

NPO GOVERNANCE PROGRAMME

MODULE - I

NPO CONSTITUTION, ACCOUNTABILITY & LEGAL FRAMEWORK



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Chapter 1

BACKGROUND OF NPOs IN INDIA

SHIFTS IN NPO SECTOR IN INDIA

1.1.1 India has a rich tradition of voluntary action and charitable work. Before Independence, Voluntary Organizations based on Gandhian philosophy were playing significant role mainly in social welfare activities and now the range and spheres covered by voluntary organizations has expanded considerably covering almost all the development related activities.

1.1.2 The approach of the voluntary sector has also changed over the past 50 years. In fifties and sixties the approach was based on charity and relief to the poor basically in disasters and tragedies. Otherwise also charity was in the mould of helping people by giving them alms and other things. In the seventies, the approach shifted to the welfare of the people rather than only charity by an external entity. NPOs started working with communities for the general welfare and health issues.

1.1.3 In the eighties, the approach shifted to development of the communities and NPOs started playing the role of a catalyst and

accompanier. NPOs started working in partnership with communities on various development issues such as food security, health, education, irrigation etc. In the nineties and till today, there has been a major shift in the approach of NPO work, currently most of the NPOs work on rights issues. They work with the communities with regard to the awareness and entitlement of various rights. The rights of communities may include the fundamental rights and also the right to access various Government programmes such as NREGA (National Rural Employment Guarantee Act), NRHM (National Rural Health Mission), Mid-day meal, etc. There has been a radical transformation in the work and approach of NPOs. This transformation has led to greater issues of accountability as today most of the funds are used in capacitation, training, awareness, advocacy, etc. Very little money goes to the communities directly. Therefore, there is a strong need for accountability standards.

SIZE OF THE NPO SECTOR IN INDIA

1.2.1 Charitable trusts and NPOs have been playing an integral and constructive role in the society since time immemorial. Last 50 years have seen an astronomical growth in the number of NPOs as well as the funds mobilised by them. The *Kelkar Committee Report* to the Finance Ministry in the year 2002, provided the following statistics of growth in the Charitable Sector.

Table - 1
Growth of Charitable Trusts/NPOs

	<i>In Crores</i>	
	1950-51	1998-99
Funds Mobilised	247	87,529
Share of GDP	2.49%	4.99%

1.2.2 It can be seen that there is a staggering growth in the Charitable Sector over the past few decades and currently it is estimated that the

charitable sector is around 3 to 4% of GDP which should be close to 2 lakh Crore rupees annually. Therefore, this sector assumes great importance in terms of its contribution to the nation.

NATIONAL POLICY ON VOLUNTARY SECTOR

1.3.1 The Government of India released a policy document for the voluntary sector on May 17, 2007. The “National Policy on Voluntary Sector 2007” was basically prepared to rationalise the laws pertaining to NPOs and create an enabling environment for an independent and effective voluntary sector. In this document it is stated that, the government take various measures for simplyfying the registration law and other applicable statutes. A brief extract from the policy is provided hereunder :

“Voluntary organizations may be registered as societies, as charitable trusts, or as non-profit companies under Central or State laws. Some States have adopted the Societies Registration Act (1860), with amendments, while others have independent laws. Similarly, laws relating to charitable trusts vary across States. Over time, many of these laws and their corresponding rules have become complex and restrictive, thus leading to delays, harassment and corruption. As the nodal agency for interface between the Government and the Voluntary Sector, the Planning Commission will encourage State Governments to review prevailing laws & rules and simplify, liberalise and rationalise them as far as possible. In order to facilitate registration of non-profit companies, the Government will examine measures to simplify procedures under section 25 of the Companies Act (1956), including those for license, registration, and remuneration to member employees.”

1.3.2 The policy sets out four specific objectives:

- To create an enabling environment for VOs that stimulates

their enterprise and effectiveness, and safeguard their autonomy.

- To enable VOs to legitimately mobilize necessary financial resources from India and abroad.
- To identify operating systems by which the Government may work together with VOs, on the basis of the principles of mutual trust and respect, and with the shared responsibility; and,
- To encourage VOs to adopt transparent and accountable systems of governance and management.

The text of the National Policy on the Voluntary Sector is provided in *Annexure 1*.

SELF ASSESSMENT QUESTIONS

1. Trace the development of Voluntary Sector in India from 1950s till now. What are some of the key characteristics of the sector as of today.
2. List out key focus areas in the National Policy on Voluntary Sector.

Chapter 2

DIVERSITY IN NATURE AND SIZE OF NPOs

DIVERSITY IN THE NPO SECTOR IN INDIA

2.1.1 Transparency and accountability of NPOs & charitable trusts always poses a great challenge because of the extreme diversity in terms of volume as well as nature of activities between the NPOs. One can find millions of small NPOs having total income within 2,00,000 to 3,00,000 rupees per annum. At the same time, one can also find NPOs handling in excess of 500 million rupees per year. Therefore, NPOs vary from tiny to mega NPOs.

2.1.2 In terms of the nature of activity also NPOs function between radical extremes. Few instances are as under :

- NPOs having relief component and tangible deliverable as the one working immediately after a natural calamity such as flood, cyclone, earthquake, etc;
- NPOs having a rehabilitative mission such as the NPOs who work for the rehabilitation and reconstruction after calamities and unfortunate happenings;

- NPO focussing on awareness and capacity building of people without having any tangible deliverable component;
- NPOs engaged in vocational training and employment generation programmes;
- NPOs engaged in counselling and psychological support;
- NPOs working as networks of smaller NPOs to mobilise people across the country/state for their rights and well-being;
- NPOs working as activists against various social, legal and political issues.

2.1.3 In terms of the form and operations also, the NPOs are very diverse. Some instances are as under :

- i) International Agencies working in India. There are few agencies which are directly working in India. For example, CARE, is an international NPO working in India for the last 60 years.
- ii) International Agencies having liaison & branch offices in India.
- iii) Agencies registered in India but controlled by foreign NPOs.
- iv) Networking NPOs
- v) CBOs (Community based NPOs)
- vi) Federations of smaller NPOs and CBOs
- vii) NPOs engaged in research, capacity building, advocacy, lobbying etc.
- viii) CSR (Corporate Social Responsibility) Institutions
- ix) Microfinance Institutions
- x) Medical Institutions and Universities
- xi) Chamber of commerce & Stock Exchanges

DISTINGUISHING NPOs FROM MUTUAL SOCIETIES

2.2.1 NPOs are distinct and different from a mutual society. A mutual society is an organization, where a group of person come together for the benefit of the members of that association or society so formed. A mutual society does not work with the outside world, the members from the society for their own recreation/benefit. Another distinct feature of a mutual society is that such members have the right to claim the benefit from that society/association. Contrary to a mutual society in an NPO members cannot take any benefit from the society. The social clubs like “Rotary Club” or “Lions Club” are mutual societies as members get together and access various benefits. Another example of a mutual society could be the association of the flat owners in a large apartment. The mutual societies are different from NPOs.

2.2.2 It may be noted that the income of mutual societies is also exempted from tax, not because they may or may not be doing charitable activities, but because they are exempted on the ‘principles of mutuality’. The ‘principles of mutuality’ states that since the contributor and the beneficiary are the same group of people therefore, the income is exempted.

2.2.3 Certain inherent characteristics of a mutual society are as under :

- (i) A mutual society is an organization, where a group of person comes together for the benefit of the members of that association or society so formed.
- (ii) A distinct feature of a mutual society is that such members have the right to claim the benefit from that society/association which is not possible in the case of NPO.
- (iii) The income generated from such societies are not be subject to tax on the principles of mutuality. The reasons for tax exemptions to mutual society are (a) there is common identity of the contributors and recipients, in other words the contributors and beneficiaries are same. (b) the mutual

society is created or incorporated as an entity merely for the convenience of the members. (c) there is impossibility of the contributors making profits from contributions made by themselves to a fund, which could either, be spent or returned back to themselves.

- (iv) The members should contribute as a class of homogenous group and they must be able to participate in the surplus in similar terms.
- (v) The individuals of a mutual society may be different at different times. But as long as the contributors and participators are both holding membership status and their identity is clearly established then the principles of mutuality would be available to them.

DISTINGUISHING NPOs FROM CO-OPERATIVE SOCIETIES

2.3.1 NPOs are distinct and different from a co-operative society. A co-operative society is an organization, where a group of person come together for the benefit of the members of that society so formed. For example a group of farmers may form a co-operative society for marketing their product. A co-operative society works for the benefit of its members whereas an NPO works for public benefit. Another distinct feature of a co-operative society is that such members have the right to claim the benefit, dividend or profit from the co-operative society. In an NPO members cannot take any benefit from the society.

SELF ASSESSMENT QUESTIONS

1. How are NPOs different from Mutual Societies and Co-operative Societies ?
2. Explain the issue of 'diversity' in NPO sector in India.

Chapter 3

UNDERSTANDING CHARITABLE & RELIGIOUS PURPOSE

THE TERM 'CHARITABLE' IS VERY BROAD

3.1.1 NPOs are generally known as charitable organisations, the term charitable is too broad to include various diverse categories on organisations, the term charitable includes :

- Organisations engaged in scientific, cultural, social activities etc.
- Religious organisations, though for income tax purposes religious organisations should specifically work for religious purposes only.
- Organisations doing activities without having philanthropic activities i.e. having activities with reasonable profit. For instance, schools which survive on the fees collected from students are treated as 'charitable' even if they are making reasonable profit.
- Even organisation such as stock exchanges and chambers of commerce have been considered as charitable organisation.

The bottom line for being a charitable organisation is to apply all its income and resources for its declared objectives without distributing any surplus to members or related persons or parties.

NOT FOR PROFIT DOES NOT MEAN CANNOT HAVE PROFIT

3.2.1 NPOs are not for profit organisations, however, it does not imply that NPOs cannot do commercial/business activity or cannot have profit. NPOs can engage in incidental business or profit making activity, however, NPOs should not have the intent of profit making and they cannot distribute any profit to any member or trustee. All income or profit of NPOs have to be used for charitable purposes only. The profit generated by a charitable organisation shall not, in principle, affect its charitable nature. However, if the motive primarily is to generate profit then the charitable nature can be questioned. In other words, profiteering is not permissible.

3.2.2 It may further be noted that having income or profit does not imply that an NPO is commercial in nature. An NPO may have various sources of income which may includes :

- rent from properties,
- income from conference halls,
- income from one time activities such as charity shows, etc.,
- professional service related with expertise incidental to charitable work, etc.
- sale of khadi or the goods produced by beneficiaries, provided the activity is with the intent of serving the beneficiaries.

DEFINITION OF CHARITABLE PURPOSE AND CHARITIES ACT, 2006 OF UNITED KINGDOM

3.3.1 “Charitable Purpose” generally implies working for the benefit of the poor and downtrodden, however legally the definition is very broad to include various other activities which may not be towards benefit of the poor. Each country has a separate definition of “Charitable Purpose”, generally the charitable purpose is very broad and covers wide range of

objectives including such as benefit of animals, trade associations, farmer associations, religious bodies etc. In this regard it is worthwhile to refer the Charities Act, 2006 of United Kingdom which provides a very exhaustive definition of the term “charitable purpose” which is as under:-

- (a) The prevention of relief of poverty;
- (b) The advancement of education;
- (c) The advancement of religion.
- (d) The advancement of health or the saving of lives;
- (e) The advancement of citizenship or community development;
- (f) The advancement of the arts, culture, heritage or science;
- (g) The advancement of amateur sport;
- (h) The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) The advancement of environmental protection or improvement;
- (j) The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) The advancement of animal welfare;
- (l) The promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;
- (m) Other purposes currently recognized as charitable and any new charitable purposes which are similar to another charitable purpose.

COMBINATION OF CHARITABLE AND NON-CHARITABLE OBJECTS

3.4.1 If there are several objects of the trust, some of which are

charitable and some non-charitable, and the trustees have unfettered discretion to apply the income to any of the objects, the whole trust would not be treated as charitable in nature. However, it has been held that when the primary object or dominant object satisfies the conditions of being charitable in nature then even if some ancillary or incidental objects are not charitable in nature the institution will still be considered as a charitable organisation, provided the charitable organisation continues to engaging in charitable activities only and desirably amends any such non charitable clause.

RELIGIOUS PURPOSE

3.5.1 An NPO is treated as religious in nature when it is engaged in propagation of any particular faith or religion for public benefit. The term 'charitable purpose' is wide enough to include religious purpose as well. A religious charity is technically a charitable organisation, however, in general it is expected that an organisation should be either religious or charitable. In other words an organisation may be pre-dominantly charitable in nature though it may have some religious activity and vice versa.

PRIVATE & PUBLIC RELIGIOUS PURPOSE

3.6.1 An NPO is treated as religious in nature when it is engaged in propagation of any particular faith or religion for public benefit. However, if it confines its benefit to a particular community or group of people then it will be treated as a private religious organisation. On the other hand a religious organisation shall be treated as public religious organisation if it is engaged in propagation of any particular faith or religion for public benefit irrespective of caste, creed or religion. For example in a public religious temple or church people from any caste, creed or religion can come and worship.

SELF ASSESSMENT QUESTION

1. What is the key characteristic of being “Charitable” ?
2. What are the highlights of the term “Charitable” as per the U.K. Charity Act, 2006 ?
3. What is the difference between a Public Religious and Private Religious Organisation.

Chapter 4

FUNDAMENTAL CHARACTERISTICS AND ACCOUNTABILITY OF NPOs

FUNDAMENTAL CHARACTERISTICS OF NPOs

4.1.1 At the outset it is important to understand the legal and formal characteristic of an NPO, which are explained as under :

(a) *NPOs are private institutions* : Contrary to the common perception NPOs are private institutions and should not be considered as public bodies. They are privately constituted institutions which may be privately managed. However, NPOs exist only for public purposes. For example, both public trust or private trust can be created with two or three persons (selected by the author of the trust) but a public trust cannot have any private objectives, it cannot work for the benefit of any individual or specific group of individuals. It may further be noted that NPOs which are substantially funded by government (more than 50%) are generally treated as public institutions.

(b) *NPOs need not necessarily be registered* : It is not a legal necessity to formally register an NPO, a group of individual may get together for a definite purpose and form an NPO. There are many oral trust which are

validly existing for centuries. However, for all practical purposes registration of an NPO is a necessity. Registration of NPO becomes important to avail various exemptions and rights under law.

(c) ***NPOs are Formal institutions*** : All NPOs are formal institutions irrespective of whether they are registered or unregistered. NPOs exist for a definite purpose having definite rules and regulations.

(d) ***Self Governing*** : As discussed above NPOs are private institutions therefore, they are self governing bodies. The members or the trustees of the NPOs have the legal right to determine the governance structure of the NPOs.

(e) ***Not for Profit*** : NPOs are not for profit organisations, however, it does not imply that NPOs cannot do commercial/business activity or cannot have profit. NPOs can engage in incidental business or profit making activity, however, NPOs should not have the intent of profit making and they cannot distribute any profit to any member or trustee. All income or profit of NPOs have to be used for charitable purposes only.

(f) ***NPOs are Voluntary in nature*** : The constitution and existence of NPOs is voluntary in nature. The members and the board/trustees work and participate without any personal interest. Everybody has to work voluntarily without drawing any personal benefit. In this context, it may be noted that any personal benefit does not include any legitimate payment such as salary, wages, honorarium, consultancy etc. against services rendered.

(g) ***NPOs are Non Religious*** : All charitable organisations are non religious in nature. It may be noted that even religious organisation are registered as NPOs however, in order to avail privileges under Income Tax and other laws even religious organisation have to propagate the religious activities irrespective of caste, creed and religion.

(h) **NPOs are for Public Benefit :** NPOs may be private institutions but they work and exist only for public purposes and public benefit. Public benefit does not mean they have to work for the entire population. NPOs may work for specific sections of the society but such section should be large and not a small definite group.

FIDUCIARY ACCOUNTABILITY OF NPOs

4.2.1 NPOs generally work in fiduciary capacity while implementing developmental projects. The term, '*fiduciary*' has been defined¹ as

“a trustee or a person holding the character of a trustee or a character analogous to trustee”.

And the term '*fiduciary capacity*' has been defined¹ as

“One is said to act in a ‘fiduciary capacity’ or receive money or contract a debt in a “fiduciary capacity”, when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of all attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer”.

4.2.2 The legal connotation of the term '*fiduciary*' refers to somebody who is entrusted to hold or manage properties or fund for another. In

¹ From 'The Law Lexicon', The Encyclopaedic Law Dictionary – Wadhwa & Company Nagpur, India

strict legal parlance, NPOs work in fiduciary capacities for donor agencies. Therefore, they have a donor-wise accountability to manage records and report on the basis of individual projects and funds. NPOs are accountable individually to the specific donors apart from the formal accountability towards the state and other stakeholders.

4.2.3 Fiduciary activities always come with operational accountabilities. When a person manages or utilizes fund on behalf of somebody else he/she has to ensure the following:

- the funds were utilized strictly in compliance with the project agreements and contracts
- the cost of services provided or the administrative component is reasonable and does not involve any element of profit
- in case of investment and properties, their title, safety and return are prudent and are as per the project agreement
- project-wise and fund-wise reporting is made as per the project agreement

4.2.4 A true trustee should provide account of every penny of fund spent or retained and such account should be to the satisfaction of the donor agency.

LEGAL ACCOUNTABILITY AND DOCTRINE OF *CY PRES*

4.3.1 The doctrine of *Cy pres* means that the general intent of the donor should prevail, therefore if a definite function or duty cannot be done in exact conformity with a desire of the donor then it should be performed with as close an approximation to that scheme as is reasonably practicable.

4.3.2 The Supreme Court of India defined the doctrine of *Cy pres* in

Ratilal Panachand Gandhi v. State of Bombay, AIR [1954] SC 388, 394 as under :

“ ‘*Cy pres*’ means in some way as nearly as possible when the particular purpose for which a charitable trust is created fails, or it cannot be carried out in whole or in part, the court would not allow the trust to fail but would execute it ‘*cy pres*’ that is to say, in some way as nearly as possible to that which the author of the trust intended.”

4.3.3 The doctrine of *Cy pres* is an important legal principle for the NPOs, which means that if a charitable activity cannot be done in particular way specified by the donor then it may be done in a way as close as possible. This doctrine was evolved largely in context of the performance of charitable trusts. A trust once created is bound by the trust deed and even the settlor of the trust cannot make any changes. But, suppose some clauses of the trust deed are not possible to be performed then the court may permit to change the objectives through some other similar objectives.

4.3.4 The doctrine of *Cy pres* provides a strong legal principle about the legal accountability of public fund. NPOs have to work strictly in conformity with the deed or agreement based on which the funds are received. Legally it is not possible to deviate from the project agreement.

ACCOUNTABILITY TO MULTIPLE STAKEHOLDERS

4.4.1 All NPOs are accountable to various stakeholders in various degrees. A stakeholder is an entity or a person(s) who is directly or indirectly affected by the activities of an NPO. One may also become a stakeholder through exclusion that is getting a fair opportunity of being selected. A inconclusive list of various stakeholders is as under:

- a) Beneficiaries

- b) Community (Targeted Population)
- c) Community (Target Population)
- d) Society
- e) Donors
- f) Management & Staff Members
- g) General Members
- h) Network & Alliance Partners
- i) Local Government
- j) Statutory Bodies (Income Tax, FCRA, Registrar of Societies, etc.)
- k) Advisors/Consultants
- l) Auditors

4.4.2 Each of the above stakeholders holds a different position and perspective from the other. For instance the beneficiaries or the targeted population may be a marginalised stakeholder, but the larger target population from which the beneficiaries were selected also happens to be an indirect stakeholder. It is important to understand the matrix of targeted population and the beneficiaries because each one's interest and stakes differ from the other. For instance, in a State where there are, say, 5000 Dalit villages and an NPO is working in 100 of such villages. Further, around 20% population of these 100 villages are direct beneficiaries of the NPO. In the above instance, 5000 Dalit villages is the target population, 100 villages are the targeted population and 20% of these 100 villages are the direct beneficiaries. The role and interest of these stakeholders would vary from each other. The larger target population may not matter much, but it is always important to know whether the entire population had an equal/stratified chance of being selected.

4.4.3 At times satisfying the needs of one stakeholder may lead to the detriment of the other. For instance, if the organisation aggressively goes

for providing staff welfare measures then the administrative component will go up and consequently reduce the funds available for programmes. Similarly a large corpus may be a good from a sustainability and security angle but large corpus reduces the availability of funds for immediate activities. The accountability aspect is also multi-directional.

4.4.4 In a world where the resources available are very scarce as a result whenever resources are used for any particular purpose there is always an opportunity lost, where the same resources could have been used. Therefore, in the process of NPO governance, each decision will have varying effect on the various stakeholders. NPOs have to ensure that not only their decision are satisfying the canon of “*maximum social advantage*” but they also have the mandate of all the affected stakeholders. The governance and decision making systems should be fair to all stakeholders and have the participation of all stakeholders.

4.4.5 However, from a legal and contractual perspective the **primary stakeholders** are the direct beneficiaries, donors and the government authorities. The volunteers, the local people, network and alliance partners, advisors, consultants, auditors, etc., can be considered as **secondary stakeholders**. The **tertiary stakeholders** could be the society at large, or the group of people who may be subjected to the long indirect impact of the project activity.

SELF ASSESSMENT QUESTIONS

1. Explain some of the fundamental characteristic of NPOs ?
2. What is fiduciary accountability ?
3. How is the “Principle of cypress” at work in NPOs.
4. Discuss the various types of stake holders in NPOs.

Chapter 5

REGISTRATION OF NPOs AND OTHER STATUTES

REGISTRATION AS LEGAL ENTITY

5.1.1 The registration and administration of NPOs is a concurrent subject under the 7th schedule, List III, Item 28, of the Constitution of India, which means that both the central and the state governments are competent to legislate on this subject. Currently the registration and regulation of NPO is, basically, a state subject. The most popular form of registering an NPO is the registration as a society. The registration of a society is regulated as per the laws enacted by the respective states. NPOs can also be registered as trust or companies. It may be noted that for registering a Trust there is no specific law in the country¹, all public Trust are registered under the Indian Registration Act, 1908. The Companies Act, 1956 is the only Central Statutes under which NPOs can be registered. However, registering an NPO as a company is not very popular and can be difficult for small and remote NPOs.

5.1.2 The three primary statutes of registration are as under :

- Registration of Societies Act, 1860; and
- The Companies Act, 1956

- Registration as Trust under The Indian Registration Act, 1908

The registration requirement, inherent characteristics and a comparative analysis of the three forms of registration has been provided in subsequent chapters.

ADVANTAGES OF LEGAL REGISTRATION

5.2.1 Any person or entity has the right to carry on development work even without any formal registration. However, it is important that all voluntary organisations should get themselves legally registered. Some reasons for getting an organisation registered are as under :

- Properties can be lawfully vested in the name of the organisation.
- Bank accounts can be opened in the name of the organisation.
- It becomes a legal entity which can sue and be sued.
- It can be registered under the Income-tax Act, Foreign Contribution Regulation Act and various other legal authorities.
- It provides greater credibility in sourcing funds as well as implementing programmes.
- It can have sustained longevity independent of its founders.
- The liability of the members generally becomes limited **except in the case of trust where the liability of the trustees is unlimited.**

OTHER IMPORTANT STATUTES APPLICABLE TO NPOs

5.3.1 All registered NPOs may require subsequent registration and compliances under various other statutes of the land for various purposes,

some important statutes which apply to the NPOs are as under :

- Registration under the Income Tax Act, 1961 to avail exemptions from Income Tax. Such registration is normally done under section 12AA of the Act. There are various other sections under which exemptions can be availed by various types of NPOs.
- Registration under Foreign Contribution (Regulation) Act, 2010 (FCRA) in order to receive grant from foreign sources.
- Registration under the section 80G or 35AC of the Income Tax Act, 1961 by virtue of which the donor (in India) can get Income Tax benefit.
- Registration/approval from Reserve Bank of India for foreign NPOs to work in India under Foreign Exchange Management Act.
- NPOs may also have to register or comply with various other statutes depending on the specific applicability on case to case basis, some of such compliances would be as under :
 - Applicability of provident fund and gratuity laws if the number of employees exceed 20 and 10 respectively.
 - Applicability of Service Tax Act if taxable services above the exempted limit are provided.
 - Applicability of Sales Tax, VAT or other commercial taxes if any applicable activity is conducted.
 - Permission from specific Ministry if international activity is conducted in India etc.

SELF ASSESSMENT QUESTION

1. What are the various laws applicable to the NPOs and discuss the implication ?

Chapter 6

REGISTRATION & LEGAL ISSUES AS A SOCIETY

REGISTRATION UNDER SOCIETIES REGISTRATION ACT

6.1.1 A group of seven or more persons are entitled to register an organisation under the Societies Registration Act, 1860. Such organisation should be for any literary, scientific or charitable purposes. Section 20 describes in detail the purposes for which a voluntary organisation can be registered. The founders/subscribers have to prepare a memorandum of association and the bye-laws and to file the same with the Registrar of Societies.

6.1.2 In addition to the Societies Registration Act, 1860, various States of India have framed their respective Act and Rules. Registration is done by the State Governments in whose territories the organisation is located. Subject to the minor procedural variations between various States of India, an organisation can be registered in any district of India, with the Assistant Registrar of Societies of that particular district. To have state-wide jurisdiction it is desirable to register the organisation with the Registrar of Societies of the respective States.

DOCUMENT TO BE FURNISHED FOR REGISTRATION

6.2.1 The following documents are required to be prepared and furnished for the purpose of registration :

1. Memorandum of Association along with a certified copy, signed by all the subscribers. A model specimen is provided as ***Annexure 2***.
2. Bye-laws or the Rules & Regulations along with a certified copy of the same. A model specimen is provided as ***Annexure 3***.
3. Affidavit on non-judicial stamp paper sworn by the President/ Secretary. The affidavit should be attested by an Executive Magistrate or Notary Public. A model specimen is provided as ***Annexure 4***.
4. Documentary evidence of the premises of the registered office, like house tax receipt or rent receipt. A 'no objection' certificate from the landlord should also be furnished.
5. A covering letter along with the requisite fees, requesting the Registrar for registration. The fees payable range between Rs. 10 to Rs. 100 in various States. The exact amount payable should be verified from the local registering authority.

CERTIFICATE OF REGISTRATION

6.3.1 The Registrar of Societies will verify and process the above-mentioned documents. After satisfying himself about the compliance of the provisions of the relevant Act and the correctness of the documents the Registrar will issue a certificate of registration.

6.3.2 The Certificate and the Bye-laws form the *prima facie* evidence

of registration of the Society. Certified copies should be made of both these documents to be used for all other legal and administrative matters.

RIGHTS AND LIABILITIES OF THE MEMBERS

6.4.1 The members of the Society are treated as entities different from the society, and therefore no suit or action can be brought against the members in their individual capacity. The following are the Rights and Liabilities of the members.

6.4.2 *Rights of members :*

- (i) Right to receive notices.
- (ii) Right to vote.
- (iii) Right to receive copies of the bye-laws.
- (iv) Right to receive Statement of Accounts.
- (v) Right to attend general meetings.

6.4.3 *Duties & Liabilities :*

- (i) The foremost duty of a member is to work towards attainment of the objects of the Society.
- (ii) The members should regularly attend the meeting and exercise their democratic right as and when necessary.
- (iii) A society may act against a member for :
 - (a) recovery of arrears of membership subscription.
 - (b) recovery of any retained property or damages to the property caused by the members.
 - (c) misutilising/misappropriating the funds of the society.
 - (d) forging any deed, document, money receipt etc. causing loss of fund or credibility of the society.

STATUTORY & MANAGEMENT COMMITTEES

6.5.1 A Society is formed with two sets of committees. The first is the General Body, which comprises all the members of the society. The second one is the Governing Body or the Executive Board, which is elected out of the general member. The general members are normally permanent in nature subject to disqualification condition as may be provided in the constitution of the society. The governing board is elected for a period of 1 to 3 years in the annual general meeting of all the members of society.

ARE FOREIGNERS ALLOWED AS MEMBERS OR BOARD MEMBER OF THE SOCIETY ?

6.6.1 As far as registering a charitable organisation with foreigners as subscribers/members/trustees is concerned, there is no law, which prohibits such registration. In fact there are case laws, which say “even if all the subscribers are foreigners yet the society will be Indian if it is registered in India and *vice versa*”.

6.6.2 On the other hand, a society will be considered as foreign society if it is registered outside India although all the members are of Indian origin.

6.6.3 There are some organisations which are validly registered with foreigners as subscribers. Therefore, legally charitable organisations can be formed with foreigners as subscribers/trustees/members. In this context it may be noted that under the Foreign Contribution Regulation Act (FCRA), 2010 foreigners on board are permitted with prior approval only.

TENURE OF REGISTRATION

6.7.1 The registration under Societies Act is permanent in nature and generally it is not revoked. Under extreme circumstances such societies

can be liquidated, both at the initiation of the existing members or the Government. However, it may be noted that various states have the laws which have time bound registration, subject to renewal.

OPENING OF BANK ACCOUNTS, TRANSFERRING AND USING FUNDS

6.8.1 The bank accounts can be opened in the name of the society as per the provisions laid down in the bye-laws. Therefore, proper clause for opening and operation of bank account should be drafted at the time of preparing bye-laws of the society.

6.8.2 There is no bar on transfer or use of funds, the only condition is that the funds, should be used for charitable purpose only.

EMPLOYING STAFF

6.9.1 A society can employ staff like any other Indian organisation. The prevailing laws relating to the employees are only applicable.

SUBMISSION OF ANNUAL REPORTS

6.10.1 A list of general and governing body members is required to be filed to the Registrar of the Societies every year. In addition to it, annual audited statements should also be filed. The requirement of submitting annual reports varies marginally between State to State. Therefore, the local law have to be checked.

OTHER STATUTORY OBLIGATIONS

6.11.1 All NPOs including society are required to get income-tax registration. Similarly NPOs receiving foreign contribution need to have

FCRA registration. Further, employee welfare scheme as may be applicable are required to be initiated.

SECURITY AND STABILITY FOR CONTINUING OPERATION LONG-TERM

6.12.1 A registered society generally has a very secure and stable existence activities. All the powers and destiny of a registered society rests in the hands of its general members. Therefore, if majority of the general members are like minded, then there is no threat to the existence of the society.

SELF ASSESSMENT QUESTION

1. What are the advantages of registering as a society under Societies Registration Act, 1860 ?

Chapter 7

REGISTRATION & LEGAL ISSUES AS A COMPANY

INTRODUCTION

7.1.1 It is permissible to register a Voluntary Organisation under the Companies Act, 1956. The Central Government can grant licence to a Voluntary Organisation under section 25 of the Companies Act. Such licences are granted allowing limited liability for the members. Further such organisation have the liberty to keep their name without the addition of the terms “Limited” or “Private Limited”.

REGISTRATION PROCEDURE

7.2.1 An application in eForm 1A is to be made to the Registrar of Companies (RoC) along with a fees of Rs. 500.

7.2.2 *Name of the organisation :* In this application suitable names for the organisation in order of preference are to be given for obtaining approval. The Registrar normally, will inform about the availability of the desired name within 7 days.

7.2.3 Application for licence : Once the name is approved by the Registrar, the Memorandum and Articles of Association are prepared [Refer **Annexure 5** and **Annexure 6** for specimen], and an application to the Registrar of Companies requesting for issue of a approval under section 25 is to be made.

7.2.4 Grant of licence and certificate of incorporation : The RoC after scrutinizing the application will grant the approval. After the receipt of the license/approval from the RoC, the Memorandum and Articles of Association [Refer **Annexure 5** and **Annexure 6** for specimen forms] along with the documents specified are again to be filed with the Registrar of Companies (RoC). The RoC then issues a certificate of incorporation to the organisation.

7.2.5 Fees payable : The registration fees and the filing fees are very nominal. The exact amount payable at various stages should be ascertained from the concerned Registrar's Office. It is preferable to act under the guidance of a professional Chartered Accountant or any other competent consultant.

7.2.6 Documents to be filed with the RoC initially : The following documents and papers are required to be submitted electronically to the RoC for approval of licence under section 25. The e-application should be accompanied by the requisite fee. An organisation may upload additional documents and information in addition to e-form 24A the documents which may be uploaded are :

- (i) E-form 24A with digital signature.
- (ii) Draft of the Memorandum & Articles of Association.
- (iii) Details such as name, address, occupation of the promoters.
- (iv) List of companies, associations in which the promoters are directors or hold responsible position with the description of the position held.
- (v) List of the proposed members of the Board of Directors.

- (vi) The proposed sources of income and the expenditures thereof.
- (vii) A note on the proposed activities and also the past activities, if any.
- (viii) A statement of the grounds for making an application under section 25. In this statement a reference to the relevant clause in the Memorandum of Association regarding the Vision & Mission of the proposed company should be made.
- (ix) In case of an existing society applying for conversion into section 25 company, Audited Statement of Accounts and Annual Report of the society for the past 2 years in triplicate should be submitted.
- (x) A certified copy of the notice to be published in newspapers.

7.2.7 Notice to be Published in Newspaper : Within one week of making application to the RoC a notice is required to be published in newspaper. It should be published in one English newspaper and one vernacular newspaper of the local area in which the Registered Office is situated. A specimen of such notice is provided at **Annexure 7**.

7.2.8 Approval and Registration as Company : The licence is granted by the RoC after the scrutiny of the application. The RoC may ask for any further clarification or explanations from the applicants.

After the approval is granted by the RoC, an application should be again made to the Registrar of Companies for its registration along with certain documents. The Registrar after scrutinising the requisite documents shall issue the certificate of incorporation.

7.2.9 Documents to be filed electronically with the Registrar of Companies : The following documents are required to be submitted to the Registrar of Companies :

- (i) Printed copy of the Memorandum and Articles of Association.
- (ii) The licence granted by the RoC.

- (iii) *Eform 1*
- (iv) *Eform 18*
- (v) *Eform 32*

ALTERATION OF MEMORANDUM

7.3.1 A body in respect of which a licence under section 25 is in force, shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government obtained in writing. The Central Government may revoke the licence of such a body if the alteration is made without its approval.

CONCLUSION

7.4.1 Once a company is registered it is required to follow various formalities as per the Companies Act, 1956, such as getting its accounts audited, holding Board Meetings & Annual General Meetings, Filing of Annual Returns & various other documents with the Registrar of Companies.

7.4.2 Under section 25(2) such companies enjoy a lot of exemptions in procedures and formalities. In this regard it is advisable to consult a Chartered Accountant or any other competent person for complying with various formalities under the Companies Act.

STATUTORY AND MANAGEMENT COMMITTEES

7.5.1 A company is formed with two sets of committees. The first is the General body, which comprises all the members/shareholders of the

company. The second one is the Board of Director, which is elected out of the general member. The general members are normally permanent in nature subject to disqualification condition as may be provided in the articles of association of the company. The company's Board of Director are elected for a period of 1 to 3 years in the Annual General Meeting of the members of company.

ARE FOREIGNERS ALLOWED AS BOARD MEMBERS OF THE COMPANY ?

7.6.1 There is no law, which prohibits registration of a company with foreigners as board members. In this context it may be noted that under the Foreign Contribution Regulation Act (FCRA), 2010 foreigners on board are permitted with prior approval only.

TENURE OF REGISTRATION

7.7.1 The registration as a company provides perpetual existence. In certain extreme circumstances a company can be liquidated. The authority is the official liquidator of companies.

OPENING OF BANK ACCOUNTS, TRANSFERRING AND USING FUNDS

7.8.1 The bank accounts can be opened in the name of the company as per the provisions laid down in memorandum and articles of association. Therefore, proper clause for opening and operation of bank account should be drafted at the time of preparing memorandum and articles of association of the company.

7.8.2 There is no bar on transfer or use of funds, the only condition is that the funds, should be used for charitable purpose only.

EMPLOYING STAFF

7.9.1 A company can employ staff like any other Indian organisation. The prevailing laws relating to the employees are only applicable.

SUBMISSION OF ANNUAL REPORTS

7.10.1 Annual return in prescribed format along with audited financial statements are required to be filed every year with the Registrar of Companies.

ACCRUAL BASIS OF ACCOUNTING

7.11.1 The books of account of a charitable organisation registered as a company are required to be maintained on accrual basis of accounting. There is no such statutory direction for a trust or a society. Normally NPOs prefer to keep books of account on cash basis of accounting. This factor should also be considered while registering an NPO as a company.

OTHER STATUTORY OBLIGATIONS

7.12.1 All NPOs including company are required to get income-tax registration. Similarly NPOs receiving foreign contribution need to have FCRA registration. Further, employee welfare scheme as may be applicable are required to be initiated.

SECURITY AND STABILITY FOR CONTINUING OPERATION LONG-TERM

7.13.1 A company generally has a very secure and stable existence activities. All the powers and destiny of a company rests in the hands of its general members/shareholders. Therefore, if majority of the general members/shareholders are like minded, then there is no threat to the existence of the company.

SELF ASSESSMENT QUESTIONS

1. What are the advantages if an entity is registered U/s. 25 of Companies Act, 1956 “
2. What is Accrual basis of accounts and what are its advantages ?

Chapter 8

REGISTRATION & LEGAL ISSUES AS A TRUST

INTRODUCTION

8.1.1 Formation of an organisation as a Trust is fairly simple, but the statutory provisions, procedures and the laws relating to trusts are a bit confusing. Under Indian Laws, various kinds of Private and Public Trusts can be formed, for the purposes of our discussion we will confine ourselves to the laws and procedures related with a Public Charitable Trust.

8.1.2 Ironically, the Indian Trust Act, 1882 is not applicable to Public Charitable Trust. Public Trusts are formed under general law, with guidance drawn from the Indian Trust Act, 1882. The other relevant acts are Religious Endowment Act, 1863, Charitable and Religious Trusts Act, 1920 and the Bombay Public Trust Act, 1950.

INGREDIENTS OF A VALID TRUST

8.2.1 The following are the basic ingredients of a valid trust :

- (i) There must be an author or settlor of the trust.

- (ii) There must be a trustee.
- (iii) There must be a beneficiary or beneficiaries.
- (iv) There must be clearly delineated trust property
- (v) The objects of the trust must be specific.

8.2.2 The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries. The trustee are the persons who manage this property for the benefit of the beneficiaries as per the trust deed. The author himself may or may not become a trustee.

8.2.3 A public charitable trust can be formed even if immovable properties are not set aside. Normally certain funds are settled in the trust deed for the benefit and purposes as mentioned in the trust deed.

THE THREE CERTAINTIES REQUIRED ARE AS UNDER

8.3.1 Three certainties of a trust are :

- (i) Certainty of intention to create trust.
- (ii) Certainty of the objects and the beneficiaries.
- (iii) Certainty of the subject-matter of the Trust *i.e.* fund or properties must be specified and settled in the deed.

WHO CAN FORM A TRUST ?

8.4.1 Every person competent to make a contract and competent to deal with property can create a trust. Besides individuals, a body of individuals or an artificial person such as an association of persons, an institution, a limited company, a Hindu Undivided Family through its Karta can also form a trust.

CHARITABLE PURPOSE

8.5.1 To form a public charitable trust it is very important that the objects of the trust must be of charitable nature and of general public utility. The Charitable Endowment Act, 1890 defines 'charitable purpose' as a purpose for the relief of the poor, education, medical relief and advancement of any other object of general public utility but does not include a purpose which relates exclusively to religious teachings or worship.

8.5.2 Since it is necessary for a trust to be registered under the Income-tax Act it is important to understand the meaning of 'charitable purpose' as per the Income-tax Act. The term charitable purposes has been divided into 4 parts :

8.5.3 *Relief of the poor* : Charitable purpose of providing support including financial support to poor people. The relief provided should be of public character. Relief such as help to the employees of the company or relief of group of private individuals like 'poor relatives' of the donors, would not be of charitable purpose.

8.5.4 *Education* : Promotion and imparting of education, literature, science or fine arts is a charitable purpose. Education need not necessarily be for the poor only, it may extend to the rich, but it must be a public character. Coaching institutes which prepare the students for competitive examinations are however excluded, since they do not 'impart' education. Similarly, publishing of newspapers and periodicals would not amount to providing 'education'.

8.5.5 *Medical Relief* : Arrangement of medical relief to the needy sick persons is a charitable purpose. It is not necessary that the medical relief should be free of cost; reasonable price can also be charged.

8.5.6 *General Public Utility* : Advancement of any object of benefit to

the public or to an identifiable section of the public would be considered as a charitable purpose. It has been held that even promotion of sports and games can be considered as a charitable purpose.

8.5.7 W.e.f. 1st April 2009 the Income Tax Act has expanded the definition of charitable purpose by adding two more categories of charitable organisation, they are (i) organisations engaged in environment related activities (ii) organisations engaged in preservation of monuments related activities.

PROCEDURE OF FORMATION OF A TRUST

8.6.1 No clear-cut statutes are available for the formation of a Charitable Trust. The only Central Legislation available is the Charitable and Religious Trusts Act, 1920. This Act is very limited in its application, and does not provide any effective control over Public Charitable Trusts. Therefore, Trusts in India are registered under the Indian Registration Act, 1908, in fact Trust deed are registered.

8.6.2 *Preparation of trust deed:* To form a valid public charitable trust it is always desirable to prepare a Trust deed. Such Trust deed should clearly specify and satisfy the certainties of a trust. A model trust deed is provided at **Annexure 8**.

8.6.3 *Registration of trust deed:* Registration should be made though it is optional. Without Registration of the trust deed it would not be possible to get registration under Income-tax Act and the Foreign Contribution Regulation Act. Registration is to be made as per the provisions of the Indian Registration Act. It may be noted that the trust deed and not the trust is Registered. The deed has to be registered with the Sub-Registrar of the registration department of the respective State Governments. For Public Charitable Trust in the State of Maharashtra and Gujarat, registration is to be made under the Bombay Public Trust Act, 1950.

MANAGEMENT OF A TRUST

8.7.1 No specific statutory guidelines are available for the management of a Trust. It is very important that the trust deed should specify rules and regulations with regard to :

- (i) Holding of Meeting
- (ii) Quorum of Meeting
- (iii) Chairman of Meeting
- (iv) Adopting a resolution
- (v) Delegation of Functions
- (vi) Fixing of Accountability
- (vii) Sources of Income, including receipt of grants
- (viii) Modes of Investment
- (ix) Modes of application of funds, towards attainment of the objectives
- (x) Prohibition on use of funds for specified purposes
- (xi) Treatment of unutilised funds in the event of winding-up.
- (xii) Statutory audit and other legal formalities
- (xiii) Opening and Operation of Bank Accounts etc.

STATUTORY & MANAGEMENT COMMITTEES

8.8.1 Unlike a company or a society the trust does not have a general body, from which the governing body is elected. The trustees are the ultimate authorities of a trust. Therefore, all the trustees form the governing body of the trust and the issue of electing a governing body is not relevant. However, trustees can elect office bearers among themselves at periodic intervals. It is important that the trust deed is drafted accordingly.

ARE FOREIGNERS ALLOWED AS MEMBERS OF THE TRUST ?

8.9.1 There is no apparent bar on the foreigners becoming a trustee of trust. In this context it may be noted that under the Foreign Contribution Regulation Act (FCRA), 2010 foreigners on board are permitted with prior approval only.

AMENDMENT OF TRUST DEED

8.10.1 A Trust deed once executed cannot be amended, therefore, appropriate clauses of amendments should be provided in the Trust deed empowering the Trustees to do such amendments. A trust deed which provides unlimited powers of amendments to the trustees will not remain a valid trust as it will become revocable in nature. Generally the powers of amendments pertain to management and administrative matters.

TENURE OF REGISTRATION

8.11.1 The registration as a trust provides perpetual existence. A trust will cease to exist if the subject-matter of the trust is totally liquidated. A trust cannot be revoked once it is legitimately created.

OPENING OF BANK ACCOUNTS, TRANSFERRING AND USING FUNDS

8.12.1 The bank accounts can be opened in the name of the trust as per the provisions laid down in the trust deed. Therefore, proper clause for opening and operation of bank account should be drafted at the time of preparing trust deed of the trust.

8.12.2 There is no bar on transfer or use of funds, the only condition is that the funds, should be used for charitable purpose only.

EMPLOYING STAFF

8.13.1 A trust can employ staff like any other Indian organisation. The prevailing laws relating to the employees are only applicable.

SUBMISSION OF ANNUAL REPORTS

8.14.1 A trust is not regulated by any authority therefore, no annual returns are required to be filed with the registering authority, except in the States of Maharashtra and Gujarat where a trust is required to be registered with the Charity Commissioner.

OTHER STATUTORY OBLIGATIONS

8.15.1 All NPOs including trust are required to get income-tax registration. Similarly NPOs receiving foreign contribution need to have FCRA registration. Further, employee welfare scheme as may be applicable are required to be initiated.

SECURITY AND STABILITY FOR CONTINUING OPERATION LONG-TERM

8.16.1 A registered trust generally has a very secure and stable existence activities. All the powers and destiny of a registered trust rests in the trust deed and the trustees are only the implementers.

SELF ASSESSMENT QUESTION

1. A Trust is a closely held entity. Discuss ?

Chapter 9

COMPARATIVE TABLE FOR FORMS OF REGISTRATION FOR NPOs IN INDIA

Description	Society	Trust	Company
Act under which it is registered	The Societies Registration Act, 1860	The Registration Act, 1908	The Companies Act, 1956
Ease of Formation	Relatively simple, it may take 1-2 months	Very simple, it may take a week	Relatively complicated, it may take 3-6 months.
Authority with whom to be registered	Registrar of Societies of the concerned state	Sub-registrar of Registration at District level	Registrar of Societies of the concerned state.
Approval of Name	Separate application not required. Name is generally granted if available	Not required	Separate application is required to be made. There are strict guidelines for approval of name.
Minimum No. of subscribers/trustees required	7 (Seven)	2 (Two)	2 (Two)
Cost of Registration	Less than Rs. 10,000	Less than Rs. 10,000	Less than Rs. 25,000
Governing Structure	Two tier structure (a) General body (b) Board of Directors	Single tier structure the trustees are the ultimate authority	Two tier structure (a) General body (b) Board of Directors
Voting Rights	All members have equal rights	All trustees have equal rights	The voting rights may vary on the basis of share holding. This provision can be used for control purposes.
Types of activities allowed	Not much of a difference between these 3 forms. Any kind of charitable & public utility activity can be undertaken.	Same	Same

Description	Society	Trust	Company
Annual Documents to be filed	The Act requires a list of managing body to be filed every year. But different states have different requirement for filing additional document every year. Normally the annual audited accounts, directors report and the list of governing body member should be filed every year.	No documents are required to be filed.	Annual return and audited accounts are required to be filed every year.
General and Board meetings	General and Board meetings are required to be held as prescribed in the bye-law of the society.	No provisions are laid down. Adequate rules should be framed in the trust deed, in this regard.	Specific provisions have been laid down. At least 1 Annual General Meeting and 4 Board meetings are required to be held every year.
Transfer of Membership	Membership is not transferable.	Membership is not transferable.	Membership can be transferred. Restriction on transfer can also be placed.
Payment to functionaries	Permitted as the general body may decide.	Provision in the trust deed should be there for any such payment.	Permitted as the general body may decide.
Recurring expenditure	The statutory compliances required are minimal. Consequently recurring expenditure are also negligible.	No statutory recurring expenditure.	Annual returns and Balance Sheet are filed along with certain fees. Again the quantum of expenditure is not significant.
Area of operation	Can operate throughout India even if registered in one particular state. No separate registration is required for operating in another state.	Can operate throughout India.	Can operate throughout India as the registration is granted by the Central Government.
Income Tax Registration	Compulsory within 12 months of registration.	Same	Same
FCRA Registration or Prior Permission	Compulsory for receiving foreign funds.	Same	Same
Labour and other relevant laws	To be complied as per applicability.	Same	Same
Foreigner as a member/trustee	Possible	Same	Same
Threat in having foreigner on board	Difficulties may be faced in getting FCRA registration. No other threat perceived.	Same	Same

Chapter 10

CHOOSING BETWEEN A TRUST, SOCIETY OR A COMPANY

INTRODUCTION

10.1.1 Under the laws applicable to Indian NPOs, there are three forms of registration, for creating a legally valid NPO, which are as under :

- Registration as society under the Societies Registration Act, 1860 (See **Chapter 6**)
- Registration as a not for profit company under the Companies Act, 1956 (See **Chapter 7**)
- Registration as a trust under the Indian Registration Act, 1860 (See **Chapter 8**)

The complete procedure of registration under each of the above three modes of registration is provided in **Chapters 6** to **8**.

CHOOSING A PARTICULAR FORM OF REGISTRATION

10.2.1 There is very little to choose between the three modes of registration

available in India, though, each one of them comes with its distinct characteristics, advantages and disadvantages. The comparative advantages or disadvantages are not alarming enough to recommend any particular form of registration. Registration as company would be a more professional and organized way of working, entailing more paper work and compliances. On the other hand, registration as a trust would be the simplest way with very minimal paper work and procedural hassles. Registration as a society will come in between and probably that is why it is the most popular form of registration. See comparative table for three forms of registration for NPOs in India given in **Chapter 9**.

REGISTRATION FROM CONTROL POINT OF VIEW

10.3.1 The control of an organisation depends directly on the number of members or the voting power.

10.3.2 In the case of a society, minimum 7 members are required to register and there is a two-tier structure comprising the general body and the governing body. It is a fairly open structure with all the members having equal voting rights.

10.3.3 A company also has a structure similar to a society but it has certain distinct advantages. For instance, a company can be formed with only two persons and the voting rights are not based on the basis of the number of persons. The voting rights are based on the basis of the number of shares held. The Company form of registration can be used for planning control mechanisms, by exploiting the rule of unequal voting powers.

10.3.4 A trust can also be formed with minimum of three persons. It does not have a two-tier structure like the company or society. Therefore, a trust is a relatively closed structure.

10.3.5 In the company or society the general members have the power to remove a Director or a board members but in the case of trust it is not possible.

10.3.6 Above all the drafting of the memorandum and articles of association, bye-laws or trust deed is most crucial in determining the control and governance aspects of charitable entity.

REGISTRATION FROM ACTIVITIES POINT OF VIEW

10.4.1 There is more or less no difference between these three forms of registration as far as the activities or the areas of operation are concerned. Because, activities/area of operation and other bye-laws are based on the constitution of the registered entity and the law of the state generally do not interfere.

COMPARATIVE INITIAL AND RECURRING COST

10.5.1 The costs of registration are very minimal for all the three forms of registration. The company form of registration involves a long complicated process, therefore, the cost will be marginally higher. The statutory fees and costs are negligible in all the three forms of registration.

10.5.2 Regular annual returns are required to be filed in the case of a Society as well as a Company. But, the cost involved again should not be an issue for consideration.

10.5.3 The Societies are regulated by the State Government, therefore, the fee structure and regulations vary from state to state. For instance, in Karnataka, the State Government collects a small portion of the total revenue generated by the societies, annually. Therefore, the geographical location and the state laws can also influence the mode of registration.

SELF ASSESSMENT QUESTION

1. What should be the basis for choosing a form of registration between society, trust and company ?

FUNDAMENTAL DOCUMENTS

INTRODUCTION

11.1.1 NPOs have a legal existence i.e. an artificial legal entity, which is bound by the principles of *Privity Cestui Que Trust*, which means the right to sue and the obligation of being sued.

11.1.2 Documents such as the Trust Deed, bye-laws or even project contracts are documents subject to legal rights, obligation and duties. Such documents provide the basis of the rights and duties to organisations and group of persons and can be very crucial and jeopardise the interest of various stakeholders in the short or long run. Therefore it is important to understand the implications as well as basics of legal documents which form the basis of NPO constitution and governance.

11.1.3 For instance, a clause in the main objectives which allows religious activities may result in rejection of registration. Or in a project agreement if there are some charges or expenses charged on percentage basis which results in a surplus may affect the '*not for profit*' nature if not drafted properly and endanger the exemptions and privileges enjoyed. Some

fundamental documents and the pertaining issues are discussed in this standard.

TRUST DEED OR MEMORANDUM OF ASSOCIATION

11.2.1 It is the legal document that is filed with the appropriate government authority at the time of registration of an NPO.

11.2.2 The form and content of this document varies from country to country. However the issues should ideally be addressed while drafting a Trust Deed or Memorandum of Association are as under :

- ♦ Name of the organisation.
- ♦ Duration of the organisation, usually perpetual
- ♦ Purpose for which the organisation is formed.
- ♦ Provision for conducting the internal affairs of the organisation.
- ♦ Names and address of the subscribers / founders.
- ♦ Address of the registered office.
- ♦ Names and address of the Secretary and initial Board Members
- ♦ Clause for distribution of the assets on dissolution.
- ♦ Declaration regarding the not for profit nature.

11.2.3 The object clause should be broad enough to cover the mission, vision and the future perspectives and evolution. The object clause should be very focused and should not mingle unrelated or divergent objectives. For instance, in India it is not permissible to have a mixed (religious as well as charitable) trust.

11.2.4 A specimen of Memorandum of Association of a society is provided in *Annexure 2*, A specimen of Memorandum of Association of a company is provided in *Annexure 5*, a specimen of Trust Deed is provided in *Annexure 8*.

ARTICLES OF ASSOCIATIONS OR THE BYE-LAWS

11.3.1 It is the legal document that is filed along the memorandum of association with the appropriate government authority at the time of registration of an NPO. This document comprises a set of rules and regulations which enables the organisation to govern, manage and conduct its affairs. It is necessary that the bye-laws are clearly stated, shared and understood by all the stakeholders. The issues normally addressed in bye-laws are as under :

- Interpretation of expressions used.
- Requirements pertaining to notice, frequency and quorum of board and general meetings.
- Voting criteria and procedure including use of proxy.
- The board, its size and scope of authority.
- The method of nomination, election tenure of functionaries and board members.
- Membership criteria, rights and duties.
- Termination of membership.
- Code of conduct.
- Custody of assets and funds.
- Bank account operations.
- Scope and authority of the chief functionary.
- Accounts and financial reporting.

- Audit.
- Indemnity.

A specimen of Rules and Regulations of a society is provided in **Annexure 3**, A specimen of Articles of Association of a company is provided in **Annexure 6**.

PROJECT CONTRACTS

11.4.1 An NPO works either on the support of its own funds and internal accruals or on external funding. When externally funded projects are undertaken they are usually based on a legal contract.

11.4.2 A donor and NPO partnership is a legally bound activity and such partnership should have the following characteristics :

- Clarity of purpose
- Clarity of rules & functions
- Clarity of working methods
- Clarity of practice standards
- Clarity of resources & performances targets
- Clarity of accountability & ownership
- Clarity of mutual trust & commitments

11.4.3 The basic legal requirement of a valid contracts include the following :

- Intention to create legal relationship
- Clear identification of the subject matter
- Offer & Acceptance
- Consideration
- Cognizance of the relevant laws

11.4.4 The normal contents of a legally consistent contract should cover the following :

- Name & Address
- Duration & time
- Date of commencement
- Description of objectives
- Specification of inputs, procedures, output, activity & quality
- Methodology/Access
- Evaluation criteria
- Monitoring methods
- Finance/payment details
- Reporting procedures
- Managing change
- Managing disputes
- Indemnity & liabilities

11.4.5 A specimen of model contract is provided in *Annexure 9*.

PROJECT GRANTS & VOLUNTARY CONTRIBUTION

11.5.1 It is important to understand from a legal perspective that the voluntary contribution and project grants may have different legal status and implications. For instance a grant bound by a specific project agreement is a legal obligation towards the donor. On the other hand the voluntary contribution implies that the donor has provided funds without any conditions to be applied for the objects of the society. Legally a voluntary contribution can be treated as income because the funds are

available unconditionally to the organisation. However, specific project grants cannot be treated as income unless the legal obligation is executed. The legal difference between voluntary contribution and project grants will have an implication on the accounting and tax treatment also.

SELF ASSESSMENT QUESTION

1. What are the various fundamental documents and why they are important ?

Chapter 12

AMENDMENT OF TRUST DEED

OVERVIEW

12.1.1 It is extremely difficult to amend a trust deed since a trust by its inherent nature is irrevocable. Therefore, it is important to provide the amendment clauses in the trust deed itself. However, if the amendment clauses provided in the trust deed are too wide, then the trust may not be treated as irrevocable. In the trust deed where there is no mention about amendment, the amendment has to be done with the permission of a civil court. Even the Civil Courts do not have unlimited powers of amendment. The Civil Courts permit amendment under the doctrine of *Cy pres*, which means the original intent of the settlor should prevail. Therefore, only such amendments should be made which are in line with the original intent of the settlor. It may further be noted that even the settlor does not have powers to amend the trust deed.

AMENDMENT OF THE TRUST DEED BY TRUSTEES

12.2.1 It is a generally a settled principle of trust law that once a trust is

created with certain objects, no one has the power to delete any of the original objects. This was also affirmed by the Madras High Court in *Sakthi Charities v. CIT* [1984] 149 ITR 624/19 Taxman 100, where a deed of rectification deleting certain original objects of a trust deed was held to be invalid. The landmark decision on this issue was given by the Supreme Court in *CIT v. Palghat Shadi Mahal Trust* [2002] 254 ITR 212/120 Taxman 889 (SC) where a trust was constituted for the educational, social and economic advancement of backward class Muslims. A general body resolution extended these objects to all communities irrespective of religion or creed. The Supreme Court held that this amendment would be invalid because it implied alteration in the object of the trust deed which was not contemplated by the settlor.

THE SETTLOR OR FOUNDER HAS NO POWER TO REVOKE

12.3.1 The Madras High Court in *Thanthi Trust v. ITO* [1973] 91 ITR 261 observed, it is well established that the subsequent acts and conduct of the founder of trust cannot affect the trust if there has been already a complete dedication (complete handover of the property). If a valid and complete dedication has taken place, there would be no power left in the founder to revoke and no assertion on his part or the subsequent conduct of himself or his descendants contrary to such dedication would have the effect of nullifying it. If the trust has been really and validly created, any deviation by the founder of the trust or the trustees from the declared purposes would amount only to a breach of trust and would not detract from the declaration of trust. In this regard the Supreme Court ruling in the case *Sri Agasthyar Trust v. CIT* [1999] 236 ITR 23 (SC) is also relevant.

12.3.2 *It should be kept in mind that the trustees inherently do not possess any power to amend the trust deed, for that matter even the settlor does not have the power of any subsequent amendment. The power to amend shall be limited to the extent provided in the trust deed itself. Therefore, drafting of trust deed becomes very important and suitable clauses should*

be kept for future need of changes and contingencies. Further, care should be taken to ensure that the amendment clauses are not too wide or discretionary in nature which may render the trust invalid and revocable.

LIMITED POWER OF RECTIFICATION BY CIVIL COURT

12.4.1 A civil court has been conferred with the power to amend a trust deed and the Income Tax Officer has to take notice of such amendment. In the case *CIT v. Kamla Town Trust* [1996] 217 ITR 699 (SC), [1996] 84 Taxman 248 (SC), the Hon'ble Supreme Court held that any change in Trust Deed is not possible unless the deed itself provides for such change. Approaching the registrar or a Court of law shall only be relevant if a change is legally permissible.

12.4.2 The Civil Courts have power to direct changes in the trust deed in the spirit of the *Doctrine of Cy pres* which implies that the original intent of the settlor should not fail. However once a civil court has allowed amendment, it is not open on the part of the Income Tax Officer or any other person to challenge such rectification.

SECTION 26 OF SPECIFIC RELIEF ACT IS THE REMEDY AND NOT SECTION 34 OF TRUST ACT

12.5.1 In the above *Kamla Town case (supra)*, the Supreme Court observed that the Section 34 of the Indian Trust Act, 1882 was not applicable as far as amendment of Trust deed was concerned. It may be noted that Section 34 of the Indian Trust Act, 1882 provides the right to apply to court for opinion in management of Trust property. The apex court was of the opinion that section 34 was confined only to management of trust property and could not be invoked for amendment in the deed and objects. It was also observed that the right legal provision was section 26 of the Specific Relief Act, 1963 under which an application for amendment to trust deed could be made.

SECTION 92 OF CIVIL PROCEDURE CODE (CPC)

12.6.1 In *Kamla Town Trust v. CIT* [1982] 133 ITR 632 (All.), the question debated was whether the Civil Court had the power to rectify the trust deed under section 92. It was observed that Section 92 nowhere enables the Civil Court to alter or rectify the terms of a trust. It only enables the Civil Court in suitable cases to remove any trustee, appoint a new trustee, vesting any property in a trustee, directing any ex-trustee to deliver possession of the trust property to the person entitled to the possession of such property, directing accounts and enquiries, declaring that portion of the trust property or interest therein shall be allotted to any particular objects of the trust or to settle a scheme. Thus, the court has got power to allocate the trust properties to any particular field of the trust. In this case the Civil Court had deleted from the trust deed certain objects so as to enable the trustees to claim the benefit of exemption under the Income Tax Act, 1961. It was held that section 92 of CPC was not the appropriate section / statute for amendment of Trust Deed. Under section 92 of CPC, the court can give a direction which is necessary for the administration of any trust. However, it can only exercise the powers expressly set out thereunder, and by exercising the power under section 92, it cannot alter the objects of the trust deed.

REVENUE NEED NOT BE A PARTY TO RECTIFICATION

12.7.1 The Income Tax Department or any other authority cannot decline to accept an amended deed only on the ground that they were not made party to such amendment. In the case *CIT v. Kamla Town Trust* [1996] 217 ITR 699 (SC), [1996] 84 Taxman 248 (SC) one of the contentions of the revenue was that the rectification decree of the trust deed was *in personam* and not *in rem* to which the revenue was not a party and, therefore, it was not binding on the income-tax authorities. It was held that in such proceedings, the order granting rectification of such instrument of trust would certainly remain relevant. Consequently, it

cannot be said that such rectification orders passed by Civil Courts permitting rectifications of trust deeds under the relevant provisions of the Specific Relief Act could not be relied upon by the assessee-trust in assessment proceedings before the Income Tax Officer (ITO) **even though the revenue or the ITO was not a party to such rectification proceedings**. The ITO has to consider the real scope and ambit of the trust deed as presented to him in rectified form with a view to finding out whether on the basis of such a rectified instrument, the assessee-trust had earned exemption from payment of income-tax under the relevant provisions.

12.7.2 In this context it is pertinent to note that a *judgment in rem* is a judgement pronounced on the status of some particular subject or property or thing (as opposed to one pronounced on persons). In the case of amendment of Trust Deed, though the rectification orders of the Civil Court is not judgments *in rem*, still it is binding in assessment proceedings before the ITO and will have to be given effect to for whatever they are worth.

THE EFFECT OF RECTIFICATION IS NOT RETROSPECTIVE

12.8.1 In the case *Bhriguraj Charity Trust v. CIT* [1997] 228 ITR 50 (Del.)(FB), the full bench of the Delhi High Court observed that any rectification would have only prospective operation and would not affect the assessment years in question, which were prior to the date of the Civil Court's decree.

SUPPLEMENTARY TRUST DEEDS

12.9.1 In the case *Laxmi Narain Lath Trust v. CIT* [2000] 244 ITR 272 (Raj.), it was held that a supplementary trust deed permitted by appropriate civil court was legally valid and binding on the department. The court relied on the assessee's own case for the assessment year 1972-

73 in *Laxminarain Lath Trust v. CIT*[1988] 170 ITR 375/[1987] 33 Taxman 194, where it had held that the supplementary deed bound the trustees who were parties to the said deed as well as future trustees of the assessee-trust and in view of the supplementary deed it was no longer permissible for the trustees of the assessee to use the trust funds.

SUM UP POINTS

- It is important to provide the amendment clause in the Trust Deed itself.
- If there is no amendment clause in the Trust Deed, any amendment has to be done with the permission of a Civil Court.
- Once the Civil Court has allowed permission for amendment, it is not open on the part of the Income Tax Officer or any other person to challenge such amendment.
- Amendments made should be in line with the original intention of the Settlor and should not negate or deviate from the original intention of the Settlor.
- To form a valid trust the trust property has to be completely handed over, thereafter the founder or the Settlor do not have any powers to revoke or nullify the objects of the Trust.
- Section 26 of the Specific Relief Act, 1963 is the appropriate statutory provision under which an application for amendment to Trust Deed can be made. It may be noted that the Section 34 of the Indian Trust Act, 1882 only provides the right to apply to court for direction in the management/administration of the Trust.
- Similarly, a Civil Court cannot alter the objects of the Trust Deed by exercising its power under Section 92 of the Civil Procedure Code (CPC) under this provision it can only give direction for administration of any Trust.
- The Income Tax Department or any other authority cannot

decline to accept an amended Trust Deed only on the ground that they were not made party to such amendment.

- The Assessee Trust for Income Tax purposes, can rely on the amended Trust Deed for availing Income Tax exemptions, even though the Income Tax Department was not party to the amendment carried out.
- The amendment to Trust Deed made with a Civil Court order, takes onward effect from the date of the Civil Court's decree and does not bind the operation of those assessment years which were prior to that date.
- Supplementary Trust Deed is also permitted by Civil Court. The Supplementary Trust Deed is also binding on the Trustees in the manner the original Trust Deed binds.

SELF ASSESSMENT QUESTIONS

1. What is the procedure of amending trust deed ?
2. What are the powers of founder/trustees in amending trust deed ?
3. What are the powers of Civil Court in amending trust deed ?

Annexure 1

NATIONAL POLICY ON THE VOLUNTARY SECTOR

Government of India Planning Commission
(Voluntary Action Cell)

NATIONAL POLICY ON THE VOLUNTARY SECTOR - 2007

1. Preamble

- 1.1** This Policy is a commitment to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India.
- 1.2** The voluntary sector has contributed significantly to finding innovative solutions to poverty, deprivation, discrimination and exclusion, through means such as awareness raising, social mobilization, service delivery, training, research, and advocacy. The voluntary sector has been serving as an effective non-political link between the people and the Government. This policy recognizes the important role that the voluntary sector has to play in various areas and affirms the growing need for collaboration with the voluntary sector by the Government, as well as by the private sector, at the local, provincial and national levels.

2. Scope of the Policy

- 2.1** In the Policy, voluntary organizations (VOs) mean to include

organizations engaged in public service, based on ethical, cultural, social, economic, political, religious, spiritual, philanthropic or scientific & technological considerations. VOs include formal as well as informal groups, such as: community-based organizations (CBOs); non-governmental development organizations (NGDOs); charitable organizations; support organizations; networks or federations of such organisations; as well as professional membership associations.

2.2 To be covered under the Policy, VOs should broadly have the following characteristics:

- a) They are private, *i.e.*, separate from Government
- b) They do not return profits generated to their owners or directors
- c) They are self-governing, *i.e.*, not controlled by Government
- d) They are registered organizations or informal groups, with defined aims and objectives.

3. Objectives of the Policy

3.1 The specific objectives of the policy are listed below:

- 3.1.1 To create an enabling environment for VOs that stimulates their enterprise and effectiveness, and safeguards their autonomy;
- 3.1.2 To enable VOs to legitimately mobilize necessary financial resources from India and abroad;
- 3.1.3 To identify systems by which the Government may work together with VOs, on the basis of the principles of mutual trust and respect, and with shared responsibility; and,
- 3.1.4 To encourage VOs to adopt transparent and accountable systems of governance and management.

The following paragraphs describe how these objectives are to be achieved.

4. Establishing an Enabling Environment for the Voluntary Sector

- 4.1 The independence of VOs allows them to explore alternative paradigms of development to challenge social, economic and political forces that may work against public interest and to find new ways to combat poverty, deprivation and other social problems. It is therefore crucial that all laws, policies, rules and regulations relating to VOs categorically safeguard their autonomy, while simultaneously ensuring their accountability.
- 4.2 Voluntary organizations may be registered as societies, as charitable trusts, or as non-profit companies under Central or State laws. Some States have adopted the Societies Registration Act (1860), with amendments, while others have independent laws. Similarly, laws relating to charitable trusts vary across States. Over time, many of these laws and their corresponding rules have become complex and restrictive, thus leading to delays, harassment and corruption. As the nodal agency for interface between the Government and the Voluntary Sector, the Planning Commission will encourage State Governments to review prevailing laws & rules and simplify, liberalise and rationalise them as far as possible. In order to facilitate registration of non-profit companies, the Government will examine measures to simplify procedures under section 25 of the Companies Act (1956), including those for license, registration, and remuneration to member-employees.
- 4.3 The Government will also examine the feasibility of enacting a simple and liberal central law that will serve as an alternative all-India statute for registering VOs, particularly those that wish to operate in different parts of the country and even abroad. Such a law would co-exist with prevailing central and state laws, allowing

a VO the option of registering under one or more laws, depending on the nature and sphere of its activities.

- 4.4 There has been much public debate on the voluntary sector, particularly its governance, accountability, and transparency. It is widely believed that the voluntary sector must address these issues through suitable self-regulation. The Government will encourage the evolution of, and subsequently accord recognition to, an independent, national level, self-regulatory agency for the voluntary sector.
- 4.5 At the same time, there is need to bolster public confidence in the voluntary sector by opening it up to greater public scrutiny. The Government will encourage Central and State level agencies to introduce norms for filing basic documents in respect of VOs, which have been receiving funding by Government agencies and placing them in the public domain (with easy access through the internet) in order to inculcate a spirit of public oversight.
- 4.6 Public donation is an important source of funds for the voluntary sector and one that can and must increase substantially. Tax incentives play a positive role in this process. Stocks and shares have become a significant form of wealth in the country today. In order to encourage transfer of shares and stock options to VOs, the Government will consider suitable tax rebates for this form of donation. The Government will also simplify and streamline the system for granting income tax exemption status to charitable projects under the Income Tax Act. At the same time, the Government will consider tightening administrative and penal procedures to ensure that these incentives are not misused by paper charities for private financial gain.
- 4.7 International funding of voluntary organizations plays a small, but significant part in supporting such organizations and their work in the country. An organization seeking foreign funding must be

registered under the Foreign Contribution (Regulation) Act. This law prescribes stringent screening norms that often restrict the ability of VOs to avail foreign funds. When approved, there are problems like funds must be held in a single bank account, thus presenting enormous difficulties to VOs working at different locations. The Government will review the FCRA and simplify its provisions that apply to VOs, from time to time, in consultation with the joint consultative group to be set up by the concerned Ministry (as suggested under para 5.4).

- 4.8 The Central Government has framed guidelines for bilateral agencies to give direct assistance to voluntary organizations for projects of social and economic importance. It controls access to such funds and their utilisation, both through the FCRA and through regulation by the Department of Economic Affairs. This system needs to be simplified in consultation with the joint consultative group to be set up by the concerned Ministry (as suggested under para 5.4).
- 4.9 The Government will encourage all relevant Central and State Government agencies to introduce pre-service and in-service training modules on constructive relations with the voluntary sector. Such agencies should introduce time bound procedures for dealing with the VOs. These would cover registration, income tax clearances, financial assistance, etc. There would be formal systems for registering complaints and for redressing grievances of VOs.

5 Partnership in Development

- 5.1 The voluntary sector can play an important role in the development process, particularly through community participation. VOs can offer alternative perspectives; committed expertise; an understanding of the local opportunities and constraints; and perhaps most importantly, the capacity to conduct a meaningful

dialogue with communities, particularly those that are disadvantaged. It is therefore essential that the Government and the Voluntary Sector work together. Where feasible, such partnership may also include other entities such as *panchayati raj* institutions, municipalities, academic institutions, and private sector organizations.

- 5.2 Partnership between Government and VOs implies identifying shared goals and defining complementary roles. It must be based on the basic principles of mutual trust and respect, with shared responsibility and authority. These principles must be explicit in the terms and conditions of the partnership. They must also be evident in the formal and informal systems of collaboration.
- 5.3 This Policy recognizes three instruments of partnership, viz., (i) consultation, through a formal process of interaction at the Centre, State and District level; (ii) strategic collaboration to tackle complex interventions where sustained social mobilization is critical over the long term; and (iii) project funding through standard schemes. The Government will ensure that these three instruments of partnership are given due attention in Annual Plans prepared by Ministries and States. The action that will be taken in respect of each of the three instruments is discussed in the following paragraphs.
- 5.4 The Government will encourage setting up of Joint Consultative Groups / Forums or Joint Machineries of government and voluntary sector representatives, by relevant Central Departments and State Governments. It will also encourage district administrations, district planning bodies, district rural development agencies, *zilla parishads* and local governments to do so. These groups will be permanent forums with the explicit mandate to share ideas, views and information and to identify opportunities and mechanisms of working together. The Government will introduce

suitable mechanisms for involving a wide cross-section of the voluntary sector in these Groups / Forums.

- 5.4.1 The expertise of the voluntary sector will also be utilized, by including experts from VOs in the committees, task forces, and advisory panels constituted by the Government from time to time to help address important issues.
- 5.5 The country faces a number of complex problems that require adaptive, multi-sectoral solutions where sustained social mobilization is particularly important. These include poverty alleviation, skill promotion, entrepreneurship development, empowerment of women, population stabilization, combating HIV/ AIDS, managing water resources, elementary education and forest management, to name a few. Such areas urgently require strategic collaboration between the Government and VOs, through national level programmes that are long-term in duration, and utilize multiple strategies, methodologies and activities to achieve their objectives. The Government will identify national collaborative programmes to be implemented in partnership with VOs. Each national collaborative programme will involve a finite set of reputed, medium or large VOs with a proven track record, and the ability to work on a reasonably large scale. The Government will ensure that such national collaborative programmes are given due importance in Plan documents.
- 5.6 The third instrument of partnership between the Government and the voluntary sector is project funding. A large number of Government agencies operate schemes for financial assistance to VOs. These schemes usually deal with activities such as surveys, research, workshops, documentation, awareness raising, training, creation and running of public welfare facilities, and so on. Project grants are a useful means for the Government to promote its activities without its direct involvement. They are also a valuable

source of support to small and medium VOs. Nevertheless, there are legitimate concerns regarding the effectiveness of grant-in-aid schemes. Out-dated design of funding schemes, arbitrary procedures, selection of unsuitable VOs, poor quality of implementation, and misuse of funds are some of the reasons for the possible defeat of the objectives of such funding. Concerned Government agencies would be encouraged to ensure proper accountability and monitoring of public funds distributed to VOs.

- 5.6.1 Some Central agencies have achieved good results by decentralizing the process of project funding. Rather than administering various schemes directly, they appoint regional or State level intermediary organizations to do so on their behalf. This allows for closer interaction for better selection and monitoring of VOs. Intermediaries could include umbrella VOs, professional or academic institutes, State Government agencies, or multi-stakeholder standing committees. The Government will review the experience of such decentralized funding and make suitable recommendations to Central agencies.
- 5.6.2 There is reason to believe that accreditation of VOs will lead to better funding decisions and make the funding processes more transparent. Further, accreditation may provide incentives for better governance, management and performance of VOs. No reliable accreditation system is in place at present. The Government will encourage various agencies, including those in the voluntary sector, to develop alternative accreditation methodologies. It will allow time for such methodologies to be debated and gain acceptability in the voluntary sector, before considering their application to Government funding of VOs.

6. Strengthening the Voluntary Sector

- 6.1 The Indian society has a well-established tradition of philanthropy.

While a regime of tax concessions facilitates donations to charitable organizations, there is considerable untapped potential to channelise private wealth for public service. The Government will support and encourage existing, as well new, independent philanthropic institutions and private foundations to provide financial assistance to deserving VOs. It will also promote a dialogue among public and private grant makers so that they may take advantage of the best practices in grant making and fund-raising strategies.

- 6.2 Accountability to all stakeholders and transparency in functioning are key issues in good governance. The voluntary sector is expected to set its own benchmarks in these areas. Since VOs vary in their objectives and activities, it would be impractical to expect uniform norms for accountability and transparency. The Government will encourage support organizations, and VO networks & federations to facilitate discussion and consensus building on these issues. It will also encourage such agencies to advise and assist VOs to adopt norms that they find acceptable and useful. The Government will recognize excellence in governance among VOs by publicizing best practices.
- 6.3 Training is a crucial requirement for people working in the voluntary sector. However, this is often neglected on account of limited availability of good quality training courses that are reasonably priced. The Government will support and encourage organizations that train aspirants to enter the voluntary sector, as well as those already working in the sector. It will make available physical facilities currently available with its training institutes as a measure of such support.
- 6.4 Innovation in institutional, technical and social approaches to development problems is an essential ingredient of voluntary action. The Government will encourage and recognize innovative & pioneering work.

- 6.5 Databases of VOs working in different fields and at different levels are useful for communication within the voluntary sector, as well as between the voluntary sector and the public & private sector. The Government will commission suitable agencies to prepare and update such databases.
- 6.6 Information on Government policies and programmes is often difficult for VOs to access. The websites of various Government agencies will be re-designed to provide links to key documents and databases, including those related to project funding schemes.
- 6.7 The Government will encourage involvement of volunteers in public services, such as, at family welfare centers, primary health centers, hospitals, schools, vocational training centers, sanitation campaigns, etc.

This National Policy on the Voluntary Sector-2007 is the beginning of a process to evolve a new working relationship between the Government and the Voluntary Sector, without affecting the autonomy and identity of VOs.

Annexure 2

A MODEL SPECIMEN OF THE MEMORANDUM OF ASSOCIATION OF A SOCIETY

(Only the relevant portion of aims and objectives may be used while drafting).

1. Name : The society shall be called by the name“
.....”
2. Location : The registered office of the organisation will
be situated at :
At:.....
P.S.:.....
P.O.:.....
Distt.:.....
State:.....
Pin Code:.....
3. Jurisdiction : Its Jurisdiction shall be throughout the State
of
4. Aims & objectives :
 - i. To do all acts and things necessary to facilitate the charitable, social, cultural, educational, vocational and economic development of the society.
 - ii. To establish, construct, maintain, manage and supervise hospitals, relief and rehabilitation centres and many other

ancillary voluntary services carried on by the Society.

- iii.* To establish orphanages, old-age homes, leprosy rehabilitation centres, homes for widows, aged, helpless and people of weaker sections, to come out with deliverance from the fallen condition.
- iv.* To create an awareness about the ills of population explosion and motivate people to check population explosion by adopting family planning measures.
- v.* To undertake integrated rural development projects for overall socio-economic development of the villages including encouragement of co-operative movement among the villagers.
- vi.* To restore the cultural and social heritage of the country by propagating and promoting various dying arts and lesser known cults and practices of excellence and wisdom.
- vii.* To establish, manage, maintain fellowship centres and subscribe to arrange for training centres, camps, seminars, excursions, study groups, recording studios and other ancillary services for the members and general public to further the purpose of the Society.
- viii.* To edit, translate, publish, disseminate literature of such nature as to further the purpose of the Society *viz.* building up a healthy society that would preserve and promote national integration.
- ix.* To develop literacy among the people through various educational programmes

like adult-education, night schools, pre-schools etc.

- x. To provide medical assistance to the poor and weaker sections of the society.
- xi. To organise movements, counselling centres and other forums to bring about public awareness of the ills of drug abuse, crime and other social evils like dowry systems etc.
- xii. To undertake relief measures in aid of the distressed people affected by natural calamities or in other ways *e.g.* to rehabilitate them and make them self-dependent through income-generating schemes.
- xiii. To set up Government aided projects such as of KVIC, Ministry of Food Processing etc.

5. We, the several persons of General Body whose names, address, occupations, designation and signatures are given below, are desirous of being formed into a society in accordance with the provision of the Societies Registration Act, 1860 under the name of in pursuance of this Memorandum of Association.

Sl. No.	Name with Father/ Husband name	Designation	Address	Age	Occupation	Signature
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- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

Attested the Signatures from
Nos. 1 to 7

Signatures of the two witnesses other
than the members of the society with
address.

Signature of the Attesting Officer 1.
with Official Seal

Certified that this is the true and 2.
correct copy of the Memorandum

Signatures of any three members
of the Governing Body

PRESIDENT

SECRETARY

TREASURER

Annexure 3

A MODEL SPECIMEN OF RULES & REGULATIONS

1. Name : The name of the society is “ ”
(Herein after referred to as the Society)
2. Location : The registered office of the organisation will be situated at :
At :
P.S. :
P.O. :
Distt. :
State :
Pin Code :
3. Jurisdiction : It's Jurisdiction shall be throughout the State of
4. Aims & Objectives of the Society : Aims and objects as stated in the Memorandum of Association
5. Interpretation : In these rules and regulations unless there be anything in the context repugnant or inconsistent therewith ;
 - a. 'The Society' means xxx
 - b. 'The General Body' means the members of the Society.

- c. 'The Board' means the Board of Management of the Society.
- d. 'A Member' means a member admitted as such under the rules prescribed by the Society.
- e. 'Act' means the Societies Registration Act,.....

6. Membership : The membership of the Society shall consist of; Individual Members :
- a. Such individuals who sign the Memorandum of Association of the Society shall be the Founder Members.
 - b. Such other individuals who may be admitted to the Society from time to time and whose name is entered in the Register of Members shall be member of the Society.
 - c. Membership of the Society shall cease ;
 - i) If a member dies or resigns
 - ii) If a member is removed from the membership of the Society
 - iii) If a member, whose membership solely stands on his occupying an official position, ceases to be in that position
7. Expulsion from membership : A member shall be expelled from the primary membership of the Society for any of the following reasons with the approval of the general body having 2/3 majority and sufficient proof thereof; which shall be recorded in the register of the Society :-

- i. If the activities of a member are detrimental to the attainment of the aims & objectives of the Society.
 - ii. Who does not attend three consecutive meetings without proper reason.
 - iii. Who becomes of unsound mind, insolvent and convicted in a criminal offence.
- 8. Code of Conduct : Every member of the Society shall be bound by the provisions of the Memorandum of Association, the Rules & Regulations of the Society, Bye-laws and decisions made or taken by the Society or Board from time to time
- 9. Management : The affairs of the Society shall be managed by the Board consisting of not less than seven and not more than twelve members elected in the Annual General Meeting for a period of two year and eligible for re-election.
 - a. The Officers of the Society shall be the President, the Vice-President, the Secretary, the Asst. Secretary and the Treasurer. They shall be elected by the General Body from among its members for a term of two years in the Annual General Meeting and eligible for re-election.
 - b. Any vacancy arising on the Board may be filled by the remaining members until the next Annual General Meeting
- 10. General body and its functions :
 - a. The General Body of the Society shall consist of all those members mentioned in Rule 6, not less than seven.

- b. An Annual General Meeting shall be held every year at such place, time and date as may be determined by the Board to transact the following business (atleast twentyone days clear notice shall be given to the members to convene such an Annual General Meeting) :-
 - i) To receive the report of the officers of the Society on the affairs of the Society
 - ii) To receive audited financial statement of the Society
 - iii) To approve the budget of the Society
 - iv) To elect the Board of Management of the Society
 - v) To appoint an auditor.
- c. The accidental omission to give notice to or the non-receipt of notice, by a member or other person to whom it should be given shall not invalidate the proceedings of the meeting.
- d. One third members of the Society, shall constitute a quorum for the annual general meeting.
- e. If there is no quorum for the annual general meeting, the meeting shall adjourn for half and hour and reassemble, all those members present then shall form the quorum.
- f. In any meeting of the Society the President may exercise casting vote if required.

g. The General Body shall lay down general policies for the furtherance of the aims and objectives of the Society.

11. Financial Year : The financial year of the society shall commence on the 1st day of April of each year to 31st day of March of the succeeding year or as per the local laws applicable.

12. Audit : The accounts of the organisation shall be audited annually by a Chartered Accountant in practice and the audit report along with the Annual Accounts shall be placed before the Annual General Meeting.

13. Funds : The following shall comprise the funds of the organisation. The amount of entrance fee and monthly membership fee may be varied from time to time.

a. Entrance fees towards admission of members,

b. Monthly membership fees of

c. Grant-in-Aid

d. At the time of exigency, special funds can be raised by the Board after getting the approval of General Body.

e. Any other suitable means as decided by they General Body having 2/3rd majority.

14. Bank Account : A savings bank account having cheque facility shall be opened in the name of the

Society. All the transactions shall be made under the signature and seal of the President, the Secretary, the Treasurer or such other person severally or jointly as may be decided from time to time.

15. Office of the Society : The Society shall have the following officers :
- a) President
 - b) Vice-President
 - c) Secretary
 - d) Assistant Secretary
 - e) Treasurer

The President :

- a. The Chief Officer of the Society shall be the President who shall be elected by the members of the General Body. His term of office shall be two years.
- b. The President shall appoint the other office bearers of the Society or remove any member of the Society from misconduct.
- c. All properties both movable and immovable and all securities belonging to the Society shall vest in the Society. All properties to be acquired for the Society in pursuance of its objects shall be acquired in the name of the Society through the President, Secretary or any other member of the Governing Body duly authorised by the President.

- d. It shall be competent for the President to appoint members of the staff of the Society and fix their remuneration.

Secretary

- a. The Secretary shall be elected by the member of the Society.
- b. The Secretary shall attend to the day-to-day management of the affairs of the Society like correspondence, etc., subject to the control of the President.
- c. The Secretary shall maintain proper accounts in respect of the transactions of the Society and be responsible for the preparations of the financial statements of the Society whenever necessary.
- d. In case of emergency, it shall be competent to the Secretary to by circulating the papers among them with the prior approval of the President.

Asst. Secretary

In the absence of the Secretary the Asst. Secretary shall carry out the functions of the Secretary in consultation with the President, after obtaining written permission from the Secretary.

The Treasurer shall oversee

- a. i) All sums of money received and expended by the Society and the

matters in respect of which receipt and expenditure take place.

ii) All sales and purchases of goods by the Society.

iii) The assets & liabilities of the Society.

b. Arrange annual audit of the accounts by the Auditor duly appointed by the Society for the purpose.

c. File returns of Income of the Society with the Income-tax authorities as prescribed by the rules in this regard.

d. Prepare the annual budget for the approval by the Society.

All the above powers of the Treasurer shall be carried out in consultation with the Secretary.

16. Income & Property :
- a. The income and property of the Society whenever derived shall be applied solely for the promotion of its objectives as set forth in the Memorandum of Association
 - b. No portion of the income or property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the Society or to any one or more of them or to any person(s) claiming through any or more of them.
 - c. No remuneration or other benefit in money or money's worth shall be given

by the Society to any of its members except payment of expenses incurred in connection with the work of the Society.

- d. To raise voluntary grants and contributions either in cash or in kind.
- e. To borrow or release money for the purpose & objectives of the Society and conditions as the Society may think fit.
- f. To draw, make, accept discount, endorse, negotiate, sell, execute and issue bills of exchange, promissory notes, cheques, warrants, debentures and other negotiable or transferable instruments and securities.
- g. To pay for rights of property acquired by the Society and to remunerate any person, firm or body corporate rendering service to the Society.
- h. To adopt such means of making known the objectives and purposes of the Society as may seem expedient and in particular granting prizes, rewards and donations out of the funds of the Society.

17. Legal Matters :
- a. Any document or proceedings of the Society requiring authentication may be so attested by any officer of the Society.
 - b. All documents relating to the properties of the Society shall be executed by the President or the Secretary for and on behalf of the Society.

18. Amendments or Alteration : a. No alteration to the rules and regulations of the Society shall be made except by a resolution of the Annual General Meeting of the Society by not less than 3/5 of the members present and voting in favour of such a resolution.
- b. No alteration to the Memorandum of Association of the Society shall be made except in accordance with the provisions of the Act.
19. Dissolution : Upon dissolution of the Society, its assets will be handed over to a similar type of registered society or to the Govt. after satisfaction of all debts and liabilities and shall not be distributed or paid among the members. The Society shall not be dissolved unless 3/5 of its members express a wish for such dissolution by their votes delivered in person or by proxy at the General Body Meeting of the Society convened for the purpose.
20. Legal Action : The Secretary may sue or be sued on behalf of the society for movable and immovable properties.
21. Certificate : a. Certified that this is the true and correct copy of the Rules & Regulations of "xxxxxx a voluntary organisation.
- b. Certified that there is no other registered society with the above name in the same area.

- c. All legal matters shall be guided under the Societies Registration Act

Signature of the Attesting Officer with
Official Seal

Certified that this is the true and correct
copy of the bye-laws

Signature of any three members of
Governing Body

Annexure 4

**AFFIDAVIT TO BE GIVEN BY
THE PRESIDENT/SECRETARY**

BEFORE THE EXECUTIVE MAGISTRATE/NOTARY PUBLIC

AFFIDAVIT

I, Mr/Ms....., aged about..... years son/daughter
of Sri..... of P.O.
P.S., Distt. do hereby solemnly affirm and
state as follows :—

1. That I am the President/Secretary of the Institution namely “xxxxxxx”
situated at
2. That there is no other registered society/organisation with the above
name.
3. That the copy of Rules and Regulations of the aforesaid society
submitted along with is true and correct.
4. That all the legal matter should be guided under the Societies
Registration Act, 1860, with its amendment thereof.

The facts stated above are true to the best of my knowledge.

Identified by

Advocate

Deponent

The above-named deponent being identified by
..... solemnly affirms and states before me that the facts
stated above are true to his knowledge.

Place :

Executive Magistrate.

Date :

Annexure 5

**SPECIMEN OF MEMORANDUM AND
ARTICLES OF ASSOCIATION OF**

- I. The name of the company is
- II. The Registered office of the Company will be located in the State of xxxxxx.
- III. A. The main objects of the company on its incorporation are :-
- i) To create awareness on various social, moral and economic issues affecting the country and to direct this awareness to developing innovative means of generating resources-financial, material and professional and channelise these resources through people and projects in the field;
 - ii) To promote national integration and encourage, support and develop social welfare programmes for balanced growth of the nation ;
 - iii) To provide financial or any other assistance towards relief and rehabilitation of the populace affected by calamities like cyclones, earthquakes, epidemics, fire, famine, floods, war, riots, etc. ;
 - iv) To establish, maintain or support a home or homes for widows, orphans, special centres for providing shelter and protection to women and children in distress ;
 - v) To create and promote enlightened public opinion on various issues affecting the citizens of the country ;

- vi) To encourage conservation, afforestation and protection of the environment including birds, animals and all species of plants and animals ;
- vii) To provide food, clothing and shelter to all those in need and provide pecuniary assistance to those unable to fend for themselves due to old age, disease or any physical or mental handicap ;
- viii) To undertake, or assist in undertaking, projects like digging wells, providing drinking water facilities, fodder for cattle, grains, seeds and fertilizers for farming, agricultural tools etc. ;
- ix) To establish, maintain or support dharamshalas, resthouses, convalescing homes, health and immunisation camps, infirmaries, orphanages ;
- x) To provide assistance for building or maintaining roads, national and state highways, bridges, reservoirs, irrigation tanks, tube wells, recreation centres, parks, playgrounds for children, libraries, museums, art galleries, cultural centres for the benefit of the public and improving their quality of life;
- xi) To support the initiative of any individual, group or organisation in promoting education both formal and informal and for children and adults;
- xii) To establish, take over, run, maintain, assist and support hospitals, including mobile hospitals, charitable dispensaries, maternity homes, sanatoriums, medical centres, medical camps, health education and family planning centres, children welfare centres, natural health centres, nutrition centres and any other institution or forum for preventive, curative or primary health-care and treatment ;
- xiii) To establish take over, run, maintain a centre or centres for senior citizens or retirement homes or old peoples

homes with facilities for boarding, lodging, health-care, nutrition, recreation, etc., as may be necessary ;

- xiv) To construct low cost buildings and houses for the poor, disadvantaged and those in distress, especially in the rural and/or urban slums or wherever found necessary;
- xv) To conduct and organise seminars, workshops, conferences, meetings, public lectures.

B. The objects incidental or ancillary to the attainment of main objects are :

- i) To co-operate with the Central and State and Local Government in formulation of laws and policies-concerning Community, Urban and Rural Development and to offer proper advice in implementation of such laws and policies.
- ii) To retain and/or employ skilled professionals or technical advisers and other staff and workers in connection with the objective of the Company and pay such fees and remuneration as may be thought expedient and for the purpose to appoint, suspend and dismiss employees of the Company.
- iii) To solicit obtain or accept subscriptions, donations, grant-in-aid, gifts and endowments, bequeath and trust of moveable or immovable property of any kind from Government, Municipalities, other local and public bodies, co-operative societies or other person or persons on such terms and conditions as considered fit and proper by the Managing Committee and otherwise to receive money.
- iv) To purchase or to take by way of lease, sublease, gifts, exchange, hire or otherwise acquire any movable or immovable property and in particular any land, building, workshop, laboratory, machinery, equipment, furniture, scientific record, experimental data, library, plant, apparatus, appliance and any right or privilege necessary

or convenient for the purpose of the Company and to construct, erect, develop, alter, improve and maintain any building.

- v) To borrow or raise money for the purpose of the Company on terms and conditions as may be considered fit and proper by the Committee of Management.
- vi) To make rules and regulations in connection with the management and control of the Company.
- vii) To create productive employment by improving the existing skills and introducing new skills by proper training both in the field of agriculture as well as small and cottage industries.

C. The other objects for which the Company is established are :

- i) To sell, charge, hire, lease, demise, let, mortgage, dispose of or otherwise deal with and manage the assets and properties movable or immovable of the company.
- ii) To sell, dispose of, distribute, market or denote the produces and products generated in carrying out any of the activities of the company.
- iii) To set up and run farms, processing units, distribution and marketing centres.
- iv) To establish, promote, co-operate with or become a member of any associations, institutions and other bodies having similar object of community and rural development or to appoint trustees, agents or delegates for control, management, superintendence of such association, institutions and other bodies and afford financial assistance to or otherwise assist the same.
- v) To establish, maintain, control and manage branches of the company in the country and elsewhere.
- vi) To establish, and support or aid in the establishment or support of associations, institutions, funds, trusts and

convenience calculated to benefit employees or ex-employees of the company or the dependent of such person, and to grant pensions and allowances to make payments towards insurance of such persons.

- vii) To pay out of the funds belonging to the company or out of any other particular part of such funds all expenses of or incidental to the formation of the company and for management and administration of any of the objectives of the company including all rents, license fees, taxes, outgoing salaries, honorarium and other benefits to employees.
- viii) To draw, make, accept, endorse, discount the cheques notes or other negotiable instruments.
- ix) For the purpose of the company to sign deeds, documents and assurances as may be necessary.
- x) To do all other things that are incidental or conducive to the attainment or furtherance of the aims and objectives of the company.

Provided that the company shall not support with its funds, or endeavour to impose on or procure to be observed by, its members or others, any regulations or restriction which, if an object of the company, would make it a Trade Union.

- IV. The objects of the Company extends to the whole of the country in general and the State of in particular.
- V. a) The no income and property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the company or to any one or more of them or to any person claiming through any one or more of them.

- b) No portion of the income or property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the company or to any one or more of them or to any person claiming through any one or more to them.
 - c) Except with the prior approval of the general body no remuneration, or other benefit in money or money's worth shall be given by the Company to any of its members, whether officers or servants of the Company or not, except payment of out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the Company.
 - d) Except with the previous approval of general body no member shall be appointed to any office under the Company which is remunerated by salary, fees or in any other manner not excepted by sub-clause (3).
 - e) Nothing in this clause shall prevent the payment by the Company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member) in return for any services actually rendered to the Company.
- VI. No addition or amendment shall be made to this Memorandum of Association or the Regulation contained in the Articles of Association for the time being in force unless the same has been previously submitted to and approved by the Regional Director. Clause V & VI contain the conditions on which a licence is granted by the Central Government to the Company in pursuance of Section 25 of the Companies Act, 1956.
- VII. The liability of the members is limited.
- VIII. The Share Capital of the Company will consist of Rs. 1,00,000/-

(Rupees One Lakh Only) divided into 10,000/- (Ten Thousand) Equity Shares Rs. 10 (Rupees Ten) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit as per the provisions of the Companies Act, 1956.

- IX. True accounts shall be kept of the all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place; and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Company for the time being in force, the accounts shall be open to the inspection of the members. Once at least in every year, the accounts of the company shall be examined and the correctness of the balance sheet and Income and Expenditure Account ascertained by one or more properly qualified auditor or auditors.
- X. If upon winding up or dissolution of the Company, there remains after the satisfaction of all the debts and liabilities, any property whatsoever the same shall not be distributed among the members of the Company but shall be given or transferred to such other Company or Society, Trust having objects similar to the objects of this Company to be determined by the members of the Company at or before the time of dissolution or in default thereof, by the High Court of judicature that has or may acquire jurisdiction in the matter.

Annexure 6

SPECIMEN OF ARTICLES OF ASSOCIATION OF

TABLE EXCLUDED

- 1) The regulation contained in the Table A of the First schedule to the Companies Act,..... shall apply to the company so far as applicable to a Private Company except as otherwise provided/modified impliedly or expressly by the following Articles.

INTERPRETATION

- 2) In the interpretation of these Articles, the following expressions shall have the following meanings, unless repugnant to the subjects or context.

“THE ACT” means the Companies Act,....., with all modifications or amendments thereof.

“THE COMPANY” or this company means “Name of the Company”

“MEMORANDUM & ARTICLES” means the Memorandum of Association and Articles of Association respectively of the Company.

“DIRECTOR” means and include all Directors of the Company and except where the context otherwise requires for those Articles shall mean the Board of Directors of the Company, or a properly constituted committee thereof.

“THE OFFICE” means the Registered Office for the time being of the company.

“THE REGISTRAR” means the Registrar of Companies,

“SEAL” means the common seal of the Company.

“MONTH” means Calendar Month.

“PROXY” includes Attorney duly constituted under a power of attorney.

“IN WRITING OR WRITTEN” includes printing, lithography, and other modes of reproducing works in a visible form, which also include thumb impression properly attested.

Words importing persons includes corporation, Firms and Association.

Words importing singular number include the plural and vice-versa.

Words importing masculine gender include the feminine gender and vice-versa.

- 3) The exemptions granted by the Central Government *vide* SO No. 1578 and SO No. 2767 dated 8th July, 1961 and 5th August, 1964 respectively and exemptions that may be granted in future shall be applicable to the Company.

II. PRIVATE COMPANY

- 4) The Company is a “Private Company” within the meaning of Section 3(1)(iii) of the said Act and accordingly the following provisions shall have effect namely.
 - a) No invitation shall be issued to the public to subscribe for any shares in or debentures of the Company.
 - b) The number of members of the Company (exclusive of persons who are in the employment of the company and persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be the members after the employment ceased) shall be limited to fifty. Provided that for the purpose of these provisions where two or more persons hold one or more shares jointly in the Company, they shall be treated as single member.

- c) The right to transfer the share of the Company shall be and is restricted in the manner and to the extent as may be decided by the Board of Directors from time to time.
- 5) The Company may at any time by a special resolution convert itself into a public company within the meaning and subject to the provisions of the Companies Act,

III. SHARE CAPITAL

- 6) The Authorised Share Capital of the Company is sum of divided in 10,000 (Ten Thousand Only) Equity Shares of each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit, as per the provisions of the Companies Act,

IV. VOTE OF MEMBERS

- 7) Subject to any right of restriction attached to any class by term of its issue or otherwise :
 - a) On show of hands, every member (holder of equity shares) present in person shall have one vote and
 - b) On poll the voting right of every member holder of Equity Shares present in person or by proxy shall be in proportion to his holding of Equity Shares in the paid up Equity Capital of Company.

V. GENERAL MEETING

- 8) All General Meeting other than Annual General Meeting shall be called Extra Ordinary General Meeting
- 9) General Meeting may be convened on not less than Fourteen days notice to the members.
- 10) The board may, wherever it thinks fit, call an Extra Ordinary General Meeting.

- 11) The Chairman of the Board shall be the Chairman of the General Meeting.
- 12) If the Board is unable to call an Extra-Ordinary General Meeting for want of quorum or otherwise, any two members of the Company may call such a meeting in the same manner as nearly as possible, as that by which such a meeting may be called by the Board.

VI. PROCEEDING AT GENERAL MEETING

- 13)
 - a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
 - b) One-third of the total number of members shall form the quorum subject to a minimum of two members.
- 14)
 - a) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of member shall be dissolved.
 - b) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at other time and place as the Board may determine.
 - c) If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
- 15) The Chairman, if any, of the Board shall preside as Chairman at every general meeting.
- 16) If there is no such Chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their members to be chairman of the meeting.

- 17) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their member to be chairman of the meeting.
- 18)
 - a) The Chairman may, with the consent of any meeting, at which a quorum is present and shall if so directed by the meeting, adjourn the meeting, from time to time and from place to place.
 - b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
 - c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
 - d) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
19. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
20. Any business other than that upon which a poll has been demanded may be proceeded upon, pending poll.

VII. DIRECTORS

21. Subject to the provisions of the..... Act, unless and until otherwise determined by the Company in General Meeting the number of Directors shall not be less than two and not more than twelve.
22. The following persons shall be the first Directors of the Company.
 - a)

- b)
- c)
- 23. No remuneration shall be paid to any director for attending the Board, Committee or General Meeting of the Company.
- 24. The directors may however be paid all travelling, hotel and other expenses properly incurred by them.
 - a) In attending and returning from meetings of the Board or any committee thereof or General Meeting of the Company ; or
 - b) In connection with the business of the Company.
- 25. Subject to the provisions of the Act, any vacancy caused by the Board of Directors by resignation, or death of any Director, or by any other reason may be filled in by the Board of Directors by appointing someone they so choose. The Board of Directors have powers to appoint, additional and alternate Directors, but in no case the number of Directors should exceed the maximum fixed by general body.
- 26. At each Annual General Meeting of the Company one third of the Directors for the time being shall retire by rotation and the vacancy so caused may be filled up by appointing the retiring director or some other person thereto.
- 27. The directors shall not be required to hold any qualification shares.

VIII. PROCEEDING OF DIRECTORS

- 28. The Board of Directors shall meet at least once in every Six Calendar months to conduct its business.
- 29. A resolution in writing circulated amongst all the Directors and passed in accordance with provision of the Companies Act, shall be valid and effected as if it has been passed at a meeting of the Directors duly called and constituted.

30. The quorum for transacting any business of the meeting of the Board of Directors shall be one-fourth of the total strength provided the quorum shall not be less than two members in any case.
31. Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes and in case of equality of votes the chairman shall have a second or casting vote.
32. The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their member to be chairman of the meeting.
33. A Manager or Secretary being not a member of the Company may be appointed by the Board on such terms, at such remuneration and upon such conditions as it may think fit, and manager or secretary so appointed may be removed by the Board.
34.
 - a) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.
 - b) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulation that may be imposed on it by the Board.
35.
 - a) A committee may elect a chairman of its meetings.
 - b) If no such chairman is elected or in any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.
36.
 - a) A committee may meet and adjourn as it think proper.

- b) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of any equality of votes, the chairman shall have a second or casting vote.

37. Save as otherwise expressly provided in the Act, a resolution in writing signed by all the members of the Board or Committee thereof for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it has been passed at a meeting of the Board or Committee, duly convened and held.

IX. SEAL

38. The Board shall provide for the safe custody of the seal of the company. The seal shall not be affixed to any instrument except by the authority previously given by Resolution of the Board in presence of one of the Directors who shall sign every instrument to which the seal of the Company shall be so affixed in his presence.

X. ACCOUNTS

39. a) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the Company or any of them shall be open to the inspection of members (not being Directors).

- b) No member (not being a Director) shall have any rights of inspection any accounts or books of accounts of the Company except as conferred by the law or authorised by the Board or by the Company in General Meeting.

40. The Directors shall in all respects comply with the provisions of the Act, so far as they are applicable to a Private Company and the Profit & Loss Accounts, Balance Sheet and Auditors Report and every other documents required by law to be annexed or

attached, as the case may be, to the Balance Sheet shall be sent to every member of the Company at least 14 days before the date of the General Meeting of the Company at which they are to be laid.

XI. AUDIT

- 41)
 - a) The first Auditors of the Company shall be appointed by the Board of Directors within one month from the date of Registration of the Company and the Auditors appointed shall hold office until conclusion of first Annual General Meeting.
 - b) At each Annual General Meeting the Company shall appoint an auditor to hold office from the conclusion of the meeting until the next Annual General Meeting.

XII. INDEMNITY

42. Subject to the provisions of the Act, every Director, Managing Director, Manager, Secretary or other officer or servant of the Company shall be indemnified by the Company against any liability arising out of the Act done by him or them in the bonafide discharge of their duties and shall be the duty of the Board of Directors to pay out of the funds of the Company all costs, losses and expenses which such director, officer or servant may incur or become liable to, by reason of any contract entered into, act, or deed done by him as such officer, servant or in any way in the discharge of his duty. The Board of Directors may execute in the name and on behalf of the Company, in favour of any director or other person who may incur or be about to incur, any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit, and any such other powers as shall be agreed upon.

Annexure 7

SPECIMEN OF NOTICE TO BE PUBLISHED IN NEWSPAPERS

Notice is hereby given that in pursuance of section 25 of the Companies Act, 1956, an application has been made to the Government of India for a licence directing that a body about to be formed under the name of the (here state name of proposed association) with limited liability may be registered as a company with limited liability without the addition of the word 'Limited' or the words 'Private Limited' to its name.

The principal objects of the company are as follows :—

- (i)
- (ii)
- (iii)

A copy of draft memorandum and articles of association of the proposed company may be inspected at (here state address of Regd. Office). Any person, firm, company or corporation objecting to the application may communicate such objection to the Regional Director within thirty days from the date of publication of this notice by a letter addressed to the Regional Director of the Company Law Board
(here state address of Regional Director).

Date :

Applicants

Annexure 8

A MODEL TRUST DEED

This Trust Deed made at on this _____ day of _____ 20 _____,
Between Mr./Mrs./Ms. _____
of _____, residing at _____
_____ (hereinafter called “the settlor”) (which
expression shall, unless repugnant to the context or meaning thereof, be
deemed to include their respective heirs, executors and administrators)
of the one part and Mr./Mrs./Ms. _____
of _____ (hereinafter called “the trustees”) (which
expression shall, unless repugnant to the context or meaning thereof, be
deemed to mean and include the survivor or survivors of them and the
heirs, executors and administrators of the last survivor, their/his or her
assigns and the trust or trustees, for the time being, of the said trust) of
the other part.

Whereas the settlers are desirous of creating a trust in respect of the sum
of Rs. _____, [Rupees _____ only] in the
manner hereinafter appearing.

And Whereas the trustees have consented to act as the first trustees of
these presents and to accept the trusts under these presents as testified
by their being parties to and executing the same.

NOW THIS INDENTURE WITNESSETH AS FOLLOWS :

1. The trust created by these presents shall be known as
.....

2. The trustees so declare that they, the trustees, shall hold and stand possessed of the sum of Rs. [Rupees in words] as trust funds.
3. The registered office of the trust will be located at or at such other place as the trustees may decide from time to time.
4. **AIMS & OBJECTIVES**
 - i) To create awareness on various social, moral and economic issues affecting the country and to direct this awareness to developing innovative means of generating resources-financial, material and professional and channelise these resources through people and projects in the field ;
 - ii) To promote national integration and encourage, support and develop social welfare programmes for balanced growth of the nation ;
 - iii) To provide financial or any other assistance towards relief and rehabilitation of the populace affected by calamities like cyclones, earthquakes, epidemics, fire, famine, floods, war, riots, etc. ;
 - iv) To establish, maintain or support a home or homes for widows, orphans, special centres for providing shelter and protection to women and children in distress ;
 - v) To create and promote enlightened public opinion on various issues affecting the citizens of the country ;
 - vi) To encourage conservation, afforestation and protection of the environment including birds, animals and all species of plants and animals;
 - vii) To provide food, clothing and shelter to all those in need and provide pecuniary assistance to those unable to fend for themselves due to old age, disease or any physical or mental handicap ;

- viii) To undertake, or assist in undertaking, projects like digging wells, providing drinking water facilities, fodder for cattle, grains, seeds and fertilizers for farming, agricultural tools etc. ;
- ix) To establish, maintain or support dharamshalas, resthouses, convalescing homes, health and immunisation camps, infirmaries, orphanages ;
- x) To provide assistance for building or maintaining roads, national and state highways, bridges, reservoirs, irrigation tanks, tube wells, recreation centres, parks, playgrounds for children, libraries, museums, art galleries, cultural centres for the benefit of the public and improving their quality of life ;
- xi) To support the initiative of any individual, group or organisation in promoting education both formal and informal and for children and adults;
- xii) To establish, take over, run, maintain, assist and support hospitals, including mobile hospitals, charitable dispensaries, maternity homes, sanatoriums, medical centres, medical camps, health education and family planning centres, children welfare centres, natural health centres, nutrition centres and any other institution or forum for preventive, curative or primary health-care and treatment ;
- xiii) To establish take over, run, maintain a centre or centres for senior citizens or retirement homes or old peoples homes with facilities for boarding, lodging, health-care, nutrition, recreation, etc., as may be necessary ;
- xiv) To construct low cost buildings and houses for the poor, disadvantaged and those in distress, especially in the rural and/or urban slums or wherever found necessary ;
- xv) To conduct and organise seminars, workshops, conferences, meetings, public lectures.

- xvi) To provide assistance to approved funding agencies in verification of financial statements and progress reports of the voluntary organisation, pertaining to the said development projects and programmes in the country.
- xvii) To pay all costs, charges and expenses incidental to the management, administration and execution of the objectives and powers herein contained.
- xviii) To open and maintain account or accounts for the Trust in any scheduled bank or banks for the purpose of keeping the moneys and to operate on the same or to authorise anyone or more to operate upon them.
- xix) To accept, in cash or kind, donations, gifts, grants, contributions, (as Corpus or otherwise) and to collect interest and other income of the Trust for being utilised for furtherance of the aims and objectives of the Trust.
- xx) To purchase or to take on lease lands, buildings and other immovable or movable properties in the name of the Trust.
- xxi) To invest, dispose of, transfer and otherwise deal with monies, assets and properties, for the time being, of the Trust in such manner as the law permits and proper to do in carrying out the objects of the Trust.
- xxii) To pay all expenses preliminary or incidental to the formation of the Trust and its registration and for management and administration for the same.
- xxiii) To do all such acts, deeds and things and extend all such other assistance to the said voluntary organisations as may be necessary and incidental to the attainment of aforesaid objects.
- xxiv) All activities financed from the funds shall be conducted in accordance with the ideals and objects as stated hereinabove and no discrimination shall be made on grounds of religion, caste, creed, sex or political affiliation of the implementing agency or beneficiary.

5. BOARD OF TRUSTEES

- a) The management and control of the Trust and the Trust properties shall vest in the Board of Trustees which shall comprise of not less than two and not more than seven trustees including the Chairman and the Managing Trustees. All the Declarants herein will be the First Trustees. The Board of Trustees shall determine the strength of the Board from time to time.
- b) The tenure of the first Board of Trustees shall be for a period of five years and provisions for retirement of such Board of Trustees shall be applicable in respect of them only after first five years.
- c) All other Trustees to be appointed subsequently will hold office for a period of three years after which one-third of them shall retire by rotation on the basis of their seniority.

6. APPOINTMENT OF NEW TRUSTEES

Subject to the provisions contained in Clause 4 mentioned above, the appointment of new Trustees shall be Governed by the rules as follows :

- a) After the completion of the tenure of office of the Trustees, they shall retire but shall be eligible for reappointment.
- b) In case of vacancy/vacancies, new trustees shall be appointed from among the representatives of voluntary organisations, funding agencies and independent experts in the field of development, finance, legal and other related matters.
- c) Filling in of vacancies shall be by a decision of the Board of Trustees. As far as possible, efforts shall be made to fill in the vacancies by unanimous decisions failing which the majority decision shall prevail.
- d) If and as often as the trustees of THESE PRESENTS shall die or desire to retire or refuse or become incapable to act in the Trust thereof shall take the benefit of the insolvency

law for the time being in force or if any Trustee shall remain absent from three consecutive meetings of the Trustees without leave of absence, then and in every such case, it shall be lawful for the surviving or continuing trustee or trustees for the time being of THESE PRESENTS to appoint new trustee so vacating their offices in the Board of Trustees.

7. EFFECT OF APPOINTMENT OF NEW TRUSTEES

Upon every such appointment made in pursuance of the last foregoing clauses thereof, the newly appointed Trustees shall have powers and authorities of a Trustee under THESE PRESENTS.

8. POWERS TO APPOINT COMMITTEES

The Board of Trustees shall be entitled from time to time to appoint with or without remuneration and on such terms and conditions as they may think proper, to appoint Committee as they may think proper to function under the Authority and control of the Trustees for carrying out the objects of the Trust of these presents or the management thereof and invest them with all such powers including power to incur all such expenditure as may be necessary for carrying out the objects of the Trust.

9. POWER TO DETERMINE ALL QUESTIONS OF DOUBT OR DIFFICULTY

It shall be lawful for the Board of Trustees to settle and determine all matters of interpretation of THESE PRESENT as well as matters of difficulty, doubt or dispute and all questions arising in the course of or incidental to the administration, management and execution of the trusts and powers of THESE PRESENT and any such settlement or determination shall be valid, binding and conclusive and shall not be objected to or re-opened upon any ground whatsoever.

10. POWER TO COMPROMISE

The Board of Trustees shall have full powers to settle compromise or compound, out of court, all suits, action and other proceedings

and to settle all or other proceeding, difference of demand and adjust the settlement of all accounts relating thereto as fully as if they were absolutely entitled to the trust fund and without being answerable for the loss occasioned thereby.

11. POWER TO PURCHASE, HIRE OR TAKE ON LEASE

The Board of Trustees shall be entitled to purchase or hire or to take on lease a property or properties for the purpose of carrying out the objects of the Trust hereby created.

12. POWER TO BORROW

The Trustees may from time to time, at their discretion for the furtherance and carrying out the objects of the Trust of THESE PRESENTS, borrow such sum as may be determined by the Board of Trustees from time to time in form and manner thereupon. The Trustee shall, at their discretion, make all such dispositions of the properties movable or immovable forming part of the Trust Fund or any part thereof and enter into such agreements, assurances and things in relation thereto as the Trustees may deem proper for giving security for such loan and interest.

13. INVESTMENT OF TRUST FUND

All money forming part of the Trust Fund and requiring investment shall be invested in any of the securities authorised by law for investment of Trust Funds which are permissible u/s 11 (5) of the Income Tax Act, 1961 or shall at their discretion sell and/or realise the same or any part thereof.

14. IN WHOSE NAME MONEY TO BE INVESTED

All money forming part of the Trust Fund requiring investments shall be invested and the conveyance of assurance in respect of any immovable property/properties forming part of the Trust Fund shall be obtained in the name/names of the Trustees for time being of the Board of Trustees.

15. OPENING BANK ACCOUNTS

The Board of Trustees of may open any banking account or accounts with such scheduled bank as may from time to time be determined by the Trustees and shall forthwith pay or cause to be paid the rents, income, dividends and all other money forming part of the Trust Fund to the credit of any such account or accounts and such accounts or account shall be operated upon by such of accounts or account shall be operated upon by such of the Trustees or other persons as may from time to time be authorised to do so by a resolution of the Board of Trustees.

16. ACCOUNT AND AUDIT

The Trustees shall maintain regular accounts of the trust funds and shall get the same duly audited by a firm of Chartered Accountants. The Accounts and Audit Report and report of the Trust shall be made up at least once in a year covering the accounting period as may be determined by the Board of Trustees from time to time.

17. Power to sell the Immovable Property and Manage

- a) The Trustees shall have the power to buy, acquire, take on lease any property, movable and immovable that may be needed to carry out and further the objects of the Trust and incur all such expenses connected therewith.
- b) The Trustees shall, manage any immovable property or properties for the time being forming part of the Trust Fund in such manner as they shall think fit with full power to make improvement, repairs or alterations of any description and to make or incur any outlay for any such purposes or for the insurance or otherwise for the protection of benefits of the said premises and to grant or renew leases or tenancy of occupation and to make any agreements with tenants or occupiers or intending tenants or occupiers.

- c) The Trustees shall, if the need arises, sell or assign or lease any movable or immovable property or properties for the time being forming part of the Trust Fund together or in parts for the purpose aforesaid or any of them to execute and do all such assurances, acts, suits and things as they shall think fit.

18. RECEIPTS OF THE TRUSTEES

The receipts in writing by the Managing Trustee or any other person authorised by the Board of Trustees for any interest, dividend or income of the Trust Fund or for any deeds, papers, writing documents or other monies and effect payable to the Trustees shall be sufficient and effectual discharge for the same. The Board of Trustees by a resolution may also authorise any scheduled bank or other banks in the country to collect any interest, dividend or income of the Trust Fund on their behalf.

19. POWER TO AMEND THE RULES

If in the opinion, of the Trustees circumstances so require, the Trustees may unanimously make any amendment in the rules, they may consider necessary for the better management or administration of the Trust activities or for carrying out the objects of the Trust.

20. POWER TO MAKE RULES AND REGULATIONS

In addition to the aforesaid rules, the Trustees, shall from time to time, be entitled to make rules and regulations for the administration and management of the Trust of THESE PRESENTS and all matters incidental to or concerning the same PROVIDED, such rules and regulations shall not be repugnant to or be inconsistent with the provisions of the purposes of the Trust thereof.

21. POWER TO AMALGAMATE OTHER TRUST OR VICE-VERSA

The Trustees shall be at liberty to allow or to be allowed and permit, or to be permitted to amalgamate or to be amalgamated with any other Trust, Institution or Charity, in any areas or area whose objects are the same or similar to those of THESE PRESENTS, PROVIDED, they are not inconsistent with or repugnant to the objects hereof.

22. INDEMNITY TO THE TRUSTEES ETC.

The Trustees for the time being of THESE PRESENTS, shall be chargeable only for such monies, stocks, funds, deposits and securities as they shall actually receive, notwithstanding their signing of any receipt for the sake of conformity and shall be answerable or accountable only for their own acts, receipts, neglects, defaults, and not for those of others or any banker, auctioneer or any other persons with whom or into whose hands any trust monies or securities may be deposited in accordance with THESE PRESENTS nor for the determination or loss of any stocks, funds, deposits or securities nor for any defects or insufficiency of title nor for any other losses unless the same shall happen through their own neglect or wilful demeanour.

23. POWER TO REIMBURSE

The Trustees of THESE PRESENTS ARE entitled to be reimbursed and also to pay and discharge out of the Trust Fund, all expenses incurred by them or on their behalf in or about the execution of the Trusts and powers of THESE PRESENTS in accordance with the decision of the Board of TRUSTEES.

IN WITNESS WHEREOF THE PARTIES hereto set their hands and seals, the day & the year first hereinabove written.

Signed, Sealed and Delivered
by the within named settlor

In presence of

Signed, Sealed and Delivered
the above named trustees

In presence of

Annexure 9

SPECIMEN COPY OF MODEL PROJECT CONTRACT

AGREEMENT OF COOPERATION

between

XXX (Donor)

and

XXX

(project holder; referred to as the “PARTNER”)

concerning the following project or programme in the defined period

(referred to as “the Project”):

Project Number and Title:

Agreement of Cooperation

1. Purpose and Components of this Agreement

- 1.1 The PARTNER and XX (Donor) enter into this Agreement with the common objective of bringing the Project to a successful completion. The PARTNER shall be responsible for the implementation; XX (Donor) shall give its full support within the

terms of this Agreement and in the framework of mutual Partnership.

- 1.2 The Letter of Approval and the Budget (Plan of expenditure and income) as agreed between the PARTNER and XX (Donor) form part of this Agreement. If any of the provisions of this Agreement is contrary to the Letter of Approval, the latter shall take precedence over this Agreement.
- 1.3.1 In order to facilitate communication, the PARTNER should use XX (Donor)'s Forms and Explanatory Notes. This Agreement makes reference to those forms where applicable.

2. **Funding of the Project**

- 2.1 In accordance with the agreed Budget a Project shall be funded from one or more of the following sources

The total of the funds available to the Project is referred to as Project Funds.
- 2.2 The Project shall be financed out of the sources mentioned in clause 2.1. in the ratio as determined in the Budget. If total actual expenditure is less than the budgeted total, the same ratio shall be applied, i.e. the contribution from XX (Donor) shall be reduced proportionately.
- 2.3 If the contribution from the PARTNER or from any other parties is higher than determined in the Budget, XX (Donor) reserves the right to reduce its contribution by an equivalent amount, unless the additional funds are used for project expenditure exceeding the agreed Budget.
- 2.4 Notwithstanding the above the contribution from XX (Donor) shall not exceed the amount as stated in the Budget and Letter of Approval.
- 2.5 The PARTNER shall inform XX (Donor) immediately if his own contribution or if contributions from any other party cannot be provided in the ratio as determined in the Budget. In that case this Agreement may be renegotiated or revoked.

3. Utilization of Funds and Budgetary Control

- 3.1 Project Funds shall only be utilized for the purposes of the Project as specified in the Letter of Approval and the Budget.
- 3.2 Within the scope of this Agreement including the Letter of Approval and the Budget the PARTNER is free to develop the Project to achieve the best possible result. In order to achieve this, the PARTNER may decide to exceed individual expenditure items of the Budget by up to 10%, decreasing the funds available for other expenditure items of the Budget by an equivalent amount, whereby the agreed Budget remains unchanged and binding.
- 3.3 The PARTNER shall inform XX (Donor) immediately if any of the following changes are considered necessary:
 - a. substantial alterations to the project objectives, and/or substantial alterations of drawings and specification in case of construction projects, or
 - b. circumstances that may result in expenditure on any budget item exceeding the agreed Budget by more than 10%, or unforeseen additional expenditure not included in the agreed Budget.
 - c. Such changes shall require the prior written approval of XX (Donor) or may lead to renegotiation of this Agreement. XX (Donor) shall respond promptly if such alterations are proposed.
- 3.4 The PARTNER shall utilize Project Funds efficiently and economically.
- 3.5 The PARTNER shall obtain goods and services from the most economical and reliable supplier. This shall normally be assured by comparing offers from different suppliers before placing the order and in case of building projects by calling for tenders before entering into a contract. Preference shall be given to equivalent offers made in the Partner's own country. Equivalent offers from developing countries shall have preference over those from

industrialised countries. Payments in advance to suppliers prior to delivery of goods or services may only be made or agreed upon if this is common practice or justified due to exceptional circumstances.

- 3.6 The PARTNER shall ensure the existence of proper systems of internal control, adequate procedures for the authorisation of payments and that documentation of each transaction conforms to generally accepted accounting practices. Payments shall be authorised normally by at least two persons and evidence of it will be documented. Cash payments shall be avoided as far as possible.

4. Transfer of funds

- 4.1 The PARTNER shall keep a separate bank account for the Project. The bank account will be in the name of the Partner, indicating that it is held for the purpose of the Project. If the Project includes the setting up of a revolving fund, a further separate bank account should be opened for repayments and re-utilization of the fund.
- 4.2 The contribution from XX (Donor) shall be released in instalments for a period of up to 3 months in advance taking into account the progress of the Project. The PARTNER shall prepare a request stating the amount needed for the next three-month period. The requested amount shall be calculated on the basis of a cash flow projection taking into consideration all Project income and expenditure from the beginning of the Project. The request shall be signed by at least one authorized representative.
- 4.3 Upon notification of the arrival of funds by the bank, the PARTNER shall send to XX (Donor):
- a. an acknowledgement of receipt of the transferred amount stating the equivalent in national currency, the local bank charges and the net amount credited to the bank account. The acknowledgement shall be signed by at least one authorized representative.
 - b. a copy of the respective bank advice.

- 4.4 XX (Donor) shall process the first request for transfer of funds only after a duly signed copy of this Agreement and of the Audit Agreement (which needs to be signed by the Auditor as well) has been returned to XX (Donor). Any further requests for transfer of funds shall be processed by XX (Donor) only after the PARTNER has acknowledged the receipt of previous remittances and if the reporting is done according to this Agreement.
- 4.5 XX (Donor) may settle invoices from third parties on behalf of the PARTNER directly. A request by the PARTNER to XX (Donor) for directly settling invoices to third parties shall be signed by at least one authorized representative. If those transactions take place, XX (Donor) shall send a Debit Note to the PARTNER which shall be reflected in the Project's books of account and Financial Reports.
- 4.6 If funds requested by the PARTNER and transferred by XX (Donor) cannot be utilized for Project purposes within 6 months after receipt, the PARTNER shall inform XX (Donor) and explain the reasons. The PARTNER and XX (Donor) shall seek an acceptable solution.
- 4.7 To avoid transfer of funds in excess of the ratio as agreed in the Budget, XX (Donor) may withhold up to 5% of its contribution until the final Financial and Progress Reports have been received and accepted by XX (Donor).
- 4.8 The PARTNER shall account for interest earned on amounts transferred by XX (Donor) in the Financial Reports. The interest may be utilized for additional project expenditure exceeding the agreed Budget, provided there are valid reasons and that XX (Donor) has given approval in writing. Otherwise XX (Donor) may reduce its contribution accordingly.

5. Books of Account

- 5.1 The PARTNER shall ensure that the Project Funds are kept separately from any other funds. The PARTNER shall keep proper

documentation for all project transactions and maintain suitable books of account for the Project Funds in accordance with generally accepted accounting practices. The PARTNER shall prepare the Financial Reports based on these books of account.

- 5.2 The PARTNER shall introduce in the books of account a separate account head for each budget item and ensure that each transaction is correctly recorded under its proper account head. This applies even if an item exceeds the amount budgeted for this purpose.
- 5.3 In case of direct settlements made to third parties by XX (Donor) upon the PARTNER's request XX (Donor) shall send a Debit Note to the PARTNER which shall then be recorded promptly into the books of account under the respective account head.
- 5.4 The PARTNER shall keep the books of account and the corresponding documents and vouchers for a minimum of 5 years after XX (Donor) has confirmed in writing that the files of the Project have been closed.

6. Financial and Progress Reports

- 6.1 After the approved starting date of the Project the PARTNER shall prepare Financial and Progress Reports at six-month-intervals. The final Financial and Progress Reports shall be prepared on completion of the Project. For Projects not exceeding a 12 month implementation period XX (Donor) shall only require a final Financial Report and a final Progress Report.
- 6.2 The start of the Project is the date of the Letter of Approval unless otherwise stated there. Expenditure prior to the agreed date are not accepted by XX (Donor) as Project expenditure.
- 6.3 Each Financial Report shall be based on the Project's books of account and shall contain:
 - a. Project income and expenditure (including capital items but excluding depreciation) structured according to the individual items of the Budget during the six months reporting period as

well as the accumulated amounts from the start of the Project. Debit notes as well as interest earned on funds transferred by XX (Donor) shall be included.

- b. The balance of project funds (income minus expenditure I) at the end of each reporting period.
- c. A statement of cash status showing the cash held on the Project's bank account and the cash in hand for the Project. If the total cash available does not tally with the balance of project funds, the statement shall explain the reasons and give the details of the relevant items that make up the difference.
- d. A confirmation that the funds have exclusively been used for the purposes of the Project as specified in the Letter of Approval and the Budget.

It is essential that Financial Report shall include exclusively project-related income and expenditure which are covered by the Letter of Approval and the Budget, disregarding whether they are of revenue or capital nature. Instead of "income and expenditure", the Financial Report may as well be based on receipts & payments.

It is recommended that the PARTNER prepares the Financial Report using the standardised form for a Financial Report as worked out by XX (Donor).

- 6.4 The PARTNER shall arrange for the auditing of each Financial Report.
- 6.5 The Progress Report shall be prepared from the start of the Project implementation at six-month-intervals. The Progress Report shall cover the following aspects:
 - a. A summary of the major activities and the results of the Project so far; a comparison to the planned activities, results and objectives and reasons for any deviations from the plans.
 - b. An overview of further activities planned and of the personnel and management situation within the Project.

- c. Meaningful statistical data and, if appropriate, photographs.
 - d. Specifically photographs of constructions that are part of the Project, showing their progress and finally their completion; upon completion a statement concerning conformity with the approved drawings while deviations are being explained.
 - e. Towards the end of the Project an appraisal of its impact on the beneficiaries, the region and other development efforts.
- 6.6 The Financial and the Progress Report shall be signed by at least one authorized signatory of the PARTNER and shall be sent together with the Auditor's Report to XX (Donor) within 3 months after the end of the reporting period. If the PARTNER is unable to do so, XX (Donor) shall be informed about the reasons.
- 6.7 If for any reasons XX (Donor) considers it necessary to receive further information on the finances or the progress of the Project or about the PARTNER's organisation in general (balance sheet, statements on financial activities etc.) the PARTNER shall make them available to XX (Donor) on request.

7. Audit

- 7.1 The PARTNER shall appoint an independent local Auditor, who is either a Chartered Accountant or a Certified Public Accountant or equivalent, to audit the accounts, the utilization of funds and the adherence to the Agreement of Cooperation.
- 7.2 The PARTNER, the Auditor and XX (Donor) shall enter into a tripartite written agreement (Audit Agreement). XX (Donor) prepares an Audit Agreement in three copies and shall send it together with this Agreement of Cooperation to the PARTNER. The PARTNER shall return the 3 copies of the Audit Agreement duly signed by the legal representatives of the PARTNER and the Auditor to XX (Donor) along with this Agreement of Cooperation. After approval by XX (Donor), one signed copy shall be returned to each the PARTNER and the AUDITOR.
- 7.3 If either the PARTNER or XX (Donor) consider it necessary to

terminate the contract with the Auditor and appoint another one, the prior consent previous auditor is required.

- 7.4 The audit costs shall be paid by the PARTNER out of Project Funds.

8. Project Assets

- 8.1 Assets acquired out of Project Funds shall be the property of the PARTNER (or the beneficiaries according to the purposes of the Project) and shall be utilized only for the purpose of the Project.

- 8.2 The PARTNER shall maintain a register of all fixed assets of the Project. Proper records shall be kept for other Project Assets for example, stocks, debtors, revolving (credit) funds and cash accounts.

- 8.3 The PARTNER shall obtain adequate insurance cover for fixed assets according to the laws and common practice of the country concerned.

- 8.4 XX (Donor)'s prior consent in writing is required if:

- a. the PARTNER wants to utilize Project Assets for any other purposes than those of the Project
- b. the PARTNER wishes to pledge or mortgage Project Assets
- c. the PARTNER wishes to wind up revolving funds and use such funds for other purposes.

If any of the above transactions results in proceeds being received by the PARTNER they shall be accounted for separately as project income in the Financial Report.

- 8.5 If Project Funds or Project Assets are used for purposes other than those agreed in the Agreement of Cooperation, without XX (Donor)'s prior consent, XX (Donor) shall be entitled to compensation from the PARTNER. The basis of calculation shall be the actual market value for assets, and the residual value for funds. XX (Donor)'s share of the resultant total shall be in the same ratio in which XX (Donor) has actually provided funds to the Project.

- 8.6 If the PARTNER receives compensation in the case of dispossession or misappropriation of Project Assets, for instance expropriation or any other deprivation of use, XX (Donor) is entitled to receive a share of the compensation corresponding to the ratio in which XX (Donor) has actually provided funds to the Project.

9. **Right of Withdrawal and Restrictions**

- 9.1 The PARTNER and XX (Donor) shall inform each other, if circumstances beyond their control prevent a successful accomplishment of the Project. The PARTNER and XX (Donor) shall renegotiate the Project with the aim of pursuing it under changed objectives or with other activities or an adjusted budget. If that is not feasible, the PARTNER and XX (Donor) may mutually agree to abandon the Project and a new arrangement shall be reached on the use of funds already transferred by XX (Donor).
- 9.2 If within one year from the date of the Letter of Approval project measures have not been started this Agreement shall become null and void. Funding procedures shall have to be renegotiated should the PARTNER wish to commence the Project at a later date.
- 9.3 In accordance with legal provisions XX (Donor) may revoke funding of the Project, stop transfer of funds and reclaim funds already transferred or paid to third parties if:
- a. the information given by the PARTNER that is the basis for funding was incomplete or incorrect
 - b. the funds are not used according to the terms of this Agreement.
 - c. the PARTNER does not provide the own contribution in the ratio of funding as determined in the agreed Budget.
 - d. the PARTNER does not use the funds transferred by XX (Donor) within the planned period
 - e. the PARTNER does not submit the Financial Reports, Auditor's

Reports, Progress Reports or any other relevant information to XX (Donor) within the stipulated time-schedule

- f. the PARTNER does not comply with any other stipulations of this Agreement without obtaining XX (Donor)'s prior consent.

- 9.4 Furthermore, XX (Donor) may exercise an entitlement to interest of 6% per annum on the amount repayable to XX (Donor) under clause 9.3 from the date when entitlement to compensation starts to the date when compensation is paid.

10. Miscellaneous Provisions

- 10.1 In consultation with the PARTNER, XX (Donor) representatives as well as other persons authorized by XX (Donor) may visit the Project to see its progress and look at the books of account and records. The PARTNER shall provide all necessary information and extend full cooperation for an evaluation of the project activities and financial transactions to date.
- 10.2 If any of the provisions of this Agreement is contrary to the law of the country concerned, the latter shall take precedence over this Agreement. The legal validity of the other provisions in this Agreement shall not be affected.
- 10.3 The PARTNER shall inform XX (Donor) about the representatives who are authorized to cooperate with XX (Donor) on financial matters, particularly to request XX (Donor) for transfer of funds, to acknowledge receipt of the transferred amount, to request XX (Donor) for directly settling invoices to third parties and to sign Financial Reports. The PARTNER shall inform XX (Donor) should any changes of authorizations take place during the implementation period.
- 10.4 The PARTNER and XX (Donor) shall inform each other about changes in the respective bye-laws or if alterations in the office bearers of either of them take place.
- 10.5 This agreement can only be changed by mutual consent of the PARTNER and XX (Donor) evidenced in writing.

10.6 This Agreement becomes effective when signed by XX (Donor) and the PARTNER.

For XX (DONOR)

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For the PARTNER

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(Place) (Date)