of Legal Entity	Limit of Maximum Members	Compliance of Act	Income Tax Payable	Transfer of membership	Decision Making Process	Changes in Management	Limitations while raising funds	Liability of the member
<b>Co-operative Housing Society under the Maharashtra Co-operative Societies Act, 1960</b>	Min. - 10 Max. - No such limit	Accounts & Audit, Filing of Returns, MCM, to held, AGM to held, Registers to Maintain	22 % (Sec. 115 BAD)	Sale of Shares as per Bye Laws	In AGM and approval of registrar in few cases is must	Through election commissioner / registrar	Limitations of RBI guidelines for co-operative societies	Limited to the extent of Shares
<b>Society under the Societies Registration Act, 1860.</b>	Min. - 7 Max. - No such limit	Accounts & Audit, Filing of Returns, MCM, to held, AGM to held, Registers to Maintain	22 % (Sec. 115 BAD)	Sale of Shares as per Bye Laws	In AGM and approval of commissioner in few cases is must	As per bye laws	Limitations of RBI guidelines for co-operative societies	Limited to the extent of Shares
<b>Trust under the Maharashtra Public Trust Act, 1950.</b>	Min. - 3 Max. - No such limit	Accounts & Audit, Filing of Returns, MCM, to held, AGM to held, Registers to Maintain	MMR of 42.744%	Sale of Shares as per Memorandum	In AGM and approval of charity commissioner in few cases is must	As per memorandum	Limitations of charity commissioners approval	Members are personally liable

## COMPARATIVE CHART

Type of Legal Entity	Limit of Maximum Members	Compliance of Act	Income Tax Payable	Transfer of membership	Decision Making Process	Changes in Management	Limitations while raising funds	Liability of the member
<b>Non registered association of persons.</b>	Min. - 2 Max. - No such limit	Accounts & Audit, Filing of Returns, Other compliance as per Memorandum	MMR of 42.744%	Sale of Shares as per Memorandum	In AGM	As per memorandum	Restrictions on Banking Sector for raising funds due to non-registration under any statute	Members are personally liable
<b>Partnership Firm under the Partnership Act, 1932.</b>	Min. - 2 Max. - 20	Accounts & Audit, Filing of Returns, Other compliance as per partnership deed	30%	Valuation of Shares and Goodwill is a task.	In members meeting	In members meeting	Based on personal guarantee by the partners	Members are personally liable

## COMPARATIVE CHART

Type of Legal Entity	Limit of Maximum Members	Compliance of Act	Income Tax Payable	Transfer of membership	Decision Making Process	Changes in Management	Limitations while raising funds	Liability of the member
Limited Liability Partnership Firm under the Limited Liability Partnership Act, 2008.	Min. - 2 Max. - No such limit	Accounts & Audit, Filing of Returns, AGM to held, Registers to Maintain, Other compliance as per partnership deed	30%	Valuation of Shares and Goodwill is a task.	In members meeting	In members meeting	Based on personal guarantee by the partners	Limited to the extent of Shares
Company (Private / Public) under the Companies Act, 2013	Min. - 2 Max. - 200 (Pvt Ltd) Max. - No such limit (Limited Company)	Accounts & Audit, Filing of Returns, BOD M, to held, AGM to held, Registers to Maintain	under normal provisions - 25% Section 115BAA - 22%	Sale of Shares	In AGM	In AGM	Very convenient / easy	Limited to the extent of Shares

# PRACTICAL ASPECTS TO CHECK WHILE FORMATION OF A CO-OPERATIVE HOUSING SOCIETY

As per section 4 of the Maharashtra Co-operative Societies Act, 1960, a society, which has as its objects the promotion of the economic interests or general welfare of its members or of the public, in accordance with co-operative principles or a society established with the object of facilitating the operations of any such society, may be registered under this Act

## Conditions of Registration

As per section 6(1) No society, other than a federal society, shall be registered under this Act, unless it consists of at least ten persons [or such higher number of persons as the Registrar may, having regard to the objects and economic viability of a society and development of the co-operative movement, determine from time to time for a class of societies](each of such persons being a member of a different family), who are qualified to be members under this Act, and who reside in the area of operation of society . For this purpose, the society shall submit to the Registrar:

- a. A plan showing the area covered by the proposal and the surrounding land as shown in the map or maps of the village or villages affected;
- b. An extract from the record of rights duly certified showing the names of the owners of lands and the areas of the lands included in the proposal;
- c. Statements of such of the owners of the lands as consented to the making of the proposal signed by owners before two witnesses;
- d. A detailed estimate of the cost of implementing the proposal;
- e. A detailed statement showing how the cost is proposed to be met.



# PRACTICAL ASPECTS TO CHECK WHILE FORMATION OF A CO-OPERATIVE HOUSING SOCIETY

## **Application For Registration**

As per section 8(1) For the purpose of registration, an application shall be made to the Registrar in the prescribed form and shall be accompanied by four copies of the proposed bye-laws of the society and such registration fee as prescribed in this behalf. Different registration fees may be prescribed for different class of societies, regard being had to the service involved in processing an application for registration. The person by whom, or on whose behalf, such application is made, shall furnish such information in regard to the society, as the Registrar may require.

As per section 9(1) If the Registrar is satisfied that a proposed society has complied with the provisions of this Act and the Rules, [or any other law for the time being in force, or policy directives issued by the State Government under section 4], and that its proposed bye-laws are not contrary to this Act or to the rules, he [shall, within two months], from the date of receipt of application register the society and its bye-laws.

Where the registrar refuses to register a proposed society, he shall forthwith communicate his decision, with reasons therefore, to the person making the application and if there be more than one to the person who has signed first therein.



# THANK YOU



**Western India Regional Council of  
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(Set up by an Act of Parliament)

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