

CSR & Social Governance

(Chapter 11)

(Total= 20 marks)

Time - 1 Hr

Answer the following question.

Case Study 1

The concept of societies is not new to India. In ancient period, societies were the breeding ground for like-minded intellectuals to discuss important developments in the fields of arts, sciences, or for recreational purposes. In India, societies existed in the form of religious or charitable conventions dispensing relief to the needy. After the Constitution of India came into force, the Societies Registration Act 1860, (the main Act) has continued to be in force in all the States by virtue of Article 372 of the Constitution. A registered society is a legal entity but it is not a body corporate (Board of Trustees v. State of Delhi AIR 1962 SC 458). It is separate from its members. It can own properties. It is capable of suing or being sued. The position of a society is comparable with an incorporated company under the Companies Act 1956. Hence, a Company Secretary has an important role to play in registration and management of a registered society.

The main Act has been continuing to be applicable in all the States with some amendments made by almost all the States in operation, administration and management of societies within the respective States.

Questions:

(5 marks each)

1. What following documents are required to be filled with the Registrar of societies for registration of a society under the main Act or corresponding Acts of various State Governments.

Answer

1. Covering letter requesting for registration stating various documents annexed to it addressed to the registering authority and signed by all the subscribers to the Memorandum or by a person authorised by all of the them.
2. Memorandum of Association (in duplicate) containing (a) name of the society; (b) the objects of the society; (c) the names, addresses and occupation of the members of the governing body; (d) the place of registered office of the Society, and (e) the names, addresses and full signatures of the seven or more persons subscribing their names to the memorandum of Association. Their signatures should be witnessed.
3. Rules & Regulations/Bye-laws (in duplicate) duly signed by atleast three members of the governing body.
4. Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.
5. Documentary proof such as rent receipt or property tax receipt in respect of the Registered office of the Society or no-objection of the owner of the premises.
6. Registration fee in cash or by demand draft.

2. The members of governing body is collectively responsible and accountable to comply with the statutory provisions of the Act for carrying out the functions of the society to achieve its objective(s) for which it is set up. Explain any 10 duties.

Answer

1. To hold annual general meeting as per the rules and regulations of the society for laying before such meeting the statement of activities, Income & Expenditure Account and other information as provided in the rules and regulations for the purpose;
2. A list of the names, addresses and occupations of the governors, council, directors, committee or other governing body to which the management of the society is entrusted, is to be filed with the

Registrar or such authority as prescribed once in a year either within 14 days of the date of holding such meeting or in the month of January every year.

3. To hold extra-ordinary general meeting to transact some special business, which cannot be waited or delayed, till the holding of the annual general meeting. The purposes of such meeting may be to amend, alter or change in name or address or extensions of operation etc.
4. To report changes or alterations made in the managing, governing body or in the rules of the society to the Registrar.
5. To file notice of situation of the registered office of the society and of any change therein with the Registrar.
6. To register amendment in Memorandum of Association or Bye-laws with the Registrar by way of an application with a copy of the special resolution of the amendment with filing fee.
7. To supply copies of the Bye-laws, the Receipts/Incomes & Expenditure Account and Balance Sheet to the members of the society on their application with the fees, if any, prescribed by the society.
8. To invest and apply the funds and properties of the society in a manner as a prudent man will apply his own funds.
9. To keep and maintain a register of members of the society in accordance with the rules and regulations of the society.
10. To display the name of the society prominently at its registered office and other places of business.
11. To produce or submit periodical statement of Receipts Incomes & Expenditure A/c, Assets & Liabilities of the society.
12. To file a certified copy of every special resolution duly signed by an authorised officer of the society with the Registrar within the prescribed time.
13. To keep and maintain minutes of the meetings of the governing body and general body correctly and truly at the registered office of the society.
14. To retain all the important documents permanently.
15. To prepare periodical Accounts of the society and get them audited and to file Income-Tax Return.
16. To attend all other duties as may be provided in the rules and regulations of the society.

Case Study 2

A Society registered under the Act is a legal entity. It is capable of suing and be sued in the name of the president, chairman or principal, secretary or trustees as determined by the rules and regulations. If there is no such prescribed determination then in the name of such person as appointed by the governing body for the occasion. If no such person is nominated by the governing body on an application made to it, then a person having a claim against society may sue the president or chairman or secretary or trustee.

No suit or proceeding in any Civil Court shall abate or discontinue if the person in whose name the suit has been brought has died or ceased to fill the character. Such suit shall be continued in the name of or against the successor of such person.

The section is merely an enabling provision and does not take away the right of society to sue or be sued in its own name (Govind Prasad v. Laxminarain 1960 MPLJ 145).

The provisions contained in Sections 6 and 7 are not mandatory.

Questions:

(3 marks each)

1. Explain the division of the society and also mention the procedure and following actions which are to be complied with.

Answer

Under Section 12 of the main Act, a society may be amalgamated with any other society, either wholly or partially by the governing bodies of the societies for the better utilisation of the properties, resources or any other purpose. The procedure is mandatory (Prasanna Venkatesa Ra v. K. Srinivasa Ra 59 MLJ 770). The following actions are to be complied with –

1. Submission of the proposal of amalgamation by the governing body to the members of the society by a printed report;
 2. Holding special general meeting by giving ten days notice to the members for consideration and passing resolution for the proposed amalgamation by 3/5th majority of the members, present thereat;
 3. Convening another special general meeting after a month for confirmation to the first resolution passed at the first special general meeting by 3/5th majority of the members present thereat.
- The majority of a body cannot alter the fundamental principles of the body unless such power is specially reserved. The Government may order division or amalgamation of a society after giving the society an opportunity to represent against such proposal.

2. Difference between: Trust and Bailment.

Answer

The definition of Bailment is given in Section 148 of the Indian Contract Act, 1872. The following is the difference between a trust and a bailment.

- (i) A trustee becomes the full owner of trust property. A bailee acquires special property only.
- (ii) The obligation of the bailee is legal, whereas that of a trustee is equitable.
- (iii) A bailment may be created for movable property only. A trust may be created for both movable and immovable properties.

Q3. (4 marks)

A trust may be created (i) by every person competent to contract, and (ii) with the permission of a Principal Civil Court of original jurisdiction, by or on behalf of a minor (Section 7). Thus, generally any person competent to contract and competent to deal with the property can create a trust. Every person capable of holding property may be a trustee. But if the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract. Explain the Rights, powers and Disabilities of trustees.

Answer

The important rights are as under:

1. The right to have the possession of the instrument of trust and the title-deed relating to the trust property.
2. The right to reimburse himself of all costs, expenses and liabilities incurred in administration of the trust.
3. In case of a breach of the trust, the person who derives any benefit out of such a breach, must indemnify, the trustee to the extent of the amount actually received by him.
4. A trustee has a right to take opinion, advice or direction from the Court on questions relating to the management and administration of the trust.
5. When a trustee, properly completes his duties, he is entitled to get a discharge to the effect in writing.
6. A trustee has a general right to do all necessary acts (i) for preservation and protection of the trust property, and (ii) to protect the interest of a beneficiary who is not competent to contract but he cannot give on lease any trust property for more than twenty-one years without the permission of a Court.

Powers of Trustee

1. He can sell the trust property where instrument of the trust so empowers him.
2. A trustee has a power to vary investments.
3. A trustee has a power to apply the trust property for the maintenance of property as provided in the instrument of trust.
4. A trustee can compromise claims unless a contrary intention appears from the instrument of the trust.
5. A trustee can give receipt for the money received on account of the trust.
6. In case of death of one of the trustees, the other trustees have a right to act, unless contrary intention appears from the instrument of the trust.

Disabilities of Trustees

1. A trustee who once accepted the trust, cannot renounce it except:
 - (i) with the permission of the Court,
 - (ii) with the consent of the beneficiaries who are competent to contract,
 - (iii) by virtue of a special power in the instrument of the trust.
2. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, except in the following cases:
 - (1) When the instrument of the trust so provides,
 - (2) When such a delegation is in the regular course of business,
 - (3) When such a delegation is necessary, and
 - (4) The beneficiary, being competent to contract, consents to such a delegation.
3. Where there are more trustees than one, all must join in the execution of the trust unless the trust instrument or any law for the time being in force provides otherwise.
4. The trustees cannot exercise their discretionary powers arbitrarily.
5. In the absence of express direction to the contrary contained in the instrument of trust or of a contract entered into with the beneficiary or of the sanction of the Court, the trustee has no right to remuneration.
6. A trustee may not use or deal with the trust property for his own use.
7. No trustee whose duty is to sell the trust property may directly or indirectly buy the trust property.
8. No trustee and no person who has recently ceased to be a trustee may, without the permission of the Court, buy, or become mortgagee or lessee of the trust property.
9. The trustee and the co-trustee may not lend the trust amount to themselves

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