



"TAILORING SECRETARIAL AND COMPLIANCE SERVICE SEAMLESSLY."

Introduction

India's social consciousness is deeply engraved with the generosity of social service, which have evidently existed in various forms since ages, like the concept of daana, dakshina, bhiksha etc. There are many different ways through which individuals, companies etc. can help bring wellbeing, prosperity to one's life as well as society at large. There are innumerable ways for providing social benefits it is not restricted only to single individuals but individual altogether as society at large can contribute and take active part, the most common structures for providing social benefit is forming a Non-Profit Organization such as Trust and Section 8 Companies. These organizations are set up for providing social welfare, hence considered as Not for Profit Organization, this includes schools, colleges, religious organizations, hospitals etc.

Governing Legislation

- **Section 8 of Companies Act, 2013:** Section 8 Companies are governed by the Companies Act, 2013, and the relevant rules and regulations under the Act.
- **Trust:** Trust in India are primarily governed by the Indian Trusts Act, 1882

Definitions:

"Section 8 Companies" as per Companies Act, 2013 means a company as one whose objectives is to promote fields of arts, commerce, science, research, education, sports, charity, social welfare, religion, environment protection, or other similar objectives. These companies also apply their profits towards the furtherance of their cause and do not pay any dividend to their members.

"Trust" as per THE INDIAN TRUSTS ACT, 1882 means a "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner

"Charitable Purpose" according to Section 2 sub section 15 of the Income Act, 1961 "Charitable Purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

“Non-profit Organization” means NPOs are legally and voluntarily registered entities, run by a group of people with a service motive, so as to promote the general welfare of the public.

“Social Enterprises” Social Enterprises define as a select class or category of Enterprises that are engaged in the business of “creating positive social impact” which is further classified into Not for the Profit Organizations (NPO) like Trust, Society, or For the Profit Enterprises (FPE) like a Private Company, Partnership, etc. The Categorization is required because the category as a whole includes entities that differ significantly in terms of their legal structure, existing regulatory structure, and other factors. Furthermore, allowing both NPO and FPE to feature would aid in achieving the scale and demand required for SSE to remain financially viable.

“Social Stock Exchange (SSE)” means a Social Stock Exchange is a platform to list securities and raise funds by social enterprises that are engaged in creating a positive social impact. An exchange like this would help not only such enterprises looking for funds but also sociable investors who look for Bonafide entities engaged in social sectors. It would be separate segment under the existing Indian Stock Exchanges, although unlike conventional stock exchanges, Social Stock Exchange (SSE) has a deeper purpose which should be reflected in their governance, design and operations

One might think, if all the two above specified organization have similar objects, then what is the difference between them ??? how to choose which organization is the best amongst themselves???

BIRD'S EYE VIEW

1. **TRUST:**

Trust is the first and oldest form of not-for-profit organization, these are regulated as per the provisions given under the Indian Trust Act, 1882. There are several categories of trusts such as; public trusts and private trusts, discretionary & non-discretionary, testamentary & non testamentary etc. Public trust means trust formed for the benefits of public at large, whereas private trust is formed for the benefits of limited number of person limited to some individuals, families etc.

A Private trust comes under the Indian Trust Act, 1882. Whereas the same does not apply to public trust as Indian Trust Act is not valid to the public trust.

Public trust is the trust which is created for the benefits of public at large or where the beneficiary is incapable of ascertainment is known as public trust. These trusts are essentially governed by charitable and religious trust act, 1920, the religious endowments act, 1963, the societies registration act, 1860, etc. But not governed by Indian trust Act, 1882.

Trust can be formed with minimum two individuals, no statutory requirement for annual return/ documents filling, hence is easy to form and operate. But, as there is no regulatory oversight, it is difficult to wind up the trust, as trust are generally irrevocable, however according to the trust deed, it can be wound up.

2. SECTION 8 COMPANY:

Section 8 companies are governed by Companies Act 2013. The Government grants these companies an exclusive license under Section 8 Company. These companies can be limited by shares/ guarantee, having/not having share capital. The members of a company who are limited by guarantee are bound by a guarantee in the articles of association of the company, which requires them to pay the company debts up to a fixed sum. There are three main conditions for this.

- I. The company should form for the charitable trust
- II. Income and profits should be used towards these objects
- III. The company should not pay any dividend to its members

Section 8 companies are authorized to undertake micro finance activities wherein small-scale loans of somewhat **Rs. 50,000** for rural areas and **Rs. 1,25,000** for urban areas are allowed by section 8 companies, it is the simplest way to register a microfinance company, as per **RBI circular RBI/2015-16/15 DNBR (PD) CC.No.052/03.10.119/2015-16 Dated July 01 2015**, exempted section 8 companies to obtain Certificate of Registration from RBI to carry on any non-banking financial business, but within the limits prescribed by RBI.

❖ EXEMPTIONS AND RELIEFS AVAILABLE TO SECTION-8 COMPANIES UNDER DIFFERENT ACTS, RULES AND REGULATIONS: COMPANIES ACT, 2013 ('ACT'):

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▪ Companies Act, 2013

- Directorship in Section 8 Companies will not be counted for calculating the ceiling with respect to maximum number of directorships as prescribed under Section 165 of the Act.

- A general meeting may be called by giving notice of not less than 14 clear days instead of 21 clear days.
- A Section 8 Company can hold at least one meeting within every six calendar months instead of holding four meetings a year.
- Recording of minutes of General Meetings, Board Meeting and other resolutions is not applicable on a Section 8 Company. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the Company's articles provide for confirmation by way of circulation of minutes.
- A firm can even be a member of a Section 8 Company.
- Section 149(1) of the Act shall not apply to Section 8 Company accordingly; a Section 8 Company is not required to appoint an Independent Director. Further, for the above-mentioned reason, the Audit Committee of a Section 8 Company shall also not require to have Independent Directors as member of its Board. Section 8 Companies are not required to appoint a qualified CS professional as its Company Secretary.
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- It is exempted from applicability of secretarial standards as well. Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee and nor a Stakeholders Relationship Committee.

- **Income Tax Act, 1961**

Section 8 Company is immune from some provisions of the income tax if their main activity is "charitable purpose" as mentioned section 2(15) of Income Tax Act, 1961. They also avail various other deductions and tax benefits under Section 80G of the Income Tax Act, 1961.

Below is the list of reliefs or exemption that every Section 8 Company can procure:

- Section 8 Company needs to pay less stamp duty as compared to other companies.
- Under the Income Tax Act, 1961, the donors of Section 8 Company may claim a 50% rebate against the donations they made. Under Section 80G, it shall be valid for a period of one to three years.
- If Section 8 Company got registered under section 12AA (tax exemption) of the Income Tax Act, then its profits shall be entirely exempted, and no tax will be levied on the company.
- Every year the Central Government issues some compliance to enable more favourable conditions to not profit organizations in terms of the tax exemption.

❖ EXEMPTIONS AND RELIEFS AVAILABLE TO TRUST UNDER DIFFERENT ACTS, RULES AND REGULATIONS: COMPANIES ACT, 2013 ('ACT'): –

- Under Section 80G, it shall be valid for a period of one to three years.
- Under section 12AA (tax exemption) of the Income Tax Act, then its profits shall be entirely exempted.

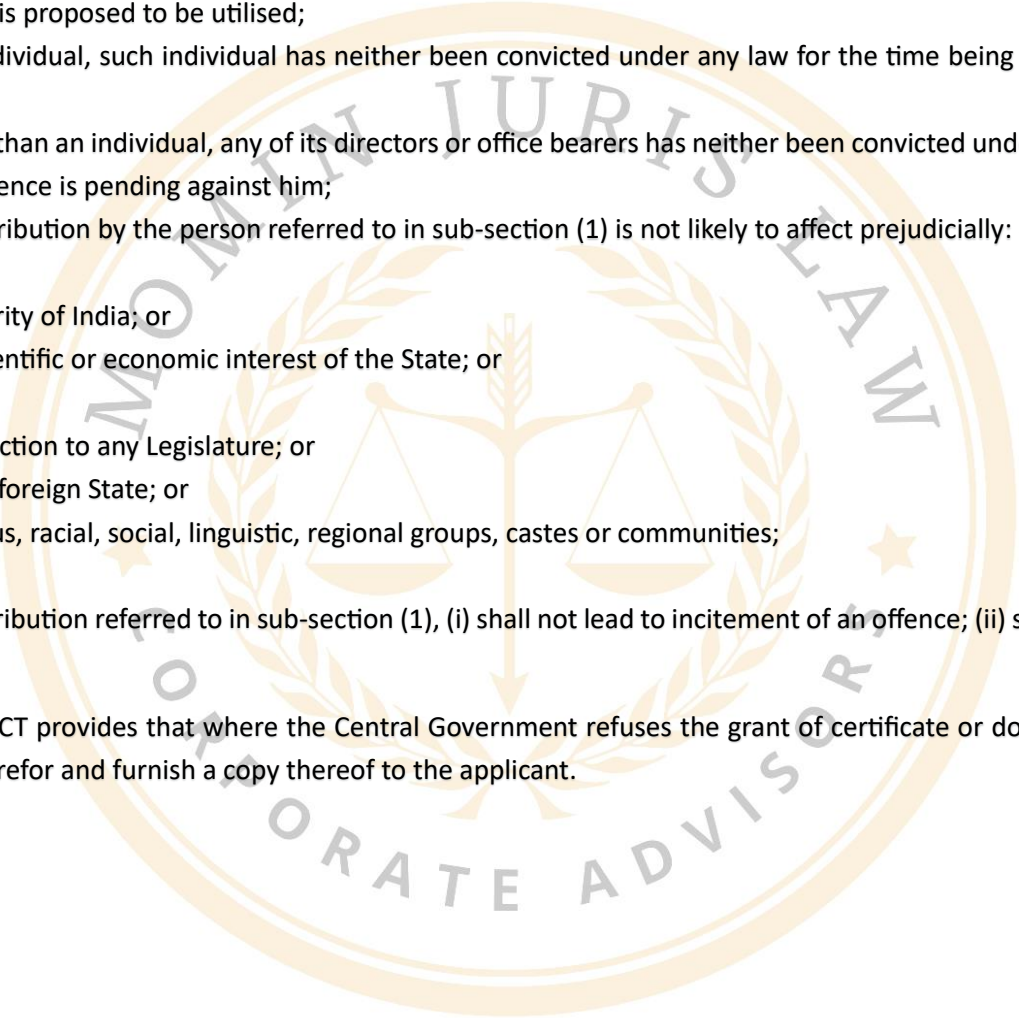
❖ Foreign Contribution Regulation Act, 2010

In light of Section 11 of Foreign Contribution Regulation Act, 2010 provides that no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government. Such Registration certificate under FCRA Act, 2010 valid for 5 years.

- Under Section 12 read with sub section 4 of the Foreign Contribution Act, 2010 provide that a person shall not eligible for grant of certificate or giving prior permission if his certificate has been suspended and such suspension of certificate continues on the date of making application.

The following shall be the conditions for the purposes of sub-section (3), namely: -

- a) The person making an application for registration or grant of prior permission under sub-section (1),
 - (i) Is not fictitious or benami;
 - (ii) Has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - (iii) Has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - (iv) Has not been found guilty of diversion or mis-utilisation of its funds;
 - (v) Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - (vi) Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - (vii) Has not contravened any of the provisions of this Act; (viii) has not been prohibited from accepting foreign contribution;

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- b) The person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - c) The person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;
 - d) In case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
 - e) In case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
 - f) The acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially: -
 - (i) The sovereignty and integrity of India; or
 - (ii) The security, strategic, scientific or economic interest of the State; or
 - (iii) The public interest; or
 - (iv) Freedom or fairness of election to any Legislature; or
 - (v) Friendly relation with any foreign State; or
 - (vi) Harmony between religious, racial, social, linguistic, regional groups, castes or communities;
 - g) The acceptance of foreign contribution referred to in sub-section (1), (i) shall not lead to incitement of an offence; (ii) shall not endanger the life or physical safety of any person.

Section 12 subsection (5) of the ACT provides that where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant.

❖ Social Stock Exchange

Introduction

Social Stock Exchange identifies social enterprises as the ones engaged in creating a positive impact in society. It works as mediator between the Social Enterprises who are in need of funds and the Investors who are willing to invest money for this social cause. The SEBI has set up the regulatory framework for the working of the SSE and issued regulations for Social Enterprises for registration and listing on SSE.

The concept of the Social Stock Exchange (SSE) caught everyone's attention when Hon'ble Finance Minister, Smt. Nirmala Sitharaman, in her union parliamentary budget 2019-20 proposed to create an electronic fundraising platform under the regulatory ambit of SEBI for listing social enterprises with the following objectives: (i) To provide a regulated platform that brings together an investor and Social Enterprises (SE). (ii) To facilitate the funding as well as the growth of social enterprises. (iii) Setup mechanism to ensure robust standards of social impact and financial reporting. Accordingly, SEBI vide its notification dated 25th July 2022 made amendments to SEBI (ICDR) Regulations, 2018, and SEBI (LODR) Regulations, 2015. This notification developed the framework on SSE and inserted chapter IX-A viz. obligations of social enterprises. The Central Statistical Institute of India announced in 2009 that there were 3.3 million NGOs registered in India even if 1% of them get registered with SSE it comes to be a big number. To date the number of registered NPO under NSE has not crossed the double figure, the details of registered NPOs are as under.

Sr.No	NAME OF THE NPO	REGISTRATION WITH SSE	WEBSITE OF THE NPO
1.	Gramalaya Trust	05-Apr-2023	https://www.gramalaya.org/
2.	SGBS Unnati Foundation	05-Apr-2023	https://unnatibl.org/
3.	Masoom Trust	05-Apr-2023	https://masoomeducation.org/
4.	Opportunity Foundation Trust	05-Apr-2023	https://www.avasar.ngo/
5.	Possit Skill Organization	19-Apr-2023	http://www.possit.in/
6.	Development Management Foundation	24-Apr-2023	https://www.isdm.org.in/
7.	Krushvi Vikas Va Gramin Prashikshan Sanstha	28-Apr-2023	https://www.krushivikas.org/
8.	Voice Society	03-May-2023	https://consumer-voice.org/
9.	Samvedna Development Society	08-May-2023	http://www.sdsorg.in/

It is clear from the above table that SSE is an emerging concept and professionals have to play a vital role in its development. It is expected that a large number of social enterprises (SE) will take advantage of SEBI's new architecture for raising the fund. From the process of registration till the completion of raising of funds from the public and even thereafter the SE has to avail the services of professionals to help them in implementing this whole process. Before discussing the role of the company secretary in compliance with NPO registered under SSE it becomes essential to look at the eligibility of criteria and rules made for the set-up of NPO:

(i) Eligible entities: To get registered under social stock exchange an entity must be registered in India as one of the following below:

- a. A charitable trust registered under the public trust statute of the relevant state;
- b. A charitable trust registered under the Societies Registration Act, 1860
- c. A charitable trust registered under the Indian Trusts Act, 1882
- d. A company incorporated under section 8 of the Companies Act, 2013

(ii) Eligibility criteria: Out of the eligible entities mentioned above only those can get registered under Social Stock Exchange which satisfies any one of following predominance criteria:

a. At least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population.

Or

b. At least 67% of the immediately preceding 3-year average of expenditures has been incurred for providing eligible activities to members of the target population.

Or

c. Members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base/beneficiaries

(iii) Compliance services for raising of funds through SSE: Non-Profit Organization (NPO) / For Profit Social Enterprises (FPE) can raise fund in following way:

TYPE	Non-Profit Organization (NPO)	For Profit Social Enterprises (FPE)
Registration	Mandatory	No registration
Type of security to be issue	<ul style="list-style-type: none"> • Zero coupon zero principal bonds • Mutual funds • Development impact bonds 	<ul style="list-style-type: none"> • Equity (main board/SME) • Equity (AIF/ Social impact fund) • Issuance of debt security

(iv) Ineligible to raise funds through a Social Stock Exchange (SSE): In the following cases a Social Enterprises (SE) will become ineligible to raise funds or even register on a Social Stock Exchange:

- The Social Enterprises or any of its promoters or directors is a deceptive borrower or a fugitive economic violator;
- The Ministry of Home Affairs or any other department of either the state or national government as disqualified the Social Enterprises, any of its promoters, promoter group, or directors from accessing the securities market; or
- They are promoter or directors of any other company or Social Enterprises which has been disqualified from gaining access to the securities market by the Board.

❖ Regulatory Requirements of Section 8 Companies and Trust

Every company and Trust incorporated in India is required to file annual returns specifically under the Companies Act, 2013 and Income Tax Act, 1961. Applicable e-forms must be submitted to the MCA/IT authority within the period prescribed under the law. Apart from event-based filing,

- **Section 8 company is required to file following periodic forms:**

Sr. No	Forms	Applicable Provision
1.	MGT-7A/7	Sec 92 of the Companies Act, 2013
2.	AOC-4	Sec 129,137 of the Companies Act, 2013
3.	DIR-8	Sec 164(2) of the Companies Act,2013
4.	MBP-1	Sec 184(1) of the Companies Act, 2013
5.	DIR – 3 KYC	Sec 153 of the Companies Act, 2013

6.	ADT-1	Sec 139 of the Companies Act,2013
7.	ITR-6	Exempted for Companies with Charitable objects

- ***Trust is required to file following periodic forms:***

Sr. No	Forms	Applicable Provision
1.	Form No. 10A	As per Income Tax Act, 1961
2.	Form No. 10AB	As per Income Tax Act, 1961

❖ CONVERSION OF SECTION 8 COMPANY / TRUST INTO ANY OTHER COMPANY

- A Company registered under Section 8 of the Companies Act, 2013 may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- A Trust registered under The Indian Trust Act, 1882 may convert itself into company under Section 366 of the Companies Act, 2013

❖ COMPARATIVE ANALYSIS

Sr. No	BASIS	TRUST	SECTION 8 CO.
1.	Statute/ Legislation	Trust is governed by the Indian Trust Act, 1882.	Section 8 Companies are governed by the Indian Companies Act, 2013
2.	Prime Object/ Activities	For providing social benefit i.e. Non-Profit Organization's surplus, cannot be utilized in any other purpose other than fulfilling its objects	Same as Trust & Society
3.	Nature of Control	One Man Control i.e., settlor / founder trustee / board of trustees	Governed by the Board of Directors
4.	Jurisdiction	Trusts are registered under the jurisdiction of Deputy Registrar / Charity commissioner of the	The power to register a section 8 Company lies with the Regional Director & Registrar of Companies of concerned

		relevant area.	state
5.	Main documents	Trust Deed	Memorandum Of Association and Article of Association
6.	Stamp Duty	Trust Deed are executed on non-judicial stamp paper (amount varies from state to state)	No requirement of stamp papers for Memorandum & Bye laws of society
7.	Minimum Requirement.	At least two trustees are required to register a public charitable trust In general. Indian citizens serve as trustees, although there is no prohibition against non-natural legal persons or foreigners serving in this capacity.	Minimum 2 directors and shareholders. Directors and Shareholders can be the same person.
8.	Area of Activities	Applicable to whole of over India no matter from which state trust deed belongs	As registered by central processing center (CPC), applicable all over India
9.	Micro Finance Activities	Cannot do	Can undertake micro finance activities
10	Annual compliances/ documentations	There are no requirement for any annual compliances	The company must file the annual returns AOC-4, MGT-7 etc and accounts with the ROC.
11	Registration with Income Tax u/s. 12A & 80G as NGO	At par with society & Section 8 Company.	At par with trust & Society.
12	Borrowings	Trusts can borrow only from the Author	Can borrow from members/ shareholders and also from banks & institutions
13	From the point of view of Grant of subsidy by the government	Moderately preferred	Most preferred

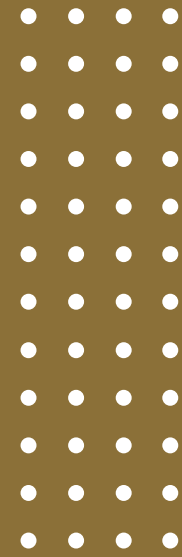
14	Possibility of Amendment	Can be done through supplementary trust deed	Restricted without approval of CG
15	From the point of view of Foreign Contribution Regulation Act, (FCRA) registration	Moderately preferred	Most preferred
16	Foreign Direct Investment	FDI in Trusts other than VCF is not permitted.	Not Permitted
17	Cost efficiency & Transparency	Low Cost & Less Transparent	Comparatively Higher Cost & More Transparent
18	Winding-Up	Generally irrevocable, hence cannot be easily wound but, as per the trust deed can be wound up	Can be wound up if shareholders desire (in AGM)

❖ Conclusion

If your primary goal is to attract CSR Donations, Government grants, Foreign Contributions and gain the trust of corporate donors, a Section 8 company is often the better choice due to its formal structure, transparency, and legal recognition under the Companies Act, 2013.

However, if you're looking for a simpler setup with more flexibility, a **Trust** could also work well. The decision should ultimately be based on the nature of your operations, long-term goals, and the type of donors you wish to attract.

For CSR donations specifically, **Section 8 Company** tends to have an edge in terms of formal recognition and acceptance by corporate donors.



THANK YOU

*We look forward to working
with you*

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