



Bombay Chartered Accountants' Society

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Suggestions for Changes in Maharashtra Public Trust Administration & Law

A. General

In recent times, most persons wanting to set up charitable organisations prefer to set up non-profit companies under section 8 of the Companies Act, rather than set up trusts in Maharashtra, because of the various restrictions on trusts and the difficult procedures that trusts have to comply with.

The overall objective should be to ensure encouragement of charitable activity through trusts, with minimal restrictions and minimal requirement of attendance at the Charity Commissioner's office of trustees and their representatives for routine matters. Online filing should be the norm for most matters. Personal attendance should be required only in matters of enquiry and investigation.

For this, it is essential that the existing website is converted into a user friendly and comprehensive portal, with both English and Marathi options, so that e filing is made convenient.

Categorisation of Trusts into large, medium and small can be considered. Limits of average income over last 3 years of above Rs 10 crore, between Rs 10 lakh to Rs 10 crore, and below Rs 10 lakh respectively would be reasonable limits for such categorisation. Only the large trusts should be subject to greater reporting requirements and closer scrutiny by the Charity Commissioner.

B. Registration of Trusts

1. Newspaper Advertisements are insisted upon at the time of registration of new trusts. In many cases, the trust is created with a nominal Corpus of Rs. 1,000 to Rs. 10,000, while the cost of Advertisement in the Newspaper is Rs. 25,000 to 50,000, wiping out the initial corpus. This requirement of advertisement should be dispensed with.

Every officer follows different practice and has different requirements for the Registration of New Trust, change Report & other applications. There should be defined practice and stipulated documents clearly mentioned in the Rules.

2. If a Trust is registered in Maharashtra, and has immovable properties or activities in Gujarat, it is compulsory for that Trust to register with the Gujarat Charity Commissioner, and vice versa. There is a dual reporting requirement to both Maharashtra Charity Commissioner and Gujarat Charity Commissioner. Trusts registered

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in another State under the local public trust legislation should be exempt from further reporting in Maharashtra as well. There could be a system whereby such trusts merely have to file an initial intimation with the Maharashtra Charity Commissioner, and thereafter are exempt from the various other compliance and reporting requirements in Maharashtra, so long as they continue to be registered in that other State.

C. Change Reports

1. Only the following changes should require filing of change report:
 - a. Change in Name of the Trust
 - b. Change in Objects of the Trust
 - c. Change in address of the trust
 - d. Change in trustees of the trust
 - e. Change in immovable properties of the trust
 - f. Change in any other clauses of the Trust Deed/Memorandum of Association or Rules and Regulations.

No change report should be required in case of changes in movable property of the trust, since such property changes on a day-to-day basis.

2. Change reports should be automatically taken on record immediately, as is done by the Registrar of Companies. The existing procedure causes huge delays, at time running into many years before a change report is accepted, and necessitating several visits to the Charity Commissioner Office. A time limit of 3 months from the date of amendment should be fixed for taking on record change reports already filed earlier.
3. The rules should prescribe the list of supporting documents to be filed for different types of change reports. The requirement of filing copy of Schedule I certified by Charity Commissioner's office should be done away with, since such Schedule I is already with the Charity Commissioner's office.
4. For change reports in respect of immovable property, the requirement of obtaining the report from the Local Charity Commissioner Office and the Registrar/Talati where the property is situated should be completely done away with since the document would in any case be registered with the Registrar of Assurances. At present, the onus is on the Trustee to run around and get the report from the Local office of Charity Commissioner in whose jurisdiction the property is situated.

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5. In case of a society where there is a change in the managing committee due to elections, letters from the outgoing members who are not re-elected should not be required to be filed.
6. Digital signing of online change reports should be sufficient. There should be no need for notarisation of change reports or supporting documents, or for filing of affidavits.
7. Once change reports are filed online through digital signature of reporting trustee along with all prescribed supporting documents, change reports should be regarded as valid.
8. Enquiries should be initiated only in cases where any objection is raised to a change report by any person.

D. Audit & Accounts

1. A vertical format of balance sheet and profit & loss account may also be prescribed.
2. The requirement of audit should apply only to trusts with income for the year exceeding Rs 1,00,000, instead of the existing limit of Rs 5,000. Small trusts with income below this level should be exempted from the requirement of audit.
3. The format of the audit report should be modified and simplified, to require the auditor to express an opinion on the true and fair nature of the accounts, and of the final accounts being in accordance with the books of account. The existing points required to be reported in the audit report could be put as an annexure to the audit report. The limit for reporting on whether tenders were invited for repairs or construction should be increased from Rs 5,000 to Rs 1,00,000.
4. The requirement of revaluation of ornaments, gold and silver every 10 years, should be substituted by the requirement of stating such market value as a note below the value of such items stated at cost. This will do away with the requirement of creating a revaluation reserve.
5. a. Preparation and filing of accounts should be the responsibility of the trustees, and not that of the auditors.
b. For online filing of accounts, filing of a scanned copy of the audited accounts through digital signature of the trustee should suffice.

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- c. There should be no requirement of further filing of physical copy, with physical signatures of trustees and auditors.
6. It is seen that the online data on the Charity Commissioner's website does not incorporate changes, such as change in address, already taken on record through an order passed on a change report. There should be a facility to get the data corrected by uploading the change report order.
7. The requirement of filing budget should apply only for very large trusts, with income above Rs 10 crore.

E. Permission for Alienation of Property

1. There should be no prior permission required for sale of property under section 36, if the property is sold after inviting bids, the stamp duty valuation is less than Rs 1 crore and the sale price is higher than the stamp duty valuation of that property.
2. No permission should also be required for demolition of a building by the owner-trust, which is more than 40 years old, where the trust itself is getting the building reconstructed, unless there is an alienation of any rights in the reconstructed property.
3. Currently, leasing of a property for more than 3 years is regarded as alienation of immovable property for the purposes of section 36. Leave and licence agreements for a period of up to 5 years should not be regarded as alienation of immovable property.
4. There should be a time limit for disposal of applications for alienation of property under section 36, say 90 days from the date of filing the application along with all required documents. The list of documents required along with such application should be specified in the rules, and the time limit should operate from the date that all such documents are filed.
5. The whole process should be made online, so as to minimise the interface between the officials of the Charity Commissioner and the trustees.



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F. Permission for Loans

1. Automatic permission should be available for certain types of borrowing by trusts. For instance, borrowing of money from banks against the security of fixed deposits with the bank for the purposes of acquisition of assets or to meet expenses of the trust should not require permission. Very often, such borrowing is preferred to premature encashment of fixed deposits, as the interest to be paid is less than the loss of interest which may be caused by premature encashment of fixed deposits. Similarly, in cases of borrowings from banks not exceeding 10% of the value of the assets of the trust, for the purposes of the activities of the trust or for acquiring assets of the trust, no prior permission should be required.
2. In cases of other borrowings, the process should be made online, with the form and the list of documents required duly prescribed in the rules. There should be a time limit of 30 days for disposal of such applications.

G. Non-Resident Trustees

Section 47 provides for removal of a trustee if he is absent from India for a continuous period of 6 months, or leaves India for the purpose of residing abroad. Many Non-resident Indians are desirous of setting up trusts to carry on charitable activities in their ancestral or original home villages, towns or states. However, this clause deters them from setting up such trusts in Maharashtra, as they cannot effectively be assured of remaining as trustees of the trust if the trust is set up in Maharashtra. Similarly, trusts set up by residents are unable to attract non-residents, who may be able to provide valuable advice and guidance to the trust as trustees.

It is therefore suggested that trusts should be permitted to have non-resident trustees, so long as the majority of trustees are resident in India.

H. Approved Securities u/s 35

The investments permitted under section 35 need to be amended, to permit investments in debt oriented mutual funds, and bonds of public sector companies.

The updated list of securities approved for the purposes of section 35 by a special order should be available online on the Charity Commissioner's website. Today, it is very difficult to find out whether a security is approved by the Charity Commissioner or not.

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I. Schedule I

The format of schedule I should be amended, to exclude property held by the trust, since the details of such property would be available from the balance sheet of the trust.

Schedule I should be capable of being downloaded by any registered user online.

J. Framing of a Scheme or Amalgamation of Trusts under section 50A

It is seen that, any modification/alteration/addition/amendment/ amalgamation in the constitution takes substantial amount of time. It is recommended that online filing of application should be provided for, along with the required documents as specified in the Rules. Thereafter, order must be passed within 90 days from the date of filing the application with all required documents.

K. Orders

Copies of all orders passed by the Charity Commissioner's office should be available online, in an easily accessible manner. This will introduce transparency in the working of the Charity Commissioner's office, and also minimise the requirement of visits to the Charity Commissioner's office.

L. Representation by Chartered Accountants

Only advocates are allowed to represent trusts today in the Charity Commissioner's office. Many advocates charge exorbitant fees for attending to such matters. Practising Chartered Accountants should also be permitted to act as representatives of trusts for this purpose, so that the fees come down to reasonable levels.

Thanking You,

Yours Sincerely,

For Bombay Chartered Accountants Society

CA Sunil Gabhawalla
President

CA Chetan Shah
Chairman
Corporate & Allied Laws Committee

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