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PROPOSED LAW TO REGULATE PUBLIC TRUSTS IN TAMIL NADU

A public trust is one of the legal forms through which a property may be dedicated either to charitable purposes, educational or otherwise. The distinction between a Private and Public Trust is that in Private Trust beneficiaries are specifically identified persons, whereas in a Public Trust, the beneficiaries are generally the general public; though there could be a class of general public such as persons who are economically under privileged. Private Trusts are subject to the provisions of the Indian Trusts Act, 1882. In the context of the public charitable trusts, though this Act does not apply, one can derive from this Act as to what constitutes a trust and who creates the same and what are the duties of trustees and all do's and dont's for trustees.

Presently in the State of TN, there is no law like the Bombay Public Trusts Act, 1950. As per section 2(13) of the Bombay Public Trusts Act, 1950 "Public Trust" means an express or constructive trust for either a public, religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.

The expression "Charitable Purposes" as defined in sub-section (15) of section 2 of the Income- tax Act, 1961 is one of the most relevant definitions in the context of CSR. As per this definition, "charitable purposes include relief of the poor, education, yoga, medical relief, preservation of environment (including water-shed, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. A proviso inserted by the Finance Act, 2015 which has come into force with effect from 01st April, 2016 states that the advancement of any other object of general public utility shall not be a charitable purpose,

if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for access or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless–
(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

The words *"unless such activity is undertaken in the course of actual carrying out of such advancement of any object"* speak volumes of the intention of the legislature.

the proposed Public Trusts Act, 2020 (PTA) defines Public Trust as one that is express or constructive or a society formed for public or charitable purposes or both, but does not include a religious charitable or endowment created under Tamil Nadu Hindu Religious Charitable Endowments Act, 1959 or a Waqf under the Waqf Act, 1995 or a charitable trust or endowment created under Tamil Nadu Vanniyakula Kshatriya Public Charitable Trusts and Endowments (Protection and Maintenance) Act, 2018.

Registration of Public Trusts

PTA requires compulsory registration of every Public Trust. Further, every Public Trust in existence is also required to get registered within three months from the date of commencement of the PTA. Any Public Trust which fails to get registered as stated, shall cease to carry on its business after the expiry of four months from the date of commencement of PTA. An application for registration of Public Trust inter alia should identify and disclose details of a Working Trustee. A Working Trustee is defined to mean a person identified amongst the Trustees of a Public Trust to administer the property of the Trust and includes a manager of the Trust.

The Registrar is vested with inquiry rights to verify whether properties identified as Trust properties are vested with the Trust, whether the whole or substantially the whole of the properties of the Trust are within its jurisdiction, origin, nature and subject matter of the Trust, gross annual income and expenditure of the Trust, succession to the office of the trustee etc. The Registrar is required to record findings on such inquiry and any Trustee or any person having interest in the Trust can challenge the findings of the Registrar in a suit and can seek to set aside the findings of the Registrar within six months from the date of publication of the findings, else, the findings of the Registrar will become final and conclusive.

Management of Public Trust Properties

All monies of a Public Trust are required to be kept in an account maintained in a scheduled bank account or a post office savings bank account or in any bank account of an entity registered under the Co-operative Societies Act, 1983.

Any of the following transactions unless provided for in the registered trust deed or by any directions under the proposed PTA or any law for the time being in force, will not be valid unless the sanction of the Registrar is obtained:

(i) Any sale or exchange or mortgage or gift of any immovable property belonging to the Public Trust.
(ii) Any lease of agricultural property for a period more than five years or lease of a non-agricultural property or building for a period of more than three years.

In order to be a Trustee of a Public Trust, the person must not suffer from any of the disqualifications prescribed in the PTA. For instance, a person who is not a citizen of India cannot be a trustee of a Public Trust. Similarly, a person who has not attained the age of 25 years cannot be a Trustee unless he is recognised as a hereditary trustee. Be aware of the disqualifications!

Audit of accounts of Public Trust

The accounts of a Public Trust are required to be audited by a Chartered Accountant. The auditor is required to state inter alia in his report, all transactions relating to any irregularities, illegal or improper expenditure, omission to recover monies or other properties of the Trust, any loss or waste caused due to breach of trust, any misapplication or misconduct by the Trustees. The Registrar is vested with the powers to order special audit, where necessary.

The Registrar is also vested with inspection rights to enter and inspect the properties of the Public Trust after notice of not less than forty-eight hours to the Working Trustee.

Under the Corporate Social Responsibility (CSR) Policy Rules, 2014, CSR activities could be undertaken by a company through a trust established by the company itself or through a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature. A Public Trust established and registered under this PTA will be eligible for undertaking CSR Activities.

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