

**Diploma in Financial
Management & Accountability
(DFMA)
(A joint initiative of TISS and FMSF)**

**Course Material for
LEGAL FRAMEWORK**

**(Paper-II, Module-1)
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OBJECTIVES OF THIS MODULE

LEGAL MODULE

This module covers all the major Acts governing the NPOs. It explains the registration procedure under these Acts. It provides the statutory rights and duties of the NPOs under these Acts. It simplifies the Acts for easy and better understanding. It explains the necessity of the mandatory compliance of the provisions of these Acts. It also helps in understanding the various procedures pertaining to legal contracts, meetings, resolutions, etc.

These objectives are discussed in the following chapters:

1. Registration Acts
2. FC(R)A
3. Income Tax
4. P.F. & Gratuity
5. Service Tax
6. Accounting standards

Unit - I

LEGAL CONSTITUTION AND REGISTRATION

CHAPTER - 1

LEGAL ENTITY AND VARIOUS FORMS OF REGISTRATION AVAILABLE

INTRODUCTION

1.01 Any person, entity have the right to carry on development work irrespective of any formal registration. However it is important that all voluntary organisations should get themselves legally registered. Few reasons of getting an organisation registered are as under :

- Properties can be lawfully vested in the name of the organisation.
- Bank accounts can be opened in the name of the organisation.
- It becomes a legal entity which can sue and be sued.
- It can be registered under the Income Tax Act, Foreign Contribution Regulation Act and various other legal authorities.
- It provides greater credibility in sourcing funds as well as implementing programmes.
- It can have sustained longevity independent of its founders.
- The liability of the members generally becomes limited.

FORMS OF REGISTRATION

1.02 In India various options of registration of an organisation are available. The most convenient & popular form of registration is under The Societies Registration Act, 1860.

1.03 An organisation can also be registered as a Trust under the Registration Act, 1908. The other relevant acts are

- The Charitable & Religious Trust Act, 1920
- The Bombay Public Trust Act, 1950.

However, in the states of Gujarat and Maharashtra a trust has to be registered with the Charity Commissioner

1.04 An organisation can also be registered under the Companies Act, 1956 under section 25.

1.05 The above mentioned forms of registration are prevalent in India and one has to choose keeping in view the purpose and size of the organisation.

CHAPTER - 2

FORMATION OF AN NGO AS A SOCIETY

LEGISLATION

2.01 In India, the most popular form of registration is as a Society. The relevant legislation is "*Societies Registration Act, 1860*". This act is a central statute applicable to whole of India. However, for procedural purposes, each state in India has a supplementary Societies Legislation Act, which is applicable in that state only.

REGISTERING AUTHORITY

2.02 The registration is made with the Registrar of Societies of the state in which the registered office is situated. The register of societies in some states is also known as the Inspector General of Registration.

REGISTRATION PROCEDURE

2.03 A group of seven or more persons are entitled to register an organisation under the Societies Registration Act, 1860. Such organisation should be for any literary, scientific or charitable purposes. Section 20 describes in detail the purposes for which a voluntary organisation can be registered. The founders/subscribers have to prepare a memorandum of association and the bye-laws and to file the same with the Registrar of Societies.

2.04 The following documents are required to be prepared and furnished for the purpose of registration :

1. Memorandum of Association along with a certified copy, signed by all the subscribers. A model specimen is provided as *Annexure-01*

2. Bye-laws or the Rules & Regulations along with a certified copy of the same. A model specimen is provided as ***Annexure-02***
3. Affidavit on non-judicial stamp paper sworn by the President/ Secretary. The affidavit should be attested by an Executive Magistrate or Notary Public.
4. Documentary evidence of the premises of the registered office, like house tax receipt or rent receipt. A ‘*no objection*’ certificate from the landlord should also be furnished.
5. A covering letter along with the requisite fees, requesting the Registrar for registration. The fees payable range between Rs. 10/- to Rs. 100/- in various States. The exact amount payable should be verified from the local registering authority.

CERTIFICATE OF REGISTRATION

2.05 The Registrar of Societies will verify and process the above mentioned documents. After satisfying himself about the compliance of the provisions of the relevant Act and the correctness of the documents, the Registrar will issue a certificate of registration.

The Certificate and the Bye-laws form the *prima facie* evidence of registration of the Society. Certified copies should be made of both these documents to be used for all other legal and administrative matters.

RIGHT AND LIABILITIES OF THE MEMBERS

2.06 The members of the Society are treated as entities different from the society, and therefore no suit or action can be brought against the members in their individual capacity. The following are the Rights and liabilities of the members.

2.07 *Rights of members*

- i) Right to receive notices.
- ii) Right to vote.
- iii) Right to receive copies of the bye-law.

- iv) Right to receive statement of Accounts.
- v) Right to attend general meetings.

2.08 Duties & Liabilities

- i) The foremost duty of a member is to work towards attainment of the objects of the Society.
- ii) The members should regularly attend the meeting and exercise their democratic right as and when necessary.
- iii) A society may act against a member for :
 - a) recovery of arrears of membership subscription.
 - b) recovery of any retained property or damages to the property caused by the members.
 - c) misutilising/misappropriating the funds of the society.
 - d) forging any deed, document, money receipt etc. causing loss of fund or credibility of the society.

STATUTORY AND MANAGEMENT COMMITTEES

2.09 A Society is formed with two sets of committees. The first is the General Body, which comprises all the members of the society. The second one is the Governing Body or the Executive Board, which is elected out of the general member. The General members are normally permanent in nature subject to disqualification condition as may be provided in the constitution of the society. The governing board is elected for a period of 1 to 3 years in the annual general meeting of all the members of society.

CHAPTER - 3

FORMATION OF AN NGO AS A COMPANY

LEGISLATION

3.01 Another available form of registration is as a company. This is a Central Statute applicable to whole of India. Unlike, the Societies Registration Act, the State Government do not have the power to frame any supplementary legislation to regulate the companies. Therefore, the regulatory authority law and procedure are uniform throughout India.

REGISTERING AUTHORITY

3.02 The registration is made with the Registrar of Companies of the state in which the registered office is situated.

NO NEED TO USE THE WORDS ‘LIMITED’ OR ‘PRIVATE LIMITED’

3.03 The registration of charitable organisation under the Companies Act, 1956, is made along with other commercial companies. The Central Government can grant license to a Voluntary Organisation under section 25 of the Companies Act. Such license are granted allowing limited liability for the members. Further such organisation have the liberty to keep their name without the addition of the terms “*Limited*” or “*Private Limited*”.

REGISTRATION PROCEDURE

3.04 An application in Form 1 A, is to be made to the Registrar of Companies along with a fees of Rs. 500/-.

3.05 *Name of the organisation* - In this application suitable names for the organisation in order of preference are to be given for obtaining approval. The Registrar normally, will inform about the availability of the desired name within 7 days.

3.06 *Application for licence* - Once the name is approved by the Registrar, the Memorandum and Articles of Association are prepared, see *Annexure - 03* and *04* for specimen, and an application to the Regional Director at Mumbai/ Calcutta/Kanpur/Chennai, requesting for issue of a license under section 25 is to be made.

3.07 *Grant of licence and certificate of incorporation* - The Regional Director after scrutinizing the application and considering the recommendations of the Registrar will grant the license. After the receipt of the license/approval from the Regional Director, the Memorandum and Articles of Association, the ROC then issues a certificate of incorporation to the organisation.

3.08 *Fees payable* - The registration fees and the filing fees are very nominal. The exact amount payable at various stages should be ascertained from the concerned Registrar’s Office. It is preferable to act under the guidance of a professional Chartered Accountant or any other competent consultant.

3.09 *Documents to be filed with the Regional Director* - The following documents and papers are required to be submitted to the Regional Director for approval of licence under section 25. The application should be accompanied by a draft of Rs. 500/- drawn in favour of “Pay & Accounts Officer, Department of Company Affairs”. These documents should be enclosed to a covering letter.

- i) Draft of the Memorandum & Articles of Association. [In triplicate].
- ii) Details such as name, address, occupation of the promoters. [In triplicate].
- iii) List of companies, associations in which the promoters are directors or hold responsible position with the description of the position held.
- iv) List of the proposed members of the Board of Directors.

- v) Declaration signed by an Advocate/Chartered Accountant/Company Secretary on non-judicial stamp paper of appropriate value.
- vi) The proposed sources of income and the expenditures thereof.
- vii) A note on the proposed activities and also the past activities, if any.
- viii) A statement of the grounds for making an application under section 25. In this statement a reference to the relevant clause in the Memorandum of Association regarding the Vision & Mission of the proposed company should be made.
- ix) Declaration signed by all the promoters on non-judicial Stamp Paper of appropriate value.
- x) In case of an existing society applying for conversion into a section 25 company, Audited Statement of Accounts & Annual Report of the society for the past 2 years in triplicate should be submitted.
- xi) A certified copy of the notice to be published in newspapers. The payment of fees of Rs.500/- can also be made through a treasury challan paid at specified branches of Punjab National Bank.

A copy of the application with all enclosures and papers should be sent to the concerned Registrar of Companies of the State in which the Registered Office is situated.

3.10 Notice to be Published in Newspaper - Within one week of making application to the Regional Director a notice is required to be published in newspaper. It should be published in one English newspaper and one vernacular newspaper of the local area in which the Registered Office is situated.

3.11 Approval & Registration as Company - The licence is granted by the Regional Director after the scrutiny of the application. The Regional Director may ask for any further clarification or explanations from the applicants as well as the Registrar of Companies.

3.12 After the approval is granted by the Regional Director, an application should be made to the Registrar of Companies for its registration along with certain documents. The Registrar after scrutinising the requisite documents shall issue the certificate of incorporation. The fees payable on such application is Rs. 50/-.

3.13 Documents to be Filed with the Registrar of Companies - The following documents are required to be submitted to the Registrar of Companies :

- i) Printed copy of the Memorandum & Articles of Association.
- ii) The licence granted by the Regional Director.
- iii) One copy of *Form 1*
- iv) One copy of *Form 18*
- v) Two copies of *Form 32*
- vi) The requisite amount of fees payable which is Rs. 50/- plus Rs. 10/- per document i.e. *Form 1, Form 18, Form 32*.

ALTERATION OF MEMORANDUM

3.14 A company in respect of which a licence under section 25 is in force, shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government obtained in writing. The Central Government may revoke the licence of such a body if the alteration is made without its approval. But at least formal procedures are there for alteration in the memorandum or association. It is not that rigid like a trust, where a deed cannot be changed.

CONCLUSION

3.15 Once a company is registered it is required to follow various formalities as per the Companies Act, 1956, such as getting its accounts audited, holding Board Meetings & Annual General Meetings, Filing of Annual Returns & various other documents with the Registrar of Companies.

3.16 Under section 25 (2) such companies enjoy a lot of exemptions in procedures and formalities. In this regard it is advisable to consult a Chartered Accountant or any other competent person for complying with various formalities under the Companies Act.

STATUTORY AND MANAGEMENT COMMITTEES

3.17 A Company is formed with two sets of committees. The first is the General body, which comprises all the members/shareholders of the company. The second one is the Board of Director, which is elected out of the general member. The General members are normally permanent in nature subject to disqualification condition as may be provided in the articles of association of the company. The company’s Board of Director are elected for a period of 1 to 3 years in the annual general meeting of the members of company.

CHAPTER - 4

FORMATION OF AN NGO AS A TRUST

INTRODUCTION

4.01 Formation of an organisation as a Trust is fairly simple, but the statutory provisions, procedures and the laws relating to trusts are fairly confusing. Under Indian Laws, various kinds of Private and Public Trusts can be formed, for the purposes of our discussion we will confine ourselves to the laws and procedures related with a Public Charitable Trust.

4.02 Ironically the Indian Trust Act, 1882 is not applicable to Public Charitable Trust. Public Trusts are formed under general law, with guidance drawn from the Indian Trust Act, 1882. The other relevant acts are Religious Endowment Act, 1863, Charitable & Religious Trust Act, 1920 and The Bombay Public Trust Act, 1950.

LEGISLATION

4.03 In India, the second most popular form of registration is as a trust. There is no specific act under which a public trust is to be registered, except in the State of *Gujarat* and *Maharashtra*. A trust can be formed by just registration of the trust deed like any other legal document. The registration of the trust deed is made with the Sub-Registrar of Registration in the district in which it is situated. The registration is done as per the provisions of Indian Registration Act, 1908.

INGREDIENTS OF A VALID TRUST

4.04 The following are the basic ingredients of a valid trust :

- i) There must be an author or settlor of the trust.

- ii) There must be a trustee.
- iii) There must be a beneficiary or beneficiaries.
- iv) There must be clearly delineated trust property
- v) The objects of the trust must be specific.

4.05 The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries. The trustee are the persons who manage this property for the benefit of the beneficiaries as per the trust deed. The author himself may or may not become a trustee.

4.06 A public charitable trust can be formed even if immovable properties are not set aside. Normally certain funds are settled in the trust deed for the benefit and purposes as mentioned in the trust deed.

THE THREE CERTAINTIES REQUIRED

4.07 Three Certainties of a trust are :

- i) Certainty of intention to create trust.
- ii) Certainty of the objects and the beneficiaries.
- iii) Certainty of the subject matter of the Trust i.e. fund or properties must be specified and settled in the deed.

WHO CAN FORM A TRUST ?

4.08 Every person competent to make a contract and competent to deal with property can create a trust. Besides individuals, a body of individuals or an artificial person such as an association of persons, an institution, a limited company, a Hindu Undivided Family through its Karta can also form a trust. For all practical purposes two or more individuals are required to form a charitable trust.

CHARITABLE PURPOSE

4.09 To form a public charitable trust it is very important that the objects of

the trust must be of charitable nature & of general public utility. The Charitable Endowment Act, 1890 defines 'charitable purpose' as a purpose for the relief of the poor, education, medical relief and advancement of any other object of general public utility but does not include a purpose which relates exclusively to religious teachings or worship.

TRUST DEED AND REGISTERING AUTHORITY

4.10 No clear-cut statutes are available for the formation of a Charitable Trust. The only Central Legislation available is the Charitable and Religious Trust Act, 1920. This Act is very limited in its application, and does not provide any effective control over Public Charitable Trusts.

4.11 *Preparation of trust deed* - To form a valid public charitable trust it is always desirable to prepare a Trust deed. Such Trust deed should clearly specify and satisfy the certainties of a trust. A model trust deed is provided at *Annexure-05*.

4.12 *Registration of trust deed* - Registration is to be made as per the provisions of the Indian Registration Act, 1908. It may be noted that the trust deed and not the trust is Registered. The deed has to be registered with the Sub-Registrar of the registration department of the respective State Governments. For Public Charitable Trust in the State of Maharashtra and Gujarat, registration is to be made under The Bombay Public Trust Act, 1950.

4.13 There is no formal authority to regulate the formation and management of Trust. The Sub-Registrar with whom it is registered generally registers all kind of legal documents. Therefore, the registration of trust deed is a sort of legal authentication of the trust by the trustees. There are no legal formalities or compliances, which are required to be done in future.

MANAGEMENT OF A TRUST

4.14 No specific statutory guidelines are available for the management of a Trust. It is very important that the trust deed should specify rules and regulations with regard to :

- i) Holding of Meeting

- ii) Quorum of Meeting
- iii) Chairman of Meeting
- iv) Adopting a resolution
- v) Delegation of Functions
- vi) Fixing of Accountability
- vii) Sources of Income, including receipt of grants
- viii) Modes of Investment
- ix) Modes of application of funds, towards attainment of the objectives
- x) Prohibition on use of funds for specified purposes.
- xi) Treatment of unutilised funds in the event of winding-up.
- xii) Statutory audit and other legal formalities
- xiii) Opening & Operation of Bank Accounts etc.

STATUTORY AND MANAGEMENT COMMITTEES

4.15 Unlike a company or a society the trust does not have a general body, from which the governing body is elected. The trustees are the ultimate authorities of a trust. Therefore, all the trustees form the governing body of the trust and the issue of electing a governing body is not relevant. However, trustees can elect office bearers among themselves at periodic intervals. It is important that the trust deed is drafted accordingly.

CHAPTER - 5

CRUCIAL LEGAL FACTS PERTAINING TO NGOS

ARE FOREIGNERS ALLOWED AS MEMBERS OR BOARD MEMBER OF THE NGO

5.01 As far as registering a charitable organisation with foreigners as subscribers/ members/ trustees is concerned, there is no law, which prohibits such registration. Infact there are case laws, which say *“even if all the subscribers are foreigners yet the society will be Indian if it is registered in India and vice-versa¹”*.

5.02 On the other hand, a society will be considered as foreign society if it is registered outside India although all the members are of Indian origin².

WILL THERE BE SUBSEQUENT PROBLEMS IF FOREIGNERS ARE ON BOARD

5.03 It is difficult to get FCRA registration if foreigners are there as subscribers or board members. Normally, FCRA registration is not granted to such organisations. The FCRA is silent in this regard but FCRA authorities confirmed that FCRA registration is not given if foreigners are its subscribers/members. The FAQs issue by FCRA department clearly states that foreigner shall not be there on board, foreigners under specific circumstances are allowed to be on board that to with prior permission only.

5.04 The difficulties involved in getting FCRA permission for NGOs having

¹From Anands commentaries on Societies Registration Act, 1860, (i) General Company for promotion of Land Credit (1870) 5 ch. Ap.363 and on appeal (1871) 5 H.L.176, (ii) A.G. vs. Jewish Colonisation Association, (1901) 1 K.B.123.

²Janson vs. Drifontein Mines (1902)A.C.484 Gramophone and typewriter Ltd. vs. Stanley (1906) 2 K.B. 856

foreigners on Board is a deterrent for foreign NGOs contemplating the option of floating an Indian NGO. Therefore, foreign NGOs should explore other legal and legitimate way of controlling an Indian NGO.

CAN FOREIGNERS BE INDUCTED AS *EX-OFFICIO* OR NOMINATED BOARD MEMBERS

5.05 The memorandum of association of the society can be suitably drafted so as to have *Ex-Officio* directors or nominated directors.

5.06 A foreign NGO may provide that, for instance, the country director will be an *ex-officio* board member of the Indian Society.

5.07 A foreign NGO may also reserve the power to nominate board members who may or may not be foreigners. Retention of such power should provide a controlling interest to the foreign NGO and thus some kind of line management from the head quarter can be maintained.

TENURE OF REGISTRATION

5.08 The registration under Societies and Companies Act is permanent in nature and generally it is not revoked. Similarly the life of Trust is also determined by the Trust Deed. Under extreme circumstances such societies can be liquidated, both at the initiation of the existing members or the government.

OPENING OF BANK ACCOUNTS, TRANSFERRING & USING FUNDS

5.09 The bank accounts can be opened in the name of the society as per the provisions laid down in the bye laws. Therefore, proper clause for opening and operation of bank account should be drafted at the time of preparing bye-laws of the society.

5.10 There is no bar on transfer or use of funds, the only condition is that the funds, should be used for charitable purpose only.

EMPLOYING STAFF

5.11 An NGO can employ staff like any other Indian organisation. The prevailing laws relating to the employees are only applicable.

SUBMISSION OF ANNUAL REPORTS

5.12 A list of general and governing body members is required to be filed to the Registrar of the Societies and Registrar of Companies every year. In addition to it, annual audited statements should also be filed. The requirement of submitting annual reports varies marginally between state to state. Therefore, the local law have to be checked.

OTHER STATUTORY OBLIGATIONS

5.13 All NGOs including society are required to get income tax registration. Similarly NGOs receiving foreign contribution need to have FCRA registration. Further, employee welfare scheme as may be applicable are required to be initiated.

SECURITY & STABILITY FOR CONTINUING OPERATION LONG TERM

5.14 A registered society generally has a very secure and stable existence, being an Indian entity. All the powers and destiny of a registered society rests in the hands of its general members. Therefore, if majority of the general members are like minded, then there is no threat to the existence of the society.

CAN AN INDIAN ENTITY HAVE ACTIVITIES OUTSIDE INDIA?

5.15 The various acts under which an NGO can be registered do not prohibit activities outside India. The FEMA and FCRA are silent in this regard and under

the liberalized regime of RBI, current account transaction are allowable without any prior permission. Therefore, there should not be any problem in transfer of foreign exchange subject to the guidelines of FEMA.

5.16 The most important legislation in this context is the Income Tax Act, which under section 11(1)(c), prohibits the activities of Indian NGO outside India without specific permission of the CBDT. An Indian NGO spending money on activities outside India will be subject to income tax on that portion of its income.

CHAPTER - 6

CHOOSING BETWEEN A TRUST, SOCIETY OR A COMPANY

CHOOSING A PARTICULAR FORM OF REGISTRATION

6.01 There is very little to choose between the three modes of registration available in India, though, each one of them comes with its distinct characteristics, advantages and disadvantages. The comparative advantage or disadvantages are not alarming enough to recommend any particular form of registration. Registration as company would be a more professional and organized way of working, entailing more paper work and compliances. On the other hand, registration as a trust would be the simplest way with very minimal paper work and procedural hassles. Registration as a society will come in between and probably that is why it is the most popular form of registration. See comparative table for three forms of registration for NGOs in India given in *next chapter*.

REGISTRATION FROM CONTROL POINT OF VIEW

6.02 As discussed elsewhere in the report that the control of a organisation depends directly on the number of members or the voting power.

6.03 In the case of a society, minimum 7 members are required to register and there is a two-tier structure of the general body and the governing body. It is a fairly open structure with all the members having equal voting rights.

6.04 A company also has a structure similar to a society but it has certain distinct advantages. For instance, a company can be formed with only two persons and the voting rights are not based on the basis of the number of persons. The voting rights are based on the basis of the number of shares held. The Company form of registration can be used for planning control mechanisms, by exploiting the rule of unequal voting powers.

6.05 A trust can also be formed with minimum of two persons. It does not have a two-tier structure like the company or society . Therefore, a trust is a relatively closed structure.

6.06 In the company or society the general members have the power to remove a director or a board members but in the case of trust it is not possible.

6.07 Above all the drafting of the memorandum and articles of association, bye-laws or trust deed is most crucial in determining the control and governance aspects of charitable entity.

REGISTRATION FROM ACTIVITIES POINT OF VIEW

6.08 There is more or less no difference between these three forms of registration as far as the activities or the areas of operation are concerned. Because, activities/area of operation and other bye-laws are based on the constitution of the registered entity and the law of the state generally do not interfere.

COMPARATIVE INITIAL AND RECURRING COST

6.09 The costs of registration are very minimal for all the three forms of registration. The company form of registration involves a long complicated process, therefore, the cost will be marginally higher. The statutory fees and cost are negligible in all the three forms of registration.

6.10 Regular annual returns are required to be filed in the case of a society as well as a company. But, the cost involved again should not be an issue for consideration.

6.11 The societies are regulated by the State Government, therefore, the fee structure and regulations vary from state to state. For instance, in Karnataka, the State Government collects a small portion of the total revenue generated by the societies, annually. Therefore, the geographical location and the state laws can also influence the mode of registration.

CHAPTER - 7

COMPARATIVE TABLE FOR FORMS OF REGISTRATION FOR NGOS IN INDIA

Description	Society	Trust	Company
Act under which it is registered	The Societies Registration Act, 1860	The Registration Act, 1908	The Companies Act, 1956
Ease of Formation	Relatively simple, it may take 1-2 months	Very simple, it may take a week	Relatively complicated, it may take 3-6 months
Authority with whom to be registered	Registrar of Societies of the concerned state	Sub-registrar of Registration at District level	Registrar of Societies of the concerned state
Approval of Name There	Separate application not required. Name is generally granted if available	Not required	Separate application is required to be made. are strict guideline for approval of name.
Minimum no. of subscribers/trustees required	7 (Seven)	2 (Two)	2 (Two)
Cost of Registration	Less than Rs.10,000/-	Less than Rs.10,000/-	Less than Rs.25,000/-
Governing Structure	Two tier structure a) General body b) Board of Directors	Single tier structure the trustees are the ultimate authority	Two tier structure a) General body b) Board of Directors

Description	Society	Trust	Company
Voting Rights	All members have equal rights	All trustees have equal rights	The voting rights may vary on the basis of share holding. This provision can be used for control purposes
Types of activities allowed	Not much of a difference between these 3 forms. Any kind of charitable & public utility activity can be undertaken	Same	Same
Annual Documents to be filed	The Act requires a list of managing body to be filed every year. But different states have different requirement for filing additional document every year. Normally the annual audited accounts, directors report and the list of governing body member should be filed every year.	No documents are required to be filed.	Annual return and audited accounts are required to be filed every year.
General & Board meetings	General & Board meetings are required to be held as prescribed in the bye law of the society	No provisions are laid down. Adequate rules should be framed in the trust deed, in this regard.	Specific provisions have been laid down. At least 1 Annual General Meeting and 4 Board meetings are required to be held every year.
Transfer of Membership	Membership is not transferable	Membership is not transferable	Membership can be transferred. Restriction on transfer can also be placed.
Payment to functionaries	Permitted as the general body may decide	Provision in the trust deed should be there for any such payment	Permitted as the general body may decide

Description	Society	Trust	Company
Recurring expenditure	The statutory compliances required are minimal. Consequently recurring expenditure are also negligible.	No statutory recurring expenditure	Annual returns & Balance Sheet are filed alongwith certain fees. Again the quantum of expenditure is not significant.
Area of operation	Can operate throughout India even if registered in one particular state. No separate registration is required for operating in another state.	Can operate throughout India.	Can operate throughout India as the registration is granted by the Central Government.
Income Tax Registration	Compulsory within 12 months of registration.	Same	Same
FCRA Registration or Prior Permission	Compulsory for receiving foreign funds.	Same	Same
Labour & other relevant laws	To be complied as per applicability.	Same	Same
Foreigner as a member/trustee	Possible	Same	Same
Threat in having foreigner on board	Difficulties may be faced in getting FCRA registration. No other threat perceived.	Same	Same

Unit - II

FUNDAMENTAL DOCUMENTS, BOARD MEETINGS & RESOLUTION.

CHAPTER - 8

UNDERSTANDING THE FUNDAMENTAL DOCUMENTS

INTRODUCTION

8.01 NGOs have a legal existence i.e. an artificial legal entity, which is bound by the principles of *Privity Cestui Que Trust*, which means the right to sue and the obligation of being sued.

8.02 Documents such as the Trust Deed, bye-laws or even project contracts are documents subject to legal rights, obligation and duties. Such documents provide the basis of the rights and duties to organisations and group of persons and can be very crucial and jeopardise the interest of various stakeholders in the short or long run. Therefore it is important to understand the implications as well as basics of legal documents which form the basis of NGO constitution and governance.

8.03 For instance, a clause in the main objectives which allows religious activities may result in rejection of registration. Or in a project agreement if there are some charges or expenses charged on percentage basis which results in a surplus may affect the ‘*not for profit*’ nature if not drafted properly and endanger the exemptions and privileges enjoyed. Some fundamental documents and the pertaining issues are discussed in this Chapter.

TRUST DEED OR MEMORANDUM OF ASSOCIATION

8.04 It is the legal document that is filed with the appropriate government authority at the time of registration of an NGO.

8.05 The form and content of this document varies from country to country. However the issues should ideally be addressed while drafting a Trust Deed or Memorandum of Association are as under :

- Name of the organisation.
- Duration of the organisation, usually perpetual
- Purpose for which the organisation is formed.
- Provision for conducting the internal affairs of the organisation.
- Names and address of the subscribers / founders.
- Address of the registered office.
- Names and address of the Secretary and initial Board Members
- Clause for distribution of the assets on dissolution.
- Declaration regarding the not for profit nature.

8.06 The object clause should be broad enough to cover the mission, vision and the future perspectives and evolution. The object clause should be very focused and should not mingle unrelated or divergent objectives. For instance, in India it is not permissible to have a mixed (religious as well as charitable) trust.

ARTICLES OF ASSOCIATIONS OR THE BYE-LAWS

8.07 It is the legal document that is filed along the memorandum of association with the appropriate government authority at the time of registration of an NGO. This document comprises a set of rules and regulations which enables the organisation to govern, manage and conduct its affairs. It is necessary that the bye-laws are clearly stated, shared and understood by all the stakeholders. The issues normally addressed in bye-laws are as under :

- Interpretation of expressions used.
- Requirements pertaining to notice, frequency and quorum of board and general meetings.
- Voting criteria and procedure including use of proxy.
- The board, its size and scope of authority.
- The method of nomination, election tenure of functionaries and board members.
- Membership criteria, rights and duties.
- Termination of membership.
- Code of conduct.
- Custody of assets and funds.
- Bank account operations.

- Scope and authority of the chief functionary.
- Accounts and financial reporting.
- Audit.
- Indemnity.

In the light of the above issues an NGO should revisit its existing Articles of Association or the Bye-laws and make the necessary amendments, if required.

PROJECT CONTRACTS

8.08 An NGO works either on the support of its own funds and internal accruals or on external funding. When externally funded projects are undertaken they are usually based on a legal contract.

8.09 A donor and NGO partnership is a legally bound activity and such partnership should have the following characteristics :

- Clarity of purpose
- Clarity of rules & functions
- Clarity of working methods
- Clarity of practice standards
- Clarity of resources & performances targets
- Clarity of accountability & ownership
- Clarity of mutual trust & commitments

8.10 The basic legal requirement of a valid contracts include the following :

- Intention to create legal relationship
- Clear identification of the subject matter
- Offer & Acceptance
- Consideration
- Cognizance of the relevant laws

8.11 The normal contents of a legally consistent contract should cover the following :

- Name & Address

- Duration & time
- Date of commencement
- Description of objectives
- Specification of inputs, procedures, output, activity & quality
- Methodology/Access
- Evaluation criteria
- Monitoring methods
- Finance/payment details
- Reporting procedures
- Managing change
- Managing disputes
- Indemnity & liabilities

CHAPTER - 9

TRUSTEES AND BOARD MEMBERS

INTRODUCTION

9.01 NGOs deal in public money for public utility purposes, however for legal and practical purposes the ownership of all funds lie with a group of people. A good NGO should exemplify openness and transparency by having desirable criteria for selection and rotation of trustees.

9.02 The NGO law normally varies from country to country and normally within the country also there are various kinds of registration which permit different board and trustee structure. For instance a public charitable trust can be formed with one or two trustee who are permanent in nature. Such law belong to an era when charities were entirely based on the funds / assets bequeathed by a particular donor/author. But when such trust are registered for fund raising and donor based projects, it raises a serious question mark on the public ownership of the NGO. Similarly various other forms & registration also provide the possibility of the ownership being in the hands of a private group of persons.

9.03 NGOs also struggle in defining the role and responsibilities of the trustees which results in a governance imbalance where the board may hinge from being dormant to overactive and interfering. The different forms of registration also create different ownership structures, for instance in a trust there is no provision for general body, but in case of a society there can be a general body which appoints the board.

9.04 The diversity of skills and the ability of the board member to assume and exercise authority also require careful support from the policies and norms.

COMPOSITION OF THE BOARD

9.05 The board should be ideally between five to ten members unless the legal requirements are different.

9.06 The board should not have members who are permanent in nature except the case of institutional nomination. In case of a trust normally a clause regarding permanent trustees is found, in such instances it is desirable that the total voting right of the founder trustees is less than 50%.

9.07 The composition of the board should be clearly defined in terms of the diversity of the skills required for discharge of the board functions. The balance of the board should be maintained in terms of gender, finance & other specialised skills, stakeholders and distance & availability.

9.08 Not more than two employees should be board members with voting rights or at any point the employees participation should not exceed 20% of the board members. If two or more employees are on the board then they should not be relatives.

ELECTION/SELECTION OF THE BOARD MEMBERS

9.09 There should be a clearly defined policy for recruitment, election, selection of trustees or board members. The induction of new trustees should be through an open process providing the opportunity of being elected/selected to a wider group of stakeholders.

9.10 The board members should retire and be re-elected on the basis of rotation. For instance every two years a third of the board can retire. Though the board members usually get re-elected but the technical possibility of replacing the entire board in an election process should be avoided.

BOARD PROCESSES

9.11 There should be a process for orientation and sensitising of the trustees regarding their responsibilities in particular as well as in general.

9.12 There should be a process through which clear distinction between strategic matters and operational matters should be made and a position paper should be drafted and revisited annually.

9.13 The board should set key performance indicators for themselves.

9.14 The board should meet once at least in every quarter.

9.15 An annual report on the financial or other contributions of the board members should be prepared to assess the stakes and ownership of the board members.

ROLES AND RESPONSIBILITIES

9.16 The board should formulate the mission statement of the organisation and should revisit it every three years in order to ensure that the programmes and resources are in consonance with it.

9.17 The board should formulate the structure of authority and responsibility to be delegated to the CEO and other staff.

9.18 The board should determine the procedure of electing/selecting the CEO and the compensation thereof.

9.19 The board should formulate important policy documents and guidelines on gender, human resource, finance etc.

9.20 The board should appoint the statutory auditor and the internal auditor if required. Both the auditors should directly report to the board.

9.21 The board should determine and approve the annual budget and allocations.

9.22 The board should determine and approve the bank accounts to be operated and the signatories thereof.

9.23 The board should develop proper policy and systems regarding the title, safeguard, location and verification of fixed assets.

9.24 The board should ensure strict adherence with all statutory compliances. It should also ensure that requirements/obligations towards other stakeholders is diligently done.

9.25 The board should constitute advisory committees for special functions or for specific purposes.

9.26 The board should review the performance of the CEO and other senior management staff on annual basis.

9.27 The board should prepare a position paper every three years on issues such as (i) Financial Sustainability, (ii) Institutional Sustainability, (iii) Programmatic Sustainability, (iv) State, need and relevance of corpus, endowment and general funds, (v) Risk and contingencies.

9.28 The board should carefully position its involvement in the management of the affairs of the organisation. Generally the board should not be interfering in nature, but certain powers of approval should be retained by the board depending on the size of the NGO. A suggested list of the additional functions of board could be as under :

- approval of projects and activities to be undertaken
- periodical perusal of the reports from the Secretary and other key functionaries
- approval of purchase of assets for large financial transactions
- approval of project budgets and investments
- finalising annual financial statements
- staff capacity building measures
- appointment of staff
- internal control measures
- resource mobilisation, etc.

CONFLICT OF INTEREST

9.29 There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The issues which may be regarded as material interest are as under :

- Appointment of relatives in board or senior management
- Ownership or partial ownership in organisations which are engaged or may seek business or consultancies.
- Payment of fees and remuneration.
- Directorship or management position in other NGOs.
- Providing consultancies in personal capacities.
- Having commercial interest in any decision or resolution.

9.30 The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

EX-OFFICIO BOARD MEMBERS

9.31 The memorandum of association of the society can be suitably drafted so as to have provision regarding *Ex-officio* board members. An *Ex-officio* board member denotes the right of a particular formal position holder to participate and vote in the board proceedings. For instance, an NGO may provide that the District Magistrate will be one of the board members, then who ever is the District Magistrate will automatically have the right of a normal board member.

GENERAL MEMBERS

9.32 The NGOs registered under the Societies Registration Act or under the Companies Act or any other law which require both the general body and the board, should ensure that there is a transparent and appropriate policy regarding general members and general meetings.

9.33 The general body should be the body of general members with equal voting rights. The membership should be open to all section of stakeholders. The size of the general body is determined by the nature of NGOs work, generally movement based NGOs have larger general body. However normally the size of general body should vary between ten to thirty members. The general body should always be considerably larger than the board.

CHAPTER - 10

MEETINGS AND RESOLUTIONS

INTRODUCTION

10.01 Sound governance largely depends on the effective interaction between the decision making persons of the organisations. It is very important that regular meetings are conducted for :

- Planning & Budgeting
- Resource mobilisation
- Legal Compliances
- Internal Control
- Appointment of Auditor
- Purchase of Capital Assets
- Opening of Bank Accounts
- Appointment of Staff etc.
- Election of functionaries.

10.02 The general members and the board/trustees exercise the power entrusted to them as per the memorandum of association and articles of association and the provisions of the prevailing law through meetings. The power is generally exercised at meetings and not exclusively, in other words the power bestowed upon the board by the memorandum are generally available and not exclusive. In an NGO two types of meetings are normally held, (i) General meetings, (ii) Board meetings.

GENERAL MEMBERS & MEETING

10.03 A meeting of the general members should be held at least once in a year to discuss and approve important matters like approval of audited accounts,

appointment of auditors, review of activities during the year, election of the board members. This meeting is called Annual General Meeting (AGM). It is normally conducted within six months from the end of the financial year and all the activities and accounts for the previous financial year are placed.

10.04 Apart from the AGM, general meetings can also be called during the year if the circumstances so demand. All general meetings other than the AGM are normally called as Extraordinary General Meeting (EGM).

10.05 In the general meeting all the members of the organisation should have a right to participate and vote. (Therefore all the decisions of enduring significance should be taken in a general meeting. The NGOs which are formed as companies or registered under the Societies Registration Act, normally have both general body and the board. But NGOs registered as trusts normally do not have a general body and therefore the trustees happen to be the ultimate body.)

BOARD MEETINGS

10.06 The meeting of the governing body or the board of an organisation should be held at least once in every three months. The board may meet more frequently as may be required.

NOTICE

10.07 A notice of every meeting is required to be given in writing. Care should be taken to provide for the length of the notice while framing the bye laws of the organisation. In the absence of any time limit of notice in the bye-law, it is desirable to give 21 days notice for a general meeting and 7 days notice for a governing body meeting.

AGENDA

10.08 Alongwith the notice of a meeting ; it is desirable to enclose of list of items to be discussed, such list is known as AGENDA. It is very important that the agenda of a meeting is sent in advance preferably with the notice, it helps

a member to prepare for the meeting. Issue of a meticulous agenda in advance shows the transparency and democratic functioning of an organisation.

QUORUM

10.09 The term quorum implies the minimum number of members that must be present to make the proceedings of a meeting valid. Normally the bye-laws of an organisation specify the quorum required for different meetings.

10.10 If the quorum is not available in a meeting then the meeting should be adjourned. Normally the meeting is adjourned to the same day of the next week, at the same time and place. If a quorum is not present even in the adjourned meeting the meeting, can be held as a valid meeting.

10.11 For general meeting, the quorum should be at least one third of the total members. For board meetings at least 50% of the board members should be present to form the quorum. If the quorum is not present in any particular meeting then the meeting should be adjourned to a future date by the members present on that day. If on that future date again the quorum is not present then the members present should be considered as valid quorum. The future date for the adjourned meeting should ideally be within 7 to 14 days.

10.12 It may be noted that proxies are not permissible for the determination of quorum in a meeting.

PROXY

10.13 Proxy refers to a person or a representative empowered to attend a meeting on behalf of a member. Any member of an organisation who is entitled to attend and vote at meetings is also entitled to appoint a proxy who can also attend & vote. A proxy has to carry an authorisation form ; the member entitled to attend the meeting should authorise his/her representative in writing in a proxy form.

10.14 A proxy form should be deposited in advance at the registered office of the organisation atleast two days before the meeting the date of the meeting.

10.15 A proxy is not permissible for board meetings. Proxy should preferably be avoided in a voluntary organisation and be used in general meetings only.

CHAIRPERSON OF THE MEETING

10.16 All meetings are normally facilitated by a Chairperson. The bye-laws of the organisation normally provides for the person who would be the Chairperson and preside over the meetings. In the absence of any such provision in the bye-laws, one of the member present should be elected as the Chairperson.

CASTING VOTE OF THE CHAIRPERSON

10.17 The Chairperson shall have a casting board in all meetings. It is desirable that the bye laws should also provide for such a casting vote. The Chairperson can pass or reject a resolution in case of a tie in the number of votes. In other words, whenever there is a tie over a resolution the Chairperson can vote once again and resolve the issue.

10.18 The Societies Registration Act is silent about the casting vote of the Chairman but clause 54 of table A to schedule 1 of the Companies Act clearly provides that in case of equality of vote, the Chairperson shall be entitled to second or casting vote. This convention is normally followed by all types of organisation.

MINUTES

10.19 Minutes is the formal record of the proceedings of the meeting. It is important to record the summary of the proceedings of the meeting in a written form. A minutes book can be of loose sheets chronologically bound together or a bound register. The pages of the minutes should be consecutively numbered.

10.20 Minutes of the previous meeting should be read and confirmed at the beginning of the meeting. The confirmed minutes should be signed by the chairperson and subsequently it cannot be altered or corrected.

10.21 All the members are required to sign in an attendance register during the meeting, but if the number is small then the members can sign in the minutes itself.

RESOLUTIONS

10.22 A resolution is a formal expression of the decision taken by the members in a meeting. It is required to specifically mention the decision or opinion in the shape of a resolution alongwith the number of members voting in favour and against that particular resolution.

10.23 There are two kinds of resolutions i) General Resolution where a simple majority is required to pass, ii) Special Resolution, where a higher percentage of support is expected to pass the resolution. Normally the support of 3/4th of the members present is sufficient for a special resolution. However one should verify its bye-laws for the numbers required to pass a special resolution.

Unit - III

FOREIGN CONTRIBUTION (REGULATION) ACT 2010

CHAPTER - 11

ANALYSIS OF FOREIGN CONTRIBUTION (REGULATION) ACT 2010 & RULES 2011

INTRODUCTION

11.01 The Foreign Contribution (Regulation) Act 2010 and The Foreign Contribution (Regulation) Rules 2011 have been enacted w.e.f. 01.05.2011. The old FCR Act and Rule, 1976 have been repealed. In this issue, we are discussing the major changes and the impact thereof.

THE SCOPE OF FCRA EXPANDED

11.02 The new FCRA, 2010 has a much broader applicability; it is applicable to individuals, Hindu Undivided Family (HUF), Association and a section 25 company. In the old Act, the term person was not defined and generally the Act referred to the term 'Association'. However, now it is very clear that FCRA applies to the above category of persons.

DOES FCRA APPLY TO COMMERCIAL OR BUSINESS ORGANISATIONS

11.03 Movement of foreign funds in the normal course of commerce and business is outside the purview of FCRA. Therefore, business organisations are not covered by FCRA 2010 also. However, the provision of Foreign Exchange Management Act, 1999, which is a financial legislation, would be applicable.

WHAT IS FOREIGN CONTRIBUTION

11.04 Foreign Contribution includes all kind of transfers from foreign sources. The new act retains the older definition which includes any kind of *transfer*,

delivery or donation of currency, article or securities. The notable change in the new act is that Foreign Contribution does not include commercial receipts. In other words, an NGO can receive consultancy or other commercial receipt from foreign sources even without having FC registrations. FC registered NGOs should receive such receipt in their domestic account and the commercial receipt are not required to be reported to the FCRA department.

PANCHAYAT HAS BEEN DEFINED AS LEGISLATURE

11.05 'Panchayat' has been included under the definition of '*Legislature*' under section 2(1)(k). The implication of this change is that a member of a Panchayat cannot receive any foreign contribution. Secondly, NGOs who are working closely with Panchayat will have to be careful and ensure that their activities are not interpreted as of political nature.

FC FROM RELATIVES OR SCHOLARSHIP, STIPEND ETC.

11.06 The term 'Relative' has been defined for the first time giving it the same meaning as under section 2(41) of the Companies Act, 1956.

11.07 No permission is required to obtain foreign contribution from a relative under section 4 which is a relaxation. However, rule 6 provides that any gift from relatives above ₹ 1,00,000/- in one year shall be intimated to the FCRA department in Form FC-1. Therefore, the rules seems to be in contravention of the Act.

11.08 Similarly scholarship, stipend etc. received from foreign sources are excluded under section 4. This again is a relaxation over the old Act.

ORGANISATIONS OF POLITICAL NATURE

11.09 Organisations of political nature cannot accept foreign contributions which was possible under the old Act with prior permission. Elaborate Rules have been framed for notifying any organisation as an organisation of political nature.

11.10 Under Rule 3 the FCRA department may declare any organisation as an organisation political nature, if :

- It has political objectives in its memorandum.

- It is a trade union.
- It is a group of political nature.
- It is like Student Union, Worker Union, Youth Union and Women wing of Political party.
- Any organisation if any material evidence found to be engaged in political activity.
- Any organisation found to be engaged in political activity such as 'Bandh', 'Rasta Roko' 'Rail Roko' and 'Jail Bhao'.

TRANSFER OF FUNDS TO FC REGISTERED ORGANISATIONS

11.11 The Act prohibits transfer of funds to any other organisation unless the recipient organisation also possesses FC registration. However, there is some confusing requirement under Rule 24(2) which requires filing of Form 10 for prior permission even for transfer to registered FC organisations. This issue has been clarified by the FCRA department in writing. It has been clarified that there is no need for obtaining prior approval for transfer of FC funds to organisations which are having FC registration.

TRANSFER OF FUNDS TO UNREGISTERED ORGANISATIONS

11.12 The old Act prohibited transfer of funds to any other organisation unless the recipient organisation also possesses FC registration. However, the new Act allows of FC funds to even unregistered organisation.

11.13 Section 7 of FCRA 2010 provides that foreign contribution can also be transferred non FC organisation with prior approval. Rule 23(4) provides that an organisation may apply in Form FC-10 for transfer of FC funds to unregistered organisations. Such transfer could be made to multiple recipients through one prior approval. However, the total amount of transfer to unregistered organisations shall not exceed 10% of the total foreign contribution received. Further, a recommendation from the District Magistrate have to be obtained. The aforesaid rule has practically defeated the purpose of this amendment as *prior permission* was in any case available to all organisations. Further, suppose a donor organisation wants to transfer funds to various districts, then certificate from District Magistrate would have to be obtained separately for each district. In other words, the purpose of this new provision will not be achieved and the small CBOs and registered SHGs will continue to be deprived of FC funds.

ADMINISTRATIVE EXPENSES

11.14 Under the new FCRA, 2010 there is a new provision which prohibits administrative expenses beyond 50%. The definition of administrative expenses includes various expenses such as rent, vehicles etc. which can also be incurred for programme purposes.

11.15 This amendment may cause hardship in interpreting the Rule 5 constituted in this regard. The definition of Administrative Expenditure briefly is as under :

- Remuneration and other expenditure to Board Members and Trustees
- Remuneration and other expenditure to persons managing activity.
- Expenses at the office of the NGO
- Cost of accounting and administration
- Expenses towards running and maintenance of vehicle
- Cost of writing and filing reports
- Legal and professional charges
- Rent and repairs to premises

11.16 The Rule further provides that the following salaries shall not be considered as administrative in nature :

- Salaries of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training (1st proviso)
- Expenses related to activities for example salaries to doctors of hospital, salaries to teachers of school etc. (2nd proviso)

11.17 From the above definition of administrative expenses the followings issues need greater clarity :

- All kinds of vehicle expenditure has been considered as administrative in nature. However, the last proviso provides that expenses for furtherance of activity shall be excluded. Therefore, it should be expected that all programme related vehicle expenses and other expenditures are excluded from calculation of administrative expenses.
- The Rule includes the salaries of persons engaged in management of activity and at the same time the proviso as discussed above also applies. Therefore, it is expected that all direct programme salaries shall be excluded.
- In case of network organisations, the programme is implemented through partner organisations. In such cases, it is not clear how the

adm. expenditure of the mother NGO shall be determined. It is expected that the programme expenses incurred by the subsequent organisation will be considered as a part of programme expenses of the mother NGO as well.

APPLICATION FOR REGISTRATION & PRIOR PERMISSION

11.18 Under section 11 of new Act, application for registration and prior permission is required to be made. There are no major changes under this provision and all the existing registered organisations will continue to remain valid for the next 5 years from the enactment of this Act. Other relevant issues in this regard are as under :

- All new registration and prior permission applications have to be made in Form FC-3 and FC-4 respectively. All applications should be made electronically followed by hard copies within 30 days of the electronic submission, otherwise the application will become void. A new application can only be made after 6 months of the cessation of the old application, both in the case of registration and prior permission.
- A new prior permission application can be made any time or simultaneously if it pertains to a different project.

11.19 In the old FCRA there was no time limit for processing an application for registration. Under section 12 of the FCRA 2010, applications have to be processed within 90 days. The FCRA department shall also provide reasons for rejections.

11.20 In case of prior permission, there is no provision which allows deemed approval as was the case in the old act.

POWERS FOR REJECTING AN APPLICATION

11.21 The FCRA 2010 has provided considerable powers to the authorities for rejecting an application for prior permission or registration. Under Section 12, various strict conditions have been provided which include that the applicant should not have been **prosecuted** or convicted for indulging in activities aimed at conversion or creating communal tension. It may be noted that the word 'prosecuted' has been used which implies that even if there is a Court proceeding pending, then also FCRA registration could be denied.

SUSPENSION OF REGISTRATION CERTIFICATE

11.22 Section 13 of the new Act allows the power to suspend the registration pending cancellation of certificate, for a period upto 180 days. During suspension the organisation cannot receive any foreign funds without prior approval. However, such organisation can utilise the existing foreign funds to the extent of 25%, that to with prior approval from FCRA department. Before suspending any organisation, the FCRA department shall record the reasons in writing. ***One very important issue under this section is the absence of any provision for an opportunity of being heard, before suspension which seems to be very harsh and unfair.***

CANCELLATION OF REGISTRATION CERTIFICATE

11.23 Under section 14, the Central Government may cancel the registration certificate for various reasons. However, no certificate shall be cancelled unless reasonable opportunity of being heard is provided. The reasons for cancelling the certificate are :

- (i) Providing false information
- (ii) Violating the terms and conditions like filing of return, etc.
- (iii) Violating the Act or the Rules
- (iv) Acting against public interest
- (v) No reasonable activity for 2 years.

11.24 Once a registration certificate is cancelled, such person shall not be eligible for registration or prior permission for the next 3 years from the date of cancellation.

11.25 The term "reasonable activity" has not been defined. It may so happen that an NGO may have activity from local sources. Therefore, it is expected that reasonable activity whether from FC or local sources should be there for retaining FC registration.

FOREIGN COMPANY & FOREIGN SOURCE

11.26 The old FCRA 1976 considered Indian companies, where more than 50% of equity is held by foreigners, as foreign source. For example : companies like ICICI Bank, Infosys etc. were foreign source and donations can not be accepted from them without FCRA registration. Unfortunately this provision has been

retained in the new FCRA 2010, though the stated intent of the Government was to exclude such companies. This provision could be a drafting error as the FCRA 2010 has defined a foreign company under clause (g) of Section 2, which does not include Indian Companies. This clause is apparently inserted to exclude Indian companies having more than 50% of Foreign equity holding. However section 2(j) which defines the term 'foreign source' includes an Indian company under the category of foreign source if more than 50% of its equity is held by foreigners.

11.27 This provision shall create problem in flow of funds from such organisations to various genuine NGOs as only FC registered NGOs can accept such contributions.

BUSINESS / CONSULTANCY INCOME OF AN NGO

11.28 As discussed earlier, the new Act excludes consultancy or commercial receipts from the purview of foreign contribution. This amendment was very necessary but it comes with a lot of potent controversies and trouble for the NGOs. As per the new provisions, any fee or cost against business, trade or commerce shall not be considered as foreign contribution. In other words, such receipts can be treated as local income. However the problem is that this provision is in contradiction with the amended section 2(15) of the Income Tax Act which prohibits trade or business related receipts beyond Rs.25 lakh. Therefore, NGOs should be careful in treating consultancy income and other receipts as local income even though it is now permissible under the proposed Act.

PERSONS SPECIFICALLY DEBARRED FROM RECEIVING FOREIGN CONTRIBUTION

11.29 Section 3 of FCRA 2010 specifies that the following persons cannot receive foreign contribution:

- (a) candidate for election.
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper.
- (c) Judge, Government servant or employee of any corporation.
- (d) member of any legislature

- (e) political party or office-bearer thereof.
- (f) Organisation of a political nature.**
- (g) Association or company engaged in broadcast of audio or visual news.**
- (h) Correspondent, columnist etc. related with the company referred in clause (g)**

11.30 it may be noted that the category of persons debarred from receiving foreign funds have been increased. The clause (f), (g) and (h) have been added by the FCRA 2010.

11.31 The above mentioned persons cannot receive foreign contribution subject to certain exceptions specified in section 4 which are as under:

- “(a) If they receive foreign funds by way of salary, wages or remuneration for services rendered. Or if they receive payment in ordinary course of business transaction in India by such foreign organisation or source.
- (b) If the funds are received in the course of international trade or commerce or in the ordinary course of business transacted outside India.
- (c) Payment is received as an agent of a foreign source of organisation in relation to any transaction made by such foreign organisation with the central or state government.
- (d) If the payment is received by way of gift or presentation as a part of any Indian delegation within the norms of acceptance described by Central Government.
- (e) From his / her relative.
- (f) By remittance under normal course under FEMA 1999.
- (g) By way of Scholarship, stipend etc.”

11.32 This section is more or less the same except the fact that remittance from specified person has not been restricted to Rs.8000/- as was under FCRA 1976.

RENEWAL OF REGISTRATION EVERY 5 YEARS

11.33 The FCRA 2010 provides for renewal of registration of NGOs every 5 years. However, the Act has provided relief to all the existing NGOs for the first

5 years from the date of enactment. In other words, all existing NGOs have to renew their registration at the end of the period of 5 years from the date of enactment of FCRA 2010. This implies that the renewal of all the existing NGOs will become due on 1st May 2016.

11.34 Rule 12 provides the procedure for renewal application. All NGOs have to apply in Form FC-5 six months before the due date. Therefore, all the existing NGOs have to file their FC-5 for renewal before 1st November 2015. The Rule further provides that NGOs implementing multi year projects shall be eligible to apply for renewal twelve months before the date of expiry of the certificate of registration.

11.35 In case an NGO fails to apply for renewal within the due date, its registration shall become invalid. However, the department may condone the delay if satisfactory reasons for not submitting the renewal application are provided. Such delay should not be for more than 4 months after the expiry of the original certificate of registration.

POWER TO PROHIBIT SOURCES FROM WHICH FC CAN BE ACCEPTED

11.36 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.

MULTIPLE BANK ACCOUNT

11.37 Section 17 of FCRA 2010 provides that multiple bank accounts can be opened for the purposes of utilisation provided only one bank account is maintained for receiving foreign contribution. This amendment provides a great relief to all the NGOs which were struggling under the arbitrary disallowance of multiple bank accounts under FCRA, 1976.

11.38 Under Rule 9 it is provided that the NGOs may open one or more bank accounts for the purpose of utilisation. However, in all such cases an intimation in plain paper should be sent to the FCRA department within 15 days of the opening of such account.

DISPOSAL OF FIXED ASSETS ON DISSOLUTION

11.39 Section 22 of the FCRA 2010 provides that, in case of dissolution, the Central Govt. shall have the power to determine the process of disposal of FC assets. The Central Govt. may specify the manner and procedure in which such asset shall be disposed off.

SPECULATIVE ACTIVITIES

11.40 Rule 4 specifies the circumstances under which an investment could be treated as speculative in nature.

11.41 Rule 4(1)(a) prohibits investment in shares & stocks even through mutual fund. This provision is in conflict with section 11(5) of the Income Tax Act which provides investment in certain stock linked mutual funds.

11.42 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. This provision may create needless controversies as it will be very difficult to make distinction between investment in land in relation to the objectives and otherwise. Infact, NGOs cannot invest anything beyond the objectives. All investments have to be towards fulfillment of the long term objectives.

DISCLOSURE OF INFORMATION IF RECEIPTS EXCEED ₹ ONE CRORE

11.43 Rule 12 provides that if the contributions received during the year exceed ₹ one crore, then the organisation has to keep in the public domain all data of receipts and utilisation during the year and also in the subsequent year. The rule also states that the Central Government will also upload such summary data through its website.

11.44 The manner of disclosure or meaning of 'public domain' has not been explained. It seems that all such organisations are required to have their own website where such data should be uploaded.

CUSTODY OF FUNDS AND ASSETS IN THE EVENT OF CANCELLATION

11.45 Rule 14 provides the procedure regarding the custody of foreign funds and assets in the event of cancellation of registration.

11.46 In case of available bank balances, the respective banking authority will become the custodian till the Central Government issues further directions.

11.47 If funds have been transferred to another NGO after cancellation, then the funds in the bank account of such NGO will also go to the custody of the banking authority.

11.48 All other assets of the organisation whose certificate has been cancelled or has become defunct shall go to the interim custody of the District Magistrate or any other authority which the Central Government may direct. This provision seems unfair, because the direction for repossession of asset should only be issued when all appellate remedies are exhausted.

REPORTING BY BANKS

11.49 Rule 15 provides that the bank should report to the FCRA department within 30 days under two circumstances :

- (i) if any foreign contribution is received without registration or prior permission,
- (ii) if foreign contribution is received in excess of ₹ one crore during a period of 30 days, this rule will apply to all FC funds received through valid registration or prior permission.

FILING OF RETURN & METHOD OF ACCOUNTING

11.50 Rule 16 provides that the annual return accompanied by Income and Expenditure statement, Receipt and Payment Account and Balance Sheet shall be submitted by 31st of December. The law regarding filing of returns remains, more or less unchanged. However, the notable changes are as under :

- The return shall be filed in Form FC-6 and not FC-3
- For the first time, FC rules are asking for submission of income and expenditure account

- A copy of bank statement certified by the bank has to be submitted
- A nil return is required to be filed if there is no activity

11.51 The FCRA 2010 and the Rules thereof do not specify any method of accounting. Section 19 of the FCRA 2010 just provides that accounts with regard to FC receipt and utilisation should be maintained. In the past, it was assumed that FCRA required cash basis of reporting (if not accounting). However, with the new requirement of filing *Income and Expenditure account* raises the question whether accrual basis of accounting is also permissible. On a plain reading of section 19 of FCRA 2010, Rule 16 and Form FC-6, it seems that the requirement is to report FC funds received and utilised during the year. In other words, the receipt of funds shall be on cash basis only but there is no direction regarding utilisation on payment basis only. FCRA 2010 does not seem to be prescribing any fixed method of accounting. Any method of accounting may be followed by the organisation but the receipt of FC funds should be reported on cash basis only. **It seems due to the inclusion of *Income and Expenditure account*, the utilisation will be permissible on accrual basis also if the organisation consistently follows accrual basis of accounting. However, the proposed Direct Tax Code (DTC) prescribes cash basis of computation only.**

WHICH RETURN SHOULD BE FILED FOR THE CURRENT YEAR

11.52 The new Rules provide that the annual return shall be filed in Form FC-6. However since the act became effective from 1st May 2011, it is understood that the FCRA return for the year 2010-11 should be filed in the old form FC-3.

ADDITIONAL REQUIREMENT OF FILING FORM FC-7

11.53 All NGOs are required to file Form FC-7 alongwith a certificate for Chartered Accountant, if they receive contribution in kind. In the old act, there was no such requirement for filing a separate return for foreign contribution received in kind. It may be noted that old Form FC-3 and the new Form FC-6 both have a column for contribution received in kind. Therefore, it was not necessary to have an additional requirement of filing Form FC-7. However, as it stands, FC-7 has to be filed in case of receipt of contribution in kind.

PRESERVATION OF ACCOUNTING RECORDS FOR 6 YEARS

11.54 The Rule 17(7) provides that accounting statements shall be preserved for 6 years. This is a very welcome change. Earlier it was seen that the NGOs were asked to provide books and records for past 10-15 years which was practically not possible. This rule will provide a lot of relief to the existing NGOs.

COMPOUNDING OF OFFENCE

11.55 Section 41 read with Rule 21 provides that the Ministry of Home Affairs may compound any offence punishable under the FCR Act. When an offence is compounded, then such organisation is not prosecuted. This is also a positive change which will help in avoiding needless legal cases.

CHAPTER - 12

FCRA DILEMMA FOR CSOs

INTRODUCTION

12.01 The Foreign Contribution (Regulation) Act 2010 and the Foreign Contribution (Regulation) Rules 2011 have been enacted w.e.f. 01.05.2011. The old FCR Act and Rule, 1976 have been repealed. In this issue, we are discussing the major areas requiring clarity from the CSOs viewpoint.

WHETHER THE OLD FORM FC-3 OR THE NEW FORM FC-6 SHOULD BE FILED FOR THE YEAR ENDED 2010-11

12.02 To our understanding, for the year 2010-11 the old form FC-3 should be filed because the new law became effective only from 1st May 2011 which is 1 month after the end of the financial year 2010-11. Moreover the new form FC-6 requires location wise reporting and such records may not be available with some organisations as it was not legally required to be maintained as per the earlier act.

IN THE NEW FORM FC-6, IS IT NECESSARY TO PROVIDE COMPLETE ADDRESS OF EACH ACTIVITY

12.03 The new form FC-6 has a column which requires address of specific activity. For a large NGO, it may not be practically possible to provide the village wise address of all activities spread across various states of India. To our understanding, the requirement and the intent of the FCRA department is to have information on how the funds were geographically distributed. Therefore, a district wise details of fund utilisation should suffice.

WHETHER SALARIES OF SENIOR PROGRAMME STAFF ENGAGED IN IMPLEMENTATION OF PROGRAMMES SHALL BE TREATED AS ADMINISTRATIVE OR PROGRAMME EXPENDITURE

12.04 As per the proviso to Rule 5, all salaries of personnel directly engaged in implementation of programmes towards achievement of objectives shall be treated as programme expenditure. Therefore, such salaries and expenditures should be treated as programme expenditure.

WHETHER EXPENDITURE ON VEHICLE, CONVEYANCE, TRAVEL, RENT, TELEPHONE ETC. INCURRED DIRECTLY TOWARDS IMPLEMENTATION OF PROGRAMMES SHALL BE TREATED AS ADMINISTRATIVE OR PROGRAMME EXPENDITURE

12.05 As per the proviso to Rule 5 all expenditure on vehicle, conveyance, travel, rent, telephone etc. incurred directly towards implementation of programmes shall be treated as programme expenditure. Therefore, such salaries and expenditures should be treated as programme expenditure

HOW WILL ADMINISTRATIVE EXPENDITURE BE COMPUTED WHEN THE PROGRAMME IS IMPLEMENTED THROUGH OTHER FC REGISTERED PARTNERS

12.06 The FC rules is silent about the computation of administrative expenditure in case where the programme is implemented through multiple partners. To our understanding, the administrative expenditure in case of a multi partner programme shall be computed on the basis of the programme as a whole.

HOW WILL ADMINISTRATIVE EXPENSES BE REPORTED

12.07 The FC rules are silent about the reporting of administrative expenses. There is no separate column in the form FC-6 with regard to administrative expenses. To our understanding, the administrative expenditure should be reported under a separate schedule to the Income and Expenditure Account duly certified by the Auditor. The organisation may use the same schedule of expenditure as an Annex to the Form FC 6.

WHETHER TRANSFER OF FUNDS DIRECTLY TO END BENEFICIARIES SUCH AS SHG AND CBOS AT THE VILLAGE LEVEL IS PERMISSIBLE ?

12.08 Transfer of funds directly to end beneficiaries such as SHG and CBOs at the village level is permissible only if it can be treated as end utilisation. Such groups are informal and the funds are transferred for the benefit/consumption of such groups only. It also noted that under FCRA 2010, transfer of funds to NGOs or any intermediary 'person' is not permissible. Any transfer of funds to NGOs or any intermediary 'person' should be done only with prior permission if such person is not registered under FCRA. Such prior permission can be obtained in Form 10 under Rule 24. It may further be noted that no prior permission is necessary for transfer of fund to FC registered organisations.

HOW WILL THE TRANSFER OF FIXED ASSETS TO ANOTHER FC REGISTERED NGO BE TREATED

12.09 The FCRA law is silent in this regard. It may be noted that the transfer of fixed assets to another FC registered organisation shall be treated as application of foreign funds in the books of the donor if the assets were purchased during the year. However, the problem comes in case of old FC assets transfer where such assets have already been shown as utilised in earlier years and do not form a part of the FC balance. It may be noted that many organisations reinstate the assets in the FC balance sheet by creating asset funds but such assets are not a part of the FC closing balance. Therefore, they cannot be shown as utilised in the FC-6 statement, such assets should be shown as contribution given in kind both in the FC-6 and FC-7 statements. The Auditor should certify the approximate or written down value accordingly. For the recipient organisation, in both the cases it will be treated as contribution received in kind. The recipient organisation should file form FC-7 in both the cases.

HOW WILL THE TRANSFER OF FIXED ASSETS TO THE BENEFICIARIES BE TREATED

12.10 The FCRA law is silent in this regard. It may be noted that the transfer of fixed assets to the beneficiaries shall be treated as application of foreign funds in the books of the donor if the assets were purchased during the year. However if old FC assets are transferred where such assets have already been shown as utilised in earlier years and do not form a part of the FC balance, they cannot be shown as utilised in the FC-6 statement. Such assets should be shown as contribution given in kind both in the FC-6 and FC-7 statements.

CAN FC FUNDS AND ASSETS BE TRANSFERRED TO A PANCHAYAT

12.11 It may be noted that FCRA 2010 has included Panchayat under the definition of 'legislature' U/s. 2(1)(k). Therefore, no FC funds or Assets can be transferred to a Panchayat as anyone forming part of the legislature is debarred from receiving FC funds.

HOW TO REPORT MULTIPLE BANK ACCOUNT OPENED EARLIER

12.12 Under the old FCRA law as per the FCRA department, multiple bank accounts were legally not permissible. Therefore any multiple bank account opened prior to 1st May 2011 shall be considered as violation of FCRA. Organisation may open new multiple bank accounts for utilisation purposes and report to the FCRA department within 15 days.

WILL NON-RECEIPT OF FC CONTRIBUTION FOR 2 YEARS RESULT IN CANCELLATION

12.13 The FCRA law says that if the organisation is not having any reasonable activity for 2 years then it could be considered for cancellation. This provision does not imply that there will be an automatic cancellation, since the department will provide an opportunity of being heard. To our understanding, if the NGO is having other activities from local income then it may not lose registration only because no foreign contribution was received for 2 years.

ARE BRANCH OFFICE AND LIAISON OFFICE OF FOREIGN AGENCIES COVERED UNDER FCRA

12.14 Under the FCRA law, all entities whether registered or not having a definite purpose in India shall be covered under the definition of the term "Association". Therefore, the branch office and liaison office of foreign entities will also be covered under the FCRA Laws if they receive foreign contribution in India. The clause No. 4(a) of form FC 3 also clarifies this aspect by including branch and liaison offices. All the branch and liaison offices working validly under the FEMA should also apply for FCRA registration if they receive foreign contribution in their Indian branch account. To our understanding FCRA registration would not be necessary in case of inward remittances from Head quarters (including the grant component). FCRA law

becomes applicable only if there is a transfer, donation or delivery of foreign currency, article or security. In case of an inward remittance, there is no transfer as both the recipient and the transferor are the same person. Barring inward remittances, all other funds received shall be subject to FCRA laws.

WILL CONSULTANCY INCOME BE COVERED UNDER FCRA 2010

12.15 Under FCRA 2010, the term Foreign Contribution does not include commercial receipts. In other words, an NGO can receive consultancy or other commercial receipt from foreign sources even without having FC registration. FC registered NGOs should receive such contribution in their domestic account and such commercial receipt are not required to be reported to the FCRA department.

CAN AN NGO BE TREATED AS ORGANISATION OF POLITICAL NATURE IF IT WORKS WITH PANCHAYATS

12.16 Under FCRA 2010, Panchayats are debarred from receiving foreign contribution. However, any development work towards the objectives of the NGO should not be treated as political activity even if taken up at the Panchayat level. However, there should be no transfer of foreign contribution to a Panchayat. The circumstances under which an organisation can be declared to be an organisation of political nature are provided in Rule 3 and they do not include any genuine development activity at the grassroot level.

HOW A CHARTERED ACCOUNTANT WOULD CERTIFY CONTRIBUTIONS RECEIVED IN KIND

12.17 The new FCRA Rules under form FC-7 requires a certificate from a Chartered Accountant with regard to the foreign contribution received in kind. There was no such requirement in the earlier Act and Rules. A Chartered Accountant normally certifies only objective valuations. In case of contributions received in kind from foreign sources the authentic valuation in India is not normally available which may cause problems for the Chartered Accountant in certifying such valuations. In this regard, it is important that the FCRA department issues guidelines on the valuation of contributions received in kind and thereafter the Chartered Accountant can certify whether such processes were followed or not. Further, when FC assets are given by one FC registered organisation to another FC registered organisation. The written down value of the donor organisation may be considered as a basis for valuation.

DOES FCRA PROHIBIT INVESTMENT IN LAND AND MUTUAL FUNDS FROM PROJECT FUNDS

12.18 The new Act and Rule prohibit investment of speculative nature. Rule 4 specifies the circumstances under which an investment could be treated as speculative in nature.

12.19 Rule 4(1)(a) prohibits investment in shares & stocks even through mutual fund. This provision is in conflict with section 11(5) of the Income Tax Act, 1961 which provides investment in certain stock linked mutual funds.

12.20 Further 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 the organisation. To our understanding all investment in land in the normal course (which are not short term in nature) will not be affected by the new Rule.

CAN ASSETS BE DONATED TO PANCHAYAT ? OR HOW CAN ASSETS BE DONATED TO THE VILLAGE

12.21 The new Act has defined a Panchayat as a part of legislature, therefore no FC assets can be donated to a Panchayat. However, it does not seem to be the intent of the act to prevent any asset being gifted to the village or community. For instance donating black board and tables to the village school. Any such assets may be directly donated provided definite end beneficiaries are there.

WILL BROADCAST UNDER COMMUNITY RADIO BE TOTALLY PROHIBITED

12.22 The new Act has specifically prohibited “persons” engaged in Audio/Visual Broadcast, therefore, charitable organisation formally owning community radios or video channels should not do such activities otherwise they will fall under the debarred category and cannot receive foreign contribution for any purpose.

WILL UPLOADING OF AUDIO & VIDEO IN THE ORGANISATIONS WEBSITE BE CONSIDERED AS AUDIO/VISUAL BROADCAST

12.23 The new Act prohibits Audio/Visual broadcast to our understanding on website should not be considered as Audio/Visual broadcast. The organisation may also upload Audio or Video materials on their websites but such material should be confined to the permissible activities and objectives of the Society.

CHAPTER - 12A

FAQs ISSUED BY FCRA DEPARTMENT

Q. 1 *What is foreign contribution?*

Ans. Foreign contribution has been defined in Section 2(1)(h) of FCRA, 2010. However, foreign contribution excludes earnings from foreign client(s) by an association in lieu of goods sold or services rendered by it as this is a transaction of commercial nature.

Q. 2 *Section 2(c)(i) of repealed FCRA, 1976 inter alia defined foreign contribution as the donation, delivery or transfer made by any foreign source of any article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees. What limit has been prescribed in FCRA, 2000 in respect of such article?*

Ans. Till any limit is fixed in the Rules, foreign contribution has to be understood without any limit.

Q. 3 *What is a foreign source?*

Ans. Foreign source, as defined in Section 2(1) (j) of FCRA, 2010 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, 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;
- (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 or territory;
- (ix) a society, club or other association or individuals formed or registered outside India;
- (x) a citizen of a foreign country;"

List of agencies of the United Nations, World Bank and some other International agencies/multilateral organisations, which are exempted from the definition of 'foreign source', are available on the website <http://mha.nic.in/fcra/intro/FCRA-exemptedAgenciesUN.pdf>

Q. 4 *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 the normal banking channels, is not 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 an Indian passport holder.

Q. 5 *Whether a Company incorporated in India under the Companies Act, 1956 having its operations in 2 or more countries is to be treated as an MNC under FCRA, 2010?*

Ans. No. However, the definition of 'foreign source' under section 2(j)(vi) may be seen as explained above as answer to Question 3.

Q. 6 *Whether foreigners can be appointed as Executive Committee members?*

Ans. Organisations having foreign nationals as members of their executive committees or governing bodies are generally not permitted to receive foreign contribution. However, foreign nationals, fulfilling the following

conditions, may be appointed as Executive Committee members, after obtaining prior permission of the Central Government:

- (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 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 Trustee/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source. The need for such an appointment should, however, be adequately justified.

Q. 7 *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. 8 *Who can receive foreign contribution?*

Ans. A ‘person’, as defined in Section 2(1)(m) with the exclusion of those mentioned in Section 3 of FCRA, 2010, having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. Illustrative but not exhaustive lists of activities which are permissible and may be carried out by associations of different nature are available on the website http://mha.nic.in/fcra/intro/permitted_programs.htm. It may also be noted that as per Explanation 3 of section 2(h) of FCRA, 2010, the following is not covered in the definition of foreign contribution:

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

Q. 9 *Who cannot receive foreign contribution?*

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

- (a) a candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) 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 subsection (1) of Section 5 by the Central Government.
- (g) association or company engaged in the production or broadcast of audio news or audio visuals or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of subsection (i) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or communist, cartoonist, editor, owner of the association or company referred to in clause (g).

Explanation – In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

- (i) Individuals or associations who have been prohibited from receiving foreign contribution.

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

Ans. The position in this regard as given in Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011 are as under:

Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess

of one 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. Available on the website <http://mha.nic.in/fcra/forms/fc-1.pdf>

Q. 11 *Can foreign contribution be received in and utilised from multiple Bank Accounts?*

Ans. All foreign contribution should be received in the same single Bank Account mentioned in the order for registration or prior permission granted by MHA. This account number would be the same as has been intimated by the organisation in their application for registration/prior permission. One or more accounts in one or more scheduled banks may be opened for utilizing the foreign contribution provided that no funds other than foreign contribution shall be received or deposited in such account or accounts. Section 17 of the FCRA, 2010 may please be referred.

Q. 12 *Can foreign contribution be mixed with local receipts?*

Ans. No. Foreign contribution can not be deposited or utilised from the bank account being used for domestic funds.

Q. 13 *Can foreign contribution be received in rupees?*

Ans. Yes. Any amount received from 'foreign source' in rupees or foreign currency is construed as 'foreign contribution' under law. Such transactions even in rupees term are considered foreign contribution.

Q. 14 Will interest earned from foreign contribution be considered foreign contribution?

Ans. Yes.

Q. 15 *What is the procedure for change of designated Bank Account?*

Ans. For change of the bank account, an application in prescribed form mentioning the details of the old bank account and the proposed new bank account alongwith justification for change of designated bank, name/ address of the society, copy of registration under FCRA, copy of fresh resolution of the executive committee (in English or Hindi) for change of designated back account, certificate from the proposed bank (copy of Bank Pass Book is not acceptable) that the account is being opened exclusively for FCRA, may be submitted to MHA. This form is available on website http://mha.nic.in/fcra/forms/chng_name_addr.pdf

Q. 16 *What are the eligibility criteria for registration?*

Ans. For grant of registration, the association should:

- (i) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
- (ii) normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. For this purpose, the association should have spent at least Rs.6,00,000 over last three years on its activities, excluding administrative expenditure. Statement of Income & Expenditure duly audited by Chartered Accountant for last three years may be enclosed to substantiate that it meets the financial parameter.
- (iii) meet the following conditions:-
 - (a) The person making an application for registration or grant of prior permission under sub-section (1),-
Sec.12 (4) (a)
 - (1) is not fictitious or benami;
 - (2) 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;
 - (3) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - (4) has not been found guilty of diversion or mis-utilisation of its funds;
 - (5) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - (6) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - (7) has not contravened any of the provisions of this Act;
 - (8) has not been prohibited from accepting foreign contribution;
 - (9) the person and/or 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.
- (iv) the acceptance of foreign contribution by the association/ person is not likely to affect prejudicially –
 - (1) the sovereignty and integrity of India; or

- (2) the security, strategic, scientific or economic interest of the State; or
 - (3) the public interest; or
 - (4) freedom or fairness of election to any Legislature; or
 - (5) friendly relation with any foreign State; or
 - (6) harmony between religious, racial, social, linguistic, regional groups, castes or communities.
- (v) the acceptance of foreign contribution-
- (1) shall not lead to incitement of an offence;
 - (2) shall not endanger the life or physical safety of any person.

Q. 17 *What are the eligibility criteria for grant of prior permission?*

Ans. An organisation in formative stage is not eligible for registration. Such organisation may apply for grant of prior permission under the law. Prior permission is granted for receipt of specific amount from specific donor for carrying out specific activities/projects. For this purpose, the association should:

- (i) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
- (ii) submit a specific commitment letter from the donor; and
- (iii) submit copy of a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised.
- (iv) should meet all the conditions for the grant of registration.

Q. 18 *Is recommendation of District Collector or District Commissioner or District Magistrate mandatory?*

Ans. No. Submission of verification certificate from the District Collector or District Commissioner or District Magistrate is not mandatory. However, in certain cases, if the amount applied for prior permission is less than Rs.50 lakh, submission of such a certificate assists in speedy clearance of the application.

Q. 19 *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. Yes. When an application is filed online, a printout of the same may be taken after submission and thereafter, it should be submitted, duly signed,

alongwith the requisite documents to the Ministry of Home Affairs. The prescribed forms for submission of application for grant of Registration and Prior Permission are FC-3 and FC-4 respectively. Available at MHA website <http://mha.nic.in/fcra/forms/fc-3.pdf> and <http://mha.nic.in/fcra/forms/fc-4.pdf> respectively.

Q. 20 *What are the documents to be enclosed with the application?*

Ans. (a) Following documents should be enclosed with the application for grant of Registration:

- (i) Hard-copy of the online application, duly signed by the Chief Functionary of the association;
- (ii) Certified copy of registration certificate or Trust deed, as the case may be;
- (iii) Details of activities during the last three years;
- (iv) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- (v) 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 Newspaper for India that the publication is not a newspaper in terms of section 1(1) of the said Act.
- (vi) Fee of by means of demand draft or banker's cheque of Rs. 2000/- in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(b) Following documents should be enclosed with the application for grant of Prior Permission:

- (i) Hard-copy of the online application, duly signed by the Chief Functionary of the association;
- (ii) Certified copy of registration certificate or Trust deed, as the case may be;
- (iii) Commitment letter from foreign donor specifying the amount of foreign contribution;
- (iv) Copy of the project report for which foreign contribution is solicited/being offered;
- (v) 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 Newspaper for India that the publication is not a newspaper in terms of section 1(1) of the said Act.

- (vi) Fee of by means of demand draft or banker's cheque of Rs. 1000/- in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

Note: The hard copy of the on-line application along with all the documents mentioned above must reach the Ministry of Home Affairs, Foreigners Division (FCRA Wing) within thirty days of the submission of the online application, failing which the request of the person for grant of registration or prior permission, as the case may be, shall be deemed to have ceased.

Q. 21 *How to find the status of pending application for registration/prior permission. ?*

Ans. Status of pending applications for grant of registration or prior permission may be checked on-line from the Ministry of Home Affairs website – <http://mha.nic.in/fcra.htm>. One needs to fill in the numbers on acknowledgement letter or any correspondence from MHA (Foreigners Division) in the blank format which pops up on the screen after selection of status enquiry icon (registration/prior permission, as the case may be)

Q. 22 *Is there any restrictions on transfer of funds to other organisations?*

Ans. Yes. Section 7 of FCRA, 2010 states:-

"No person who –

- (a) is registered and granted a certificate or has obtained prior permission under this Act; and
- (b) receives any foreign contribution,

shall transfer such foreign contribution to any other person **unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:**

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government."

It may further be noted that Rule 24 of FCRR, 2011 prescribes the procedure for transferring foreign contribution as under:

"Rule 24:- "Procedure for transferring foreign contribution to other registered or unregistered persons:-

- (1) Any person intending to transfer the foreign contribution may make an application to the Central Government in Form FC-10. <http://mha.nic.in/fcra/forms/fc-10.pdf>
- (2) The Central Government may permit the transfer in respect of a person who has been granted the certificate of registration or prior

permission under section 11 of the Act, in case the recipient person has not been proceeded against under any provision of the Act.

- (3) Any transfer of foreign contribution shall be reflected in the returns in Form FC-6 <http://mha.nic.in/fcra/forms/fc-6.pdf> as well as in Form FC-10 <http://mha.nic.in/fcra/forms/fc-4.pdf> by the transferor and the recipient.
- (4) In case the foreign contribution is proposed to be transferred to a person who has not been granted a certificate of registration or prior permission by the Central Government, the person concerned may apply for permission to the Central Government to transfer a part of the foreign contribution, not exceeding ten per cent, of the total value of the foreign contribution received. The application shall be countersigned by the District Magistrate having jurisdiction in the place where the transferred funds are sought to be utilized. The District Magistrate concerned shall take an appropriate decision in the matter within sixty days of the receipt of such request from the person. The donor shall not transfer any foreign contribution until the Central Government has approved the transfer."

Q. 23 *How would an organisation that is registered or has obtained prior permission under FCRA and intends to transfer a part of the foreign contribution received by it to another organisation registered under FCRA would know whether the recipient organisation has been proceeded against under FCRA?*

Ans. Where any organisation is proceeded against under FCRA, it is done with due intimation to the organisation concerned. Therefore, the donor organisation is advised to insist on a written undertaking from the intending recipient organisation.

Q. 24 *What is the procedure for filing Annual Returns?*

Ans. An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and utilised and submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purposewise utilisation of the foreign contribution. The return is to be filed 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. Submission of a 'Nil' return, even if there is no receipt/utilization of foreign contribution during the year, is mandatory. The return is to be submitted, in prescribed Form FC – 6, duly accompanied with the balance sheet and statement of receipt and payment, which is certified by a

Chartered Accountant. The form is available on MHA's web-site – <http://mha.nic.in/fcra/forms/fc-6.pdf> For further details, please refer to Sections 17, 18 and 19 of FCRA, 2010 and Rule 17 of FCRR, 2011.

Note: It may be noted that the annual return for the financial year 2010 – 2011 is to be filed by the 31st December, 2011 in Form FC-3, i.e., as per FCRA, 1976.

Q. 25 *What is foreign hospitality?*

Ans. Foreign Hospitality means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

Q. 26 *Who cannot accept foreign hospitality without prior approval of the Ministry of Home Affairs?*

Ans. No member of a Legislature or office bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government any foreign hospitality.

Provided that it shall not be necessary to obtain any such permission for an emergent medical aide needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.

Q. 27 *How one can seek permission of the Government for receiving foreign hospitality?*

Ans. Application form (Form FC-2) for this purpose is available on MHA's web-site – <http://mha.nic.in/fcra/forms/fc-2.pdf>. In terms of Rule 7 of FCRR, 2011:

- (i) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.
- (ii) The application for grant of permission to accept foreign hospitality

must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.

- (iii) In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Provided that no such intimation is required if the value of such hospitality in emergent medical aid is up to one lakh rupees or equivalent thereto.

Q. 28 *What is the procedure for seeking change in the name/address of the association?*

Ans. For seeking change in the name/address of the association, one should use the prescribed form available on MHA's website http://mha.nic.in/fcra/forms/chng_name_addr.pdf and submit the same along with the requisite documents specified therein.

Q. 29 *Can an organization, whose violation under FCRA has been condoned, apply for registration/prior permission?*

Ans. After the violation committed by an association has been condoned, the association can apply for prior permission (PP) only by submitting an application in form FC-4 <http://mha.nic.in/fcra/forms/fc-4.pdf>. Once the PP has been granted and foreign contribution received for specific purpose has been fully/partially utilized and organisation has submitted annual FC-6 <http://mha.nic.in/fcra/forms/fc-6.pdf> returns and accounts in prescribed format pertaining to the PP, it becomes eligible for consideration of registration under FCRA. Registration would be granted under FCRA, if other parameters are fulfilled by the association.

Q. 30 *Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?*

Ans. No. Speculative activities have been defined in Rule 4 of FCRR–2011 as under:-

1. (a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to marked 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.

- (2) A debt-based secure investment shall not be treated as speculative investment.
- (3) Every association shall maintain a separate register of investments.
- (4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

Q. 31 *Whether expenses like 'interest paid to bank', 'bank charges', 'hospitality' etc. can be included in 'administrative expenses'?*

Ans. No. The definition of as 'administrative expenses', as given in Rule 5 of FCRR, 2011 is explicit in this regard.

Q. 32 *Can capital assets purchased with the help of foreign contributions be acquired in the name of the office bearers of the association?*

Ans. No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since association has a separate legal entity distinct from its members.

Q. 33 *Can an association invest the foreign contribution received by it in profitable ventures and proceeds can be utilized for welfare activities?*

Ans. No. The association should utilize such funds for the welfare purpose or activities for which it is received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilized for self-sustaining activities, not meant for commercial purposes.

Q. 34 *Whether interest earned out of foreign contributions be shown as fresh foreign contribution receipt during that year or not?*

Ans. Yes. The interest earned out of such deposit should be shown as second / subsequent foreign contribution receipt in the annual return during the year in which it is earned.

Q. 35 *Can the fee paid by the foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?*

Ans. Foreign delegates/participants paying "delegate/participation Fees" in foreign currency for participation in a conference/seminar which is utilized for the purpose of meeting the expenditure of hosting the

conference/seminar and is not treated as foreign contribution and as such no permission under FCRA is required.

Q. 36 *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 and such registration shall be valid for a period of 5 years from the 1st May, 2011, i.e., up to the 30th April, 2016.

Unit - IV

INCOME TAX LAWS

CHAPTER - 13

INCOME TAX REGISTRATION PROCEDURE

INTRODUCTION

13.01 Income tax was first introduced in India in 1860. In those days income related with charitable purposes were totally exempt from tax. Over the years the Income Tax Act underwent radical changes, basically to ensure that such exemptions are not misused by unscrupulous elements. Currently extensive exemptions are still available to NGOs but a host of regulatory provisions have been incorporated in the act, which are to be adhered to, in order to claim exemptions.

APPLICATION FOR REGISTRATION

13.02 In order to claim exemption an NGO should make an application to the Commissioner of Income Tax for registration of the NGO. Such application is to be made in Form 10A. The following documents are required to be submitted :

- i) Form 10A
- ii) The original instrument under which the NGO is established, or the Bye Laws & Memorandum of Association evidencing the creation of the NGO should be enclosed.
- iii) Two copies of the Accounts of 3 previous years should be enclosed. Where the NGO was not in existence in any of three prior years, copies of the accounts of lesser No. of years may be submitted.

TIME LIMIT FOR MAKING AN APPLICATION

13.03 The application for registration should be made before expiry of one year from the date of creation of the NGO. NGOs which make a delayed

application are allowed exemption with effect from the 1st day of the financial year in which application is made. The Commissioner of Income Tax does not have the power to condone the delay in submitting the application, therefore, even if registration is granted an NGO may be subjected to tax liabilities for earlier period, if a delayed application is made.

THE AUTHORITY TO WHOM APPLICATION IS TO BE MADE

13.04 The application is to be submitted to the Commissioner of Income Tax in whose area the NGO is located. However, in respect of the four metropolitan cities of Calcutta, Chennai, Delhi & Mumbai, the applications are to be made to the Director of Income Tax (Exemption).

GRANTING & REFUSAL

13.05 The Commissioner of Income Tax, on receipt of an application for registration of an NGO, shall call for such documents or information, as he thinks necessary. While processing such application, the concerned authority normally concentrates on the genuineness of the NGO. Once the genuineness of the activities & creation is established, then it is incumbent upon the authority to pass an order in writing, registering the NGO.

OPPORTUNITY OF BEING HEARD

13.06 The Commissioner of Income Tax has the power to reject an application for registration. It may be noted that such powers cannot be used arbitrarily without substantiating adequate reasons for such rejection. Under the current laws it is statutorily required that, an opportunity of being heard should be provided to the applicant, before rejection of any application.

CAN WE APPEAL AGAINST REJECTION

13.07 Under the provisions of Section 253 of the Income Tax Act an appeal

can be made to the Income Tax Appellate Tribunal against an order rejecting the application for registration. Under such circumstances if an NGO sincerely believes that an unjust order has been awarded against it, then it can file an appeal.

TIME LIMIT FOR PASSING THE ORDER

13.08 Under income tax laws the order for either granting or refusing registration shall have to be passed within six months from the end of the month in which the application was made.

WHAT IF NO ORDER IS PASSED WITHIN THE TIME LIMIT

13.09 Here it is worthwhile to note that, both FCRA and Income Tax laws in India are vague and ambiguous in this regard. Ironically it has been clearly mentioned in the Income Tax Act that an order has to be passed within 6 months but nothing has been mentioned about the fate of the application if it is not cleared within 6 months. There are some case laws where the High Courts have held that if an order is not passed within 6 months, then it should be treated as deemed permission.

CAN REGISTRATION ONCE GRANTED BE CANCELLED

13.10 The Finance Act, 2004 has inserted a new sub-section to section 12AA. By virtue of this newly inserted sub-section 3, the Commissioner with effect from 1st day of October, 2004 shall have the power to cancel the registration, if he or she is satisfied that the activities of such trust/institution are not genuine or are not being carried out in accordance with the objects of the trust or institution. Before such cancellation, the Commissioner has to provide a reasonable opportunity of being heard and an order in writing has to be passed for such cancellation.

REGISTRATION OF NGOS OF NATIONAL IMPORTANCE

13.11 Government of India notifies few NGO's in the official gazette each year. Such notified NGO's are totally exempted from tax even if they are not registered under section 11 of the Income Tax Act. All NGO's are open to apply for this recognition. Currently the Central Government has exempted various organisations including universities, sport institutions, medical institutions, NGO's etc, under these provisions. An NGO can apply for such exemptions under section 10(23)(c)(iv).

13.12 In order to claim exemption an application in Form No. 56 is to be submitted to the Director General (Income Tax Exemption), Calcutta through the Commissioner of Income-Tax having jurisdiction over the Trust or Institution in four copies alongwith the following documents :

- a) copies of the Deed of Trust/Rules and Regulations/Memorandum and Articles of Association ;
- b) a List of Members of the Governing Council/Body ;
- c) photocopies of the latest certificate under Section 80G issued by the Commissioner of Income Tax, if applicable ;
- d) photocopies of the assessment orders passed for the last three year (or to the extent applicable)
- e) photocopy of communication from the Commissioner of Income Tax with reference to the application of the fund/trust/institution for registration.

CHAPTER - 14

EXEMPTION OF INCOME FROM INCOME TAX

INTRODUCTION

14.01 We have to understand that registration of an NGO does not automatically allow exemptions. The income of an NGO may still be taxable unless it is properly utilized.

TYPES OF INCOME & THEIR TREATMENT UNDER THE ACT

- (a) ***Contributions to Corpus of the Trust or Institution*** : Any voluntary contributions received by a trust or an institution created wholly for charitable or religious purposes with a specific direction that they shall form part of the Corpus of the trust or institution shall not be included in the total income of the previous year of the NGO in receipt of such income.
- (b) ***Other Contributions and Donations*** : However, all other voluntary contributions and donations received by an NGO established wholly for charitable or religious purposes shall for the purposes of Income Tax be deemed to be income of the NGO subject to tax and the provisions of exemption will apply accordingly. It may be noted that anonymous donations received after 01.04.07 will not be eligible for exemption. In other words anonymous donations in excess of Rs. 1 lakh or 5% of total income (whichever is higher) shall be exempted and the remaining amount will be taxed @30%.
- (c) ***Income from Business*** : An NGO cannot carry on a business unless the business is incidental to the attainment of its aims and objects and separate books of account are maintained in respect of such business. In other words, for example, if the income arises by way of fees or from sale of produce of demonstration farms or sale of goods made from sewing machines, handlooms, knitting machines

etc. kept for training to the poor and marginalised beneficiaries for the purposes of relieving poverty, such income will be exempted, provided that separate books of account are maintained in respect of these activities and the income is wholly and exclusively applied for charitable purposes. It may be noted that for NGOs engaged in advancement of any other charitable purpose the business turnover shall not exceed Rs. 25 lakhs per year.

- d) **Capital Gains** : If there is a transfer of capital asset such as land, building, furniture etc. which results in a capital gain, then the capital gain arising therefrom may be applied for charitable or religious purposes in the same manner as any other income. Alternatively, where the whole of the sale proceeds realised from the sale of the capital asset is utilised in acquiring a new capital asset, then the whole of such capital gain shall be treated as exempted. If only a part of the sale proceeds is utilised for acquiring a new capital asset then only so much of capital gain as equal to the amount, if any, by which the amounts so utilised exceeds the cost of the transferred asset shall be exempted. An organisation may also apply the capital gains for charitable purposes alongwith other income.

MINIMUM AMOUNT REQUIRED TO BE UTILISED

14.02 In order to be eligible for tax exemption an NGO is required to apply atleast 85% of its income for charitable purposes. While computing 85% of the income, repayment of loan and purchase of capital assets are also treated as an application of income, provided they are for charitable purposes.

COMPULSORY AUDIT

14.03 If the total income of the trust or institution as computed exceeds One lakh rupees in any financial year, the accounts are required to be audited by a Chartered Accountant and the audit report should be prepared in Form No. 10B, duly signed and verified and setting forth such particulars as may be prescribed, are to be submitted alongwith the return of income for the relevant assessment year.

CHAPTER - 15

ACCUMULATION AND INVESTMENT OF INCOME

ACCUMULATION OF INCOME

15.01 Where 85% of the income is not applied for charitable purposes the NGO is required to accumulate or set apart such income for future application. The incomes so accumulated will not be included in the total income of the NGO if the following conditions are applied :

- i) the NGO has to give a notice to the assessing officer in Form No. 10, alongwith a certified copy of resolution passed by the governing body. This resolution should specify the purpose and the period for which the income is so accumulated. The period of accumulation cannot exceed five years under any circumstances, this period used to be ten years but has been reduced to five years with effect from 01.04.2002.
- ii) the NGO has to enclose copies of annual accounts alongwith the details of investments of the money so accumulated before the expiry of six months from the end of each relevant previous year.
- iii) the amount so accumulated should be invested in any one or more forms specified in section 11(5) within six months from the end of the each of the previous year.

THE TWO PERMISSIBLE TYPES OF ACCUMULATION

15.02 It may be noted that under the existing provisions, two kinds of accumulation are possible :

- (1) Accumulation upto 15% of income under section 11(1). Such accumulations are not subject to application within a maximum permissible period of 5 years. In other words, 15% of income can

be retained by a charitable organisation without applying it for charitable purposes in the year in which the income accrued. This 15% accumulation is an indefinite accumulation and the organisation does not have to apply it for charitable purposes in subsequent years. It can be retained as a part of its corpus of capital.

- (2) Accumulation beyond 15% of income under section 11(2). Such accumulations are subject to application within a maximum permissible period of 5 years. In other words income in excess of 15% cannot be retained by a charitable or religious organisation. If the income is not spent in the current year then the assessee is permitted to spend it within the next 5 years.

CIRCUMSTANCES WHERE ACCUMULATION IS PERMITTED

15.03 It has been held that accumulation under the provisions of section 11(2), is to be specifically made only under those circumstances where 85% of the income of the trust could not be applied. Section 11(2), only becomes operative beyond the 15% of the accumulation of income which is otherwise allowed under section 11(1).

Illustration - For instance, the total income of an organization is Rs. 1,00,000 and it applies Rs. 20,000 only for charitable purposes during the year, Rs. 80,000 remains unutilized subject to accumulation. In this case, the assessee would be required to accumulate only Rs. 65,000 under section 11(2). As the deemed application under section 11(1) would be Rs. 35,000 [Rs. 20,000 actually applied + Rs. 15,000 - 15% of total income allowable for accumulation].

FILING OF FORM 10 UNDER RULE 17

15.04 The organisation desiring to accumulate funds has to give a notice in writing to the Assessing Officer of its intention and reasons for such accumulation in Form 10 under Rule 17 of the Income-tax Rules; 1962. This notice has to be made before the expiry of the due date of filing return under section 139(1). The following enclosures and details should be submitted with Form 10 :

- 1) A resolution has to be passed by the governing body of the organisation and such resolution has to be filed with the Form 10.
- 2) Copies of the annual accounts of the organisation along with the details of investment and utilization, if any, of the money so accumulated or set apart have to be furnished before the Assessing Officer before the expiry of six months commencing from the end of each relevant previous year.
- 3) For accumulation of income, it is necessary that the organisation/trust must indicate specific purpose or purposes for which it wants to accumulate the funds. A general decision to accumulate listing all the objects of the organisation would not be sufficient.

POWER OF CIT TO CONDONE THE DELAY

15.05 The Commissioner of Income-tax is authorized to condone the delay in deserving circumstances. (*Re : CBDT Circular No. 273, dated 3-6-1980*). Normally trusts/organisation make delay in filing Form 10 and the Commissioner condones the delay after ensuring that the failure to apply in time was not deliberate and did not benefit the settlor, trustee and founders in any manner and the accumulation of income was necessary for carrying out the objects of the organisation. The condonation of delay by the CIT has become even more important, in the light of the Supreme Court ruling in *Nagpur Hotels case, (supra)*, where it was held that the time limit to file Form 10 is mandatory. The CBDT circular no. 273, dt. 03.06.1980, has empowered the CIT under section 119(2)(b) to condone the delay in filing of application in Form 10.

GUIDELINES FOR CONDONING DELAY

15.06 Further, in addition to the above circular, an order No. 120/57/80-IT (A-I) dated 3-6-1980 was issued providing the guidelines for the Commissioner of Income-tax, while exercising the powers conferred under section 119(2)(b) to admit application under section 11(2) filed beyond the time stipulated. As per this order, the following conditions were required to be fulfilled in order to avail condonation of delay in filing Form 10 under section 11(2):

- i)* that, the genuineness of the trust is not in doubt,
- ii)* that, the failure to give notice to the Income-tax officer under section 11(2) of the Act and investment of the money in the prescribed securities was due only to oversight,
- iii)* that, the trustees or the settlor have not been benefited by such failure directly or indirectly,
- iv)* that, the trust agrees to deposit its funds in the prescribed securities prior to the issue of the Government sanction extending the time under section 11(2), and
- v)* that, the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

CHAPTER - 16

DEEMED APPLICATION

DEEMED APPLICATION WHERE MONEY IS NOT ENTIRELY SPENT IN PREVIOUS YEAR

16.01 According to *Explanation 2* to section 11(1), if in the previous year, a charitable organisation is not able to utilise 85% of its income (75% prior to 1-4-2003), as aforesaid due to the fact that such income has not been received in the previous year or for any other reason then the organisation has an option to apply such income in the year of the receipt or in the year, immediately following the year of accrual of income.

16.02 It may so happen that an NGO is unable to utilise the 85% of income due to the fact that such income is not received in the previous year or is received towards the end of the year. In such circumstances the NGO has an option to apply the income in succeeding year but it will be treated as deemed to have been spent in the previous year.

THE METHODOLOGY INVOLVED

16.03 Under accrual system of accounting, charitable organisations may have accrued income which actually is not received in the year of accrual. In such circumstances, there is a genuine problem which prevents the organisation from applying the income in the year of accrual. By exercising the option available under explanation - 2 to section 11(1), the organisation can apply such income in the year of receipt or the year immediately following the year in which the income accrued. Similarly, in some circumstances where the income was received but could not be applied for charitable purposes for any other reason -for instance income received towards the end of the financial year- such income could also be applied in the immediately following year after exercising the option available under explanation 2 to section 11(1). In both the above cases, the income will be deemed to have been applied in the year in which it

accrued. Some illustration have been given to have a clearer understanding of the issue

Illustration-1 : The income of an organisation for the year, 2002-03 is Rs. 1,00,000/- out of which only Rs. 60,000/- was received during the year and Rs. 40,000/- was received in the year 2003-04. The organisation has actually applied Rs. 55,000/- during the year. The organisation wants to exercise option available under Expln.- 2 to section 11(1).

Solution :

Income during the year 2002-03	Rs.	1,00,000
Less : Application during the year	Rs.	55,000

Remaining income	Rs.	45,000
Less : Deemed application u/s. 11(1) Expl. 2(ii)	Rs.	40,000

Income accumulated u/s. 11(2) or subject to tax	Rs.	5,000
		=====

When the organisation exercises option under Explanation-2 to section 11(1) it cannot retain 15% of income for indefinite accumulation. In this above case when the organisation receives Rs. 40,000/- in 2003-04 it will have to apply Rs. 25,000/- and the remaining Rs. 15,000/- can be accumulated indefinitely on account of the year 2002-03. The amount of Rs. 25,000/- applied in 2003-04 will be deemed to have been applied in the year 2002-03. The total application will be as under :

Income during the year 2002-03	Rs.	1,00,000
Less : Application during the year 2002-03	Rs.	55,000

	Rs.	45,000
Less : Accumulation u/s. 11(2) or income subjected to tax	Rs.	5,000

Remaining amount	Rs.	40,000
Less : Application during the year 03-04 (Deemed to be applied in 2002-03)	Rs.	25,000

Indefinite Accumulation for 2002-03	Rs.	15,000
		=====

In the above illustration Rs. 5,000/- will become subject to tax, in the year 2002-03 unless the assessee also exercises the option of

accumulating the income for 5 years by applying section 11(2). In 2002 the organisation will either pay tax on Rs. 5,000/- or accumulate it. If the income is accumulated then the organisation can spend it in the next 5 years. There is one more possibility with regard to the amount of Rs. 5,000/- which remained unutilised in 2002-03, the organisation, if it has valid reasons, can also apply for the option under explanation -2(ii) i.e. income received but could not be utilised for some other reason.

Illustration-2 : The income of an organisation for the year, 2002-03 is Rs. 1,00,000/- out of which only Rs. 90,000/- was actually received during the year. Out of the income actually received, Rs. 20,000/- was received on the last day of the year. Rs. 10,000/- was received in the year 2003-04. The organisation has actually applied Rs. 50,000/- during the year. The organisation wants to exercise option available under Expln.- 2(i) and (ii) to section 11(1).

Solution :

Income during the year 2002-03	Rs. 1,00,000
Less : Application during the year	Rs. 50,000

Remaining income	Rs. 50,000
Less : Deemed application u/s. 11(1) Expl. 2(i)	Rs. 10,000

Remaining income	Rs. 40,000
Less : Deemed application u/s. 11(1) Expl. 2(ii)	Rs. 20,000

Remaining Income	Rs. 20,000
Less : Appropriate portion of 15% indefinite accumulation	Rs. 5,000

Accumulation under section 11(2)/subject to tax	Rs. 15,000
	=====

In the above illustration, though Rs. 20,000/- is available but the organisation will not be entitled to accumulate 15% indefinite accumulation which is otherwise available, in view of CBDT circular no. 204, dt. 24.07.1976, which provides that to avail the option under explanation-2(i) the organisation has to spend all the income received for charitable purposes and the indefinite accumulation will be allowed from the income accrued but not received, when it is received in the next year.

Illustration-3 : The income of an organisation for the year, 2002-03 is Rs. 1,00,000/- out of which only (i) Rs. 80,000/- was received during the year

and Rs. 20,000/- was received in the year 2003-04. The organisation has actually applied Rs. 80,000/- during the year. But, the organisation wants to spend 85% of its income. (ii) Rs. 80,000/- was received during the year and Rs. 20,000/- was received in the year 2003-04. The organisation has actually applied Rs. 80,000/- during the year. But, the organisation wants to spend 100% of its income. (iii) Rs. 90,000/- was received during the year and Rs. 10,000/- was received in the year 2003-04. The organisation actually applied Rs. 80,000/- But, the organisation wants to spend 85% of its income. (iv) Rs. 90,000/- was received during the year and Rs. 10,000/- was received in the year 2003-04. The organisation actually applied Rs. 90,000/- But, the organisation wants to spend 100% of its income. The organisation wants to exercise option available under expln.- 2 to section 11(1).

Solution : The illustration has been solved on the basis of two different circumstances available to the organisation, one when the organisation wants to apply 85% of its income, second when the organisation wants to apply 100% of its income :

	(i)	(ii)	(iii)	(iv)
Income actually received during the year 2002-03	80,000	80,000	90,000	90,000

Income accrued during the year 2002-03	1,00,000	1,00,000	1,00,000	1,00,000
Less : Application during the year	80,000	80,000	80,000	90,000

Remaining income	20,000	20,000	20,000	10,000
Less : Deemed application u/s. 11(1) expl. 2	5,000	20,000	Nil	10,000
=====				

In case (i) the organisation has received only 80% of accrued income therefore, it will be allowed to apply Rs. 5,000/- in the year of receipt. (ii) the organisation has received only 80% of accrued income but if the organisation wants to forego the indefinite accumulation and apply 100% of income then it can avail the benefit of deemed application to the extent of Rs. 20,000/- provided it has to spent the entire outstanding income in the year of receipt. (iii) the organisation has received Rs. 90,000/- but has only applied Rs. 80,000/- which is 80% of income therefore, the organisation will be liable to pay tax on Rs. 5,000/- and the benefit of deemed application will not be available. (iv) the organisation has received and applied

Rs. 90,000/- but if it wants to forego the benefit available for indefinite accumulation then it can make deemed application to the extent of Rs. 10,000/-. The 85% requirement is the basic limit and the organisation can always go beyond it. In this case, the organisation by opting to apply 100% of income has not transferred 15% to its corpus.

OVERALL SUMMARY

16.04 The provisions of this chapter can be summarised as under :

- i) When an organisation is unable to apply 85% of its income because it has not been received any portion thereof or for any other reason, then it can exercise the option under explanation-2 to section 11(1). Then such unutilised/unapplied income would be treated as deemed application.
- ii) The organisation can exercise this option when the income is accrued but not received. In such cases, the organisation can spend it in the year of receipt or the year succeeding the year in which the income accrued, whichever is later.
- iii) The organisation can also exercise this option when the income is received but it could not be applied due to some valid circumstantial reasons. In such cases the organisation can spend the income in the year succeeding the year in which the income accrued.
- iv) To exercise this option the organisation has to apply to the assessing officer in writing before the time limit specified under section 139(1) for filing return of income.
- v) It has been held that the time limit to exercise this option is not mandatory and only directory in nature and therefore, the assessing officer can condone the delay.
- vi) If the income is not applied in the year of receipt or the year succeeding the year of accrual of income, as the case may be, then such income will become taxable in the year succeeding the year in which it was received or it was required to be applied.
- vii) If the income is not applied in the year of receipt or the year succeeding the year of accrual of income, as the case may be, then such income will not be eligible for accumulation under section 11(2) for 5 years.

CHAPTER - 17

INTER-CHARITY DONATIONS

DONATION TO ANOTHER CHARITABLE ORGANISATION IS APPLICATION

17.01 It has been held in various cases that donation made by one charitable organisation to another shall be considered as application of income for the objectives of the organisation provided the donee organisation also has objects similar to the object donor organisation.

DONATIONS TO OTHER CHARITABLE INSTITUTIONS AFTER 1-4-2002

17.02 The Finance Act, 2002 has inserted an *Explanation* to sub-section (2) of section 11. This *Explanation* prohibits donations to other charitable organisations out of the accumulated funds. This amendment can have far-reaching practical implications. The new amendment puts restriction on donations to other charities only out of accumulated funds. In other words, funds once accumulated under section 11(2) can only be applied for charitable purposes directly by the concerned organisation and any inter-organisation transfer would not be possible.

DONATION OUT OF CURRENT INCOME IS NOT BANNED

17.03 However inter-organisation donations are possible from current year's income, but the newly amended provision will certainly create hurdles for organisations, which were used as conduct for channelling funds to other

organisations. The new *Explanation* inserted by the Finance Act, 2002, to section 11(2) has debarred organisations from applying its accumulated or set-apart income by way of payment or credit to other such organisations. Now, payments or credits out of accumulated funds to any other organisation would not be treated as application for charitable or religious purpose. There is no apparent bar on payment or credit to such other organisations out of previous year's income subject to the provisions of section 11(1).

17.04 In the light of the above, funds once accumulated are no longer available for credit or payment to any other charitable organisation, though such transfer may still be possible out of the current year's income under section 11. CBDT has also issued a clarificatory circular no. 8, dt. 27.08.2002 the relevant text of the circular is provided in *Annexure 6*.

17.05 In the light of the aforesaid and the amendments by virtue of Finance Act, 2002, donations to other charitable organisation are still possible but only out of the current years income. Once the funds are accumulated then it will not be permissible to make inter-trust donation and treat them as application.

AMENDMENT IN FINANCE ACT, 2003

17.06 The Finance Act, 2003 has inserted another proviso to sub-section (3A) of section 11 which provides that inter-charity donation out of accumulated funds will be permissible in case of dissolution of a charitable organisation. This amendment has been made to reduced the hardship of charitable organisation on the brink of dissolution.

TAX PLANNING THROUGH DEEMED APPLICATION

17.07 In the light of what is discussed in this chapter, the amended provisions with regard to inter-charity donations will cause hardship to those organisations which act as a mother NGO to many small charitable organisations and funds through various foreign and domestic sources are routed through them. Many donors prefer to fund through one mother NGO which subsequently distributes

the funds to smaller NGOs. After the amendment made in 2002 there is an apprehension in the fraternity of charitable organisations that it may become difficult to disburse funds received towards the end of the year. And since accumulated income is not available for inter-charity donations, the funds could neither be applied nor could be donated to other charities.

17.08 For instance if a charitable organisation receives funds in the month of March - which is required to be distributed to other charitable organisations - and is unable to make inter-charity donations within the year of receipt, then it has to accumulate the same. Once the income is accumulated under section 11(2) then it is not permissible to make inter-charity donations.

17.09 Under the above mentioned circumstances a charitable organisation may exercise the option available under *Explanation to section 11*. The Explanation to the section 11 refers to two situations where the income applied falls short of 85% and still can be deemed to have been applied in the previous year. The two situations are (i) when the income is not received but accrued (ii) for any other reason. Under the second situation, the assessee may exercise its option by applying in writing before the expiry of the time allowed under section 139(1) for filing of return. After exercise of the option the income will be deemed to have been applied in the previous year even though it is spent in the succeeding or the year of receipt.

17.10 Inter-charity donations being valid application of income, there is no reason why option under Explanation 2 to section 11(1) could not be applied and the income be actually spent/disbursed in the succeeding year. But the reasons have to be genuine, the organisation must have valid reasons for not being able to apply the income as inter-charity donations.

OVERALL SUMMARY

17.11 To sum up the discussions :

- i) Donation to another charity with similar objects is considered as an application of income for charitable or religious purposes.
- ii) CBDT Instruction No.1132 (1978), has clarified that if the donee organisation does not utilise in the year of receipt, then the exemption to donor will not be affected.
- iii) The Assessing Officer should be satisfied that the donation is a bonafide initiative and would be used by the donee for charitable

purposes only. In other words, unqualified benefit to the donor is not available.

- iv) High Courts have held that even inter-charity donations towards corpus is a valid application. But this contention may require re-consideration.
- v) After 01.04.2002, inter-charity donation out of accumulated funds is not possible except in the case of dissolution of the donor organisation.
- vi) Organisations receiving funds towards the end of the year can still make inter-charity donations by applying the option under Explanation to section 11.

CHAPTER - 18

FORFEITURE OF EXEMPTION UNDER SECTION 13 AN OVERVIEW

OUTLINE OF SECTION 13

18.01 Section 13 of the Act, specifies the circumstances under which the benefits under section 11 would not be available to an organisation. Section 13 has been enacted as an exception to section 11, thereby, the benefits which are otherwise available under sections 11 and 12, will not be available under the circumstances stated in section 13. An organization, under the following circumstances, may risk losing its exemptions under section 11 :

- (i) If the income is not applied for the benefit of the public [section 13(1)(a)].
- (ii) If the income is applied for the benefit of any particular religious community or caste [section 13(1)(b)].
- (iii) If the income or property of the trust or institution is applied/used for the benefit of the persons specified in section 13(3) who may be the founders, trustee, manager, chief functionary, major donors, relatives of the founders or persons who have a substantial interest in the organization [section 13(1)(c) read with sections 13(2) and 13(3)].
- (iv) If the funds are applied in modes other than those specified in section 11(5) or shares of companies other than a government company are held (not being a part of the corpus as on 1-6-1973). [section 13(1)(d)].

18.02 The provisions of section 13 specify complete withdrawal of the exemptions available under section 11, in respect of various incomes. In other words violations as specified under section 13 will have the effect of forfeiting exemptions on incomes which are otherwise available under section 11(1). Sub-section (1) of section 13 specifies various circumstances where the organization will lose exemption if the income is applied in the manner specified under section 13(1).

SCOPE OF SECTION 13

18.03 Section 13 is over and above the conditions and provisions provided for exemption under section 11 and 12. The income of a charitable or religious organisation will be forfeited if any of the provisions of section 13 are violated even if other conditions of section 11 and 12 are complied with. In *M. A. Namazie Endowment v. CIT* [1988] 174 ITR 58 (Mad.), the Madras High Court held that Section 13 is only an exception to section 11 of the Act. If a trust is covered by the provisions of section 11 of the Act, the income thereof will not be exempt from liability to tax under the circumstances set out in section 13 of the Income-tax Act. Section 13 begins with the words “nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year”. The implication of the section is that incomes which are otherwise exempted under section 11 or section 12 will not be exempted if the provisions of section 13 are contravened. The applicability of section 13 arises only when an organization is eligible for exemption provided under section 11. Therefore, only those organisation which are claiming exemption under section 11 are subject to the provisions of section 13.

CHAPTER - 19

BUSINESS ACTIVITIES BY A VOLUNTARY ORGANISATION

INTRODUCTION & OVERVIEW

19.01 The recent amendments in the definition of 'charitable purpose' under section 2(15) may have far reaching implications on the business income of charitable organisations. It may be noted that the NGOs engaged in advancement of any other object of general public utility, **will not be allowed to have even incidental business activity beyond Rs.25 lakh turnover**. Therefore, it becomes important to know the types of commercial activities which will not be treated as business at all. It is also important to know the activity which can be considered as incidental business. In this issue various permissible and incidental business activities have been discussed. However a brief overview of the recent amendments and the implications are provided as under :

19.02 The definition of 'charitable purpose' can be divided into 6 parts, viz. (i) relief of poor, (ii) education, (iii) medical relief, (iv) preservation of environment, (v) preservation of monuments or places or objects of artistic or historic interest, (vi) advancement of any other object of general public utility. However, the Finance Act, 2008 w.e.f. 1-4-2009 has excluded any trade, commerce or business related activity by any trust or NGO engaged in the sixth category i.e. advancement of any other object of general public utility, from the purview of 'charitable purpose'. In other words an NGO exclusively engaged in the field of education, medical relief and relief of poor preservation of environment & preservation of monuments shall not be hit by this amendment.

19.03 Therefore, w.e.f. 01.04.2009 it seems that income from trade, commerce or business pertaining to those NGOs which are coming under the sixth category of 'charitable purpose' shall not be treated as charitable activity and the entire exemption of such Trust will be lost. Consequently such organisations will not be eligible for any exemption under section 11 or other provisions which provide exemptions towards charitable purpose. It may be noted that the issue of incidentality of business will not be relevant to such group of NGOs. Whether the business activity is incidental or not, shall be of no consequence, as this sixth category of NGOs will lose the charitable status. However, the Finance Act, 2011

has provided some relief to the sixth category NGOs as NGOs having business activities to the extent of rupees twenty five lakh (receipt) will not be affected.

19.04 There is confusion that only the business income of NGOs shall become taxable at the rate of 30%. It is clarified that once an NGO is hit by this provision, it will lose its charitable status and the entire income will become taxable.

19.05 It is pertinent to note that all other NGOs (other than the NGO coming under the sixth category) can have business related activity as permitted under section 11(4A), and other provisions pertaining to business activities shall be applied without any changes.

19.06 Hitherto the law was very liberal with regard to the business activities of NGOs and even income from unrelated businesses (for example, publishing newspapers) held by them was eligible for exemption if the entire income was used for charitable purposes. The law will continue to remain liberal for the first five categories of NGOs.

19.07 It is important to note that the exclusion of trade or business related activities is discriminatory and will apply to only a particular group of NGOs or Trusts as discussed above. It is not clear why a particular group of NGOs will be discriminated even though the registration provides an *on par* status to all NGOs. The resulting scenario denotes an unfair legal situation where even an incidental business activity of the sixth category NGO will render forfeiture of the charitable status. On the other hand, for other NGOs even unrelated business activities might be permissible. The constitutional validity of such unfair provision needs to be verified.

19.08 Newly inserted proviso to section 2(15) lays down the 'specified activities'. They are :

- Carrying on of any activity in the nature of trade, commerce or business (hereafter referred to as 'the trade'); or
- Carrying on of any activity of rendering any service in relation to the trade, for a fee or cess or any other consideration.

The proviso further lays down that if the specified activities are carried on in pursuit of the sixth object, then it would not be considered as a charitable purpose, if the receipts from such activities exceed rupees twenty five lakh per annum.

19.09 It may be noted that NGOs or trusts engaged in the sixth objective shall continue to be eligible under section 11 unless they engage in trade or business related activity.

19.10 It may also be noted that the current amendments are prohibiting business activity and not *profit making*. In other words such sixth category NGOs may still have some profit through various sources of income generation other than business or commercial activity. Therefore, going by various case laws activities such as

- charity shows,
- rent from property,
- income from Kalyana Mandapam or conferences facilities,
- business involving poor / beneficiaries etc.
- sale of books without profit motive
- organising workshop and seminars etc.

shall still be permissible and valid. The CBDT has issued an explanatory circular in this regard which is annexed herewith. The circular categorically denies even incidental business or commercial activities for the sixth category NGOs.

19.11 Micro finance activity may get impacted. It seems that organisations existing solely for providing interest bearing loans will be treated as commercial entity. However giving interest bearing loan as one of the various activity may not necessarily be a commercial activity.

19.12 Incidental business activities such as employing indigent women for stitching or tailoring, marketing products of the beneficiaries or greeting cards etc, shall be considered as activities towards achievement of the primary purpose of relief to poor and therefore, should not be treated as business activity, as was decided by Supreme Court in *Thiagarajar Charities* and *Thanti Trust case* (*supra*).

19.13 The amendment to the Section 2(15) shall apply from the assessment year 2009-10.

INCOME FROM KALYAN MANDAPAM OR WORKSHOP INFRASTRUCTURE

19.14 It has been held that income from Kalyan Mandapam or the building and other fixed infrastructure used for seminars and workshops etc., shall be treated as income from house property and not as business income. The following cases may be referred, *CIT v. Samyuktha Gowda Saraswatha Sabha* [2000] 245 ITR 242 (Mad.), *CIT vs. Gordhandas Bhagwandas Charitable Trust* [2004] 136 TAXMAN 161 (MAD.)

INCOME FROM OCCASIONAL ACTIVITIES

19.15 It has been held that income from occasional activities cannot be considered as business activity. In *CIT vs. Hyderabad Race Club Charitable Trust* [2003] 129 TAXMAN 788 (AP) it was held that activities such as running races and inter-venue betting after obtaining license from the Government cannot be considered as business activity. The Explanatory Circular No. 11/2008, F. No. 134/34//2008-TPL dated 19th December 2008 also provides that whether an activity is business or not shall be determined based on the nature, scope and frequency of the activity. In other words, the Circular also provides that occasional commercial activity will not be considered as business or commercial activity. Therefore, occasional businesses like a charity show or a mela for fund raising will not be treated as business.

BUSINESS INVOLVING POOR AND BENEFICIARIES

19.16 The Supreme Court in case *Thiagarajar Charities v. ACIT* [1997] 092 TAXMAN 152 (SC), has held that businesses involving the poor and beneficiaries cannot be said as business or activity for profit. The apex court provided two reasons (i) the business is only a 'means' of achieving the 'object' of the trust; it is a medium through which the 'objects' are accomplished. (ii) the business - corpus - property held under trust - produces or results in income, *like any other property*. In the light of this landmark decision it seems that business activities involving the beneficiaries and done only with the motive of providing relief to the poor, cannot be considered as business at all.

19.17 The issues of business activity involving poor beneficiaries were also considered by the Supreme Court in the case of *Asstt. CIT v. Thanthi Trust* [2001] 247 ITR 785, wherein the Hon'ble Supreme Court held that even the business of weaving cloth and stitching clothing by employing indigent women, carries on the business in the course of actually accomplishing its primary object of affording relief to the poor and it would qualify for the exemption under section 11.

MARKETING COMMITTEES

19.18 In another important ruling regarding commercial marketing of various products of common beneficiaries in the case *Agricultural Produce and Market Committee v. CIT* [2007] 291 ITR 419 (Bom.), it was held that the activities

pertaining to marketing of agricultural produce was charitable in nature. The contention of the revenue that the activities were commercial in nature was not accepted by the Bombay High Court and it was observed that any profit or fees charged in the process of marketing could not take away charitable nature of the activity and it would still be considered as a charitable activity towards advancement of any other general public utility. This is very significant in the light of the recent amendment to section 2(15) which prohibits business activity for the NGOs engaged in advancement of any other general public utility.

MANUFACTURE AND SALE OF KHADI

19.19 In a significant ruling the Rajasthan High Court in *CIT v. Adarsh Gram Trust* [1986] 159 ITR 41 (Raj.), held that a trust with the dominant object of propagating and implementing the ideas of Mahatma Gandhi for the upliftment of poor and backward people was a charitable trust. The issue was whether an organisation for the purpose of promotion and sale of khadi can be called as a charitable organisation? The court observed that if the trust's predominant object was for charity, it was entitled to the exemption. Promotion and sale of khadi is an activity of general public utility. Therefore, it should not be treated as business or commercial activity at all.

19.20 The court held that the manufacture and sale of Khadi was an activity towards propagation of the doctrine of Mahatma Gandhi and therefore should be considered as a charitable activity.

19.21 From the above it is clear that any business run as a part of charitable activities cannot be considered as a business or commercial activity *per se*. Therefore, business activity involving employment of indigent women or poor beneficiaries will be treated as actually accomplishing the primary objects or affording relief to the poor and it would be considered as charitable activity only.

INCIDENTAL TRADING ACTIVITY NOT A BUSINESS - SALE OF BOOKS

19.22 The Supreme Court in *CST v. Sai Publication Fund* [2002] 258 ITR 70/122 Taxman 437 (SC) held that any business incidentally done as an integral part of the larger charitable purpose cannot be considered as incidental business. The Apex Court has held that if the main activity is not business, then any transaction incidental or ancillary would not normally amount to 'business' unless an independent

intention to carry on 'business' in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on 'business' connected with or incidental or ancillary to sales will rest on the department.

MANAGEMENT SEMINARS WITH HIGH FEES IS NOT BUSINESS

19.23 In the case *Indo-American Society v. ADIT (E)* [2005] 96 ITD 61 (Mum.) / [2005] 278 ITR (AT) 49 (Mum.), the Assessing Officer denied benefit of exemption under section 11 to assessee-society on ground that it was conducting educational courses in professional manner with high charges at five star hotels where only elite class could attend those courses and thus, object of society was not falling within 'general public utility' category. The issue before the Tribunal was that since dominant object of conducting seminars and class-room programmes by assessee-society was to impart education; such programmes were conducted with desire to do good work and not to earn profit; and fee was charged to meet cost, it could not be construed to be business of assessee-society. The Tribunal held that such activity could not be considered as business activity. The Tribunal held that there was nothing to support that the educational programme were being done with an intention to earn profit. Therefore even if it was for the elite class, it cannot be considered as business activity and should be treated as a part of charitable purpose.

PERIPHERAL BUSINESS ACTIVITY CANNOT AFFECT EXEMPTION

19.24 In the case *DIT(E) v. Agri-Horticultural Society* [2005] 273 ITR 198 (Mad.) it was held that various peripheral activities including sale of seeds, flower pots or even higher charges for shooting of commercial films would not justify withdrawal of exemption because various receipts were received for activities undertaken without any commercial motive.

MICRO FINANCE AND MONEY LENDING ACTIVITY

19.25 The Micro Finance activity may be hit by the recent section 2(15) amendments. In the Departmental Circular No. 100 [F.No. 195/1/72-IT(A-1)] dated 24.01.1973 the issue of money lending and interest bearing loan has been

discussed. This circular is in context of loan given to students for higher education. It has been clarified that even interest bearing loan given to the students would be treated as activity towards advancement of the objectives, provided giving interest bearing loan is not the only activity of the organisation. From the circular the following issues are apparent :

- (i) Interest bearing loan *per se* is not necessarily a commercial activity unless the sole objective of the organisation is to provide interest bearing loan. In that case it will be treated as money lending activity.
- (ii) If a portion of activity of an NGO involves providing interest bearing loan to needy beneficiaries, it may still be considered as an activity towards advancement of charitable objectives and may not be treated as business activity at all.
- (iii) Even loan taken for the purposes of trust can be repaid as valid application and such loan may be used for advancing loan to needy beneficiaries.

19.26 The circular was issued in context of educational loan for higher studies, but it provides the ratio and the legal rationale for treatment of Micro finance activity as charitable activity or money lending activity. Micro Finance Institutions solely existing for providing interest bearing loans may not be treated as charitable activities unless such institution proves that its activities are towards relief of poor. Therefore, unless the interest rates are highly subsidised it may not be treated as charitable activity.

THE CIRCULAR NO. 11, DATED 19TH DEC, 2008 APPLICABLE ONLY TO MASKED ENTITIES

19.27 The CBDT had issued the above mentioned circular (*Annexure-7*) clarifying the circumstances in which business activity of NGOs will be prohibited. The circular clearly states that the amendments were primarily made with the intention of curbing the misuse of the Income Tax exemptions by masked entities. In this regard it was held by Himachal Pradesh Tribunal that the amendments should apply to masked entities only. In other words, only those entities which are not genuine NGOs should suffer. In the case *Himachal Pradesh Environment Protection and Pollution Control Board v. CIT* [2009] 125 TTJ 98(Chd.) the Tribunal observed that the applicability of the circular No. 11, dated 19th Dec, 2008 (2009) 221 CTR (St) on the proviso to Explanation section 2(15) can only be pressed into service when pursuing objects of 'general public utility' is only a mask to cover the "true purpose" of "trade, business or commerce, or rendering of any service in relation to such trade, business or commerce".

19.28 However, the income tax act does not speak about masked entities and normally a circular can not go beyond what is stated in the statute. It can only clarify or provide guidelines.

SUPREME COURT ON INCIDENTAL BUSINESS

19.29 The Hon'ble Supreme Court has held that a business activity should be considered as incidental if the entire income is used for charitable purposes. In effect the Supreme Court held that any business would be incidental provided its income is applied for charitable purposes. Such a wide interpretation of the term 'incidental' also has contributed to the recent amendments. In the case *Asstt CIT Vs Thanti trust (2001)247 ITR 785(SC)*, the Supreme Court had given a landmark decision wherein it was held that if the income generated from a business is totally used for charitable purposes then such business should be considered as incidental. In this case, the assessee was having the business of publishing newspaper and the entire income was used for charitable purposes.

19.30 In our opinion the legal and judicial position (as taken in *Thanti case*) should remain intact as far as the business or trade related income is concerned, even after the amendments made by Finance Act, 2008 w.e.f. 1-4-2009. The controversy is around the nature of charitable purpose which a trust is pursuing if it does not fall in the category of (i) relief of poor, (ii) education, (iii) medical relief, (iv) preservation of environment, (v) preservation of monuments or places or objects of artistic or historic interest, then any trade or business related activity whether incidental or not shall result in revocation of the entire exemption. Further, even in the sixth category business activity to the extent of Rupees Ten Lakh is permissible w.e.f. 01.04.2011.

19.31 Therefore, after this amendment if *Thanti Trust* is having activities which falls in the sixth category i.e. *advancement of any other object of general public utility*, then it will no longer be considered as a charitable organisation. Similarly, in a recent case *CIT vs. Gujarat Maritime Board [2008] 214 CTR (SC) 81, 295 ITR 561 (SC)* it was held that the income earned and deployed for the development of the minor ports in India was a charitable activity and therefore, the Gujarat Maritime Board would continue to remain a 'charitable trust'. Now after the amendment, if *Gujarat Maritime Board* is holding independent business activity whose profit feed the charitable work then the exemption will be lost. On the other hand, if some profits are generated during the normal course of its charitable activity, then its charitable existence will remain intact because *Gujarat Maritime Board* is clearly a sixth category charitable organisation. However, the analysis will be different for a medical, educational or an NGO engaged in relief for poor, who are not hit by the recent amendments.

BUSINESS PURPOSE VS ACTUAL BUSINESS ACTIVITY

19.32 It should be noted that the recent amendments have been made in the section defining charitable purpose. Therefore, the question arises whether the provisions of section 2(15) will be attracted even if there is a clause pertaining to business activities in the memorandum or trust deed. In other words, do NGOs need to amend their object clause and delete the business related clauses from their Memorandum of Association or Trust Deeds to avoid the attraction of section 2(15) since there will be a possibility of questioning the charitable nature of an NGO even if it does not have any actual business related activities. However, it has been held that only the existence of other objects cannot affect the charitable status of a Trust or NGOs, *Digamber Jain Society for Child Welfare vs. DGIT (Exemptions)* [2010] 228 CTR (Del) 517.

In *Ewing Christian College Society v. Chief Commissioner of Income-tax* [2009] 318 ITR 160 (ALL.), it was held that the objective to serve the church and nation would not mean that the society was not existing solely for educational purposes. In this case the petitioner-society was running various educational institutions in State of Uttar Pradesh. In this case the court relied on the Supreme Court ruling in *American Hotel and Lodging Association Educational Institute* [2008] 301 ITR 86 SC.

CHAPTER - 20

TREATMENT OF CAPITAL GAINS

BACKGROUND

20.01 The definition of income under section 2(24) includes capital gains and therefore for the purposes of section 11, capital gains should form part of the income and consequently it should be treated on par with any other income under section 11. Section 11(1A), which deals with treatment of capital gains, was not there during the inception of the Act. In the absence of any provision related with capital gains, all charitable or religious organisations were required to apply the capital gains for charitable purposes under the provisions of section 11(1)(a). The requirement of utilising capital gains on fulfilment of the objects of the organisation resulted in depletion of the corpus. Necessity was felt to allow an option to charitable and religious organisations whereby they can re-invest the sale proceeds from capital assets in new capital assets, so that, in the long run, the corpus would remain intact. The concerns of charitable organisations were recognised in Circular No. 2-P(LXX-5), dt.15-05-1963. In this circular, it was stated that when the capital assets, so that forming part of the corpus are transferred with a view to acquire further capital assets for the use and benefit of the trust, the amount of capital gains should be regarded as having been applied for religious and charitable purposes within the meaning of section 11(1). Further, CBDT Circular No. 52, dt. 30-12-1970, clarified that the intent of the legislature was not in favour of imposing tax liabilities in cases where the capital gains as well as the consideration is applied for acquisition of new capital assets. The charitable organisations were afforded an advantage in getting an option of claiming benefits of re-investment with regard to capital gains.

INSERTION OF SECTION 11(1A)

20.02 The Finance (No.2) Act, 1971, inserted sub-section (1A) in section 11 regarding the treatment of capital gains. It provided that the capital gains will

be deemed to have been utilised for the purposes of section 11(1)(a), if the net consideration received is re-invested in another capital asset. The insertion of section 11(1A) seemed to be the logical outcome of the two circulars issued earlier, as discussed above. More so, because the newly inserted sub-section (1A) in 1971 was made retrospectively effective from 01-04-1962 i.e. the date of commencement of the Act.

THE PROVISIONS RELATED WITH CAPITAL GAINS

20.03 Section 11(1A) first caters to two main situations, viz.,

- (i) where the capital asset is property held under trust wholly for charitable or religious purposes;
- (ii) where the capital asset is held under trust in part only for such purposes

Within these main situations, the provision also caters to the following sub-situations:

- (i) where the whole of the net consideration is utilised in acquiring the new capital asset;
- (ii) where only a part of the net consideration is utilised for acquiring the new capital asset.

In respect of each of these sub-situations under the main situations, the section spells out the quantum of income which will be deemed to have been applied to charitable or religious purposes.

QUANTUM OF GAINS DEEMED TO HAVE BEEN APPLIED

20.04 The computation will depend upon whether the property is wholly held under trust or partially held under trust.

20.05 *Where property is wholly held under trust* : Under clause (a) of sub-section (1A), capital gains arising from transfer of capital assets shall be deemed to have been applied for charitable or religious purposes as indicated in the chart given below:

Situation	The quantum of capital gains deemed to have been applied for charitable or religious purpose
<ul style="list-style-type: none"> ■ Whole of net consideration is utilised in acquiring the new capital asset 	The whole of capital gains
<ul style="list-style-type: none"> ■ Only a part of the net consideration is utilised in acquiring the new capital asset 	Capital gains equal to excess of utilised amount over cost of the transferred asset. [In effect, capital gains minus shortfall in reinvestment.]

Illustration : 1 - Showing treatment of capital gains

The following illustration clarifies the treatment of capital gains under section 11(1A).

Cost of the Asset	Rs.	40,000/-
Sale Proceeds/Net consideration	Rs.	1,00,000/-
Re-investment in Capital Assets	(i) Rs.	80,000/-
	(ii) Rs.	1,00,000/-

The computation of capital gain deemed to have been applied for the purposes of section 11(1)(a) is as under :

	(i)	(ii)
(i) Net consideration	1,00,000	1,00,000
(ii) Cost of the Asset	40,000	40,000
(iii) Capital gains	60,000	60,000
(iv) Investment in New Asset	80,000	1,00,000
(v) Shortfall in re-investment (i) - (iv)	20,000	Nil
(vi) Capital gains deemed to have been applied for charitable purposes (iii) - (v)	40,000	60,000

20.06 *Where property is partly held under trust* - As per clause (b) of section 11(1A), when capital gain is derived out of property partly held for charitable or religious purposes then appropriate fraction of the net consideration is required to be re-invested in new capital assets. Here it may be noted that income from trust property partly held for religious or charitable

purposes is eligible for exemption under section 11(1)(b) provided such trust was created before the commencement of the Act.

Situation	The quantum of capital gains deemed to have been applied for charitable or religious purpose
<ul style="list-style-type: none"> ■ Whole of net consideration is utilised in acquiring the new capital asset ■ Only a part of the net consideration is utilised in acquiring the new capital asset 	<p>The whole of capital gains</p> <p>Capital gains equal to excess of appropriate of utilised amount over appropriate fraction of cost of transferred asset.</p>

Illustration : 2 - Showing treatment of capital gains

The following illustration clarifies the treatment of capital gains under section 11(1A).

[It has been assumed that 50% of the income from the asset was used for charitable purposes]

Cost of the Asset	Rs.	40,000/-
Sale Proceeds/Net consideration	Rs.	1,00,000/-
Re-investment in Capital Assets	(i) Rs.	80,000/-
	(ii) Rs.	1,00,000/-

The computation of capital gain deemed to have been applied for the purposes of section 11(1)(b) is as under :

	(i)	(ii)
(i) Net consideration	1,00,000	1,00,000
(ii) Cost of the Asset	40,000	40,000
(iii) Capital gains	60,000	60,000
(iv) Investment in New Asset	80,000	1,00,000
(v) Appropriate fraction of (ii)	20,000	20,000
(vi) Appropriate fraction of (iii)	30,000	30,000
(vii) Appropriate fraction of (iv)	40,000	50,000
(viii) Capital gains deemed to have been applied for charitable purposes (vii) - (v)	20,000	30,000

CAN CAPITAL GAINS BE APPLIED FOR CHARITABLE PURPOSES

20.07 The capital gains can also be applied for charitable purposes. It is at the discretion of the organisation to apply the capital gains for charitable purposes or towards purchase of a new capital asset. The definition of income under section 2(24), includes capital gains and therefore, income for the purposes of section 11(1)(a) includes capital gains. The historical background under which section 11(1A) was enacted and the statute as it existed before 01-04-1971 provides ample testimony to the fact that capital gains form a part of the income available for application under section 11(1)(a). Circular No.2-P(LXX-5), dt. 15-05-1963 and Circular No. 72, dt. 06-01-1972 discussed the problems faced by the organisations and the gradual erosion of the corpus, prior to the insertion of section (1A). The purpose behind insertion of section (1A) was to provide an option to the assessee, in order to keep its corpus intact. This option did not imply withdrawal of exemption of capital gains under section 11(1)(a). An organisation, therefore can utilise the capital gains for charitable purposes under section 11(1)(a). The portion of capital gains which was not considered as deemed to have been applied for charitable purposes under section 11(1A), can also be applied for charitable purposes under section 11(1)(a).

OVERALL SUMMARY

20.08 To Sum up the discussions :

- i) 'Income', as defined under section 2(24), includes capital gains, therefore, for the purposes of section 11(1)(a), capital gains are also considered as a part of the income.
- ii) Since, capital gains are also considered as a part of the income, therefore, they can be applied for charitable or religious purposes.
- iii) But, if capital gains are also applied for charitable and religious purposes, then it will amount to depletion of the corpus of the organisation. In order to overcome this disadvantage, the Income tax act has provided another option under section 11(1A), by virtue of which capital gains can be re-invested in another capital asset without losing exemptions.
- iv) Under section 11(1A), if the entire amount of net consideration is invested in another capital asset then, the entire capital gain will be deemed to have been applied for charitable or religious purposes.
- v) Under section 11(1A), if a part of the entire amount of net

consideration is invested in another capital asset then, the appropriate fraction of the capital gain will be deemed to have been applied for charitable or religious purposes.

- vi) The capital gain have to be re-invested in another capital asset in the same year, unless the assessee exercises the option available under explanation to section 11(1), to apply the income in subsequent year.
- vii) Investment in fixed deposit is considered as an investment in capital asset. The CBDT instruction no. 883, dated 24.09.1975, specifies that, such fixed deposits should be for 6 months or more. But, various High Courts have held that, such 6 months time limit is legally not valid. The nature of asset is important and not the time frame.
- viii) No time limit has been provided under section 11(1A), for retention of the new asset. Under the prevailing provisions each years income and application are treated separately for the purposes of exemptions, therefore, if the asset is held till the end of the relevant previous year and is disposed of in the subsequent year, then the exemptions cannot be denied nor can they be withdrawn in the next year.

CHAPTER - 21

INCOME TAX - PRIVILEGES TO THE DONORS U/S 80G

INTRODUCTION

21.01 As we already know that an NGO can avail income tax exemption by getting itself registered and complying with certain other formalities, but such registration does not provide any benefit to the persons making donations. The Income Tax Act has certain provisions which offer tax benefits to the "*donors*". All NGO's should avail the advantage of these provisions to attract potential donors. Section 80G is one of such sections.

REGISTRATION UNDER SECTION 80G

21.02 If an NGO gets itself registered under section 80G then the person or the organisation making a donation to the NGO will get a deduction of 50% from his/its taxable income. The NGO has to apply in Form No. 10G As per *Annexure - 8* to the Commissioner of Income Tax for such registration. Normally this approval is granted for 2-3 years.

DOCUMENTS TO BE FILED WITH FORM 10G

21.03 The application form should be sent in triplicate to the Commissioner of Income Tax alongwith the following documents :

- i) copy of income tax registration certificate.
- ii) detail of activities since its inception or last three years whichever is less

- iii) copies of audited accounts of the institution/NGO since its inception or last 3 years whichever is less.

CONDITIONS TO BE FULFILLED UNDER SECTION 80G

21.04 For approval under section 80G the following conditions are to be fulfilled :

- i) the NGO should not have any income which are not exempted, such as business income. If, the NGO has business income then it should maintain separate books of accounts and should not divert donations received for the purpose of such business.
- ii) the bylaws or objectives of the NGOs should not contain any provision for spending the income or assets of the NGO for purposes other than charitable.
- iii) the NGO is not working for the benefit of particular religious community or caste.
- iv) the NGO maintains regular accounts of its receipts & expenditures.
- v) the NGO is properly registered under the Societies Registration Act 1860 or under any law corresponding to that act or is registered under section 25 of the Companies Act 1956.

ILLUSTRATION OF BENEFITS UNDER SECTION 80G

21.05 The persons or organisation who donate under section 80G gets a deduction of 50% from their taxable income. Here at times a confusion creeps in, that the tax advantage under section 80G is 50%, but actually it is not so. 50% of the donation made is allowed to be deducted from the taxable income and consequently tax is calculated.

21.06 The ultimate benefit will depend on the tax rates applicable to the assessee. Let us take an illustration. Mr. X an individual and M/s. Y Pvt. Ltd., a Company both give donation of Rs. 1,00,000/- to a NGO called Satyakaam. The total income for the year 1999-2000 of both Mr. X and Ms. Y Pvt. Ltd. is Rs. 2,00,000/-. Now assuming that the rates are 30% for the individuals and 40% for the Companies without any minimum exemption limit. The tax benefit would be as shown in the table :

	MR. X	MS. Y PVT. LTD.
i) Total Income for the year 2003-04	2,00,000.00	2,00,000.00
ii) Tax payable before Donation	60,000.00	80,000.00
iii) Donation made U/S 80G	1,00,000.00	1,00,000.00
iv) Taxable Income after deduction 50% of Donation U/S 80G.	1,50,000.00	1,50,000.00
v) Tax payable after Donation	45,000.00	60,000.00
vi) Tax Benefit U/S 80G (ii)-(v)	15,000.00	20,000.00
Note : The tax rates and mode of computation is not actual.		

QUANTUM OF DEDUCTION UNDER SECTION 80G(1)

21.07 Section 80G(1) provides the quantum of deduction available to various organisations. Under section 80G donations to certain specified organisations are allowed 100% deduction and donations to the remaining approved organisations are allowed 50% deduction, subject to certain limits. Section 80G(2) provides the list of organisations, donation to which are eligible for deduction under section 80G. The following table provides the list of the organisation alongwith the quantum of deduction available.

(1) National Defence Fund set up by Central Government, [clause (a)(i)]	100%
(2) Jawaharlal Nehru Memorial Fund, [clause (a)(ii)]	50%
(3) Prime Minister's Drought Relief Fund, [clause (a)(iii)]	50%
(4) Prime Minister's National Relief Fund, [clause (a)(iia)]	100%
(5) Prime Minister's Armenia Earthquake Relief Fund, [clause (a)(iiia)]	100%
(6) The Africa (Public Contribution-India) Fund, [clause (a)(iiib)]	100%
(7) The National Children's Fund, [clause (a)(iiic)]	50%
(8) The Indira Gandhi Memorial Trust, [clause (a)(iiid)]	50%
(9) The Rajiv Gandhi Foundation, [clause (a)(iiie)]	50%
(10) The National Foundation for Communal Harmony, [clause (a)(iif)]	100%
(11) Any approved University or educational institution of National eminence, [clause (a)(iig)]	100%

(12)	The Maharashtra Chief Minister’s Relief Fund, [clause (a)(iiiig)]	100%
(13)	Gujarat Government’s Earthquake Relief Fund, [clause (a)(iiiiga)]	100%
(14)	Any Zila Saksharta Samiti, [clause (a)(iiihi)]	100%
(15)	The National Blood Transfusion Council, [clause (a)(iiiha)]	100%
(16)	Any State Government Fund to provide Medical Relief to the poor, [clause (a)(iiihb)]	100%
(17)	Central Welfare Fund of the Army, Naval Forces or the Air Force, [clause (a)(iiihc)]	100%
(18)	Andhra Pradesh Chief Minister’s Cyclone Relief Fund, [clause (a)(iiihd)]	100%
(19)	The National Illness Assistance Fund, [clause (a)(iiihe)]	100%
(20)	The Chief Minister’s Relief Fund or the Lieutenant Governor’s Relief Fund, [clause (a)(iiihf)]	100%
(21)	National Sports Fund set up by the Central Government, [clause (a)(iiihg)]	100%
(22)	The National Cultural Fund set up by the Central Government, [clause (a)(iiihh)]	100%
(23)	The Fund for Technology Development and Application set up by the Central Government, [clause (a)(iiihj)]	100%
(24)	The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, [clause (a)(iiihj)]	100%
(25)	Any other fund or institution under section 80G, [clause (a)(iv)]	50%
(26)	The Government or Local Authority for purpose other than promotion of Family Planning, [clause (a)(v)]	50%
(27)	Any authority for planning development or improvement of Cities, Towns & Villages, [clause (a)(vi)]	50%
(28)	Any corporation for promoting the interest of the Minority Community set up by the Central Government or the State Government [clause (a)(via)]	50%
(29)	The Government or Local Authority, Institution or Association approved by the Central Government for promotion of Family Planning, [clause (a)(vii)]	100%
(30)	Any payment towards repair or innovation of Temple, Mosque, Gurudwara, Church and other places notified by the Central Government, [clause (b)]	50%
(31)	Indian Olympic Association or any other association notified by the Central Government under section 10(23), [clause (c)]	100%
(32)	Any Trust, Institution or Fund providing relief to the victims of Earthquake in Gujarat, [clause (d)]	100%

CERTAIN ASPECTS RELATED WITH DONATIONS UNDER SECTION 80G

21.08 The following aspects related with donations under section 80G are important :

- (i) Section 80G is applicable only to donations made in terms of money. *Explanation 5* clearly states that no deduction will be allowed in respect of any donation unless such donation is in the form of money. In other words donations in kind are not considered for deduction under section 80G.
- (ii) Deduction under 80G is available only if the assessee has some income. 80G is not available in case of losses and the benefits under 80G cannot be carried forward.
- (iii) Further the deduction is available against taxable income only. If some part of the income is not taxable then it should be excluded for the purposes of section 80G. In case the assessee has no taxable income then the deduction under 80G will not be available even if the assessee has other income, which is not subject to tax. *Goodricke Group Ltd. (No. 1) v. CIT* [1993] 201 ITR 261 (Cal.).
- (iv) It is not necessary for the donations to have any nexus with the business prospects of the assessee. When a donation is claimed as expenditure under section 37(1), it becomes necessary to establish a nexus of the donation with the business. But deduction under 80G can be claimed regardless of any nexus with business.
- (v) It is not necessary that the donations should have been made out of the taxable income of the assessee for the current year. If the assessee makes donations out of reserve fund or previous years income, such donations would be eligible for deduction under section 80G provided the assessee has some taxable income. However, in *Raja Shri Sailendra Narayan Bhanja Deo v. CIT* [1959] 36 ITR 94 (Ori.), where the assessee had both agricultural and non agricultural income, allocation of donation as between them was considered unjustified. The assessee was allowed full deduction in spite of the fact that a portion of the contribution could have been made from agricultural income.
- (vi) To claim deduction under section 80G it is necessary that the assessee should produce adequate proof of the payment. In *Golecha Properties (P) Ltd. v. CIT* [1988] 171 ITR 47 (Raj.), it was held that deduction under section 80G would not be available in the absence of any proof of payment. The Court observed that without

any proper proof of payment, the question of giving relief based thereon would not arise.

DONATIONS TOWARDS RELIEF TO EARTHQUAKE VICTIMS IN GUJARAT

21.09 The Taxation Laws Amendment Act, 2001 inserted clause (d) to sub-section (2) and sub-section (5C) with retrospective effect from 3-2-2001. This amendment provided approval to trust, institutions or fund for providing relief to the victims of earthquake in Gujarat. The Finance Act, 2003 has amended the clause (iv) to sub-section (5C). Now the donation remaining unutilised on the 31st day of March, 2004 has to be transferred to the Prime Minister’s Relief Fund on or before 31st day of March, 2004. Under sub-section (5C) the deduction will be available only on the satisfaction of the following conditions :

- (i) The organisation of fund is approved in terms of clause (vi) of sub-section (5),
- (ii) It maintains separate accounts of income and expenditure for providing relief to the earthquake victims of Gujarat,
- (iii) The donations made to the organisation are applied only for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, 2004,
- (iv) The donation remaining unutilised on the 31st day of March, 2004 must be transferred to the Prime Minister’s Relief Fund on or before 31st day of March, 2004,
- (v) The organisation has to render accounts of income and expenditure to such authority and in such manner as may be prescribed, on or before 30th day of June, 2004.

OVERALL SUMMARY

21.10 To sum up the discussions :

- (i) Under section 80G, the donors get deduction from their taxable income upto 100% of donation in certain cases.
- (ii) Section 80G(1) specifies two categories of donations, one entitled for 100% deduction and other entitled for 50% deduction. In other words, donations to certain organisations will fetch the donor

100% deduction and donations to remaining eligible organisation would qualify for 50% deduction.

- (iii) The maximum limit of qualifying amount under section 80G is 10% of the total income before allowing the deduction, unless the donation is made to certain specific organisations such as Prime Minister's fund.
- (iv) Section 80G is not applicable to donations in kind. Donations in the form of money only are eligible.
- (v) Deduction under section 80G is available only against positive income. It cannot be claimed against losses nor can it be carried forward.
- (vi) Deduction is available against taxable income only. If some part of the income is not taxable then it should be excluded for the purposes of 80G. However, in certain cases, it has been held that, full deduction will be available even if the donation is made out of composite income comprising both taxable and non-taxable income.
- (vii) It is not necessary that the donation should have a nexus with the prospects of business.
- (viii) Donations need not necessarily be made out of current year's income. Donations out of the reserve fund or the previous year's income are eligible for deduction.
- (ix) To claim deduction under section 80G, it is necessary to produce adequate proof of payment.
- (x) For registration under section 80G, the organisation has to apply in Form 10G to the CIT.
- (xi) The approval is not permanent and is granted for a period of 2 to 3 years but upto the maximum limit of 5 years.
- (xii) The CIT may call for such information and documents which may be felt necessary for application.
- (xiii) The time limit for processing the application is six months from the date on which such application is made. In computing the period of six months any time taken by the applicant direction of the CIT shall be excluded.
- (xiv) If the application is to be rejected opportunity of being heard should be provided to the applicant and the reasons for rejection are also required to be recorded.
- (xv) The applicant has to comply with the following conditions, in order to be eligible for approval :

- (a) It must be established for charitable purposes.
- (b) If the organisation has business income, then the donations received should not be used for the purposes of business directly or indirectly.
- (c) A certificate in this respect has to be issued to the donee specifying that separate books of accounts are maintained and the donation will not be used for the purposes of business directly or indirectly.
- (xvi) The bye-laws shall not contain any provision for spending the income or assets of the organisation for purposes other than charitable purpose.
- (xvii) The organisation shall not be established for any particular religious community or caste. This condition will not apply to organisations established for scheduled tribes, scheduled castes, backward tribes, or for women and children. However, if less than 5% of income is used for the benefit of any particular religious community or caste then exemption and deduction under section 80G will not be affected.
- (xix) The organisation shall maintain regular accounts of receipts and expenditure.
- (xx) The organisation should be properly registered under the various forms of registration or should be a recognised university or an educational institution.
- (xxi) If the donation is received towards the Gujarat earthquake relief, it has to be utilised on or the unutilised portion before 31.03.2004 or has to be transferred to the Prime Minister's relief fund on or before 31.03.2004.

CHAPTER - 22

INCOME TAX - PRIVILEGES TO THE DONORS U/S 35AC

INTRODUCTION

22.01 As we already know that an NGO can avail income tax exemption by getting itself registered and complying with certain other formalities, but such registration doesn't provide any benefit to the persons making donations. The Income Tax Act has certain provisions which offer tax benefits to the "donors". All NGOs should avail the advantage of these provisions to attract potential donors. Section 35AC is one of such sections.

REGISTRATION U/S 35AC

22.02 The Central Government approves certain NGOs and notifies them as eligible for project or schemes for the purposes of section 35AC. If an NGO succeeds in getting such an approval for its projects then it stands a very good chance of mobilising funds from the corporate and the business sector. Business houses making contribution to such approved projects are allowed the benefits of deducting such contribution as expenditure.

NATIONAL COMMITTEE

22.03 The Central Government has constituted a National Committee to identify projects and schemes to be notified under section 35AC, such committee normally consists of eminent persons. All NGOs are entitled to apply to the National Committee to get its projects or schemes approved.

WHERE THE APPLICATION IS TO BE MADE

22.04 The application for approval by the National Committee should be made

to the Secretary, National Committee for Promotion of Social & Economic Welfare, Dept. of Revenue, Govt. of India, North Block, New Delhi - 110001.

THE APPLICATION AND ITS ENCLOSURE

- i) The application is to be made in 2 Sets, written either in Hindi or English.
- ii) Details such as name, address and status of applicant, the district/ward circle where assessed/PAN number.
- iii) Audited Balance Sheet, Profit & Loss Account or Income & Expenditure Account for the latest year and two preceding years.
- iv) How constituted i.e. whether as a trust, society, etc supported by relevant documents like trust deed, rules & regulation, memorandum of association etc. and registration certificate, if any.
- v) Name & Addresses of the persons managing the affairs of the association or institution, including those who left the organisation but were managing the affairs of the association or institution during the 3 years preceding the date of application.
- vi) If the association or institution is notified under section 10(23)(C) or is approved for the purposes of section 80G, the particulars of such approval granted.
- vii) Brief particulars of the activities of the association or institution during 3 years preceding the date of application or since inception if the association or institution is less than 3 years old.
- viii) Such other information as the association or institution may like to place before the National Committee.

ADDITIONAL INFORMATION REGARDING THE PROJECT/ SCHEME TO BE SUBMITTED

- (i) Title of project or scheme;
- (ii) Date of commencement;
- (iii) Duration and the likely date of completion;
- (iv) Estimated cost of the project ;

- (v) Category or class of persons who are likely to be benefited from the project or scheme;
- (vi) Affirmation that no benefit from the project or scheme other than remuneration or honorarium, will accrue to persons managing the affairs of the NGO ;
- (viii) Such other particulars as the applicant may place before the National Committee.

CERTIFICATE TO BE ISSUED TO THE DONOR

22.05 All approved NGOs are required to issue a certificate to the donor for all contributions & receipts under section 35AC. The certificate is to be issued in Form 58A.

22.06 This certificate will enable the donor to claim exemption from its taxable income. Further, the NGOs should also send an annual report to the National Committee indicating the progress of the work relating to the project/scheme and the following informations in respect of each contributor :

- i) name of the contributors & their addresses.
- ii) PAN.
- iii) amount of contributions.
- iv) the project/scheme for which the contribution is made.
- v) total amount of contribution received during the year.
- vi) total cost of the project approved by the National Committee.

22.07 Such annual report should reach the National Committee by 30th June, following the financial year in which the amount is received.

DEDUCTION OF CONTRIBUTION UNDER SECTION 80GGA

22.08 Section 35AC is available to assessees who have income from the head ‘business’ or ‘profession’. Therefore, for the assessees who do not have income from business or profession, section 80GGA provides for deduction on donations made to eligible projects under section 35AC. Section 80GGA, is a

broader section and deductions are also available for contributions made for scientific research under section 35CCA & 35CCB, which have been withdrawn. 100 per cent deduction is available under section 80GGA, subject to the available gross total income under section 80A. Therefore, unlike section 35AC, deduction under section 80GGA cannot be carried forward in the form of losses to next year .

OVERALL SUMMARY

22.09 To sum up the discussions :

- i) Under section 35AC, organisations having income from business or profession can get 100 per cent deduction. Charitable organisations can get registered themselves u/s. 5AC by applying to the National Committee under rule 11F to 11-O, if they are carrying on any business.
- ii) The Central Government has specified various types of projects of national needs for which charitable organisations can make donations.
- iii) Business houses making donations for the purpose of section 35AC, should be careful that the donee organisation continues to enjoy approval u/s. 35AC. As the approval under section 35(AC) is not permanent in nature.
- iv) To get approval u/s. 35AC two sets of application has to be made alongwith specified enclosures to secretary of National Committee, New Delhi.
- v) The National Committee may recommend or reject the project but when the approval is recommended then it is for a period of maximum 3 years and it could be further extended if the National Committee is satisfied with the performance during the period.
- vi) A certificate has to be issued to the donor in Form 58A. This certificate will enable the donor to claim exemptions.
- vii) The National Committee may withdraw the approval if the project is not carried out in accordance with the approved conditions. To withdraw a project National Committee should provide an opportunity of being heard to the aggrieved organisation.
- viii) Section 35AC provided deduction from income from business and profession. Similar deduction is also available u/s. 80GGA, for assesseees having income from other heads.

CHAPTER - 23

TAX DEDUCTION ACCOUNT NUMBER

INTRODUCTION

23.01 Under the Income-tax Act, every person making payment or crediting income of specified types to another person is required to deduct a specific proportion of amount payable/creditable at the time of making payment or giving credit, whichever is earlier and deposit the sum so deducted [Refer further to **para 23.04**]. Every such person shall have to apply to the Assessing Officer for allotment of a Tax Deduction Account Number (TAN) under section 203A.

PROCEDURE FOR OBTAINING TAX DEDUCTION ACCOUNT NUMBER (TAN)

23.02 All organisations which are required to deduct tax at source are required to obtain TAN from the Assessing Officer by making an application for the allotment of TAN in Form 49B.

MANDATORY NATURE OF PROVISIONS

23.03 Under income-tax law it is mandatory to apply and obtain TAN if an organisation is liable to deduct tax at source on certain payments which are discussed in the following paras and the organisation deducting tax is required to quote the TAN in the following documents :

- (i) all challans while depositing the tax so deducted.
- (ii) all certificates issued against the tax deducted.
- (iii) all returns furnished in respect of tax deducted at source.
- (iv) all other documents pertaining to such transaction as may be prescribed.

TYPES OF PAYMENTS REQUIRING TAX DEDUCTION AT SOURCE

23.04 Section 200 of the Act specifies a list of payments which require deduction of tax at source. From the viewpoint of voluntary organisations the following are the important payments, in respect of which tax must be deducted at source :

<i>Nature of Payment</i>	<i>Amount above which TDS will operate (in Rs.)</i>	<i>Rate of Deduction</i>
Salary	1,60,000	Average Rate
Contract/Sub-contract**	20,000	Advertising 1%, other 2%
Interest	-	-
Rent*	1,20,000	10%
Fees for Professional or Technical Service	20,000	10%

*2% for use of any machinery or plant or equipment if the payee is other than an individual or HUF.

** Till 30-9-2004 no deduction need be made from the sum credited/paid in pursuance of any contract the consideration for which does not exceed Rs. 20,000.

From 1-10-2004 tax shall be deducted at source where the amount credited/paid to a contractor/sub-contractor exceeds Rs. 20,000 in a single payment or Rs. 50,000 in the aggregate during the financial year.

The Taxation Laws (Amendment) Act, 2006 has further enlarged the scope of TDS by amending sections 194-I and 194J. Section 194-I till now covered letting out of properties now it has been enlarged to include leasing of machinery, plant, equipment, furniture, etc. Section 194J which covers professional fees will also cover royalties and non-compete fee.

The TLA, 2006 comes into force on the date of assent to the Bill by the President. With effect from that date, TDS is liable to be deducted as per the enlarged scope of section 194-I/194J.

DEPOSIT OF TAX DEDUCTED AT SOURCE

23.05 The tax deducted at source is required to be deposited to the credit of the Central Government within the stipulated time limit. Such deposit can be made in various specified nationalised banks with the help of TAN challans. Whenever a TDS is deposited one should not forget to quote the TAN on challan.

The time limit for depositing the amount of TDS is as under :

- for salaries as well as for other payments within one week from the end of the month in which deduction has been made.

However, in case of 'other payments' when amount is credited by a person to the payee's account as on the date up to which the accounts of such person are made : Within 2 months from the end of the month in which such date falls.

With effect from 1-06-2004 the income-tax department has introduced OLTAS (online tax accounting system) wherein a single copy of Challan No. 281 is required to be filed.

ISSUE OF CERTIFICATE

23.06 Under section 203 the organisation deducting TDS is required to issue a certificate to the person from whose income-tax has been deducted. This certificate will enable the person to claim credit for such tax deducted in his/her return of income. Organisations can prepare the certificate in their own stationery but in the prescribed form. The prescribed form is Form No.16/16AA for deduction of tax from salary, for all other cases it is Form No. 16A. Form 12BA is a statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof.

Where the tax has been deducted or deposited on or after 1-4-2008 there is no requirement to furnish this certificate. However, the TDS certificate shall be issued by the prescribed income-tax authority or the person authorised by such authority within the prescribed time after the end of each financial year beginning on or after 1-4-2008 to the person from whose income-tax has been deducted at source or in respect of whose income-tax has been paid.

RETURNS TO BE FURNISHED BY THE ORGANISATION

23.07 All organisations responsible for deduction of tax at source are required to submit to the prescribed income-tax authority ; a return(s) within a stipulated

period after the end of the quarter. The relevant return form and the month by which it should be filed are as under :

<i>Types of Return</i>	<i>Form No.</i>	<i>Last date for Submission</i>
Quarterly return for salaries and perquisites	24Q	15th July, 15th Oct., 15th Jan. & 15th June
Quarterly return for others	26Q	15th July, 15th Oct., 15th Jan. & 15th June

INTEREST, PENALTIES AND PUNISHMENT

23.08 Failure to deduct income-tax at source on various payments as discussed may attract interest, penalty and even severe punishment.

- If an organisation does not deduct tax or deducts tax but does not deposit the same then interest at the rate of 12 per cent per annum would be levied on the tax not deducted or not paid as the case may be, under section 201(1A).
- The Income Tax Department may also levy penalties to the extent of the amount of tax not deducted in cases of failure to deduct tax, under section 271C(1)(a).
- If the tax is deducted but not deposited in favour of the Central Government as per the provisions of the Income-tax Act then the principal officer can be punished with imprisonment for a period of 3 months to 7 years with fine.
- If the returns required to be furnished under section 206 are not filed then a penalty of Rs. 100 per day may be imposed for each day of default, under section 272A. However, the Assessing Officer shall give an opportunity of being heard before imposing the penalty under this section.

CHAPTER - 24

TDS ON INCOME OF NGOS

WHEN NO TAX NEED BE DEDUCTED OR TAX MAY BE DEDUCTED AT LOWER RATE

24.01 On payee's application in Form No. 13, if the Assessing Officer is satisfied that total income of payee justifies no deduction or deduction of tax at lower rate, he may issue an appropriate certificate to that effect to the payer.

DECLARATION UNDER SECTION 197A

24.02 No deduction of tax is to be made in the case of a payee (other than a company or firm), if he furnishes a declaration in writing in duplicate in the prescribed form [Form No. 15G] and verified in the prescribed manner, to the payer of such income to the effect that tax on his estimated income of the relevant previous year will be *nil*.

24.03 The payer of the income is required to deliver to the Commissioner of Income-tax one copy of the aforesaid declaration on or before the 7th day of month next following the month in which the declaration is furnished to him [section 197A]. Where payments are to be made to the same person more than once in a year, the declaration in the relevant form may be furnished before the first payment in a year becomes due. It may also be noted that in the declaration particulars of only such securities are to be furnished the income from which is payable by a person to whom declaration is furnished - *Circular No. 351, dated November 26, 1982*.

24.04 RESTRICTION ON FILING SELF-DECLARATIONS WITH EFFECT FROM 1-6-2002-Under sub-section (1B) of section 197A, inserted by the Finance Act, 2002 with effect from 1-6-2002, the provisions of section 197A shall not

apply where the amount of income on the following items, or the aggregate of such income, exceeds the maximum amount which is not chargeable to tax :

- (a) Interest on securities
- (b) Dividends
- (c) Interest other than interest on securities
- (d) Payments in respect of deposits under National Savings Scheme
- (e) Income in respect of units.

In other words, if the income of a trust under any of the above items, or the aggregate income of the trust under all the above items, exceeds the prescribed limit, such a trust cannot *ab initio* file any declaration in respect of the above items, and even if he files a declaration, the payer cannot act on the same and make the payment without deducting tax at source. The payer has to just ignore the declaration and deduct tax at source.

SPECIAL PROVISIONS FOR CERTAIN ENTITIES

24.05 With effect from 1-4-2004, the newly inserted rule 28AB provides for obtaining a certificate of no deduction of tax at source in the case of certain entities, provided certain conditions are satisfied.

24.05a PERSONS COVERED - The following persons are covered in this regard:

- (a) Persons in receipt of income or deemed income derived from property held under trust wholly for charitable purposes and who claim exemption under section 11 or section 12
- (b) Persons mentioned below who are required to file a return of income under section 139(4C) & (4D) :
 - (i) Scientific research association referred to in section 10(21);
 - (ii) News agency referred to in section 10(22B);
 - (iii) Association or institution referred to in section 10(23A);
 - (iv) Institution referred to in section 10(23B);
 - (v) Fund or trust referred to in section 10(23C)(iii);
 - (vi) Fund or trust referred to in section 10(23C)(iv);
 - (vii) Trust or institution referred to in section 10(23C)(v);

(viii) University or other educational institution referred to in section 10(23C)(vi);

(ix) Hospital or other medical institution referred to in section 10(23C)(via);

(x) Trade Union or association referred to in section 10(24)(a)(b).

24.05b FORM OF APPLICATION - The persons mentioned above may make an application in Form No. 13 to the Assessing Officer for the grant of a certificate under section 197(1) authorising them to receive incomes of any type without deduction of tax at source, if the conditions mentioned below are satisfied.

24.05c CONDITION TO BE SATISFIED - The persons must satisfy the following conditions in order to make the application in Form No.13:

- (i) The persons must have furnished the returns of income for all assessment years for which such returns became due on or before the date of which the application in Form No. 13 is made;
- (ii) the entity if for the time being approved for the purpose of exemption from income-tax;
- (iii) the applicant must give a list of deductors from whom amount are to be received without deduction of tax at source every six months along with the names, address and the amounts received.

24.05d ISSUE OF CERTIFICATE - The Assessing Officer may issue a certificate authorising payment of incomes without deduction of tax at source, if he is satisfied that all the conditions are fulfilled and that the issue of any such certificate will not be prejudicial to the interests of revenue. The certificate is to be handed over to the applicant.

24.05e VALIDITY OF THE CERTIFICATE - The certificate shall be valid for the financial year specified therein unless it is cancelled by the Assessing Officer at any time before the expiry of the period of validity of the earlier certificate.

24.05f ISSUE OF FRESH CERTIFICATE - If the assessee do desires, he can make an application for a fresh certificate, after the expiry of the period of validity of the earlier certificate.

24.05g ACTION BY APPLICANT - The applicant may furnish copies of certificate to the persons responsible for paying the income for the purpose of no deduction of tax at source.

CHAPTER - 25

PERMANENT ACCOUNT NUMBER (PAN)

INTRODUCTION

25.01 All organisations which are required to furnish return of income under section 139(4A) and (4C) should apply for a Permanent Account Number(PAN). As the name suggests, it is a taxpayer’s permanent identification number allotted by the income-tax department. PAN once allotted remains valid forever unless it is cancelled or changed by the department. *Explanation* to section 139A(8) defines PAN as “*permanent account number under the new series means a permanent account number having 10 alphanumeric characters and issued in the form of a laminated card*”.

APPLICATION PROCEDURES

25.02 The application for allotment of PAN is required to be made in a revised format of Form No. 49A, the acknowledgement of the application is returned to the applicant after affixing the official stamp by the department. The application for PAN should be accompanied by the proof of identity and address of the applicant. The PAN application is to be made to the assessing officer who has been specifically assigned by the income-tax department to carry out such function.

NECESSITY AND USES OF PAN

25.03 Under the existing law it is absolutely necessary for all income- tax assesseees to quote PAN in the following documents :

- (i) in the income-tax return and in all other correspondences with the income-tax department.

- (ii) in all challans for payment of any tax, interest and penalty due under the Income-tax Act.
- (iii) in all documents related with the following transactions :
 - (a) sale or purchase of any immovable property in excess of Rs. 5,00,000/-.
 - (b) sale or purchase of a motor vehicle other than a two wheeler.
 - (c) a time deposit exceeding Rs. 50,000/- with a bank.
 - (d) a deposit exceeding Rs. 50,000/- in any account with a Post Office.
 - (e) sale or purchase of shares, stocks and other securities in excess of Rs. 10,00,000/-.
 - (f) opening of a bank account.
 - (g) applying for a telephone connection including cellular phone connection.
 - (h) payment to hotels and restaurants in excess of Rs. 25,000 at a time.

Further, if any part of the income of the assessee is liable to deduction of tax at source, the assessee is required to intimate his PAN to the person responsible for deducting tax at source.

PENALTIES

25.04 The voluntary organisations which fail to comply with the provisions of section 139A are subjected to penalty under section 272B, inserted by the Finance Act, 2002. A sum of Rs.10000 by way of penalty can be levied on such organisations after giving a reasonable opportunity of being heard. It may be noted that penalty is leviable not only for not applying for PAN, but also for (i) failure to quote PAN in the prescribed documents, or (ii) failure to intimate such PAN when required, or (iii) quoting or intimating a number which is false. Penalty is however not leviable if the assessee proves that there was reasonable cause for the failure.

CHAPTER - 26

AUDIT & FILING OF RETURN

REQUIREMENT OF AUDIT REPORT

26.01 Section 12A states two conditions for availing the exemption available under the Act, the first condition is regarding application for registration and the second condition is regarding audit by an accountant as defined in the Explanation below sub-section (2) of section 288. All organisations are required to apply for registration within one year from the date of their creation. If there is delay in applying for registration then the organisation should submit audit reports for the past three years or as may be available.

MONETARY LIMIT

26.02 The monetary limit for compulsory audit under section 12(b) was raised from Rs. 25,000 to Rs. 50,000 by the Finance Act, 1994. It may be noted that the Taxation Laws (Amendment) Act, 2006 has amended the clause (b) of section 12A w.e.f. the assessment year 2006-07. As per the amendment provisions the word ‘*fifty thousand*’ have been replaced by the words ‘*the maximum amount which is not chargeable to income tax*’, which implies that for the time being the fifty thousand limit has been raised to rupees one lakh eighty thousand.

FILING OF RETURN

26.03 All charitable organisations having income exceeding Rs. 1,80,000 during the previous year are required to file their return of income. The ‘income’ for the purposes of filing the return should be computed without giving effect to the provisions of sections 11 and 12 of the Act. Such returns are to be filed with the Income-tax Officer or the Assessing Officer under whose local jurisdiction they fall. The return is to be filed as per the provisions of section 139(4A) and (4C) in the manner provided in section 139 of the Act.

FILING OF RETURN MADE MANDATORY

26.04 The Finance Act, 2002 has inserted sub-section (4C) to section 139 making it mandatory for the organisations registered under section 10(21), 10(22B), 10(23A), 10(23B), 10(23C) etc. to file annual returns under section 139(1). Earlier no clear provision for filing of return by these organisations was available, and it was not very clear whether these organisations were required to file returns or not, though Bombay High Court held in a case that returns are required to be filed. Now this controversy seems to be resolved.

FORMS AND DUE DATES

26.05 All organisations or trusts are required to file the return in Form No. ITR 7 by the 30th September of the assessment year. The return must be accompanied by an audit report in Form 10B prescribed under Rule 17B of the Income-tax Rule, 1962.

FILING OF RETURN BY UNREGISTERED ORGANISATIONS

26.06 Organisations which are not registered under the provisions of the Act, do not enjoy any exemption on their income hence, they are liable to file a return if the voluntary contribution received by them or their income exceed Rs. 1,80,000. Such organisations should file their income-tax return in Form No. 2, if the income includes "business income" or in Form No. 3, if the income does not include "business income".

DELAYED SUBMISSION OF RETURN OF INCOME

26.07 An organisation which fails to furnish its return of income within the due date can still submit its return of income any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier. For instance, a return of income for the financial year 2001-2002 can be submitted upto 31st March, 2004.

26.08 Under section 272A(2)(e), any voluntary organisation which fails to furnish the return of income which it is required to furnish under sub-sections

(4A) and (4C) of section 139 or fails to furnish it within the time allowed and in the manner required under that sub-section, it shall pay by way of penalty a sum of Rs. 100 for everyday during which the failure continues. Before imposing such penalty, an opportunity of being heard shall be given to the organisation.

DOCUMENTS TO BE ATTACHED WITH THE RETURN

26.09 One set of the following documents are required to be attached with the return :

- (i) Audit report in Form 10B.
- (ii) Balance Sheet.
- (iii) Income and Expenditure Account.
- (iv) Receipt and Payment Account.
- (v) Copy of the registration certificate.
- (vi) In case the organisation has accumulated income, resolution for accumulation.
- (vii) Form 10 in which application for accumulation is made.

REVISION OR CORRECTION OF MISTAKES

26.10 The concerned organisation can file a revised return at any time before the expiry of one year from the end of the assessment year or completion of the assessment whichever is earlier only if there is any mistake or omission in the return. For instance, if the financial year for which the return is filed is 2001-2002 then a revised return can be submitted any time on or before 31st March, 2004, provided the assessing officer has not completed the assessment in the intervening period.

OVERALL SUMMARY

26.11 To sum up the discussions

- (i) Registration under Income tax Act, is a mandatory requirement to claim exemptions.

- (ii) Registration is only a pre-condition for exemption. But, in order to claim exemptions, compliance of other provisions and conditions is necessary.
- (iii) Application in Form 10A, in duplicate is required to be made to Commissioner of Income Tax.
- (iv) The time limit for making such application is one year from the date of creation of the organisation.
- (v) If the application is filed after the time limit the CIT cannot condone the delay.
- (vi) As the delay cannot be condoned the organisation will be eligible for exemptions from the first day of the financial year in which the application is filed.
- (vii) The CIT, on receipt of application, shall call for such documents and information as he thinks necessary to determine the genuineness of the organisation.
- (viii) The CIT has to make an order in writing within six months from the end of the month in which the application is made.
- (ix) If the CIT wants to reject the application for registration, then a reasonable opportunity of being heard should be provided to the applicant.
- (x) Though the time limit of six months for processing an application is prescribed, there is no provision with regard to the delay made in processing the application.
- (xi) There is a provision in the Act for withdrawal of registration. Therefore, registration once granted is not permanent in nature.
- (xii) If the application for registration is rejected then the aggrieved organisation can file an appeal against such order to the Appellate Tribunal under section 253.
- (xiii) The time limit for filing an appeal to the Tribunal is 60 days from the date on which the order is received.
- (xiv) Under section 12A, all charitable organisations have to get their accounts audited if the total income exceeds Rs. 1,80,000/-. Such Audit report has to be in Form 10B.
- (xv) Further, all charitable organisations having total income exceeding Rs. 1,80,000/- during the previous year are required to file their return of income. The return of income is required to be filed in Form ITR 7, as per the provisions of section 139(4A) & (4C).

- (xvi) Even unregistered organisations which do not enjoy any exemptions are required to file return if their income exceeds Rs. 1,80,000/- . Such return should be filed in Form 2 or in Form 3, if the income does not includes business income.
- (xvii) An organisation can submit a delayed return under section 139(4), any time before the expiry of one year from the end of the relevant assessment year.
- (xviii) An organisation can file a revised return at any time before the expiry of one year from the end of the relevant assessment year or completion of the assessment whichever is earlier only if there is mistake or omission in the return.
- (xix) One set of the following documents are required to be attached with the return :
 - (a) Audit report in Form 10B as per *Annexure 9*.
 - (b) Balance Sheet.
 - (c) Income and Expenditure Account.
 - (d) Receipt and Payment Account.
 - (e) Copy of the registration certificate.
 - (f) In case the organisation has accumulated income, resolution for accumulation.
 - (g) Form 10 in which application for accumulation is made.

Unit - V

EMPLOYEES WELFARE SCHEME

CHAPTER - 27

EMPLOYEES PROVIDENT FUND SCHEME, 1952

INTRODUCTION

27.01 Prior to 1952, in India there was no statutory requirement for providing retrieval/post service economic support to the workers and their families employed by the establishments falling in Industrial and Commercial sectors. The Employees Provident Fund Act, 1952 (since renamed as the Employees Provident Fund and Misc. Provisions Act, 1952) was enacted by the Parliament and the Employees Provident Fund Scheme, 1952 was notified by the Government effective from November, 1952. The Scheme provided for creation of Contributory Provident Fund System on compulsory basis wherein the employer of the establishment and the employee concerned will contribute at equal rate. Contribution accretion with interest to the credit in members account becomes payable to the member in lump sum on quitting service or to the nominee/legal heirs of the member in the vent of his death. Besides terminal payment on retirement/leaving the job, the member could make partial withdrawal while service for specified purposes.

APPLICABILITY

27.02 The Scheme applies to establishments belonging to notified category of Industries/Class of establishments employing 20 or more persons. In case of Cinema Theatre establishments, 5 employees and 50 employees in respect of cooperative Societies working without the aid of power, shall attract the provision of the Scheme.

27.03 Provisions also exist for coverage on voluntary basis on joint request by the employer and majority of the employees of establishments of non-applicable category. So also, the Central Government has the power to extend the coverage.

27.04 The Central Government has further specified various organization, which are subject to the Employees Provident Fund Scheme, 1952. Such organization are listed below :

- i) Educational, scientific research and training institutions
- ii) Establishments known as hospitals
- iii) Societies, clubs or associations which render services to their members without charging any fee over and above the subscription fee or membership fee.
- iv) Establishments rendering expert services
- v) Financial establishments (other than banks) engaged in the activities of borrowing, lending, advancing of money and dealing with other monetary transactions with a view to earn interest.
- vi) Establishments engaged in poultry farming
- vii) Establishments engaged in cattle feed industry
- viii) Agricultural farms, fruits, orchards, botanical gardens and zoological gardens.

27.05 From the above it is clear that the voluntary organization is subject to the provisions of Employees Provident Fund Scheme, 1952

MEMBERSHIP

27.06 Every employee, other than an excluded employee, need be enrolled to the membership of the fund from the very day of employment. Membership is necessary for all categories of employees irrespective of their being permanent, temporary, casual, whole time, part time or otherwise, and shall include the persons engaged by or through contractors, if any.

- (i) Every employee employed in or in connection with the work of the factory or other establishments to which the EPF Scheme applies except an excluded employee i.e. drawing a salary exceeding Rs. 6,500.00 p.m.
- (ii) Every employee is required to join the fund from the date of joining the factory or establishment
- (iii) Every excluded employee on his ceasing to be excluded employee i.e. makes an application jointly with the employer

EMPLOYER

27.07 An 'Employer' means – sec. 2(e) :

- (i) in relation to an establishment, which is a factory, the owner or occupier including the agent, the legal representative of a deceased owner or occupier and
- (ii) in relation to any other establishments, the person or authority who has ultimate control over the affairs of the establishment or the manager or managing director if entrusted with affairs of the establishment.

EMPLOYEE

27.08 An employee – sec. 2(f), means any employee who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets wages directly or indirectly from the employer and includes any person :

- (i) employed by or through a contractor in or in connection with the work an establishment
- (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the

27.09 An apprentice means a person who according to the certified standing orders applicable to a factory or establishment, is an apprentice or who is declared to be an apprentice by the authority specified by the appropriate government

27.10 Accordingly personal or domestic servants are not employees under the Act.

CONTRACTOR'S EMPLOYEES

27.11 It has been held by the court in *Enfield India v RPFC* 2000 (85) FLR 519(Mad) a person doing work of the principal employer, even though employed covered by the definition

"Excluded Employee" has been defined in para 2(f) to mean an employee:

- (i) who having been a member of the fund, withdrew the full amount of his accumulations on retirement or emigration or

- (ii) whose pay at the time he is otherwise entitled to become a member of the fund exceeds Rs. 6,500.00 p.m.

CONTRIBUTION

27.12 Contribution is payable monthly by the employer and employee both at equal rate. The employer is required to deposit both the shares of contribution including those of contractors employees, if any. The employer is authorized to recover the employees share from the salary of the employees share from the contractor concerned:

27.13 Basic rate provident fund contribution is @ 10% of the basic wage/ salary and the higher rate is @12%. Basic rate is applicable on 5 industries namely Beedi, Brick, Jute, Coir and Guargum Industries. In respect of other establishments engaging less than 20 employees or which are sick units, basic rate of contribution shall be payable.

27.14 Out employer's share of contribution, 8.33% equivalent is to be diverted to pension fund a/c while the balance of employer's share of contribution and the employees share of contribution in toto will be credited to PF account.

CIRCUMSTANCES IN WHICH MODE OF FINAL PAYMENT TO EMPLOYEE

27.15 Accumulations in the provident fund account of a member becomes payable for final settlement under following situations :

- i) On retirement from service after attaining the age of 55 years
- ii) On retirement as a result of total and permanent disablement rendering in capacity to work
- iii) Immediately before migration from India for permanent settlement abroad or for taking employment abroad;
- iv) Termination of service upon mass or individual retrenchment
- v) Termination of service under a voluntary retirement scheme; and
- vi) Termination of job and remaining unemployed for over two months or leaving the job from a covered establishment and joining an establishment not covered by P.F.

CHAPTER - 28

PAYMENT OF GRATUITY ACT, 1972

APPLICABILITY OF PAYMENT OF GRATUITY ACT

28.01 The payment of Gratuity Act, 1972 applies to the whole of India and so far as it relates to ports and plantations it does not apply to the State of Jammu and Kashmir. It applies to :

- (a) every factory, mine, oilfield, plantation, port and railway company.
- (b) Every shop or establishment within the meaning of any aw for the time being in force in relation to shops and establishment in a State, in which 10 or more persons are or were employed on any day in the preceding 12 months
- (c) Such other establishment within or class establishment, in which 10 or more employees are or were employed on any day in the preceding 12 months, as the Central Government may notify in this behalf.

28.02 Any shop or establishment shall continue to be governed by the Act even if the no. of its employees comes below 10 persons at any time in the future.

28.03 Public charitable and religious trusts are also covered by this Act, provided that they are shops or establishments within the meaning of the Shops and Establishment Act applicable to their area of operation and that 10 or persons have been employed by them on any day in the preceding 12 months.

PAYMENT OF GRATUITY

28.04 Gratuity shall be paid to an employee on the termination of his employment after s/he has rendered continuous service of not less than 5 years i.e. on superannuation, retirement, resignation, death or disablement due to accident or disease (Sec 4).

28.05 The period of 5 years is not necessary if the termination of the employee is because of death or disablement. In the case of death the amount is paid to the legal heirs.

28.06 Gratuity is calculated at 15 days wages last drawn by the employee for each completed year of service. The monthly wage is divided by 26 and multiplied by 15. In computing a completed year of service the period in excess of six months shall be taken as a full year.

28.07 The maximum amount of gratuity payable under the Act is Rs.3,50,000.00.

28.08 The employer is required to pay the gratuity within 30 days from the date it becomes payable {Sec. 7(3)}.

28.09 "Continuous Service" means uninterrupted service which may be interrupted on account of sickness, accident, leave, absence from duty without (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee. (Sec 2A)

28.10 No gratuity payable under the Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. However if the employee had agreed to a deduction from the amount due as gratuity then that amount can be recovered. (Jagannath Dasi v Bina Khadi & Village Industries Board 1995 Lab. IC 923. (Sec. 13)

PENALTIES

28.11 Gratuity can be forfeited {Sec 4(6)} Where an employee has been terminated :

- (i) for any act, willful omission or negligence causing any damage or loss to or destruction of any property belonging to the employer, to the extent of such loss or damage.
- (ii) for riotous or disorderly conduct or any act of violence on his part.
- (iii) For any act which constitutes an offence involving moral turpitude, provided the offence has been committed by him in the course of his employment.

NOMINATIONS (SEC 6)

28.12 Each employee who has completed one year of service is required to make a nomination for the purposes of gratuity in case of his death. There can be more than one nominee. (Form F)

28.13 Nominees may be changed at any time by the employee, by giving a written notice to the employer. (Form H)

Annexure-01

**A MODEL SPECIMEN OF THE MEMORANDUM
OF ASSOCIATION OF A SOCIETY**

1. NAME : The society shall be called by the name “xxxxx”
2. LOCATION : The registered office the Organisation will be situated at
At :
P.S. :
P.O. :
DIST :
STATE :
PINCODE :
3. JURISDICTION : It’s Jurisdiction shall be throughout the State of
4. AIMS & OBJECTIVES OF THE SOCIETY :
 - i. To do all acts and things necessary to facilitate the charitable, social, cultural, educational, vocational & economic development of the society.
 - ii. To establish, construct, maintain, manage & supervise hospital, relief and rehabilitation centres and many other ancillary voluntary services carried on by the Society.
 - iii. To establish orphanages, old-agehomes, leprosy rehabilitation centres, homes for widows, aged, helpless and people of weaker sections, to come out with deliverance from the fallen condition.
 - iv. To create an awareness about the ills of population explosion and motivate people to check population explosion by adopting family planning measures.
 - v. To undertake integrated rural development projects for overall socio-economic development of the

Annexure-01

villagers including encouragement of co-operative movement among the villagers.

- vi. To restore the cultural and social heritage of the country by propagating and promoting various dying arts and lesser known cults and practices of excellence and wisdom.
- vii. To establish, manage, maintain, fellowship centres & subscribe to arrange for training centres, camps, seminars, excursions, study groups, recording studios and other ancillary services for the members and general public to further the purpose of the Society.
- viii. To edit, translate, publish, disseminate literature of such nature as to further the purpose of the Society viz building up a healthy society that would preserve and promote national integration.
- ix. To develop literacy among the people through various educational programmes like adult-education, night schools, pre-schools etc.
- x. To provide medical assistance to the poor and weaker sections of the society
- xi. To organise movements, counselling centres and other forums to bring about public awareness of the ills of drug abuse, crime and other social evils like dowry systems etc.
- xii. To undertake relief measures in aid of the distressed people affected by natural calamities or in other ways e.g. to rehabilitate them and make them self-dependent through income-generating schemes.
- xiii. To set up Government aided projects such as of KVIC, Ministry of Food Processing etc.

5. We, the several persons of General Body whose names, address, occupations, designation and signatures are given below, are desirous of being formed into a society in accordance with the provision of the Societies Registration Act, 1860 under the name of in pursuance of this Memorandum of Association.

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Sl. No.	Name with Father/Husband name	Designation	Address	Age	Occupation	Signature
1.						
2.						
3.						
4.						
5.						
6.						
7.						

Attested the Signatures from
No. 1 to 7

Signatures of the two witnesses other
than the members of the society with
address.

Signature of the Attesting Officer with
Official Seal

1.

Certified that this is the true and correct
copy of the Memorandum

2.

Signatures of any three members of the
Governing Body

PRESIDENT

SECRETARY

TREASURER

Annexure-02

A MODEL SPECIMEN RULES AND REGULATIONS

1. NAME : The name of the society is “xxxxx”
(Herein after referred to as the Society)
2. LOCATION : “XXXX”
At :
P.S. :
P.O. :
DIST :
STATE :
PINCODE :
3. JURISDICTION : It’s Jurisdiction shall be throughout the State of
4. AIMS & OBJECTIVES OF THE SOCIETY : Aims and objects as stated in the Memorandum of Association
5. INTERPRETATION : In these rules and regulations unless there be anything in the context repugnant or inconsistent therewith ;
 - a. ‘The Society’ means xxx
 - b. ‘The General Body’ means the members of the Society.
 - c. ‘The Board’ means the Board of Management of the Society.
 - d. ‘A Member’ means a member admitted as such under the rules prescribed by the Society.
 - e. ‘Act’ means the Societies Registration Act, 1860.
6. MEMBERSHIP : The membership of the Society shall consist of ;
Individual Members :
 - a. Such individuals who sign the Memorandum of Association of the Society shall be the Founder Members.

Annexure-02

- b. Such other individuals who may be admitted to the Society from time to time and whose name is entered in the Register of Members shall be member of the Society.
 - c. Membership of the Society shall cease ;
 - i) If a member dies or resigns
 - ii) If a member is removed from the membership of the Society
 - iii) If a member, whose membership solely stands on his occupying an official position, ceases to be in that position
- 7. Expulsion from membership : A member shall be expelled from the primary membership of the Society for any of the following reasons with the approval of the general body having 2/3 majority and sufficient proof thereof ; which shall be recorded in the register of the Society :-
 - i. If the activities of a member are detrimental to the attainment of the aims & objectives of the Society.
 - ii. Who does not attend three consecutive meetings without proper reason.
 - iii. Who becomes of unsound mind, insolvent and convicted in a criminal offence.
- 8. CODE OF CONDUCT : Every member of the Society shall be bound by the provisions of the Memorandum of Association, the Rules & Regulations of the Society, Bye-laws and decisions made or taken by the Society or Board from time to time
- 9. MANAGEMENT : The affairs of the Society shall be managed by the Board consisting of not less than seven and not more than twelve members elected in the Annual General Meeting for a period of two year and eligible for re-election.
 - a. The Officers of the Society shall be the President, the Vice-President, the Secretary, the Asst. Secretary and the Treasurer. They shall be elected by the General Body from among its

Annexure-02

members for a term of two years in the Annual General Meeting and eligible for re-election.

- b. Any vacancy arising on the Board may be filled by the remaining members until the next Annual General Meeting

10. GENERAL BODY
& ITS FUNCTIONS :

- a. The General Body of the Society shall consist of all those members mentioned in Rule 6, not less than seven.
- b. An Annual General Meeting shall be held every year at such place, time and date as may be determined by the Board to transact the following business (atleast twentyone days clear notice shall be given to the members to convene such an Annual General Meeting) :-
 - i) To receive the report of the officers of the Society on the affairs of the Society
 - ii) To receive audited financial statement of the Society
 - iii) To approve the budget of the Society
 - iv) To elect the Board of Management of the Society
 - v) To appoint an auditor.
- c. The accidental omission to give notice to or the non-receipt of notice, by a member or other person to whom it should be given shall not invalidate the proceedings of the meeting.
- d. One third members of the Society, shall constitute a quorum for the annual general meeting.
- e. If there is no quorum for the annual general meeting, the meeting shall adjourn for half and hour and reassemble, all those members present then shall form the quorum.
- f. In any meeting of the Society the President may exercise casting vote if required.

Annexure-02

- g. The General Body shall lay down general policies for the furtherance of the aims and objectives of the Society.
11. FINANCIAL YEAR : The financial year of the society shall commence on the 1st day of April of each year to 31st day of March of the succeeding year.
12. AUDIT : The accounts of the organisation shall be audited annually by a Chartered Accountant in practice and the audit report along with the Annual Accounts shall be placed before the Annual General Meeting.
13. FUNDS : The following shall comprise the funds of the organisation. The amount of entrance fee and monthly membership fee may be varied from time to time.
- a. Entrance fees towards admission of members, Rs. 100/- (One Hundred only)
 - b. Monthly membership fees of Rs. 10/- (Ten only)
 - c. Grant-in-Aid
 - d. At the time of exigency, special funds can be raised by the Board after getting the approval of General Body.
 - e. Any other suitable means as decided by they General Body having 2/3rd majority.
14. BANK ACCOUNT : A savings bank account having cheque facility shall be opened in the name of the Society. All the transactions shall be made under the signature and seal of the President, the Secretary, the Treasurer or such other person severally or jointly as may be decided from time to time.
15. OFFICE OF THE SOCIETY : The Society shall have the following officers :
- a) President
 - b) Vice-President
 - c) Secretary
 - d) Assistant Secretary
 - e) Treasurer

Annexure-02

The President :

- a. The Chief Officer of the Society shall be the President who shall be elected by the members of the General Body. His term of office shall be two years.
- b. The President shall appoint the other office bearers of the Society or remove any member of the Society from misconduct.
- c. All properties both movable and immovable and all securities belonging to the Society shall vest in the Society. All properties to be acquired for the Society in pursuance of its objects shall be acquired in the name of the Society through the President, Secretary or any other member of the Governing Body duly authorised by the President.
- d. It shall be competent for the President to appoint members of the staff of the Society and fix their remuneration.

Secretary

- a. The Secretary shall be elected by the member of the Society.
- b. The Secretary shall attend to the day-to-day management of the affairs of the Society like correspondence, etc., subject to the control of the President.
- c. The Secretary shall maintain proper accounts in respect of the transactions of the Society and be responsible for the preparations of the financial statements of the Society whenever necessary.
- d. In case of emergency, it shall be competent to the Secretary to by circulating the papers among them with the prior approval of the President.

Asst. Secretary

In the absence of the Secretary the Asst. Secretary shall carry out the functions of the Secretary in consultation with the President,

Annexure-02

after obtaining written permission from the Secretary.

The Treasurer shall oversee

- a.
 - i) All sums of money received and expended by the Society and the matters in respect of which receipt and expenditure take place.
 - ii) All sales and purchases of goods by the Society.
 - iii) The assets and liabilities of the Society.
- b. Arrange annual audit of the accounts by the Auditor duly appointed by the Society for the purpose.
- c. File returns of Income of the Society with the Income-tax authorities as prescribed by the rules in this regard.
- d. Prepare the annual budget for the approval by the Society.

All the above powers of the Treasurer shall be carried out in consultation with the Secretary.

16. INCOME & PROPERTY :
- a. The income and property of the Society whenever derived shall be applied solely for the promotion of its objectives as set forth in the Memorandum of Association
 - b. No portion of the income or property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the Society or to any one or more of them or to any person(s) claiming through any or more of them.
 - c. No remuneration or other benefit in money or money's worth shall be given by the Society to any of its members except payment of expenses incurred in connection with the work of the Society.
 - d. To raise voluntary grants and contributions

Annexure-02

either in cash or in kind.

- e. To borrow or release money for the purpose and objectives of the Society and conditions as the Society may think fit.
- f. To draw, make, accept discount, endorse, negotiate, sell, execute and issue bills of exchange, promisory notes, cheques, warrants, debentures and other negotiable or transferable instruments and securities.
- g. To pay for rights of property acquired by the Society and to remunerate any person, firm or body corporate rendering service to the Society.
- h. To adopt such means of making known the objectives and purposes of the Society as may seem expedient and in particular granting prizes, rewards and donations out of the funds of the Society.

- 17. LEGAL MATTERS :
 - a. Any document or proceedings of the Society requiring authentication may be so attested by any officer of the Society.
 - b. All documents relating to the properties of the Society shall be executed by the President or the Secretary for and on behalf of the Society.
- 18. AMENDMENTS OR ALTERATION :
 - a. No alteration to the rules and regulations of the Society shall be made except by a resolution of the Annual General Meeting of the Society by not less than 3/5 of the members present and voting in favour of such a resolution.
 - b. No alteration to the Memorandum of Association of the Society shall be made except in accordance with the provisions of Section 12 of the Act.
- 19. DISSOLUTION : Upon dissolution of the Society, its assets will be handed over to a similar type of registered society or to

Annexure-02

the Govt. after satisfaction of all debts and liabilities and shall not be distributed or paid among the members. The Society shall not be dissolved unless 3/5 of its members express a wish for such dissolution by their votes delivered in person or by proxy at the General Body Meeting of the Society convened for the purpose.

20. LEGAL ACTION : The Secretary may sue or be sued on behalf of the society for movable and immovable properties.
21. CERTIFICATE : a. Certified that this is the true and correct copy of the Rules & Regulations of “xxxxx a voluntary organisation.
- b. Certified that there is no other registered society with the above name in the same area.
- c. All legal matters shall be guided under the Societies Registration Act XXI 1860 with amendment of 1969.

Signature of the Attesting Officer with
Official Seal

Certified that this is the true and correct
copy of the bye-laws

Signature of any three members of
Governing Body

Annexure-03

**MEMORANDUM AND ARTICLES OF ASSOCIATION
OF**

- I. The name of the company is
- II. The Registered office of the Company will be located in the State of
xxxxxx.
- III. A. The main objects of the company on its incorporation are :-
- i) To create awareness on various social, moral and economic issues affecting the country and to direct this awareness to developing innovative means of generating resources-financial, material and professional and channelise these resources through people and projects in the field ;
 - ii) To promote national integration and encourage, support and develop social welfare programmes for balanced growth of the nation ;
 - iii) To provide financial or any other assistance towards relief and rehabilitation of the populace affected by calamities like cyclones, earthquakes, epidemics, fire, famine, floods, war, riots, etc. ;
 - iv) To establish, maintain or support a home or homes for widows, orphans, special centres for providing shelter and protection to women and children in distress ;
 - v) To create and promote enlightened public opinion on various issues affecting the citizens of India ;
 - vi) To encourage conservation, afforestation and protection of the environment including birds, animals and all species of plants and animals ;
 - vii) To provide food, clothing and shelter to all those in need and provide pecuniary assistance to those unable to fend for themselves due to old age, disease or any physical or mental handicap ;
 - viii) To undertake, or assist in undertaking, projects like digging wells,

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providing drinking water facilities, fodder for cattle, grains, seeds and fertilizers for farming, agricultural tools etc. ;

- ix) To establish, maintain or support dharamshalas, resthouses, convalescing homes, health and immunisation camps, infirmaries, orphanages ;
- x) To provide assistance for building or maintaining roads, national and state highways, bridges, reservoirs, irrigation tanks, tube wells, recreation centres, parks, playgrounds for children, libraries, museums, art galleries, cultural centres for the benefit of the public and improving their quality of life ;
- xi) To support the initiative of any individual, group or organisation in promoting education both formal and informal and for children and adults ;
- xii) To establish, take over, run, maintain, assist and support hospitals, including mobile hospitals, charitable dispensaries, maternity homes, sanatoriums, medical centres, medical camps, health education and family planning centres, children welfare centres, natural health centres, nutrition centres and any other institution or forum for preventive, curative or primary health-care and treatment ;
- xiii) To establish take over, run, maintain a centre or centres for senior citizens or retirement homes or old peoples homes with facilities for boarding, lodging, health-care, nutrition, recreation, etc., as may be necessary ;
- xiv) To construct lowcost buildings and houses for the poor, disadvantaged and those in distress, especially in the rural and/or urban slums or wherever found necessary ;
- xv) To conduct and organise seminars, workshops, conferences, meetings, public lectures.

B. The objects incidental or ancillary to the attainment of main objects are :

- i) To co-operate with the Central and State and Local Government in formulation of laws and policies-concerning Community, Urban and Rural Development and to offer proper advice in implementation of such laws and policies.
- ii) To retain and/or employ skilled professionals or technical advisers and other staff and workers in connection with the objective of

Annexure-03

the Company and pay such fees and remuneration as may be though expedient and for the purpose to appoint, suspend and dismiss employees of the Company.

- iii) To solicit obtain or accept subscriptions, donations, grant-in-aid, gifts and endowments, bequeath and trust of moveable or immovable property of any kind from Government, Municipalities, other local and public bodies, co-operative societies or other person or persons on such terms and conditions as considered fit and proper by the Managing Committee and otherwise to receive money.
 - iv) To purchase or to take by way of lease, sublease, gifts, exchange, hire or otherwise acquire any movable or immovable property and in particular any land, building, workshop, laboratory, machinery, equipment, furniture, scientific record, experimental data, library, plant, apparatus, appliance and any right or privilege necessary or convenient for the purpose of the Company and to construct, erect, develop, alter, improve and maintain any building.
 - v) To borrow or raise money for the purpose of the Company on terms and conditions as may be considered fit and proper by the Committee of Management.
 - vi) To make rules and regulations in connection with the management and control of the Company.
 - vii) To create productive employment by improving the existing skills and introducing new skills by proper training both in the field of agriculture as well as small and cottage industries.
- C. The other objects for which the Company is established are :
- i) To sell, charge, hire, lease, demise, let, mortgage, dispose of or otherwise deal with and manage the assets and properties movable or immovable of the company.
 - ii) To sell, dispose of, distribute, market or denote the produces and products generated in carrying out any of the activities of the company.
 - iii) To set up and run farms, processing units, distribution and marketing centres.
 - iv) To establish, promote, co-operate with or become a member of any associations, institutions and other bodies having similar object

Annexure-03

of community and rural development or to appoint trustees, agents or delegates for control, management, superintendence of such association, institutions and other bodies and afford financial assistance to or otherwise assist the same.

- v) To establish, maintain, control and manage branches of the company in India and elsewhere.
- vi) To establish, and support or aid in the establishment or support of associations, institutions, funds, trusts and convenience calculated to benefit employees or ex-employees of the company or the dependent of such person, and to grant pensions and allowances to make payments towards insurance of such persons.
- vii) To pay out of the funds belonging to the company or out of any other particular part of such funds all expenses of or incidental to the formation of the company and for management and administration of any of the objectives of the company including all rents, license fees, taxes, outgoing salaries, honorarium and other benefits to employees.
- viii) To draw, make, accept, endorse, discount the cheques notes or other negotiable instruments.
- ix) For the purpose of the company to sign deeds, documents and assurances as may be necessary.
- x) To do all other things that are incidental or conducive to the attainment or furtherance of the aims and objectives of the company.

Provided that the company shall not support with its funds, or endeavour to impose on or procure to be observed by, its members or others, any regulations or restriction which, if an object of the company, would make it a Trade Union.

- IV. The objects of the Company extends to the whole of India in general and the State of in particular.
- V. a) The income and property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the company

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or to any one or more of them or to any person claiming through any one or more of them.

- b) No portion of the income or property aforesaid shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time are, or have been members of the company or to any one or more of them or to any person claiming through any one or more to them.
- c) Except with the prior approval of the Central Government no remuneration, or other benefit in money or money's worth shall be given by the Company to any of its members, whether officers or servants of the Company or not, except payment of out of pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the Company.
- d) Except with the previous approval of the Central Government no member shall be appointed to any office under the Company which is remunerated by salary, fees or in any other manner not excepted by sub-clause (3).
- e) Nothing in this clause shall prevent the payment by the Company in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member) in return for any services actually rendered to the Company.

- VI. No addition or amendment shall be made to this Memorandum of Association or the Regulation contained in the Articles of Association for the time being in force unless the same has been previously submitted to and approved by the Regional Director.

Clause V & VI contain the conditions on which a licence is granted by the Central Government to the Company in pursuance of Section 25 of the Companies Act, 1956.

- VII. The liability of the members is limited.

- VIII. The Share Capital of the Company will consist of Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000/- (Ten Thousand) Equity Shares Rs. 10 (Rupees Ten) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit as per the provisions of the Companies Act, 1956.

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- IX. True accounts shall be kept of the all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place ; and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Company for the time being in force, the accounts shall be open to the inspection of the members. Once at least in every year, the accounts of the company shall be examined and the correctness of the balance sheet and Income and Expenditure Account ascertained by one or more properly qualified auditor or auditors.
- X. If upon winding up or dissolution of the Company, there remains after the satisfaction of all the debts and liabilities, any property whatsoever the same shall not be distributed among the members of the Company but shall be given or transferred to such other Company or Society, Trust having objects similar to the objects of this Company to be determined by the members of the Company at or before the time of dissolution or in default thereof, by the High Court of judicature that has or may acquire jurisdiction in the matter.

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**ARTICLES OF ASSOCIATION
OF**

TABLE EXCLUDED

1. The regulation contained in the Table A of the First schedule to the Companies Act, 1956 shall apply to the company so far as applicable to a Private Company except as otherwise provided/modified impliedly or expressly by the following Articles.

INTERPRETATION

2. In the interpretation of these Articles, the following expressions shall have the following meanings, unless repugnant to the subjects or context.

“THE ACT” means the Companies Act, 1956, with all modifications or amendments thereof.

“THE COMPANY” or this company means “Name of the Company”

“MEMORANDUM & ARTICLES” means the Memorandum of Association and Articles of Association respectively of the Company.

“DIRECTOR” means and include all Directors of the Company and except where the context otherwise requires for those Articles shall mean the Board of Directors of the Company, or a properly constituted committee thereof.

“THE OFFICE” means the Registered Office for the time being of the company.

“THE REGISTRAR” means the Registrar of Companies,

“SEAL” means the common seal of the Company.

“MONTH” means Calendar Month.

“PROXY” includes Attorney duly constituted under a power of attorney.

“IN WRITING OR WRITTEN” includes printing, lithography, and other

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modes of reproducing works in a visible form, which also include thumb impression properly attested.

Words importing persons includes corporation, Firms and Association.

Words importing singular number include the plural and vice-versa.

Words importing masculine gender include the feminine gender and vice-versa.

- 3) The exemptions granted by the Central Government vide So. No. 1578 and So. No. 2767 dated 8th July, 1961 and 5th August, 1964 respectively and exemptions that may be granted in future shall be applicable to the Company.

II. PRIVATE COMPANY

- 4) The Company is a “Private Company” within the meaning of Section 3 (1) (iii) of the said Act and accordingly the following provisions shall have effect namely.
 - a) No invitation shall be issued to the public to subscribe for any shares in or debentures of the Company.
 - b) The number of members of the Company (exclusive of persons who are in the employment of the company and persons who, having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be the members after the employment ceased) shall be limited to fifty. Provided that for the purpose of these provisions where two or more persons hold one or more shares jointly in the Company, they shall be treated as single member.
 - c) The right to transfer the share of the Company shall be and is restricted in the manner and to the extent as may be decided by the Board of Directors from time to time.
- 5) The Company may at any time by a special resolution convert itself into a public company within the meaning and subject to the provisions of the Companies Act, 1956.

III. SHARE CAPITAL

- 6) The Authorised Share Capital of the Company is Rs. 1,00,000/- (Rupees One Lac Only) divided in 10,000 (Ten Thousand Only) Equity Shares

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of Rs. 10/- (Ten Only) each with the power to increase or reduce, subdivide or consolidate it as the Company may think fit, as per the provisions of the Companies Act, 1956.

IV. VOTE OF MEMBERS

- 7) Subject to any right of restriction attached to any class by term of its issue or otherwise :
 - a) On show of hands, every member (holder of equity shares) present in person shall have one vote and
 - b) On poll the voting right of every member holder of Equity Shares present in person or by proxy shall be in proportion to his holding of Equity Shares in the paid up Equity Capital of Company.

V. GENERAL MEETING

- 8) All General Meeting other than Annual General Meeting shall be called Extra Ordinary General Meeting
- 9) General Meeting may be convened on not less than Fourteen days notice to the members.
- 10) The board may, wherever it thinks fit, call an Extra Ordinary General Meeting.
- 11) The Chairman of the Board shall be the Chairman of the General Meeting.
- 12) If the Board is unable to call an Extra-Ordinary General Meeting for want of quorum or otherwise, any two members of the Company may call such a meeting in the same manner as nearly as possible, as that by which such a meeting may be called by the Board.

VI. PROCEEDING AT GENERAL MEETING

- 13) a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

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- b) One-third of the total number of members shall form the quorum subject to a minimum of two members.
- 14) a) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of member shall be dissolved.
- b) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at other time and place as the Board may determine.
- c) If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.
- 15) The Chairman, if any, of the Board shall preside as Chairman at every general meeting.
- 16) If there is no such Chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their members to be chairman of the meeting.
- 17) If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their member to be chairman of the meeting.
- 18) a) The Chairman may, with the consent of any meeting, at which a quorum is present and shall if so directed by the meeting, adjourn the meeting, from time to time and from place to place.
- b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- d) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

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19. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
20. Any business other than that upon which a poll has been demanded may be proceeded upon, pending poll.

VII. DIRECTORS

21. Subject to the provisions of Section 259 of the Act, unless and until otherwise determined by the Company in General Meeting the number of Directors shall not be less than two and not more than twelve.
22. The following persons shall be the first Directors of the Company.
 - a) xxxxx
 - b) xxxxx
 - c) xxxxx
23. No remuneration shall be paid to any director for attending the Board, Committee or General Meeting of the Company.
24. The directors may however be paid all travelling, hotel and other expenses properly incurred by them.
 - a) In attending and returning from meetings of the Board or any committee thereof or General Meeting of the Company ; or
 - b) In connection with the business of the Company.
25. Subject to the provisions of the Act, any vacancy caused by the Board of Directors by resignation, or death of any Director, or by any other reason may be filled in by the Board of Directors by appointing some one they so choose. The Board of Directors have powers to appoint, additional and alternate Directors, but in no case the number of Directors should exceed the maximum fixed by clause 21 thereof.
26. At each Annual General Meeting of the Company one third of the Directors for the time being shall retire by rotation and the vacancy so caused may be filled up by appointing the retiring director or some other person thereto.

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27. The directors shall not be required to hold any qualification shares.

VIII. PROCEEDING OF DIRECTORS

28. The Board of Directors shall meet at least once in every Six Calendar months to conduct its business.
29. A resolution in writing circulated amongst all the Directors and passed in accordance with Section 289 of the Companies Act, 1956 shall be valid and effected as if it has been passed at a meeting of the Directors duly called and constituted.
30. The quorum for transacting any business of the meeting of the Board of Directors shall be one-fourth of the total strength provided the quorum shall not be less than two members in any case.
31. Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes and in case of equality of votes the chairman shall have a second or casting vote.
32. The Board may elect a chairman of its meeting and determine the period for which he is to hold office. If no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their member to be chairman of the meeting.
33. A Manager or Secretary being not a member of the Company may be appointed by the Board on such terms, at such remuneration and upon such conditions as it may think fit, and manager or secretary so appointed may be removed by the Board.
34. a) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.
- b) Any committee so formed shall in the exercise of the powers so delegated, conform to any regulation that may be imposed on it by the Board.

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- 35. a) A committee may elect a chairman of its meetings.
- b) If no such chairman is elected or in any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their member to be chairman of the meeting.
- 36. a) A committee may meet and adjourn as it think proper.
- b) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of any equality of votes, the chairman shall have a second or casting vote.
- 37. Save as otherwise expressly provided in the Act, a resolution in writing signed by all the members of the Board or Committee thereof for the time being entitled to receive notice of a meeting of the Board or Committee, shall be as valid and effectual as if it has ben passed at a meeting of the Board or Committee, duly convened and held.

IX. SEAL

- 38. The Board shall provide for the safe custody of the seal of the company. The seal shall not be affixed to any instrument except by the authority previously given by Resolution of the Board in presence of one of the Directors who shall sign every instrument to which the seal of the Company shall be so affixed in his presence.

X. ACCOUNTS

- 39. a) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the account and books of the Company or any of them shall be open to the inspection of members (not being Directors).
- b) No member (not being a Director) shall have any rights of inspection any accounts or books of accounts of the Company except as conferred by the law or authorised by the Board or by the Company in General Meeting.

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40. The Directors shall in all respects comply with the provisions of Sections 209, 210, 211, 215, 216, 217, 220 and 221 of the Act, so far as they are applicable to a Private Company and the Profit & Loss Accounts, Balance Sheet and Auditors Report and every other documents required by law to be annexed or attached, as the case may be, to the Balance Sheet shall be sent to every member of the Company at least 14 days before the date of the General Meeting of the Company at which they are to be laid.

XI. AUDIT

- 41) a) The first Auditors of the Company shall be appointed by the Board of Directors within one month from the date of Registration of the Company and the Auditors appointed shall hold office until conclusion of first Annual General Meeting.
- b) At each Annual General Meeting the Company shall appoint an auditor to hold office from the conclusion of the meeting until the next Annual General Meeting.

XII. INDEMNITY

42. Subject to the provisions of the Act, every Director, Managing Director, Manager, Secretary or other officer or servant of the Company shall be indemnified by the Company against any liability arising out of the Act done by him or them in the bonafide discharge of their duties and shall be the duty of the Board of Directors to pay out of the funds of the Company all costs, losses and expenses which such director, officer or servant may incur or become liable to, by reason of any contract entered into, act, or deed done by him as such officer, servant or in any way in the discharge of his duty. The Board of Directors may execute in the name and on behalf of the Company, in favour of any director or other person who may incur or be about to incur, any personal liability for the benefit of the Company such mortgages of the Company's property (present and future) as they think fit, and any such other powers as shall be agreed upon.

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A MODEL TRUST DEED

This Trust Deed made at on this _____ day of _____ 20 _____, Between Mr./Mrs./Ms. _____ of _____, Indian inhabitant, residing at _____ (hereinafter called "the settlor") (which expression shall, unless repugnant to the context or meaning thereof, be deemed to include their respective heirs, executors and administrators) of the one part and Mr./Mrs./Ms. _____ of _____, Indian

_____ (hereinafter called "the trustees") (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include the survivor or survivors of them and the heirs, executors and administrators of the last survivor, their/his or her assigns and the trust or trustees, for the time being, of the said trust) of the other part.

Whereas the settlers are desirous of creating a trust in respect of the sum of Rs. _____, [Rupees _____ only] in the manner hereinafter appearing.

And Whereas the trustees have consented to act as the first trustees of these presents and to accept the trusts under these presents as testified by their being parties to and executing the same.

NOW THIS INDENTURE WITNESSETH AS FOLLOWS :

- 1) The trust created by these presents shall be known as
- 2) The trustees so declare that they, the trustees, shall hold and stand possessed of the sum of Rs. [Rupees in words] as trust funds.
- 3) The registered office of the trust will be located at or at such other place as the trustees may decide from time to time.
- 4) **AIMS & OBJECTIVES**
 - i) To create awareness on various social, moral and economic issues affecting the country and to direct this awareness to developing innovative means of generating resources-financial, material and professional and channelise these resources through people and projects in the field ;

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- ii) To promote national integration and encourage, support and develop social welfare programmes for balanced growth of the nation ;
- iii) To provide financial or any other assistance towards relief and rehabilitation of the populace affected by calamities like cyclones, earthquakes, epidemics, fire, famine, floods, war, riots, etc. ;
- iv) To establish, maintain or support a home or homes for widows, orphans, special centres for providing shelter and protection to women and children in distress ;
- v) To create and promote enlightened public opinion on various issues affecting the citizens of India ;
- vi) To encourage conservation, afforestation and protection of the environment including birds, animals and all species of plants and animals ;
- vii) To provide food, clothing and shelter to all those in need and provide pecuniary assistance to those unable to fend for themselves due to old age, disease or any physical or mental handicap ;
- viii) To undertake, or assist in undertaking, projects like digging wells, providing drinking water facilities, fodder for cattle, grains, seeds and fertilizers for farming, agricultural tools etc. ;
- ix) To establish, maintain or support dharamshalas, resthouses, convalescing homes, health and immunisation camps, infirmaries, orphanages ;
- x) To provide assistance for building or maintaining roads, national and state highways, bridges, reservoirs, irrigation tanks, tube wells, recreation centres, parks, playgrounds for children, libraries, museums, art galleries, cultural centres for the benefit of the public and improving their quality of life ;
- xi) To support the initiative of any individual, group or organisation in promoting education both formal and informal and for children and adults ;
- xii) To establish, take over, run, maintain, assist and support hospitals, including mobile hospitals, charitable dispensaries, maternity homes, sanatoriums, medical centres, medical camps, health education and family planning centres, children welfare centres, natural health centres, nutrition centres and any other institution or forum for preventive, curative or primary health-care and treatment ;

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- xiii) To establish take over, run, maintain a centre or centres for senior citizens or retirement homes or old peoples homes with facilities for boarding, lodging, health-care, nutrition, recreation, etc., as may be necessary ;
- xiv) To construct lowcost buildings and houses for the poor, disadvantaged and those in distress, especially in the rural and/or urban slums or wherever found necessary ;
- xv) To conduct and organise seminars, workshops, conferences, meetings, public lectures.
- xvi) To provide assistance to approved funding agencies in verification of financial statements and progress reports of the voluntary organisation, pertaining to the said development projects and programmes in India.
- xvii) To pay all costs, charges and expenses incidental to the management, administration and execution of the objectives and powers herein contained.
- xviii) To open and maintain account or accounts for the Trust in any scheduled bank or banks for the purpose of keeping the moneys and to operate on the same or to authorise anyone or more to operate upon them.
- xix) To accept, in cash or kind, donations, gifts, grants, contributions, (as Corpus or otherwise) and to collect interest and other income of the Trust for being utilised for furtherance of the aims and objectives of the Trust.
- xx) To purchase or to take on lease lands, buildings and other immovable or movable properties in the name of the Trust.
- xxi) To invest, dispose of, transfer and otherwise deal with monies, assets and properties, for the time being, of the Trust in such manner as the law permits and proper to do in carrying out the objects of the Trust.
- xxii) To pay all expenses preliminary or incidental to the formation of the Trust and its registration and for management and administration for the same.
- xxiii) To do all such acts, deeds and things and extend all such other assistance to the said voluntary organisations as may be necessary and incidental to the attainment of aforesaid objects.

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- xxiv) All activities financed from the funds shall be conducted in accordance with the ideals and objects as stated hereinabove and no discrimination shall be made on grounds of religion, caste, creed, sex or political affiliation of the implementing agency or beneficiary.

5. BOARD OF TRUSTEES

- a) The management and control of the Trust and the Trust properties shall vest in the Board of Trustees which shall comprise of not less than two and not more than seven trustees including the Chairman and the Managing Trustees. All the Declarants herein will be the First Trustees. The Board of Trustees shall determine the strength of the Board from time to time.
- b) The tenure of the first Board of Trustees shall be for a period of five years and provisions for retirement of such Board of Trustees shall be applicable in respect of them only after first five years.
- c) All other Trustees to be appointed subsequently will hold office for a period of three years after which one-third of them shall retire by rotation on the basis of their seniority.

6. APPOINTMENT OF NEW TRUSTEES

Subject to the provisions contained in Clause 4 mentioned above, the appointment of new Trustees shall be Governed by the rules as follows :

- a) After the completion of the tenure of office of the Trustees, they shall retire but shall be eligible for reappointment.
- b) In case of vacancy/vacancies, new trustees shall be appointed from among the representatives of voluntary organisations, funding agencies and independent experts in the field of development, finance, legal and other related matters.
- c) Filling in of vacancies shall be by a decision of the Board of Trustees. As far as possible, efforts shall be made to fill in the vacancies by unanimous decisions failing which the majority decision shall prevail.
- d) If and as often as the trustees of THESE PRESENTS shall die or desire to retire or refuse or become incapable to act in the Trust thereof shall take the benefit of the insolvency law for the time being in force or if any Trustee shall remain absent from three consecutive meetings of the Trustees without leave of absence, then and in every such case, it shall be lawful for the surviving or

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continuing trustee or trustees for the time being of THESE PRESENTS to appoint new trustee so vacating their offices in the Board of Trustees.

7. EFFECT OF APPOINTMENT OF NEW TRUSTEES

Upon every such appointment made in pursuance of the last foregoing clauses thereof, the newly appointed Trustees shall have powers and authorities of a Trustee under THESE PRESENTS.

8. POWERS TO APPOINT COMMITTEES

The Board of Trustees shall be entitled from time to time to appoint with or without remuneration and on such terms and conditions as they may think proper, to appoint Committee as they may think proper to function under the Authority and control of the Trustees for carrying out the objects of the Trust of these presents or the management thereof and invest them with all such powers including power to incur all such expenditure as may be necessary for carrying out the objects of the Trust.

9. POWER TO DETERMINE ALL QUESTIONS OF DOUBT OR DIFFICULTY

It shall be lawful for the Board of Trustees to settle and determine all matters of interpretation of THESE PRESENT as well as matters of difficulty, doubt or dispute and all questions arising in the course of or incidental to the administration, management and execution of the trusts and powers of THESE PRESENT and any such settlement or determination shall be valid, binding and conclusive and shall not be objected to or re-opened upon any ground whatsoever.

10. POWER TO COMPROMISE

The Board of Trustees shall have full powers to settle compromise or compound, out of court, all suits, action and other proceedings and to settle all or other proceeding, difference of demand and adjust the settlement of all accounts relating thereto as fully as if they were absolutely entitled to the trust fund and without being answerable for the loss occasioned thereby.

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11. POWER TO PURCHASE, HIRE OR TAKE ON LEASE

The Board of Trustees shall be entitled to purchase or hire or to take on lease a property or properties for the purpose of carrying out the objects of the Trust hereby created.

12. POWER TO BORROW

The Trustees may from time to time, at their discretion for the furtherance and carrying out the objects of the Trust of THESE PRESENTS, borrow such sum as may be determined by the Board of Trustees from time to time in form and manner thereupon. The Trustee shall, at their discretion, make all such dispositions of the properties movable or immovable forming part of the Trust Fund or any part thereof and enter into such agreements, assurances and things in relation thereto as the Trustees may deem proper for giving security for such loan and interest.

13. INVESTMENT OF TRUST FUND

All money forming part of the Trust Fund and requiring investment shall be invested in any of the securities authorised by law for investment of Trust Funds which are permissible u/s 11 (5) of the Income Tax Act, 1961 or shall at their discretion sell and/or realise the same or any part thereof.

14. IN WHOSE NAME MONEY TO BE INVESTED

All money forming part of the Trust Fund requiring investments shall be invested and the conveyance of assurance in respect of any immovable property/properties forming part of the Trust Fund shall be obtained in the name/names of the Trustees for time being of the Board of Trustees.

15. OPENING BANK ACCOUNTS

The Board of Trustees of xxxxxxxx xxxxxxxx xxxxxxxx may open any banking account or accounts with such scheduled bank as may from time to time be determined by the Trustees and shall forthwith pay or cause to be paid the rents, income, dividends and all other money forming part of the Trust Fund to the credit of any such account or accounts and such accounts or account shall be operated upon by such of accounts or account shall be operated upon by such of the Trustees or other

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persons as may from time to time be authorised to do so by a resolution of the Board of Trustees.

16. ACCOUNT AND AUDIT

The Trustees shall maintain regular accounts of the trust funds and shall get the same duly audited by a firm of Chartered Accountants. The Accounts and Audit Report and report of the Trust shall be made up at least once in a year covering the accounting period as may be determined by the Board of Trustees from time to time.

17. POWER TO SELL THE IMMOVABLE PROPERTY AND MANAGE

- a) The Trustees shall have the power to buy, acquire, take on lease any property, movable and immovable that may be needed to carry out and further the objects of the Trust and incur all such expenses connected therewith.
- b) The Trustees shall, manage any immovable property or properties for the time being forming part of the Trust Fund in such manner as they shall think fit with full power to make improvement, repairs or alterations of any description and to make or incur any outlay for any such purposes or for the insurance or otherwise for the protection of benefits of the said premises and to grant or renew leases or tenancy of occupation and to make any agreements with tenants or occupiers or intending tenants or occupiers.
- c) The Trustees shall, if the need arises, sell or assign or lease any movable or immovable property or properties for the time being forming part of the Trust Fund together or in parts for the purpose aforesaid or any of them to execute and do all such assurances, acts, suits and things as they shall think fit.

18. RECEIPTS OF THE TRUSTEES

The receipts in writing by the Managing Trustee or any other person authorised by the Board of Trustees for any interest, dividend or income of the Trust Fund or for any deeds, papers, writing documents or other monies and effect payable to the Trustees shall be sufficient and effectual discharge for the same. The Board of Trustees by a resolution may also authorise any scheduled bank or other banks in India to collect any interest, dividend or income of the Trust Fund on their behalf.

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19. POWER TO AMEND THE RULES

If in the opinion, of the Trustees circumstances so require, the Trustees may unanimously make any amendment in the rules, they may consider necessary for the better management or administration of the Trust activities or for carrying out the objects of the Trust.

20. POWER TO MAKE RULES AND REGULATIONS

In addition to the aforesaid rules, the Trustees, shall from time to time, be entitled to make rules and regulations for the administration and management of the Trust of THESE PRESENTS and all matters incidental to or concerning the same PROVIDED, such rules and regulations shall not be repugnant to or be inconsistent with the provisions of the purposes of the Trust thereof.

21. POWER TO AMALGAMATE OTHER TRUST OR VICE-VERSA

The Trustees shall be at liberty to allow or to be allowed and permit, or to be permitted to amalgamate or to be amalgamated with any other Trust, Institution or Charity, in any areas or area whose objects are the same or similar to those of THESE PRESENTS, PROVIDED, they are not inconsistent with or repugnant to the objects hereof.

22. INDEMNITY TO THE TRUSTEES ETC.

The Trustees for the time being of THESE PRESENTS, shall be chargeable only for such monies, stocks, funds, deposits and securities as they shall actually receive, notwithstanding their signing of any receipt for the sake of confirmity and shall be answerable or accountable only for their own acts, receipts, neglects, defaults, and not for those of others or any banker, auctioneer or any other persons with whom or into whose hands any trust monies or securities may be deposited in accordance with THESE PRESENTS nor for the determination or loss of any stocks, funds, deposits or securities nor for any defects or insufficiency of title nor for any other losses unless the same shall happen through their own neglect or wilful demeanour.

23. POWER TO REIMBURSE

The Trustees of THESE PRESENTS ARE entitled to be reimbursed and also to pay and discharge out of the Trust Fund, all expenses incurred

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by them or on their behalf in or about the execution of the Trusts and powers of THESE PRESENTS in accordance with the decision of the Board of TRUSTEES.

IN WITNESS WHEREOF THE PARTIES hereto set their hands and seals, the day & the year first hereinabove written.

Signed, Sealed and Delivered
by the within named settlor

In presence of

Signed, Sealed and Delivered
the above named trustees

In presence of

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EXTRACT OF CBDT CIRCULAR NO. 8, DT. 27.08.2002

- 21.** Restriction on the application of accumulated income of the charitable or religious trusts.
- 21.1** Through Finance Act, 2002, an Explanation has been inserted below subsection (2) of section 11 so as to provide that any amount paid or credited out of income from property held under trust referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, either during the period of accumulation or thereafter, shall not be treated as application of income for charitable or religious purposes. Thus, payment to other trusts and institutions out of income from property held under trust in the year of receipt will continue to be treated as application of income. However, any such payment out of the accumulated income shall not be treated as application of income and will be taxed accordingly.
- 21.2** Through Finance Act, 2002, a new clause (d) has also been inserted in sub-section (3) of section 11 so as to provide that if any income referred to in sub-section (2) of the said section, is paid or credited to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or (v) or (vi) or (via) of clause (23C) of section 10, such payment or credit shall be deemed to be the income of the person making such payment or credit, of the previous year in which such payment or credit is made.
- 21.3** A proviso in sub-section (3A) has also been inserted so as to provide that the Assessing Officer shall not allow application of accumulated income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of section 11. This takes away the discretion of the Assessing Officer provided in sub-section (3A) to allow the trusts to apply the accumulated income for payment or credit to other charitable or religious trusts and institutions.
- 21.4** These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years. [Section 7]
- 22.** Condition of publication of accounts by religious and charitable trusts in a local newspaper has been dispensed with

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- 22.1** Under the existing provision contained in clause (c) of section 12A, the exemption under sections 11 and 12 is not available to a trust or institution, having total income exceeding one crore rupees (before giving effect to the provisions of sections 11 and 12), unless such trust or institution publishes its accounts in a local newspaper, before the due date of furnishing the return of income and also furnishes a copy of such newspaper along with the return of income.
- 22.2** Under the existing provisions contained in the ninth proviso of clause (23C) of section 10, income of trust or fund or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (iv), (v), (vi). (via) of the said clause, whose gross receipts exceed one crore rupees, is not exempt, unless the said trust or fund or institution or university or other educational institution or hospital or other institution, publishes its accounts in a local newspaper and furnishes a copy of such newspaper, along with the form of application for exemption or continuance thereof.
- 22.3** Since the trusts or institutions registered under section 12AA are already filing their returns, and the entities exempt under sub-clauses (iv), (v), (vi) and (via) are now also required to file their return of income, the requirement of publishing accounts in a local newspaper and furnishing a copy of such newspaper along with the return of income or along with the form of application for exemption or continuance thereof, as the case may be, has been dispensed with by omitting clause (c) of section 12A and ninth proviso to clause (23C) of section 10 through Finance Act, 2002.
- 22.4** These amendments take effect retrospectively from 1st April, 2002 and apply in relation to the assessment year 2002-2003 and subsequent years. [Sections 4(s) & 9]

Annexure-07

CIRCULAR ON CHARITABLE PURPOSE' UNDER SECTION 2(15)

Circular No. 11/2008, F. No.134/34//2008-TPL
Government of India, Ministry of Finance, Department of Revenue
Central Board of Direct Taxes, (Tax Policy & Legislation Division)
New Delhi, the 19th December, 2008

1. Section 2(15) of the Income-tax Act, 1961 ('Act') defines “charitable purpose” to include the following :—

- (i) Relief of the poor
- (ii) Education
- (iii) Medical relief, and
- (iv) The advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of ‘charitable purpose’. Therefore, section 2(15) was amended *vide* Finance Act, 2008 by adding a proviso which states that the ‘advancement of any other object of general public utility’ shall not be a charitable purpose if it involves the carrying on of—

- (a) any activity in the nature of trade, commerce or business; or
- (b) any activity of rendering any service in relation to any trade, commerce or business; for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

2. The following implications arise from this amendment.

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), *i.e.*, relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute ‘charitable purpose’ even if it incidentally involves the carrying on of commercial activities.

2.2 ‘Relief of the poor’ encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that :—

- (i) the business should be incidental to the attainment of the objectives of the entity, and
- (ii) separate books of account should be maintained in respect of such business.

Annexure-07

Similarly, entities whose object is ‘education’ or ‘medical relief’ would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is ‘advancement of any other object of general public utility’ *i.e.*, the fourth limb of the definition of ‘charitable purpose’ contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under ‘any other object of general public utility’. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, *where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality.* However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

3.2 In the final analysis, however, whether the assessee has for its object ‘the advancement of any other object of general public utility’ is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of ‘general public utility’ will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is ‘charitable purpose’ within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business.

(Pradip Mehrotra)
Director (TPL-I)

Annexure-08

FORM NO. 10G

(See rule 11AA)

**Application for grant of approval or continuance thereof to institution
or fund under section 80G(5)(vi) of the Income-tax Act, 1961**

1. Name of the institution/fund in full (in block letter)
2. Address of the registered office of the institution/fund
3. Legal status [please specify whether the institution/fund is
 - i) constituted as public charitable trust ;
 - ii) registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India ;
 - iii) registered under section 25 of the Companies Act, 1956 (1 of 1956) ;
 - iv) a University established by law ;
 - v) any other educational institution recognised by the Government or by any University established by law or affiliated to any University established by law ;
 - vi) an institution wholly or partly financed by the Government or a local authority ;
 - vii) an institution established with the object of controlling, supervising, regulating or encouraging games or sports and is approved for this purpose under section 10(23), or ;
 - viii) a Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of past or present members of such forces or their dependants]
4. Objects of the institution/fund and geographical area over which its activities are undertaken :
5. Names and addresses of trustees/office-bearers of the institution or fund.
6.
 - i) If registered under section 12A(a) of the Income-tax Act, 1961, the registration number\ and date of registration ;
 - ii) If notified under section 10(23) or under section 10(23C) of the Income tax Act, the details thereof ;
 - iii) If responses to (i) & (ii) are negative, whether any application for the same has been filed ? If yes, enclose a copy of the same.
7.
 - (a) Period of last approval, if any please enclose a copy of the approval ;
 - (b) If any change in the aims and objects and the rules and regulations have been made since the last approval, the details thereof.

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8. Assessment particulars :-

- (a) Ward/Circle where assessed and permanent account number/GIR number ;
- (b) Is the income exempt under sections 10(22), 10(22A), 10(23), 10(23AA), 10(23C) or 11 ?
- (c) Whether any arrears of taxes are outstanding ? If so, give reasons.

9. Amount accumulated for the purposes mentioned in item (4) above.

10. i) Details of modes in which the funds are invested or deposited, showing the nature, value and income from the investment ;

ii) Whether any funds have not been invested in the modes specified in section 11(5)?

11. i) Is the institution/fund carrying on any business ? If yes, give details.

ii) Is the business incidental to the attainment of its objects ?

12. Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilised.

13. Details of shares, security or other property purchased by or on behalf of the trust from any interested person as specified in sub-section (3) of section 13.

14. Whether any part of the income or any property of the association was used or applied in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13 ? if so, details thereof.

I certify that information furnished above is true to the best of my knowledge and belief.

I undertake to communicate forthwith any alternation in the terms or in the rules governing the institution/fund made at any time hereafter.

Place :

Date :

Signed

Designation

Address

Annexure-09

ANNEXURE-FORM 10B

Statement of Particulars

I. Application of income for charitable or religious purposes

1. Amount of income of the previous year applied to charitable or religious purposes in India during the year.
2. Whether the trust/institution has exercised the option under clause (2) of the Explanation to section 11(1) ? If so, the details of the amount of income deemed to have been applied to charitable or religious purposes in India during the previous year.
3. Amount of income accumulated or set apart finally set apart for application to charitable or religious purposes, to the extent it does not exceed 25 % of income derived from property held under trust *wholly/in part only* for such purposes.
4. Amount of income eligible for exemption u/s 11(1)(c) (Give details)
5. Amount of income, in addition to the amount referred to in item 3 above, accumulated or set apart for specified purposes under section 11(2).
6. Whether the amount of income mentioned in item 5 above has been invested or deposited in the manner laid down in section 11(2)(b) ? If so, the details thereof.
7. Whether any part of the income in respect of which an option was exercised under clause (2) of the Explanation to section 11(1) in any earlier year is deemed to be income of the previous year under section 11(1B) ? If so, the details thereof.
8. Whether, during the previous year, any part of income accumulated or set apart for specified purposes under section 11(2) in any earlier-year.
 - (a) has been applied for purposes other than charitable or religious purposes or has ceased to be accumulated or set apart for application thereto, or
 - (b) has ceased to remain invested in any security referred to in section 11(2) (b)(i) or deposited in any account referred to in section 11(2)(b)(ii), or section 11(2)(b)(iii), or

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- (c) has not been utilised for purposes for which it was accumulated or set apart during the period for which it is to be accumulated or set apart during the period for which it was to be accumulated or set apart, or in the year immediately following the expiry thereof ? If so, the details thereof.

II. Application or use of income or property for the benefit of persons referred to in section 13(3)

1. Whether any part of the income or property of the trust/institution was lent, or continues to be lent, in the previous year to any person referred to in section 13(3) (hereinafter referred to in this Annexure as such person) ? If so, give details of the amount, rate of interest charged and the nature of security, if any.
2. Whether any land, building or other property of the trust/institution was made, or continued to be made, available for the use of any such person during the previous year ? If so, give details of the property and the amount of rent or comparison charged, if any.
3. Whether any payment was made to any such person during the previous year by way of salary, allowance or otherwise ? If so, give details.
4. Whether the services of the trust/institution were made available to any such person during the previous year ? If so, give details thereof together with remuneration or compensation received, if any.
5. Whether any share, security or other property was purchased by or on behalf of the trust/institution during the previous year from any such person ? If so, give details thereof together with the consideration paid.
6. Whether any share, security or other property was sold by or on behalf of the trust/institution during the previous year to any such person ? If so, give details thereof together with the consideration received.
7. Whether any income or property of the trust/institution was diverted during the previous year in favour of any such person ? If so, give details thereof together with the amount of income or value of property so diverted.
8. Whether the income or property of the trust/institution was used or applied during the previous year for the benefit of any such person in any other manner ? If so, give details.

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III. Investments held at any time during the previous year(s) in concerns in which persons referred to in section 13(3) have substantial interest.

Sl.No.	Name and Address of the concern	Where the concern is a company, number and and class of shares held	Nominal Value of the investment	Income from the investment Yes/No	Whether the amount in col. 4 exceeded 5% of the capital of the concern during previous Year-say,
1	2	3	4	5	6
Total					

Place :

Date :

Signed

Accountant