

E-NEWSLETTER

WHICH IS BETTER – SOCIETY, TRUST OR SECTION 8 COMPANY?

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It is a well established fact by now, that the charitable activities in India can be carried out only through three forms of organization, namely:

- a) Society registered under Societies Registration Act, 1860 (or the similar act under a State Legislature)
- b) Trust registered under Indian Trust Act, 1882 (or similar act under a State Legislature)
- c) Section 8 Company registered under Companies Act, 2013

So, this has always been a million dollar question for those wishing to start an NGO that whether they should form a society or a trust or incorporate a Section 8 company. Though they are treated as same under the Income Tax provisions, but are different in terms of their conception, management and structure. Moreover in our view, each of the forms have their own benefits, challenges, requirements and constraints in some way or the other. Thus, it is up to the prospective trustees/members/directors to decide which format suits the best for the nature of charitable activity they wish to carry out. In this compilation, we have not only tried to cover all the relevant differences but certain similarities too, that is shared among the society, trust and Section 8 company.

A TABULAR COMPARISON OF SOCIETY, TRUST AND SECTION 8 COMPANY

Sl. No.	Description	Society	Trust	Section 8 Company
1.	Governing Act	The Societies Registration Act	The Indian Trust Act	Companies Act 2013
2.	Authority with whom to be registered	Registrar of Societies of the concerned State	Registrar of Assurances at district level	Registrar of Companies
3.	Approval of Name	Usually separate application is not required. If the name is available, it is granted	No such approval is required	Separate application is required to be filed and there are strict guidelines for approval of name
4.	Governing Structure for administration	Two-tier structure: a) Governing Body b) General Body of Members	Single Tier Structure: The Board of Trustees are the ultimate authority	Two-tier structure: a) Board of Directors b) General Body of Members
5.	Minimum number of persons required for registration	7 persons	2 persons	2 persons
6.	Annual Compliance	Different states have different requirements of documents to be filed. Normally audited financial statements, activity report for the year and list of current governing body is required to be submitted every year	No documents are required to be filed anywhere.	Annual return and audited financial statements are required to be filed every year.

A TABULAR COMPARISON OF SOCIETY, TRUST AND

SECTION 8 COMPANY (Contd.....)



Sl. No.	Description	Society	Trust	Section 8 Company
7.	Meetings to be held	General and Board Meetings are required to be held as prescribed in the bye-laws of the Society	No provisions are laid down regarding the conduct of meetings. However, adequate rules regarding the same can be framed in the trust deed	Specific provisions have been prescribed in the Companies Act. One Annual General Meeting and at least 4 Board Meetings are compulsory to be held every year.
8.	Voting Rights	Voting Rights are usually equal for all members. However, it can also be defined in the bye-laws of the Society	All trustees usually have equal rights	The voting rights may vary on the basis of shareholding or as defined in the Articles of Association.
9.	Ease of Formation	Time-Consuming	Easy to Form	Less Time Consuming
10.	Registration Document	Memorandum of Association and Rules and Regulations	Trust Deed	Memorandum and Articles of Association

SIMILARITIES SHARED BY THE SOCIETY, TRUST AND SECTION 8 COMPANY

However, apart from the differences mentioned in the table above, all the 3 forms of organizations also have something in common. So, let's see what are the similarities with all three of them.

1. All the three are eligible for application of income tax exemption vide registration u/s 11 and 12 of the Income tax Act and are treated at par under the provisions of the aforesaid Act.
2. The core activities carried out by each of them are usually charitable in nature and shall fall under the purview of Section 2(15) of the Income Tax Act which defines charitable activities.
3. FCRA Registration or Prior permission is compulsory for all the three in order to receive foreign contribution.
4. Labor laws and other legal compliances have to comply with by all three, if applicable.
5. All the three can operate throughout India, even though the state of initial registration might be different.

OUR VIEW

In this context, the Team NGOenabler is of the view that the decision to choose among the above 3 forms of organization totally depends on various factors such as ease of registration process, costs involved, restrictions in the concerned Act, burden of compliance etc... As mentioned earlier, each form has its own advantages and disadvantages which needs to be analysed carefully before arriving at any conclusion. The structure that best suits the need of the management and will help them carry out their activities smoothly should be selected and the registration can be done as per the prescribed procedures and regulations.