SOCIAL ENTREPRENEURSHIP & NON-PROFIT VENTURES

Please note that this is optional reading for students of this course. This reading will not be tested in various assessments of this course. However, we recommend that you read through these notes as they provide information on creation and operation of non-profit trusts, societies and Section 25 companies, and knowledge about operations of these structures can be very useful while engaging in all sorts of businesses and tax planning activities. Expertise on these matters is not at all common in the Indian legal market.

Part I: Introduction to Social Entrepreneurship and Non-Profit Ventures

Starting a non-profit venture gives one the sense of contribution to society and of working for public good. Non-profit ventures are undertaken through specific forms of business structures which are eligible for significant tax benefits offered to non-profit organizations (Part II of this write up discusses tax benefits for non-profits briefly). Contrary to popular perception, starting a social or charitable venture does not necessarily imply that the entrepreneur will not be able to remunerate himself for his effort. By way of example, India has thousands of private educational institutions that are structured as non-profit making trusts, which are now plush with accumulated funds. The founders and managers of such institutions are often very well rewarded by their ventures. This module covers legal structures for social entrepreneurship and non-profit making ventures, tax breaks and the manner in which they can be incorporated.

1. Are social entrepreneurship ventures the same as non-profit ventures?

‘Social entrepreneurship’ is a popular term amongst entrepreneurs these days. Social entrepreneurs are individuals with innovative solutions to pressing social problems.¹ Social entrepreneurship can include not-for profit ventures as well as for-profit business ventures which serve social purposes. Some of the social entrepreneurship ventures are guided by profit motives; these concerns distribute profits amongst the stakeholders/investors, although the venture may be providing a much needed service that is essential for social development or public convenience. On the other hand, there are a large number of social ventures which operate as non-profit making organizations which may still make profit from its operations or investments, but do not distribute any of its profits to stakeholders such as partners or shareholders or investors. One major attractive feature of starting such an organization is that their income and accruals may be tax-free or subject to taxation related incentives. ²

¹ http://www.ashoka.org/social_entrepreneur

© Intelligent Legal Risk Management Solutions LLP. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.
This part will discuss the legal functioning of non-profit ventures in detail. The learning objective will be to identify the various structures used by not for profit organizations (for profit structures would be just like any other company, partnership or LLP which have already been discussed before), various advantages and disadvantages of these structures and some operational and governance issues in administering those structures.

2. Profit making by non-profits

Non-profit organizations often generate significant revenue and funds and accumulate huge surpluses. For instance, trusts of temples such as the Siddhivinayak Temple, the Tirupati temple (which has funds of around INR 2000 crores) are some of the richest non-profit bodies which are extremely rich, and accumulates funds through donations, operations and investments but they still qualify as non-profit organizations.

Similarly, if a company regularly makes losses while conducting business, it does not automatically qualify as a non-profit organization under law. For example, imagine that a power project for generating thermal power which was started with a capital of INR 1000 crores makes losses for its first ten years consecutively. That does not mean that the factory has become a non-profit venture.

When a venture is referred to as a non-profit venture, it usually implies that it is prohibited from distributing its profits out to its promoters or owners, and all its revenues must be applied towards promoting its objects. For instance, a non-profit company or a society cannot pay dividends to its shareholders or members, respectively, and it must apply its funds towards promotion of its stated objectives.

3. How do non-profit ventures generate funds for operations?

An entrepreneur may have the desire to contribute to society, even if he intends to make money in the process. In case he starts the venture with no selfish motive, it does not mean that his employees, labourers, and support staff must also work to serve the same social cause, without any remuneration for their services. Simply put, an entrepreneur or his employees who are involved with a non-profit venture, are not necessarily engaged in charity or social service. The prohibition is on distribution of profits towards those who provided the initial funds, but not on paying salary or management fee, or even on bearing various expenses of managers and employees related to the work.

Apart from the prohibition on distribution of profits, a non-profit organization is entitled to incur all other expenses just like a for-profit organization would – it can pay its employees, labourers, consultants, incur expenses towards rent, promotional activities, etc.

4. How does a non-profit organization pay for its costs?

A non-profit venture can pay for its costs in three ways:

a) By generating revenues from its operations – Generating revenues from operations is possible if the organization is providing products or services at a price, or if it has some investments which generate interest or returns.

b) By interest or dividend from investments

A non-profit venture may also generate revenues from investments. Non-profits often invest a portion of their corpus of donations or accumulated funds. Note that the investments must be made in accordance with the law and the bye-laws or rules applicable for the governance of the non-profit organization.

c) By raising funds through donations

Donations are a popular way of raising money for non-profits. Donations offer several tax benefits both for the donor and the recipient. These days, donations from foreign sources, called “foreign contributions” under Indian law, have become widespread. You will learn more about the law governing foreign contributions in Module III.

5. How does an entrepreneur who is part of a non-profit organization receive compensation for his involvement?

An entrepreneur can perform his duties as an ‘employee’ or ‘consultant’ for the organization, and claim a ‘salary’ or ‘consultancy fee’ for his services. The prohibition usually is only on distribution of profits to members. The founder of a social enterprise cannot be entitled to a share of the profits as the owner of the organization.

In this course, we shall discuss the three most commonly chosen non-profit structures, that is – Section 25 company, Society and a public charitable trust.
Part II: Tax benefits for non-profits

Non-profit ventures are eligible for income tax benefits (not available for private trusts) if they satisfy the requirement of operating for a ‘charitable purpose’ under the Income Tax Act, and if they obtain a registration and Section 12A of the act (see below for details). These tax benefits are available irrespective of the structure opted for by the non-profit organizations.

As per the Income Tax Act, a charitable purpose includes the following:

- **Relief of the poor**
- **Education**
- **Medical relief**
- **Preservation** of (i) environment (including watersheds, forests and wildlife), (ii) monuments or places or objects of artistic interest or (iii) monuments or places or objects of historic interest
- **Advancement of any other object of general public utility**\(^4\) - Carrying out a business will not be covered in this clause if the receipts are **less than INR 25 lakhs in a year**.\(^5\)

**Example: Activities of trade associations**

Where the activities of **industry or trade associations** are **restricted to contributions from and participation of their members only**, they can qualify as being conducted for the advancement of any other object of general public utility. Participation by outsiders will render such activities as taxable (i.e. non-charitable).

So, a NASSCOM event which discusses relevant issues for the IT industry will qualify as being conducted for a ‘charitable’ purpose if participation and collection of fee is restricted to its members, but not if non-members can also pay and participate.

i) **Income tax on non-profits**

Income of a non-profit organization registered under Section 12A of the Income Tax Act (procedure and conditions for registration are given below) is treated in the manner explained below.

a) **Income from corpus donations**

---


\(^5\) Circular No. 11/2008.
It is common non-profit ventures to raise funds through voluntary contributions or donations. Although such contributions qualify as income under the Income Tax Act\(^6\) and an organization, there is a special benefit provided for voluntary contributions, if they received with a specific direction that they shall form part of the corpus.\(^7\)

**Key points to note:**

- If the donor specifies any purpose in which his contribution should be used, the non-profit organization will have to comply with such direction.

- To be eligible for income tax benefit, the non-profit organization must retain specified information such as the name, address and other prescribed details of the donor. Donations made without such providing such details are considered as ‘anonymous’ donations. The amount of such donation is treated as income and taxed at the maximum rate of 30%. This rule has been enacted with a view to discourage unaccounted money, i.e. money which is not disclosed in the financial statements and tax returns of the donors, from being channelized into charitable institutions.

\\[Section 115BBC, Income Tax Act\\]

b) **Income from operations that is reapplied for promotion of objectives**

To the extent income of an organization (from property held for charitable or religious purposes) is immediately applied towards such purposes, such income is not subject to income tax.

c) **Income from commercial activities that are incidental**

A trust may generate income by carrying on a business which is incidental to the attainment of its main objects. Income from such a business may also help in financing the actual objectives of the trust. Income of a trust from a business that is incidental to its main objects is exempt to the same extent as under point e) below, if separate books of account are maintained for the business.

d) **Income from other commercial activities**

---


\(^7\) Section 12, Income Tax Act, 1961.
Income from commercial activities which are unrelated to the objectives of the trust is not eligible for any tax benefits.

e) Income set aside for future purposes, for realization of objectives

If a non-profit is not able to immediately utilize any portion of its income for the promotion of its objectives but intends to utilize it in future for promotion of its objectives, its income will not be taxable. It may even invest the funds into certain instruments authorized under the Income Tax Act (listed below). Up to 15% of income every year can be accumulated for utilization in future. Such income can be accumulated indefinitely. The balance 85% can be set apart and be accumulated for a maximum period of **upto 10 years** by giving a notice to the Assessing Officer in **Form 10**, after compliance with the following procedural requirements:

(i) A resolution passed by the governing body of the organisation to set apart the income must be filed with Form 10.

(ii) Copies of annual accounts of the organisation, along with the details of investment and utilization (if any) of the money accumulated or set apart must be furnished before the Assessing Officer within 6 months.

(iii) The organisation must indicate specific purpose or purposes for which it wants to accumulate the funds. A general decision to accumulate listing all the objects of the organisation would not be sufficient.

(iv) The money is invested in instruments specified under Section 11 of the Income Tax Act, such as:

- Securities - bonds, promissory notes, debentures, stock or any other instruments of any State Government, Central Government, or issued under the authority of a Central or State Act, or of Indian Railways.

- Units issued by the Unit Trust of India.

- Any other security expressly authorized by the trust deed or notified by the Central Government or prescribed by the High Court.

- Savings certificates, post office deposits or deposits with a bank.

*(The full list of instruments is provided under Section 11(5) of the Income Tax Act.)*

ii) **Steps for Registration under Section 12A of the Income Tax Act**
For obtaining a registration under Section 12A, an application for registration must be made by the non-profit entity to the Commissioner or Director General of Income Tax (Exemptions) in Form 10A, accompanied by the following documents:

- Copy of the instrument by way of which the trust, society or company is created, i.e. its memorandum, articles and certificate of incorporation (in case of a Section 25 company) or a registered trust deed (in case of a trust), or a registration certificate and bye-laws (in case of a society); and

- If it existed in years prior to the year in which application is made, accounts of the prior years (not exceeding three years)

Before granting approval, the Commissioner or Director must satisfy himself about objects of the trust and genuineness of its activities. A decision must be issued within 6 months from the end of the month in which the application is made.

*(See Section 17A of the Income Tax Act)*
Part III: Structuring non-profit ventures

A non-profit vehicle may be structured as a trust, a society or a company which is registered under Section 25 of the Companies Act.

TYPES OF NON-PROFITS

A. Trust

Trust is a common form in which charitable and non-profit ventures are structured. Only certain kind of trusts are eligible for tax benefits, but it is useful to have overall understanding of different kind of trusts since all of them are used in structuring for various purposes.

A trust usually involves transfer of property from one person to another, where the transferee manages the property for the benefit of an identified person or a class or persons.

The transferor is called the settlor, the person to whom legal ownership is transferred is called the trustee, and the person for whose benefit the trustee must act is known as the beneficiary. The diagram below shows how ownership of property is transferred by creation of trust, through a trust deed.
Prior to creation of the trust

- Initial owner of trust property called "Settlor" or "Author" of trust
- Transfer of ownership through trust deed

Post creation of the trust

- Trustee (legal owner of the trust property)
- Beneficiaries (specified individuals or class of persons)

A trust takes into account two concepts of ownership – legal and beneficial. The legal owner of a trust is called the trustee. However, despite being the legal owner, the trustee is not free to act as he wishes – his actions must always be taken for the benefit of the beneficial owner.

In addition to his specific obligations under the trust deed, general obligations of a trustee are laid out under specific statutes applicable to private and public trusts.

I. **Types of trusts**

Trusts are of two types – private and public. Private trusts are typically created for the benefit of identified persons. In a private trust, the beneficiaries are one or more ascertainable individuals.

*Example of a Private Trust:* A businessman may transfer a certain portion of his property to a trust which is to be held by a trustee for the benefit of his children. Here, the trust is being held for specific individuals – that is, the children of the businessman. In this case, the children become the beneficial owners while the trustee is the legal owner.

On the other hand, public trusts are created for a social or charitable purpose. In a public trust the beneficiaries are a body of uncertain or fluctuating individuals and may consist of a class of the public or the whole public.

*Example of a Public Trust:* A company creates a trust and transfers a piece of land to the trust. As per the trust deed, a park must be developed on that land for the benefit of the general public, or the residents of a particular city. Here, although the beneficiaries are a class of people (i.e. the
residents of a particular city), the actual membership of the beneficiary population will fluctuates.

A public trust may be created by a person when he is alive or by a will. A public trust created through a will can only take effect after the death of a person.

II. **Key issues related to trusts**

1. **Who can create a trust?**

   Every person who has attained the age of majority, is capable of contracting and can transfer property can create a trust. Even corporate personalities and other forms of organizations can create a trust. For example, a company, LLP, or a partnership can also create a trust.

2. **Who can be appointed as a trustee?**

   Every person who is capable of holding property can become a trustee. However, where the trust involves the exercise of discretion, he can accept or act the position of a trustee only if he is competent to contract.

   The trustees should signify their assent for acting as trustees to make the trust a valid one. Once a public trust is created and the property is transferred to it, it cannot be revoked.

3. **What happens if no trustee is appointed, or if the trustee sought to be appointed refuses to be appointed as trustee?**

   The person sought to be appointed as a trustee must accept such appointment. No one is bound to accept trusteeship.

   However, a trust is not defeated for lack of a trustee. Where no trustee is appointed as per the terms of the trust or the person named in the trust deed refuses to act as the trustee, an official trustee may be appointed by the court to administer the trust.

4. **Process of creation of a trust**

   a) **Trust in respect of immovable property:** A trust in respect of immovable property – e.g. land, a building, house, an apartment or a park must be created by a written instrument signed by the author of the trust, or the trustee, which is stamped as per the Stamp Duty legislation prevailing in the state, and must be mandatorily registered.

   b) **Trust in respect of movable property:** If movable property is the subject matter of a trust – e.g. shares, bonds, jewellery, etc. no formal document or written agreement is necessary in law, but it is advisable to have a written and stamped trust deed which records the
terms of the trust, for the purpose of clarity, and for evidentiary purposes in the event of disputes.

**Registration and stamping requirements**

A trust deed must be registered with the Sub-Registrar as per the provisions of the Indian Registration Act, 1908. The trust deed must also be stamped at the rate specified in the state where it is created. For example, stamp duty on a trust deed which involves a transfer of property in Mumbai, is approximately 2% of market value of the property, if the trust is created for religious or charitable purposes as per the Bombay Stamp Act, 1958.

5. **Legislations relating to ‘public trusts’**

Most states have passed special laws for public charitable trusts. For example, in Maharashtra and Gujarat, non-profit ventures may be required to register under the Bombay Public Trusts Act, 1950 if they qualify as ‘public trusts’, that is, ventures constituted for a public or charitable purpose.

Relief of poor, education, medical relief, provision for facilities for recreation or other leisure time occupation (if such facilities are provided for public benefit) are all considered charitable purposes under the Bombay Public Trusts Act.

*Note:* Even if a non-profit is structured as a society under Societies Registration Act or a Section 25 company under the Companies Act (see below), it may have to comply with the relevant state legislation relating to public trusts, if it qualifies as a public charitable trust.

**Registration authority under the Bombay Public Trusts Act**: A public trust in Maharashtra or Gujarat would have to make an application as per Form II of the Bombay Public Trusts Rules, 1951 to the Assistant or Deputy Charity Commissioner at the Public Trusts Registration Office of the concerned area, within 3 months of its creation.

The duty to obtain registration is placed on the trustee or manager of the trust or society (as applicable). Non-compliance will attract a fine of Rs. 1000.

6. **Can a trust be terminated or revoked?**

a) **Public trust**: Public trusts are irrevocable in India. If a public trust becomes inactive due to the negligence of its trustees, the Charity Commissioner authorized under the relevant state act 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* may be applied. The doctrine enables courts to
alter the terms of a trust to further the purpose of the trust. Thus, in the event the trust can no longer accomplish its initial purposes, its purposes would be changed to another similar public charitable purpose, or in the event of a distribution or winding up of a trust due to changed circumstances, the trust’s assets would be used for similar charitable purposes.

The property of a public charitable trust may also be transferred to another public charitable trust.

Example

A lawyer dies, and by his will creates a trust to provide Rs. 10 lakhs per year to a bird sanctuary located near his house. The payments are made for several years, until a lightning strike hits the sanctuary and burns it to the ground. The owners decide to relocate to a new location several miles away. Because the trust was very specific in the location of the sanctuary to be paid, without any modification, the relocated bird sanctuary would not have access to the funds. The courts, however, could look at all the evidence (to deduce the intent of the deceased), and decide that the location was irrelevant to his decision to grant the money; he simply wanted to help the birds. The court then would use the *cy pres* doctrine to alter the terms of the trust so that its true purpose (the protection of birds) could continue.

b) Private trust: A private trust can be revoked in the following ways:

- By the consent of all the beneficiaries
- By the settlor (that is, the person who had initially transferred property and created the trust), if there are powers of revocation reserved by him as per the trust deed.
- A trust created for repayment of debts can be revoked by the settlor at any time irrespective of whether the debt is repaid or not. However, if the creditor has knowledge of the creation of the trust, it cannot revoked without the consent of the creditor, until the debt is repaid.

B. Societies

Under Indian law, a society can be constituted for any literary, scientific or charitable purpose, or for any such purpose as is described in the Societies Registration Act. The purposes for which societies can be created:

- charitable societies, the military orphan funds or societies established at the several presidencies of India,
• for the promotion of science, literature, or the fine arts,
• for instruction, the diffusion of useful knowledge, political education,
• foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

[Section 20, Societies Registration Act]

A society must have a minimum of 7 members. There is no cap on the maximum number of members it can have. The activities of a society are governed by its Memorandum of Association, along with any document describing the rules and regulations made for its governance. These documents must be filed with the Registrar of Societies at the time of creation of the society.

1. **Procedure for governance of a society’s affairs**

The day to day activities of a society are governed in the manner specified in its rules and regulations. Usually, the governing body comprises of people designed as the governors, council, directors’ committee or trustees.

A society will have to comply with certain regulatory requirements as per the applicable state rules, such as:

• maintaining books of accounts,
• conducting an audit of accounts,
• filing financial statements and audit reports with the Registrar of Societies
• maintaining lists of members,
• filing a list of the members of the governing body on an annual basis

2. **Distribution of profits and dissolution**

A society cannot distribute its profits even upon its dissolution by members, although its debts and liabilities may have been satisfied. As per Section 14 of the Societies Registration Act, 1860 any surplus profits must be given to another society, as determined by 60% of the members, or in their absence, by the Court.
3. Understanding the legal framework governing societies

Unlike companies, the rules applicable to societies differ from state to state. Although the obligations and compliance requirements under the rules are not difficult, an early stage business must first be able to identify the correct set of rules that are applicable to it in order to begin compliance with them. Once you have done that, the relevant legislation and rules can easily be obtained on the internet or in a law bookstore.

A brief explanation of the acts applicable to societies is provided below, after which we have provided a simple flowchart for you, so that you can identify the correct rules on your own for a society located in any state.

Societies across India may be governed by the Societies Registration Act, 1860 or the law made by the state legislature (of the state where the society has been formed). Some states have enacted specific laws to govern societies. For example, societies in Delhi and Maharashtra are governed by the Societies Registration Act. However, societies in Karnataka are governed by the Karnataka Societies Registration Act, 1960.

Even in states where there is no specific act to govern societies, state governments have passed rules to govern some of the procedural aspects of societies. In such cases the rules passed by the state government must be read jointly with the Societies Registration Act, 1860. For example, in Maharashtra, societies will be governed by the Societies Registration (Maharashtra) Rules, 1971 will apply along with the provisions of the Societies Registration Act, 1860.
C. Section 25 companies

Under the Companies Act, companies incorporated for promoting commerce, art, science, religion, charity or any other useful object may be permitted by the Central Government to drop the word “Limited” or “Private Limited” from their name. Such companies must apply profits for promoting their objects and prohibit the payment of any dividend to its members. These companies are known as “Section 25 companies”.

Their rights and obligations are the same as those of other limited companies – their capital is owned by shareholders, and their day-to-day affairs are managed by a board of directors. The only difference is that they are not required to append the word “Limited” at the end of their name. Unlike other companies, Section 25 companies enjoy the same tax benefits as trusts.

Step Outline for Incorporation of a Section 25 Company

The procedure for incorporating a Section 25 company is similar to incorporation of a private limited company, with a few additional steps. You may use the Step Outline for Incorporation of a Company uploaded on the learning management system for reference. The steps are briefly summarized below:

- **Steps 1 - 3:** See Steps 1, 2 and 3, i.e. until submission of Form 1A, in the file Step Outline for Incorporation of a Company

- **Step 4:** Application to Regional Director for grant of licence

For grant of license (to drop the word ‘Limited’ or ‘Private Limited’ from the name of the company, an application must be made by the promoters to the Regional Director in Form 24A. There are currently 7 Regional Directors for different zones, whose details are available on the following link: [http://www.mca.gov.in/Ministry/rd.html](http://www.mca.gov.in/Ministry/rd.html)

Essential details that must be mentioned in Form 24A are:

- Brief description of work proposed to be carried out after incorporation, the reasons for the application, and details of promoters
- Memorandum & Articles of Association, executed by the Promoters,

---

8 Please read this document with the Step Outline for Incorporation of a Company
• Declaration on stamp paper by a Chartered Accountant, an Advocate of a Supreme Court or of a High Court or a Company Secretary, stating that the Memorandum & Articles have been drawn up in accordance with the provisions of the Companies Act.
• Statement showing estimates of future Income & Expenditure and Balance Sheet.
• Statement showing the assets and liabilities of the company on the date of application or within seven days of that date

• **Step 5: Liaisoning with Registrar of Companies**
  A copy of the entire application (with all documents) made to the Regional Director for grant of license must be forwarded to the Registrar of Companies with all enclosures.

• **Step 6: Publication in newspaper**
  Within seven days of making the application, a notice is to be published once in English language in English Newspaper and once in vernacular language in local newspaper circulating in the district in which the registered office is proposed to be situated, inviting objections to the application for grant of license. Such a notice must provide 30 days for sending objections. The Regional Director shall consider all objections received by him before grant of license. The Regional Director may specify that the company must insert particular terms or conditions of the license in its constitutional documents.

• **Step 7: Registration of the company**
  After obtaining the license, the following documents must be executed and submitted to the Registrar of Companies for registration:
  - *Memorandum and Articles of Association* - These are required to be executed by the promoters in the presence of a witness. The Memorandum must be identical to, or as similar as possible to the format given in Annexure I of the Companies Regulations.
  - *Form 1* - This is the application form for incorporation of a company. The memorandum and articles need to be attached with this form. Further, it requires a declaration by a whole-time Chartered Accountants, Company Secretary, or an advocate practicing in the High Court or Supreme Court stating that the requirements for incorporation under law have been complied with.
  - *Form 18* – This form is filed to inform the Registrar of the registered office of the proposed company.
  - *Form 32* - This is a form stating the fact of appointment of the proposed directors on the board of directors from the date of incorporation of the proposed company and is signed by one of the proposed directors.
Note: Fees payable to the Registrar of Companies for various form filings are mentioned in Schedule X of the Companies Act. You can also use the Fee Calculator on the MCA website is helpful: http://www.mca.gov.in/DCAPortalWeb/dca/MyMCALogin.do?method=setDefaultProperty&mode=15

(For more details, see the Companies Regulations, 1956)

D. How should one choose an appropriate vehicle for his non-profit venture?

While trusts, societies and Section 25 companies all have similar tax benefits, the point on which they majorly differ are management and control. The governance structures in each of these entities are entirely different and are suitable for different purposes.

i. Society: Societies are more democratic than other forms of non-profit organisations. When democratic participation of members in the decision making process is the goal, societies will be preferred. Founders can exercise relatively higher control if they hold lifelong posts in the managing committees and prescribe specify this in the constitutional documents of the society. Similarly, they may also be able to grant themselves veto powers through the constitutional documents in decision making processes.

ii. Trust: Trustees can exercise very high level of control on activities of the trust. Even the entire board of trustee may not participate in effective decision making – often trust deeds vests all effective decision making power in a single person – such as a managing trustee or the secretary of the trust. Hence, for founders who would like to retain very high level of control on decision making and economic matters of the organisation, trust is a preferred form.

iii. Section 25 company: Governance of a Section 25 Company is the same as a normal company (except that there is no provision for distributing profits through dividends to shareholders). Like a normal company, the executive actions as well as day-to-day activities of the company are decided on and carried out by the board or officers authorised by the board. The shareholders can appoint and fire the directors or the entire board, thus exercising ultimate control over the company.

From a founder’s point of view, if he would like to retain control over the company in the long term, he must retain majority shares. It is a good vehicle for non-profits since new shares can be issued to donors and employees thus giving them some control (e.g. voting rights proportionate to their shareholding), which will provide a feeling of being a stakeholder in the venture and ensure a higher level of participation in decision making.
This can be done without diluting ultimate control of the founders over the organisation, which is why Section 25 companies are preferred by many.
FLOWCHART - FIND OUT WHICH RULES APPLY TO A NON-PROFIT

(In all cases below, the public trusts law made by the state government in the concerned state will apply in addition to the acts specified)

Step 1

Find out whether the non-profit is a society, a section 25 company or a public charitable trust.

Step 2

If it is a trust, only the public trusts act of the concerned state will apply.

If it is a society, find out whether the state government has enacted a separate law for registration of societies.

If it is a Section 25 company, only the public trusts act of the concerned state will apply.

Step 3

Yes

If yes, then the state act will be applicable.

No

If no state law is enacted in the concerned state, then the Societies Registration Act will apply.

Step 4

Find out the relevant rules enacted by the state government. These will also apply to societies, in addition to the act identified in step 3.