

Technical Guide on Internal Audit of Not-For-Profit Organisations (NPOs)

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Board of Internal Audit and Management Accounting
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Not for Profit Organisations (NPOs), as the name indicates, are driven by a mission or purpose that focuses on benefiting society. This distinct feature and focus on the public good differentiate them from businesses having priority for earning profits, and due to this distinction NPOs are provided various tax benefits for emphasizing their positive role for the society. NPOs rely on various sources of funding, including donations, grants, fundraising events, government support, and revenue generated from programs or services.

Social Stock Exchange notified by SEBI is indeed a progressive step towards the socio-economic development in the country as it will serve as a platform for fundraising by Social Enterprises, and also incorporate a set of procedures by which social impact will be measured and reported.

Chartered Accountants, by actively engaging with NPOs and leveraging their financial expertise, play an important role to mitigate the risk of misuse, strengthen financial management practices, and promote transparency and accountability within the not-for-profit sector.

I am happy to note that the Board of Internal Audit and Management Accounting (BIA&MA) has issued this *Technical Guide on Internal Audit of Not-for-Profit Organizations* to provide guidance to members on peculiar aspects related to internal audit of Not-for-Profit Organizations. I congratulate CA. Rajendra Kumar P., Chairman; CA. Charanjot Singh Nanda, Vice Chairman and other members of BIA&MA for bringing out this Technical Guide. This comprehensive publication would surely help the members to understand entire spectrum of operational, conceptual and practical issues related to internal audit in not-for-profit organizations.

I am sure that this Technical Guide would be an informative and useful publication for the members.

June 21, 2023
New Delhi

CA. Aniket Sunil Talati
President, ICAI

Preface

The not-for-profit sector plays a central role in enriching people through its charitable, social, cultural, educational contribution and in providing support to weaker section of the society. Financial accountability, transparency and good governance are the need of the hour in the NPO sector. Revenue completeness assertion, accounting of restricted fund transactions, valuation of non-monetary transactions, dealing with variations of budgets to actual results, problems associated with accounting for multiple programs, grants or contracts that have different year ends and Tax considerations and other legal compliances give rise to unique internal control and risk management issues.

Chartered Accountants have a significant role to play by providing assurance on all key focus areas like donation receipts, grant management, limited resources, use of volunteers and expenditure control. Definitely this leads to the need for our members to maintain and expand their knowledge base on this emerging area.

In view of the above, the Board of Internal Audit and Management Accounting has issues Technical Guide on Internal Audit of Not-For-Profit Organizations (NPOs) in 2012 which comprehensively deals with the peculiar aspects of NPO sector, including various regulatory aspects and provides a step-wise approach for internal audit. The Guide has been thoroughly revised to reflect the significant changes those arising out of the significant developments in the last two years in the regulatory environment of NPO sector and changes that has taken place in the profession of internal audit.

This Technical Guide has been divided into various chapters. This guide describes legal framework applicable to Not-For-Profit Organizations (NPOs) and explain the taxation aspect and tax deduction for donors, detailed guidance regarding compliance of Foreign Compliance Regulation Act (FCRA), 2010. This Guide explains the key aspects related to the sector such as, revenue, expenses, fund accounting, in-kind contribution, etc. and describes the Standards on Internal Audit and Accounting Standards applicable to the Not-for-Profit Organizations. This Guide deals with the overall approach of internal audit with reference to Standards on Internal Audit and provides an insight into major areas of internal audit significance, i.e., Receipts, Donations, Grants, Endowment Funds and Restricted Funds. This Guide contains an illustrative internal audit checklist regarding

knowledge of business, budgeting, internal control, finance, donations and grants received, in-kind contribution, legal compliances.

At this juncture, we are grateful to CA. Meenakshi Gupta for sharing her experience and knowledge and preparing the draft of the Technical Guide.

We would like to thank CA. Aniket S. Talati, President, ICAI and CA. Ranjeet Kumar Agarwal, Vice President, ICAI for their continuous support and encouragement to the initiatives of the Board. We also thank the members of our Board who have always been a significant part of all our endeavours.

We also wish to express my sincere appreciation for CA. Arti Bansal, Secretary, Board of Internal Audit and Management Accounting, ICAI, and her team for their efforts in giving final shape to the publication.

We are sure that this Guide would be of immense use to readers working in non-profit sectors as internal auditors.

We will be glad to receive your valuable feedback at biama@icai.in. We also request you to visit our website <https://internalaudit.icai.org/> and share your suggestions and inputs, if any, on internal audit.

CA. Rajendra Kumar P.

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Board of Internal Audit &
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CA. Charanjot Singh Nanda

Vice-Chairman
Board of Internal Audit &
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Place: Chennai

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Chapter 1

Introduction

1.1 Philanthropy broadly encompasses any altruistic activity intended to serve others, or the act of donating money, goods and services to support a socially beneficial or humanitarian cause, with no financial or material reward to the donor. The word is derived from the Greek term *Philanthropos*, which means the "love of humanity". Philanthropy has been an important part of life in India since ancient times. Charity is a similar concept to philanthropy, except it is usually specifically linked to religion. Individuals as well as religious institutions have been contributing for social welfare since time immemorial. While Hindus believe in *daana* (giving) and Buddhists have *bhiksha* (giving to a monk), Islam directs its followers to give in the form of *sadaqah* (voluntary charity), and *zakat* (obligatory charity). *Bhagavad Gita* goes so far as to say that one is entitled to keep only as much wealth as is required for one's maintenance. If one accumulates more than one's need, he will be regarded as a thief in the eyes of God. Charity focuses on providing a solution to the immediate need of an individual or a group, whereas philanthropy attempts to deal with the root cause of the problem to prevent them from happening. For example, providing food to a hungry person would be charity but providing education so that the person can find a job and fend for himself is philanthropy. Earlier donating to temples, churches and other religious institutions also constituted philanthropic activity since these organizations ran various educational institutions and conducted various social activities. Even today, some of the large religious institutions like Ramakrishna Mission and Kanchi Kamakoti Peetam SRI SANKARA MATAM, etc. are involved in health care, social services and education. But nowadays most organizations with non-religious background run by various corporate or other private individuals involved in philanthropic activities like women's empowerment, promotion of education, social welfare, etc.

1.2 There has been corporate involvement too in the philanthropic movement since 19th century. The first known instance of corporate philanthropy was the establishment of J N Tata Endowment Scheme in 1892 by Jamshedji Tata, long before the first major foundation was formed in the US. His biggest contribution was the establishment of the Indian Institute of Science. Similarly, Ardeshir Godrej gave a generous donation to the Tilak Fund for the upliftment of Harijans. The Tatas and the Muruggappas

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pioneered charitable contributions to hospitals and schools. Now, corporate philanthropy is becoming more structured and expanding to include new areas like environmental conservation, preservation of history and art and have institutionalised their philanthropic activities in the form of family foundations. The Azim Premji Foundation and the Infosys Foundation support educational initiatives, and industrial houses, such as, Bajaj, Birla, Reddy laboratories, etc., have foundations which support an array of development initiatives. Various socio-religious institutions, like, Satya Sai Sewa Trust, the Chinmaya and the Ramakrishna Missions have increased their scope to include developmental activities, like rural development, healthcare, etc.

1.3 Elsewhere, the concept of Non-Government Organisation gained impetus after the formation of United Nations. The UN introduced the term "NGO" to distinguish between the participation of international private organizations and intergovernmental specialized agencies. The UN defined them as organizations that do not form part of the government and are not conventional for-profit business. "NGOs" cannot seek to diminish a nation's government in the shape of an opposing political party; NGOs also need to be non-criminal and non-profit. They operate independently outside the realm of government by excluding government representatives from membership in the organization though financially they depend on government and private business.

1.4 There is a growing movement within the sector to define itself in a more constructive, accurate way as the term NGO focuses not on the organization's purpose but what it is not. The terms "Social Benefit Organization" (SBO), "Civil Society Organization" (CSO) and Not-for-Profit Organization (NPOs) are being used by a growing number of organizations. In this Technical Guide, the term Not-for-Profit Organization is used as this term is widely understood and is also being used all over the world by professional accounting bodies.

Characteristics

1.5 Not-for-Profit Organisations (NPOs) form a significant segment of the economy due to their sheer numbers and the extent and nature of their activities. They are sometimes referred to as the third sector", the first sector being the "government" and the second sector being the "market" or private business. It is difficult to define their characteristics as these organisations are extremely varied. Their range of activities include health, economic and

social assistance, education, promotion or defence of various causes, etc. The services are not limited to merely charitable causes and include training, recreational services, artistic or cultural endeavours (museums, theatres), professional associations, farmers' networks, academic centres, labour unions, etc. Many of these activities are not exclusive to NPOs and there are profit organisations and doing the same for a fee. For instance, Profit oriented sports clubs, theatres also exist.

1.6 They cannot be categorised through size or legal structure. Though the majority of them are small and have a limited budget, there are NPOs with national and even international reach. In India, there are national level NPOs, like, Child Rights and You (CRY), Smile Foundation, Give India, Goonj and Helpage India to name a few. Some of well known international names are Amnesty International, Rotary International, Carnegie Corporation of New York, the Red Cross and Red Crescent Organizations, United Nations Educational Scientific and Cultural Organisation (UNESCO) and World Wide Fund for Nature.

1.7 Many NPOs need to have their financial statements audited under statutory or donor requirements. The Income tax Act requires filing of annual returns and audit report for certain NPOs. Some of the state legislations relating to trusts and charitable institutions provide for compulsory audit even where the income is below the maximum amount which is not chargeable to income tax. Such ceiling limits are dependent in terms of the statutory provisions of the relevant State Acts. Many donors demand annual accounts and audit report when applying for grant. Some donors may not need it considering the fact that the NPO may not have audited financial statements but would require a yearly audit after the funds are transferred. It has to be kept in mind that the above characteristics may not be applicable to all NPOs. Depending on the size, nature and objectives, some features may not be significant for other.

Definition

1.8 The World Bank defines NPOs as "Private organisations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development".

1.9 The Canadian Institute of Chartered Accountants (CICA) handbook defines them as "Non Profit organisations are organisations in which there is normally no transferable ownership interest and from which the members or

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contributors do not receive any direct economic gain and that are formed, for example, for social, educational, religious, health or philanthropic purposes.”

Corporate Social Responsibility (CSR)

1.10 Corporate Social Responsibility (CSR) broadly refers to the work and activities undertaken by corporates towards social causes and development, environment, disaster relief and community support. It was made mandatory for companies in India by The Companies Act 2013. India is the first country in the world to introduce statutory Corporate Social Responsibility (CSR). CSR is not a new concept in India and have existed since ancient times. Even in modern India, many big corporate houses and businessmen have been engaged in CSR/charity/philanthropy. They have built hospitals, educational institutions, infrastructure facilities, etc. Many have established foundations to undertake philanthropic activities. These facilities have been not only for the employees of their organizations but also for general public. The landmark development following the 2013 amendment is that CSR has been put on the forefront, with a ‘comply or explain’ mandate.

The companies whose net worth is over Rs. 500 crores, or turnover is over Rs. 1000 crores, or net profits over Rs. 5 crores in the preceding financial year, have to spend 2% of their average net profit of preceding three years on CSR. The act provides detailed guidelines regarding eligible activities. This includes hunger and poverty, education, health care, gender equality and women empowerment, skills training, social enterprise projects, and promotion of rural areas and national sports. The rules clarify that companies are not required to conduct CSR programs by themselves. Many large corporations are handling CSR activities through their foundations while midsize companies are setting up internal teams to supervise projects carried out by implementing partners. This has opened new doors for Indian NGOS and NPOs and provided them a huge opportunity. NPOs need to work on finding the various possibilities of funding and collaboration. Many of them are conducting research, building internal capacity, hiring people and developing corporate engagement strategies. Companies are on the lookout of NPOs with good track record. An important task for NPOs would be to do a mapping of the corporate CSR activities in their area of work and expertise. They need to find out the companies’ doing social development work in their area of work and location. CSR forums are being organized by agencies devoted to CSR like “India CSR network”.

Objective and Scope of the Technical Guide

1.11 This Technical Guide is intended to assist internal auditors in carrying out internal audit of not-for-profit organisations. It is aimed to provide an insight into the functioning of the not for profit organisations, its concepts and its peculiar characteristics. As the size, legal structure, functioning, nature of activities may vary widely from one NPO to another; the Technical Guide cannot cover all the aspects of functioning of entities or detailed provisions of all the applicable laws within such a wide spectrum. Also, tax laws and Foreign contribution laws undergo frequent changes. Therefore, the various aspects and principles enunciated in this Technical Guide should be applied *mutatis mutandis*, exercising professional judgment. This Guide is not intended to dwell on the basic internal audit procedures, which are common to all types of organisations. It provides insight into the special aspects of the not-for-profit sector. The Guide also discusses special areas of compliance applicable to this sector that call for internal auditor's scrutiny.

1.12 The management in concurrence with the internal auditor has to take into consideration the various pronouncements of ICAI and the regulatory requirements, assessment of control environment and business domain knowledge to decide the scope of the internal audit. The scope and criteria of internal audit would be determined by the following:

- (i) entity's policies
- (ii) entity's systems
- (iii) entity's procedures
- (iv) entity's processes
- (v) entity's products
- (vi) entity's standards
- (vii) entity's laws and regulations
- (ix) entity's specification
- (x) entity's contract requirements

This Technical Guide deals with the operational areas of entities with emphasis on compliance of various regulations as applicable to such entities.

1.13 The following organisations are not included under NPO in this Guide:

- (i) Public sector organisations formed under central or state governments

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(municipalities, corporations and other government owned corporations, etc.)

- (ii) Organisations formed under special Acts of Parliament
- (iii) Private or public hospitals and other public health organisations
- (iv) Political parties
- (v) Unions
- (vi) Pension funds

1.14 Some examples of NPOs that fall into the scope of this Technical Guide are as follow:

- (i) Charitable organisations
- (ii) Foundations
- (iii) Endowment Funds
- (iv) Religious organisations
- (v) Chambers of Commerce
- (vi) Professional bodies and associations
- (vii) Artistic and cultural organisations
- (viii) Museums and art galleries
- (ix) Institutions working for preservation of environment (including water sheds, forests and wildlife)
- (x) Institutions working for preservation of monuments and places or objects of artistic or historic interest. (Heritage management and conservation).

Chapter 2

Legal Framework

2.1 There are innumerable NPOs in India, engaged in wide variety of activities. India has possibly the largest number of active non-government, not-for-profit organizations in the world. In spite of this, there is no national regulatory body or framework governing the sector. NPOs are governed under the statute or state law under which they are formed.

2.2 The Constitution of India guarantees the right of all citizens to form associations or unions is under Article 19(1) (c). Also, Article 30(1) in the Constitution gives all minorities, whether based on religion or language the right to establish and administer educational institutions of their choice. Thus, non-profit/ voluntary organisation can be set up without any kind of registration or recognition under any of the article entries mentioned above. In fact, some of the community based organisations like village committees, small religious groups and many welfare Associations function in this manner. However, to claim exemptions under the Income Tax Act, 1961 and for availing other benefits from the Government, there is insistence on formal registration.

Types of Not-for-Profit Organisations

2.3 A not-for –profit organisation can be set up either as:

- (i) Registered Trust
- (ii) Registered Society
- (iii) Non-trading Corporation
- (iv) Section 8 Company (under the Companies Act, 2013) (Earlier Section 25 Company under the Companies Act, 1956)
- (v) Religious Endowment, Waqf, Gurudwara, etc.
- (vi) Government Acquired Trust
- (vii) Unregistered Trust/ Society/ NGO

Registered Trust

Trusts are usually set up when someone wishes to set apart either property

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or money for a specific purpose, usually a charitable cause and wants limit control over the distribution and administration to selected persons only. These persons are known as trustees. Trusts can be public or private. Public charitable trusts are governed by the Public Trust Act, if any (e.g. Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh) applicable in the relevant State. In the absence of such an act in any particular state or territory, the general principles of the Indian Trusts Act 1882 are applied. A public trust can be set up by registration of the trust deed with the registrar. Public charitable trusts, as distinguished from private trusts, are designed to benefit members of an uncertain and fluctuating class. To determine whether a trust is public or private, the key question is whether the class to be benefited constitutes a substantial segment of the public.

Registered Societies

A registered society is viewed as an independent juridical 'person'. It is different from the people who form it. Property which is vested in the members of an unregistered society becomes "property belonging to the society" after registration, and there is no transfer of ownership.

Features of Society v. Trust

Features	Society	Trust
Objects	Charitable, Literary, Scientific, etc	Non-profit activities
Formation	Procedure is simple and easy	is complicated
Name	Selection of name is not difficult	Name approval by Registrar of Companies
Management	Easy and simple and not much restrictions imposed under the Act	Provisions are complex, rigid and time consuming
Meetings	Annual Meeting of society to be held as per provisions in the Act. Meetings of the Governing body are held as prescribed in the Rules of the Society	All the meetings are to be held as per provisions of the Companies Act, 1956
Penalties	Very few offences and penalties have been prescribed	Provisions are more stringent and attract penalties

Legal Framework

Reputation	Registered societies enjoy same reputation as companies	Same
Legal Entity	Registered Society is a legal entity with certain limitations	Is a legal entity.

Section 8 Company (Companies Act, 2013)

Earlier not-for-profit companies were formed under Section 25 of The Companies Act, 1956. Under this section, a company could be formed with the objective of "promoting commerce, art, science, religion, charity or any other useful object" provided the profits, if any, or other income was applied for promoting only the objects of the company and no dividend is paid to its members.

Difference between Section 8 of the Companies Act, 2013 and Section 25 of the Companies Act, 1956 are as follows:

- (i) The scope of the Section 8 has been increased to include sports, education, research, social welfare, protection of environment in addition to the promotion of commerce, arts, science, religion, charity, which were present in Section 25.
- (ii) As Section 8 has broadened the objects, it has to be examined whether these objects are in line with the charitable objects defined under Section 2(15) of the Income Tax Act, 1961 at the time of registration under Section 12A and Section 12AA of the Income Tax Act, 1961.
- (iii) Section 25 company could be a private or public company but under Section 8 it can also be a One Person Company (OPC) or Association of Persons (AOP).
- (iv) Under Section 25, if there was a violation of terms of license the action that could be taken was revocation of license by the Central Government but under present Section 8 there is provision for revocation of license and also directions for winding up of company if affairs are carried put fraudulently or prejudicial to public interest.
- (v) Under Section 8, there is provision for amalgamation with another Section 8 company with same objects.

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Comparative Analysis of Non-Profit Company, Society and Trust

Particulars	Company	Society	Trust
Statute/ Legislation	Companies Act, 2013	Societies Registration Act, 1860	Bombay Public Trusts Act, 1950 and various other Trust Acts
Jurisdiction	Registrar of Companies	Registrar of Societies	Deputy Registrar/ Charity Commissioner
Objects	Non-profit activities	Charitable, Literary, Scientific activities, etc.	Charitable, Socially Beneficial activities.
Main Document	Trust deed	Memorandum of Association and Articles, Rules and Regulations (bye-laws)	Memorandum and Articles of Association
Alteration of Objects	Complex legal procedure	Simple procedure	Bound by covenants of Trust Deed; Normally only the settlor can modify and is almost always impossible to modify if settlor is deceased.
Formation	Complex Procedures; Three to six months required	Simple and easy	Simple and easy
Number of Members Required	Minimum seven if public limited company and two	Minimum seven and no upper limit	Minimum two and no maximum statutory limit

Legal Framework

	if private limited company Minimum 2 directors and no upper limit. Director and shareholder can be the same person.		
Registration	As a company under Section 8 of the Companies Act, 2013	Both as a society and a trust in some States, e.g., Maharashtra.	As trust
Stamp Duty	No stamp paper required for Memorandum of Association and Articles	No stamp paper required for Memorandum of Association and Rules and Regulations	Trust required to be executed on non-judicial stamp paper (Valued at 4% of the trust property)
Name	Prior approval required from the Registrar of Companies in the relevant State/U.T.	Comparatively simple	Comparatively simple
Board of Management	Board of Directors/ Managing Committee	Governing Body	Trustees
Management	Formalities of company law in terms of the Companies Act, 2013 to be observed	Few restrictions imposed under the Act	Very few restrictions imposed under the Act

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Mode of Succession in the Management	Usually by election by members	Usually by election by members	By appointment
Meetings	To be held as per provisions of company law which are quite extensive	Annual Meeting according to provisions of law. Governing body meetings as prescribed in Rules of the Society	No provisions laid down
Penalties	Various offences and corresponding penalties for violations have been provided	Few offences and penalties have been prescribed	Very Negligible
Legal Status	Full legal status	Legal status with certain limitations	Legal status with certain limitations
Statutory Regulation	Exhaustive but mature	Very limited	Nominal
Transfer of Membership	Totally free or controlled, as desired	Not possible	Not applicable
Admission of New Members	Controlled by general body or Board through issue of capital	Controlled by Governing Body	Not applicable
Removal of Members	Not possible without consent	Possible without consent	Not applicable
Dissolution / take-over by State	Very difficult. Generally irrevocable,	Possible. Can be wound up if 3/5 th of members so	Possible. Can be easily wound up if shareholders

Legal Framework

	hence cannot be easily wound up.	desire.	decide so. (in AGM).
Payment to Members	As approved by deed company and State	Not restricted	As specified in Trust

Advantage of Section 8/25 Companies

Some of the advantages of a Section 8/ 25 Company are:

- **Distinct Legal Identity:** A Section 8 Company is a separate legal entity and is different from its members. It can open bank accounts and run operations. It can have a perpetual succession.
- **Zero Stamp Duty:** A Section 8 Company is excluded from the necessity of paying stamp duty on both “MoA and AoA” of the private or public limited organization.
- **No Minimum Capital Requirement:** The requirement of minimum paid up capital which apply to private limited company does not apply to a Section 8 Company.
- **Name:** A Section 8 Company does not need to add Limited or Private Limited, to its name. It may be registered with names, like, Association, Academy, Council, Organization, Club, Charities, Foundation, Institute, Society, etc.
- **Non applicability of CARO:** Companies (Auditor’s Report) Order, 2016 do not apply to Section 8/ 25 company.
- **Tax Benefits:** The Income Tax Act, 1961 provides many deductions and exemptions from tax:
 - if the charitable or other objects of the Section 8/ 25 company confirm to the ones mentioned under the relevant sections of the Act and the company.
 - is registered under Section 12(a), 12AA.
 - satisfies the other conditions mentioned.
- **Exemption to the donors:** If a Section 8/ 25 company gets approval under Section 80 G of the Income Tax Act, 1961, those donating to the Company are eligible for tax deductions on the sum donated.

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Compliances

Compliances as to be done by Section 8/ 25 Company are as follows:

Books of accounts: Section 8 company has to maintain books of accounts on accrual basis under Section 128 of the Companies Act, 2013. Many Charitable institutions follow cash basis of accounting but Section 8 companies do not have that option.

Preparation of financial statements: Rule 4A of the Companies (Accounts) Rules, 2014 provides that the financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable.

Receipt of foreign funding: A Section 8 Company can register under FCRA to receive funds from foreign source. Registration under FCRA is mandatory for availing such benefits.

GST/ TDS applicability: It is not entitled for any exemptions/ reliefs from payment/ applicability of excise duty, service tax, customs duty, deduction of tax at source, collection of tax at source, etc.

Income tax: Section 8 company are required to file for Income Tax Returns in Form ITR-7 within the date prescribed under Section 139 (currently within 30th September of the Assessment year).

Board meetings: First meeting of the Board to be held within 30 days of the date of incorporation (Section 173). After that, the Board of Directors should convene at least 4 times a year. The time gap between the two meetings should not be more than 120 days.

Audit of Accounts: Just like any other company incorporated under the Companies Act, 2013, a Section 8 company has to get its accounts audited by an auditor appointed under Section 139 of the Companies Act, 2013.

Also, Section 12 A(b) of the Income tax Act, 1961 provides for mandatory audit of accounts if the total income exceeds the amount not chargeable to tax, without giving effect to the exemptions under Section 11 and 12.

Filing of annual accounts: The audited financial statements, the Board of Director's report and annual report has to be filed electronically within the prescribed time limit in addition to requisite filing fees with the Registrar of Companies, within 6 months of end of the financial year.

Religious Endowments and Waqf

Religious Endowments and Waqfs are variants of Trusts which are formed for specific religious purposes e.g. for providing support functions relating to the deity, charity and religion amongst Hindus and Muslims respectively. Unlike Public Trusts, they may not necessarily originate from formal registration, nor do they specifically emphasise on a triangular relationship among the donor, Trustee and the beneficiary. Religious endowments arise from dedication of property for religious purposes. The corresponding action among the Muslim community leads to the creation of Waqfs. Waqfs tie up the property and devote the usufruct to people.

Waqf in India

The concept of Waqf is rooted to the Quranic injunctions, which deal with charity. It gained prominence under Muslim rule when the rulers generously dedicated property such as land and its revenue rights to Waqf created with the purpose of maintaining mosques, tombs, orphanages (yatimkhanas), madrasas, etc. Waqf implies the endowment of property, moveable or immovable, tangible or intangible to God by a Muslim, under the premise that the transfer will benefit the needy.

Unregistered Trust/ Society/ NGO

As mentioned earlier, in India, there is a plethora of acts under which any group desirous of commencing a not-for-profit, voluntary or charitable work can organize themselves into a legal body depending on the type of activity, purpose, beneficiaries, etc. They can register themselves under the applicable Act (or a combination of Acts). However, for most entities, these provisions are not mandatory and therefore, there exists a vast group of voluntary bodies which have not registered themselves under any of the available provisions. An unregistered association is not recognised as an independent juridical person under law. Failure to register the associations gives it no legal face and only the trustees in charge of the fund have a legal status.

Although registration is not compulsory, unregistered not for profit organisations miss out on important advantages of incorporation. Some of them are:

- (i) the organisation acquires legal status to sue and/or be sued as a separate and distinct "person".

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- (ii) Incorporation bestows legal rights to the members to hold property in a common name. It also enables the not-for-profit organization to open bank account(s) against its registered identity.
- (iii) Any property held by the organisation can pass from one generation of managers to another without having to pay any transfer fees or taxes and without any cumbersome documentation.
- (iv) Only organizations which are registered can get benefits of tax-exemptions, and other benefits.
- (v) Registration under the Foreign Contribution Regulation Act (FCRA), 2010 is more easily granted if the not-for-profit organization is incorporated.

Legal Framework

Trusts, Endowments and Waqfs are legally created as modes of property arrangement/ settlement dedicated for definite charitable and religious purposes. The law concerning Societies, Trusts, Waqfs and other religious and charitable endowments in India can be placed under three broad groupings.

- (i) Societies registered under the Societies Registration Act, 1860, States amendments on it after 1947 and various State Registration Acts.
- (ii) Those engaged in pure religious and charitable work registered under the Religious Endowments Act, 1863; the Charitable and Religious Trusts Act, 1920; the Waqf Act, 1995 and similar other State Acts.
- (iii) Trusts and charitable institutions registered under the Indian Trusts Act, 1882; Charitable Endowments Act, 1890; the Bombay Public Trusts Act, 1950; and similar other State Acts.

The mode of incorporation, organisational structure and distribution of functions and powers are governed by the provisions of the specific law under which they are registered. Broadly, such organisations can assume a legal personality in the following five ways:

- (i) By way of formal registration before the Charity Commissioner / Inspector General of Registration under the respective State Public Trusts Act e.g., the Bombay Public Trusts Act, 1950;
- (ii) By invoking interference of civil courts to lay down schemes for

governing a Trust under Sections 92 and 93 of the Civil Procedure Code;

- (iii) By registering the Trust deed of a Public Charitable Trust under the Registration Act, 1908;
- (iv) By notifying an organisation in the list of Charitable Trusts and Religious Endowments which are supervised by the Endowments Commissioner of the State or by a Managing Committee formed under the Charitable Endowments Act, 1890 or under other State laws on Hindu Religious and Charitable Endowments; and
- (v) By creating a Waqf to be managed under the provisions of the Waqf Act, 1995.

The main features of these enactments are indicated in the **Appendix 1**.

In addition to meeting the requirements of legislation mentioned above, the not-for-profit organizations are also required to follow the provisions of law as applicable to their functional areas. For example, a NPO whose working affects the natural resources or environment needs to take into account the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Forest (Conservation) Act, 1980, Environment Protection Act, 1986, Biological Diversity Act, 2002, etc.

Trusts

Introduction

After the establishment of British rule in India, it was felt all over that there was no comprehensive enactment in India governing the private trusts. The very question of enacting a law relating to the trust was treated as one of the important matter which was referred to the Indian Law Commission of 1879 which reported the advisability of the Codification of the Trust Law.

In the words of Justice Phear *“There is, probably no country in the world where fiduciary relations exhibit themselves so extensively and in such varied form as in India, and possession and dominion over property coupled with the obligation of using it wholly or partially, for the benefits other than the possessor, is, I imagine familiar to every Hindu”*. Muslims also had concept of entitlements too. But with the exceptions of certain provisions of Penal Code, Code of Civil Procedure (Sections 92 and 93 related to power of Civil Courts and Collector) and couple of other Acts, the Indian Statute book

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was silent on this matter. An attempt was made to define and amend the law relating to private trust and the Indian Trusts Act, 1882 came into being. It applies to private trusts other than religious or charitable endowments. Also, it does not affect the rules regarding waqf or mutual relations of members of an undivided family.

The most fundamental distinction between private and public trusts depends upon the character of the person for whose benefit they are created.

The decisions in *Radhavallabh v. Damodardas*, AIR 1955 NUC (MB) 3799; (1983) 144 Tax LR (MP) 108 that the act applies to private trusts only and in *Shri Ram Krishna Mission v. Dogar Singh*, AIR 1984 All 72; *Shanti Devi v. State*, AIR 1982 Del 453 that the provisions of the Act do not apply to public (charitable or religious) trusts should be considered in the light of observations of the Supreme Court.

Under Schedule 7 of the Constitution of India, the subject 'Trust and Trustees' finds mention at Entry No. 10 in the Concurrent List. 'Charities & Charitable Institutions, Charitable and religious endowments and religious institutions' find place at Entry No.28 of this list.

The first legislation governing public trusts is the Bombay Public Trusts Act which was meant to deal with an express or constructive Trust for either public, religious or charitable purposes or both and included a temple, a math, a Waqf, or any other religious or charitable endowment and a Society formed either for a religious or a charitable purpose or for both and registered under the Societies Registration Act, 1860 – Section 2(13). When the Bombay province got separated into the states of Maharashtra and Gujarat, both the states adopted this act with Gujarat making some variations. Only two other states - Madhya Pradesh and Rajasthan have enacted their own Public Trusts laws, others do not have any specific act. In states which have the public trust act, it is compulsory for every public trust to register with the charity Commissioner.

List of Public Trust Act

List of Public Trusts Act is as follows:

- (i) Rajasthan Public Trusts Act, 1959
- (ii) The Madhya Pradesh Public Trusts Act, 1951
- (iii) Bombay Public Trusts Act, 1950
- (iv) Gujarat Public Trusts Act, 2011

Governing Enactments

The Governing enactments under which trusts are constituted are:

- (a) Religious Endowments Act, 1863;
- (b) Charitable and Religious Trusts Act, 1920
- (c) Charitable Endowments Act, 1890;
- (d) the Bombay Public Trusts Act, 1950; and similar other State Acts

The Indian Trusts Act, 1882

Elements of Trust

The following basic elements have to be satisfied:

- There must be an author or settlor of the trust.
- There must be a trustee.
- There must be beneficiary or beneficiaries.
- There must be a trust property. It must be divested in favour of the Trust.
- The objects of the Trust must be specific.
- Declaration of trust or trust deed.

Trust property

It is important to understand that the subject matter of the property is essential to constitute a trust. In other words, there should be a valid title to the property merely having beneficial interest under a subsisting trust is not enough.

Scope of the Indian Trust Act, 1882

The scope of the Act is as follows:

- (i) Creation of Trusts - Chapter II (Sections 4 to 10)
- (ii) Duties and Liabilities of Trustees - Chapter III (Sections 11 to 30)
- (iii) Rights and Powers of Trustees - Chapter IV (Sections 31 to 45)
- (iv) Disabilities of Trustees - Chapter V (Sections 46 to 54)
- (v) Rights and Liabilities of Beneficiaries - Chapter VI (Sections 55 to 69)

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- (vi) Vacation of the Office of Trustees - Chapter VII (Sections 70 to 76)
- (vii) Extinction of Trusts - Chapter VIII (Sections 77 to 79)
- (viii) Certain Obligations in the Nature of Trusts - Chapter IX (Sections 81 to 94)

The *Chapter I* of the Act states that "*Trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner*".

The *Chapter II* of the Act deals with the creation of trusts. It declares that a trust may be created for any "*lawful purpose*" and states that the purpose of a trust is lawful unless it:

- (a) forbidden by law, or
- (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or
- (c) is fraudulent, or
- (d) involves or implies injury to the person or property of another, or
- (e) the Court regards it as immoral or opposed to public policy.

Chapter III deals with a trustee's duties and also liabilities arising from breach of these duties. Section 20 gives a list of securities on which a trustee can invest trust funds. Section 23 specifies the extent of the trustee's liability in case of a breach of trust.

Chapter IV treats of the rights and powers of trustees. Section 34 of the Chapter empowers trustees to apply to a principal Civil Court of original jurisdiction for advice on any questions regarding the management and administration of the trust-property. Section 36 of the Act deals with the general authority of a trustee.

Chapter V deals with disabilities of the trustee and

Chapter VI specifies the rights and liabilities of the beneficiary.

Chapter VII deals with vacation the office of trustee and incidentally deals with the appointment of new trustees, and declares that, on the death or discharge of one of several co-trustees, and declares that, on the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the other, unless the instrument of trust expressly declares otherwise.

Chapter VIII deals with of the extinction of trusts and incidentally of their revocation. Section 77 states that a trust is extinguished –

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Chapter IX specifies the cases in which an obligation arises.

Societies Registration Act, 1860

2.4 The Societies Registration Act, 1860 is modeled on the Literary and Scientific Institutions Act, 1854. It was enacted mainly to give legal standing to various organisations and groups related to politics, literature, arts and science which were coming up at that time. It was also meant to enable the colonial government to keep a watch over those entities but the Act was not intrusive, it gave full freedom to the Societies/ organisations which chose to register with the government. There was minimal State interference into affairs of such institutions, except routine matters of filing annual statements.

2.5 The Societies Registration Act, 1860 provides for formation of a Society for any literary, scientific, or charitable purpose, or for any such purpose as is described under Section 20 of the Act. In terms of Section 20, the following Societies may be registered under this Act:

*“Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, *[the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.”*

2.6 After Independence the subject came under the State list of Schedule 7. Most States made a number of amendments and some states have adopted the Act and framed their Rules for implementation of the Act and some have enacted their own law for regulation of societies in their states. States like, Uttar Pradesh, Gujarat and Maharashtra made major

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amendments in the original Act. The amendments mainly concern the following four issues:

- (i) Purpose for which Societies can be formed.
- (ii) Regulatory powers with regard to change in memorandum of association, bye-laws, alienation of property and investment, amalgamation and dissolution of the Body.
- (iii) Powers with regard to submission of annual returns.
- (iv) Powers of the State Government with regard to enquiry and investigation, supersession, dissolution or cancellation of registration.

2.7 The Act is not applicable in States (or parts thereof), which have independent legislations framed by their legislatures. They are:

- (i) Andhra Pradesh Societies Registration Act, 2001
- (ii) Haryana Registration and Regulation of Societies Act, 2012
- (iii) Himachal Pradesh Societies Registration Act, 2006
- (iv) Jammu & Kashmir Societies Registration Act, 1998
- (v) Madhya Pradesh Societies Registrickaran Adhinyam, 1973; amended by M.P. Society Registrickaran (Sansodhan) Adhinyam, 1976
- (vi) Meghalaya Societies Registration Act, 1983
- (vii) Mizoram Societies Registration Act, 2005
- (viii) Karnataka Societies Registration Act, 1960
- (ix) Rajasthan Societies Registration Act, 1958; amended as Rajasthan Societies Registration Act, 1967
- (x) Tamil Nadu Societies Registration Act, 1975.
- (xi) Andhra Pradesh Societies Registration Act, 2001
- (xii) West Bengal Societies Registration Act, 1961 as amended by West Bengal Societies Registration Act, 1964.

Kerala has an act 'Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955' which provides for the registration of literary, scientific and charitable societies in the State of Kerala excluding the Malabar Districts. The Societies Registration Act, 1860 applies to all other societies.

Comparative Analysis between various State Legislations on Societies is given as **Appendix 2**.

Documents Required for Registration

2.8 The following documents are required to be submitted for getting registration

- (i) Memorandum of association with a certified copy signed by all the subscribers
- (ii) A copy of rule and regulations of the society, certified by the members of the governing body
- (iii) By-laws of the society along with certified copy
- (iv) Affidavit owned by the office bearers, either President or Secretary, shall be notarized
- (v) Proof of address of the office

Annual Submission to the Registrar

2.9 There is a requirement under Section 26 of the Act to file annually the audited financial statements and the list of members.

Religious and Charitable Endowments

2.10 Endowments are the dedication or entrustment of property either for a religious purpose or for a charitable purpose or both: religious and charitable purposes. It may be called a religious endowment or a charitable endowment depending upon its objects. The ultimate decision as to whether or not an endowment is religious and /or charitable rests not with the settler but with the legislature and the court.

2.11 Hindu society has always been, a religious society. Most of donations in India are religious charity. Additionally, during the British rule reformist orthodox Hindu socio-religious organisations fostered and shaped religious norms, precepts and ritual practices through charitable gifting. They also attempted to revitalize the Hindu dharma to craft citizenship, nationalism and a modern civil society*. Thus, we see innumerable religious and charitable

* 'All gifting is sacred' The Sanatana Dharma Sabha Movement, the reform of dana and civil society in late colonial India by Malavika Kasturi.

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endowments all over the country. However, in comparison to their numbers there is very meagre legal literature. This can be attributed to the trust in character of the priests who managed the institutions and the binding nature of the customs which regulated such organisations. When the British ruled over India, they passed a number of regulations. Out of them, there are three all India enactments on the subject of endowment still in force. These are the Religious Endowments Act, 1863; The Charitable Endowments Act, 1890; and the Charitable and Religious Trusts Act, 1920. These Acts are not comprehensive but they legislate on only a fraction of the subject.

2.12 The Religious Endowments Act, 1863 was basically a law on private endowments which placed a property under the management of Trustee/Trustees under a will for religious and charitable purposes for a predefined set of beneficiaries. It was a type of contract between the will maker and the Trustee. The objective of the Act was to enable the Government to divest itself of the management of religious endowments. Since it was a contract between the Will maker and the Trustees, the only intervention possible was through filing of a civil suit in a court of law. Following this many Zamindars started creating endowments which generated a lot of civil disputes.

2.13 The Government then came up with a new law - The Charitable Endowments Act, 1890 to provide for vesting and administration of property held in trust for charitable purposes. This enactment led to appointment of a Government officer as a treasurer to oversee the functioning of charitable endowments and State formulated schemes for administration of property vested in the treasurer. However, the Act is of permissive nature in the sense that framing of scheme and vesting of scheme can only be done by the Government if application for that purpose is made.

2.14 Towards the beginning of the 20th century, many religious institutions had acquired considerable landed property and funds; often comparable to the holdings of a zamindari. It led to incidents of social tension and civil disputes. There were constant complaints especially in the Madras Presidency, as to the inefficacy of The Religious Endowment Act, 1863 to prevent squandering and misappropriation of funds. To deal with this situation, the government enacted a new law in the form of the 'Charitable and Religious Trusts Act, 1920' which recognised the existence of such religious bodies as entities different from Endowment Trusts formed for social and charitable purposes. It was meant to serve the twin purpose of simplifying the legal processes for obtaining information about these

institutions as well as exercising control over the action of trustees. Trustees of such bodies were made accountable for disclosure of the income, values, management and application of the subject matter of the trust. Civil courts were given proactive powers with regard to management of the property but there was no direct State intervention. However, after independence many state governments enacted their own endowment acts. The state government has the control over management of temples in the states with exceptions being made for those owned by families and private boards. Some such acts are the Madras Hindu Religious Charitable Endowments Act, 1951; the Travancore-Cochin Hindu Religious Institutions Act 1950; the Bodh Gaya Temple Act, 1949, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987; and the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997. The government appoints officials to the Board. In such a scenario, being a Hindu place of worship, in the state of Kerala, as a law and convention all temple board members as well as officials need to have sworn allegiance to Hindu faith and sworn to prime deity of each temple Board.

Wakf

2.15 "Wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes:

- (i) A Wakf by user but such Wakf shall not cease to be a Wakf by reason only of the user having ceased irrespective of the period of such cesser.
- (ii) "Grants", including mushrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable.
- (iii) A wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable. and "wakif" means any person making such dedication.*

2.16 The concept of Waqf is rooted to the Quranic injunctions, which deal with charity. The followers of Islam transformed this concept of charity into an institution known as Waqf. Literally, Waqf means endowment of moveable or

* Definition of wakf- <http://mahawakf.com/>

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immovable property dedicated to God by the Muslims for the welfare of needy. The Waqif (settler) in his deed appoints Mutawalli (Manager) for the administration of the Waqf. The Waqif has authority to either appoint himself or any Muslim as Mutawalli. During Muslim rule, the rulers generously dedicated property such as land and its revenue rights to Waqf created with the purpose of maintaining mosques, tombs, orphanages (yatimkhanas), madrasas, etc. In many cases, donations to a Waqf were made with the intent of promoting the tenets of Islam. During that period, Islamic courts overseen by Qazis kept a close eye on the Mutawallis. Any mismanagement of Waqf property was considered breach of the trust reposed in them for which they were duly punished. After the collapse of Muslim Empire, the British abolished the institution of Islamic courts headed by Qazis and deprived them of their supervisory control over Waqf. The Mutawallis became more powerful as they had no fear from the harsh punishment under the provision of Islamic Law. This led to large-scale corruption in the administration of Waqf and they often indulged in favouritism, corruption and maladministration. At that time, the British colonial administration did not interfere much in the religious matters of the natives. After 1857, when the British started expanding the Common law regime in the country, they began exercising control over a waqf mostly where there were charges of corruption. The British Government confiscated several Waqf properties like Jama Masjid and the Fatehpuri Mosque in Delhi. These were restored to the Mutawallis only after the enactment of the Charitable and Religious Endowments Act by the government in 1863. Another practice which was started by some wealthy Muslims was to endow them to Waqf- al-Alaulad (Family Waqf) with the intention of saving their properties from irresponsible progeny. This kind of Waqf was opposed by a number of Muslim clerics as well as Amir Ali, the noted advocate of Calcutta and expert of Muslim Law. In 1894, the Privy Council maintained that it was "a concealed means for the aggrandizement of family" (Wakf Administration in India by S.Khalid Rasid, Vikas Publishing House, 1978, page127), which was contrary to the concept of charity the core spirit behind Waqf. It also said that in Waqf-alAulad "the provision for charity is so illusory that the poor are not entitled to receive a rupee till after total extinction of a family". This decision led to a chain of events which finally led to the enactment of the Mussalman Waqf Validating Act in 1913. Thereafter, there were slew of acts passed on this matter. They are as follows:

- (i) Mussalman Waqf Act, 1923
- (ii) Bengal Waqf Act, 1934

- (iii) The Hyderabad Endowment Regulation, 1939
- (iv) U.P. Muslim Waqf Act, 1936
- (v) Delhi Muslim Waqf Act, 1943
- (vi) Bihar Waqf Act, 1947
- (vii) Bombay Public Trusts Act, 1950
- (viii) Dargah Khwaja Saheb Act, 1955
- (ix) Central Waqf Act, 1954
- (x) Waqf Amendment Act, 1959
- (x) U.P. Muslim Act, 1960
- (xi) Dargah Kwaja Saheb Waqf Amendment Act, 1964
- (xii) Waqf Amendment Act, 1969
- (xiii) Waqf Amendment Act, 1984 and
- (xiv) The Waqf Act, 1995

2.17 The Central Government is responsible for the implementation of the Wakf Act. The Wakf Act, 1954 had provisions for survey of Wakfs, constitution of Central Wakf Council and State Wakf Boards, etc. For better management and administration of Waqfs, the Wakf Act, 1954 was amended many times. Finally, a comprehensive and land mark legislation, i.e., Wakf Act, 1995 was enacted by the Government of India which became effective from 01.01.1996. In contrast to the previous Act, this Act is applicable throughout the country except Jammu & Kashmir and Dargah Khwaja Saheb, Ajmer. Currently, 300000 Waqfs in India are being administered under various provisions of the Waqf Act, 1995. The management structure under the Act consists of a Waqf Board as an apex body in each State. Every Waqf Board is a quasi-judicial body empowered to rule over Waqf-related disputes. At the national level, there is Central Waqf Council which acts in an advisory capacity. The Council consists of Chairperson, who is the Union Minister Incharge of Wakfs and such other members not exceeding 20 in numbers appointed by Government of India as stipulated in the Act. The Council derives its income from the contribution received by it from the various State Wakf Boards @ 1% (one per cent) of the net income of the Wakfs. All administrative and other expenses of the Council are met out of from this income. The Council advises the government pertaining to working of the State Wakf Boards and proper administration of the Wakfs in the country.

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The main functions of the State Wakf Boards can be described briefly as follows:

- (i) Registration of Wakf Properties on due process.
- (ii) Appointment & removal of Muttawalli.
- (iii) Removal of Encroachment & illegal occupation on Wakf property.
- (iv) Assessment of income, Issuance of Demand Notices of Wakf contribution & its collection.
- (v) Preparation of Budget and scrutiny of Annual Accounts submitted by Muttawalli.
- (vi) Maintenance of Wakf Fund & Fund of Wakf Estates.
- (vii) Audit of Wakf Estates with income ` 10000/- and more by Govt. approved panel of Audit Firm.
- (viii) Development of Wakf properties for Housing, marketing, educational institutions and other income generating purposes.
- (ix) Management of Wakf Estates under Direct Management.
- (x) Law matters and Court cases.
- (xi) Preservation of Wakf Records, like, Deeds and other relevant papers.
- (xii) Distribution of Stipend to poor and meritorious students.
- (xiii) Organization of—Urs / Melas/ fair under different Estates.
- (xiv) Liaison with the Central Wakf Council, Delhi.

The Sikh Gurdwaras Act, 1925

2.18 This Act was enacted to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith, and whereas the previous sanction of the Governor General has been obtained for the passing of this Act. The Gurdwara Reform Movement, which led to the passing of this Act in 1925, started because the Mahants were not duly recognizing the status and role of Sri Guru Granth Sahib in the Gurdwaras by placing other objects of worship alongwith. This remarkable piece of legislation is considered as an achievement of Sikhs in the twentieth century. The Sikhs got not only their Gurdwaras but also the full freedom to manage them.

2.19 Scope of the Act is as follows:

- (i) Petitions to State Government Relating to Gurdwaras - Chapter II (Section 3 To 11)

- (ii) Appointment of, And Proceedings Before, A Tribunal - Chapter III (Section 12 To 37)
- (iii) Application of Provisions of Part III to Gurdwaras found to be Sikh Gurdwaras by Courts Other Than A Tribunal Under the Provisions of The Act - Chapter IV (Section 38)
- (iv) Control of Sikh Gurdwaras - Chapter V (Section 39 To 41)
- (v) The Board - Chapter VI (Section 42 To 69)
- (vi) The Judicial Commission - Chapter VII (Section 70 To 84)
- (vii) Committees of Gurdwaras - Chapter VIII (Section 85 To 105)
- (viii) Finances - Chapter IX (Section 106 To 124)
- (ix) Powers and Duties of The Board - Chapter X (Section 125 To 132)
- (x) Powers and Duties of Committees - Chapter XI (Section 133 To 140)
- (xi) Miscellaneous - Chapter XII (Section 141 To 148A)
- (xii) Temporary and Transitional Provisions - Chapter XII-A (Section 148B To 148F)
- (xiii) Electoral Offences - Chapter XIII (Section 149 To 161)

Non-Trading Corporations Acts

2.20 The list of State Non-trading Corporations Act is as follows:

- (i) Andhra Pradesh Non-trading Companies Act, 1962
- (ii) Bihar (Non-trading) Act, 1959
- (iii) Kerala Non-trading Companies Act, 1961
- (iv) Madhya Pradesh Non-trading Corporations Act, 1962
- (v) Orissa (Non-trading) Companies Act, 1959
- (vi) Punjab Non-trading Companies Act, 1960
- (vii) Rajasthan Non-trading Companies Act, 1960
- (viii) Tamil Nadu Non-trading Companies Act, 1972
- (ix) West Bengal Non-trading Corporations Act, 1965

National Policy on the Voluntary Sector, 2007

2.21 This Policy is a commitment to encourage, enable and empower an

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independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India. In the Policy, Voluntary Organisations (VOs) mean to include organization engaged in public service, based on ethical, cultural, social, economic, political, religious, spiritual, philanthropic or scientific & technological considerations. VOs include formal as well as information groups, such as: Community-based organizations (CBOs); non-governmental development organizations (NGDOs); charitable organizations; support organizations; networks or federations of such organizations; as well as professional membership associations.

Objectives of the Policy

2.22 The specific objectives of the policy are as follows:

- (i) To create an enabling environment for VOs that stimulates their enterprise and effectiveness, and safeguards their autonomy;
- (ii) To enable VOs to legitimately mobilize necessary financial resources from India and abroad;
- (iii) To identify systems by which the Government may work together with VOs, on the basis of the principles of mutual trust and respect, and with shared responsibility, and
- (iv) To encourage VOs to adopt transparent and accountable systems of governance and management.

Strengthening the Voluntary Sector

2.23 The Indian society has a well-established tradition of philanthropy. While a regime of tax concession facilitates donations to charitable organizations, there is considerable untapped potential to channelise private wealth for public service. The Government will support and encourage existing, as well new, independent philanthropic institutions and private foundations to provide financial assistance to deserving VOs. It will also promote a dialogue among public and private donors makers so that they may take advantage of the best practices relating to grant's and fun-raising strategies. However, since many years have been passed, it has now been decided to formulate a new policy taking into consideration the changes in the Not-for-profit environment.

Grants-from the Government of India

2.24 NPOs /NGOS depend on various sources to fund their operations. They may raise some money through membership fees, renting space, sale of items or services but that is not enough, and they rely mostly on donations and grants from private donors, corporations, other charitable foundations and governments. Under Corporate Social Responsibility (CSR) scheme, NGOs have started getting funds locally. Despite their autonomy, NGOs depend substantially on government subsidies and money for funds. Though some people say that governments would finance only those areas or sectors where it has some political gains and not the others.

2.25 Whatever be the objective, the Government of India allocates the grants for carrying out the specific programmes as well as for general purposes. These grants are made out to voluntary organizations who are involved in implementing these programmes. Grants-in-aid have been defined as the sum which a superior authority assigns to an inferior authority. The terms and conditions governing these specific schemes are from grants-in-aid rules mentioned in these schemes of the various ministries and departments. It should have been engaged in social welfare/ development activities for a specified period (which vary according to area) prior to seeking the grant.

Registration on NGO Darpan portal

2.26 To get funds and grants from the government, it is mandatory for the NGO to get registered and enrol with Niti Ayog (a premier policy think-tank of the Government of India) on the NGO Darpan Portal. On enrolling with Niti Aayog, the NGOs get a unique ID. This portal enables Vos (Voluntary Organisations)/ NGOs to enrol centrally and thus facilitates creation of a repository of information about VOs/ NGOs, Sector/ State wise. The Portal provides a system generated Unique ID, as and when signed. The Unique ID is mandatory to apply for grants under various schemes of Ministries/ Departments/ Governments Bodies.

Steps in NGO DARPAN portal's registration process:

- Visit the NGO DARPAN portal.
- Click on the 'Login/Register' button and click on the 'Sign Up' button.
- Enter the name of the NGO, mobile number, and email and click on the 'Submit' button.

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- Enter the PAN of the NGO and password and submit it.
- After logging into the portal, enter the registration information.
- Choose the company sector, enter the address and click on the 'Submit' button.

Documents required for NGO DARPAN registration:

- Copy of the NGO registration certificate.
- Pan card of the NGO.

PAN and Aadhaar cards of three members are NGO's executive committee members.

2.27 There are various schemes sponsored by the Central Government ministries, such as, Ministry of Social Justice and Empowerment, Ministry of Health and Family Welfare, Ministry of Human Resources Development. The applicant voluntary organizations has to apply for such grants through the NGO Darpan portal Various programmes sponsored by the various Central Government ministries are given as **Appendix 3**.

2.28 Application for grants

- To apply for grants, the first step is to create account/ sign-up and create User ID and Password.
- Once you login is done, there are various links available, for viewing the department-wise schemes, providing NGO grants. The NGO has to select the scheme under which it want to apply for a grant. The link for to the selected scheme will provide all the details of the scheme - format in which to apply, documents to be attached, etc.
- The details of the Nodal Officers for the concerned scheme is available on the website. Any queries regarding schemes or how to proceed for schemes and grants will be clarified by the respective Nodal Officers (List and Contact Details are available on the website).

Taxation

2.29 Though there exists different methods by which NPOs are of being registered, as far as income tax is concerned, it makes no difference whether the organisation is formed by way of trust, a company or a society. The relative benefits would depend upon the way in which these organisations would be conducting its activities. The local laws of each state will also have relevance particularly in an area of compliances and state interferences in

the activities. The Income Tax Act, 1961 states and defines certain activities which are exempt, conditions to be met by the entities, modes of investments allowed etc. This guide does not go into details of all the sections, subsections, provisos, etc. and moreover modifications are made in almost every finance act, therefore the internal auditor should refer to the Act itself for details while conducting the audit. The internal auditor should always refer to Tax manuals and Finance Acts for in –depth coverage of all the provisions, conditions and case laws. The subject is so vast that if we try to cover the sections, their implications and analysis of each head would need to be explained in separate chapter. This guide provides just an outline of the relevant sections.

2.30 The provisions regarding granting of exemption to a public charitable Trust, a company registered under Section 8/ 25 of the Companies Act or a society registered under the Societies Registration Act, 1860, or any other institution are contained in one or more of the following Sections of Act:

- (i) Section 2(15);
- (ii) Section 2(24) (iia);
- (iii) Section 10
- (iv) Sections 11, 12, 12A, 12AA and 13; and
- (v) Sections 35(i)(ii), 35(i)(iii), 35AC]

2.31 Section 2(15) defines the expression “charitable purpose” in an inclusive manner to include,

- (i) relief of the poor,
- (ii) education,
- (iii) medical relief,
- (iv) preservation of environment, (including watersheds, forests and wildlife)
- (v) preservation of monuments or places or objects of artistic or historic interest, and
- (vi) any other object of general public utility.

The definition is not exhaustive and, therefore, purposes similar to the purposes mentioned in the definition will also constitute charitable purposes. The clause “any other object of general public utility” was increasingly being

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misused or being the subject of frequent disputes. Finance Act, 2008 sought to limit the definition of "charitable purpose" by stating that if the "advancement of any other object of general public utility" involves undertaking any trade, commerce, or business activities, or rendering any related service for a fee or any other condition (irrespective of use, application, or retention of income arising from such activities), it will not be considered a "charitable purpose." The Finance Act 2010, retroactively effective from April 1, 2009, provided some relief by exempting the aggregate value of receipts from such activities up to ten lakh rupees that was further raised to twenty five lakhs by the Finance Act, 2011.

Finance Act, 2015 made some further amendments. W.e.f 1.4.2016 Business income will be exempt where the activity is undertaken in the case of carrying out advancement of any other object of general public utility under two circumstances:

- (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

2.32 Section 12A(1)(a) deals with registration of trust or institution. Section 12 AA provides details of procedure for registration and Rule 17A to the Income Tax Rules, 1962 give detailed list of documents to be provided while applying for registration.

Section 12A states that provisions of Section 11 and Section 12, regarding exemption of income, will not be applicable to an institution etc., unless an application for its registration is made to the CIT within a period of one year from the date of its creation. Section 12A(b) also requires that if the total income of a trust etc. in any previous year exceeds the maximum amount not chargeable to income tax without giving effect to the provisions of Section 11 and Section 12, then its accounts are required to be audited by an accountant and his report in Form no. 10B has to be filed along with the return of income. [Section 2(24)(iia)]

2.33 This Section defines what constitutes income for certain specified non profit organisations. Under Section 2(24)(ii), voluntary contributions received by the following entities are considered as income:

- (i) Trust or institution created wholly or partly for religious or charitable purposes
- (ii) Scientific research association as specified in Section 10(21) and Section 35(1) (ii) and (iii)
- (iii) Fund or trust or institution established for charitable purposes having special importance as specified under Section 10 (23C)(iv)
- (iv) Trust or institution established for wholly for public religious or charitable purposes being administered in accordance with requirements of Section 10 (23C)(v)
- (v) Any university or other educational institution referred to in Section 10 (23C)(vi) or
- (vi) Any hospital or other institution referred to in Section 10 (23C)(via).

2.34 The Finance Act, 2020 introduced various amendment related to the registration of Charitable trust and Religious. Section 12AB introduced which made earlier provision of registration (i.e. Section 12AA) inoperative. The provisions of Section 12AB were proposed to become operative w.e.f 01/04/2020. However, due to COVID-19 pandemic, it was postpone and made applicable from 01/04/2021. The main aim of these amendments was to ensure that conditions precedent to the registration are adhered to. Further, it was stated in the Memorandum to the Finance Bill, 2020 that; “the present process of registration of trusts, institutions, funds, university, hospital, etc. under Section 12AA or under Sub-clauses (iv), (v), (vi) or (via) of Clause (23C) of Section 10, and approval of association, university, college, institution or company, etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.”

Earlier, once an organization got registration under Section 12AA, it was valid for its life unless the registration was cancelled under Sub-Section (3) or (4) of Section 12AA of the Act. However, under the new amendments, the period of registration is limited (i.e. 5 years or 3 years, for different cases) which require compulsory re-registration/ renewal of registration after expiry of period of 5 years or 3 years for availing the exemption under Section 11 & 12 of the Act.

Business Income

2.35 Whether a charitable trust or religious organization or NPO can carry on any activity for profit is a subject of numerous litigations. It has been

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widely seen that engagement in any activity for profit provides scope for manipulations for tax avoidance. Many trusts have abused the provisions enabling them to carry on business. The Department of Company Affairs has observed that many business houses that had created trusts had mostly appropriated the trust funds for their own businesses. The modus operandi is that the business houses establish trusts, invest the trust money in their sister concerns and avoid taxes. In USA, despite several provisions charity is widely used as a cover for tax avoidance. Despite this, outright banning of activity for profit will cause undue hardship to genuine organizations as the activities for profit are essentially fund raising in nature without which charities cannot exist. So, carrying on trade or business is allowed under some circumstances.

Provisions of Income Tax Act, 1961

2.36 The Income Tax Act allows charitable trusts or institutions to carry on business under Section 11 (4) provided certain conditions are met. However, proviso to Section 2 (15) **does not allow** exemption under Section 11 (for that activity) if any business or commercial activity is carried out. Let us examine the sections to understand where and when they apply.

Section 11(4A) allow trusts or institutions to carry on business (without any monetary limit) provided certain conditions are met. They are:

- (i) business is incidental to the attainment of the main object of the organization,
- (ii) the entity maintains separate books and accounts with respect to the business.

Proviso to Section 2(15)

The clause "any other object of general public utility" was increasingly being misused or being the subject of disputes. As discussed earlier, Finance Act, 2008 sought to limit the definition of "charitable purpose" by stating that if the "advancement of any other object of general public utility" involves undertaking any trade, commerce, or business activities, or rendering any related service for a fee or any other condition (irrespective of use, application, or retention of income arising from such activities), it will not be considered a "charitable purpose." Various finance acts gave some relief by specifying a monetary limit. The Finance Act 2010 provided exemption to the income if the aggregate value of receipts from such activities up to ten lakh rupees. This was further raised to Rs twenty five lakhs by the Finance Act,

2011. Finance Act, 2015 made some further amendments. W.e.f. 1.4.2016 Business income will be exempt (where the activity is undertaken in the case of carrying out advancement of any other object of general public utility) under two circumstances:

- (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.

2.37 Considering both the Sections, it can be said that the operation of proviso to Section 2(15) arises when trade, business or commerce or rendering of services which are activity for profit and not incidental.

First thing to analyse is what Section applies to the NPO.

- (i) Analyse what is the predominant object of the trust or institution.
- (ii) Then determine whether this falls under the “advancement of general public utility”.
- (iii) Whether predominant object is as engaged in trade, or commerce or business. if the answer is yes, proviso to Section 2(15) will apply.

Application of Income

2.38 Section 11 deals with income from property held for charitable or religious purposes. Provided that the conditions specified are met, and applied to charitable or religious purposes within India, income of trust or institution it is not included in the total income of the entity. In other words, the income is exempt from tax.

The term ‘applied’ is used in Section 11(1)(a) but not defined in the Income Tax Act, 1961 but it has to be understood in the light of other Sub-Sections as follows:

- (i) It comprises not only amount spent but amount which is accumulated for future spending. this can be understood from Section 11(2) which recognizes amount set aside for future to be deemed as ‘applied’.
- (ii) It consists of both revenue as well as capital expenditure.
- (iii) Application in India is must.

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Section 11 specifies the following conditions on satisfaction of which the entity gets tax exemptions.

- (i) The organization must spend 85% of its income in any financial year on the objects of the organization. The organization has until 12 months following the end of the financial year to comply with this requirement.
- (ii) Surplus income may be accumulated for specific projects for a period ranging from 1 to 5 years.
- (iii) The organization's income must be applied or accumulated in India. If for any reason income received falls short of 85% the entity has to apply in writing to get exemption and the funds have to be deposited as specified in section 11(5);
- (iv) If due to circumstances beyond the control of the entity, the accumulated income cannot be applied for the purpose it was set up, the entity has to apply to the Assessing Officer and if permission is granted and other conditions set in the Act are met, entity can apply the income for other charitable or religious purposes which are similar to its objects.
- (v) If the organisation is dissolved, then Assessing officer may allow the income to be transferred to a trust or institution specified under Section 11(3)(d).

Donation to Other Charitable Organization

2.39 Donations made by one charitable organisation to another would be considered as application of income provided that the donee organization has the same objects as donor organization. Also, whether it will be considered as exempt depends on what type of funds the donation is made from:

- (i) **Donation from current income:** there is no apparent bar on donation to other organizations if the provisions of Section 11(1) are complied with.
- (ii) **Donation from accumulated income:** The Explanation to Section 11(2) prohibits organizations from giving donations to specified organizations [trust or institution or university or hospital or any other institution referred to in Section 10(23C) or trust or other institution registered under Section 12AA] out of accumulated income. If donation is made, the amount so donated will be deemed the income of such

person of the previous year in which it was paid or credited. Proviso to sub Section 3A of Section 11 allows inter charity donations in case there is a dissolution of a charitable organization

- (iii) **Donation to Corpus Fund:** Finance Act 2017 added explanation 2 to Section 11(1) which states that any donation to specified institutions [trust or institution or university or hospital or any other institution referred to in Section 10(23C) or trust or any other institution registered under Section 12AA as being contribution to the corpus fund shall not be treated as application of income (under Section 11) for the donor organisation.

Instances held as Application

2.40 From the various case laws, we can infer the expenses which can be held as application of income:

- (i) Establishment expenses [CIT v Birla Janhit Trust (1994) 208 ITR 372 (Cal)].
- (ii) Capital expenditure [CIT v Mool Chand Sharbati Devi Hospital (2010) 190 Taxmann 338(All)] and CIT v M. Ct. Muthiah Chettiar Family Trust (2000) 245 ITR 400 (Mad) and many more
- (iii) Repayment of debt [CIT v Janmabhoomi Press Trust (2000) 242 ITR 703 (Kar)].
- (iv) Payment of taxes, [CIT v Ganga Charity Trust Fund (1986) 162 ITR 612 (Guj)], [CIT v Rajour Pallottine Society (1989) 180 ITR 579 (MP)] and many others.
- (v) Salary paid to trustees and managers.

Capital Gains

2.41 The term 'capital assets' has been defined in Section 2(14) the Income Tax Act, 1961 as "property of any kind held by an assessee, whether or not connected with his business or profession. Some exclusions are provided in Section 2(14). The Treatment of capital gains is specified in Section 11(1A). When a capital asset which is held as property under the trust is transferred, the income from there will constitute income derived from property held under trust. According to Section 11(1A), when a charitable trust or religious trust or organization transfers a capital asset held for charitable or religious purposes and if the net consideration) is applied towards acquiring a new

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capital asset, then, the capital gains is deemed to have been applied for charitable or religious purposes.

Section 48 provides the mode of computation whereby it states" the "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto:

Cost of the transferred asset has been defined in Explanation to Section 11 (1A). Cost of acquisition and cost of improvement has been explained in detail in Section 55(2) of The Income Tax Act, 1961. This section states provides mode of calculation of cost, calculation of fair market value, cost inflation index, etc.

Assets held Wholly/ Partly for Charitable or Religious Purposes

2.42 Treatment of capital gains is specified in Section 11(1A). Where the whole of the property is used for charitable and religious purposes and the whole of the net consideration (Consideration minus the expenditure incurred in connection with transfer) is applied towards acquiring a new capital asset, then, the capital gains is taken to have been applied for charitable or religious purpose. Total amount of all capital gain's exempt.

However, if only a part of the net consideration is applied for acquiring a new capital asset, then, the capital gains to the extent of differences between amount so applied and original cost of the asset is taken to be applied for religious or charitable purpose. Exemption will be available to the extent of excess of amount utilized for the new capital asset over cost of transferred asset. The provision applies mutatis-mutandis where the capital asset is held partly for religious or charitable purpose.

Anonymous Donations

2.43 Anonymous donation has been defined under Section 115BBC. Anonymous donation means any voluntary contribution referred to in Sub-clause (ia) of clause (24) of Section 2, where a person who is receiving such

contribution does not maintain any record towards the identity having a name, address, etc.

The organization must keep a basic record (name, address and other prescribed particulars) of voluntary contribution received. In case of failure to maintain these records, donation received would constitute anonymous donation as per Section 115BBC.

2.44 As far back in 1971, the Wanchoo Committee had recommended that anonymous donations received by charitable trusts or institutions should be taxed as this route was being used by many unscrupulous persons to bring unaccounted money. Finally, this recommendation was brought into statute in the Finance Act, 2006 as Section 115BBC. According to Section 115BBC, all anonymous donations to charitable organizations are taxable at the maximum marginal rate of 30%. Section 115BBC is applicable to following NPOs:

- (i) Any university or other educational institution referred to in Section 10(23C) (iiiad) or Section 10(23C) (vi)
- (ii) Any hospital or other institution referred to in Section 10(23C) (iiiie) or Section 10(23C) (via)
- (iii) Any fund or institution referred to in Section 10(23C)
- (iv) Any trust or institution referred to in Section 10(23C) (v)
- (v) Any trust or institution referred to in Section 11

2.45 Anonymous donations were taxable at the maximum marginal rate of 30%. However, Finance (No.2) Act, 2009 gave some relief and, w.e.f. 1.4.2010, the income-tax payable shall be the aggregate of:

- (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:
 - (A) five per cent of the total donations received by the assessee; or
 - (B) one lakh rupees; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.

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2.46 Additionally, the following entities are exempt from the provisions of this section:

- (i) any trust or institution created or established wholly for religious purposes;
- (ii) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

Tax Deduction for Donors

Deductions under Section 80G

2.47 An NPO can get tax exemption by getting registered and complying with conditions mentioned in the applicable acts. If the NPO possesses an Section 80 G certificate, the donor also receives financial benefit in the form of income tax exemption. Thus, an NPO can attract more contributors by obtaining the Section 80G certificate. Section 80 G of the income tax provides deduction to the taxpayers on donations made to charitable institutions and specified trusts/ funds. The assessee claiming the deduction can be individual, HUF, Company, etc. Only specified donation mentioned in the income tax act are eligible for deduction. Finance Act, 2017 has inserted Section 80 G (5D) under which no deduction will be allowed in respect of any donation of any sum exceeding Rs. 2000 unless it is paid by any other mode other than by cash. In-kind contributions do not qualify for deductions under Section 80 G.

2.48 Section 80G of the Income Tax Act, 1961 sets forth the types of donations that are tax-deductible for donors. Contributions to various funds, institutions, charitable trust, etc are exempt. The percentage of exemption differs for various types of entities. Donor get a 100% deduction for donations to entities listed under Section 80G (2) which comprises mainly of funds set up by Central or State Government or local authority. For entities not specifically enumerated in Section 80G, donors may deduct 50% of their contributions to such organizations, provided the following conditions are met. [Section 80G (5)]:

- (i) The institution or fund was created for charitable purposes in India and provisions of Section 11 and Section 12 apply to it;

- (ii) The institution or fund is tax-exempt; it does not have any income which is not exempted like business income. If at all the institution or fund or trust has any business income, it should maintain separate books of accounts, income received for donations should not be used for business purpose and it gives a certificate to each donor stating that it maintains separate books of accounts and income received for donations would not be used for directly or indirectly for business purpose.
- (iii) The institution's governing documents do not permit the transfer or use of income or assets for any purpose other than a charitable purpose;
- (iv) The institution or fund is not expressed to be for the benefit of any particular religious community or caste; and
- (v) The institution or fund maintains regular accounts of its receipts and expenditures.
- (vi) The institution is either a public charitable trust or a society or Section 8/ 25 company or a specified educational institution or is an institution financed wholly or partly by the government or a local authority.

Registration

2.49 The Finance Act, 2020 has made some substantial changes in registration process and period for which approval will be given. The concept of perpetuity is no longer applicable and all the existing Section 80G approvals needs to be revalidated and the application for the same has to be submitted within three months from the date on which the proposed amendment came into force (i.e. 1st April 2021).

The Trust or institution is required to file Form No. 10A or 10AB, as the case may be for the purpose of validation of existing registration and re- approvals for Trust under Section 80G. These forms will be verified by the person who is authorised to verify the return of income under Section 140, as applicable to the applicant. This revalidation will be valid for a period of 5 years after which approval needs to be taken again and the application has to be made atleast 6 months prior to the end of validity period. On receipt of an application in Form No.10A, the Principal Commissioner or Commissioner, authorised by the Board shall pass an order in writing granting approval of Section 80G in form 10AC and issue a 16 digit alphanumeric Unique Registration Number (URN) to the applicants making application.

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The organisations applying for registration/ revalidation as per the amended provisions of Section 80G, is mandatorily required to give the details of its Registration number with **Darpan** portal of Niti Aayog. This is also mandatory in the situation where the applicant organisation receives or intends to receive any grantor assistance from either the Central Government or state Government.

2.50 It should be remembered that:

- (i) Total deductions available to a donor cannot exceed 10% of the donor's total gross income. Any amount in excess of 10% will not be exempt in the hands of donor.
- (ii) Donations to institutions or funds "for the benefit of any particular religious community or caste" are not tax-deductible. A not-for-profit organization created exclusively for the benefit of a particular religious community or caste may, however, create a separate fund for the benefit of "Scheduled castes, backward classes, Scheduled Tribes or women and children" and those will be exempted [Section 80G Explanation 1].
- (iii) For purpose of Section 80G, an association or institution related to sports or games and notified by the Central Government will be considered as charitable institution.
- (iv) Tax deduction under Section 80G are allowed only if the donation is a sum of money. Thus, in-kind donations are not recognised for exemption.
- (v) Receipts issued to donors by not-for-profit organizations must bear the number and date of the Section 80G certificate.
- (vi) Finance Act, 2017 has inserted Section 80 G (5D) under which no deduction will be allowed in respect of any donation of any sum exceeding Rs. 2000 unless it is paid by any other mode other than by cash. In-kind contributions do not qualify for deductions under Section 80 G.

The auditor should get acquainted with the tax impact to the donor as this can be useful in the audit. E.g. copies of receipts can serve as audit evidence for verifying donations received by the entity. More implications are discussed in chapter related to audit.

Deductions for Projects, Schemes, etc.

2.51 The Income Tax Act, 1961 contains a number of other provisions

permitting donors to deduct contributions related to various projects, schemes and programmes related to welfare and scientific research. Section 35AC of the Act allows for tax deductions for eligible companies or organisations that undertake projects for public welfare. This section was introduced to encourage private sector companies and organisations to invest in public welfare projects and contribute to the country's development. The eligible project needs to be approved by the national committee for carrying out the eligible project or scheme. Any payment made by an assessee to public sector company or local authority or trust or institution (which would be carrying out the approved project or scheme) is eligible for 100% deduction while computing the total income. Under Section 80G, the deduction may be 100% or 50% but under this section deduction is 100% this gives more incentive to donor to contribute.

The eligible project or scheme has to be approved by the national committee for carrying out the scheme. Approved projects or schemes must be notified by the Central Government in the official Gazette and must be approved by the National Committee for Promotion of Social and Economic Welfare.

Exemption Under Section 35 AC has been Revoked from Assessment Year 2018

2.52 Government of India has revoked the tax deduction allowed under Section 35 AC of the Income Tax Act in computing the income of the assessee through the Finance Bill, 2016. Any payment made by an assessee to public sector company or local authority or trust or institution (which would be carrying out the approved project or scheme) was eligible for 100% deduction while computing the total income of the amount paid by to a public sector company or local authority or NGO for carrying out any approved project or scheme. In some cases it was even 125% and 175%. The Finance Bill 2016 amended the Section 35 AC and added subsection 35AC (7) which states that no deduction under this section will be allowed in respect of any assessment year commencing on or after **1st April, 2018**. This means that the permissions and certificates provided for tax exemption earlier under Section 35 AC shall be terminated and the tax exemption will not apply for certificate holder NGO. Other tax exemption like those under Section 80G and 12 A shall continue. NGOs which were registered and provided exemption upto 100%, 125% and 175% to the donors could use the certificate upto 31st March 2018 only.

Provisions under Section 35 AC

2.53 For some reason, the Section has not been deleted and a non-applicability clause has been added as a subsection.

Some salient features of the Section are as follows:

- (i) Rule 11 K of the Income Tax Rules, 1962 provides details guidelines for recommending the projects or schemes. Apart from listing the eligible projects, it also provides some conditions and accounting guidelines which need to be followed. Some of the projects allowed include the following:
 - (a) construction and maintenance of drinking water projects in rural areas and in urban slums;
 - (b) construction of dwelling units for the economically disadvantaged; and
 - (c) construction of school buildings, primarily for economically disadvantaged children.
 - (d) Construction and construction and maintenance of bridges, public highways and other roads;
 - (e) any other programme for uplift of the rural poor or the urban slum-dwellers, as the National Committee may consider fit for support;
 - (f) promotion of sports;
 - (g) pollution control;
 - (h) any programme that promotes road safety, prevention of accidents and traffic awareness;
- (ii) Requirements of rules 11 J and 11 L have to be fulfilled. Procedure has been prescribed in Rule 11 M of the Rules.
- (iii) Section 35CCA of the Act allows donors to deduct 100% of their contributions to associations and institutions (approved by prescribed authority) carrying out rural development programs and,
- (iv) Under Section 35CCB of the Act, 100% of donations to associations and institutions (approved by prescribed authority) carrying out programs of conservation of natural resources is allowed as tax deduction.

- (v) A weighted deduction of 150% is also allowed for contributions to organizations approved under Section 35(1)(ii) (i.e., a research association or a university, college, or other institution) specifically for "research," and 125% for contributions made under Section 35(1)(iii) specifically for "research in social science or statistical research".
- (vi) Similar type of exemption is now available to donors of companies engaged in scientific research. Any sum paid for contributions made to a company registered in India, whose main objective is scientific research and development, when those contributions are approved by the prescribed authority and satisfy prescribed conditions. However, these companies will not be eligible for the weighted deduction of 150% available under Section 35(2AB) to qualifying companies and manufacturers for expenditures incurred on scientific research or in-house research and development.

Foreign Contribution (Regulation) Act (FCRA), 2010

History of Foreign Contribution (Regulation) Act (FCRA), 1976

2.54 The Foreign Contribution (Regulation) Act was enacted by our Parliament in 1976 by virtue of Entry 36 of the Union list in schedule VII of the constitution dealing with currency, coinage and legal tender, foreign exchange. The FCRA bill, 1976 received the assent of the President on 31st March, 1976 and becomes an Act as published in the Gazette of India, Extraordinary, Part II, Section I, dated 31st March 1976 to serve as a component of the protective structure of our constitution and our cultural values. In order that funds from abroad do not subvert the integrity of the institutions that constitute the pillars of our secular democratic polity, the FCRA seeks to regulate the flow of funds into India from foreign sources by laying down a legal framework that enables the government to keep a vigil over undesirable foreign influence. Object of Foreign Contribution (Regulation) Act (FCRA), 1976.

Objective of Foreign Contribution (Regulation) Act (FCRA), 1976

2.55 The objective and purpose of FCRA is to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or

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associations and academic and other voluntary organizations as well as individual working in the important areas of national life may do so in a manner which is confident with the values of a sovereign democratic republic that India is. As foreign money and hospitality at the material time was invading many institutions and organisations to destabilize the government in power, it was felt necessary to curb the receipts and usage of foreign contribution or foreign hospitality for nefarious or anti national purposes by all persons including Indian citizens or corporation operating within or outside India. The Ministry of Home Affairs has been made responsible for the implementation of the FCRA. The FCRA is a Framework for regulating and controlling the acceptance and utilization of foreign contribution and foreign hospitality.

History of Foreign Contribution (Regulation) Act (FCRA), 2010

2.56 Foreign Contribution Regulation Act and Rules, 1976 is replaced by Foreign Contribution (Regulation) Act, 2010 and Foreign Contribution (Regulation) Rules, 2011. Foreign Contribution (Regulation) Act, 2010 received the assent of the President on the 26th September, 2010 and notification relating the Foreign Contribution (Regulation) Rules, 2011 published on 29th April, 2011. The FCRA, 2010 and Foreign Contribution (Regulation) Rules, 2011 is effective from 1st May 2011.

2.57 The FCRA, 2010 is an act to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the National interest and for matters connected therewith or incidental thereto.

2.58 The Act extends to whole of India and it shall also apply to:

- (a) Citizens of India outside India and,
- (b) Associates, branches or subsidiaries, outside India, of companies or bodies corporate registered or incorporated in India.

Expanded Scope of FCRA, 2010

2.59 The FCRA, 2010 has much broader applicability. It is applicable to individuals, HUF, association and a Section 25 company.

Similarly, the object of Act also changes from regulation to prohibition. The object of FCRA, 1976 was to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons. Where as role of FCRA, 2010 is to regulate the acceptance and utilization of foreign contribution or foreign hospitality and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activity detrimental to the national interest.

History of Foreign Contribution (Regulation) Amendment Act, 2020

2.60 After 2010, various amendments have been made to the FCRA with the main aim of increasing scrutiny of foreign contributions received by NPOs. Some major amendments were made to the Act which led to The Foreign Contribution (Regulation) Amendment Act, 2020. The Amendment Act was passed by the Parliament in September 2020 and notified on 28.09.2020. Some of the major changes are as follows:

1. **Prohibition to accept foreign contribution:** Under Section 3 of the Act, certain persons are prohibited to accept any foreign contribution. These include: candidates for election, editor or publisher or columnist of a newspaper, judges, government servants, members of any legislature, and political parties, among others. The Amendment adds public servant (as defined under Section 21 the Indian Penal Code) to this list. Public servant includes any person who is in service or pay of the government or remunerated by the government for the performance of any public duty.
2. **Transfer of foreign contribution:** Under the FCRA, 2010, foreign contribution could be transferred to only such person/s who were registered to accept foreign contribution or had obtained prior permission under the Act to obtain foreign contribution. The amendment now prohibits the transfer of foreign contribution to any other person (Section 7). The term 'person' under the Act includes an individual, a HUF, an association, or a registered company.
3. **Reduction in use of foreign contribution for administrative purposes:** The act placed some restrictions on the utilisation of foreign contribution. Under the Act, a person who receives foreign contribution must use it only for the purpose for which the contribution is received. Further, they could not use more than 50% of the contribution for meeting administrative expenses. It could be done but

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with the prior approval of the Central Government. Now this limit has been reduced to 20% (the provision regarding prior approval remains)

4. **Aadhaar for registration or renewal:** Any person seeking registration or renewal of registration or prior permission for receiving foreign contribution must make an application to the Central Government in the prescribed manner. The amendment has inserted a new Section 12 A under which any person seeking prior permission, registration or renewal of registration must provide the Aadhaar number of all its office bearers, directors or key functionaries, as an identification document. In case of a foreigner, they must provide a copy of the passport or the Overseas Citizen of India card for identification.
5. **Suspension of certificate:** Under the Act, the Government may suspend the registration of a person for a period not exceeding 180 days. The amendment now gives the Central Government the power to suspend the certificate for additional 180 days (in addition to the first 180 days).
6. **Surrender of certificate:** A new provision has been inserted (Section 14A) under which the central government can permit a person to surrender their registration certificate. When a request is made, the Central government may permit this, if after making an inquiry, it is satisfied that such person has not contravened any provisions of the Act, and the management of its foreign contribution (and related assets) has been vested in an authority prescribed by the government.
7. **Renewal of certificate:** A proviso has been added under which, when the person applies for renewal, the Central Government may before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in Section 12(4).
8. **FCRA account:** Under the 2010 Act, a registered person could accept foreign contribution only in a single branch of a scheduled bank specified by them. However, they could open more accounts in other banks for utilisation of the contribution. After the amendment, foreign contribution can now be received only in an account designated by the bank as "FCRA account" in such branch of the State Bank of India, New Delhi, as notified by the Central government. No funds other than the foreign contribution should be received or deposited in this

account. The person may open another FCRA account in any scheduled bank of their choice to which he may transfer funds for utilising any foreign contribution received by him in his “FCRA Account” in the specified branch of the State Bank of India at New Delhi or kept by him in another “FCRA Account” in a scheduled bank of his choice.

9. **Reporting:** The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person has opened his foreign contribution account has to report to specified authority about
 - (a) the prescribed amount of foreign remittance;
 - (b) the source and manner in which the foreign remittance was received; and
 - (c) other particulars as may be prescribed
10. **Restriction in utilisation of foreign contribution:** If a person accepting foreign contribution is found guilty of violating any provisions of the Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived foreign contribution may be utilised or received, only with the prior approval of the central government. The 2020 amendment adds that the government may also restrict usage of unutilised foreign contribution for persons who have been granted prior permission. If, based on a summary inquiry, and pending any further inquiry, the government believes that such person has contravened provisions of the Act, the CG may direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government

Changes Made in 2022 to the Foreign Contribution (Regulation) Rules, 2011 [FCRR, 2011]

2.61 The Central Government has introduced Foreign Contribution (Regulation) Amendment Rules, 2022 to amend the Foreign Contribution (Regulation) Rules, 2011 effective July 01, 2022. Most of the amendments are regarding increase in the timelines for reporting to the statutory authorities. Certain key changes are as follows:

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- a. **Increase in threshold limit for intimating receipt of Foreign Contribution** (Rule 6). Rule 6 is related to the intimation to the Central Government of receipt of a foreign contribution by a person from relatives [as defined in section 2(1)(r) of the FCRA, 2010]. The Amendment Rules 2022 has increased the threshold limit from **Rs. 1 lakh to Rs. 10 lakhs**. Accordingly, an Indian can now receive foreign contribution from a foreign relative upto Rs. 10 lakhs, without intimating the authorities regarding the same.
- b. **Increase in the timeline for reporting the receipt of Foreign Contribution**: The time limit to intimate the receipt of a foreign contribution from relatives (in Form **FC-1**) has been increased . The time limit has been increased from **30 days** from the date of receipt of such contribution **to 3 months**.
- c. **Increase in the timeline for reporting the opening an FCRA bank account**: One of the conditions of obtaining the FCRA registration or prior permission is that the organization making the application must have an FCRA Bank account.
- Rule 9(1) (e) prescribes furnishing intimation for the opening of an additional FC-utilization Bank Account for *utilization* of foreign contributions.
 - Rule 9(2)(e) prescribes furnishing an intimation for the opening of an additional FC-utilization Bank Account for utilization of foreign contribution in case of *prior permission*.
- The intimation has to given to the Secretary, Ministry of Home Affairs in Form 6D. The Amendment Rules 2022 has increased the time limit for intimating from **15 days to 45 days**. The said timeline has been increased in both cases i.e. for FCRA registration or FCRA prior permission.
- d. **Removal of requirement for intimating quarterly receipt of foreign contribution on official website or FCRA website** Previously, the Rule 13(b) required that any person receiving foreign contribution in a quarter of the financial year had to give details of foreign contribution received on its official website or on the website as specified by the Central Government (FCRA website) within fifteen days following the last day of the quarter in which it has been received. FCRA Rules, 2022 now announced that FCRA registered entitles shall not be

required to furnish any intimation of quarterly receipt either on their website or on the FCRA website.

- e. Increase in timeline for Intimation of Changes under Rule 17A:** The Rule 17A of FCRA 2011 provided that any person who has been granted a certificate of registration or prior permission had to intimate the following changes in the prescribed form electronically within **15 days** of such change.

SI. No	Form No.	Intimation of Changes
1	FC-6A	Change of name and/ or address within the State of the Association
2	FC-6B	Intimation – Change of nature, aims, and objects, and registration with local/relevant authorities in respect of the association
3	FC-6C	Intimation – Change of designated bank/ branch/ bank account number of designated FC receipt-cum-utilisation bank account
4	FC-6D	Intimation – Opening of additional FC-utilisation Bank Account for utilization of foreign contribution
5	FC-6E	Intimation – Change in original Key members of the association

The FCRA Amendment Rules 2022 has increased the time limit to furnish the intimation in Form 6A to Form 6E to 45 days from 15 days.

- f. Application for revision of an order:** As per earlier Rule 20, an application for revision of an order passed by the competent authority under Section 32 of the Act had to be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a **plain paper** along with a fee of Rs. 3,000/- only. The amendment provides for the application to be filed in the prescribed form **electronically**.

Major Provisions of FCRA, 2010

2.62 The major provisions introduced under FCRA, 2010 are as follows:

- (a) Restriction to Utilize Foreign Contribution for Administrative Purpose**

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Every Person who is registered and granted a certificate or given prior permission under this act and received any foreign contribution shall not defray as far as possible such sum, not exceeding twenty percent (was fifty percent prior to 2020 amendment) of such contribution, received in a financial year, to meet administrative expenses.

Elements which shall be included in the administrative expenses and the manner in which the administrative expenses shall be calculated are prescribed in Rule 5 of FCRA Rules, 2011.

Administrative Expenses

The Following shall constitute administrative Expenses:

- (i) Salaries, Wages, travel expenses or any remuneration realized by the members of the Executive Committee or Governing Council of the person;
- (ii) All expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
- (iii) All expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organization or Association is functioning, stationery and printing charges, transport and travel charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
- (iv) Cost of accounting for and administering funds;
- (v) Expenses towards running and maintenance of vehicles;
- (vi) Cost of writing and filing reports;
- (vii) Legal and professional charges; and
- (viii) Rent of premises, repairs to premises and expenses on other utilities:

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses, such as, salaries to doctors of hospital, salaries to teachers of school, etc.

(b) Foreign Contribution or Any Income Arising out of It Shall Not Be Used for Speculative Business

Rule 4 is specifying the activities or business which shall be construed as speculative business:

Speculative Activities

1. The following activities shall be treated as Speculative activities:
 - (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investments in mutual funds or in shares;
 - (b) participation in any scheme that promises high returns like investments in chits or land or similar assets not directly linked to the declared aims and objectives of the organisation or association.
2. A debt-based secure investments shall not be treated as speculative investment.
3. every association shall maintain a separate register of investments.
4. every register of investment maintained under sub-rule (3) shall be submitted for audit.

(c) Validity for Certificate of Registration

The certificate granted to accept foreign contribution shall be valid for a period of five years & the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to received, as the case may be.

(d) Renewal of Certificate

Every person who has been granted a certificate under Section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

(e) Application for Obtaining 'Registration' or 'Prior Permission' to Receive Foreign Contribution: Many changes have taken place since 2011 in method of reporting, forms, time limits, etc. so the updated rule is given along with old rule.

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Rule 9 of FCRR, 11-

(1) [(a) An application for certificate of registration by a person [under Section 11(1)], for acceptance of foreign contribution shall be made [in electronic form] in Form FC-3A with an affidavit executed by each office bearer and key functionary and member in Proforma 'AA' and

(b) an application for obtaining prior permission by a person under [under Section 11(2), for acceptance of foreign contribution, shall be made [in electronic form] in Form FC-3B [with an affidavit executed by each office bearer and key functionary and member in Proforma 'AA' appended to these rules.]

(c) The applicant shall upload the signed or digitally signed application along with scanned documents as specified by the Central Government from time to time;

(d) Any person making an application for registration under clause (a) of sub-rule (1) shall have an FCRA Account.

(e) The person may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and, in all such cases, intimation in electronic form in form FC-6D shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within forty five days of the opening of any account.

[(f) A person seeking registration under Section 12(4)(b) of the Act will have to meet the following conditions, namely:

(i) it shall be in existence for three years and have spent a minimum amount of rupees fifteen lakh on its core activities for the benefit of society during the last three financial years:

Provided that the Central Government, in exceptional cases or in cases where a person is controlled by the Central Government or a State Government may waive the conditions;

(ii) if the person wants inclusion of its existing capital investment in assets like land, building, other permanent structures, vehicles, equipment in the computation of its spending during last three years, then the chief functionary shall give an undertaking that the assets shall be vested henceforth with the person till the validity of the certificate and they shall be utilised only for the activities covered under the Act and the rules made thereunder and shall not be diverted for any other purpose till the validity of its certificate of registration remains valid.]

Legal Framework

- (1A) Every application seeking registration under clause (a) of sub-rule (1), made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.]
- (2) Clause a, b and c have been deleted.
- [(d) Any person making an application for obtaining prior permission under clause (a) of sub-rule (1) shall have an FCRA Account.
- (e) person seeking prior permission under this rule may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and in all such cases intimation [in electronic form in form FC-6D shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within forty five days of the opening of any account.
- [(f) A person seeking prior permission for receipt of specific amount from a specific donor for carrying out specific activities or projects mentioned in Section 12(4)(c) of the Act shall meet the following criteria, namely:-
- (i) submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given;
 - (ii) for the Indian recipient persons and foreign donor organisations having common members, prior permission shall be granted to the person subject to it satisfying the following conditions, namely:
 - (A) the chief functionary of the recipient person shall not be a part of the donor organisation;
 - (B) seventy-five per cent. of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;
 - (C) in case of foreign donor organisation being a single individual that individual shall not be the chief functionary or office bearer of the recipient person; and
 - (D) in case of a single foreign donor, seventy-five per cent. of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor.]

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[(2A) Every application for obtaining prior permission under clause (a) of sub-rule (1) made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.]

(3) No person shall prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

(4) [(a) An application made for the grant of *prior permission* shall be accompanied by a fee of rupees 5,000 (five thousand) only, which shall be paid through the payment gateway specified by the Central Government.]

[(b) An application made for the grant of registration shall be accompanied by a fee of rupees 10,000 (ten thousand) only, which shall be paid through the payment gateway specified by the Central Government.]

(c) The fee may be revised by the Central Government from time to time.(5) Notwithstanding anything contained in sub-rules (1) to (4), every application made for registration or prior permission under the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under these rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

The old rule 9 from FCRR, 2011 has changed considerably over the years. The main details are given below for information purposes.

Old Rule 9

- (i) An application for registration of a person for acceptance of foreign contribution shall be made electronically online in form FC-3 and shall be followed by forwarding the hard copy of the online application duly signed by the chief functionary of the association together with the required documents.
- (ii) The hard copy shall reach within thirty days of the submission of the online application.
- (iii) An application for obtaining prior permission of the Central Government to receive foreign contribution shall be made electronically online in form FC-4 and shall be followed by forwarding the hard copy.

- (iv) An application made for the Grant of the registration shall be accompanied by a fee of Rs. 2000 and for the grant of prior permission shall be with a fee of Rs. 1000.
- (v) Every application made for registration or prior permission under the FCRA, 1976 but not disposed of before the date of commencements of the Foreign Contribution Regulation Rules 2011 shall be deemed to be an application for registration or prior permission, as the case may be under these rules, subject to condition that the applicant furnishes the prescribed fees for such registration or prior permission as the case may be.]

(f) Procedure for Renewal of Registration Certificate (Rule 12)

(1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application.

[(2) An application for renewal of the certificate of registration shall be made to the Central Government in electronic before in Form FC-3C accompanied with an affidavit executed by each office bearer, key functionary and member in Proforma 'AA' appended to these rules within six months from the date of expiry of the certificate of registration.]

[(2A) Every person seeking renewal of the certificate of registration under Section 16 of the Act shall open an FCRA Account and mention details of the account in his application for renewal of registration.

(2B) Every application for renewal of the certificate of registration made under sub-rule (2) before commencement of these rules, but not disposed of, shall be considered after furnishing the details of FCRA Account.]

(3) An application made for renewal of the certificate of registration shall be accompanied by a fee of rupees five thousand only, which shall be paid through payment gateway specified by the Central Government.]

(4) A person whose certificate of registration has ceased to exist can neither receive or utilise the foreign contribution until the certificate is renewed.

(5) If no application for renewal of registration is received or the application is not accompanied by requisite fee before the expiry of the validity of the certificate of registration, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of certificate of registration.

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(6) The amount of foreign contribution lying unutilised in the FCRA Account and utilisation account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.

(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Central Government as per the provisions of rule 9.

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee [and with late fee of Rs.5000/- (Five Thousand rupees only)], but not later than one year after the expiry of the original certificate of registration

(g) *Intimation of Foreign Contribution by the Recipient*

- (i) Every person who receives foreign contribution under the act shall submit a signed or digitally signed report [in electronic form] in Form FC-4 with scanned copies an income and expenditure statement, receipt and Payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.
- (ii) The annual return in form FC-4 shall reflect the foreign contribution received in the exclusive bank account and include the details in the respect of the funds transferred to other bank accounts for utilization.
- (iii) If the foreign contribution relates only to articles, the intimation shall be submitted in form FC- 1.
- (iv) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form FC-1.
- (v) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.
- (vi) Every such return in Form FC-4 shall also be accompanied by a copy of a statement of account from the bank where the exclusive foreign

contribution account is maintained by the person, duly certified by an officer of such bank.

- (vii) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.
- (viii) A 'NIL' report shall be furnished even if no foreign contribution is received during a financial year.

Provided that where foreign contribution has not been received or utilised during a financial year, it shall not be required to enclose certificate from Chartered Accountant or income and expenditure statement or receipt and or receipt and payment account or balance sheet with Form FC-4.

(h) Reporting by Banks of Receipt of Foreign Contribution

The bank shall report to the Central Government within **forty-eight** hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act [Rule 16]

This change was made in December 2015. Prior to this, reporting was within 30 days. The deleted rule read as follows:

Rule 16: The bank shall send a report to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within duration of thirty days, by any person, whether registered or not under the Act and such report shall include the following details:

- (i) Name and address of the donor.
- (ii) Name and address of the recipient.
- (iii) Account number.
- (iv) Name of the bank and branch.
- (v) Amount of foreign contribution (in foreign currency as well as Indian rupees.)
- (vi) Date of receipt.
- (vii) Manner of receipt of foreign contribution (Cash/ cheque/ electronic transfer, etc)

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(i) Receipts of Foreign Contribution in Excess of One Crore Rupees in Financial Year

In case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilization of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain. Besides, the Central Government shall also display or upload the summary data of such persons on its website for information of the general public.

(j) Intimation of Receiving Foreign Contribution From Relatives

Any person receiving foreign contribution in excess of ten lakh (was one lakh rupees prior to 1st July, 2022) or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within 3 months (was thirty days prior to 1st July, 2022) from the date of receipts of such contribution.

(k) Guidelines For Declaration of An Organization to be of A Political Nature, Not Being A Political Party

The Central Government may specify any organization as organization of political nature on one or more of the following grounds:

- (i) Organization having allowed political objectives in its Memorandum of Association or bylaws;
- (ii) Any Trade Union whose objectives include activities for promoting political goals;
- (iii) Any voluntary action group with objectives of a political nature or which participates in political activities;
- (iv) Front or mass organization like students Unions, Worker' Union, Youth Forums and women's wing of a political party;
- (v) Organization of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligns to any political party but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interest of such groups;

- (vi) Any organization, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail rook' or 'jail bharo' in support of public causes.

The organisations specified under clauses (vi) and (vii) shall be considered to be of political nature, if they participate in active politics or party politics, as the case may be.

(l) Bank Account

Under FCRA, 2010 Act, a registered person who had been granted a certificate or given prior permission could **receive** foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate. However, they could open more accounts in other banks for **utilisation** of the contribution. After the 2020 amendment in FCRA Act, foreign contribution can now be received only in an account designated by the bank as "FCRA account" in such branch of the State Bank of India, New Delhi, as notified by the Central government. No funds other than the foreign contribution should be received or deposited in this account. The person may open another FCRA account in any scheduled bank of their choice to which he may transfer funds for **utilising** any foreign contribution received by him in his "FCRA Account" in the specified branch of the State Bank of India at New Delhi or kept by him in another "FCRA Account" in a scheduled bank of his choice.

(m) Prohibition to Transfer Foreign Contribution to Other Person

Under the FCRA, 2010, foreign contribution could be transferred only such person/s who were registered to accept foreign contribution or had obtained prior permission under the Act to obtain foreign contribution. The 2020 amendment now prohibits the transfer of foreign contribution to any other person (Section 7) i.e. It cannot be transferred to any one.

(n) Cancellation of Registration Certificate

Under Section 14, the Central government may cancel the registration certificate for various records. However, no certificate shall be cancelled unless reasonable opportunities of being heard certificate are: (i) Providing false information,

- (i) Violating any of the terms and conditions of the certificate or renewal there of, or

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- (ii) in the opinion of the central government, it is necessary in the public interest to cancel the certificate, or
- (iii) the holder of certificate has certificate has violated any of the provisions of this Act or rules, or
- (iv) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has becomes defunct. Any persons whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior for a period of three years from the date of cancellation of such certificate.

(o) Surrender of Certificate

A new provision has been inserted (Section 14A) under which the central government can permit a person to surrender their registration certificate. When a request is made, the Central government may permit this, if after making an inquiry, it is satisfied that

- such person has not contravened any provisions of the Act, and
- the management of its foreign contribution (and related assets) has been vested in an authority prescribed by the government.

(p) *Management of foreign contribution of person whose certificate has been cancelled or surrendered*

If the certificate of registration of a person who has opened an FCRA Account under Section 17 is cancelled, or surrendered u/s 14A, the assets created out of the FC and the amount of foreign contribution lying unutilised in that Account shall vest with the prescribed authority under the Act.

(q) *Business/Consulting Income of an NGO*

The notable change in FCRA 2010 is that foreign contribution does not include commercial receipts. Any consulting or commercial receipt from foreign source by NGO will not be included as foreign contribution.

(r) *Foreign Company and Foreign Source*

As per provisions of Section 2 (j) which defines the form foreign source includes an Indian company under the category of foreign source if more than 50% of its equity is held by foreigners.

(s) Panchayat

Panchayat has been Defined as Legislature Panchayat has been included under the definition of Legislature under Section 2 (1) (k). The implications of this charged is that a member of a panchayat cannot receive any foreign contribution.

Definitions under FCRA, 2010

2.63 Some of the definitions under FCRA, 2010 are as follows:

Foreign Contribution “Foreign Contribution” means the donation, delivery or transfer made by any Foreign Source:

- of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
- of any currency, whether Indian or foreign;
- of any security as defined in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in Clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1 – A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more person, shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 2 – The interest accrued on the foreign contribution deposited in any bank refer to in Sub-Section (1) of Section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3 – Any amount received, by any person from any foreign source in India, by way of fee (Including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or service rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;

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Foreign Source

"Foreign Source" Includes,

- (i) The Government of any foreign country or territory and any agency of such Government;
- (ii) Any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) a company within the meaning of the Companies Act, 1956 (now Companies Act, 2013) and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:
 - (a) the Government of a foreign country or territory;
 - (b) the citizens of a foreign country or territory;
 - (c) corporations incorporated in a foreign country or territory;
 - (d) trust, societies or other associations of individuals (Whether incorporated or not), formed or registered in a foreign country or territory;
 - (e) foreign company.Provided when the nominal value of the shares is within the limits specified under FEMA or its regulations, such company will not be considered as foreign source.
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- (ix) a society, club or other association of individuals formed or registered outside India;

- (x) a citizen of a foreign country.

Person

Person includes:

- (i) an individual,
- (ii) a Hindu undivided family (HUF),
- (iii) an association,
- (iv) a company registered under Section 25 of the Companies Act, 1956.

Note: FCRA has not been amended to include company registered under Section 8 of the Companies Act, 2013.

Account and Audit

2.64 Every NGO/ NPO which has permission to receive foreign contribution has to submit an Annual Return to the Ministry of Home Affairs (MHA), online before **31st December** for its foreign fund receipts for the previous financial year. Also, if FCRA NGOs do not receive foreign contribution Filing a Nil return is mandatory. Until 2015, this format was called the FC-6; later, with a few modifications, it was called the FC-4 form and are available on the website of FCRA, year-wise, since 2006.

Further every organization receiving foreign contributions is required to furnish a certificate from a chartered accountant. The proforma of the certificate to be given by the chartered accountant is provided in Form FC-4. Along with this certificate, audited Balance Sheet, Income & Expenditure statement and the statement of receipt and payment account should also be submitted.

On the basis of the relevant books and vouchers, the chartered accountant is required to certify the following:

1. The brought forward balance of the foreign contribution at the beginning of the year.
2. The foreign contribution received during the year
3. The unutilized balance of foreign contribution at the end of the year
4. Certify that the association has maintained the account of foreign contribution and records relating thereto in the manner specified in the Foreign Contribution (Regulation) Act, 2010.

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5. The information furnished in the certificate and in the enclosed balance sheet, income & expenditure statement and statement of receipt and payment are correct.

Method of Accounting

2.65 The FCRA 2010 and the rules there of do not specify any method of accounting. Section 19 of the FCRA 2010 provides that accounts with regard to FC receipt & utilization should be maintained. On a plain reading of Section 19 of FCRA 2010, Rule 16 & form FC – 6, it seems that the requirement is to report FC Fund received and utilised during the year. In other words, the receipts of fund shall be on cash basis only. There is no specific direction regarding utilization on payment basis only. FCRA 2010 does not prescribe any fixed method of accounting. Any method of accounting may be followed but the receipts of FC Funds should be reported on cash basis only.

Role of Chartered Accountants

2.66 Since the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) is national security legislation; associations are required to exercise extreme care and caution in dealing with foreign contribution from the time of its receipt to its final utilization. As the Chartered Accountants audit the accounts of the associations and certify the accounts before submission to the Government, they are required to provide proper guidance to the associations who is either applying for grant of prior permission/ registration or who have been granted prior permission/registration under FCRA, 2010.

2.67 The Chartered Accountants are required to get themselves thoroughly acquainted with FCRA, 2010 and the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011) so that they can help the associations:

- (i) To verify whether the associations are eligible to receive foreign contribution.
- (ii) To guide the applicant organization in submission of application for registration/ prior permission;
- (iii) To ensure that the association receives and utilizes the foreign contributions through its bank account exclusively opened for the purpose in accordance with the provisions of FCRA, 2010 and FCRR, 2011 and that foreign contribution is not deposited or utilized from the bank account being used for domestic funds.

Legal Framework

- (iv) To assist in the proper maintenance of prescribed books of accounts in accordance with the provisions of FCRA, 2010 and FCRR, 2011;
- (v) To ensure that the annual returns of an association have been prepared in accordance with the provisions of FC(R) Act, 2010 and FCRR, 2011.

Frequently asked question on FCRS are given as **Appendix 4**.

Chapter 3

Key Concepts

3.1 While a for-profit and a not-for-profit organisation have a lot in common, there are some areas which require a different approach in case of not-for-profit activities. They are either distinctive to the not-for-profit organisation (NPO) or demand special attention from the management.

A for-profit enterprise focuses on profitability and maximizing shareholder value. A not-for-profit organization's primary goal is to provide some socially desirable need on an ongoing basis. However, since both involve running an organisation and providing goods or services, most for-profit accounting and financial management principles apply to not-for-profit organisations as well. But there are some areas which require a different approach in case of not-for-profit activities. Before going into details of internal audit, it is necessary to have knowledge of these significant concepts relating to these enterprises. This Chapter presents some key concepts relating functioning of NPOs. Major areas of internal audit significance would include:

Revenue

3.2 Most NPOs derive their income from non business transactions like donations, contributions, grants, programs or events contributions, subscription or membership fees, or investment income. Another mode which is commonly used nowadays is fundraising through social media campaigns and crowdfunding Revenue is not received as a part of exchange between the NPO and a third party in most cases. There are usually statutory and tax prohibitions on carrying out commercial activities. If the NPO carries out such business activities, the express condition is that either the entire revenue has to go toward meeting their objectives and should be related to their mission. However, it would be wrong to assume that all NPOs survive on contributions from a vast multitude of general public. Publicly-supported charities, form just a small segment of the non-profit sector in terms of assets or revenue.

3.3 There are various methods by which NPOs get funds:

Sources of Funding

- (i) **Private funding:** Many NPOs are funded by private foundations, wealthy individuals or corporate houses. E.g. Infosys Foundation, Azim Premji Foundation, Bill and Melinda Gates Foundation.
- (ii) **Direct public support:** NPOs may get funds from numerous individuals and businesses. Such NPOs get donations from individuals, private foundations, and businesses, each donation being limited to a small percentage of the total revenue. Each contributions forms small percentage of NPOs revenue. For e.g., CRY (Child Relief and You) receives funding from several sources.
- (iii) **Indirect public support:** Two major indirect sources are governments and publicly-supported granting agencies (including other publicly-supported NPOs and public foundations). In the second case, the support is through a general public, but via an intermediary. This form of public support is particularly useful to large charitable or religious organisations as they do not have to put in effort to use the full amount statutorily required to get tax exemption. They can give the money to smaller grassroots level NPO who find difficult to raise funds. For e.g., GIVE Foundation, CRY (supports 300 organisations).
- (iv) **Grants:** Grants are financial donations given by a foundation, corporation or government agency. Grants are usually a large amount which help a NPO fund a program or purchase supplies. Grants also build a non profit's visibility and credibility. Once a NPO gets a a grant from a notable organization, it gets attention and is able to attract new donors. In India, various ministries provide grants for specific issues. e.g. NGOs which work as Women Helplines, Beti Bachao Beti Padoo schemes can get grants from Ministry of Women and Child Development schemes. NGOs like The Humsafar Trust, The Naz Foundation working to combat HIV prevention and care get grants from government under The National Aids Control Programme (NACP)
- (v) **Matching grants:** Many grant funding agencies approve a grant if the NPO can prove that they are capable of raising funds themselves for the projects undertaken. The NPO usually has to prove this by raising the same amount which is offered by the grant making agency.
- (vi) **Fundraising campaigns:** NPOs hold fundraising campaigns many a time to raise awareness about their missions or their specific

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initiatives. These campaigns are a concentrated effort to solicit major donations. They may be awareness campaigns to educate people or campaigns conducted annually on a specific date (e.g. Year end, foundation day or a festival day) or periodically in various forms to meet revenue goals.

- (vii) **Crowdfunding:** In recent years, crowdfunding using various social media platforms has become popular. Funds are raised online for a project through small donations given by individual supporters. There are even dedicated websites like GoFundMe through which funds can be raised. However, both fundraisers and donors need to be aware of the tax implications and legal issues. Recently some well-known individuals got into trouble with tax authorities and were taxed heavily when they raised money through crowdfunding platform. As they did not have registration and /or permissions to raise money, one third of the money raised went towards taxes and did not reach the real recipients. Three things should be ensured while using crowdfunding:
- (a) Donations should be channelled through a NPO to the cause the fundraiser wants to support. If an individual or non NPO raises the money and then transfers the money to a NPO, the fundraiser has to pay tax on the amount raised.
 - (b) The NPO should have an 80G certificate, then the donor can get tax benefit as well.
 - (c) If the donor is a foreign citizen, the NPO needs to have a FCRA licence. If the NPO doesn't have the licence, it cannot allow foreign citizens to donate as it is a violation of law to receive foreign contribution.
- (viii) **Program service revenue:** to fulfil their mission many NPOs engage in a trade or business that is substantially related to their mission and raise funds through it. That is, they engage in an activity which is an exchange transaction and generate revenue. The NPO has to tread cautiously because only if the activity falls under exempt services, the revenue generated is exempt from tax. In many countries, the governing statutes or tax laws provide a list of revenue-generating activities which may be carried out by the NPOs. The tax authorities may also decide exemption based on the details of the organization's mission statement and description, and their past treatment. In India, Income Tax Act, 1961 provides exemptions to certain NPOs if their

activities are for "charitable purpose" [which includes relief of the poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic and historic interests and the advancement of any other object of general public utility.] There is also not tax on income from a business that is incidental to the attainment of the objects of the not-for-profit organization, provided the entity maintains separate books and accounts with respect to such business (Section 11 of the Income Tax Act, 1961). The NPO/NGOS have to be very watchful with regard to the residuary Tax Act specifies clause of the definition of charitable purpose –the advancement of any other object of general public utility. if the NPO carries on any activity in the nature of trade, commerce or business for a consideration and exceed the specified monetary limit, it will not be regarded as charitable purpose EVEN if the income is applied for the predominant purpose of charity. Furthermore, certain activities resulting in profit, such as, renting out auditoriums, are not treated as income from business. Of course, certain conditions need to be met which would be covered in detail in the chapter 'Legal Framework under taxation.

- (ix) **Investment income:** If used and managed properly, investments are beneficial to all entities, whether NPO or not. However, it has to be kept in mind that the avenues of investment are restricted if they want to get the benefits of tax exemptions.

In order for income to be exempt, NPO is required to apply 85% of income to charitable or religious purposes (the definition of what is included under charitable or religious purposes is specified under Income Tax Act and mentioned in earlier chapter). Income utilized for purchase of capital asset, revenue expenditure and donation to trust registered under Section 12AA and Section 10(23C) shall also be treated as applied for charitable purposes and treated as exempt. If it is unable to apply 85% of income in its entirety, the income is still exempt if

- Income is deemed to be applied in specified scenarios
- trust is allowed to accumulate or set aside 85% of income if certain conditions are satisfied
 - Furnish form 10 (notice of accumulation) on or before due date of filing

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- Mention the purpose for which accumulated or set aside
- Income shall not be accumulated for more than 5 years
- Money so accumulated is set aside or invested in specified mode

The specified modes being:

- Investment in government saving certificate/UTI
- Deposit in post office savings bank/scheduled bank/co-operative bank
- Investment in immovable property
- Investment in any security for money created and issued by the Central or State Government
- Company debentures fully and unconditionally guaranteed by Central or State Government
- Investment or deposit in public sector company
- Deposit with or investment in bonds of a financial corporation or public company (registered in India) engaged in providing long term finance for India's industrial development

(x) **In kind contributions:** Many NPOs, including funding agencies, receive a large amount of donations or support in the form of goods or services. Common examples of in-kind contributions include donated rent, utility payments, materials, and services, such as, advertising. They also receive assets as donations like vans or equipment which are also gifts in-kind. In some situations, NPOs are granted discounts for the purchase of certain items. There are certain tricky cases where it is difficult to estimate the value. For instance, an NPO decides to provide certain infrastructure facilities for the welfare of the local community. The local people might contribute in the following manner:

- (i) They agree to provide labour at a lower cost or work without wages;
- (ii) Allow free use of tractor-trolley for carrying stone, mud ,cement etc.;
- (iii) Providing free saplings during tree plantation;
- (iv) Allowing free use of personal shed for school / meetings.

- (xi) **Unrelated Business income and other income:** A NPO may earn revenue from various other activities. For instance, interest, investment income (other than those exempted), unused capital gains and other unrelated business income. Unrelated business income is income from business activities that aren't considered to directly advance the mission of the organisation. Unlike other sources of revenue, unrelated business income is taxed at normal corporate income tax rates. It is essential however, that the NPO should ensure that the activities carried out are not prohibited by the statute under which the entity is formed. This may result in de-registration or loss of exemption.

Budgeting

3.4 A unique feature of NPO funding is that there is almost no exchange transaction with the resource providers. The resources provided are used for others. The organisation thus has to demonstrate its stewardship of donated resources — money donated for a specific purpose must be used for that purpose. That purpose is either specified by the donor or implied in the not-for-profit's stated mission or internal guidelines. The management and reporting activities should clearly demonstrate that the money was used as directed. Thus, budgeting is a vital exercise for not-for-profit organizations.

3.5 Budget is an important tool to manage the financial health of an NPO. It serves as a benchmark for measuring current income and expense. A budget can also help in predicting tough financial times, and thus gives plenty of time for contingency planning if grants or other income sources fall through. Lastly, NPOs have to provide project and grant budgets to donor agencies while applying for funds as well as progress reports.

3.6 New organizations may start the budgeting process by looking at potential income -- figuring out how much money they have to spend. Existing organizations can develop the budget as by reviewing its history of contributed income and stability of earned income. Ideally, the budgeting process should include those who are responsible for adhering to the budget and those who are responsible for achieving the organisation's objectives, i.e., both finance committee members and senior staff.

3.7 The budgeting process should be documented, with tasks, responsibility and timelines clearly stated. A good budgeting process would incorporate strategic planning initiatives. With uncertain nature of income, the NPOs need to identify fixed costs and relate it to reliable revenue. They need

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to adopt policies that allow a balance between today's operating needs and maintaining the ability to provide for tomorrow's. Budgeting decisions are driven both by mission priorities and fiscal accountability. Another thing to be remembered is that budgets should not be 'set in stone' because there is lot of uncertainty regarding income so financial position of the NPO may change throughout the year. There needs to be a periodic review of the budget to compare it with the actual cash flow and expenses and the budget has to be amended if the need arises.

3.8 Each organisation would have its own style of budgeting. The internal auditor can confirm whether good budgeting practices are being adhered to. Some good budgeting practices are as follows:

- (i) **Written:** It is always recommended that the budget is written down. This creates a measurement tool against which progress can be monitored and a checklist to ensure thoroughness in the process.
- (ii) **Timeline:** Many funding agencies require budget at the beginning of the fiscal year. Since NPO usually have a shortage of staff, the annual budget process should be integrated into the schedule such that the key persons have time to focus on it.
- (iii) **Headings and title:** Ensure that proper headings are given. This would include name of organisation, programme details and budget period. To avoid unnecessary confusion, many organisations mark the approved budget as final budget.
- (iv) **Involvement:** While the executive directors and program directors play a significant role in the budget process, it is the departmental staff members who have responsibility for adhering to budgets. Hence, they should also have a role in preparing those budgets. Staff members know more about operating details than board members, even the involved ones. With the limited manpower in most NPOs, it is probably more efficient for staff to create the early drafts of budgets and use the time of Finance Committee members to review and vet the proposed drafts.
- (v) **Assignment of responsibility:** The major reason for success of a budget is proper delegation. Tasks need to be listed specifically to be done within a given timeline. Ideally, there should be a person who has the leadership responsibility to ensure that the assigned task is completed within dead timeline. When a person knows he or she will be held personally accountable to have completed the assigned task by the dead timeline, it is more likely to get done.

- (vi) **Inflation:** The budget should take into account inflation. Many a time, there is time gap between the submission and approval of budget by the donor agency or funding agency. By implementation stage, the estimates may become useless. Items like salaries, audit fees, contractors' fees and taxes have a high probability of revision. For such items ensure whether there is provision for renegotiation.
- (vii) **Basis of Calculation:** The basis of calculation of each and every line item is available. This is especially, required for responding to any query from outside agencies and external reporting requirements.

Effective comparisons can be made between budget and actuals if the budget line items are in sync with the financial statement line items. A mismatch would entail additional work to reconcile the two and may also lead to errors.

- (viii) **Details:** The budget presented to the Board is a summary. But staff, Finance Committee members and Internal auditors would need the complete details. The details of budget components should be readily available. This could be done with the help of spreadsheet which has linked worksheets or worksheet tabs. Each line item in the Budget summary could be linked to a worksheet which would provide the breakup, e.g., insurance line item would be linked to a worksheet containing details of types of insurance, like, general liability, vehicle insurance, asset insurance, officers' liability etc. Revenue would include details of events, projects, concerts, prices, discounts. Details of Contributed revenue would include name and amount of donations. In-kind contributions can be included on this worksheet or on a separate one, depending on the quantity and complexity of such contributions. In a similar manner, details of Personnel and external consultants, business expenses (interest, licenses, office expenses etc.), rent, transportation, capital expenditure should be available.

Management of Contributions

3.9 A question arises as to how to describe to potential contributors the act of giving money. For most people the word donation and contribution may mean the same thing. That's why the two words are often interchanged especially in terms of charity. If you are donating to charity, you are contributing to the cause but sometimes using one word instead of other can confuse people. If we examine the dictionary meanings of the words, we get that donation is a gift or anything given to benefit a cause. it can be

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monetary, material things or services. The term 'donation' has a clear meaning linked to charitable giving, 'contribution' has multiple meanings. Contribution is giving or supplying something that plays a significant part in making something happen. It can be

- a gift or payment to a common fund or collection (e.g. she contributed 'x' amount to cancer research).
- sum of money given to help a person or a cause (e.g. Money given for treatment, medicine, education, food etc.)
- something that you give or do to help produce or achieve together with other people.
- the part played by a person in bringing about a result or helping something to advance in some field (e.g. Nikola Tesla is known for his *revolutionary* contribution in the field of electricity and magnetism)
- a piece of writing that is published as part of larger work (magazine, newspaper or book)
- a regular payment made to an employer or government for something (such as health insurance or pension)

The word contribution thus has other connotations and also relates to duties and obligations. People usually associate the act of donating as self-oriented which has positive sentiments of voluntary action and charity, while the term 'contribution' is more associated with the negative sentiments of duty and taxation. So, in charitable giving settings, money given is mostly referred to as 'donation' when speaking to general public or potential contributors. However, in corporate and legal parlance the word 'voluntary contribution' is used.

The Income tax Act, 1961 too uses the word voluntary contribution for donation. Voluntary contributions are considered as income of the trust / institution. Charitable trusts or institutions may obtain voluntary contributions as donations from the public. The funds given by public are classified into following types:

- **Voluntary contribution received with specific direction:** They will form part of the corpus fund exempt from taxation. This is recognized as income under Section 2(24) (iia) and exempt under Section 11(10)(d) the provision of accumulation or application will NOT apply.

- **Without specific direction:** This is donation received without any restriction it is recognized as income under Section 2(24) (iia). It is also deemed to be income derived from property under trust. The provision of accumulation or application will apply.
- **Anonymous Donations:** An entity should try to document all private, individual donations, regardless of how small or large the monetary amount. "Anonymous" donations should be to a minimum. The organization must keep a basic record (name, address and other prescribed particulars) of voluntary contribution received. In case of failure to maintain these records, donation received would constitute anonymous donation as per Section 115BBC and taxed.

3.10 **Voluntary contribution received without specific direction:** Section 12 of the Income Tax Act provides that voluntary contributions received by trust or institution wholly for charitable and religious causes is deemed to be income derived from the property under trust. Requirement of Section 12 in this regard is as follows:

- It has to be received by trust or institution wholly for charitable and religious causes.
- It must be from voluntary contribution.
- The said contribution are used solely for charitable and religious causes.

In recent times (especially during the COVID-19 outbreaks) when individuals or institutions have collected money to help the general public but since their institution were either not registered at all or registered but not as trust or institution (whose objects are not specifically exempt under the Income Tax Act) that they have had issues with the tax authorities for e.g. private individuals or groups which raised money (and were not registered as charitable organization) had to pay tax at 30% and those who didn't know and/ or didn't pay tax were penalised .

Another question arises as to why Voluntary contribution with specific direction is DEEMED to be income derived from property under trust. Section 11(1) (a) of the Income tax act provides exemption to income received **from property held under trust** if the income is used for charitable or religious purposes. In practice, all income received will not be from property. one such example is donation. If the income is not from property under trust it cannot be said to be INCOME APPLIED within the meaning of Section 11(1) (a). To

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remove this anomaly a deeming provision has been brought under Section 12. So, under this voluntary contribution other than corpus donation is deemed to be income derived from property held under trust so that the organization can get exemption.

3.11 Voluntary contribution received with specific direction: This is commonly called 'Corpus' donation. Corpus is a Latin word, which means body. The term 'corpus' in corporate usage denotes the sum and substance of an entity. For a NPO, corpus fund are of paramount importance Just like the capital of a commercial organisation – the funds generated and kept aside for the existence and sustenance of the organisation. It is a permanent fund kept for the basic expenditures needed for the administration and survival of the organisation. It is, generally, not allowed to be utilised for attainment of organisational objectives but interest/ dividend accrued on the corpus funds can be utilised or accumulated. In case of a trust, the corpus is started by the settler. For other types of NPO, a donation is treated as corpus donation only if it is accompanied by a specific written direction of the donor. In the absence of any written direction of the donor, a contribution or grant cannot be transferred to corpus fund. Corpus fund is an unrestricted permanent fund, i.e., there is no bar on the purpose for which the funds are used but its use should be restricted to preserve the financial base of the NPO. A corpus fund may be used in exceptional circumstances, when there is a serious financial emergency or the survival of the NPO is at stake. However, a large corpus may also invite questions from donors and public as the creation of a corpus fund implies reduction of program activities to that extent. In the long run, an unprotected corpus may also attract undesirable people.

For specified NPOs (whose objects are under category in section under the Income tax Act, the income is recognized under Section 2(24)(ii) of the Act and exempt under Section 11(1)(d). The provision of application or accumulation does not apply to corpus donation.

3.12 Anonymous Donations: It is recommended that the entity should document all private, individual donations, regardless of how small or large the monetary amount. "Anonymous" donations should be minimum. The organization must keep a basic record (name, address and other prescribed particulars) of voluntary contribution received. If a donor wishes to be anonymous, the NPO can issue a receipt to the individual with the details and agree to keep the information confidential and list the donations as anonymous in public documents. This is essential as anonymous donations

may result in disallowance under Income Tax. Under Section 115BBC, all anonymous donations to charitable organizations are taxable (with few exceptions). Many unscrupulous persons were using anonymous donations as a route to bring unaccounted money so Section 115BBC was inserted by the Finance Act, 2006. Section 115BBC defines anonymous donation as any voluntary contribution referred to in sub-clause (iia) of clause (24) of Section 2, where a person who is receiving such contribution does not maintain any record towards the identity having a name, address, etc. Finance (No.2) Act, 2009, has provided some relief by stating anonymous donations aggregating up to 5% of the total donations received by the organization or a sum of Rs.100,000, whichever is higher, will not be taxed. Additionally, religious organizations (e.g., temples, churches, mosques, etc) are exempt from the provisions of this Section.

Creation of Corpus

3.13 As discussed above, corpus can be created in case of a trust by the settlor. In other types of NPOs corpus can be created only when a written consent is received from the donor. For instance, a NPO puts a donation box with the inscription “donations will be added to the corpus”, the donation accumulated in the box will still not be considered corpus as there is no specific direction in writing. Corpus can also be created by the NPO out of its internal accrual and surpluses. These could be out of the current year’s income or other available Unrestricted Funds. To create a corpus fund from the current year’s income the prevailing legal provisions and the bye-laws of the organisation have to be kept in mind. For instance, for charitable trusts, the Income Tax Act requires that 85% of voluntary contribution received have to be applied for charitable purposes. In other words, a maximum of 15% of the income can be transferred to the corpus fund each year.

Management of Endowment Funds

3.14 Legally, an Endowment Fund is similar to a Corpus. The difference is only with respect to use of income from the Endowment Fund. Such a Fund is created under specific direction from the Donor. A donor cannot specify that funds donated for corpus should be used for a specified project whereas it can be done so in case of income from the Endowment Fund. Endowments can be earmarked for specific activities. The management of endowment funds –both principal and income are vital to an NPO. Getting funds is only

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half the story, the NPO should have the capacity to steward its endowment funds and maximize their impact.

The fund management has following two aspects:

- (i) Investment, oversight and reporting of Endowment fund.
- (ii) Restrictions on spending of endowment fund interest and dividends.

3.15 The investment decisions would be based on allowable investments, investment performance reports, market practices, etc. The statutory and tax prohibitions also have to be taken into account. The NPO should have specific guidelines and policies with regard to the above. Some restrictions imposed on the endowment funds are:

(i) Donor Restrictions: The decision on spending endowment income or principal may not be in the hands of the organization's leadership. Most of the time NPOs try to raise money from donors on an unrestricted basis, i.e. utilize the fund for the purpose the NPO as deemed fit. This provides flexibility to use the funds and income in an optimum way across various projects and programmes. But many a time, donors specify that the contribution should be used for a specified purpose within the organization's scope of activities. For instance, X donates Rs.2 lakh to be spent towards providing cycles to each girl student in 5 villages in Madhya Pradesh. Sometimes, a donor may require that the contribution not be used until a project has reached a predetermined goal or threshold. Thus, the concept of "unrestricted" and "restricted" comes in.

(ii) Endowment for "Perpetuity" but the Program is not: Many donors specify that the contribution is used for a specified project or program. In such a case, when the donor restriction expires, i.e., when a stipulated time restriction ends or purpose restriction is accomplished, the assets are reclassified as unrestricted net asset. In some cases, the donor stipulates that the contribution must be held by the non-profit in perpetuity (forever, not be used up), like, to provide a scholarship to the topper in the institution every year. The amount is to be recorded as a permanently restricted asset. The problem arises if the income is restricted to support a specific program or service of the organization—with an uncertain future. If there is any chance that such a "perpetually" endowed program or service could later be discontinued, there must be clear understanding and agreement with the donor at the time of the gift regarding an acceptable alternative application of such funds.

(iii) Utilisation of Endowment Funds and Income: For most organisations, there are two aspects of funds management—revenue from its business and management of investments and funds ploughed back. Revenue for NPO would be the collection from events, programmes, etc. which in most cases are not sufficient to run the organisation. The main source of funds is endowment funds. It has to pay special attention to proper utilization of its endowment income. By establishing appropriate investment and endowment spending policies, institutions can judiciously place the spending fulcrum on the time continuum. An investment policy would state the appropriate asset mix based on the entity's needs and risk tolerance. It should include both a means of determining permissible current spending and a calculation of endowment principal. The organization needs to decide how the income from endowment is handled, then attention must be given to the principal asset (the corpus).

Endowment Income

3.16 The NPO needs to make certain decisions regarding spending of endowment income. The first question is whether the organization will spend any of the income. If yes, what percentage of it? Then the question arises as to how it will spend it. If the organization decides to spend endowment income, it may direct this income toward annual operation expenses to provide some relief to Grant requests and/or because of a lack of sufficient other gifts and grants or it might rule that the income may be spent only to support specific ongoing, or new, programs, projects and services or, perhaps it might decide to pursue a combination of both these choices. To arrive at this decision, the organization needs to work out cost of current and imminent projects, programmes, etc., and prepared a budget for its short and long term expenses. However, if the donor restricts the use of income to a particular project these questions will not arise.

Endowment Principal

3.17 The Endowment Principal is supposed to be money required for working in perpetuity. Therefore, Not-for-Profit Organisations avoid depleting these assets which are intended to safeguard the future. It is inadvisable to dip into endowment principal for day to day activities. But there is so much uncertainty in NPOs that a situation may arise it has to choose between using the principal or going out of business. If the organization “today” sets an ironclad prohibition regarding any depletion of endowment principal for “tomorrow”—there be little or no other choice at a future time of dire need. It

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is much more practical that the organization first takes all possible steps to avoid such a situation. As a backup plan, it can define the circumstances and events under which the principal would spend. It can set a condition in the organization's financial policy that, should it be absolutely necessary to spend any endowment principal, those funds must be replaced by a designated date—the sooner the better.

Accounting Practices

3.18 The following paragraphs provide a brief overview of the accounting practices prevalent in the NPOs. It does not dwell on accounting and presentation of various items. For accounting practices prevalent in Not-for-Profit Organisations, please refer to ICAI's publication "Technical Guide on Accounting for Not-for-Profit Organisations".

3.19 The basic accounting principles which apply to commercial enterprises are applicable to NPOs also. There are certain differences in nomenclature, grouping and presentation on account of the non profit nature of their activities. The first element is profit. Though an NPO is not prohibited from making profits, if it generates a surplus, the surplus is referred as "Excess of Revenues over Expenses" and it should be used to further the goals of the entity to avoid being mischaracterized as a profit-making organization. A net loss is called "Excess Expenses over Revenues". Another difference is the presentation and nomenclature for owner's interest. A for-profit organisation uses the term 'Equity'. Equity is the worth of the organization usually expressed as the sum of the assets (what the entity owns), less the sum of its liabilities (what it owes). In a for-profit organisation, basically the company owns all the equity so there is no need to divide it up. A not-for-profit organization needs to separate the funds as they represent various pots of money that are meant for specific purposes. For example a NPO has a hospital building fund which can only be used for building the hospital or pay off the building loans. That money cannot be used to pay for medical equipment or salary of the hospital staff. Those would come out of a general operations fund or other designated funds. This necessitates 'Fund Accounting'.

Fund Accounting

3.20 Under Fund Accounting, resources are segregated into various categories (or funds) and the source of funds and the use of each fund are shown. This segregation helps in controlling and monitoring resources and

also ensures and demonstrates that legal/ administrative requirements are complied with. Take an example of an NPO involved in educational activity. It has received a grant from the State Government to support a computer education initiative, another grant from the central government for a free meal program, and an endowment from a business family for undertaking research projects. The NPO has to report Government about the special education program, the central government agency about the school lunch program, and the business family about the research program. Each of these donors has diverse reporting requirements and need to be apprised about the related revenues and expenditures. This is achieved by establishing separate funds. The entity thus has maintain a number of general ledgers (or fund), so that reports can be produced detailing the expenditures and revenues for each individual funds, and reports that summarize the organization's financial activities across all of its funds.

Example 1: A NPO Gram Seva Trust maintains the following funds:

- Building Fund – For construction of ICU ward, children’s ward, new general wards, delivery rooms and dining hall.
- New Equipment Fund
- Poor Patient Relief Fund
- General Fund
- Children Fund
- In Memorium
- Eye Camp Sponsorship

Restrictions on Funds

3.21 Fund accounting may not convey all the required information to users. The users of financial statements should be able to figure out whether the funds are restricted or unrestricted, what are the restrictions and whether the entity was following the restrictions set. The entity must also be able to demonstrate that it still holds assets belonging to restricted and endowment funds and has not used these for unauthorised purposes. It is a breach of trust to spend restricted funds for purposes other than for which they were given.

Statutory authorities in many countries (UK, USA, and Canada) now insist on reporting on “net assets” classification, rather than tracking each fund. (Net assets means more or less the same as owner’s equity or net worth in a for

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profit business) Under this approach, the equity of the organization is presented with three classes of assets, i.e., Restricted Assets; Temporarily Restricted Assets; Unrestricted Assets.

(i) **Unrestricted:** Funds which are free from any external restrictions and available for general use are classified under this head. Usually individual contributions are unrestricted, as are general operating and unrestricted grants. It is important to remember here that restrictions can only legally be placed on funds by the donors. The shape and form of the restrictions are defined in the “gift instrument” If the management designates some of the non profit's unrestricted assets for a specific purpose, those assets must continue to be reported as *unrestricted net assets*.

(ii) **Temporarily Restricted:** Sometimes the donors impose restrictions which are not perpetual. Such restrictions expire either with passage of a defined period of time (time restriction) or by performing specified activities (purpose restriction). Grant for a specific program or project or individual contributions given with the intent of supporting a particular program or campaign would fall under this category. An example of a time-restricted gift is a contribution of a trust, annuity, or term endowment where the principal of the gift is restricted for a certain period of time.

(iii) **Permanently Restricted:** These funds are gifts restricted by a donor for a designated purpose or time restriction that will never expire. An example is an endowment gift with the stipulation that the principal is permanently unavailable for spending, but the investment income from the principal may be used in current operations. The intent is that the balance of the contribution will remain as an investment forever, and the non-profit will utilize the interest and investment returns, such as with an endowment.

Excerpt from Balance sheet of Deepalaya (year ending 31st March 2021) showing break up of funds

Balance Sheet as on March 31,		2021	2020
Sources of Funds:	Sch.	Amount in Rupees	
Membership Funds		3,300	3,300
Corpus Fund		18,537,616	18,237,616
Unrestricted Project Funds	1	182,476,511	185,270,925
Unrestricted Project Funds	2	44,479,785	28,581,191
Total		244,497,812	232,093,233

3.22 Internal auditors need to pay special attention to the accounting practices of an NPO. The grant making entities, tax authorities and other watchdog agencies carefully analyze the accounting system of non-profit organizations. As tax-exempt entities, non-profit organisations must be extra careful to avoid incorrect accounting practices as this can prove to be very costly and endanger its existence, for detailed accounting methods, please refer to ICAI publication “Technical Guide on Accounting for Not-for-Profit Organisations”.

Classification of Expenses

3.23 Classification of expenses assumes a great deal of importance in not-for-profit entities. Many not-for-profit organisation cannot provide satisfactory information about their relative effectiveness in fulfilling their mission. In such a scenario, donors, fund providers, and watchdogs of the organizations have to fall back on financial indicators. The principal financial indicators of effective utilisation of funds are the program-spending ratio (total program expenses ÷ total expenses) and the fund raising-efficiency ratio (fund raising costs ÷ total contributions). Many donors use these ratios as their primary basis for evaluating and ranking NPOs.

3.24 Classification by natural categories would not provide the information needed to arrive at these ratios. General categories, such as, salaries, rent, or electricity etc. shows what the money was spent for, but provide no indication of the purpose for which it was spent. Except in cases where the expenses clearly pertain to only one functional category like, the cost of printing a fundraising brochure is clearly a fundraising cost. However, the complexity arises when expenses benefit more than one function. In these cases, functional classification, which involves breaking down expenses based on the organization’s major types of activities, becomes necessary. An NPO’s major activities are usually program or mission based services, supporting services like, management/ general expenses and fundraising. Functional accounting helps in understanding who (provides the income /pays for the expense, what (type of income/expense) and why (program or purpose) of every rupee coming in and going out of the organization. Ideally, the functional areas are based on the mission. The tracking of ‘why’ is by the purpose of the organisation and not by the funder or contract. With proper functional accounting each rupee can be tracked through its journey through the organisation. Through functional accounting, the entity can know the real costs of program and supporting activities, making it an invaluable tool for decision-making. This helps the entity in understanding whether the

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fundraising for a program is enough to achieve its objectives or whether the entity should build, maintain or scale back a program and so forth.

3.25 The expenses are usually bifurcated as follows:

- (a) Program expenses
- (b) Supporting services expenses
- (a) Program Expenses** Program expenses (or program services expenses) are the amounts directly incurred by the not-for-profit organisations in carrying out its programs. Programs are the activities that result in goods and services being distributed to beneficiaries, customers, or members that fulfil objective or mission of the entity. A NPO may have several major programs. For example, an educational institution may have programs for student instruction, research, literacy programs for deprived, social welfare (providing basic infrastructure in rural areas).
- (b) Supporting Services Expenses** Supporting services are all activities of a not-for-profit organization other than program services. Supporting services expenses are reported in three subgroups:
 - Management and general.
 - Fundraising.
 - Membership-development activities.

3.26 Management and general activities include business management, general record keeping, budgeting, financing, and other administrative activities, except those directly incurred for program services or fund raising activities. Fund-raising activities include publicity and conducting fundraising campaigns; conducting fund-raising events; preparing and distributing fundraising manuals and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, government agencies, and others. Membership development activities include soliciting for prospective members and membership dues, membership relations, and similar activities.

3.27 In order to accurately report the amount in each of these subgroups, it may be necessary to allocate some management and general salaries to fundraising based on the time spent by employees performing fundraising activities. For example, a management employee might be spending 30% of

Key Concepts

her time in fundraising activities but her entire salary has been recorded as management and general expenses.

Excerpt from Condensed Financial Information of save the children for year ending 31st Dec 2021 of Save the Children*

	2021	2020
Expenses and Losses		
Program Services	7,44,500	632,468
Supporting Activities		
Fund Raising	89,963	77,976
Management and General	50,968	50,534
Total Expenses and Losses	933,717	839,837

3.28 Under the accrual method of accounting, expenses are reported in the accounting period in which they best match the related revenues. If that is not clear, then the expenses should be reported in the period in which they are used up. If there is uncertainty as to when an expense is matched or is used up, the amount spent should be reported as an expense in the current period.

Accounting for in-kind Contribution

3.29 Recognizing in-kind contributions paints a more complete picture of the activities of the NPO and the resources used to accomplish its mission. Additionally, In-kind contributions whose details need to be filed under Form FC 7 of Foreign Contribution (Regulation) Rules, 2011, have to be accounted for. However, these are not accounted by many NPOs. Some field level NPOs try to resolve this by showing them as receipt of money when actually they have received items or services. These go against sound accounting principles and raises questions and doubt.

* <https://www.savethechildren.org/content/dam/usa/reports/annual-report/annual-report/2021-annual-report/annual-report-results-for-children-2021.pdf>

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3.30 The following issues need to be resolved for accounting for in-kind contributions:

- (i) Estimating the money value of the material or services received;
- (ii) Issue of supporting documents- vouchers/ receipts;
- (iii) Making accounting entries;
- (iv) Disclosure in Final Accounts.

3.31 Since, the in-kind contribution received by many NPOs is substantial and not accounting for them would mean that:

- (i) The assets constructed are shown at lower value in accounts- which is not the real value;
- (ii) The community's economic participation is not reflected in the Income and Expenditure Account or ledger books.
- (iii) It becomes difficult to have proper internal control over goods received from the community. This may lead to pilferage or wastage.

Chapter 4

Accounting Standards and Standards on Internal Audit Relevant to NPOs

4.1 Accounting Standards provide guidelines and principles on preparation of financial statements. They specify when and how economic events are to be recognized, measured presented and disclosed. This makes financial statements from various entities comparable. They also ensure that financial reports and statements are fair and transparent so external entities like banks, investors and regulatory agencies can rely on them while making decisions. These Standards thus, ensure uniformity, transparency, consistency and comparability across entities (companies, firms and other organizations). It has to be remembered that they may not applicable to all entities. For some entities, Accounting Standards are mandatory while for certain non–corporate entities it is optional. Also, all standards may not be mandatory, but they may be provide guidance.

As discussed in the chapter “Legal Framework”, NPOs are of different types. They are registered/ Incorporated under different laws. There are even unregistered NPOs. The applicability of Accounting Standards varies based on the laws under which they are formed. However, even if Accounting Standards are not mandatory, since they provide a framework and give appropriate guidance, it is recommended that organization may apply them, if relevant.

The basic accounting principles which apply to commercial enterprises apply to NPOs also. However, there are certain peculiar features which are discussed in brief. The accounting aspects and applicability of Accounting Standards are covered in detail in ICAI’s publication “Technical Guide on Accounting for Not-for-Profit Organisations.”

Key Aspects

- (i) Receipt of contributions and grants from resource providers restricted for specific purposes (temporarily and permanently).

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- (ii) Allocation of costs across functional areas (programs, management and general, and fundraising), across grantors, and identification by natural classification (i.e., line-item).
- (iii) Reports to stakeholders (e.g., contributors, grantors, oversight bodies) according to needs, formats, and accounting periods.
- (iv) Applicability of Standards on Internal Audit.
- (v) Applicability of Accounting Standards.

Need for Internal Audit

4.2 In its initial days, internal audit's function provides an independent review of finances, verifying the reliability of financial statements and provides an objective assurance about policy and legal compliances. Then it branched out to include review of operational processes. Internal audit has evolved a lot over the years and today it has become the eyes and ears of management. Direct management oversight has become almost impossible with increased complexity and volume of transactions, geographical spread of business and increasing compliance requirements (national laws and many times global laws). There is a need for full time, independent, dedicated internal audit function that can assist management in decision making, moving away from its earlier role of being merely a police on financial transactions.

Accounting and auditing scandals during the 1990s and early 2000s made Governments and regulators realize the importance of auditing and corporate governance. The accounting scandals at Enron and Worldcom further proved how accounting anomalies could have severe consequences not only for the companies but the economy as a whole. Many regulations were passed regarding auditing practices with particular focus on corporate governance, risk assessment and compliance.

In India, Board of Internal Audit and Management Accounting of ICAI has issued the 'Standards on Internal Audit (SIAs)' to provide a framework to practitioners for performing internal audit. It provides guidance on the best practices and processes to adopt while conducting audit. They also explain the scope and applicability of the Standards to different scenarios, methods to ensure that relevant and accurate information is given and provides benchmarks against which the performance of internal audit can be measured. Thus, for internal auditors, Standards help in achieving quality and consistency. It also gives confidence to other stakeholders in the quality

Accounting Standards & Standards on Internal Audit Relevant to NPOs

and consistency of the internal audit work conducted. Thus, they increase the overall credibility, consistency, clarity and comparability of the work performed by the internal auditors.

Standards on Internal Audit (SIAs)

4.3 The Standards on Internal Audit (SIAs) are a set of minimum requirements that apply to all members of the ICAI while performing internal audit of any entity or body corporate. As per Section 138 of Companies Act, 2013, the Board of a Company may, besides a Chartered Accountant, appoint a cost accountant or any other professional to conduct Internal Audits. Internal Auditors may be appointed by companies from different background having professional skills related to business of the organization. For, e.g., a pharmaceutical company may recruit an internal auditor who has a pharma background. Similarly, an automobile company may recruit somebody with automobile engineering background. The ICAI recommends the adoption of the SIAs by non-members of the ICAI who are performing internal audits so as to ensure a consistent approach and quality in the discharge of their professional duties.

The Standards on Internal Audit (SIAs) issued by the Institute of Chartered Accountants of India aim to codify the best practices in the area of internal audit and also serve to provide a benchmark of the performance of the internal audit services. While formulating SIAs, the Board takes into consideration the applicable laws, customs, usages, business environment and generally accepted internal auditing practices in India. The Council of the ICAI has decided that the Standards will be made mandatory in a phased manner. The SIAs shall initially be mandatory for members performing internal audits in all listed companies, as per Section 138 of the Companies Act, 2013, from the effective date of the SIA, and all other companies from one year thereafter. This implies that while carrying out an internal audit, it shall be the duty of the members of the Institute to ensure that they comply with the SIAs. If, for any reason, a member is unable to comply with any of the SIAs requirements, or if there is a conflict between the SIA and other mandates, such as a regulatory requirement, the internal audit report (or such similar communication) should draw attention to the material departures therefrom along with appropriate explanation.

The Standards on Internal Audit, are classified and numbered in a series format, as follows:

- (i) 100 Series: Standards on Key Concepts

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- (ii) 200 Series: Standards on Internal Audit Management
- (iii) 300–400 Series: Standards on the Conduct of Audit Assignments
- (iv) 500 Series: Standards on Specialised Areas
- (v) 600 Series: Standards on Quality Control
- (vi) 700 Series: Other/Miscellaneous Matters

The list of current Standards on Internal Audit (SIAs) is given below:

100 Series: Standards on Key Concepts

- Standard on Internal Audit (SIA) 110, Nature of Assurance
- Standard on Internal Audit (SIA) 120, Internal Controls
- Standard on Internal Audit (SIA) 130, Risk Management
- Standard on Internal Audit (SIA) 140, Governance
- Standard on Internal Audit (SIA) 150, Compliance with Laws and Regulations

200 Series: Standards on Internal Audit Management

- Standard on Internal Audit (SIA) 210, Managing the Internal Audit Function
- Standard on Internal Audit (SIA) 220, Conducting Overall Internal Audit Planning
- Standard on Internal Audit (SIA) 230, Objectives of Internal Audit
- Standard on Internal Audit (SIA) 240, Using the Work of an Expert
- Standard on Internal Audit (SIA) 250, Communication with Those Charged with Governance

300–400 Series: Standards on the Conduct of Audit Assignments

- Standard on Internal Audit (SIA) 310, Planning the Internal Audit Assignment
- Standard on Internal Audit (SIA) 320, Internal Audit Evidence
- Standard on Internal Audit (SIA) 330, Internal Audit Documentation

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- Standard on Internal Audit (SIA) 350, Review and Supervision of Audit Assignments
- Standard on Internal Audit (SIA) 360, Communication with Management
- Standard on Internal Audit (SIA) 370, Reporting Results
- Standard on Internal Audit (SIA) 390, Monitoring and Reporting of Prior Audit Issues

500 Series: Standards on Specialised Areas

- Standard on Internal Audit (SIA) 520, Internal Auditing in an Information Technology Environment
- Standard on Internal Audit (SIA) 530, Third Party Service Provider

Standards issued up to July 1, 2013

- Standard on Internal Audit (SIA) 5, Sampling
- Standard on Internal Audit (SIA) 6, Analytical Procedures
- Standard on Internal Audit (SIA) 7, Quality Assurance in Internal Audit
- Standard on Internal Audit (SIA) 11, Consideration of Fraud in an Internal Audit
- Standard on Internal Audit (SIA) 13, Enterprise Risk Management
- Standard on Internal Audit (SIA) 14, Internal Audit in an Information Technology Environment
- Standard on Internal Audit (SIA) 17, Consideration of Laws and Regulations in an Internal Audit
- Standard on Internal Audit (SIA) 18, Related Parties

Accounting Standards

4.4 The ICAI's publication "Technical Guide on Accounting for Not-for-Profit Organisations" states the following:

30. The 'Preface to the Statements of Accounting Standards', issued by the Institute of Chartered Accountants of India, states the following:

"3.3 Accounting Standards are designed to apply to the general purpose financial statements and other financial reporting, which are

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subject to the attest function of the members of the ICAI. Accounting Standards apply in respect of any enterprise (whether organised in corporate, co-operative or other forms) engaged in commercial, industrial or business activities, irrespective of whether it is profit oriented or it is established for charitable or religious purposes. Accounting Standards will not, however, apply to enterprises only carrying on the activities which are not of commercial, industrial or business nature, (e.g., an activity of collecting donations and giving them to flood affected people). Exclusion of an enterprise from the applicability of the Accounting Standards would be permissible only if no part of the activity of such enterprise is commercial, industrial or business in nature. Even if a very small proportion of the activities of an enterprise is considered to be commercial, industrial or business in nature, the Accounting Standards would apply to all its activities including those which are not commercial, industrial or business in nature.”

31. From paragraph 30, It is apparent that the Accounting Standards formulated by the ICAI do not apply to an NPO if no part of the activity of such entity is commercial, industrial or business in nature. The Standards would apply even if a very small proportion of activities is considered to be commercial, industrial or business in nature. For example, where an NPO is engaged in the commercial activity of granting loans/credit to small entrepreneurs at nominal rates of interest or in the industrial activity of manufacturing clothes for the rural poor, Accounting Standards formulated by the ICAI would apply to such an NPO. It may be mentioned that since the Accounting Standards contain wholesome principles of accounting, these principles provide the most appropriate guidance even in case of those organisations to which Accounting Standards do not apply. It is, therefore, recommended that all NPOs, irrespective of the fact that no part of the activities is commercial, industrial or business in nature, should follow Accounting Standards. This is because following the Accounting Standards laid down by the ICAI would help NPOs to maintain uniformity in presentations of financial statements. However, while applying the Accounting Standards certain terms used in the Accounting Standards may need to be modified in the context of the corresponding appropriate terms for NPOs. For instance, where an Accounting Standard refers to the term ‘statement of profit and loss’, in the context of NPOs, this Technical Guide uses the term ‘income and expenditure account’.

NPOs Incorporated under Section 8 of the Companies Act

4.5 NPOs incorporated under Section 8 of the Companies Act, 2013 are required to comply with the Accounting Standards/ Indian Accounting Standards, as the case may be by virtue of Section 133 of Companies Act, 2013.

“32. NPOs incorporated under section 8 of the Companies Act, 2013, are required to comply with the Accounting Standards /Indian Accounting Standards, as the case may be, by virtue of section 133 of the Companies Act 2013. It also require that where the statement of profit and loss (income and expenditure account) and balance sheet of a company do not comply with the Accounting Standards, the company shall disclose in its statement of profit and loss (income and expenditure account) and balance sheet the fact of such deviation, the reason therefore and the financial effect, if any, arising due to such deviation. Further, section 143(3) requires the Auditor to state whether statement of profit and loss (income and expenditure account) and balance sheet comply with the Accounting Standards referred to in section 133.

Section 133 of the Companies Act 2013 provides that for the purposes of this section, the expression ‘Accounting Standards’ means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under ‘The Chartered Accountants Act, 1949 (38 of 1949)’, as may be prescribed by the Central Government in consultation with National Financial Reporting Authority (NFRA) constituted under section 132 of the said Act. It may be noted that Accounting Standards and Indian Accounting Standards as formulated and recommended by the Institute of Chartered Accountants of India have been notified by the Central Government in consultation with NFRA under the Companies (Accounting Standards) Rules, 2021 and Companies (Indian Accounting Standards) Rules, 2015, respectively.

This Technical Guide is also applicable to the NPOs which are covered under the provision of the Companies Act, 2013, to the extent it does not conflict with the requirements of the said Act. NPOs covered under the provisions of the Companies Act will also need to ensure that accounting requirements and disclosures applicable to them are met. E.g., the reference to the term income and expenditure account (which is used at most of the places in the

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Technical Guide) may be taken to be the reference statement of profit and loss in the case of NPOs which are companies covered under the provisions of the Companies Act, 2013.

33. As far as non-corporate NPOs are concerned, it is recommended to follow Accounting Standards formulated by the ICAI. The Accounting Standards, of which, 27 Standards issued by the ICAI are also mandatory for the Members of the Institute in the performance of their attest function of these entities as per the relevant announcements made by the ICAI from time to time.

34. So far, the ICAI has formulated 29 Accounting Standards, of which, 27 Standards are applicable as on date after withdrawal of two Standards i.e., AS 6 on Depreciation and AS 8 on Accounting for Research and Development. For the purpose of applicability of Accounting Standards, pursuant to the notification on Accounting Standards (referred to in Para 32) issued by the Central Government, companies have been classified as Small and Medium Sized Companies (SMCs) and Non-SMCs. ICAI has classified entities other than companies into four categories, viz., Level I, Level II, Level III and Level IV where Level IV, Level III and Level II entities are referred to as Micro, Small and Medium size entities (MSMEs), respectively. The criteria for classification of non-corporate entities and companies into different categories, and the applicability of the individual Accounting Standards to non-corporate entities and companies are given in Appendix I of this Technical Guide.

Given their resources and scale of operations, entities falling within the category of SMCs/MSMEs are given relaxations/exemptions under certain Accounting Standards. This is relevant for micro, small and medium-sized NPOs also which meet the criteria of SMCs/MSMEs. In this context it may be mentioned that one of the criteria for categorising SMCs/MSMEs is 'turnover', and turnover in respect of NPOs would mean their gross income and contributions received in corpus fund.

35. Keeping in view the nature of activities carried on by NPOs, some Accounting Standards may not be relevant to the NPOs unless events or transactions of the nature covered by the Standard take place. For example, Accounting Standards (AS) 22, Accounting for Taxes on Income, would be relevant only where the NPO is required to pay any tax under the provisions of items of income Tax Act, 1961.

Accounting Standards & Standards on Internal Audit Relevant to NPOs

NPOs should follow the Accounting Standards as and when to the extent these are applicable to them.

Accounting Standards generally relevant to NPOs have been discussed hereinafter while dealing with peculiar items of income, expenses, assets and liabilities.”

Report to Stakeholders

4.6 How to judge whether a non-profit organization is doing a good job. This is an important issue both for NPOs themselves and for donors. If the NPO is to retain donors it must convince them that their contributions are having a substantial and beneficial effect. Not only the donor but also general public, revenue authorities, government and most importantly the people and communities who benefit from the services provided by an NPO need to be convinced as to how NPOs do this job. Few donors would be satisfied that the charity to which they've entrusted funds is honest, i.e., and will not misappropriate the money. Most donors want to be sure that the people or cause which motivated their gift in the first place does benefit from their generosity. Honesty, organizational efficiency and effectiveness (impact) are the three dimensions of NPOs in which they are interested.

Assessment

4.7 From an international perspective, donors often have to satisfy their own internal revenue authorities that the proposed recipient of their gift would be deemed 'charitable' if it were located in the donor's country. While there are usually some common requirements (official registration, board of trustees, governing document, etc), different countries have specific requirements, such as, winding up clause, exclusion of political activity, and so on. Also, some activities deemed to be charitable in one country may not be so classified in another.

4.8 To ensure this, most grantors undertake some form of organizational assessment prior to considering funding applications and these assessments can be extremely rigorous. Also, donors would like that as much of their contributions as possible goes into the actual charitable activity. Though individual donors may not have a say, grantors often state a maximum level of administration support within their grants. If an NPO has received foreign contribution, it should not the provision of the Foreign Contribution (Regulation) Act, 2010 which defines what consists administrative expenses

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and what does not. Also, the Act prohibits administrative expenses beyond 20%.

4.9 For assessing impact, grantors expect evaluations and reports, and most donors receive some type of communication illustrating effectiveness. They want to know how their investments made a difference – not just numbers to how many were helped but how lives were improved, how things have changed. This will not only need in-depth record keeping, research and interpretation, but they need to become part of the process to secure funding from international agencies and large corporate donors. "No numbers without stories; no stories without numbers."

4.10 On its part, the NPO needs to provide information which is as far as possible be verifiable: references to grants received, reports produced, statistics in the public domain, registration documents, etc. The information must also be sufficient to satisfy an international donor that further checks would verify that the NPO was eligible for a grant. The NPO can present additional information to demonstrate its effectiveness as an organization.

Types of Reports

4.11 The types of reports that may be useful to various financial information users/ decision makers are as follows:

Financial Information Users/ Decision Makers	Reports
Oversight bodies; external funding sources, and national organizations	Audited Annual Financial Statement (Audit Opinion letter, Balance Sheet, Statement of Cash Flow, Income & Expenditure Account and accompanying Notes)
Central Government (CG)	All foreign contributions received within 30 days of the receipt of the contribution reported to CG File annual reports with the Home Ministry reporting the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used.
Income Tax Authorities	NPOs claiming exemption under Section 11 and 12 to file audit report and annual return of income.

Accounting Standards & Standards on Internal Audit Relevant to NPOs

Government and other funding sources	Grant Report (specific to the agency or foundation)
Management and Program Directors	Budget vs. Actual Statement of Activities (by month, quarter, year)
Service recipients/ clients	Performance measures
Public at large, and watchdog agencies	Performance measures

Chapter 5

Internal Audit - Concept and Objectives

5.1 From providing an independent assurance function, internal audit has become one of the core organizational governance elements. Many organisations which are not statutorily required to have internal audit functions have also been established. The internal audit activity has become a key resource to the management in performing risk assessment and recommending improvements to an entity's governance, risk management and internal controls, Management Information System (MIS) and operations. An effective internal audit function helps the management in effectively discharging their duties towards the accomplishment of an organisation's objectives by assessing the effectiveness of its risk management processes, as well as using specialized data analysis in the audit, fraud detection and compliance arena.

Need for Internal Audit in NPO

5.2 In many ways not-for-profit organisations are no different from profit or commercial organisations. Their objectives and activities may be different but the day to day operations would more or less involve common activities like receipt and processing cash, tracking revenue and expenses, managing personnel, and financial reporting to stakeholders. Errors, misappropriations, frauds can happen in any organisation and the extent of its impact is more if it affects those key processes that contribute to the accomplishment of the organisational objectives. The uniqueness of not-for-profit organisations (at least those that are supported by donations) is that even a whiff of a scam can ruin it. An overwhelming majority of public still consider not-for-profit organisations to be of a high standard of integrity that the organization will use donations as promised. Thus, the greatest threat to the not-for-profit sector is the betrayal of public trust and the disappointment of public confidence. Additionally, they have to meet unique compliance requirements, especially, regarding tax exemptions and foreign contributions.

5.3 The most reliable method of meeting all these requirements is to have a sound internal control. When controls are effective, there is high probability that key processes will function as designed and the organisation will

achieve its objectives. Here, the internal auditor's objectivity, knowledge of the organization, and understanding and application of sound consulting and audit principles would be useful.

Methodology for Internal Audit

Terms of Internal Audit Engagement

5.4 The design and direction of the internal audit depends on the terms of engagement. These are usually finalized jointly by the client and the internal auditor. The internal auditor needs to take into account what kinds of issues are important to the management. It is also important to remember that the client may not have a deep understanding of the role and advantages of internal audit. Therefore, there is a need to assess what additional issues should be covered. The orientation of an internal audit may be more towards transactions verification, or system assurance. A third possible approach could be donor assurance, this would focus on whether justifiable expenses have been charged to correct budget heads.

(i) Transaction Testing and Verification

Transaction testing involves vouching and review of transactions to ensure that transactions are properly recorded and their data content with respect to internal application system is accurate. This would include:

- (a) Reviews of the details Transactions of the posted.
- (b) The transactions are accurate, valid and appropriate.
- (c) Corrective actions and closures of purchase orders have been initiated.
- (d) Payroll reports represent hours of work but in by bona file employees.
- (e) Amount shown in rupees and hours are correct and charged to the proper account.

Verification involves valuation and existence of assets like fixed assets, cash, equipment, etc. This orientation is, especially, useful for smaller organizations, where the accounts department is not fully developed and stable and there are a very few transactions but is not desirable or possible to do it in any other organisation. It is not internal audit's role to test every transaction and verify that it was handled properly (and function as a detective control). They should focus on the adequacy of processes and

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controls. Also, confirming that transactions are correct does not provide assurance that the controls are in place and effective.

(ii) System Assurance

System assurance is the planned and systematic set of activities that assure systems, processes and products conform with systems requirements for safety, reliability, availability, maintainability, standards, procedures, and regulations.

It involves system control and internal control. Whether it takes the form of system audit would depend upon the terms of engagement decided by the management and the internal auditor.

(iii) Donor Assurance

This approach is designed to reassure the donors that their funds are being spent properly. An internal audit could provide reasonable assurance that good stewardship is being used in handling and accounting for donor's money and other assets of the not-for-profit organization. It can be performed by external Accounting firms (or by an outside CA) or done internally-in which case the books are reviewed by selected non-related officers, or by prominent people in the not-for-profit organization who understand financial management. Under this approach, the focus is on looking at budgeting, budget monitoring, cost-effectiveness, distribution of assistance, internal transparency, governance, quality and timeliness of donor reporting, etc. Such audits encourage good habits of fiscal responsibility to among employees and will assure that contributions made to the organization with stipulations as to how the funds should be used, are consistently used in accordance with the donor's instructions, providing donors the assurance that their contributions are being used as intended.

Engagement Letter

5.5 Before commencement of the internal audit, the internal auditor has to obtain an engagement letter from the auditee. The engagement letter mainly outlines the terms and conditions of the engagement, scope of the work, assistance required from the management and the compensation terms. In case of a new assignment, the internal auditor visits the auditee and obtains information to determine the audit scope, audit objective, time schedules, audit dates and in a continuing assignment the earlier letter has to be modified depending on the changed circumstances. The engagement letter is prepared by the internal auditor and has to be approved by the appropriate

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authority of the auditee which could be Board of Directors or Board of Trustees or Audit Committee. Briefly, the engagement letter would include:

- (i) Scope of internal audit: this could include internal audit of financial statements, Supplemental information, Compliance reports, Tax filings, FCRA filings, etc.
- (ii) Provide for an agreed-upon process for changes in the scope of work.
- (iii) A timetable for the internal audit work including dates for fieldwork, number of staff, date of delivery of draft reports, Delivery of management letter, if applicable, meetings with audit committee, if any.
- (iv) Information that is expected to be provided during the internal audit by the organization's personnel: this typically include various information to be provided by the organization, such as permanent file documents and schedules prepared by the organization's staff in connection with the internal audit engagement.
- (v) Discuss how adjustments below the internal auditor's materiality threshold will be handled. (For example, does it address how they will be communicated to management for possible recording in the subsequent year's financial statements?)
- (vi) Identify the persons or entities that will use the internal audit report and for what purpose. Usually, the report states that report is intended for the information and use of the audit committee, management, specific legislative or regulatory bodies, grant making agencies and is not intended to be and should not be used by anyone other than these specified parties without the internal auditor's permission.
- (vii) Address the internal auditor's record retention policy stating the minimum period for which internal audit documentation is retained and conditions (dispute, disagreement) under which the timeframe may be increased.
- (viii) Internal Auditor's privacy policy regarding the organization's financial information.
- (ix) Include basis of compilation of the professional fees to be charged for the engagement and make provision for the handling of out-of-pocket expenses.

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5.6 It is recommended that the letter clarifies that the internal audit engagement ends on delivery of the internal audit report and state that they follow-up (such as representing the client before taxation authorities) will be deemed to be a separate engagement and will be governed by the terms and conditions of a subsequent engagement letter. The Standard on Internal Audit (SIA) 230, Objectives of Internal Audit provides detailed objectives of Internal Audit.

Planning an Internal Audit

5.7 The internal auditor needs to develop an audit plan for each internal audit engagement so that the internal audit can be completed in an efficient and effective manner. Adequate planning ensures that appropriate attention is given to every significant area so that weaknesses can be identified and errors can be rectified. Once deficiencies are found the entity can take preventives steps by enhancing policies, procedures, and operations. NPOs usually have budgetary constraints, and therefore the internal auditor has to also plan that frequency and depth of the audit is based on the entity's needs and budgetary constraints and focuses on the most important areas. The Standard on Internal Audit (SIA) 220, Conducting Overall Internal Audit Planning and (SIA) 310, Planning the Internal Audit Assignment provides indepth guidance on planning an internal audit.

5.8 A significant characteristic of not-for-profit organisations which affects internal control is the presence of volunteers across various levels of the organisation. The nature and degree of influence of volunteers varies across NPOs depending on size, purpose, nature of NPO's activities and its corporate culture. Volunteer presence can be in following forms:

- (i) Volunteer presence on the governing board
- (ii) Inadequate staff for administrative purposes affecting segregation of duties.
- (iii) Both volunteers and paid staff are involved in day-to-day operations including finance function.

5.9 This could affect the management and internal control of these organisations significantly. The altruistic nature of their activities and absence of an owner group could mean lesser understanding and interest in having a strong corporate culture. The focus is on allocating resources to further the mission of the entity than on segregation of duties. Deep involvement of volunteers in operations and management performing

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accounting functions, control or supervisory positions may affect the control system, especially, in areas, like, personnel management, authorisation procedures, establishment of priorities, accountability and control over data. Again, some NPOs may not have resource constraints or may have a strong corporate culture.

The internal auditor must take these into consideration and take additional safeguards while conducting internal audit of NPOs.

Knowledge of the Business

5.10 The internal auditor should have knowledge of client business to obtain an understanding of the events, transactions and practices. At the planning level, this knowledge will enable them to determine materiality level, identify components of internal audit risk, identify areas which need special attention and draw conclusions. The internal auditor needs to have specific knowledge of the following:

- (i) Legal form
- (ii) NPO's mission and objectives
- (iii) Organisational structure
- (iv) Nature and mix of its main activities
- (v) Major sources of funding, donors, etc.
- (vi) Chart of accounts and accounting methods
- (vii) Policies and procedures
- (viii) Major risks
- (ix) Tax status
- (x) Main characteristics of recipients of its services
- (xi) Related parties

5.11 If the entity has a well documented service provision, it would help in understanding the type of work undertaken by NPO. This usually contains:

- (i) The mission statement and details of all the services the organization provides to the community.
- (ii) Scope of those services; this answers questions like, how large is the service area? Is the organization state, county or citywide? The

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population the organization serves; is it a specific population, such as individuals with disabilities, homeless or battered women, or children with criminal backgrounds.

- (iii) Documentation on outcomes, or how the NPO's services affect the population it serves, numbers of people affected and length of time individuals utilize the services of the NPO.

5.12 For effective internal audit, it is vital that the internal auditor gains knowledge about the field of activity, economic, tax and legal environment. For an NPO audit, it becomes all the more vital to gain an understanding of the working of the entity from diverse resources as there might be inadequate availability of information. The internal auditor can obtain sufficient knowledge through:

- (i) Financial information, like, previous annual reports and budgets. Prior year comparative reports and narrative explanations of significant changes or unusual balances would reveal critical information about cash balances, investments, receivables, payables, and the overall financial health of the organization.
- (ii) Reports of statutory auditors required under Section 10 and 12 of the Income Tax Act.
- (iii) Monthly or quarterly report generated for the management, like, the Statement of Financial Position, the Statement of Financial Activities (sometimes called the profit and loss report, income and expense report, or budget report). If possible, go through specific detail reports, like, income and expense (profit and loss) line items by activity, cash flow projection, fundraising progress, and program or project reports.
- (iv) Enquire about the accounting policies for various items, like, capital assets, fund accounting, contribution in kind.
- (v) Study the documents, like, periodicals, survey results and financial statements of similar entities.
- (vi) Visit various offices and meet management. Standard on Internal Audit (SIA) 220, Conducting Overall Internal Audit Planning provides detailed guidance in this regard.

Audit Planning, Materiality and Sampling

5.13 During the initial stages, the internal auditor needs to formulate the internal audit program and thereafter modifications may be made as necessary. The opening conference with the client would aim at discussing the overall plans of the audit before the fieldwork starts. During the opening conference, the internal auditor would:

- (i) Explain the scope of the planned audit, the internal audit objectives, and the general approach to the internal audit;
- (ii) Clarify that the auditee understands the commitment needed from the auditee to support the internal audit and respond to internal audit requests;
- (iii) Review organizational charts and job descriptions and the nature of the auditee's activities and functions;
- (iv) Inquire about current developments relating to the entity's functions, activity, department, or unit under audit;
- (v) Inquire about problem areas that would be reviewed;
- (vi) Make arrangements with the auditee for the preparation of the data which will be needed during the internal audit, like, management plans, objectives, or other documents that may have a material impact on the audit outcome;
- (vii) Develop a list of key personnel in the auditee department to be contacted for meetings or information;
- (viii) Develop preliminary estimates of materiality levels and acceptable error rates.

Standard on Internal Audit (SIA) 220, Conducting Overall Internal Audit Planning provides detailed guidance in this regard.

5.14 The magnitude of a misstatement in quantitative terms is but the first step in evaluating materiality and there is a need for full analysis of all relevant considerations. Materiality needs to be considered when there is "substantial likelihood" that a reasonable person would consider it important. Materiality must be judged within the "total mix" of information.

The assessment of materiality in planning and completing an internal audit of a not-for-profit organization is inherently difficult. The for-profit world's rules of thumb for materiality thresholds, such as, calculating a percentage of net

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income, do not easily apply to charitable organizations. Instead, auditors apply various percentages to total assets, total revenues, or some other measure of an organization's size. The assessments of materiality involve both quantitative and qualitative judgments. Auditors can consider "other measures" for assessing planning materiality, such as unrestricted contributions, total program expenses, the ratio of program expenses to total expenses, and the ratio of fund-raising expenses to contributions.

5.15 Audit sampling is used when the internal auditor has to obtain evidence on a selective basis, i.e. to audit less than 100% of the items within an account balance or class of transactions to obtain and evaluate audit evidence about some characteristic of the items selected in order to form or assist in forming a conclusion concerning the population. Audit sampling can be used as part of a test of control or as part of a substantive procedure. They have to follow the procedure specified in Standard on Internal Audit (SIA) 5, "Sampling". When using either statistical or non-statistical sampling methods, internal auditors should design and select an audit sample, perform audit procedures thereon and evaluate sample results so as to provide sufficient appropriate audit evidence.

Risk Assessment

5.16 Every organization faces a variety of business risks from external and internal sources that must be assessed. Risk assessment involves the identification and analysis of relevant risks that may prevent the achievement of established objectives. Internal auditors typically conduct an overall risk assessment of the organization to understand overall strategy and objectives, and then within the framework of strategy, understand the key processes that drive and support accomplishment of strategy and the inherent risks to the accomplishment of objectives. Once the areas of high risk (areas susceptible to error or fraud) have been identified, different types of procedures (agreed upon procedures, reviews, audits) are performed to identify the strength of controls in the high risk areas. Risk assessment aids the auditor in deciding audit timing, audit intensity and audit frequency.

5.17 Risk analysis usually takes the following forms:

- (i) Define the audit universe and identify the auditable units within the entity for which these analyses will be carried out.
- (ii) Identify appropriate risk factors designed to reflect management's concerns.

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- (iii) Select an appropriate format for evaluating risk factors.
- (iv) Develop a combination rule for each audit unit which will properly reflect its riskiness over several risk factors that have been identified and a method of setting audit priorities for the audit units.
- (v) Once audit units have been rated according to their risk, assign them various audit frequency categories; that is, to identify frequency of audit and a mechanism for applying variable audit scope or intensity of auditing commensurate with the importance of the audit unit.
- (vi) Have an audit coverage plan which indicates which audits will be conducted at what times throughout the planning horizon and the expected costs associated with those audits. This will help in staff and other resource scheduling.

Risk Types

5.18 The internal auditor should try to limit audit risk, which is the product of inherent risk, control risk and detection risk.

Inherent Risk

Inherent risk is the risk that a financial assertion is susceptible to a material misstatement. The assertion could be about a class of transactions, account balances or disclosures about significant company events. Examples include double counting funds received, incorrectly valuing inventory and failing to disclose significant accounting changes.

The internal auditor has to assess inherent risk for each account head or class of transaction. One high risk area is cash donations. The restrictions on use of certain funds will impact the risks as wrong use of those assets could mean that the donor might refuse to provide further funding.

Control Risk

Control risk is the risk that one or more material misstatements might not be prevented or detected on a timely basis by the organization's internal control systems. For example, if the revenue is misstated on an organisation's income statement, control risk means that the organisation's internal auditing processes may not be able to catch it. As stated earlier, the use of volunteers for accounting and day to day management might be a major factor to consider.

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Detection Risk

Detection risk is the risk that an audit might not be able to detect a material misstatement. For example, if there are revenue or cost misstatements on a company's income statement, detection risk refers to the possibility that an audit fails to detect these misstatements and, consequently, expresses an inappropriate favourable opinion.

Assessment

The Internal auditors are required to assess inherent risk and control risk on three levels: maximum or high risk, moderate or medium risk and low risk. If the inherent and control risks are high, the detection risk must be low in order to have a low overall audit risk. Therefore, the internal auditor has to carry out more detection procedures to be reasonably assured that the financial statements are free of material misstatements.

Significance

A low audit risk is important because it is not possible for internal auditors to verify all transactions. Auditors tend to focus on key risk areas -- for example, overstated revenues or understated costs, where it is more likely that errors will lead to material misstatements on the financial statements. Standards on Internal Audit require internal auditors to plan and perform audits with professional skepticism because there is always the possibility that the financial statements are materially misstated. Professional skepticism involves a questioning mind and a critical evaluation.

Understanding and Evaluation of Internal Control

5.19 At the planning stage, the internal auditor has to analyse the internal controls in the organisation. The issue with NPOs is that there are limited number of staff personnel and there is a mix of paid staff and volunteers. The internal audit team should be looked into the following aspects:

- (i) The adequacy of internal control.
- (ii) The accuracy of the records and the reports to the governing body (usually. the board of directors).
- (iii) The proper authorization of activities and expenditures.
- (iv) The determination of the physical existence of assets.
- (v) A review of the tax-exempt status and identification of any activities that may endanger it.

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- (vi) Ascertaining that TDS, licenses, sales taxes, other taxes and corporate reports are properly filed in a timely manner.

In developing the audit program, the adequacy of the internal accounting controls is an influencing factor. The internal audit team should satisfy itself that the internal control procedures outlined above actually were being followed.

5.20 The involvement of volunteers and limited staff may affect the segregation of duties. The responsibility and authority delegation varies from one NPO to another. This involvement of volunteers influence the management and internal controls these organisations greatly.

5.21 The internal auditor needs to pay special attention to:

- (i) Nature and extent of volunteer involvement.
- (ii) Attitude of management, staff and volunteers with regard to internal control, budgets, etc.
- (iii) Assignment of authority and responsibility.
- (iv) Nature of external influences which may affect the internal control environment.
- (v) Personnel policies.

5.22 A system of internal control can be evaluated by assessing its ability to achieve seven commonly accepted control objectives:

Authorization: All transactions are pre-approved by responsible personnel.

Completeness: All valid transactions are included in the accounting records.

Accuracy: All valid transactions are accurate, consistent with the originating transaction data, and information is recorded in a timely manner.

Validity: All recorded transactions fairly represent the economic events that actually occurred, are lawful in nature, and have been executed in accordance with management's authorization.

Physical Safeguards and Security: Access to physical assets and information systems are controlled and properly restricted to authorized personnel.

Error Handling: Errors detected at any stage of processing receive prompt corrective action and are reported to the appropriate level of management.

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Segregation of Duties: Duties are assigned to individuals in a manner that ensures that no one individual can control both the recording function and the procedures relating to processing transactions. Standard on Internal Audit (SIA) 120, Internal Controls provides detailed guidance in this regard.

Chapter 6

Major Areas of Internal Audit Significance

6.1 As with accounting, internal auditing considerations for a not-for-profit organization are similar to those of a profit-making entity. However, there are a number of special challenges that are faced by the internal auditors of not-for-profit organizations. Donation receipts, grants management, limited resources, use of volunteers, and expenditure control give rise to unique internal control and risk management issues. Completeness of contributions — particularly as related to donations and other fundraising activities — is also an area of exposure. There is also a question as to whether or not to value non-cash contributions and services and how to value them. Key focus areas for internal audit would include the following:

- (i) Revenue completeness assertion.
- (ii) Internal controls over receipts and revenues.
- (iii) Accounting of restricted fund transactions.
- (iv) Valuation of non-monetary transactions.
- (v) Dealing with variations of budgets vis-a-vis actuals.
- (vi) Risks caused by absence of detailed chart of accounts.
- (vii) Problems associated with accounting for multiple programs, grants or contracts that have year-ends different from the fiscal year-end of the not-for-profit organization.
- (viii) Internal Audit restrictions imposed by funding sources.
- (ix) Risks associated with the use of volunteer personnel and volunteer board of trustees.
- (x) Tax considerations resulting from unrelated business income.

6.2 Once internal audit strategy is formed, it should be reevaluated every year as resource outflow, inflow, funding sources may change drastically from one year to another. This could mean changes in restrictions or requirements imposed by donors which have to be taken into account to design internal audit procedures to detect non-compliances, if any. All items

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of noncompliance (no matter how small) should be summarized by the auditors, evaluated, and brought to the attention of management.

Receipts

6.3 Revenues are recognized by a NPO for resources received in reciprocal or exchange transactions; i.e., those in which the other party receives benefits in exchange for the resources provided.

6.4 During any given accounting period, Revenues and Expenses are the two primary sections where summarized transaction amounts will be reported.

6.5 Revenues that may be listed in the statement of activities include:

- (i) Contribution, gifts and legacies
- (ii) Membership fees
- (iii) Program fees
- (iv) Fundraising events
- (v) Institutional grants
- (vi) Donated goods and services
- (vii) Investment income from endowments
- (viii) Gain on sale of investments
- (ix) Interest from other investments
- (x) Interest from earmarked funds
- (xi) Transfer from project funds - reclassifications when net assets are released from restrictions (a negative amount in the temporarily restricted column and a positive amount in the unrestricted column)
- (xii) Income derived from economic undertakings specified in the charter/mission

6.6 There are various direct and indirect ways to determine amount of receipts in such cases. Complications arise in ascertaining income from non-business transactions, like, donations, contributions and grants.

6.7 It is recommended that the entity should document all private, individual donations, regardless of amount. Donations that are specified for a particular purpose should be accounted separately. Pre-numbered receipts

Major Areas of Internal Audit Significance

should be given for contributions, gifts, etc. "Anonymous" donations should be to a minimum. If a donor wishes to be anonymous, the NPO can issue a receipt to the individual with the details and agree to keep the information confidential and list the donations as anonymous in public documents, such as, brochures and financial disclosures .

6.8 Anonymous donations may also result in disallowance under Income Tax. Under Section 115BBC, all anonymous donations to charitable organizations are taxable. Finance (No.2) Act, 2009, has provided some relief by providing anonymous donations aggregating up to 5% of the total donations received by the organization or a sum of Rs.100,000, whichever is higher, will not be taxed. Additionally, religious organizations (e.g., temples, churches, mosques, etc) are exempt from the provisions of this section.

Donation or Exchange

6.9 Income received could be contribution or exchange. Contribution is an unconditional and non-reciprocal transfer of cash or other assets from one entity to another. Assets could be land, buildings, use of facilities or utilities, materials and supplies, intangible assets, services. In other word, someone is making a donation to an organization without the expectation of receiving anything in return besides a possible tax deduction. Mr. A's cheque of Rs. 600 to Wellness Foundation in response to its fundraising appeal would be called a contribution as he expects nothing in return. In contrast, an exchange transaction is a reciprocal transfer between two entities where each party receives something of approximately equal value. So, using the same example Mr. A gives Rs. 600 and in exchange the foundation gives him a medical check-up package (worth Rs. 600). In most cases , there is a partial donation and a partial exchange Using the example, when Mr. A gives Rs. 600, he is given a t –shirt valued at Rs.150 In this instance, of the Rs. 600 of value, part of it (Rs. 450) would be a contribution and the other half (Rs. 150) would be an exchange transaction.

Internal Control over Donations

6.10 The inherent risk with respect to cash donations is quite high. It is difficult and sometimes impossible to verify that all amounts given by donors were effectively recorded. NPOs use a wide variety of methods to raise funds. Not only that, several methods are used concurrently. These include door to door solicitation, corporate fundraising strategies, organisation of fundraising events, TV campaigns endorsed by stars, etc. The internal

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auditor has to gather at the planning stage, information about the various methods used during the year to devise an audit strategy. The most important are gathering information about the internal control over cash and cheque receipts.

Cash Receipts

6.11 NPOs usually have shortage of staff. This may result in a single person having multiple responsibilities. This may be acceptable for some areas but certain duties need to be segregated. The following simple techniques would go a long way in having effective internal control:

- (i) Cash receipts should be recorded immediately and deposited in the bank daily.
- (ii) A person with no access to cash should compare cash receipts records and authenticate deposit slips.
- (iii) Individuals handling cash should not make entries to the general ledger or subsidiary ledgers.
- (iv) A petty cash fund should be entrusted to a single custodian and used for all payments other than those made through cheque.
- (v) Individuals handling cash should be bonded.

Cheque Received and Issued

- (i) Incoming mail should be opened and recorded by persons other than those with access to cash receipts journals and accounts receivable records. If there is no donation form with the Cheque, one should be prepared. All information pertaining to Cheque should be captured on the donation form.
- (ii) A person with no access to cash should compare cheque receipts records and authenticate deposit slips with mail listing.
- (iii) Cheques should be pre-numbered, used in sequence with adequate controls over supplies of blank Cheques. All Cheque numbers, even destroyed Cheques, should be entered into the accounting program.
- (iv) Cheques should be prepared by persons other than those who approve invoices. The supporting organizational invoices should be signed by the responsible committee chair for that type of funding.

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- (v) Cheques should be entered in the disbursement journal exactly as they have been prepared.
- (vi) Cheques to vendors should be issued only in payment of approved invoices, and the supporting documents should then be cancelled.
- (vii) Cheques should be prepared from original organizational invoices with attached copies of purchase orders, vendor invoices and receiving reports and presented for signature with these attached. The organizational invoices should be numbered (by the treasurer after receipt), include the originals of all receipts, and be retained in numerical order.
- (viii) Bank accounts should be reconciled periodically by someone other than the person who signs the cheques.
- (ix) The person who is responsible for the physical custody of an asset should not also have responsibility for keeping the records related to that asset.
- (x) The best bank accounts will link each evening with the organization's accounting system, and update the accounts with that day's bank transactions.
- (xi) The governing board should authorize all Cheque signatories. All Cheques more than a certain amount should be signed by two persons.
- (xii) Signing of blank Cheques should not be permitted.
- (xiii) An officer or executive director should receive the unopened bank statement before turning it over to a person, other than one who handles the receipt and disbursement of cash, for reconciliation. This officer should review the bank reconciliation, then date and initial it. The reconciliation should be retained for the internal audit team.
- (xiv) The person who has authority for placing employees on the payroll and establishing wage rates should not be the same person who signs the cheques.

Internal Audit of Donations

6.12 Similar to other areas, the internal audit objectives would be to ascertain completeness, measurement and presentation, ownership and existence of the receipts which could be achieved by ensuring the following:

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- (i) Value of donations received during the year is appropriate (measurement).
- (ii) Donation recorded during the year were in fact received by and belong to the organisation (occurrence, ownership and existence).
- (iii) Value of donations received in kind, where value could be reasonably estimated were recorded (completeness).
- (iv) Cash donations during the year were recorded (completeness).
- (v) Donations during the year were adequately disclosed in the Financial Statements (presentation).

6.13 The internal auditor needs to understand the process of issuing of donation receipts by the entity. They assume importance as these are the only official documents issued to third parties attesting to donations received. The internal audit of the receipt issuing process is an integral part of the internal control examination performed by the auditor with respect to donations. In case of a registered entity, the auditor can rely on receipts to donors for claiming income tax exemptions. Where the donation is motivated by allowing of tax deductions, donors would insist on receipts thus ensuring records are available. Difficulty arises where:

- (i) The donation is not tax deductible.
- (ii) Donors do not insist on a receipt
- (iii) The amount contribute is below the minimum limit for which the entity issues receipts.
- (iv) Donation is anonymous.

6.14 It has been estimated that most organisations receipts are not issued for upto to 20% of donations. Thus, the internal auditor may not be able to express an opinion on completeness, measurement and existence of all donations. The internal audit process would mainly help the internal auditor to determine to what extent policies and procedures of the entity can be relied upon. An internal audit strategy for donations will be based on the auditor's understanding of the receipt issuing process and of internal control on donation receipts.

6.15 The internal auditor should enquire about the following policies and procedures to ensure reliability of receipts:

- (i) Control over numerical sequence.

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- (ii) Procedures to ensure that the amount mentioned in receipts is correct.
- (iii) Control over date of issuance of receipt and date of donation.
- (iv) Details of entity name, address and registration number.
- (v) Presence of name and address of donor.
- (vi) In case of property, correct description of property , consistent use of appraisal method and competence of persons.
- (vii) Authorised signatories.
- (viii) Controls over issuing of duplicates.

6.16 Given the importance of donation receipts and unavailability of proper records, the internal audit would not be complete without some substantive testing. Procedures selected could include:

- (i) Review of receipts issued during the year to detect unusual or substantial donations which need to be audited in detail.
- (ii) Internal Audit of cash donations – Donation receipts can be used as internal audit evidence. One way is to compare records of donations in accounting system with the bank deposit slips for the day. This can be done where the internal control ensures that cash received is deposited daily as it is. Alternatively match the total receipts issued with total donation revenues recorded and with total revenues deposited in bank. This would ensure that donations received were actually recorded. But it does not provided reasonable assurance that all donations were recorded so should be used in conjunction with other procedures.

When there are differences in total amount of receipts and donation revenue shown in the books, the internal auditor should get a satisfactory explanation from the organisation. Many a time the difference is due to the different cut off dates for accounting and tax purposes or due to the fact that the donors did not ask for receipt. For donations in kind, no corresponding receipts may have been issued.

The internal auditor should analyse differences and no satisfactory explanation would necessitate increase in internal audit procedures for donations. It would mean looking into the receipt issuing process to find, if there is any weaknesses in the internal control system, paying special attention to receipts issued late, duplicate receipts, etc.

Internal Audit of Funds

6.17 The internal auditor should ensure the following:

- (i) The organization's financial policy addresses the circumstances and restrictions attached to funds.
- (ii) Though fair and reasonable requirements connected to restricted, or designated, endowment funds from donors are acceptable, the internal auditor should verify that organization carefully check with donors, limits, conditions, and expectations of such gift—taking special care to avoid conditions set forth by any donor which could cause the organization to stray from its basic mission.
- (iii) In case of donor restrictions, whether the not-for-profit organisations to segregate these contributions as temporarily restricted assets until the specified conditions have been met.
- (iv) When a donor restriction expires, whether the temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. If material, the components of temporarily restricted net assets and the amounts released are disclosed in the footnotes of the financial statements.
- (v) When the contribution must be held by the not-for-profit organisations in perpetuity whether the amount is recorded as an asset and as permanently restricted contribution revenues. Permanently restricted contribution revenues (reported on the statement of activities) also cause the amount of permanently restricted net assets to increase.

Utilization of Endowment Funds

6.18 The internal auditor can ensure that policies, which usually are set by Board or their investment committees and, have been reviewed in conjunction with state laws.

Restricted Funds

6.19 For restricted funds following should be kept in mind by the internal auditor:

- (i) The principal amount of the permanently restricted assets is invested to generate income. Unless otherwise stated, the income earned

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belongs to the fund and has the same restrictions and must be accounted for as part of the fund to which it belongs.

- (ii) For investment purposes, based on conditions of the donation assets are not pooled with others, but instead, are held in separate accounts. Activity and investment performance are reported periodically. Where the assets can be pooled for investment purpose, the income is attributed to each fund, based on the amounts invested and the time for which they were invested. The amount of interest credited at the end of the investment period will be determined by the average rate of return received by the entity on investments during that period
- (iii) If a restricted fund consists of assets (e.g. a property or investments) and any are sold, the proceeds of sale must be held within the same restricted fund.
- (iv) The only exceptions to the above are:
 - where the donor has expressly provided for some other use for the income;
 - where the asset is part of a permanent endowment held for general purposes. In this case, the capital is restricted in an endowment fund (because it cannot be spent) but the income is unrestricted and can be spent for general purposes. E.g., Millionaire Foundation awards Rs. 5,00,000 for use over twenty years for general operating support.

Donated Property, Plant and Equipment

6.20 One of the primary issues in accounting for donated goods is their valuation in the NPO's financial statements. Since in kind contributions are recognised by the Income tax authorities in Canada and USA, the internal auditors can review the receipts issued for tax purposes with accounting records but in India, since Section 80 G provides exemption only for monetary donations, auditors cannot use that method.

6.21 Though the transactions are non-monetary in nature the inherent risk in determining their value remains high, particularly for used assets not recently involved in a business transaction. Donated property, plant and equipment may be recorded by the organisation when an estimate of fair value can be reasonably made. Both the Canadian standards and US SFAS 157 talk of fair value. Fair value would be "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between

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market participants at the measurement date”. During internal audit, the internal auditor should review the documents, invoice or appraisal reports in supporting the market value attributed to these assets.

6.22 In many circumstances, the organisation is likely to receive bulk quantities of the donated items (for example, manufacturers and/or retailers donating packaged foods, new toys, new blankets, stationery etc.). In such cases, the entity can use wholesale values for the items received.

Internal Audit of Small or Used Items

6.23 The completeness of donations often presets a high inherent risk, especially in case of small furniture or equipment belonging to organisations that do not capitalise their assets.

The reasons could range from NPO not valuing its low value assets at all due to difficulty involved or it might estimate their value. If the NPO is using estimates, the internal auditors should ensure that, the methods are being applied consistently and the results obtained are reasonably expected not to be materially different from detailed measurements. The internal auditors should obtain sufficient appropriate evidence to enable them to evaluate whether management accounting estimates are reasonable within the context of the financial statements as a whole.

6.24 Valuation of used items also needs to be considered. For example, if the NPO received donated office furniture from a business, how would it value it? Here the concept of “exit price” comes into picture. The recipient charity should consider the market that would be most advantageous for the asset. It needs to identify the market where it would get the best price for the items. In case of used furniture, because of the volume and condition of the items the organization could not sell them to users directly, the best market could be the price that a used furniture outlet store would pay an office for such items.

Donated Services

6.25 Contributed services are a significant activity for many non profit organizations However, most of the time it is difficult to place a monetary value on donated services, and the NPO may also not have control over the time and effort put in, so such services are generally not recorded as contributions and expense. Then again, there are some services which, if not

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recorded, would not show a correct picture of the entity position on the financial statements. Some such services are:

- (i) Legal, accounting, and other professional services,
- (ii) Donation of office space,
- (iii) Providing free use of equipment such as computers, printers, etc..

6.26 The thumb rule to recognise services would be, that they:

- (i) can be easily measured,
- (ii) create or enhance non-financial assets (e.g., constructing a building),
- (iii) require specialized skills, are provided by individuals possessing those skills (e.g., carpenters, doctors, and accountants),
- (iv) would typically need to be purchased if not provided by donation.

Illustrations

What constitutes donated service?

a. A lawyer on the NPO board reviews the organization's contracts and receives the handicrafts made at the NPO in appreciation of her services.

The lawyer's services are within the scope of her voluntary service on the board which is not compensated and not recognized.

b. A local accountant volunteers 10 hours of service a week to set up the information system and helps in recording transactions. His professional services are valued at Rs. 350 an hour.

The accountant's services should be recognized as donated service because he is providing specialized services otherwise would have been purchased.

c. The executive director is a salaried employee.

The director is compensated and hence it does not constitute donation.

d. Several local citizens were at the counter at the fun fair organised by the NPO and were noting the name of the participants at the contest.

There was no specialised services provided.

Grant Management

6.27 Funders expect not-for-profit organisations to justify the request for funding and its capability to use it in an effective manner. The grant proposal should be able to bring out how the applicant's research has determined, and demonstrate, that the project being presented is central to the donor's agenda. Strong proposals offer compelling solutions to be carried out by competent, solvent applicants. Grant management thus involves researching grant sources, planning projects, preparing proposals and budgets and managing funded programs and evaluating them. In short, the entity has to be able to develop funders' interest in the organization's mission/services, developing in them a passion for the mission and a commitment to the organization's future, getting them to make-the-gift, and maintaining the relationship so that they will continue to support the mission and continue to give.

6.28 It has been found that a large number of funding requests, estimated at 90 percent, are declined as they fall outside a provider's stated interest areas or because they are inadequately prepared and do not reflect an organisation's strengths and its ability to carry out a proposal's objectives. Also, if grants are not utilized as per decided terms or periodic reports are not sent, the provider will not make any further disbursements. It thus becomes essential for the internal auditor to review the proposals and manage of grants and contribution programs.

6.29 The internal auditor has to first gain an understanding of the process and then go into details of management of project under grant:

First Step: Details of Grants

The Internal auditor should obtain:

- (i) A list of all grants procured by the organization, including the amount of grant, time frame for fund usage, and the specific program, service or project the money has been designated for. get copies of any specific financial arrangements or contracts required by the grantmaking organization.
- (ii) Documentation on entity's goals and its strategy to achieve them. The entity would have a plan on amount of money required and use of the money along with detailed procedures for executing the plan.

Second Step: Service Provision and Outcomes

A well documented service provision and outcomes should have the following details:

- (i) the mission statement and listing of all the services the organization provides to the community under the umbrella of the mission.
- (ii) Documentation of the scope of those services; how large is the service area? Is the organization state, county or citywide? List the population the organization serves; is it a specific population, such as individuals with disabilities, homeless or battered women, or children?
- (iii) Documentation of outcomes, or how the NPO's services positively affect the population it serves, numbers of people affected and length of time individuals utilize the services of the NPO.

Third Step: Information on Project

Obtain knowledge of the policy history, the program results desired, critical success factors, risks, known weaknesses, as well as matters specific to the program under review. At the core of internal auditing, grants and contributions is the determination of whether financial management and control is adequate. There should be clear evidence for the following:

- (i) Support for appropriate decision-making at all levels;
- (ii) Availability of timely, relevant and reliable management information, both financial and non-financial;
- (iii) Management of risk;
- (iv) Efficient, effective and economical use of resources;
- (v) Accountability for the use of resources;
- (vi) A compliance with authorities and safeguarding of assets; and
- (vii) Monitoring and reporting of actual results.

In short, auditing grants and contributions programs amounts to the determination of an appropriate level of due diligence in the management of funds.

Fourth Step: Project Management, Implementation

- (i) Has the management reviewed the program design to ensure that it provided for effective control?

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- (ii) Are the results expected from the program clear, measurable, directly related to objectives?
- (iii) Do the eligibility and assessment criteria, and any associated direction, directly address and contribute to these expected results?
- (iv) Do the program design address relevant risks?
- (v) Is there a centre of expertise/central review group for grants and contributions in the organization to assist program management?
- (vi) Are responsibilities well defined – in particular, those of people who are not program staff but are involved in funding decisions?
- (vii) Do available resources (human, physical, financial and other) match the workload for the program?
- (viii) Are responsibilities among staff supportive and clear?
- (ix) Do the staff have the time and means to enforce the rules and carry out their responsibilities?
- (x) Do the staff have information, tools and essential resources to do their jobs well?
- (xi) Do the staff know how to assess an application under the program, and how to monitor a project with due diligence?

Fifth Step: Project Reporting

- (i) Are actual project results measured and rolled-up?
- (ii) Is there on-going program information on achievement of expected results?
- (iii) Are there compliance audits/reviews of projects?

Chapter 7

Illustrative Internal Audit Checklist

7.1 This chapter contains a detailed internal audit checklist on various aspects of non-for-profit organisations. The checklist is general in nature, which can be customized according to nature and size of the organisation:

A. Knowledge of Business

S. No.	Particulars	Y/N N/A	Notes
1.	What are the documents available about the NPO's activities: <ul style="list-style-type: none">• Articles of incorporation• Regulations• Major contracts• Minutes of meetings• Brochures, newsletters or reports distributed to members or donors.		
2.	What information is available about the NPO's external environment: <ul style="list-style-type: none">• Tax, legal, regulatory and contractual obligations• Manuals, periodicals, financial information about similar organisations.		
3.	Which of the following sources for financial information are available: <ul style="list-style-type: none">• Working papers of previous engagements• Annual reports• Budgets		
4.	What accounting policies are adopted by the organisation for: <ul style="list-style-type: none">• Capital assets• Donated materials• Donated services		

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	<ul style="list-style-type: none"> • Fund accounting • Restricted assets and funds 		
5.	<p>What are the NPO's main sources of income?</p> <ul style="list-style-type: none"> • Obtain information on major sources of funding and names of main contributors. • Methods to collect donations. 		
6.	<p>What are the characteristics of the recipients of NPO's services:</p> <ul style="list-style-type: none"> • Physically challenged • Economically deprived • Homeless children, etc. 		
7.	<p>Who are the related parties?</p> <p>The income tax exemption available to NPO would not be available on the portion of income or property if it is used for the benefit of certain specified persons (Section 13). These include:</p> <ul style="list-style-type: none"> • Author of the trust or founder of the institution • Trustee or manager of the trust • Person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty thousand] rupees. • Any relative of any such author, founder, trustee, manager, or member as aforesaid. • Where such author, founder or person is a Hindu undivided family, a member of the family. • Any concern in which any of the person, mentioned above, has substantial interest. 		

B. Budgeting

S. No.	Particulars	Y/N N/A	Notes
1.	<p>Which of the following budgets does the organisation have:</p> <ul style="list-style-type: none"> • project/ program budgets. (e.g. those relating to one activity or donor-funded project) • core costs (administration/ overheads) budget. • comprehensive operating budget (organisation-wide budgets consolidating all activities like cost of programs, management and fundraising). • Others. [specify] <p>Try to get copies or go through the most recent budgets available, noting the period they refer to.</p>		
2.	<p>Whether the organization prepares cash flow projections.</p>		
3.	<p>What process is used to produce the organisation's budgets.</p> <ul style="list-style-type: none"> • <i>Find out who is involved (executive staff / finance committee)</i> • <i>When they are produced (year end or quarterly)</i> • <i>Is there a link to the organisation's mission and objectives?</i> 		
4.	<p>What method is used to produce the organisation's budgets:</p> <ul style="list-style-type: none"> • Based on historical figures and projections made? • Periodically year -end revenue is forecast, and budget adjusted 		

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5.	<p>Is there provision for contingencies to deal with emergency or unexpected expenses:</p> <ul style="list-style-type: none"> • unexpected repairs and maintenance. • Personnel expenses due to retirement or maternity leave. • changes in tax rates, fringe benefits, allocations of rents, auditing fees, etc. 		
6.	<p>Is the organisation's annual budget formally approved by the Board and entered in the minutes:</p> <p>Are significant changes to the budget approved by the Board.</p>		
7.	<p>Whether the organisation prepares budget report comparing the actuals to budgeted amounts:</p> <p><i>For actual the organization needs to monitor unit costs of programs and services through the documentation of staff time and direct expenses and allocate the management, general and fundraising expenses.</i></p>		
8.	<p>Whether the organization has established a plan identifying actions to take in the event of a reduction or loss in funding.</p>		
9.	<p>Whether the organization has established, or is actively trying to develop, a reserve of funds to cover at least three months of operating expenses.</p>		

C. Internal Control

S. No.	Particulars	Y/N N/A	Notes
1.	<p>Does the organisation have an up-to-date Organisation Chart?</p> <p><i>If not, enquire about admin structure and management responsibilities.</i></p>		
2.	<p>What are the roles of various levels of management?</p> <p><i>Note: the job profiles and hours spent in various activities like fundraising, program management, admin, etc.</i></p>		
3.	<p>Does the organisation have approved policies outlining its expectations in:</p> <ul style="list-style-type: none"> • Financial management practices • Personnel management practices • Conflict of interest • Fundraising practices • Quality of services to users, clients, consumers, or the public • Safety of staff, volunteers, and clients <p><i>Find out the nature and extent of entity's reliance on volunteers and its impact. Training provided to staff</i></p>		
4.	<p>What are the policies and procedures in various activities? Are they written down? Are they communicated to executive staff?</p> <ul style="list-style-type: none"> • Delegation of authority • Cash handling • Procurement • Payment 		
5.	<p>Are the above policies and procedures implemented?</p>		

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6.	<p>Is there proper segregation of duties in critical activities:</p> <ul style="list-style-type: none"> • Finance and book-keeping • Procurement and payment • Invoice approval and cheque signing 		
7.	<p>What controls are in place for handling Cash:</p> <ul style="list-style-type: none"> • Cash receipts recorded and immediately deposited in the bank? • A person with no access to cash compares cash receipts records and authenticate deposit slips. • All incoming money banked and no amounts held over for petty cash “feeding”. • Numbered duplicate receipts issued for all incoming cash and cheques. • Segregation of duties between Individuals handling cash and person recording in the ledgers. <p><i>Variations should be explained</i></p>		
8.	<p>What controls are in place for cheques received and issued.</p> <ul style="list-style-type: none"> • Rules for authorisation of payment. • Cheques never signed in blank. • Cheques are issued in sequence, blank cheques safeguarded and all Cheque numbers, even destroyed Cheques are entered into the accounting program. • Segregation of duty- cheque signing and invoice approval; person deciding salary amount and signatory • Issued only for approved invoices and never signed without proper 		

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	<p>documentary evidence of the nature of the payment?</p> <ul style="list-style-type: none"> • Authorised signatories approved by the governing board 		
9.	<p>What controls are in place for bank accounts.</p> <ul style="list-style-type: none"> • All bank accounts held in the name of the NPO and not in individuals. • Authorisations for bank operations and cheque signatories done yearly. • Bank notified of the amounts beyond which counter-signatures are required. • Instructions to open or close accounts properly authorised and / or reported to Trustees/Board. • Secured records held for all bank accounts. • Regular bank reconciliations carried out by someone other than the person who signs the cheques. • Bank statements regularly inspected by the Board. 		
10.	<p>Which of the following controls over purchases are followed:</p> <ul style="list-style-type: none"> • Competitive quotations are considered wherever applicable. • Supporting documentation held for all items of expenditure (i.e. invoices, vouchers, receipts). • All expenditure properly authorised. • Invoices checked against orders made. • The quality and quantity of goods supplied checked against orders made. 		

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	<ul style="list-style-type: none"> • Payments only made against original invoices (i.e. not on monthly statements or photocopies). 		
11.	<p>Whether Organizations take periodic inventories?</p> <ul style="list-style-type: none"> • monitors the inventory against theft. • reconciles general ledger inventory information. • maintains an adequate inventory level. 		
12.	<p>Whether Organization has an effective contracting or tendering system:</p> <ul style="list-style-type: none"> • Complies with the requirements of procurement legislation; • is open and fair; • meets all the requirements of each contract or tender. 		

D. Finance

S.No.	Particulars	Y/N N/A	Notes
1.	Whether the organisation has set up appropriate financial systems.		
2.	Whether the organisation has employed qualified persons, either full- time, part-time or voluntarily to administer and manage the systems.		
3.	<p>Whether the organisation has financial policies and procedures manual which includes:</p> <ul style="list-style-type: none"> • Financial statement presentation • Distribution of financial statements • System of accounting codes • Investment policies • Cheque signing procedures 		

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	<ul style="list-style-type: none"> • Bank statement reconciliation procedures • Travel expense and other policies • Revenue collection and recording • Payroll policy, • Insurance policies, • Controls over fixed assets, • Controls over inventories (if applicable), budgeting procedures • Tax procedures (if applicable) and • Conflicts of interest 		
4.	Whether capital needs are at least reviewed annually.		
5.	<p>Whether the organization has insurance coverage.</p> <ul style="list-style-type: none"> • insurance coverage is adequate. • periodically reviewed to ensure the appropriate levels and types of coverages are in place. 		
6.	Whether the organization has clear policies on loans and staff advances.		
7.	Whether the organization has a policy regarding the receipt of outside honoraria and/or remuneration in order to avoid 'duplicate' or inappropriate payment.		
8.	Whether employees, board members and volunteers who handle cash and investments are bonded to help assure the safeguarding of assets.		
9.	Whether the organization has a written policy related to investments.		
10.	Whether training is made available for board and appropriate staff on relevant accounting topics.		

E. Donations and Grants Received

S. No.	Particulars	Y/N N/A	Notes
1.	<p>What controls are in place for donation receipts:</p> <ul style="list-style-type: none"> • Control over numerical sequence • Procedures to ensure amount on receipts ins correct • Control over date of issuance of receipt and date of donation • Details of entity name, address and registration number present • Presence of name and address of donor. • In case of property, description of property is correct, consistent use of appraisal method competence of persons • Authorised signatories • Controls over issuing of duplicates 		
2.	<p>What are the different methods to collect donations.</p>		
3.	<p>Review receipts to detect substantial or unusual donations.</p>		
4.	<p>Whether total receipts issued match with donation revenues and amount deposited in bank. (Variations to be explained.)</p>		
5.	<p>Whether relevant details of grants received is maintained:</p> <ul style="list-style-type: none"> • List of all grants procured by the organization with details of amount of grant, time frame for fund usage, and the specific program, service or project the money has been designated for. • Any specific financial arrangements or contracts required by the grant-making organization 		

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6.	What is the effect of non compliance with restrictions <ul style="list-style-type: none"> • Penalties and sanctions • Financial impact 		
7.	Enquire on the reasons for non compliance with conditions or restrictions.		
8.	Whether the organisation has designated ratios and standards to keep control of fundraising and administration costs.		
9.	Whether the organisation has developed a diversified funding base to reduce the risk of financial dependency.		

F. In-kind Contribution

S.No.	Particulars	Y/N N/A	Notes
1.	How is the valuation of Donated property carried out: <ul style="list-style-type: none"> • Method used • Supporting documents which are evidence of the value attributed • Presentation in financial statements 		
2.	What is the policy of the organisation for valuation of donated material and services. <ul style="list-style-type: none"> • Method used • Method used consistently • Audit the estimated value • Presentation in financial statements • Compare with earlier years data 		

G. Compliances- FCRA 2010

Sr.No.	Particular	Y/N N.A.	Note
1.	<ul style="list-style-type: none"> • Whether any foreign contribution is received by the organization during the period: If yes, organisation has obtained the certificate of registration from the central government or • has taken the prior permission from the central government. 		
2.	<p>Whether receipt of contribution has to be now reported to the Central Government by the bank within 48 hours of the receipts with the following details:</p> <ul style="list-style-type: none"> • amount of the foreign contribution • its source and the manner in which it was received • other particulars as may be prescribed 		
3.	<p>Verification of registration documents as per FCRA</p> <ul style="list-style-type: none"> • to verify registration certified issued by Ministry of Home Affairs • to verify the designated bank account mentioned in certificate • to verify the nature of organization in certificate. 		
4.	<p>Documents in support of receipts of foreign contribution:</p> <ul style="list-style-type: none"> • to verify the donor letter & purpose thereof. • whether the purpose mentioned in donor's letter is in accordance with the object & registration certificate. • whether the source is a foreign source • whether interest & other incidental 		

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	<p>income generated out of foreign contribution is accounted properly in FC books.</p> <ul style="list-style-type: none"> • whether such foreign contribution deposited in designated bank account mentioned in registration certificate. • To counter check total foreign contributions with total cr in designated bank account. 		
5.	<p>Document in support of utilization of foreign contribution:</p> <ul style="list-style-type: none"> • to verify the purpose of utilization. • to verify whether such utilization is in accordance to donor instruction • to verify whether the utilization reached to end user. • to verify supporting for such utilization 		
6.	<p>Utilisation of foreign contribution by way of donation to other trust:</p> <ul style="list-style-type: none"> • to verify the registration status of done organisation under FCRA. • to verify the purpose for which such donation made. • to verify supporting for such transaction. • to verify application/ proposal from donee. 		
7.	<p>Whether organisations is complying with donor restrictions, if any:</p> <ul style="list-style-type: none"> • Financial managers have copies of relevant documentation to know the restrictions set forth. • Are the funds being utilised in accordance with the donor's wishes. 		
8.	<p>Whether utilisation of foreign contribution as per the FCRA Act:</p> <ul style="list-style-type: none"> • Verify whether FC is used for speculative business. If it has been so used, this orign contribution should be included in the report. 		

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	<ul style="list-style-type: none"> Administration expenses amount to not more than 20% of the total amount of foreign contribution. 		
9.	<p>Administrative Expenditure.</p> <p>(i) Section 8 of the FCRA 2010 provides that the administrative expenditure shall not exceed 20% of the total utilization of funds out of FCRA receipts. Further, it states that any expenditure of administrative nature in excess of 20% shall be defrayed with prior approval of the central government.</p> <p>(ii) The rule further provides that any type of expenditure expended directly on programme activities shall not be considered as administrative in nature.</p> <ul style="list-style-type: none"> to verify the overall expenditure of organization towards administrative expenditure. to verify direct cost of projects and other administrative expenditure. to verify overall budget of the organization. 		
10.	<p>Change in member of executive committee/Governing council</p> <p>(i) FCR Rules through its Forms require prior permission for change of more than 50% of members of Executive Committee of an NGO.</p> <p>(ii) Form FC-3 pursuant to Rule 9(1)(a) of FCRA, 1976 and Form FC-4 pursuant to Rule 9(2)(a) of FCRA 2010 includes 'Declaration and undertaking' by the Chief Functionary of the applicant organization which in point (ii) specifies obtaining of prior permission for the changes causing replacement of 50% or more members of</p>		

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	<p>the Executive committee/Governing Council.</p> <p>(iii) There is no corresponding provision in FCR Act 1976 or 2010 which provides for the above and so forms specified in rules takes the effect of superseding the Act. The rules are made under the powers conferred by the Act itself and cannot have any provision which goes beyond the Act.</p> <ul style="list-style-type: none"> • To verify the present status of governing body and to ensure that there is no substantial change in the overall composition. • In case of change in excess of prescribed limit, to ensure for necessary approval has been obtained from Ministry of Home Affairs. 		
11.	<p>Consultancy Income of an NPO</p> <p>(i) FCRA, 2010 excludes 'the professional/ consultancy fees paid to NGOs from Foreign Source' from the definition of Foreign Contribution.</p> <p>(ii) Explanation 3 to Section 2(1)(h) of FCRA 2010 states that any amount received, by any person from any foreign source in India by way of fee or cost against business, trade or commerce shall not be considered as foreign contribution. In other words, such receipts shall be kept outside the FCRA account.</p> <ul style="list-style-type: none"> • to verify whether any such transaction is recorded in FC accounts. • to verify similar type of contracts with the donor agency. 		
12.	<p>Information on Public domain</p> <p>(i) Rule 13 provides for requirement of</p>		

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	<p>keeping the information regarding receipt and utilization in public Domain.</p> <p>(ii) The Rule provides that if the contribution received during the year exceed Rs. 10 million, then the organisation has to keep in the public domain all data of receipts and utilization during the year and also in the subsequent year. The rule also states that the Central Government will also upload such summary of data through its website.</p> <p>(iii) The manner of disclosure or meaning of 'public domain' has not been explained. It seems that all such organizations are required to have their own website where such data should be uploaded.</p> <ul style="list-style-type: none"> • to obtains for web site address and verify that the information as required by the rule is kept on it and is accessible to all. 		
13.	<p>Speculative investment</p> <p>(i) The new law does not permit investment of surplus funds in risky or speculative assets. Rule 4(1)(a) prohibits investment in shares & stocks even through mutual fund.</p> <p>(ii) Rule 4(1)(b) prohibits investment in high return schemes or in land if it is not directly linked to the declared aims and objectives of organisation. Basically the idea is to prevent investment of short term funds into risk bearing instruments or assets.</p> <ul style="list-style-type: none"> • To verify the details of investments to ensure that no investment is made in such speculative investments. 		

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14.	<p>Prohibited Sources</p> <p>The Act provides power to the Central Government under Section 11(3) (iv) to notify such source(s) from which foreign contribution shall be accepted with prior permission only. It implies that the Central Govt. may notify specific donors or countries from which foreign funds could not be received or shall be received with prior permission only.</p> <ul style="list-style-type: none"> • To verify sources of all foreign contributions and to ensure that no fund is received from such prohibited sources. 		
15.	<p>Contribution received in kind.</p> <p>(i) The new FCRA Rules vide form FC-7 requires a certificate from a Chartered Accountant with regard to the foreign contribution received in kind. There was no such requirement under earlier Act and Rules. A Chartered Accountant normally certifies only the objective of the contribution.</p>		

Appendix 1

Laws for Societies, Trusts, Wakfs and other Endowments*

S. No.	Legislation	Purpose of the Act	Organisations Covered	Coverage	Measures for Purpose Compliance	Strength	Limitations
1.	<p>Societies Registration Act, 1860</p> <p>Modelled on the English Literary and Scientific Institutions Act, 1854</p> <p>Basic aim was (i) to maintain a register of such</p>	Regulation, incorporation, improving the legal condition of Societies	Societies registered for the promotion of literature, science, fine arts, diffusion of knowledge, education, charity, political education,	<p>- requirements for registrations.</p> <p>-annual returns about Governing Body.</p> <p>-legal personality of Society.</p>	<p>-purpose should be lawful.</p> <p>-alteration of purpose or dissolution only by General Body by special vote.</p>	<p>Least intervention by the State.</p> <p>-facilitative role of law recognized.</p>	<p>-loosely refers to democratic framework.</p> <p>-purpose compliance mechanism and financial discipline scheme ineffective.</p>

* Source: www.asianphilanthropy.org.

	<p>Associations functioning in the State and (ii) to make them a legal entity; (iii) element of any control / regulation was absent in the original Act. After Independence the subject came under the State list of Schedule 7. Under Indian Adaptations Order this legislation became virtually a Model Act which could be amended only by the State Government. In subsequent years many of the governments went on adding different degrees</p>		<p>libraries. -Non-profit Bodies</p>				
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	of teeth to this Act in form of (a) placing annual audit and other reports before the General Body as well as to the government; (b) Registrar's power of enquiry and investigation; (c) power of supersation; (d) take over of management.						
	Andhra Pradesh Societies Registration (SR)Act,1959 Karnataka Act, 1960 SR -M.P. Act,1973 SR -Meghalaya SR	Regulation, incorporation, improving the legal condition of Societies within the State.	Societies established for promotion of charity, education, science, literature, fine arts, sports, foundation or maintenance of libraries.	-requirement for registration. -democratic framework of Managing Committee. -Authority vested with General	-General Bodies control and Committees accountability. -annual audit and other reports to be placed before	-systematic democratic organisation. -well conceived financial discipline. -effective scheme for purpose compliance.	-excessive governmental intervention amounting to regimentation. -freedom to disassociate is difficult to exercise.

	Act, 1983 -Rajasthan SR Act, 1958 -Tamil Nadu SR Act, 1975 -Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955 -U.P. SR Act, 1976 -W.B. SR Act, 1963		reading room, collection of natural history. -Non-profit Bodies	Body. -control over transfer of property or use of funds. -extensive power of Registrar - financial discipline.	General Body. -Registrar's power of enquiry, investigation, surcharge and actions like superseding appointment of administrator. -Court's or Registrar's power of dissolution and cancellation of registration.	-laws role both facilitative and regulative	
2.	Religious Endowments	Management was solely in	Endowments of Mosques,	Rights of Trustees;	-Trustees to give	-autonomy to	-life tenure of

	<p>Act,1863</p> <p>Basically a Private Endowment Act which placed the property under the management of Trustee/Trustees under a Will for religious and charitable purposes.</p> <p>It was some sort of a contract between the Will maker and the Trustee.</p>	<p>the hands of the Trustees.</p>	<p>Temples and other religious establishments.</p>	<p>appointment of Regional Committees; members of Regional Committees; Duties of the Trustees.</p>	<p>accounts.</p> <p>-committee to supervise.</p> <p>Since it was a contract between the Will maker and the Trustees, the only intervention possible was through filing of a civil suit in a court of law.</p> <p>-suits for breach of trust.</p>	<p>Endowment.</p> <p>-concept of elected Body of the Committee.</p> <p>-control over Trustee.</p>	<p>Committee Member.</p>
3.	<p>Charitable and Religious Trusts Act,1920</p> <p>Concept of Public Trust came to be</p>	<p>Effective control over charitable and religious Trusts.</p>	<p>Charitable and Religious Trusts.</p>	<p>-Trustee under an obligation to disclose object, income and</p>	<p>-Court's interference for proper administration.</p>	<p>-Transparency is ensured by disclosure of particulars.</p> <p>-Courts</p>	<p>-Extensive institutional or administrative control is absent.</p> <p>-preventive mechanism is not</p>

	<p>established firmly. Trustees were made accountable for disclosure of the income and the value of the Trust. Civil courts given sue-motto powers to pass orders relating to proper management of Trust. But direct intervention of the government was not at all intended. After Independence, the situation changed drastically. Many of the State Government enacted their own Religious and Charitable Endowments Act in the areas of</p>			<p>value of Trust. -court to pass orders relating to proper management</p>	<p>-Remedies under civil procedure code for breach of trust.</p>	<p>regulative role.</p>	<p>adequate.</p>
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	temple management. State Government officials (State Government appointed Trustees and functionaries) given widespread administrative and supervisory powers.						
	a) Madras Hindu Religious and Charitable Endowments Act, 1951 b) Travancore-Cochin Hindu Religious Institutions Act, 1950	Administration and governance of all Hindu public religious institutions and endowments in the concerned State.	Hindu public religious institutions and endowments including Matths.	Formation, rights and duties of Trustees, powers of Authorities such as - Commissioner, Deputy Commissioner, Assistant Commissioner, Accounts	-supervising powers of authorities. -religious qualifications and duties of Trustee and servants. -financial accountability for proper use.	- systematization in temple administration. -wide-ranging powers of State Authorities to ensure purpose compliance.	-lack of democratic framework for devotees participation.

				Committee etc.			
	c) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966	Administration and governance of all Hindu Public Religious Institution and Endowments in the State.	Hindu public religious institutions and endowments including Matths.	-registration. -vesting of property in the institution. -appointment of Board of Trustees, rights, powers, duties, disqualifications of Trustees. -Powers of Authorities.	-requirement of giving accounts, audit, budget. -regulation on investment of funds and use of surplus funds.	-Chairman of the Board of Trustee is elected by the Board of Trustees. -elaborate measures about Tirupati Temple.	-lack of democratic framework for devotees' participation.
	d) Karnataka Hindu Religious Institutions and Charitable Endowments	Administration and governance of Hindu public religious institutions and	Hindu religious institutions and Charitable Endowments	-formation of Committee of Management for each notified	-requirement of giving accounts, audit, budget.	Extensive measures for financial discipline.	-exclusion of Matths and religious denominations. -lack of democratic participation of

	Act, 1997	endowments in Karnataka other than Matths and Institutions of religious denominations.	other than Matths and denomination institutions.	institution. -Advisory Committee at State level. -Powers of Authorities.	-regulation on investment of funds and use of surplus funds. -power to suspend improperly Working Committee. -proper administration of common pool fund.		devotees.
4.	Wakf Act, 1995 Special kind of Charitable and Religious Endowments Act. To manage Muslim Trust properties (Wakf). This again guided	Better administration of Wakfs, superintendence and control of Wakfs.	Wakfs or permanent dedication by a Muslim, of any property for any purpose recognized by the Muslim law	-formation of Wakf Board. -distribution of power between Wakf Board and Wakf Commission	-restraints on powers of muttawalli. -restriction on misuse of property -Executive Officer's role.	Semi-democratic composition of Wakf Board. -protection against misuse of mechanism for purpose compliance is	Beneficiaries are not given any opportunity in decision making.

	<p>by a Will.</p> <p>Little regulatory powers of the government. In case of any dispute, it could be settled only by a Civil Court.</p>		<p>as pious, religious or charitable.</p>	<p>r</p> <ul style="list-style-type: none"> -appointment of Executive Officer. -strengthening finance of Wakf Board. -restrictions on powers of Muttawalli -Wakf Tribunal. -prevention of misuse of improper transfer of property 	<p>-Wakf Tribunal's interference</p>	<p>effective.</p>	
5.	<p>Charitable Endowments Act, 1890</p> <p>The government introduced some elements of</p>	<p>Vesting administration of property held in Trust for charitable purpose</p>	<p>Public Trusts for charitable purpose.</p>	<ul style="list-style-type: none"> -defines charitable purpose. -constitutes treasurer for charitable 	<p>Treasurer has the responsibility of using Trust's property for</p>	<p>State's involvement in ensuring proper use of Trust property.</p>	<p>Skeleton like legislation without elaboration for peoples' participation.</p>

	regulation by instituting a post of treasurer in each State to oversee the functioning of such charitable endowments. It was the first step towards State intervention in the field of charity.			purpose. -vesting and administration of property.	the purpose mentioned in the Trust Deed.		
6.	Indian Trusts Act, 1882 beginning of charity laws in the country. Basically for management of a Private Trust created by a person through a Will, in the form of a contract between the Will-maker and the Trustees. The intended benefit was only for the	Registration/ incorporation. Rights and duties of Trustees and beneficiaries.	Private Trust either for charitable or other lawful purposes.	Creation of Trust, duties, liabilities, rights and powers of Trustees. Rights and liabilities of beneficiaries.	Beneficiaries can compel Trustee through legal proceeding to execute the trust and avoid breach of trust.	facilitates creation of Trusts. -codifies rights and duties of Trusts and beneficiaries -does not involve extensive State control	Lack of remedies outside the courts. -lack of State supervision.

	family members as mentioned in the Will. The intervention could only be through Civil Court.						
	a) Bombay Public Trusts Act, 1950: The first Act for Public Endowments; Firmly established strong regulatory presence of the State Government (Charity Commissioner). Provision for suspension and dismissal of Trustees, special audit of accounts.	Detailed measures for governance of Public Trusts in the State of Maharashtra.	Public Trusts	- superintendence of Public Trusts by Charity Commissioner. -quasi-judicial adjudication by Charity Commissioner.	-suspension or dismissal of Trustee by Charity Commissioner for injurious acts. -prevention of waste, damage or improper transfer of Trust property. -special audit of accounts and inquiry about laws.	-transparency. -in-built checks by Charity Commissioner. -purpose compliance is effective. -economically more effective.	-not much insistence on democratic governance. -over work on Charity Commissioner. -over dependence on Charity Commissioner.

7.	Trade Unions Act, 1926	Registration, rights and liabilities of Trade Unions.	Trade Unions	<ul style="list-style-type: none"> -arrangements and requirements about registration of Trade Unions. -immunity from civil suits and from criminal liability. -funds, amalgamation dissolution. 	<ul style="list-style-type: none"> -Registrar's power to cancel registration - annual returns. -access to Registrar. 	<ul style="list-style-type: none"> -scope for election of office bearers. and democratic framework. -competence to involve in collective bargaining. 	<ul style="list-style-type: none"> -no check against outside /political interferences -purpose clause usually vague
8.	Indian Companies Act, 1956, Section 25	Registration of Non profit Companies/ Institutions	Not-for profit Companies	<ul style="list-style-type: none"> -arrangement and requirement about registration. -corporate entity - privileges of a Limited Company. 	<ul style="list-style-type: none"> Acts done in violation of Memorandum of Associations are invalid, Directors are answerable. 	<ul style="list-style-type: none"> -enables a corporate personality. -General Body meetings controls, policies and leadership. 	

Appendix 2

Comparative Analysis between Various State Legislations on Societies

1. Purpose for Formation of Societies

- (a) Societies Registration Act, 1860 provides for formation of a Society for any literary, scientific, or charitable purpose, or for any such purpose as is described under Section 20 of the Act. In terms of Section 20, the following Societies may be registered under this Act:

“Charitable Societies, the military orphan funds or Societies established at the several presidencies of India, Societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge, [the diffusion of political education], the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.”

- (b) State Amendments –

- (i) Andhra Pradesh - A Society can be registered for promotion of art, fine art, charity, crafts, religion, sports, literature, culture, science, political education, philosophy or diffusion of any knowledge, or any public purpose.
- (ii) Karnataka – Societies can be established for promotion of charity, education, science, literature, fine arts, or sports, diffusion of knowledge relating to commerce or industry or of any other useful knowledge, diffusion of political education, foundation or maintenance of libraries, reading rooms, public museums and galleries, the promotion of conservation and proper use of natural resources and scarce infrastructural facilities like – land, power, water, forest, etc. and the collection of natural history, mechanical

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and philosophical inventions, instruments or designs. This is subject to the provision that such Societies would intend to apply their profits or other income in promoting their objects and prohibit the payment of any dividend or distribution of any income or profits among their members.

- (iii) Madhya Pradesh – Societies may be formed for promotion of science, education, literature or fine arts, diffusion of useful knowledge or political education, foundation or maintenance of libraries, galleries of paintings and arts, public museums, collection of natural history, mechanical and philosophical inventions, instruments or designs, promotion or social welfare, promotion or religious or charitable purpose including establishment of funds for welfare of military orphans, political sufferers and welfare of the like, promotion of gymnastics, promotion and implementation of the different schemes sponsored by the State Government or the Union Government and promotion of commerce, industries and khadi.
- (iv) Rajasthan – For any literary, scientific or charitable purpose, military orphan funds, promotion of literary, science or fine arts, diffusion of knowledge or political education, foundation or maintenance, libraries, reading rooms, museums, galleries, collections of natural history and for mechanical and philosophical inventions, instruments or designs.
- (v) Tamil Nadu – The objects for formation of a Society are interests of consumers in the supply and distribution of essential articles, interests of passengers using buses, taxies and similar public conveyance, welfare of the physical handicap, working women and the unemployed, interests of residents in the matter of provision of civic amenities, interest of pilgrims and tourists, welfare of animals, beards and similar living beings, welfare of displaced persons and downtrodden economically and socially backward classes.
- (vi) West Bengal – Promotion of literature, arts, science or religion; any charitable purpose, including the care or relief or orphans, or of aged, sick, helpless or indigent persons; the alleviation of the sufferings of the animals; the diffusion

of knowledge; the dissemination of social, political or economic education; establishment and maintenance of libraries or reading-rooms for the members or for the public; the collection and preservation of manuscripts, paintings, sculptures, works of art, antiquities, natural history specimens, mechanical and scientific instruments and designs; any other object as may be notified by the State Government as being beneficial to the public or to a section of the public.

- (vii) Uttar Pradesh – In addition to the objectives listed in the Societies Registration Act, Societies can also be formed for Khadi and Village Industry and Rural Development.

1. Registration

- (a) In terms of the Societies Registration Act, 1860, the Registrar will register a Society after the Memorandum of Association and certified copy of Rules and Regulations are filed with him.
- (b) State Amendments:
 - (i) Andhra Pradesh – A Society can be registered after the Memorandum of Association and Bye-laws are filed with the Registrar. If an application for registration complying with all the provisions of the Act is not disposed of within 60 days, the Society is deemed to have been registered and the Registrar shall issue a certificate to that effect. In case of refusal of registration, an appeal shall lie to the Registrar General.
 - (ii) Karnataka – Registration to be given on the basis of MOU and the Rules and Regulations filed with the Registrar. In case of refusal, an appeal shall lie to the Karnataka Appellate Tribunal.
 - (iii) Madhya Pradesh – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulations.
 - (iv) Rajasthan – Registration is done on the basis of the certified copy of MOU.
 - (v) Tamil Nadu – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulations.
 - (vi) West Bengal – Registration certificate to be issued on the basis of a copy of MOU and the Rules and Regulation. An

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appeal shall lie to the State Government against an order of the Registrar refusing to certify the registration and the decision on such appeal shall be final.

- (vii) Uttar Pradesh – The certificate of registration shall remain enforce for a period of two years from the date of issue and will have to be renewed thereafter. If any question arises regarding entitlement of the Society for registration, the matter shall be referred to the State Government and the decision of the State Government shall be final.

2. Changes in the Memorandum of Association and Bye-laws

- (i) Gujarat – The MOU can be altered by special resolution passed by a majority of not less than 3/5th of the total membership of the Society and such alteration is sanctioned by the Registrar.
- (ii) Andhra Pradesh – By a “Special Resolution”, a Society may alter the provisions of the memorandum with respect to –
 - (a) Change of objectives of the Society;
 - (b) To amalgamate itself with any other Society; or
 - (c) To divide itself into two or more Society.

“Special resolution” means a resolution passed by a majority of the total members of the Society and not less than 3/5th of the members present and voting in a meeting.

The Bye-laws can be altered by an ordinary resolution passed by not less than half of the members present and voting.

- (iii) Karnataka – The MOU can be altered by a proposal agreed to by the votes caste in favour of the proposal and such votes are not less than three times the number of the votes, if any, caste against the resolution. The resolution will need to be confirmed by a simple majority of votes at a second special general meeting convened after an interval of thirty days after the former meeting.
- (iv) Madhya Pradesh – Any amendment to the MOU or Regulations of a registered Society will have to be registered with the Registrar. Alternately, if the Registrar considers that any such amendment is necessary, he will direct the Society to make the amendments within such time as may be specified in such order. If a Society fails to

make such amendment within the specified time, the Registrar will himself register such amendment and these amendments shall be binding on the Society and its members.

- (v) Tamil Nadu – The MOU and Bye-laws can be amended by a special resolution by the Society and such amendments will have to be registered by the Registrar.
- (vi) West Bengal – A Society shall not alter its Memorandum except with the previous permission of the Registrar in writing and the votes of 3/4th of its members. The regulation of a Society can be altered by the votes of 3/4th of the members subject to the provisions of the Act and its Memorandum.

3. Filing of Annual Return

- (a) In terms of the Societies Registration Act, 1860, an annual list is supposed to be filed with the Registrar containing the names, addresses and occupations of the Governors, Councils, Directors, Committee or other Governing Body entrusted with the management affairs of the Society.
- (b) State Amendments:
 - (i) Karnataka – Along with the list indicated above, a society has to file a copy of the Balance Sheet and Income & Expenditure Account audited by a person authorized under Section 226 of the Companies Act to act as an auditor of companies registered in Karnataka.
 - (ii) Madhya Pradesh – In addition to the annual list of the Governing Body, every society shall send to the Registrar a statement of Income and Expenditure with full particulars duly audited by its auditor, audit report and balance sheet of the previous year along with details of all financial activities. Accounts of such Society having annual transaction exceeding ₹ 1 lakh shall be submitted to the Registrar duly audited by Chartered Accountant. The Registrar is empowered to undertake a special audit of the account of a Society either himself or by a person authorized by him.
 - (iii) West Bengal – In addition to the list of the Governing Body, every Society shall file an annual report by the Governing Body on the working of the Society for the previous year

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and a copy of the balance sheet and the auditors report certified by a duly qualified auditor which means a Chartered Accountant or a person approved by the Registrar in this behalf.

- (iv) In almost all the States the Registrar has been empowered to call for any information from the Society, if he so desires.

4. Property of the Society

- (a) In terms of Section 5 of the Societies Registration Act, 1860, the property belonging to a Society, if not vested in Trustees, shall be deemed to be vested in the Governing Body of such Society.
- (b) State Amendments:
 - (i) Uttar Pradesh – It shall not be lawful for the Governing Body of a Society or any of its members to transfer without the previous approval of the Court, any immoveable property belonging to such Society.
 - (ii) Madhya Pradesh – No immoveable property shall be acquired or transferred by the Society without the prior permission of the Registrar and such property will not be used for any object other than the object of the Society without prior permission from the Registrar and in case of gift, written consent of the donor.

5. Amalgamation and Dissolution of Society

- (a) Under the Societies Registration Act, the dissolution of a Society shall be decided by not less than 3/5th of the members and the subsequent settlement of the property would be done according to the rules of the Society applicable thereto. In case no such rules are in existence, it may be done as per the decision of the Governing Body. In case of any dispute between the Governing Body and the members, the matter shall be referred to the Civil Court. Subsequent assent will be required by vote of 3/5th of the members present in the general meeting convened for this purpose. Also, if the Government is a member or a contributor or otherwise interested in other Society, such Society shall not be dissolved without the consent of the government.

Upon dissolution, any property left after discharging debts and liabilities of the Society, the same shall not be paid or distributed among the members of the Society but shall be given to some other

Society to be determined by the votes of not less than 3/5th of the members. However, this shall not apply to any Society which has been founded or established by the contribution of share holders in the nature of a Joint-Stock Company.

(b) State Amendments:

(i) Uttar Pradesh – Apart from proposing the dissolution of a Society by its Governing Body, the Registrar or not less than 1/10th of the members may also move the Court seeking an order for dissolution on the grounds of contravention of the provisions of the Act, number of the members is reduced below seven, the Society has ceased to function for more than three years, the Society is unable to pay its debts or liability and the registration of the Society has been cancelled on the grounds that the activities of the Society constitute a public nuisance or are otherwise opposed to public policy.

(ii) Karnataka – The proposal for amalgamation of Societies needs to be approved by votes of the members which are not less than three times the number of votes cast against the resolution. The proposal needs to be reconfirmed at a second special general meeting convened by Governing Body after an interval of thirty days. The dissolution requires approval of 3/4th of the members of a Society. However, if the State Government is a member or a contributor or otherwise interested in any Society, such Society shall not be dissolved without the consent of the State Government.

The property which remains with the Society after the satisfaction of its debts and liabilities, shall be given to some other Society to be determined by the votes of not less than 3/5th of the members. The majority of the members may also decide to give such property to the State Government to be utilized for the purpose of formation of other Society.

(iii) Madhya Pradesh – The dissolution to be decided by 3/5th of the members and to be confirmed by voting of equal number of members at a general meeting convened for the

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purpose. The provisions regarding property are the same as applicable in Karnataka, discussed above. However, the Registrar has also been given powers to cancel the registration on being satisfied that no useful purpose is likely to be served by continuing the Society and consequently the Society been deemed to have been dissolved. In such situation, the moveable and immoveable assets of the society shall vest in the State Governments to the extent of assistance/grant that the Society may have received from the Union or State Government or any of the statutory Bodies. It shall be the duty of the Collector of a District where the property is situated to take charge of the same on intimation of cancellation by the Registrar.

- (iv) Tamil Nadu – The amalgamation, division and dissolution of the registered Societies can be done by special dissolution and as per the Bye-laws. However, for amalgamation and division, prior approval of the registrar is required.
- (v) West Bengal – Two or more Societies can be amalgamated if so decided by the Governing Body of each such Society, if the proposal is approved by the votes of 3/4th of the Members of each of the Societies concerned and confirmed by like votes at a subsequent general meeting. However, prior approval of the Registrar would be required who can also order for modifications to be carried out in the proposal. An appeal against such orders of the Registrar lies with the State Government.

A Society may be dissolved by the votes of the 3/4th of the members at a general meeting convened for this purpose. No member to receive any profit upon dissolution and 3/4th of the members or in default thereof, by the Registrar, with the approval of the State Government can decide giving the surplus property to some other Society. The dissolution may also be ordered by the court on application of the Registrar or by not less than 1/10th of the members in case the Society contravenes any of the provisions of the Act, if the number of members is less than seven, if the society has ceased to function for more than three years, if the Society

is unable to pay its debt or meet its liabilities and if it is proper that the Society should be dissolved.

Also, where in the opinion of the Registrar, there are reasonable grounds to believe that a Society is not managing its affairs properly or is not functioning the Registrar may move the court for making an order for the dissolution of the Society.

6. Other Powers of the State Government and the Registrar

(i) Karnataka – (a) The Registrar may on his own motion and shall on the application of the majority of the members of the Governing Body or of not less than 1/3rd of the members of the Society, hold an inquiry or direct some persons authorized by him to hold an inquiry into the constitution, working and financial condition of a registered Society. While doing so, he will have all the powers regarding inspection of the documents, issuing summons to any person, calling general meeting, etc. During the course of such enquiry if any person related to Society has been found guilty of misfeasance or breach of trust, the Registrar can make an order requiring him to repay or property along with the interest or to contribute such sum to the assets of the Society by way of compensation. This will be in addition to the criminal liability incurred under the Act.

(b) The Registrar can also order for cancellation of registration and dissolution of certain societies if he satisfied that such society has been carrying on any unlawful activity or has allowed any unlawful activities within their premises.

(c) The State Government is empowered to appoint an Administrator for such period not exceeding six months at a time (the aggregate period shall not extend beyond four years) in case a Society is unable to hold the General Meeting, the Governing Body has not been constituted and whether it is in the public interest to do so. The Administrator shall perform all duties and functions of the Society. He shall take necessary action to hold elections for the constitution of the Governing Body and convene the

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General Body meeting but for the reason beyond his control if is not able to do so, the State Government may order dissolution on his recommendations.

(ii) Madhya Pradesh – (a) The Registrar has been given the powers to seize records, documents of the Society in case he is satisfied that these are likely to be tampered with or destroyed.

(b) The Registrar may his own motion or an application made by a majority of the members of the Governing Body of the society or not less than 1/3rd of the total number members of the Society, either by himself or by a person authorized by him hold an enquiry into the constitution, working an financial condition of a Society.

(c) The State Government may make order for supersession of Governing Body of any State aided society if it is not functioning properly or commits acts which are prejudicial to the interest of Society and appoint a person or persons to manage the affairs of the Society for a specified period not exceeding two years in the first instance. The period however can be extended from time to time at the discretion of the State level.

(iii) Tamil Nadu – (a) The State Government has the power to order supersession of committee of any Society and appoint a person as the special officer to manage the affairs of the Society for a specified period not exceeding one year. The time period is extendable upto three years at the discretion of the State Government.

(b) As is the case with the other States, the Registrar has the power to enquire into the constitution, working and financial conditions of a registered Society. Such enquiry can also be ordered on the basis an application moved by the District Collector. The Registrar has authority to cancel the registration on the basis of outcome of such enquiry.

(c) The Registrar can also order cancellation of registration if any society is carrying on any unlawful activity or allow unlawful activity within its premises. After cancellation of

registration, the society will be dissolved by special resolution and in case of failure to do so, the Registrar can appoint a liquidator to wind up the Society.

(d) The Registrar also has the power to remove the names of the defunct Societies from the register.

7. Offences and Penalties

Unlike the Societies Registration Act, almost all the State Acts contain provisions regarding offences and penalty on the office bearers and members of the society for contravention of the provisions of these Acts.

8. Appeal

Few State Acts such as Tamil Nadu and Madhya Pradesh contain the provisions regarding appeal against the order of the Registrar. In Madhya Pradesh, the appeal against the order of the Registrar lies with the State Government and appeal against the order of the subordinate officers lies with the Registrar. In case of Tamil Nadu, the appeal against the order of the Inspector General of Registration can be filed before the State Government. In case of the orders of any other person, the appeal would lie with the Inspector General of Registration and any person aggrieved by any order made by liquidator may appeal to the Court.

Appendix 3

Programmes of Ministries

The Government of India has developed a knowledge portal called **Vikaspedia** targeting specific country needs in the domain of social development. This multilingual portal is developed as a single-window access to information, products and services, with specific objective of reaching the '**un-reached**' communities of India, especially poor. It catalyses the use of ICT tools for knowledge sharing, leading to development. This portal is developed as part of the India Development Gateway initiative of the Ministry of Electronics and Information Technology, Government of India.

The following ministries /organisations have various Schemes for NGOs (compiled from vikaspedia.com):

- Ministry of Culture
- Ministry of Education
- Ministry of Health and Family Welfare
- Ministry of Social Justice & Empowerment
- Ministry of Tribal Affairs
- Ministry of Women & Child Development
- National AIDS Control Organisation (NACO)

For detailed information visit:

<https://vikaspedia.in/social-welfare/ngo-voluntary-sector-1/government-of-india-schemes-for-ngos>

Government of India Schemes for NGOs under various ministries:

A. Ministry of Culture

1. ***The Cultural Heritage of Himalayas:*** The objective of the scheme is to promote, protect and preserve the cultural heritage of the Himalayan region spreading in Jammu & Kashmir, Himachal Pradesh, Uttrakhand, Sikkim and Arunachal Pradesh through research, documentation, dissemination, etc. The voluntary organization should be registered under the relevant Act and shall have been functioning for a period of

three years. Colleges and Universities are also eligible to apply. The organisation should have the capacity to undertake and promote research projects. It should have facilities, resources and personnel to implement the scheme for which the grant is required. The financial assistance is given for any of the items listed below up to a maximum of Rs.10. lakhs to any single organisation.

2. **Buddhist and Tibetan Culture Art:** The objective is to give financial assistance to the voluntary Buddhist/Tibetan organizations including Monasteries engaged in the propagation and scientific development of Buddhist/Tibetan culture, tradition and research in related fields. The main criteria is that the organisations should be registered under relevant Act and only those organizations who have all-India character, mainly devoted to Buddhist/ Tibetan studies and have been functioning at least for 3 years will qualify. Financial assistance is given for all or any of the items listed below up to a maximum of Rs.30 lakhs per year for any single organization. Exceptions to the amount may be made based on character of organization.
3. **Salary and Product Grant:** Under this scheme financial assistance will be provided to dramatic groups, theatre groups, music ensembles, children theatre, and solo artists and for all genres of performing arts activities. The scheme will have the following major components: Salary Grant and Production Grant.
4. **Cultural Functions Grant Scheme:** Ministry of Culture has substantially modified 'Scheme for Financial Assistance for Seminars, Festivals and Exhibitions on Cultural Subjects by Not-for-Profit Organizations' or the Cultural Functions Grant Scheme (CFGS). This scheme will provide financial support for seminars/symposia and research, etc., and also provide assistance for holding festivals and exhibitions as well. All Not-for-Profit organizations, including the University Department/Centres are eligible to apply for this grant. The Government assistance which is limited to 75% of the project cost has now a higher ceiling of Rs. 5 lakhs.

B. Ministry of Health and Family

1. **National TB Control Programme:** Involvement of NGOs and Private practitioners in the National Tuberculosis Control Programme is of vital importance as a good proportion of patients seek treatment from them.

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Five different schemes for involvement of NGOs have been envisaged. Depending on the capacity of the NGOs, their possible area of involvement can be:

- Health education and community outreach
- Provision of directly observed treatment.
- In-hospital care for tuberculosis disease.
- Microscopy and treatment centre.
- TB Unit Model.

2. **National Programme for Control of Blindness:** Involvement of NGOS is expected in augmenting provision of eye care services, development of Eye Banks in voluntary sector.
3. **National Cancer Control Programme:** The scheme is for financial assistance up to Rs. 5.00 lakhs to the Voluntary Organisations for undertaking health education and early detection activities in cancer on the specific recommendations of the State Government. The organization must prove to the effect that they are engaged in cancer control activities for the last 3 years.

C. Ministry of Education

1. **Inclusive Education for the Disabled:** This Scheme provides assistance for the inclusive education of the disabled children in classes IX-XII. In 2018, Ministry of Education (MoE) has launched Integrated Scheme on School Education under Samagra Shiksha which aims to look at education of all children including Children with Special Needs (CwSN) from pre-school to class XII. The scheme will cover all children with special needs with one or more disabilities as mentioned in the schedule of disabilities of the Right of the Persons with Disabilities (RPwD) Act, 2016, studying in Government, Government-aided and local body schools. Assistance is admissible for two major components- Student-oriented components and other components (which include teachers' allowances, teacher training, establishment of resource room etc. The School Education Department of the State Governments/Union Territory (UT) Administrations is the implementing agency. They may involve NGOs having experience in the field of education of the disabled in the implementation of the scheme.

2. **Support to Voluntary Agencies for Adult Education and Skill Development:** The main objective of the scheme is to secure extensive, as well as, intensive involvement of voluntary sector in the endeavours of the Government to promote functional literacy, skill development and continuing education, particularly in 15-35 age groups, under the overall umbrella of National Literacy Mission (NLM). Two earlier schemes, namely (i) Assistance to Voluntary Agencies in the field of Adult Education and (ii) Jan Shikshan Sansthans have been merged and named "Scheme of Support to Voluntary Agencies for Adult Education and Skill Development". The Government will support the Voluntary Agencies on project to project basis. Thus the new scheme subsumes the erstwhile NGO based schemes of the National Literacy Mission.
 3. **Assistance to Agencies for Education in Human Values:** Under the Scheme, financial assistance is provided for projects to government agencies, educational institutions, registered societies, Public trusts and non-profit making companies and NGOs for taking up projects, sanctioned within the parameters of the scheme and the financial outlay provided. Financial assistance is given to the extent of 100% of the cost of project with a ceiling of Rs. 10lakhs approved by the Grants-in-Aid Committee for activities relating to strengthening of culture and values in education.
- D. Ministry of Tribal Affairs**
1. **Award of Special Incentive (ASI) to NGOs for Improvement of Infrastructure:** One time assistance up to maximum of Rs 10 lakhs is given to organization for development of infrastructure and procurement of machinery and equipment's etc. The quantum of ASI shall depend on the proposal and the category of items proposed and its actual cost .The ASI would be 100 percent for project in the Scheduled Areas or Tribal Areas and 90 percent for organizations working in the areas other than scheduled areas. There is especial incentive to NGOs who fulfill the criteria specified in the scheme.
 2. **Development of Primitive Tribal Groups (PTGS):** Certain tribal communities with low literacy, declining or stagnant population, pre-agricultural level of technology and economically backward have been identified and categorized as Primitive Tribal Groups (PTGs). Each of

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these groups is small in number, differentially developed, of remote habitat with poor administrative and infrastructure back up. Therefore, priority has to be accorded for their protection and development. States/UTs have been requested to allocate requisite funds from Central Sector/Centrally Sponsored and State Plan schemes for their socio-economic development. However, there are items/activities, which though very crucial for the survival, protection and development of PTGs, are not specifically catered to by any existing scheme; the funds under this scheme would be used for these activities. The activities under the scheme may include measures such as awareness generation and confidence building, training for skill development of tribal youth organizations of self-help groups and provision of services/inputs not covered by any existing scheme.

The scheme will be implemented through Integrated Tribal development Projects (ITDPs)/Integrated Tribal Development Agencies (ITDAs), Tribal Research Institutes (TRIs) and **Non-Governmental Organizations** having capability and willingness. The State Government concerned will be responsible for proper execution, implementation, supervision and coordination of the scheme including selecting of NGOs. It is Central Sector Scheme; therefore, financial assistance will be available on 100% basis.

3. **Grant-in-Aid to Voluntary Organisations:** The prime objective of the scheme is to enhance the reach of welfare schemes of Government and fill the gaps in service deficient tribal areas, in the sectors such as education, health, drinking water, agro-horticultural productivity, social security etc. through the efforts of voluntary organizations, and to provide an environment for socio-economic upliftment and overall development of the Scheduled Tribes (STs). Any other innovative activity having direct impact on the socio-economic development or livelihood generation of STs may also be considered through voluntary efforts. The organization has to be a NGO or VO or registered society or public trust and have the requisite track record to get assistance.
4. **Strengthening Education among ST Girls in Low Literacy Districts:** The scheme aims to bridge the gap in literacy levels between the general female population and tribal women, through facilitating 100% enrolment of tribal girls in the identified Districts or Blocks, more particularly in naxal affected areas and in areas inhabited by Primitive

Tribal Groups (PTGs), and reducing drop-outs at the elementary level by creating the required ambience for education. Improvement of the literacy rate of tribal girls is essential to enable them to participate effectively in and benefit from, socio-economic development. The scheme will be implemented through Voluntary Organizations (VOs)/Non- Governmental Organizations (NGOs) and autonomous society/institutions of State Government/Union Territory Administration.

E. Ministry of Women & Child Development

1. **Gender Budgeting:** there are gender gaps in education, employment, entrepreneurship and public life. Governments try to remove these gaps and promote equality through their budgeting process. The government has various schemes to undertake gender budgeting analysis, providing assistance, support and consultancy services, organizing workshops and training programmes. Apart from other institutions Voluntary organizations, universities and UGC approved institutions can be the implementing agencies. The organization must have adequate experience in implementing women and child related projects and programmes etc. It should have facilities, resources and personnel to implement the project for which assistance is sought.
2. **Grant-in-Aid (GIA) Scheme for Assistance to Voluntary Organisation:** this Scheme General Grant -in -Aid Scheme is also called Scheme for innovative projects for women and children. The objective of the Scheme is to support innovative voluntary action and initiatives to render services for women and children. This Scheme is meant to supplement the existing schemes of the Ministry and of the Central Social Welfare Board and provide financial assistance for services that are not covered by the structured schemes.
3. **Grant-In-Aid for Research, Publications and Monitoring:** The projects will be in the fields of welfare and development of women and children including Food and Nutrition aspects. However, priority will be given to research projects of an applied nature keeping in consideration plan policies and programmes, and social problems requiring urgent public intervention. The grants will cover:
 - (i) research including action research for the development of innovative programmes or for testing the feasibility and efficacy of programmes and services; and

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- (ii) workshops/seminars/conferences which will be helpful in formulating research proposals, disseminating research findings or in social situational analysis
- (iii) monitoring of programmes and
- (iv) training of personnel,
- (v) promotion of innovative activities.

Research Grants: Grants under this category can be made to an institution or a group of institutions for carrying out a specific research project with one or more scholars directing it. These institutions will include universities, research institutes, and voluntary organizations, among others, which have the capacity to do research.

4. ***Assistance for the Construction/ Expansion of Hostel Building for Working Women with a Day Care Centre:*** As more and more women are seeking employment in urban areas and rural townships, there is lack of suitable and safe accommodation. Voluntary Organizations have approached the Government of India, from time to time for financial assistance to develop hostel facilities to such women. The Government has decided to introduce a scheme for grant – in - aid for construction of new/ expansion of existing building for providing hostel facilities to working women in cities, smaller towns and also in rural areas. The objective is to provide hostel facilities to working women living in different location than their homes and to a limited extent with certain conditions to women undergoing training and female students. Among other organisations, voluntary agencies/public trusts working in the field of women's welfare/social welfare women's education are eligible for assistance under the Scheme provided they meet the relevant criteria . Universities, Schools/Colleges of Social Work shall also be eligible for financial assistance under the Scheme
5. ***Support to Training and Employment Programme for Women (STEP):*** The STEP Programme aims to increase the self - reliance and autonomy of women by enhancing their productivity and enabling them to take up income generation activities. It provides training for skill Upgradation to poor and asset less women in the traditional sector viz. agriculture, animal husbandry, dairying, fisheries, handlooms, handicrafts, khadi and village industries sericulture, social forestry and wasteland development. Among other organisations ,voluntary

agencies/societies working in rural areas are eligible for assistance under the Scheme provided they meet other experience related criteria

6. **SWADHAR - A Scheme for Women in Difficult Circumstances:** Many women in difficult circumstances like widows, destitute, victims of sexual abuse and crimes, ex-prisoners, migrant or refugee women often do not have the support of immediate or extended family. The reasons range from economic instability, the breakdown of joint family system to the social bias against the marginalized women. More often vulnerable women in distress end up as beggars or prostitutes for their own survival. Very limited State intervention available through old age home, short stay home, Nari Niketan etc. Therefore a scheme known as 'Swadhar' has been designed with a more flexible and innovative approach. The Scheme purports to address the specific vulnerability of each of group of women holistic and integrated approach. Some of the approaches taken may be -providing for basic needs, providing counseling, providing training and education, clinical or legal support, services that provide for rehabilitation of women.
7. **Ujjawala:** The problem of trafficking of women and children for commercial sexual exploitation is especially challenging due to its myriad complexities and variation. Poverty, low status of women, lack of a protective environment etc are some of the causes for trafficking. A multi sectoral approach is needed which will undertake preventive measures to arrest trafficking and to enable rescue, rehabilitation and reintegration of the trafficked victims. Keeping the above issues and gaps in mind the Ministry has formulated a Central Scheme "Comprehensive Scheme for Prevention of Trafficking for Rescue, Rehabilitation and Re - Integration of Victims of Trafficking for Commercial Sexual Exploitation — Ujjawala". The objective is to prevent trafficking through social mobilization and involvement of local communities, awareness generation, rescue of victims, rehabilitation of victims and their reintegration into the family and society. Among other organisations, voluntary agencies/societies are eligible for assistance provided they have the facilities, resources, experience and personnel to initiate the scheme for which assistance is sought and they meet other experience related criteria.

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F. Ministry of Social Justice & Empowerment

1. **Assistance to Disabled Persons for Purchase / Fitting of Aids/Appliances:** The main objective of the Scheme is to assist the needy disabled persons in procuring durable, modern and scientifically manufactured, standard aids and appliances that can promote their physical, social and psychological rehabilitation, by reducing the effects of disabilities and enhance their economic potential. The scheme is implemented through implementing agencies like NGOs among others. The NGOs should have the requisite infrastructure and preferably possess professional/technical expertise in the form of professionally qualified staff (from recognized courses) for the identification, prescription of the required artificial aids/appliance, and fitment and post-fitment care of the beneficiaries as well as the aid/appliance.
2. **Assistance for Skill Development of OBCs/DNTs/EBC:** The aim of this scheme is to involve the Voluntary Organization and National Backward Classes Finance and Development Corporation (NBCFDC) to improved educational and socio-economic conditions of the target group i.e. OBCs/DNTs/EBCs, with a view to upgrade their skill to enable them to start income generation activities on their own or get gainfully employed in some sector or the other. Assistance under the scheme will be given to eligible voluntary organisations working for welfare of OBCs/DNTs/EBCs can also be taken up in the villages covered under the Saansad Adarsh Gram Yojana (SAGY)
3. **Free Coaching for SC and OBC Students:** The objective of the Scheme is to provide coaching of good quality for economically disadvantaged Scheduled Castes (SCs) and Other Backward Classes (OBCs) candidates to enable them to appear in Competitive examination and succeed in obtaining an appropriate job in Public/Private sector. Coaching is given for certain courses like UPSC, SSC, RRB ;Officer grade exams of banks , insurance companies etc,; entrance exams to engineering, management and other courses specified by the government . Among other organisations, universities and voluntary agencies may be the implementing agencies.
4. **Deendayal Disabled Rehabilitation Scheme:** The umbrella Central Sector Scheme of called the "Scheme to Promote Voluntary Action for Persons with Disabilities" was revised and renamed as the "Deendayal Disabled Rehabilitation Scheme (DDRS)". The aim is to create an

enabling environment such that persons with disabilities get equal opportunities and social justice. This can be achieved by providing the whole range of services necessary for rehabilitation of persons with disabilities including early intervention, development of daily living skills, education, skill-development oriented towards employability, training and awareness generation. Apart from this, development of appropriate housing, hostel, sports recreational and training would go a long way to integrate these people with the mainstream society. NGOs would be provided grant –in-aid for creating the facilities/opportunities.

5. **Grant-in-Aid to Voluntary Organizations working for Scheduled Castes:** The main objective of the scheme is to involve the voluntary sector and reputed training institutions to improve educational and socioeconomic conditions of the Scheduled Castes with a view to upgrade skill. The scheme has been revised as SHRESHTA (Residential Education for Students in High Schools in Targeted Areas) w.e.f. 2021-22. It aims at providing seats for the meritorious SC boys and girls in the best private residential schools in the country
6. **Integrated Programme for Older Persons:** The main objective of the Scheme is to improve the quality of life of the Senior Citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities and by encouraging productive and active ageing through providing support for capacity building of Government institutions and Non-Governmental Organizations and the community at large. Assistance will be given to programmes for providing basic needs, care services, awareness building programmes etc.
7. **Assistance to Voluntary Organizations for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services:** The scheme is in the field of drug demand reduction. The Scheme has two parts viz.
 - Assistance for the Prevention of Alcoholism & Substance (Drugs) Abuse
 - Financial Assistance in the Field of Social Defence

The Scheme of Assistance for the Prevention of Alcoholism and Substance (Drugs) Abuse is for identification, counseling, treatment and rehabilitation of addicts through voluntary and other eligible organizations. Under this scheme, financial assistance is given to the voluntary organizations and other eligible agencies for setting

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up/running Integrated Rehabilitation Centre for Addicts (IRCA), Regional Resource and Training Centres (RRTC), for holding Awareness-cum-de-addiction camps (ACDC) and Workplace Prevention Programmes etc..

The Scheme of 'General Grant-in-Aid Programme for Financial Assistance in the Field of Social Defence' aims to support such initiatives of an innovative/pilot nature in the area of welfare and empowerment of the Ministry's target groups, as cannot be supported under its regular schemes. Financial assistance is given to the voluntary and other eligible organizations.

A. National AIDS Control Organisation (NACO)

The following schemes of NACO are implemented through NGOs.

Community Care Centers

NGO / CBO operational guidelines

Appendix 4

Frequently Asked Questions on FCRA

In this Annexure, major FAQs as provided by the FCRA Department have been reproduced.*

Introduction to FCRA, 2010

Q.1. What is the purpose of FCRA, 2010?

Ans. FCRA, 2010 has been enacted by the Parliament to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest and for matters connected therewith or incidental thereto.

Q.2. What is the status of the FCRA, 1976 after coming into force of FCRA, 2010?

Ans. It has been repealed.

Q.3. To whom is FCRA, 2010 applicable?

Ans. As per section 1(2) of FCRA ,2010, the provisions of the Act shall apply to:

1. Whole of India
2. Citizens of India outside India; and
3. Associate Branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India

* Source: Ministry of Home Affairs:
https://fcraonline.nic.in/home/PDF_Doc/fc_faq_16112020.pdf

Key Definitions and Concepts under FCRA, 2010

A. Foreign Contribution

Q.1. What is foreign contribution?

Ans. As defined in section 2(1)(h) of FCRA, 2010, “foreign contribution” means the donation, delivery or transfer made by any foreign source,

- (i) of any article, not being an article given to a person* as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum as may be specified from time to time by the Central Government by rules made by it in this behalf;
- (ii) of any currency, whether Indian or foreign;
- (iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1—A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through

Explanation 2—The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3—Any amount received by any person from any foreign source, in India by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce, whether within India or outside India, or any contribution received from an agent or a foreign

* In terms of FCRA, 2010 “person” includes (i) an individual; (ii) a Hindu undivided family; (iii) an association; and (iv) a company registered under section 25 of the Companies Act, 1956 (now section 8 of the Companies Act, 2013).

source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

Q.2. Who can receive foreign contribution?

Ans. Any “person” can receive foreign contribution subject to the following conditions:

1. It must have a definite cultural, economic, educational, religious or social programme.
2. It must obtain the FCRA registration/ prior permission from the Central Government
3. It must not be prohibited under section 3 of FCRA, 2010.

Q.3. Who cannot receive foreign contribution?

Ans. As defined in section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by any: .

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of section 5 by the Central Government.
- (g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).
- (i) individuals or associations that have been prohibited from receiving foreign contribution.

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Q.4. Can foreign contribution be received in rupees?

Ans. Yes. Any donation, delivery or transfer received from a 'foreign source' whether in rupees or in foreign currency is construed as 'foreign contribution' under FCRA, 2010. Such transactions including interest on foreign contribution on income derived from foreign contribution even in rupees term are considered as foreign contribution.

Q.5. Will interest or any other income earned from foreign contribution (FC) be considered as foreign contribution?

Ans. Yes. It will become part of F.C.

Q.6. Whether interest or any other income earned out of foreign contribution be shown as fresh foreign contribution receipt during that year or not?

Ans. No. The interest or any other income earned out of foreign contribution should be shown against Column 2(i)(b) in the annual return (Form FC-4) during the year in which it is earned. Such interest or income would be considered as F.C.

Q.7. Whether earnings from foreign client(s) by a person in lieu of goods sold or a service rendered by it is treated as foreign contribution?

Ans. No. As clarified at Explanation 3 under section 2(1)(h), foreign contribution excludes earnings from foreign client(s) by a person in lieu of goods sold, or services rendered by it as this is a transaction of commercial nature/ quid pro quo in the normal course of business trade etc. within or outside India.

Q.8. Whether donation given by non-resident Indians (NRIs) is treated as 'foreign contribution'?

Ans. Contributions made by a citizen of India living in another country (i.e., non-resident Indian), from his personal savings, through normal banking channels, cannot be treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is actually an Indian citizen.

Q.9. Whether donation given by an individual of Indian origin and having foreign nationality is treated as 'foreign contribution'?

Ans. Yes. Donation from an Indian origin person who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO / OCI card holders. They are foreigners. However, this will not apply to 'non-resident Indians', who still hold Indian citizenship as they are not foreigners.

Q.10. Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?

Ans. No. As per section 4(e) of FCRA, 2010 and rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of ten lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution. This form is available on the website: fcraonline.nic.in.

Q.11. Whether individuals not covered under section 3 or a HUF can accept foreign contribution freely for the purposes listed in section 4 of FCRA 2010?

Ans. Yes. Since, subject to the provisions of section 10, even the persons specified under section 3 i.e. persons not permitted to accept foreign contribution, are allowed to receive foreign contribution for the purposes listed in section 4, it is obvious that individuals in general and HUFs are permitted to accept foreign contribution without permission for the purposes listed in section 4. However, it should be borne in mind that the monetary limit for acceptance of foreign contribution in the form of any article given as gift to a person for his personal use is within the specified limit .

B. Foreign Source

Q.1. What is a foreign source?

Ans. Foreign source, as defined in section 2(1) (j) of FCRA, 2010 includes:

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- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g) of section 2 of FCRA, 2010;
- (vi) a company within the meaning of the Companies Act, 1956, (1 of 1956) and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-
 - (a) the Government of a foreign country or territory;
 - (b) the citizens of a foreign country or territory;
 - (c) corporations incorporated in a foreign country or territory;
 - (d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
 - (e) foreign company; [Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 or rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source]
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory; (viii) a foreign trust or a foreign foundation, by whatever name called, or such

trust or foundation mainly financed by a foreign country or territory;

- (ix) a society, club or other association or individuals formed or
- (ix) a society, club or other association or individuals formed or registered outside India;
- (x) a citizen of a foreign country;” Note: A few bodies/organisations of the United Nations, World Bank and some other international agencies/ multi-lateral organisations are exempted from this definition and are not treated as foreign source. Hence, the funds received from them are not considered as foreign contribution. List of such bodies/organisations, which are not treated as ‘foreign source’, are available on the website fcaonline.nic.in

Q.2. Whether an individual of Indian origin who has acquired foreign nationality is treated as foreign source?

Ans. Yes. The contributions received from all the non-Indian Passport holders are treated as contributions from “foreign source”.

Q.3. What is a foreign company?

Ans. See section 2(1)(g) of FCRA, 2010. Foreign company means any company or association or body of individuals incorporated outside India and includes – a) foreign company within the meaning of section 379 of the Companies Act, 2013 b) a company which is a subsidiary of a foreign company c) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause(ii); d) a multi-national corporation

Q.4. What is a multinational corporation?

Ans. As per the explanation given under clause (g) of sub-section (1) of section 2 of FCRA, 2010 a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, -

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or

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- (b) carries on business, or otherwise operates, in two or more countries or territories;

Q.5. Whether a company incorporated in India under the companies Act, 2013 having its operations in two or more countries is to be treated as a MNC under FCRA, 2010?

Ans. No

Registration and Prior Permission

Q.1. How does a person obtain permission to accept foreign contribution?

Ans. There are two modes of obtaining permission to accept foreign contribution according to FCRA, 2010: (i) Registration (ii) Prior permission

A. Eligibility

Q.2. What are the eligibility criteria for grant of registration?

Ans. For grant of registration under FCRA, 2010, the association should:

- (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (now section 8 of Companies Act, 2013) etc.;
- (ii) Normally be in existence for at least three years and has undertaken reasonable activities in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilized. The applicant NGO/association will be free to choose its items of expenditure (excluding the administrative expenditure as defined in rule 5 of FCRR, 2011) to become eligible for the minimum threshold of Rs. 15.00 lac spent during the last three years. If the association wants inclusion of its capital investment in assets like land, building, other permanent structures, vehicles, equipment etc., then the Chief Functionary shall have to give an undertaking that these assets shall be utilized only for the FCRA activities, and they will not be diverted for any other purpose till FCRA registration of the NGO subsists.

Q.3. What are the eligibility criteria for grant of prior permission?

Ans. An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. Prior permission is granted for receipt of a specific amount from specific donor/donors for carrying out specific activities/projects. For this purpose, the organization should meet following criteria:

- (i) It must be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 /section 8 of Companies Act,2013 etc.
- (ii) It should submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given.
- (iii) For Indian recipient organizations and foreign donor organizations having common members, FCRA prior permission shall be granted subject to it satisfying the following conditions
 - a. The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
 - b. At least 75 per cent of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.
 - c. In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.
 - d. In case of a single foreign donor, at least 75 per cent office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

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Q.4. What are the conditions to be met for the grant of registration and prior permission?

Ans. In terms of section 12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration and prior permission:

- (a) The 'person' making an application for registration or grant of prior permission-
 - (i) is not fictitious or benami;
 - (ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - (iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - (iv) has not been found guilty of diversion or mis-utilization of its funds;
 - (v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - (vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - (vii) has not contravened any of the provisions of this Act;
 - (viii) has not been prohibited from accepting foreign contribution;
 - (ix) the person being an individual, has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
 - (x) the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.
- (b) the acceptance of foreign contribution by the association/ person is not likely to affect prejudicially–

- (i) the sovereignty and integrity of India;
 - (ii) the security, strategic, scientific or economic interest of the State;
 - (iii) the public interest;
 - (iv) freedom or fairness of election to any Legislature;
 - (v) friendly relation with any foreign State;
 - (vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities.
- c) the acceptance of foreign contribution- (i) shall not lead to incitement of an offence; (ii) shall not endanger the life or physical safety of any person.

Q.5. Can a private limited company or a partnership firm get registration or prior permission under FCRA, 2010?

Ans. Yes, a private limited company too may seek prior permission/registration for receiving foreign funds in case they wish to do some work useful/beneficial to the society.

Q.6. Whether an individual or a Hindu Undivided Family (HUF) can be given registration or prior permission to accept foreign contribution in terms of section 11 of FCRA, 2010??

Ans. Yes. The definition of 'person' under section 2(1)(m) in the Foreign Contribution (Regulation) Act, 2010 includes any individual and a 'Hindu Undivided Family' among others. As such an individual or an HUF is also eligible to apply for a certificate of registration or prior permission to accept foreign contribution.

Q.7. Whether organizations under Central/State Governments are required to obtain registration or prior permission under FCRA, 2010 for accepting foreign contribution?

Ans. Yes. However, all organizations (not being a political party), constituted or established by or under a Central Act or a State Act or by any administrative or executive order of the Central Government or any State Government and wholly owned by the respective Government and required to have their accounts compulsorily audited by the Comptroller and Auditor General of India (CAG) or any of the

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agencies of the CAG, are exempted from the operation of all the provisions of FCRA, 2010.

B. Executive Committee

Q.1. Whether foreigners can be appointed as executive committee members of an association seeking registration or prior permission?

Ans. Organizations having foreign nationals, other than persons of Indian origin, as members of their executive committees or governing bodies are generally **NOT** permitted to receive foreign contribution. However, foreigners may be allowed to be associated with such associations in an ex-officio capacity, if they are representing multilateral bodies, foreign contribution from whom is exempted from the purview of the Foreign Contribution (Regulation) Act, 2010, or in a purely honorary capacity depending upon the person's stature in his/her field of activity. Relaxation may be considered on case-to-case basis by an authority higher than the competent authority, if any of the following grounds is met:

- (i) the foreigner is married to an Indian citizen;
- (ii) the foreigner has been living and working in India for at least five years;
- (iii) the foreigner has made available his/her specialized knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;
- (iv) the foreigner is a part of the Board of Trustees/Executive Committee in terms of the provisions in an inter-governmental agreement;
- (v) the foreigner is part of the Board of Trustees/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

Q.2. Whether Government servants, judges and employees of a Government owned/controlled company/body can be on the executive committees/boards of an association?

Ans. Yes. The legal entity of a 'person' under FCRA, 2010 is distinct from an individual person. Therefore, individuals who cannot receive foreign

contribution may happen to be on the executive committees/boards of such an association.

Q.3. Whether the registration certificate or prior permission granted under the repealed FCRA, 1976 shall remain valid when FCRA, 2010 has come into force?

Ans. Yes. An association granted prior permission or registration under the repealed FCRA, 1976 shall be deemed to have been registered or granted prior permission, as the case may be, under FCRA, 2010. Registration granted under FCRA, 1976 remained valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016 and if it was renewed, then for a further period of five years.

Q.4. Whether prior permission granted under FCRA, 1976 would also remain valid for the next 5 years from 1st May, 2011, i.e., the date when FCRA, 2010 came into force?

Ans. No. Prior permission granted under FCRA, 1976 remains valid under FCRA, 2010 till receipt and full utilization of the amount of FC for which the permission was granted.

C. How to Apply

Q.1. How to submit application for grant of registration/prior permission?

Ans. Application for grant of registration or prior permission is to be submitted online in Form FC-3 (A) or FC-3 (B) at the website- fcraonline.nic.in

Q.2. If an application for registration or prior permission is submitted online by an association, does it need to submit that application in physical form also?

Ans. No. All requisite documents are to be uploaded with the application online only and no physical copies shall be accepted by MHA under any circumstances. All physical documents, even if received, shall be returned to the sender immediately. D. Filling of Online Form

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Q.3. How to fill online application form for grant of registration/prior permission?

Ans. The online application Form FC-3 (A) for registration/FC-3 (B) for prior permission has been designed in an easy to fill format. The applicant will find instructions on each web page of the online form while filling the application.

Q.4. How to rectify an error in the application for registration or prior permission that has already been submitted online?

Ans. No rectification of error is allowed after the application has been finally submitted online. In case of error, please contact the Support Centre/ Help Desk of the FCRA Wing of MHA.

E. Required Documents

Q.1. Is Aadhaar number / Darpan ID mandatory for members/ NGOs respectively?

Ans. For all FCRA services provided through online portal, Aadhaar Number & Darpan ID are mandatory now.

Q.2. What are the documents to be uploaded with the application for grant of registration?

Ans. The applicant should be ready with the scanned copies of the following documents before filing the application online:

- (A) Registration
 - (i) jpg file of signature of the chief functionary (size:50kb)
 - (ii) Self-certified copy of registration certificate/Trust deed etc., of the association (size:1mb)
 - (iii) Self-certified copy of relevant pages of Memorandum of Association/ Article of Association showing aim and objects of the association. (Size:5mb)
 - (iv) Activity Report indicating details of activities during the last three years;(size:3mb)
 - (v) Copies of relevant audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting

expenditure incurred on aims and objects of the association and on administrative expenditure; (size:5mb)
(vi) Fee of Rs. 10, 000/- is to be paid online through payment gateway

(B) Prior Permission

- (i) jpg file of signature of the chief functionary(size:50kb)
- (ii) Self-certified copy of registration certificate/Trust deed etc., of the association (size:1mb)
- (iii) Duly signed commitment letter from donor. (Size:5mb)
- (iv) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Registrar of Newspapers for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- (v) Fee of Rs. 5000/- is to be paid online through payment gateway.
- (vi) Project Report for which FC will be received. (Size:3mb)

Q.3. What audited statements are to be uploaded with the FC3 form?

Ans. An Audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure) clearly reflecting expenditure incurred on aims and objects of the association and on administration, duly signed by the chartered Accountant with his membership number is required to be uploaded with Form FC3.

F. Payment of Fee

Q.1. What is the amount of fee for grant of registration and prior permission and renewal?

Ans. For registration the association is required to pay a fee of Rs. 10,000/- and for prior permission, the fee is Rs. 5,000; for renewal, the fee is Rs. 5,000 only.

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Q.2. How to make payment of fee? Can the fee be paid through Bank draft/cheque etc. ?

Ans. The fee is to be paid while filling online form through payment gateway. No Bank draft/cheque is accepted.

G. Status of Online Form

Q.1. How to find the status of pending application for registration /prior permission/ renewal?

Ans. Status of pending applications for grant of registration/prior permission/renewal may be checked online at FCRA online services using user ID and password created at the time of filing application

Acceptance and Utilisation of Foreign Contribution

A. Acceptance

Q.1. From whom an association registered/granted prior permission under FCRA, 2010 can accept foreign contribution?

Ans. Associations registered or granted prior permission under FCRA, 2010 should ensure that they received foreign contribution only from a legitimate foreign source and for activities as prescribed under the Act.

Q.2. Is it mandatory for existing NGOs also to open 'FCRA account' in SBI, Sansad Marg, Main branch, New Delhi. If yes how?

Ans. FCRA registered NGO shall have to open 'FCRA account' in SBI, Sansad Marg, Main branch, New Delhi for receipt of foreign contribution. Organizations located anywhere in India can open and maintain designated FCRA account at SBI, Main Branch, New Delhi without visiting physically New Delhi. In this regard, a detailed SOP of State Bank of India is available in public domain on the portal of SBI & FCRA.

Q.3. Can an existing bank account other than SBI receive foreign contribution?

Ans. As per the amendment under FCRA, 2010, no organization shall receive foreign contribution in any other bank/ branch account other than SBI, Main Branch, New Delhi.

Q.4. Are there any banned organizations from whom foreign contribution should not be accepted?

Ans. Yes. FCRA is meant to ensure that foreign contribution is received from legitimate sources and utilized for legitimate purposes by any person.

Q.5. Whether the amount of foreign contribution for which prior permission has been granted can be received by an association in installments?

Ans. Yes. There is no bar on receiving such foreign contribution in installments. However, the aggregate amount should not exceed the specified total amount for which prior permission has been granted. The association shall have to submit the mandatory online return in Form FC-4 for receipt and utilization of the foreign contribution on a yearly basis, till the amount of foreign contribution is fully utilized. Even if no transaction takes place during a year, a NIL return should be submitted.

B. Administrative Expenses

Q.6. What are the administrative expenses as per FCRA, 2010?

Ans. Rule 5 of FCRR, 2011 provides that administrative expenses include the following

- (i) Salaries, wages, travel expenses or any remuneration realized by the Members of the Executive Committee or Governing Council of the person;
- (ii) All expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;
- (iii) All expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organization or Association is functioning, stationery and printing charges, transport and travel charges incurred by the Members of the Executive Committee or Governing Council and expenditure on office equipment;
- (iv) Cost of accounting for and administering the funds;
- (v) expenses towards running and maintenance of vehicles;

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- (vi) cost of writing and filing reports;
- (vii) legal and professional charges; and
- (viii) rent of premises, repairs to premises and expenses on other utilities;

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards the administrative expenses

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare-oriented organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers at school etc.

C. Utilisation of Funds

Q.7. Can foreign contributions be invested in mutual funds or other speculative investments?

Ans. No. Speculative activities have been defined in rule 4 of FCRR, 2011 as under:

- (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;
- (b) participation in any scheme that promises high returns like investment in chits or land, or similar assets not directly linked to the declared aims and objectives of the organization or association.

Every association shall maintain a separate register of investments. Every such register of investments maintained under sub-rule (3) shall be submitted for audit.

Q.8. Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?

Ans. No. The associations are granted registration/prior permission under the FCRA 2010 for receiving foreign contribution for certain purpose/objectives. Accordingly, the foreign contribution should be

utilized only for the purpose for which it is granted registration or prior permission.

Q.9. Can foreign contribution be received in and utilized from multiple Bank Accounts?

Ans. The foreign contribution should be received only in the exclusive single “FCRA account” of New Delhi Main Branch of SBI (also called designated FC account), as mentioned in the order for registration or prior permission granted and shall be independently maintained by the association. Besides, this “FCRA Account”, the association may also open “another FCRA Account” in any scheduled bank of its choice & link these accounts for transfer of foreign contribution. Also, one or more accounts (called Utilization Account) in one or more scheduled banks may be opened by the association for ‘utilizing’ the foreign contribution after it has been received in the designated FCRA bank account, provided that no fund other than foreign contribution shall be received or deposited in such account or accounts and in case of any change, intimation in Form FC-6D is to be given online within 15 days of opening of such account.

Q.11. Can an association transfer foreign contribution from one utilization account to another utilization account?

Maintenance of Accounts

Q.1. Can foreign contribution be mixed with local receipts?

Ans. No. Accounts and records relating to receipt and utilization of foreign contribution are to be maintained exclusively/separately.

Filing of Annual Return

Q.1. Is online submission of annual return mandatory?

Ans. Yes, annual return is to be filed online at fcraonlineservice.nic.in. No hard copy of the returns shall be accepted in FCRA Wing of Ministry of Home Affairs.

Q.2. What is the last date for online filing of returns?

Ans. The return is to be filed online for every financial year (1st April to 31st March) within a period of nine months from the closure of the year i.e., by 31st December each year.

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Q.3. What is the procedure for filing the annual return?

Ans. The annual return is to be submitted online at fcaonline.nic.in in the prescribed Form FC-4, duly accompanied by balance sheet and statement of receipt and payment, which is certified by a Chartered Accountant. Submission of a 'NIL' return, even if there is no receipt/utilization of foreign contribution during the year, is also mandatory. However, in such case, certificate from Chartered Accountant, audited statement of accounts is not required to be uploaded.

Q.4. For how many years an association which has been granted prior permission to receive foreign contribution should file the mandatory annual return?

Ans. The association should fill the mandatory annual return on a yearly basis, till the amount of foreign contribution is fully utilized. Even if no transaction takes place during a year, a NIL return should be submitted.

Q.5. What are the consequences of not filling the annual return on time?

Ans. An association not filing annual return on time may face the following consequences: (1) Imposition of penalty for late submission of the return. (2) Cancellation of registration. (3) Prosecution for violation of the provisions of FCRA, 2010.

Change in Name, Address, Objectives, FC Account Details, Etc.

Q.1. What is the procedure for seeking change in the name and aims and objects of an association registered under FCRA?

Ans. For seeking change in the name/address of the association, intimation is to be given online in Form FC-6A and self-certified copy of the amendment approved by the local/relevant authority is to be uploaded; similarly, for aims and objects Form FC6B is available online.

Q.2. What is the procedure for change of utilization Bank account?

Ans. For change of the utilization account, an intimation is to be given online in Form FC-6D uploading of certificates from the concerned banks regarding the change.

Q.3. Whether intimation regarding the change of Members of the Executive Committee/Governing Council of the association is to be given to the Government?

Ans. Yes. If at any point of time, such change causes replacement of original Members of the Executive Committee/Governing Council of the association, intimation is to be given online in Form FC-6E to the MHA.

Renewal of Registration.

Q.1. Whether the certificate of registration is to be renewed?

Ans. Yes, as per section 16 of FCRA, 2010 every person who has been granted a certificate of registration under section 12 thereof shall have such certificate renewed within six months [before] the expiry of the period of the certificate.

Q.2. What is the process for renewal of registration?

Ans. Associations which desire to renew their registration certificate shall apply online only in Form FC-3C within 6 months [before] the expiry of their existing registration certificate. After successful payment of fees only, the application is deemed to have been completed.

Q.3. What are the requirements to be satisfied by the applicant for renewal of registration?

Ans. Darpan ID, signature of Chief Functionary, seal of the association, registration certificate of the association, Memorandum of Association/ Trust Deed, FCRA Registration Certificate of association issued by MHA are to be uploaded for renewal of registration.

Q.4. What happens if the association does not apply for renewal of registration?

Ans. The existing registration under FCRA, 2010, will cease from the date of completion of the period of five years from the date of grant of registration and the association will not be eligible for receipt & utilization of foreign contribution. In such a case, the association has to apply afresh for grant of registration.

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Q.5. What are the statutory compliances before seeking renewal of registration?

Ans. The person/associations must have filed all previous ARs, Darpan ID and designated "FCRA Account" in SBI, Main Branch New Delhi. Filing of AR is mandatory even for 'NIL' FC receipt.