

Formation and Registration of Trusts, Societies under the Maharashtra Public Trusts Act

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What is Trust? What is a Society?

▶ Sec. 2(13) of the Maharashtra Public Trust Act-

“ public trust ” means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860

▶ Sec. 1 - Societies Registration Act, 1860 - does not define Society

Any seven or more persons associated for any literary, scientific, or charitable purpose of for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar form themselves into a society under this Act

Comment: Charitable purposes which came within the language and spirit of the statute of Elizabeth (43 Eliz ch 4) could be grouped into four heads, (i) relief of poverty, (ii) education, (iii) advancement of religion and (iv) other purposes beneficial to the community not coming under any of the preceding heads. The words in Act 21/1860 are, therefore, to be understood as including religious purposes also. Hindu Public v. Rajdhani Puja Samithee AIR 1999 SUPREME COURT 964

Benefits of Trust / Society

- ▶ Autonomous Body - with defined / construed objects
- ▶ Separate Title of Properties - Asset Protection
- ▶ Enables Long-Term planning - for use by the Society over generations
(Asiatic Society of Mumbai - Asiatic Library - 1804)
- ▶ Statutory Rights - Right to collect contributions / Right to apply for Govt. grants / Govt. plots, etc.
- ▶ Tax Exemptions, Reduced Taxation / Fees etc.

Governance of Trusts - Constitutional Provisions

- ▶ The State List

- ▶ Entry 32

- Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies

- ▶ The Concurrent List

- ▶ Entry 10

- Trust and Trustees

- ▶ Entry 28

- Charities & Charitable Institutions, Charitable and religious endowments and religious institutions

Charity Laws - Framework (India)

▶ Central Laws

- ▶ Indian Registration Act;
- ▶ Indian Trust Act;
- ▶ Companies Act

▶ State Laws

- ▶ Most States have their own State Laws - eg. Maharashtra, Gujarat, Rajasthan, Bihar, AP, Kerala, TN, Orissa, Karnataka, Madras, UP, etc.

Types of NGOs based on Administrative Model

- ▶ Trust
 - ▶ Formed under the Indian Trust Act of the State Trust Acts
- ▶ Societies
 - ▶ Formed under the Societies Registration Act, 1860 and the State Rules framed thereunder
- ▶ Companies
 - ▶ Under the Companies Act, 2013

Trust vs Society vs Sec. 8 Company

Point of Distinction	Trust	Society	Sec. 8 Company
Parent Act	Maharashtra Public Trust Act, 1950	Soc. Registration Act, 1860	Companies Act, 2013
How formed	Religious Endowment <u>or</u> as per Wishes of Settlor	Atleast 7 persons subscribing to memorandum	Atleast 2 Members subscribing to Memorandum
Supreme Body + Administrative Body	Both - Trust Board	Supreme - General Body Administrative - Managing Committee	Supreme - Members / Shareholder Administrative - Directors
Document	Trust Deed	Memorandum and Rules	Memorandum and Articles

Trust vs Society vs Sec. 8 Company

Point of Distinction	Trust	Society	Sec. 8 Company
Minimum Members	Minimum 2	Minimum 7	Minimum 2
Registration Identity	Under Section 'A', 'B', 'C', 'D' or 'E' by Charity Commissioner	Year based registration No. by Registrar + Under Section 'F' by C.C.	Sec. 8 License by R.D + CIN by ROC
Whether Temporary Reg. possible?	Yes (Sec. 41C)	No	No
Amendment in the Document	Filing of Scheme Application (sec. 50A)	Filing of Change Report	RD's prior approval + Change in MoA / AoA

Trust vs Society vs Sec. 8 Company

Point of Distinction	Trust	Society	Sec. 8 Company
Contribution / Charity tax	2%, currently stayed by Hon. SC	2%, currently stayed by Hon. SC	No tax / contribution
Compliances	<ol style="list-style-type: none"> 1. Audit Report 2. Budget 3. Change Report (only in case of change) 	<ol style="list-style-type: none"> 1. Audit Report 2. Budget 3. Change Report (Mandatory Elections) 	<ol style="list-style-type: none"> 1. Audit Report 2. All Compliances as applicable to non-small company
Eligibility for CSR Registration	After 3 years of incorporation	After 3 years of incorporation	<ol style="list-style-type: none"> 1. Immediate if established by Company 2. Otherwise 3 years after incorporation

Trust vs Society vs Sec. 8 Company

Point of Distinction	Trust	Society	Sec. 8 Company
Loan	Can be obtained subject to permission of the Charity Commissioner	Can be obtained subject to permission of the Charity Commissioner	Can be obtained freely
Immovable Property Sale / Long Lease	Need Permission of Charity Commissioner for sale	Need Permission of Charity Commissioner for sale	No Permission needed
Closure	Can be de-registered u/s 22(3A) of the MPT Act	As per sec. 13/14 of Soc. Reg. Act	Sec. 8 License to be surrendered, converted to pvt. Ltd., and then apply for wind -up

Trust or Society or Sec. 8 Company - Points of Indifference

- ▶ Separate Legal Entity - Separate ownership / title
- ▶ Irrevocability*
- ▶ Registration under sec. 12AB / 80G of the Income Tax Act, 1961
- ▶ NGO Darpan / NITI Aayog perspective
- ▶ FCRA Perspective
- ▶ Govt. Grants Perspective

Trust Deed - Clauses

- ▶ Agreement between Settlor & Trustees
- ▶ Recitals - Provides Background of Formation
- ▶ Clauses:
 - ▶ Name
 - ▶ Registered Office
 - ▶ Area of Operation
 - ▶ Objects
 - ▶ Sources of Income
 - ▶ Management & Administration of Trust
 - ▶ Trust Board - Constitution
 - ▶ Powers
 - ▶ Vacancy
 - ▶ Appointment

.... Contd

Trust Deed - Clauses

- ▶ Officer Bearers
 - ▶ Meetings of Trust Board - Notice / Quorum / Minutes / AGM
- ▶ Power for Sub-Rules
- ▶ Power of Amendment
- ▶ Bank Account Operation
- ▶ Accounts and Audit
- ▶ Power to Purchase and Sell the Property
- ▶ Statutory Registers
- ▶ Utilisation of Funds
- ▶ Investment
- ▶ Irrevocability
- ▶ Beneficiary Clause
- ▶ Dissolution Clause

Society Memorandum and Rules - Clauses

▶ Memorandum

- ▶ Name
- ▶ Registered Office
- ▶ Objects
- ▶ First Members and Designation
- ▶ Subscription Clause to Memorandum

▶ Rules

- ▶ Definitions
- ▶ Jurisdiction
- ▶ Financial Year
- ▶ Language
- ▶ Registration
- ▶ Membership and Procedure to Admit Members

.... Contd

Society Memorandum and Rules - Clauses

- ▶ Membership and Procedure to Admit Members
- ▶ General Body - Type of Members / Membership Fee / Ceasing / Powers
- ▶ Meetings of General Body - AGM / SGM / RGM
- ▶ Managing Committee - Election / Vacancy / Duty and Powers
- ▶ Office Bearers - Powers
- ▶ Rules regarding all Meetings
- ▶ Election procedure
- ▶ Power for Sub-Rules and Amendment
- ▶ Bank Account Operation
- ▶ Accounts and Audit
- ▶ Power to Purchase and Sell the Property
- ▶ Statutory Registers
- ▶ Utilisation of Funds
- ▶ Investment
- ▶ Beneficiary Clause
- ▶ Dissolution Clause

Important Clauses - From 12AB Perspective

- ▶ Investment Clause

As per Sec. 35 of MPT and sec. 11 or relevant provision of Inc. Tax. Act

- ▶ Beneficiary Clause

Without distinction of religion, gender, caste, community or creed

- ▶ Utilisation Clause

Only towards objects and administration of objects

- ▶ Irrevocability

Settlor has relinquished all rights including power to revoke

.....contd

Important Clauses - From 12AB Perspective

- ▶ Accounts and Audit Clause

Accounts to be maintained as per provisions of Income Tax Act and Audit shall be done by Chartered Accountant

- ▶ Dissolution

Trust shall dissolve as per the Rules

Upon Dissolution, no distribution among trustees / members but shall be given to another Trust having similar objects and registered under sec. 12AB or equivalent

Most Common Mistakes - Drafting of Deed

- ▶ Objects - too many / too vague / commercial intent
- ▶ Power to donate to another Trust having similar aims and objects - not mentioned
- ▶ Religious Objects mentioned but need to obtain 80G
- ▶ Succession not clearly defined
- ▶ Incorrect mode chosen - No need for General Body
- ▶ Mandatory Clauses for 12AB not mentioned
- ▶ No attesting Witnesses

MPT Act - Regulatory Framework for Registration

- ▶ S. 18 - Registration of public trusts
- ▶ S. 19 - Inquiry for registration
- ▶ S. 20 - Findings of Inquiry
- ▶ Rule 6 - Application for registration of a public trusts under section 18
- ▶ Rule 7 - Manner of inquiries
- ▶ Rule 7A - Public notice before making certain inquiries
- ▶ Rule 8 - Certificate of Registration
- ▶ Rule 8A - Registration of public trust when its name is duly changed.
- ▶ Schedule II - Form for Application for Registration under Rule 6
- ▶ Schedule II-A - Schedule of Immovable Property to be annexed

Trust Registration Flow

Application

- To be made by Trustee within 3 months
- Alongwith necessary documents
- Appropriate Court Fees

Inquiry

- Whether Trust exists and is a public trust?
- Whether property belongs to the Trust?
- Generally done by way of publication in newspaper

Findings

- To note findings regarding jurisdiction, succession, persons having interest, objects, etc.
- On payment of Fees, registration certificate granted

MPT Act - Registration Checklist

- ▶ Schedule II, duly with Court Fee Stamp of Rs. 100/-
(Sch. II contains many imp. Incorporation details - disc. Later)
- ▶ Copy of Trust Deed (True Copy, attested by the Settlor, Trustee & Witnesses)
- ▶ Consent of all the Trustees to be the Trustees
- ▶ Authority to Reporting Trustee (Granted by other Trustees)
- ▶ Proof of Address alongwith Consent of the Owners
- ▶ List of Trustees a/w Name, Address, Designation, Phone & Email id
- ▶ Self Attested Photo and Address Proof of all the Trustees
- ▶ Original Trust Deed, duly on Stamp Paper
(2% of value settled or Rs. 500 otherwise)
- ▶ After inquiry, payment of Registration Fee - (Rs. 3/5/10/20/25)

Society Act - Registration Checklist

- ▶ Schedule A - Covering Letter
- ▶ Schedule B - MoA
- ▶ Schedule C - Rules and Regulations
- ▶ Schedule D - Consent of All Members
- ▶ Schedule E - Authority to Reporting Member
- ▶ Schedule F - Self - Declaration / Affidavit
- ▶ Schedule I (Rule 7) (Annual List of Persons)
- ▶ Schedule II (Rule 8) (Statement of Persons employed and conditions)
- ▶ Schedule VI (Rule 15) (List of Members)
- ▶ Letter of Exemption from Newspaper
- ▶ All Documents as per MPT Act, Registration
- ▶ Fees of Rs. 50/- to be paid.

MPT Act - Other Framework

- ▶ Jurisdiction - Offices
- ▶ Rank of the Officer
- ▶ Appeal against Registration - Sec. 70
- ▶ Properties at multiple properties
- ▶ Out of Will / Probate
- ▶ Online or Offline?
- ▶ Important Schedules - Schedule I, II, III, VIIA, VIII, IX, IX-C, X

Online Registration

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<https://charity.maharashtra.gov.in/>

The screenshot shows the homepage of the Office of Charity Commissioner, Maharashtra State. The header includes the state emblem, the text 'The Office Of Charity Commissioner Maharashtra State', a search bar, and navigation links for 'FAQ', 'Site Map', and 'Contact Us'. A secondary navigation bar contains links for 'Home', 'About Us', 'Acts & Rules', 'Office Info', 'RTI', 'RTS', 'Preliminary Procedure', and 'Application Guidelines', along with a 'LOGIN' button. Below this, a row of service buttons includes 'New User Registration' (highlighted with a red box), 'COURT ORDER', 'SUBMIT YOUR TRUST ACCOUNTS', 'VIEW HOSPITAL DETAILS', 'VIEW BED AVAILABILITY', and 'KNOW'. The main content area features a large yellow banner for 'DĀTĀ दाता' (Digital Administration for Transparency and Accountability) with the tagline 'दाता : पारदर्शकता आणि बांधिलकीसाठी संगणकीकृत प्रशासन'. To the right, an 'Announcement' section lists recent events: 'Inauguration of the office of the Joint Charity Commissioner, Public Trust, Aurangabad' (6 January 2015), 'Workshop 2015 held at Judicial Academy, Uttan' (6 January 2016), and 'Facilities Available For Weaker And Poor Citizens' (6 January 2015). At the bottom, portraits and names of 'Shri Devendra Fadnavis, Hon'ble Chief Minister' and 'Shri S. B. Savale, Hon'ble Charity Commissioner' are displayed. The footer contains links for 'Charity Offices' and 'Charity Hospitals'.

Online Registration

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Register Citizen

Name <input type="text"/>	Local Name <input type="text"/>
Mobile Number <input type="text"/>	Email <input type="text"/>
User Name <input type="text"/>	Confirm Password <input type="text"/>
Password <input type="password"/> <small>(e.g Abcd@1234)</small>	Date of Birth <input type="text"/>
Gender <input type="text" value="Select"/>	Building Name Or Office Name <input type="text"/>
Street Name <input type="text"/>	Street Name <input type="text"/>
LandMark <input type="text"/>	LandMark <input type="text"/>
Pin <input type="text"/>	District <input type="text" value="Select"/>
Taluka <input type="text" value="Select"/>	Village <input type="text" value="Select"/>

Please Enter Correct Code.


[Generate New Image](#)

Type the code from the image

Only Trustee, Society member or Event Mandal Member to register as a user and fill the form for their Trust/Society/Event

[Login](#)

RegisterClear

Online Registration

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Login

Please Enter Correct Code.



Generate New Image

Type the code from the image

[Forgot Password ?](#) | [Register User](#)

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Online Registration

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The screenshot shows the user interface of the online registration portal. At the top, there is a green header with the state emblem and the text "The Office Of Charity Commissioner Maharashtra State". A search bar and a "Welcome Anil" message are also present. Below the header is a yellow navigation bar with various service links such as "Register Trust", "Data Entry", "RTI", "Schedule VIA", "File A Application Scheme Change", "Apply Certified True Copy", "File An Appeal Request", "Trust Accounts", "Society", and "LOGOUT".

Under the navigation bar, there is a section titled "My Applications". Below this, there are eight colored buttons representing different services: "Register Trust", "Register A Society", "Register An Event (41C)", "File A Change Report", "Request Certified Copy", "Pay Your Fees", "Submit Your Accounts", and "File A Complaint".

Below the buttons is a search form with the following fields:

- Service Request Number:
- Application Type:
- Application Date:
- Trust Name:

A blue "SEARCH" button is located below the form fields.

Below the search form is a table with the following columns:

Service Request Number	Application Type	Trust Name	Application Date	Status
[Empty table body]				

At the bottom of the table, there are navigation controls including a "1" button and a "10" dropdown menu.

Online Registration

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Event Take An Objection Schedule-I Register Report Trust Update Search Schedule-I Data Schedule-I Data Entry

Trust Registration

PTR Office

Trust Detail

Trust Name *	<input type="text"/>	Local Trust Name	<input type="text"/>
Trust PAN Number	<input type="text"/>	NITI Aayog ID	<input type="text"/>
FCRA Registration Number	<input type="text"/>		
Building Name Or Office Name	<input type="text"/>	<input type="text"/>	
Street Name	<input type="text"/>	<input type="text"/>	
LandMark	<input type="text"/>	<input type="text"/>	
Pin	<input type="text"/>		
State	<input type="text" value="Maharashtra"/>	District	<input type="text" value="Select"/>
Taluka	<input type="text" value="Select"/>	Village	<input type="text" value="Select"/>

CHECK NAME AVAILABILITY

Online Registration

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Trustee/Trustees Details

Sr.No	Name of the Trustee	Date of Birth	Gender	Occupation	Mobile No	Email	Aadhar No	PAN No	Nationality
1	sunny	25/07/1985	Male		9422703608	shinde3608@gmail.com			Edit

1

ADD TRUSTEES

Mode of Succession

Mode of Succession * Minimum No of Trustees *

Maximum No of Trustees * Tenure of Trustees

For Life

- Objects of the Trust
- Charitable/Welfare
 - Educational
 - Medical
 - Old Age Homes
 - Orphanage
 - Religious
 - Social Service
 - Sports
 - Others
- Particular of Documents creating Trust
- Constitution of Society
 - Decree
 - Indenture
 - Scheme
 - Trust Deed
 - Will
 - Others

Particular other than documents about the origin or creation of trust

Particular of scheme if any relating to the trust

Online Registration

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Movable Property Details

ADD MOVABLE PROPERTY

Immovable Property Details

ADD IMMOVABLE PROPERTY

Income Details

Sources of Income *

Image 7.PNG

Average Gross Annual Income

From Movable Property *

From Immovable Property *

Total Gross Income
(Movable
Property+Immovable
Property)

Online Registration

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Average Gross Annual Income			
From Movable Property *	<input type="text"/>	From Immovable Property *	<input type="text"/>
Total Gross Income (Movable Property+Immovable Property)	<input type="text"/>		
Average annual expenditure			
On remuneration to trustees and manager *	<input type="text"/>	On establishment and staff *	<input type="text"/>
On religious objects *	<input type="text" value="Image 8.PNG"/>	On charitable objects *	<input type="text"/>
On miscellaneous items *	<input type="text"/>	Total Annual Expenditure	<input type="text" value="0"/>

Particular of encumbrances if any on trust property

Particular of title-deeds pertaining to trust property and the names of trustees in possession thereof

Remarks

Online Registration

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Communications With Trust/Society *Note:-(These details will be used for all further communications with Trust/Society)*

Contact Name/Nodal Officer/Rugnamitra *	<input type="text"/>	Contact Name/Nodal Officer/Rugnamitra	<input type="text"/>
Building Name Or Office Name	<input type="text"/>		<input type="text"/>
Street Name	<input type="text"/>		<input type="text"/>
LandMark	<input type="text"/>		<input type="text"/>
Pin	<input type="text"/>		<input type="text"/>
State	Maharashtra ▼	District	Select ▼
Taluka	Select ▼	Village	Select ▼
Mobile No *	<input type="text"/>	Email Id *	<input type="text"/>

Note:-(File name should be simple. Two dots, special characters except (space, "-" & "_") are not allowed. File size above 1MB is not allowed.)

Sr.No	Document List	Upload Document List
1	Trust Application	<input type="button" value="Choose File"/> No file chosen
2	Consent Letter of Trustees	<input type="button" value="Choose File"/> No file chosen
3	Memorandum of association/(R&R) Constition	<input type="button" value="Choose File"/> No file chosen

Online Registration

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Note:-(File name should be simple. Two dots, special characters except (space, "-" & "_") are not allowed. File size above 1MB is not allowed)

Sr.No	Document List	Upload Document List
1	Trust Application	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
2	Consent Letter of Trustees	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
3	Memorandum of association/(R&R) Constition	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
4	Document creating Trust	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
5	Address proof of all Trustees	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
6	Identity proof of all Trustees	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
7	NOC for Trust Office Address	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
8	Trust Office Address proof	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
9	Authority Letter from Board of Trustees	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>
10	Board Resolution copy	<input type="button" value="Choose File"/> <input type="text" value="No file chosen"/>

Online Registration

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11	Affidavit of Applicant	<input type="button" value="Choose File"/> No file chosen
12	Vakalatnama, If Any	<input type="button" value="Choose File"/> No file chosen
13	Application regarding exemption from paper publication	<input type="button" value="Choose File"/> No file chosen
14	Statement relating to persons employed by society(Schedule II-see rule 8)	<input type="button" value="Choose File"/> No file chosen
15	Rules & Regulations of the Society <small>Image 11.PNG</small>	<input type="button" value="Choose File"/> No file chosen
16	Any Other Document	<input type="button" value="Choose File"/> No file chosen

Though above mentioned documents are necessary for addressing your application non availability of any of the document may not be the reason for not processing your application

Payment Detail

Payment Mode

RegistrationFee 3.00

If you fail to submit your document your application will be cancelled and the amount you paid will be forfeited

THANK YOU!

CA Rohan Dedhia

In case of any query, feel free to revert on rohan.dedhia@yahoo.co.in

Disclaimer: The conclusions reached and views expressed in this presentation are matters of opinion. My views/comments are based on my understanding of the law and regulations prevailing as of the date of this presentation. However, there can be no assurance that the Authorities may not take a position contrary to my views.