# FARMER PRODUCER ORGANIZATIONS

## AN INNOVATIVE INSTITUTIONAL APPROACH FOR COLLECTIVE ACTION

Ashok S. Alur
Shankar B. Dandin
D. L. Maheswar

CENTRE OF EXCELLENCE FOR
FARMER PRODUCER ORGANIZATIONS (COE-FPO)
UNIVERSITY OF HORTICULTURAL SCIENCES,
BAGALKOT (UHS-B)
&
NATIONAL BANK FOR AGRICULTURE AND
RURAL DEVELOPMENT (NABARD)

# CHAPTER - 4
# REGISTERING FARMER PRODUCER ORGANIZATION AS NONPROFIT AS REGISTERED TRUST

# CHAPTER-4: REGISTERING FARMER PRODUCER ORGANIZATIONS AS NON-PROFIT AS REGISTERED TRUST

## 4.1. Introduction:

The producer organizations can be registered under trust act as charitable trusts. In simple words, it is a transfer of property by the owner to another for the benefit of a third person along with or without himself/herself or a declaration by the owner, to hold the property not for himself/herself but for another or another and himself/herself. A person who creates a Trust is called a settlor, the person to whom the property is transferred on trust is called a trustee and the person for whose benefit the property is transferred is called the beneficiary.

## 4.2. Types of Trusts:

There are two types of Trusts namely public trust and private trust.

a) Private Trusts are generally formed for charitable or religious purpose, and are not intended to do commercial activities.

b) Public charitable Trust is one, which benefits the public at large, or some considerable portion of it. The income from private trusts is available to the specified beneficiaries and not to the general public at large.

## 4.3. Purposes of establishing Public Charitable Trusts:

In general, the trusts may be registered for one or more of the following purposes,

a. Relief of poverty or distress

b. Education

c. Medical relief

d. Provision of facilities for recreation or other leisure-time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit

e. The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

**4.4. Law governing Public Charitable Trusts:**

No national law (except the broad principles of the India Trusts Act 1882, which governs private Trusts) governs public charitable Trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts.

**4.5. Registration of Trust:**

The registration of trust requires the documents listed below.

a. The application for registration should be made to the official having jurisdiction over the region in which the trust is sought to be registered.

b. The application form should be submitted, together with a copy of the trust deed. Two other documents which should be submitted at the time of making an application for registration are

(I) affidavit and

(ii) consent letter.

**4.6. Trust deed:**

The trust deed is the main instrument of any public charitable. The trust deed contains the aims and objects and mode of management of the trust. In every Trust deed, the minimum and maximum number of Trustees has to be specified. The Trust deed should clearly spell out the aims and objects of the Trust, how the Trust should be managed, how



other Trustees may be appointed or removed, etc. The Trust deed should be signed by both the settlor/s and Trustee/s in the presence of two witnesses. The Trust deed should be executed on non-judicial stamp paper, the value of which would depend on the valuation of the Trust property.

A Trust needs a minimum of two Trustees however there is no upper limit to the number of Trustees. The Board of Management comprises of the Trustees.

**4.7. Sources of funds for the Trusts:**

The Trusts can mobilize funds through following means:

a. Donations

b. Gifts

c. Grants

d. Loans

**4.8. Book keeping:**

Like any other organization book keeping is of greater importance in case of trust also. The Trust has to maintain following books:

a. Cash Book

b. General Ledger

It also has to finalize its annual accounts and get it audited from a Chartered Accountant.

**4.9. Business activities:**

Section 11(4A) of the Income Tax Act, 1961 has been amended with effect from 1-4-1992. Accordingly, if the income from business is incidental to the attainment of the objects of the non-profit organization and separate books of account are maintained by such an organization in respect of such business, the profit is not considered for taxation. In other words, the profit is fully exempt from tax. Income from a business undertaking which is itself held under Trust for charitable purpose [under section 11(1) (a)] is also exempt.

Further, an activity resulting in profit need not always be treated as income from business. Income of a non-profit organization from letting out halls (for private or public functions), rest houses or auditoriums does not amount to business.

**4.10. Taxation for the trust:**

The income of a producers organization registered as trust is not exempted from the income tax, as it is not a charitable purpose.

**4.11. Advantages and disadvantages of Trust:**

**Advantages:**

a. Simple process of registration.

b. Simple record-keeping and even simpler regulations.

c. Less possibility of interference by regulator.

d. Exemption from tax due to charitable nature of operations.

**Disadvantages:**

a. Tax exemption extended to societies may apply to public trusts only to the extent the Income Tax department accepts their activities as being charitable.

b. As a charitable institutional form, a Trust, in essence, is inappropriate for for-profit, financially sustainable organizations like producer organizations.

c. No system of equity investment or ownership, thereby, making it less attractive for commercial investors.

d. Commercial investors generally regard the investments in such entities risky, primarily on account of their lack of professionalism and managerial practices, and are, therefore, reluctant to commit large volumes of funds to Trusts;

e. In accordance with Section 45S of the RBI Act, 1934, no unincorporated bodies are allowed to accept deposits from the public. Organizations registered under the Societies Registration Act and the Trust Act are considered unincorporated bodies. Therefore, according to the law, they are not allowed to collect savings from general public.

**4.12. Documents for registration of Producer Company as a Trust:**

a. Detail of all members or Trustees of the Trust with their address and PAN

b. Certified true copies of the Trust's Registration Certificate

c. Certified true copies of Laws & by-laws of the Trust

d. Copy of income tax registration certificate

e. Audited Balance Sheet and Income & Expenditure account with Audit Report of last 3 years

f. The original copy of Trust Deed evidencing the creation of the Trust

## Some Important Frequently Asked Questions and Answers:

**1) Can a producer organization be registered as a Trust?**

Producer organizations can be registered as a charitable trust.

**2) What is a Trust?**

In simple words, it is a transfer of property by the owner to another for the benefit of a third person along with or without himself or a declaration by the owner, to hold the property not for himself but for another or another and himself.

**3) How many parties are there in creating a Trust?**

A person who creates a Trust is called a settler, the person to whom the property is transferred on trust is called a trustee and the person for whose benefit the property is transferred is called the beneficiary.

**4) How many types of Trusts are there?**

There are two types of Trusts namely public trust and private trust. Private Trusts are generally formed for charitable or religious purpose, and are not intended to do commercial activities. A public charitable Trust is one, which benefits the public at large, or some considerable portion of it. While, the income from private Trusts is available to specified beneficiaries and not to the public at large.

**5) What are the eligible purposes for establishing Public Charitable Trusts?**

In general, Trusts may register for one or more of the following purposes:

a. Relief of poverty or distress

b. Education

c. Medical relief

d. Provision of facilities for recreation or other leisure-time occupation (including assistance for such provision), if the facilities are provided in the interest of social welfare and public benefit

e. The advancement of any other object of general public utility, excluding purposes which relate exclusively to religious teaching or worship.

**6) What laws in India govern Public Charitable Trusts?** No national law (except the broad principles of the India Trusts Act 1882, which governs private Trusts) governs public charitable Trusts in India, although many states (particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) have Public Trusts Acts.

**7) What documents are required for registration of Trust?**

a. The application for registration should be made to the official having jurisdiction over the region in which the Trust is sought to be registered.



b. The application form should be submitted, together with a copy of the Trust deed. Two other documents which should be submitted at the time of making an application for registration are affidavit and consent letter.

**8) What is a Trust deed?**

The main instrument of any public charitable Trust is the Trust deed, wherein the aims and objects and mode of management (of the Trust) should be enshrined. In every Trust deed, the minimum and maximum number of Trustees has to be specified. The Trust deed should clearly spell out the aims and objects of the Trust, how the Trust should be managed, how other Trustees may be appointed or removed, etc. The Trust deed should be signed by both the settlor/s and Trustee/s in the presence of two witnesses. The Trust deed should be executed on non-judicial stamp paper, the value of which would depend on the valuation of the Trust property.

**9) How many Trustees are required?** A Trust needs a minimum of two Trustees; there is no upper limit to the number of Trustees. The Board of Management comprises of the Trustees.

**10) What are the sources of funds for the Trusts?**

The Trusts can mobilise funds through following means:

a. Donations

b. Gifts

c. Grants

d. Loans

**11) What books of accounts are to be maintained by the Trusts?**

The Trust has to maintain following books:

a. Cash Book

b. General Ledger

It also has to finalise its annual accounts and get it audited from a Chartered Accountant.

**12) Can NGOs take up business activities?**

Section 11(4A) of the Income Tax Act, 1961 has been amended with effect from 1-4-1992. Accordingly, if the income from business is incidental to the attainment of the objects of the non-profit organisation and separate books of account are maintained by such an organisation in respect of such business, the profit is not considered for taxation. In other words, the profit is fully exempt from tax. Income from a business undertaking which is itself held under Trust for charitable purpose [under section 11(1) (a)] is also exempt. Further, an activity resulting in profit need not always be treated as income from business. Income of a non-profit organisation from letting out halls (for private or public functions), rest houses or auditoriums does not amount to business.

**13) Is the income of producer organization registered as Trust is exempt from Income tax?**

The income of a producer organization registered as Trust is not exempted from the income tax, as it is not a charitable purpose.

**14) What are the advantages of a Trust?**

a. Simple process of registration.

b. Simple record-keeping and even simpler regulations.

c. Low possibility of interference by regulator.

d. Exemption from tax due to charitable nature of operations.

**15) What are the Disadvantages of a Trust?**

a. Tax exemption extended to societies may apply to public Trusts only to the extent the Income Tax department accepts their activities as being charitable.

b. As a charitable institutional form, a Trust, in essence, is inappropriate for for-profit, financially sustainable organizations like producer organizations;

c. No system of equity investment or ownership, thereby, making it less attractive for commercial investors;

d. Commercial investors generally regard the investments in such entities risky, primarily on account of their lack of professionalism and managerial practices, and are, therefore, reluctant to commit large volumes of funds to Trusts;

e. In accordance with Section 45S of the RBI Act, 1934, no unincorporated bodies are allowed to accept deposits from the public. Organizations registered under the Societies Registration Act and the Trust Act are considered unincorporated bodies. Therefore, according to the law, they are not allowed to collect savings from general public.

**16) What are the Documents required for registration of Producer Company as a Trust?**

a. Detail of all members or Trustees of the Trust with their address and PAN

b. Certified true copies of the Trust's Registration Certificate & Laws & by-laws of Trust

c. Copy of income tax registration certificate & audited Balance Sheet and Income & Expenditure account with Audit Report of last 3 years

d. The original copy of Trust Deed evidencing the creation of the Trust