



## I. Summary

### A. Types of Organizations

#### 1. Trusts

Public charitable trusts can be established for a number of purposes, including the relief of poverty, education, medical relief, provision of facilities for recreation, and any other object of general public utility. Indian public trusts are generally irrevocable. No national law (except the broad principles of the India Trusts Act 1882, which governs private trusts) governs public charitable trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts.

#### 2. Societies

Societies are membership organizations that may be registered for charitable purposes. Societies are usually managed by a governing council or a managing committee. Societies are governed by the Societies Registration Act, 1860, which has been adapted by various states. Unlike trusts, societies may be dissolved.

#### 3. Section 25 Companies

A section 25 company is a company with limited liability that may be formed for "promoting commerce, art, science, religion, charity or any other useful object," provided that no profits, if any, or other income derived through promoting the company's objects may be distributed in any form to its members.[1]

## II. Applicable Laws

*Text omitted*

## III. Relevant Legal Forms

#### 1. Trusts

Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. In determining whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public. There is no central law governing public charitable trusts, although most states have "Public Trusts Acts." Typically, a public charitable trust must register with the office of the Charity Commissioner having jurisdiction over the trust (generally the Charity Commissioner of the state in which the trustees register the trust) in order to be eligible to apply for tax-exemption. In general, trusts may register for one or more of the following purposes:

- Relief of poverty or distress;
- Education;
- Medical relief;
- Provision of facilities for recreation or other leisure-time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit; and
- The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

At least three trustees are required to register a public charitable trust, though a trust may also have a single or sole trustee. In general, Indian citizens serve as trustees, although there is no specific prohibition against non-natural legal persons or foreigners serving in this capacity.

Legal title of the property of a public charitable trust vests in the trustees. Trustees of a public charitable trust may not, however, in any way use trust property or their position for their own interest or private advantage. Trustees may not enter into agreements in which they may have a personal interest that conflicts or may possibly conflict with the interests of the beneficiaries of the trust (whose interests the trustees are bound to protect). Trustees may not delegate any of their duties, functions or powers to a co-trustee or any other person, except that trustees may delegate ministerial acts. In essence, trustees may not delegate authority with respect to duties requiring the exercise of discretion.

Trustees of religious or charitable trusts are charged with discharging their duties with the degree of care that an ordinarily prudent person would exercise with respect to his personal property. Public charitable trusts are highly regulated. For instance, in many states, purchases or sales of immovable property by a trust or taking a loan must be approved in advance by the Charity Commissioner.

Indian public charitable trusts are generally irrevocable. If a trust becomes inactive due to the negligence of its trustees, the Charity Commissioner may take steps to revive the trust. Furthermore, if it becomes too difficult to carry out the objects of a trust, the doctrine of *cy pres*, meaning "as near as possible," may be applied to change the objects of the trust.

## **2. Societies**

Societies are governed by the Societies Registration Act, 1860, which is an all-India Act. Many states, however, have variants on the Act.

Societies are similar in character to trusts, although there are a few essential differences, including that a minimum of seven 'members' are required to form a society. While only two individuals are required to form a trust, a minimum of seven individuals are required to form a society. The applicants must register the society with the relevant state Registrar of Societies in order to be eligible for tax-exempt status. A registration application includes the society's memorandum of association and rules and regulations. In general, Indian citizens serve as members of the managing committee or governing council of societies, although there is no prohibition in the Societies Registration Act against non-natural legal persons or foreigners serving in this capacity.

According to section 20 of the Act, the types of societies that may be registered under the Act include, but are not limited to, the following:

- Charitable societies;
- Societies established for the promotion of science, literature, education, or the fine arts; and
- Public art museums and galleries, and certain other types of museums.

The governance of societies also differs from that of trusts; societies are usually managed by a governing council or managing committee, whereas trusts are governed by their trustees.

Individuals or institutions or both may be members of a society. The general body of members delegates the management of day-to-day affairs to the managing committee, which is usually elected by the membership. Members of the general body of the society have voting rights and can demand the submission of accounts and the annual report of the society for inspection. Members of the managing committee may hold office for such period of time as may be specified under the bylaws of the society.

Societies, unlike trusts, must annually file a list of the names, addresses and occupations of their managing committee members with the Registrar of Societies. Furthermore, in a society all property is held in the name of the society, whereas all of the property of a trust legally vests in the trustees.

Unlike trusts, societies may be dissolved. Dissolution must be approved by at least three-fifths of the society's members. Upon dissolution, and after settlement of all debts and liabilities, the funds and property of the society may not be distributed among the members of the society. Rather, the remaining funds and property must be given or transferred to some other society, preferably one with similar objects as the dissolved entity.

### **3. Companies**

The Indian Companies Act, 1956, which principally governs for-profit entities, permits certain companies to obtain not-for-profit status as "section 25 companies." A section 25 company may be formed for "promoting commerce, art, science, religion, charity or any other useful object." A section 25 company must apply its profits, if any, or other income to the promotion of its objects, and should not pay any dividend to its members. At least three individuals are required to form a section 25 company. The founders or promoters of a section 25 company must submit application materials to the Regional Director of the Company Law Board. The application must include copies of the memorandum and articles of association of the proposed company, as well as a number of other documents, including a statement of assets and a brief description of the work proposed to be done upon registration.

The internal governance of a section 25 company is similar to that of a society. It generally has members and is governed by directors or a managing committee or a governing council elected by its members.

Like a society (but unlike a trust), a section 25 company may be dissolved. Upon dissolution and after settlement of all debts and liabilities, the funds and property of the company may not be distributed among the members of the company. Rather, the remaining funds and property must be given or transferred to some other section 25 company, preferably one having similar objects as the dissolved entity.

*This excerpt is from R Company Registration at [www.company-registration.in/unlimited-company-india.php](http://www.company-registration.in/unlimited-company-india.php)*

## **Unlimited Company India**

An unlimited company or private unlimited company is a mixture company incorporated either with or without a share capital but where the liability of the members or shareholders is not limited - that is, they are liable to donate whatever sums are required to pay the outstanding debts of the company should it ever go into formal liquidation and its assets are insufficient to pay its debts and liabilities and the fixed cost of liquidation. In that situation, the members or shareholders are liable for the shortfall. As with its counterpart the incomplete company, its members or shareholders have no direct liability to the creditors of an unlimited company. Unlimited companies are found in the India. A similar entity, the unlimited liability corporation, exists in India.