

AccountAble™

Non-profit Company

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What is a non-profit Company?

A non-profit company is like any other Company. There is only one important difference. It is not supposed to make profits. In other words, it does not exist for commercial gain.

Is it relevant for voluntary work?

Non-profit company has been designed for voluntary work only. It provides all the advantages of a corporate form to a Development Organisation.



What are the advantages?

- ❑ There is one uniform law across the country for companies (Companies Act 1956). And this is a very robust law, protected by powerful commercial interests. So it is difficult for a state government to take over a company.
- ❑ The corporate form also protects you better from those whisper-quiet internal take-overs that happen in a Trust or a Society.
- ❑ Company form provides voting rights according to number of shares held. This feature allows you to increase membership without worrying about controlling votes.
- ❑ No one else will be able to register a non-profit company anywhere in India with the same name and objectives as yours.
- ❑ The company form is recognised across the world. It is more closely regulated and is more respected as a form of organisation.

Today India is looking wide-eyed at the world. Indian NGOs are testing international waters. In such a situation, the non-profit company may be the logical choice for voluntary work in the third millennium.

Going back to basics, what is a Company?

A Company is very much like a society. In fact, both are corporate forms of organisation. A company has members (commonly called 'shareholders'), a Governing Body (Board of Directors), Memorandum and Articles.

A Company is different from a firm. Many firms are casually called 'companies'. For example, 'Amit & Company' actually means a firm.

This firm may be a partnership firm or a proprietorship firm. A proprietorship firm is owned by one single person. In a partnership, there are several partners, who share profits.

A real Company will always have the word 'Limited' at the end of the name. Normally it is written as 'Ltd.'. This means that the liability of its members is limited.

So we will be called 'Lok Jagran Manch Limited'? That sounds funny...

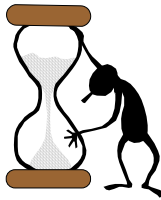
Yes, it does. Therefore, non-profit companies enjoy a special facility. They are allowed to drop the word 'Limited' (or 'Private Limited') from their name.

So you can still call yourself as 'Lok Jagran Manch'.

Do we need to renew the registration after few years?

No. If you keep filing the annual returns etc., no renewal is ever required.

On the other hand, society registration has to be renewed every five years in U.P., and each year in West Bengal.



What about the Charity Commissioner?

All public Trusts and Societies in Maharashtra and Gujarat have to be registered with the Charity commissioner.

Apparently, this requirement does not apply to non-profit Companies.

Can a non-profit Company pay salary to its directors?

Yes. They can pay salary to any director or office bearer who is working actively in the company. This applies across the country, including states like Tamilnadu (where office bearers of society can not draw remuneration).

The catch is that if any of the director is also a member (shareholder), then approval of the Central Government is needed for paying any salary or fees to that director.

Can a non-profit Company get FCRA?

Yes. A non-profit company is treated in exactly the same way as a society, so far as FCRA is concerned.

Is it very difficult to register a non-profit company?

Yes and no. It is probably less difficult than registering a society in some states. The advantage of a company is that you escape the whims and fancies of the Registrar of Societies. But...

You fall into the clutches of Registrar of Companies (ROC). Only saving grace is that at the ROC everything works according to written rules. And your C.A.s know most of the rules.

The real problem is with getting a license under section 25. This is needed so you can drop the word 'limited'. The license is issued by one of the four Regional Directors and is fairly difficult to get.

Are there many formalities later on?

Some of the formalities have been waived for non-profit companies. Still, the formalities are more than a society. And, most important, the ROC is pretty good at enforcing these formalities.

Who should go for a non-profit Company?

People who want to do things differently but want a rock-solid organisation structure. These people would probably be based in a state capital. They would be willing to invest a little extra time in paper work and reading the rulebook.

They may possibly like to call themselves 'social entrepreneurs'. They would be thinking of unusual, untested strategies of working and raising funds. They would definitely be interested in taking their work across state boundaries. And they may also be tempted by what lies beyond India's borders.

If you choose the company form, do it after careful thought. A non-profit company is not for the novice or the faint-hearted!

Registration Realities

Registering a non-profit company by yourself can be very frustrating. There are rules within rules. It would be best if you can get a CA firm or a lawyer (who specialises in companies) to register the company for you. The broad procedure is outlined below:



Choosing a name

ROC is supposed to ensure that two different companies do not get the same name. Therefore, you have to apply for prior-approval of the name. You can suggest four names, using form # 1-A.

This may take a week or two. A fee of Rs.50 has to be paid [Order u/s 613 dated 22-Dec-62]. For commercial companies the fee is Rs.500.

Memorandum & Articles

You then need to get your memorandum and articles approved by the Regional Director and the ROC. Articles are similar to bylaws.

There are some standard requirements for inclusion in these. There are printers who specialise in this. It is cost-effective to ask the printer whether they have a standard type-set. On the other hand, it is also a good idea to go through the articles carefully. This will help protect your Company later on from undesirable elements.

The printers normally agree to give you 4-8 copies initially. The ROC invariably asks for some changes in the Memorandum and Articles. The printer will deliver another 100-200 copies later after making these corrections or changes

License under section 25

You have to apply to the Regional Director (Department of Company Affairs) for the above license. This license allows you to drop the word 'Limited' or 'Private Limited' from your name. The fee for this application is only Rs.60. There are four Regional Di-

rectors, at Mumbai, Calcutta, Chennai and Kanpur.

You will also have to publish a small notice about your application in two newspapers (English and a regional language).

The Regional Director may ask for reports from the District Magistrate, ROC and the State Government. However, in normal cases, ROC's report is sufficient.

Some follow-up and a visit to Regional Director may be required for getting this license. This process may take up to 4-5 months.

Registration with ROC

Make the corrections suggested by the Regional Director and ROC in the Memorandum and Articles. File these, along with section 25 license and other papers, at the ROC office in your state.

The registration procedure varies a little from state to state. However, the registration certificate is normally granted within one month after filing section 25 license.

No stamp duty is required for filing Memorandum and Articles. But you will have to pay registration fees. This depends on your share capital. If your authorised share capital is less than Rs.20,000 then total registration and filing fees will come to about Rs.500. If the capital is five lacs, then the fees will be around Rs.6,000. If you do not have a share capital, this may range from about Rs.200 to Rs.1,700.

ROC offices

Office of the ROC is in the state capital in all states except the following:

- ❑ At Shillong for Assam, Tripura, Manipur, Nagaland, Arunachal, Mizoram.
- ❑ At Delhi for Haryana
- ❑ At Ahmedabad for Dadra and Nagar Haveli
- ❑ At Gwalior for Madhya Pradesh
- ❑ At Cuttack for Orissa
- ❑ At Jullundhur for Punjab, Himachal and Chandigarh

- ❑ At Kanpur for UP
- ❑ At Cochin for Kerala and for Lakshadweep, Minicoy, Amindivi Islands
- ❑ Additional office in Tamilnadu at Coimbatore for Districts of Coimbatore, Nilgiri, Periyar and Dharampuri

Costs of registration

Total costs of registering a non-profit company may range between Rs.8,000 to Rs.20,000. The figure includes all costs: ROC fees, printing, fees to CA / lawyer, advertisement and travel to Regional Director's office.

The total cost depends upon your share capital, fees of the CA or lawyer, and whether you have to travel to Regional Director's office.

Converting to Company

You can also convert your existing Society to a company. The procedure for this is broadly similar to above.

This may, however, require that you re-apply to FCRA for change in your FC registration.

Ambling along

After you are registered, you can start or carry on your work in the normal manner. Just keep the following in mind:

Board Meetings

A Company works through its Board of Directors. This is similar to a society, which works through the managing committee or Governing Body.



Board meetings must be held regularly, normally once each quarter. Proper minutes should be maintained.

Annual General Meetings

The shareholders or members of a company must meet each year. At these meetings, they review annual accounts, elect

some of the Directors and also appoint the auditors.

It is compulsory for companies to give copies of audited accounts to members.

Proper notice and minutes of these meetings are required.

Members in a company enjoy much more real power than in a Society. Their rights are also better protected by the Law. A member who can not attend personally can also vote by proxy. Members in a Company can not be removed so easily as in a society.

Auditors

Auditors are selected by the Board of Directors but appointed by the members. They also report to members.

Auditors of a society can be removed very easily. Removal is much more difficult in case of a company. This helps ensure independence of auditors.

Annual Returns

If there is any change in directors or office address, the ROC has to be informed. The audited accounts, annual report and an annual return have to be filed compulsorily with the ROC. Some important resolutions also have to be filed.

These requirements are enforced pretty strictly.

Annual Costs

The annual costs of running a company are not much more than in a society from the legal point of view. Only additional costs are for filing fees of documents, which averages between Rs.100 to Rs.500 each year.

But there are additional costs to be paid to C.A.s or lawyers for their advice and help with paper work. These may average around Rs.5,000 to Rs.15,000 each year.

Daring Disclosures

The key strength of a Company lies in its disclosure requirements. This improves transparency and increases public trust.

Conflict of Interest

All directors and important shareholders have to disclose names of their relatives each year. They also have to give names of other companies or concerns in which they are directors or shareholders.

They can not vote on any contract in which they may be interested. All such contracts are entered in a register.

Disclosure of payments

If directors borrow money from the company, this has to be disclosed in the Balance Sheet. If the account has been settled within the year itself, still disclosure of maximum amount due is required.

Any other payment to the directors, their relatives, or their firms, has to be disclosed. Similarly, payments to highly paid employees have to be disclosed. All payments to auditors have to be disclosed.

Public access

Members of the public can get copies of audited accounts, annual report, Memorandum etc. from the ROC. However, some portions of a private non-profit Company's accounts are not open to public.

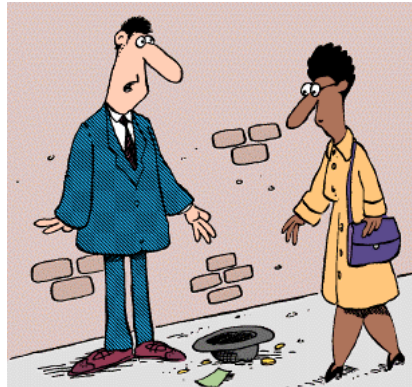
Audited accounts of a society are also open to public in the same manner. However, in practise, locating accounts of a Society in the Registrar's office is very difficult.

Facts and Figures

How many?

How many non-profit companies are registered in India? The Registrar of Companies does not have clear statistics on this.

By 31st March '99, a total of 5,10,954 companies had been registered. We do not know how many of these were exempted under section 25. However, we know that at least 17,942 companies of these are classified under 'Community Social Services'.



Care to contribute to a non-profitable Company?

Fund raising -- The Mohun Bagan Way?

In June'97, Mohun Bagan Athletic Club converted into a company (profit-oriented). The company was named United Mohun Bagan Football Club Ltd. They made a public issue. They have 7,500 shareholders. These shareholders' capital in the company is now worth Rs.2.50 crores!

'AccountAble' covers a different topic related to NGO accounting each month and is mailed to about 500 persons in NGOs, Agencies and audit firms. In most cases, circulation has been sponsored by our client-Agencies for their partners. However, AccountAble is now also available on payment of printing and handling charges (Rs.540 annually for colour; Rs. 270 for xerox copies).

Interpretation of law given here is of a general nature. Please consult your advisors before taking any important steps.



AccountAid India also offers 'QuestionAble' (a complimentary service for NGOs) – answers to practical questions on this and related topics.

Your questions, comments and suggestions can be sent to AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; Ph./Fax: 011-2634 6041

e-mail: accountaid@vsnl.com; accountaid@gmail.com
Web-site: <http://education.vsnl.com/accountaid>

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QuestionAble

What is the minimum number of members required for a non-profit company?

Two, if the non-profit is a private company. But if the non-profit is a public Company, then minimum of seven members are needed.

Both private and public forms are acceptable to the ROC and Regional Director.

