INTERface

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Key Highlighis:

- Major changes for NGOs under budget 2020
- Amendments for MPOs under Atma-Nirbhar Bharat Abhiyan
- Financial Support to Poor Beneficiaries
- Highlights of PM care fund
- FAQs on section 8 companies
- Social Stock Exchange - Challenges and Opportunities
- Virtual meetings under Companies Act 2013
- Social Audit and stakeholder participation
- Draft CSR Rules 2020- Myths & Mysteries

Between Us

A Donor's dilemma

I came across this fascinating story I don't know the author of the story but let me invite you to go through it with me:

While walking back home one day, I noticed a poster hanging on an electric pole. It was written, "An Important Note-Please read carefully". I walked closer and started reading it. It was written on the poster, "I lost Rupees 50/- on this road yesterday. I cannot see properly. If anyone finds it, please handover to me at this address".

After reading it, I became inquisitive. Someone seemed to be telling me to go and check out the address given. The place was close by and was at a walkable distance in the next lane. I slowly started walking on that lane and at the end found a run-down thatched house. The house was telling the story of abject poverty of the occupant. I called out and an old lady came out slowly with a walking stick. I could sense that she was staying there alone.

I told her "Grand Ma, I have found your Rupees 50/- that you lost the other day and have come to hand it over to you". She was in tears and told me "Son, you are the 60th person to have come and offered to give me Rupees 50/-. The fact is that I am an illiterate person and I can't even go out. I don't know, may be a kind hearted person has put up the poster after looking at my pitiable condition"

Only after my persistent appeal to her, she agreed to keep the money. But she made a request. "My son, I have not written that poster. I have lived a truthful life so far. Please tear off the poster while you go back".

I assured her that I would tear it off and started walking back, but there was a conflict going on inside me. One part of me was saying to tear it off as promised to her and, the other part of me was telling me that she would have made a similar request to the 59 people who had gone to help her before me. None of them tore it off. Why should I???

What would you do?

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The opinions expressed by the authors are not necessarily that of FMSF

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Changes for NGOs in Budget 2020

The Finance Bill 2020 has made far reaching changes pertaining to the registration and exemptions of charitable institutions. In this issue an overview of the major changes are discussed.

The Finance Bill 2020 has proposed sweeping changes with regard to the existing registrations under various sections of the Income Tax Act 1961. All the existing charitable and religious institutions are registered/approved under the following sections:

- Section 12A (organisations registered prior to 1996)
- Section 12AA
- Section 10(23C)
- Section 80G1

Now they are required to apply for re-validation within three months from 1st June 2020. Registration so re-validated shall be valid only for 5 years. The application for the renewal of registration (after five years) needs to be submitted atleast six months prior to the expiry of validity period.

The implications of the above amendment are as under:

- The Government will create a national register of all the charitable and religious institutions. Currently the registration is issued and recorded locally.
- The exercise of revalidation of all the charitable institutions will enable the Government to weed out all the inactive and defunct charitable institutions.
- The renewal of both 12A and 12AA, every five years, will provide an opportunity to withdraw the exemptions without going through the complicated cancellation provisions. It may be noted that an organization can be denied renewal even for violations under other laws as may be deemed material for the purpose of achieving its objectives. For instance if the renewal is denied under FCRA then one can expect that the renewal of registration under Income Tax laws may also be denied. In this context it may be noted that the phrase used is "The law which are material for the purpose of achieving its objective", as per our understanding NGOs are subject to primarily three types of laws:
- Activity based laws like health license for running a hospital
- Operational laws like labour law
- Fiscal laws like FCRA for receiving foreign funds.
- The Income Tax Department shall issue an Unique Identification Number to all the charitable and religious institutions.

The amended law should primarily apply to the violation of activity based or fiscal law which has a direct effect on the activities, however, there is a need for clarity in this regard otherwise this provision could be misused and result in hardship to the NGOs.

Registration of New NGOs

The Finance Bill 2020 provides a provisional registration for three years for all new organisations applying for exemptions under various sections. The registration once granted shall be valid for three years from the Assessment Year from which the registration is sought. This provision seems to be towards rationalising the registration process. The organisations shall be entitled for provisional registration based on the documents and self declaration. Application for renewal of such new registration needs to be submitted at least six months prior to the expiry of validity period and registration so granted shall be valid for 5 years.

Additional Issues Under New Registration:

- As per the proposed provisions of registration, section12A provides for time line of application of registration and section12AB provides for process to be followed for granting registration as well as the period of validity of registration.
- Subsection(vi) of section12AA provides that in cases of new registration, application shall be ubmitted, atleast one month prior to the commencement of the previous year relevant to the assessment year for which registration is sought, meaning there by new NGO will not been titled to have the benefit of registration of section12AB in the first year of operation.

Cessation of Simultaneous Benefit under two sections

Under the prevailing law, an organisation registered under section 12AA can also avail approval under section 10(23C), thereby can have the option of availing tax exemptions under either of the two sections. The Finance Bill 2020 proposes that an organisation cannot simultaneously enjoy exemptions under two provisions. By amendment in Section 11 it is clarified that if the benefit of approval u/s.12A is opted for, then the other approval if any i.e. under section 10(23C), 10(46) shall becomes inoperative and vice-versa. Hence only one approval is effective at a time. It may be noted all organisation should apply for re-validation of either or 12A or 10(23C) or 10(46), otherwise if multiple application for re-validation are made then the 12A registration will become inoperative.

If anyone want to re-activate the other approval, then it can be done within six months prior to the commencement of the Assessment Year from which the said registration is sought to be operative and in such case the existing registration shall become inoperative. This provision shall apply to all existing and future institutions, for example all the existing institutions having registration under section 12A or 12AA or section 10(23C) or 10(46) shall have to opt for exemption either under section 11 or under 10.

Changes in Audit requirement

Under the Section12A(b) of the Income Tax Act there is a condition for audit in Form10B & furnishing of the audit report along with return. However, there is no mention of the time limit by which audit report has to be obtained.

Now the Finance Bill 2020 has provided the time limit within which the audit report has to be obtained and the time limit so specified is in accordance with the specified date as per Sec.44AB of the Income Tax Act, 1961, which provides:

"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means date one month prior to [the due date for furnishing the return of in come under sub-section (1) of section139]".

Hence it becomes mandatory that audit report needs to be obtained one month prior to due date i.e. before 30th September of every year, even if for some reason the filing of Audit Report is delayed. It is to be noted that due date is also proposed to be amended to 31st October, in place of 30th September.

80 G- Amendments

Benefit to Donors: The Finance Bill 2020 provides that the donee institution/ fund has to submit the statement of donation received in such form & manner as may be prescribed & the benefit of 80G shall be available to donor on the basis of information relating to donation furnished by the corresponding institution/fund. This amendment is a welcome change and shall provide transparency and ease in availing the 80G benefit. Further the Income Tax Department can also maintain and track the 80G related transactions at the national level.

Validity & Re-Approvals: Presently the approval u/s 80G is valid in perpetuity. The Finance Bill 2020 provides that all the existing 80G approvals needs to be revalidated and the application for the same should be submitted within three monthsfrom the date on which the proposed amendment come into force.

The re approvals will be valid for a period of 5 years and thereafter approval for 80G has to be again applied for atleast 6 months prior to the validity period. New applications for approval under section 80G shall be approved only for a period of 3 years and thereafter approval for 80G needs to be re- applied atleast 6 months prior to the validity period. The subsequent approval shall be valid for five years.

The abovementioned amendments were proposed to come into effect from 1st June 2020,Subsequently, the said proposals were passed and released through Finance Act, 2020. However, due to unprecedent situation of COVID-19, the Ministry of Finance has announced that the implementation of the new procedure for approval/registration has been deferred to 1st October, 2020.

Deferment of the Due Dates for re-application and revalidation of the registrations under section 10(23C), 12AA, 35 and 80G of the Income Tax Act, 1961.

The Finance Bill, 2020 had proposed to revalidate the existing approvals and Registration granted under Section 12A, 10(23C), 35 and 80G under the Income Tax Act. The said proposal stated that every existing registration under the said sections would need to be re-validated within 3 months from 1st June 2020 i.e. on or before, 31st August, 2020. Subsequently, the said proposals were passed and released through Finance Act, 2020.

However, due to the unprecedented situation of COVID-19, the Ministry of Finance has announced through a press release dated 9th May, 2020, that the implementation of the new procedure for approval/ registration has been deferred to 1st October, 2020. In other words, the registration under section 10(23C), 12AA, 35 and 80G of the Income Tax Act would be required to be filed for revalidation within 3 months from 1st October, 2020 i.e. by 31st December, 2020.

As per the press release, the notification and the necessary legislative amendments shall be issued in due course by the department. Also, the forms of the respective revalidations are yet to be uploaded/intimated by the Department.

Ministry of Finance

New procedure for registration, approval, etc. of certain entities deferred to 1st October, 2020

Posted On: 09 MAY 2020 10:41AM by PIB Delhi

In view of the unprecedented humanitarian and economic crisis, the CBDT has decided that the implementation of new procedure for approval/ registration/notification of certain entities shall be deferred to 1st October, 2020. Accordingly, the entities approved/ registered/ notified under section 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 (the Act) would be required to file intimation within three months from 1st October, 2020, i.e, by 31st December, 2020. Further, the amended procedure for approval/ registration/ notification of new entities shall also apply from 1st October, 2020.

The necessary legislative amendments in this regard shall be proposed in due course. Various representations were received in the finance ministry expressing concerns over the implementation of the new procedure from 1st June, 2020 due to the outbreak of novel corona virus (COVID-19) and consequent lockdown. There have been a number of requests to defer the applicability of the new procedure.

It may be noted that The Finance Act, 2020 rationalized the procedure relating to approval/ registration/ notification of certain entities referred to in sections 10(23C), 12AA, 35 and 80G of the Act, with effect from 1st June, 2020. As per the new procedure, the entities already approved/ registered/ notified under these sections would be required to file intimation within three months, i.e, by 31st August, 2020. Further, the procedure for approval/ registration/ notification of new entities has also been rationalized with effect from 1st June, 2020.

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Atma-Nirbhar Bharat Abhiyan

Government of India has announced Atma-nirbhar Bharat Abhiyan (or Self-reliant India Mission) following which, the government has unveiled the details of economic packages for various sectors. The economic package has also brought some legislative amendments that would impact the financial and legal operations of NPOs, which have been described below

Reduction in Rates of Tax Deduction at Source (TDS) & Tax Collection at Source (TCS):

Collection at Source (TCS). In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of Covid-19 pandemic, the rates of the TDS for non-salaried specified payments made to residents has been reduced by 25% for the period from 14th may 2020 to 31st March 2021. Among various non-salaried specified payments, NPOs frequently deals with the following payments which attract TDS:

In other words, TDS on the amount paid or credited by NPOs during the period from 14th may 2020 to 31st March 2021, shall be deducted and deposited at the reduced rate. However, there will be no reduction in rates of TDS or TCS where the tax is required to be deducted or collected at higher rate due to non-furnishing of PAN/Aadhar.

Extension of Due date of Income Tax Return

Earlier, the Income Tax returns for the NGOs had to be filed under section 139 (4A) on or before 31st October, 2020. Now, under this package, the due date for filing income tax returns under the said section has been extended to 30th November, 2020. Also, the due date for filing of Tax Audit Report (Filed under form 10B in the case of NGOs availing exemption under section 11) shall be extended from **30th September 2020 to 31st October2020.**

Section	Nature of payment	Existing Rate	Reduced rate (14.05.2020
194C	Payments to Contractors	1% (Ind/Huf) 2% (Others)	0.75% (Ind/Huf) 1.5% (Others
194 I 194 I	Rent for plant &machinery Rent for immovable property	2% 10%	1.5% 7.5%
194 J	Fees for professional/ technical service	10%	7.5%

Reduced Employee Provident funds contribution:

Earlier, the NGOs (having more than 20 employees) had to contribute 12% each from the employees and the employers as a part of the Provident fund contribution as per the relevant Act. Now, there has been an amendment in this regard which states that, for the next three months (June2020, July 2020, and August 2020) Employee provident fund (EPF) contribution will be 10% each for employees and employers as compared to the statutory obligation of 12%. In other words, the EPF contribution has been reduced from 12% to 10% in case of employee and employers contribution towards provident fund for the next 3 months.

Processing of Refunds:

As per the press release dated 13th May 2020, it has been mentioned that all the pending refunds to charitable trust and non-corporate business and professions shall be released soon. The specific dates or time limits have not been prescribed as yet.

Financial Support to Poor Beneficiaries

In the difficult times of Corona Covid-19 pandemic, many NGOs are helping poor beneficiaries with financial support for survival or basic necessities such as medicine or food. In this regard, doubts have been raised by the NGOs and experts on whether such financial support to beneficiaries is legally permissible or not, particularly, as per the provisions of Foreign Contribution Regulation Act 2010 (FCRA 2010).

In the light of the statutory provisions and the judicial precedence, it seems that it is permissible to provide financial support to poor beneficiaries for survival or basic necessities such as medicine or food. However, certain procedures and compliances have to be followed. In this issue we will discuss the law in this regard.

Is Cash Transfer to the Beneficiaries violates the Law?

In our opinion any financial support to poor indigent beneficiary will be treated as valid application under FCRA 2010 as well as the Income Tax Act 1961. Any reasonable amount provided to beneficiaries for self-consumption should be treated as valid application. On the other hand, the applicability of FCRA at the level of an NGO will become relevant if such beneficiary is not entitled to receive such support without FCRA permission.

The FCRA 2010 has been enacted to regulate only certain specified individuals. It applies to all Indian citizens but it regulates only specified individuals. The preamble of FCRA 2010 is reproduced as under:

"An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected herewith or incidental there to."

From the preamble it is clear that this act intends to regulate certain institutions and individuals. In fact, the FCRA 2010 has carved out three categories of individuals:

- Firstly, prohibited persons under section 3, where 8 categories of individuals & institutions are prohibited from receiving foreign contribution. It may be noted that even individuals in the prohibited cateogry can receive gifts and scholarships under section 4(d) and 4(f) respectively.
- Secondly, the regulated persons under section 11 various institutions and individuals are required to take prior permission or registration under FCRA 2010 only if they receive foreign contribution for a definite cultural, economic, educational, religious or social programme. In other words, such persons should receive FC funds as

a trustee for the aforesaid definite programme. In other words, FCRA 2010 shall apply only if the recipient has a definite programme and it does not apply to personal support for self-consumption unless such individual is prohibited under section 3.

- The residual category, not covered in the above two and therefore are not regulated by FCRA 2010.

Section 7 of FCRA 2010 provides that foreign contribution should not be transferred to any person unless provisions of section 11 are complied with. Both section 7 and section 11 apply to the regulated category of individuals in consonance with the preamble of FCRA 2010.

It is important to note that section 7 uses the words "shall transfer such foreign contribution to any other person unless such other person is also registered....." The use of the word transfer can only be in context of transfer to a person referred to in section 11, otherwise any transfer such as transfer to a vendor or employee would also be prohibited. In other words, section 7 does not apply to utilisation related transfers. Further, the use of phrase "such foreign contribution" also signifies that it applies that portion of foreign contribution which is transferred to any person subject to the provisions of section 11. In other words, end utilisation towards charitable purposes are not barred.

However, for a FC registered NGO it would be necessary to establish that any financial support to beneficiaries would qualify as a valid charitable activity permissible both under FCRA 2010 and the Income Tax law. The FCRA 2010 allows all kinds of expenditure for social/charitable purposes except

(i) On speculative business under section 8(1)(a),
(ii) Administrative expenses in excess of 50% of total expenses under section 8(1)(b).

Does FCRA law allows all kind of Gifts?

Providing financial support to poor beneficiaries is not exactly in the nature of a gift. Such support is a redemption of the right of such poor beneficiaries and should not be equated with a gift, particularly because NGOs hold funds on behalf of public at large both in restricted and unrestricted form. Such expenditures are valid charitable activities.

Further, even gifts for self-consumption do not seem to be covered by FCRA 2010. Any gift received from a foreign source falls under the definition of foreign contribution, but only foreign contributions received for a definite purpose are regulated. In other words, when a person receives foreign contribution for any specific charitable purpose then only FCRA law will apply, but if a poor beneficiary receives foreign contribution for self-consumption then FCRA law will not apply.

It is emphasised that Section 11(1) of FCRA, 2010 requires that only if any person has a definite cultural, economic, educational, religious or social programmethen prior permission or registration is required to receive such foreign contribution. When gift from foreign source is received it is for self consumption and no definite purpose is attached and therefore, such receipts are not regulated by FCRA, 2010.

Will transfer to large number of beneficiaries have implications under income tax or FCRA?

Providing financial support to deserving beneficiaries, particularly, in an unprecedented situation like the COVID-19 Pandemic, is a genuine charitable activity. The Supreme Court in the case of Thiagarajar Charities v. ACIT [1997] 92 Taxman 152, has held that the scope of "relief for poor" is very wide and it can even include businesses carried on for the benefit of the poor. In this case, the objects of the Thiagarajar trust were studied and debated whether they could be considered as "relief for

poor". Some of the objects of the trust which were held to be towards "relief for poor" are as under.

- *"To build, erect and construct and to aid and assist in the building erection and construction of houses, tenements and places of residence for the poor and needy and to afford them all comforts and conveniences.*
- *To conduct poor feeding and generally to give food and clothing to the poor, needy and defectives and to afford relief to people in distress and affected by earthquake, flood, famine, pestilence and other accidents and conduct or grant donations for the support of the inmates of orphanages*
- *To help, assist and give aid to the fathers, or other natural guardians, or near relatives of indigent and unmarried girls for the marriages of uch girls."*

1.4.2 Further, CBDT in its Circular No. 11/2008 [F. No. 134/34/2008-TPL] has defined the term 'Relief of the poor' as "'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)."

In the light of the above there is no direct implication in the existing Income Tax cases or FCRA compliances.

Precautions to be taken by NGOs while providing financial support

As the activity involves direct cash transfers, it is advisable that the identification of beneficiaries is made through the participation of people, panchayat and local authorities. Further, the purpose of such transfers should be documented with the trail of information regarding the beneficiaries. Further, it is desirable to make the direct cash transfers to the bank account of the beneficiaries only. It should be ensured that the transfer is not made to any account other than the bank account of the beneficiaries. Cash payments should be avoided in the light of "Do's and Dont's" issued by the FCRA Department restricting cash expenditure to Rs. 2,000/- only. It may be noted that the "Do's and Dont's" are not formally notified by the FCRA Department therefore, they should be treated as a recommended practice.

The FCRA Department has further issued a Charter for Registered organisations where it provides a Rs. 20,000/- limit for cash expenditure. This document is also not formally notified. The PDF file of Do's & Don'ts and charter for registered organisation are available to download on FCRA website.

Contribution in Kind to Beneficiaries

In the difficult times of Corona Covid-19 pandemic, many NGOs are helping poor beneficiaries with financial and material support for survival or basic necessities. The NGOs has raised various doubts pertaining to help or contribution in kind to beneficiaries.

In the light of the statutory provisions and the judicial precedence it seems that it is permissible to provide contribution in kind to poor beneficiaries for survival or basic necessities. Here, we are providing FAQs on various doubts raised by the NGOs and experts on contribution in kind to beneficiaries.

Can a foreign donor transfer material directly to a beneficiary in India?

This issue is complex and multifaceted and has to be understood as under:

- A foreign donor has no legal sanction to do charitable activity in India. A foreign donor to have activity in India should have a branch office approval from the Reserve Bank of India under the Foreign Exchange Management Act 1999 (FEMA). Further, there is a circular issued by RBI directing branch and liaison offices of foreign donors to seek approval from FCRA authorities to receive foreign contribution in India. However, an Indian citizen can receive gifts/articles from a foreign entity including a donor without approval of FCRA, 2010, subject to certain conditions: An individual can receive an Article upto Rs. 1 lakh as it is excluded from the definition of foreign contribution under section 2(h)(i) of FCRA 2010 read with under Rule 6A of Foreign Contribution (Regulation) (Second Amendment) Rules, 2019. Such Indian citizen can be a beneficiary or a deprived person receiving the gift for self consumption.
- Therefore, a foreign donor may gift some material to a particular beneficiary but it cannot distribute material directly to a large number of beneficiaries, as any such activity will be deemed as advancement of charitable activity in India without approval under FEMA.

Can a foreign national (foreign source) transfer material to his friend in India? What are the legal consequences?

A foreign national can gift material upto Rs. 1 lakh to his/her friend in India. However, to support a large number of beneficiaries the foreign national has to work through an NGO registered under FCRA 2010.

Can a FC registered NGO purchase and distribute material/ equipments among beneficiaries even if the cost of the material is close to Rs. 1 lakh per beneficiary?

In principle an FC registered organisation can purchase a capital asset or a high value item and hand it over to a beneficiary. However, in practice it will be difficult to establish how a

particular beneficiary deserved to be the sole beneficiary of a high value item. We have to understand that the beneficiary is entitled to receive gift upto Rs. 1 lakh without FC approval, but the NGO is not entitled to distribute high value gift to selected persons. The NGO has to establish that the funds were utilized towards 'relief to poor'. Under normal circumstances it would not be possible to establish such activity as utilized towards 'relief to poor'. Therefore, the distribution of material should be reasonable and need based. Further, if a capital asset is provided to a group of beneficiaries then it would tantamount to providing the asset to an SHG or a Association of Person on behalf of the beneficiaries. For such transfers permission in Form FC-5 under Rule 24 of FCR Rule 2011 shall become necessary.

Can an NGO receive material from foreign sources and distribute them among beneficiaries?

Yes, an NGO which is registered under FCRA 2010 or possesses prior permission can receive material from foreign sources and distribute them among beneficiaries.

Can an NGO purchase material out of FC funds and hand it over to a Self-Help Group for distribution to its members?

An NGO cannot hand over material purchased out of FC Funds to a Self-Help Group (SHG) for distribution to its members. However, the NGO can purchase and directly distribute the materials to the beneficiaries. To distributethe materials through SHG for distribution to its members, the NGO should take permission by filing Form FC-5 under Rule 24 of FCRR Rule 2011. In case of direct distribution to the beneficiaries, the material so distributed shall be treated as utilization in the books of the NGO and self-consumption at the hands of the beneficiary. However, if the materials are given to a SHG for distribution then such SHG would receive the material for a definite purpose and therefore, it cannot receive without registration or prior permission as provided in section 11 of FCRA 2010.

Sometimes NGOs may use a local SHG as the facilitator for distribution of material. In such circumstances, the NGO should ensure that the SHG is not acting in an independent capacity and all the records and processes are being conducted by the NGO directly. For example identification of beneficiary, maintenance of distribution records etc. should be managed by the NGO and also be in the name of the NGO.

Can an NGO purchase material out of FC funds and hand it over to another FC registered organization and then that recipient organization distributes it among beneficiaries?

Yes, an NGO can purchase material out of FC funds and hand it over to another FC registered organization and then that recipient organization distributes it among beneficiaries. In this case the material donated shall be treated as contribution in kind in the books of both the donor and donee organisation.

The question of law in this query is, at what point the material shall be deemed as utilized in the books of the donor NGO? Will it be at the time of purchase of material or at the time of transfer of material to the other NGO? In our opinion the donor NGO should treat the fund as utilized at the time of purchase and subsequently when the material are transferred to the donee NGO such transfer should be treated as contribution in kind in the books of both the donor and donee organisations.

Can an FC registered organization receive material from foreign sources and keep part of it for their own use in the organization and the rest be distributed among beneficiaries?

An NGO holds everything on behalf of

public at large, and therefore there is nothing called own use of an NGO. If an NGO receives materials from a foreign donor, unconditionally, then it can decide the distribution pattern and beneficiaries. However, If an NGO receives materials from foreign donor, with restrictions, then it has to follow the distribution pattern and beneficiaries as agreed upon. In either case, nobody except deserving beneficiaries should be benefit out of such materials.

Can an FC registered organization purchase material from FC funds and distribute them directly among beneficiaries?

Yes, however, the NGO should do appropriate due diligence to ensure that the material is distributed amongst deserving beneficiaries only The NGO should keep proper documentation of distribution of material and verifiable record of the beneficiaries.

Can an FC registered organization purchase a capital asset (E.g Tractor) from FC funds and hand it over to beneficiaries?

In principle an FC registered organisation can purchase a capital asset and hand it over to a beneficiary. However, in practice it will be difficult to establish how a particular beneficiary deserved to be the sole beneficiary of a high value item. Further, if a capital asset is provided to a group of beneficiaries then it would tantamount to providing the asset to an SHG or an Association of Persons on behalf of the beneficiaries. For such transfers, Form FC-5 should be filed to seek permission under Rule 24 of FCR Rule 2011.

What is the documentation needed for distribution of relief materials to the beneficiaries?

The purpose of such transfers should be documented with the trail of information regarding the beneficiaries. It is desirable to involve the local panchayat or other authorities in identification of beneficiaries. Further, supporting evidence regarding actual distribution and receipt by the beneficiary should be available. Photograph/video of distribution is treated as a valuable evidence. If the amount is relatively material (say material worth Rs. 3,000/- per beneficiary) then proof pertaining to identity and address may be collected. In all such projects the organisation should be sensitive at the time of distribution and if some minimal exceptions have to be made then such exceptions could be made with approval from appropriate internal authority (within the organisation)

Can material be transferred to another organization (not registered under FCRA) for distribution purposes, where such relief material has been bought from FCRA Funds?

No, material brought out of FC cannot be transferred to a non FC organisation.

How will the receipt of relief material be accounted for in the books of recipient organization? Will it be considered as Income for the purposes of Section 11 of the Act? What would be the valuation of such material for Accounting purposes?

The recipient organisation is not required to treat such material as income for the purposes of section 11 of the Income Tax Act, 1961. For the purposes of FCRA 2010 contribution received in kind is required to be recorded separately at a approximate or reasonable valuation. There is a CBDT Circular: No. 580, dated 14-9-1990, which clarifies that donation in kind other than jewellery and furniture (which are specifically exempted) are not subject to application. Annexure

Can a donor provide relief material to an 80G registered organization and claim deduction under the said section?

No, 80G benefit shall be available only if the NGO receives funds in cash or through banking channels from the donor.

Does the distribution of material to any board member or his/her relatives attract section 13(1) of the of the Income Tax Act?

Yes, the distribution of material to any board member or his/her relatives shall attract section 13(1) of the of the Income Tax Act. However, if the amount distributed is not material then the entire income will not be taxed and only the value of the material distributed for the benefit of the interested member shall be subjected to tax.

How do we report distribution of material to FCRA under COVID-19 reporting? How will the distribution of material till a particular date be valued?

The FCRA Department issued DO No. II/21022/36(0069)/2020-FCRA-II dated 01.04.2020 and followed it with a further instruction dated 07.04.2020 regarding the special reporting requirements under Covid-19.

All FCRA registered organisation have to provide detail of their Covid-19 related activities to the FCRA Department directly in the online COVID- 19 RESPONSE FORMAT that is available at FCRA login Portal https:// fcraonline.nic.in in the Service under FCRA tab. Organisations who have sent their report through email should resubmit the same information in the online format.

The online format may be updated by 15th of every month. At the time of updation, the latest details and figures (inclusive of all support provided till date) should be entered. In other words, cumulative total support provided should be entered as on date during each updation.The FAQs on the reporting on Covid-19 related work to FCRA Department are discussed in later part of the magazine.

With regard to contribution received in kind an organisation has to follow the rules regarding acceptance and distribution of contribution in kind. The organisation may value the material at an approximate or reasonable value on the date of receipt. There is no additional change in the quarterly and annual reporting requirements under FCRA 2010.

FAQs on the reporting on Covid-19 related work to FCRA Department

Whether it is compulsory to submit such reports?

It can be inferred that such reporting is not compulsory for any organization. It is more in the nature of appeal. However, it is advised to report the support related to COVID-19 in the said format and be actively involved in the process.

What if our organization has not provided any support?

As mentioned above, this is not a compulsory reporting and hence, may be avoided if no support is being provided by the organization.

Whether such reporting/non-reporting is linked to FCRA renewal of our organization?

In our opinion, the notice and the reporting formats do not suggest any linkage with FCRA Renewal. On the other hand, in case your organization is not reporting, it does not hamper your FCRA renewals due in 2021. However, it is advised that the Organisations support and engage actively in this pandemic of such magnitude.

Our organization has not received the notice in our registered e-mail id. Can we still report the relief support that is being provided?

In case, you have not received the FCRA notice in the registered mail id, you may not be required to report under the said portal. However, from a conservative point of view, it is advisable to visit the portal and check if the organization is required to report under the said portal. In case, it reflects a pop-up message that you may not be required to report, then it is suggested to take a screenshot of the message and keep for documentation purposes.

Whether we need to report FC funded support or all the support that is provided?

A5. Upon review of the Form, it clearly mentions to report that all the support provided till date needs to be mentioned. It does not differentiate between FC funds or local funds and hence, it is advised all the cumulative support provided till date (whether from FC Funds or Local funds) should be reported in this form. In such case, you can disclose the fact that the support is being provided from Local and FCRA Funds. The relevant text in the format has been reproduced as under:
"At the time of updation, the latest details and figures (inclusive of all support provided till date) should be entered. In other words, cumulative total support provided should be entered as on date during each updation"

Do I need to report if our organization has been engaged in in-kind distribution and not spending cash directly?

Yes, the reporting format includes the type of support that is being provided. Therefore, in case your organization is engaged in in-kind distribution, such as distribution of food, clothes, santizers, soaps etc, then the same should be reported as well. Further, an estimated value of goods distributed needs to be mentioned in the amount column in the said format.

Our organization has planned for distribution in the upcoming days; however, we have not provided any support till date. Do I need to report the planned activities?

The earlier format provided that the planned activities and the estimated amount needs to be reported.

However, the form has been revised subsequently. Now, the reporting formats suggests that the organization needs to report the actual support provided till date and not the planned activities. The organization can report through the online portal by the 15th of every month regarding the activities completed till such reporting date.

There is a list of activities mentioned in the Notice. Do we need to confine our reporting only to such activities?

No, you can report any kind of support that is being provided by your organization. The list of activities are only suggestive in nature and not exhaustive. You can mention the type of support that is being provided in the reporting format irrespective of whether such support is being included in the notice or not. Further, an estimated value of such support in monetary terms can be mentioned in the space provided for such information.

Can I update the support related information once it has been filed at the online portal?

Yes, it should be noted here that the reporting format requires to 'save and update' and there is no option for upload. This implies that we can update the information multiple times as and whenrequired. However, as suggested in the notice, we should update the information prior to 15th of every month at the online portal.

Can we provide funds to other organization who is in relief work related to COVID-19 and report it hereof?

Yes, technically this is possible, since funds have been provided for COVID- 19 response. However, the donor organization should take care of the following things while reporting such support;

- Donor Organization should state in writing about the support related to COVID-19 to the recipien organization in its donation letter.
- In case, FC funds are being provided, the recipient organization should have a valid FCRA registration and 12A registration to receive FC Funds.
- In case, local funds are provided, the recipient organization should have a valid 12A registration to receive tax-free donations.

"PM Care Fund- Exceptional situations calls for exceptional measures"

Keeping in mind the need for having a dedicated national fund with the primary objective of dealing with any kind of emergency or distress situation, like posed by the COVID-19 pandemic, and to provide relief to the affected, a public charitable trust under the name of 'Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund)' has been set up.

As legit charity can only be done from your income. So, in order to encourage charity, the Government of India thought to give some tax reliefs to emergency situational contributions. That is why there is 80G, which says the trust and institutions that would be notified under this will get 50 per cent exemption. But over a period of time, many issues of national importance came into emergence that led the government give 100 per cent exemption, as given under PM Relief Fund and CM Relief Fund.

When PM CARE Fund (Dedicated to fight COVID-19) was created, the government instead of putting this under special category, had put it under the general category and that is where the confusion came in. The issue was flagged to Central Board of Direct Taxes (CBDT) that if the contribution to the PM CARES fund is eligible only for 50 per cent deduction then why not contribute to PM Relief Fund where the contribution is eligible for 100 per cent deduction. After this, a notification by the government on On 31st March, 2020 finally put this under special category and put all the confusion to rest.

In that notification the Centre On 31st March, 2020 clarified that the donation to the PM CARES Fund shall be eligible for 100 per cent deduction without limit under 80G of the Income Tax Act and will get same tax treatment as available to the Prime Minister's Relief Fund. This clarification has three aspects:

First, the PM CARES Fund will get the same tax treatment as available to the Prime Minister National Relief Fund. So, donations to the PM CARES Fund shall be eligible for 100 per cent deduction under section 80G of the Income Tax Act.

What this means: Say, your income is Rs. 20 lakh and you donate Rs 2.5 lakh to the PM CARES fund. You get a deduction under Section 80G on your entire donation of Rs 2.5 lakh, and your taxable income reduces to Rs 17.5 lakh (Rs 20 lakh less Rs 2.5 lakh). So, you pay less tax of Rs 78,000 (31.2 per cent of Rs. 2.5 lakh).

Second, the date for claiming deduction under Section 80G has been extended up to June 30, 2020. So, donations made up to June 30, 2020 shall be eligible for deduction from income of FY 2019-20.

What this means: If you donate, until June 30, 2020, to causes (including the PM CARES Fund) that are eligible for tax deduction under Section 80G, you can claim the donation as deduction from income of the fiscal year just gone by - that is, FY 2019-20 (the year ended March 2020). You can claim this deduction while filing your tax return for FY 2019-20; the due date for filing this tax return will likely be July 31, 2020, unless extended.

Third, the Centre has clarified that any person, including corporates, paying concessional tax on income of FY 2020-21 under the new tax regime, can make donations to the PM CARES Fund up to June 30th, 2020 and can claim deduction under Section 80G against income of FY 2019-20. Such persons will not lose their eligibility to pay tax in the concessional tax regime for income of FY 2020-21.

What this means: Some of us may want to shift to the new, optional tax regime that is available from April 2020 for FY 2020-21 and beyond. Under the new tax regime, the rates of tax arelower, but there is no benefit of most tax exemptions and deductions, including Section 80G. Under the current tax regime that will also continue to be available, the rates of tax are higher, but you get benefit of exemptions and deductions, including Section 80G.

For those opting for the new tax regime, the Centre has set to rest worries regarding their eligibility for the Section 80G benefit on contributions to causes such as the PM CARES Fund. It has said that even those who opt for the new tax regime in FY 2020-21 and contribute to the PM CARES Fund up to June 30th, 2020, can claim deduction under Section 80G against income of the fiscal year just gone by - that is, FY 2019-20 (the year ended March 2020).

It is to be noted that until FY 2019-20, there is only one tax regime that allows tax breaks, including Section 80G. So, those opting for the new tax regime from April 2020 will not lose the benefit of lower tax rates on income of FY 2020-21, only because they donated to causes such as the PM CARES Fund until June 30th, 2020 and claimed the Section 80G tax break for FY 2019-20.

Further, donations to PM CARES Fund will also qualify to be counted as Corporate Social Responsibility (CSR) expenditure under the Companies Act, 2013. PM CARES Fund has also got exemption under the FCRA and a separate account for receiving foreign donations has been opened. This enables PM CARES Fund to accept donations and contributions from individuals and organizations based in foreign countries. This is consistent with respect to Prime Minister's National Relief Fund (PMNRF). PMNRF has also received foreign contributions as a public trust since 2011.

Questions that need to answered

Who are eligible entities?

You will get a tax break only if you donate to institutions and funds approved by the Government. Donations to political parties are not eligible for tax breaks under Section 80G, also donations to foreign entities do not qualify for deduction under Section 80G.

Donation in money or kind?

You can get deduction under Section 80G only if you donate money. There is no deduction if you give in kind. So, if you want a tax break, donate funds, and not clothes, food items, utensils or such items. Also, donations in cash above Rs 2,000 are not eligible for deduction under Section 80G. So, if you intend giving more than Rs 2,000, do so in modes other than cash such as cheques, demand drafts and online bank transfers.

What is deduction limit?

There is no bar on the amount you can donate.The amount qualifying for deduction under Section 80G for PM CARES Fund are eligible for 100 per cent tax deduction without limit.

How to claim deduction?

Employers usually do not take into account declarations from employees about Section 80G donations, while computing and deducting their monthly taxes. So, you may have to claim deduction on the donation at the time of filing your tax return.When you donate, ask for a stamped receipt. This should include details such as the registration number, its validity, and PAN of the donee entity, the Section 80G tax benefit on the donation, the donor name, address, and amount donated. Some of these details will have to be mentioned while claiming the deduction in the tax return.Submitting the receipt along with the tax return is not mandatory. But it may come in handy at a later date if the tax officer asks for proof of donation.

Tax Laws for NPOs- Concerns and Need For A Relook

Counter Productive Laws

The Finance Bill 2020 has proposed few important changes which have the potential of creating further chaos in the regulation of the NPO sector. In the fable 'Alice in Wonderland' the girl (Alice) walks for the whole day without covering any distance. Similar seems to be the effort of Government in the legislative amendments it has brought for the NPO sector in the last decade.

The Government has been unsuccessfully trying to regulate the NPO sector and in the process brought many counter-productive legislative changes which has not helped the Government and at the same time have created lot of harassment for the NPO sector. It must also be pointed out that some provisions of the Income Tax Act are so liberal that an educational institution accumulating around 500 crore in deposits and infrastructure by charging its students over10 years was held charitable by the Supreme Court in Visvesvaraya Technological University v. Assistant Commissioner of Income Tax [2016] 68 taxmann.com 287 (SC). This is because the Act has been drafted in such a way to allow a very broad view of charity. In the past few years the Government has enacted many provisions which have only created harassment without any revenue to the Government. The Finance Bill 2020 is only going to compound those problems.

Amendment Pertaining to Business Activities

From the year 2008 onwards, the Government changed the proviso to the definition of 'charitable purpose' under section 2(15) of the Income Tax Act and denied tax exemptions to all those charities which were engaged in business activities in excess of 20% of their receipts. This amendment was probably not thought through properly and resulted in number of litigation as a result of which the income tax department lost many cases. This amendment failed to distinguish between NPOs earning income by charging their beneficiaries and NPOs engaged in incidental and non-incidental business. Further, the Delhi High Court even declared that this provision is in violation ofArticle 14 of the Constitution of India in the case of India Trade Promotion Organization v. DGIT(E) W.P.(C) No. 1872/2013 Judgment delivered on 22- 1-2015. The Delhi High Court held that the proviso to clause (15) of section 2 of the Income-tax Act would violate article 14 of the Constitution if it is interpreted to deny incidental business activities of charitable organisations. The proviso shall remain valid only if it is used to deny exemption to "purely" commercial and business entities which wear the mask of a charity, the court opined.

The challenges in this provision

The proviso to section 2(15) states that an organisation can have commercial activity to the extent of 20% of total receipts without clarifying whether this provision applies to (i) the primary activities, (ii) incidental business activities, (iii) non-incidental business activity, or (iv) generating income by charging its own beneficiaries. This proviso is further discriminatory in nature as it exempts large charities like educational and medical institutions and it only applies to NPOs engaged in 'advancement of any other activity of general public utility'.

The effect of this provision

Large educational and medical institutions which are generating huge surplus by charging their own beneficiaries are exempt from application of this provision and other NPOs having incidental business activities are subjected to tax litigations. It has not succeeded in eliminating malpractices around commercial activities. There are enough mechanisms in the law to eliminate such dubious practices by certain ill meaning NPOs.

Suggested Amendment

This proviso should be deleted and there should be an amendment to section 13 of the Income Tax Act to provide that the exemption shall be forfeited if NPOs are run as business and benefit does not pass on to their beneficiaries. There should be no exclusion to any NPO including educational and medical institutions.

Amendment for Accumulation of Income

Under section 11 of the Income Tax Act 1961 a charitable or religious organisation is required to apply 85% of its income for charitable/religious purposes. If the organisation fails to apply 85% during the previous year, then it can carry forward the income to the next year and apply such deficit in the next year. Otherwise, the organisation can also accumulate the income for next five years following the provisions of the Act and Rules thereof.

Under the prevailing rules, Form 9A is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next financial year or in the year of receipt of income. Further, Form 10 is required to be filed if the organisation fails to apply 85% and accumulates the deficit to be applied in the next five years.

With effect from 1st April 2016 there has been a radical change which threatens to tax the entire income of the organisation if there is a delay in filing of Form 9A and Form 10. Under section 11(2)(c) read with Rule 17 any accumulation made under Form 10 or Form 9A shall not be allowed if the respective form is not filed within the due date of filing of return under section 139(1).

It is incomprehensible that the entire exempt income will become taxable just because a Form was not filed on time. The Central Board of Direct Taxes (CBDT) realized the unjust and arbitrariness of this provision and since then it is issuing circulars directing the Assessing Officers not to collect tax in this regard but there is no sign of removing this provision. CBDT has issued three consecutive circulars directing the administrative authorities not to raise tax demand in this regard. As recent as 19th February 2020 the CBDT has issued yet another circular condoning the delay for filing of Form 9A or Form 10 and also the Income Tax return for the years 2016-17, 2017-18 and 2018-19. It needs to be understood that if the application of law is being exempted for everybody for years together then something needs to be corrected there in.

The challenges in this provision

The amendment pertaining to accumulation are harsh as generally such addition to income are not made only due to a procedural lapse such as filing of a Form. A form is just an intimation to the Assessing Officer of the right of assessee to accumulate. Further, the mandate of the Income Tax Act is to collect tax against income and not to collect tax against non income just for a procedural lapse.

The effect of this provision

The Income Tax Department issued huge demand notices all over the country. The CBDT realised the arbitrariness of this section and continues to direct the CIT to avoid any tax demand in this regard.

Suggested Amendment

This proviso should be rationalised and some reasonable penalty may be provided for delayed filing of the Form. Accordingly Explanation 2 of sec. 11(1) and section 11(2)(c) may be amended.

Cancellation and Taxing Assets At Market Value

In the year 2016 section 115TD was inserted which threatens to tax the assets of NPOs at market value at the time of cancellation of tax exemption. The constitutionality of this section is suspect in the light of the fact that it proposes to tax assets at market value even if the assets are In the year 2016 section 115TD was inserted which threatens to tax the assets of NPOs at market value at the time of cancellation of tax exemption. The constitutionality of this section is suspect in the light of the fact that it proposes to tax assets at market value even if the assets are more than30 to 40 years old. The Central Board of Direct Taxes(CBDT) was quick to realise the arbitrariness embedded in the section and issued a circular directing the Commissioner of Income Tax to be careful in initiating cancellation proceedings as it would result in invocation of section 115TD.

The challenges in this provision: The section 115TD states that the assets of an organisation, created out of income, will be taxed at market value. If 30-40 years old assets are taxed at market value then, (i) it will be impossible to ascertain whether the assets were created from exempt income or not, (ii) it is legally debatable whether an asset set aside for public purposes can be taxed without any transfer, (iii) organisation with very negligible activity may have properties with astronomically high market value, (iv) the income is exempt only beyond the minimum slab applicable to individuals. Many old assets may have been purchased within the exempt income slab. For instance, if an NPO has a total income of Rs. 2.5 lakhs or less, it does not need 12AA registration.

The effect of this provision

The cancellation of registration will result in coercive recovery by the Income Tax Department and the Courts and Tribunals will be flooded with litigations.

Suggested Amendment

This proviso should be deleted and in the event of cancellation, it should be ensured that the assets set aside for public charitable purposes are not used for private benefit. For instance, Section 92 of the Code of Civil Procedure provides protection against mismanagement of the property of public charitable institutions even if they are not registered under section 12AA of the Income Tax Act.

Amendment for Delayed filing of Return

In 2017 a section 12A(1)(ba) was inserted to provide that the entire gross income of an

NPO will become taxable if the return is not filed in time. It may be noted that if exemptions are withdrawn, then even genuine charitable expenditures are not allowed. It is unthinkable how the entire gross income could be taxed just for failure to file return in time. The NPO has no other option apart from filing the return in time. However, if for some circumstances beyond the control of the NPO, the return is not filed then it should be subjected to penalties like other assesses. It is not fair to tax the gross income, and disallow the genuine expenses which have been incurred in good faith.

Filing of return cannot be equated with genuineness of activity: The High Court of Punjab and Haryana in the case of Commissioner of Income-tax (Exemptions) Chandigarh vs. Shri Shirdi Sai Darbar Charitable Trust (Dharamshala) [2017] 81 taxmann.com 49 (Punjab & Haryana) held that merely because assessee- trust had not filed its return in earlier years, it could not be said that activities of assessee were not genuine.

The challenge in this provision

The failure to file return in time should not result in forfeiture of exemption as it is an event after the income has been successfully applied for charitable purposes. The penalty for delay in filing or non filing of return as applicable for other assesses should be applied in this case also.

The effect of this provision:

This provision allows the Income Tax Department to deny all the benefits and raise huge tax demands just because there was delay in filing of a Form.

Suggested Amendment

This provision should be deleted and NPOs should be subjected to the same penalties applicable to other assesses. There must be a mechanism where the NPO can represent before the CIT for condoning the delay if there are justified circumstances.

Grant Defined as Income from 2016

Section 2(24)(xviii) has been added w.e.f. 01/04/2016, which provides for treating the grant as income whereas as per legal interpretation and judicial pronouncement, restricted grant are legal obligations and cannot be considered as income. The Assessing Officer and even the ITR-7 treat all restricted grant as income after this amendment, which is legally incorrect and has created interpretation issues. This issue has been settled by theSupreme Court in the cases of CIT v. Tollygunge Club Ltd. [1977] 107 ITR 776 & CIT v. Bijli Cotton Mills (P.) Ltd. [1979] 116 ITR 60 where it was held that grant with specific direction from the donor is a legal obligation and cannot be treated as income. A legal obligation is outside the purview of income tax act. A restricted grant itself is a trust, please refer to the expln. to section 2(24)(iia) which states that a trust includes a legal obligation. The expln. 1 to section 13(9) also states that a trust include a legal obligation. Sub clause (xviii) to section 2(24) is applicable where grant and incentives are received and the recipient itself is the beneficiary. For example a company reduces its capital cost by receiving govt subsidy, therefore, it has to be treated as income. But the funds received by a charitable institution are in the capacity of a trustee of public, therefore, barring voluntary contributions, other incomes cannot be implicated. For that matter even voluntary contributions are deemed income i.e. artificially included in scope income wef 1.4.1973. In other words, the same grant will become income if the recipient organization is the beneficiary and the same grant will become legal obligation if the recipient organization is the trustee for specified public charitable purposes.

The challenge in this provision

This provision has created a confusion in the mind of the authorities that project grant and restricted grant are part of income. The Form ITR-7 also includes all grants under income except corpus donations.

The effect of this provision

This provision creates hardship to the NPOs which receive restricted grant for multiple years. In such cases the Income Tax law compels the NPO to file Form - 10 if 85% is not utilised and it also results in artificially inflated income of the NPO.

Suggested Amendment

This provision should be amended to clarify that it does not apply to grant in the nature of legal obligation.

Power to cancel for violation under other laws.

In the year 2019, section 12(4) was amended providing sweeping powers to the Commissioner of Income Tax (CIT) for cancellation even for small violations in Income Tax Act or even under any other law. Empowering the CIT to cancel registration for violations which the NPO might be facing under other laws is again unjust and constitutionally suspect, because each law has its own mechanism to penalise the violators. However, there is a provision for an opportunity of being heard before any such coercive measure is taken. Though this provision states that the CIT shall act only if the proceedings under other law are decreed or reach finality, but it does not specify the type of violation. Under the prevailing law technically the CIT can initiate cancellation proceedings even if some violations are settled under statutes.

The challenge in this provision

Any cancellation proceedings should be based on the evidence and findings of the authority. The Supreme Court of India Commissioner of Income-tax, Central v. Rama Educational Society [2018] 99 taxmann.com 282 (SC) held that in absence of any cogent material or evidence to establish any violation of provisions of section 12AA(3)., cancellation of registration of assessee - society retrospectively was not justified, Special Leave Petition (SLP) filed against High Court's order was to be granted.

The effect of this provision

This provision allows the CIT to cancel registration without any independent findings of the Assessing Officer or any other authority for which the assesse has already faced the consequences.

Suggested Amendment

The section 12AA(4) should be amended to provide that cancellation provision should always be based on independent findings by the CIT of gross violations, further cancellation should not be initiated for any other violation which does not establish the organisation not to be not charitable.

Revalidation of Registration for Five Years

The Finance Bill 2020 proposes to revalidate all the existing NPOs by issuing a National Unique Registration Number. Further the registration of all NPOs shall remain valid only for five years. Creating a national data base of exempt NPOs will bring greater clarity about the size and importance of this sector in future. However, at the end of the five years, the CIT shall have the power to deny renewal and consequently cancel the registration after providing an opportunity of being heard. This provision again is constitutionally suspect as denying renewal to an existing NPO would imply its closure. This is an extremely coercive provision which would have serious/fatal impact on the NPOs. It is even worse that this is part of the renewal

process while the NPOs are subjected to regular scrutiny and cancellation already built into the act. The CIT would have extensive power to shut down an organization if this proposal is enacted. There is a fundamental difference between providing an opportunity of being heard under a normal cancellation proceeding and a proceeding of renewal. In case of a normal cancellation proceeding, it is initiated only if there is any adverse evidence in the possession of the CIT and further the organization will exist till the cancellation order is passed. On the contrary, in case of renewal the organization will be eligible for renewal only if it is compliant and there is no adverse finding against it. In such circumstances allowing the CIT to conduct a cancellation proceeding along with a renewal procedure is unwarranted and out of context. Further in case of renewal the organization will cease to enjoy exemptions from the date of completion of five years irrespective of the date from which the order is passed. It is important that the Act provides some interim protection if an unlawful or arbitrary order is passed.

Lives of so many people cannot be subjected to the understanding or perception of the CIT. It may be noted that the Income Tax Department is the biggest litigant in the country and its success rate is very poor in Courts and Tribunals, in Direct Taxes, its success rate is 13% only. From this, one can imagine what kind of trauma assesses have suffered in the past.

To put things in perspective it is pertinent to recall section 13 of Foreign Contribution Regulation Act 2010. Under this section the authorities can suspend the registration of an organization without providing any reason or opportunity of being heard to the impugned organization. The Delhi High Court in the year 2011 in case of Indian Social Action Forum(INSAF) had held that the powers to the authorities under section 13 is in violation of the Article 14 and 19 of the Constitution. The court referred to the decision of Supreme Court in Bidi Supply Co. v. Union of India, AIR 1956 SC 479 where it was held that while scrutinizing the constitutional validity of a provision on the anvil of Article 14, it is to be seen whether it confers unbridled and unfettered powers on an authority to act at his whim or caprice.

The challenge in this provision

- Cancellation at the time of renewal would imply that the CIT will conduct investigation and scrutiny which is the mandate of the Assessing Officer(AO) at the time of assessment. It may be noted that currently under section 12(4) the CIT initiates cancellation proceedings based on the findings of the AO under section 13(1).
- Cancellation proceeding is initiated only when the Department has enough evidence against the organisation. It cannot be conducted as a roving inquiry during renewal.
- The renewal process should be subject to the condition of compliance to the Income Tax Act. Therefore, the renewal should be subject to fulfilment of compliances during those five years. Allowing an additional authority with the power to cancel based on any other reason is not justified at the time of renewal. Cancellation should always be an independent process.
- In case of non-renewal due to any minor lapse or non compliance, an opportunity should be provided to re-apply. Cancellation will needlessly close all such options.
- The Act allows the CIT to cancel the registration for violation under other laws, which is totally against natural justice. For instance if a matter is sub-judice under some other law the CIT should have no authority to act on any order by any authority unless the matter is conclusively resolved by all appellate forums.
- Any arbitrary cancellation of renewal will result in abrupt closure of an organisation, which will violate its right under Article 19 of the Constitution.

The effect of this provision

This provision will result in abrupt closure of an organisation. In such circumstances the staff, beneficiaries and other stake holders will suffer during the period when the higher courts would decide the merit of the order of the CIT. The Income Tax Department would initiate tax recovery under section 115TD which will decimate the organisation.

Suggested Amendment

The cancellation proceedings should be an independent process distinct from the renewal process. The renewal process should provide sufficient time and opportunity to the organisation to correct the defects or non compliances if any. The CIT should not be allowed to cancel registration for violation under any other law.

Provisional Registration to New NPOs

The Finance Bill 2020 provides a provisional registration for three years for all new organisations applying for exemptions under various sections. The registration once granted shall be valid for three years from the Assessment Year from which the registration is sought. This provision seems to be towards rationalising the registration process. The organisations shall be entitled for provisional registration based on the documents and self declaration. Application for renewal of such new registration needs to be submitted at least six months prior to the expiry of validity period and registration so granted shall be valid for 5 years.

The effect of this provision

Subsection (vi) of section 12AA provides that in cases of new registration, application shall be submitted, atleast one month prior to the commencement of the previous year relevant to the assessment year for which registration is sought, meaning thereby new NGO will not be entitled to have the benefit of registration of section 12AB in the first year of operation. Further, an organisation will have to apply on commencement of activity or 6 months before the expiry of three years. In other words any organisation would, almost immediately after provisional registration, have to apply for regular registration because all NPOs have some activities. Further, a new entity has to wait for one year for provisional registration.

Suggested Amendment

The provisional registration should be allowed from the year of application, further the condition regarding commencement of activity should be deleted as it is not relevant for NPOs.

To Conclude

We have to understand that there are NPOs who manage to generate large amount of resources and there are NPOs who provide employment directly/ indirectly to more than 50,000 people. For example, the NPOs which run the 108 Ambulance Service might be providing employment to 70-80,000 employees as around 5.8 persons are required per vehicle and 30-40,000 of such vehicles might be playing in the country. The NPOs have a colossal role in the development of the country, and one can find an NGO animator in every nook and corner of the country even though the government may not have reached there.

Myriad of people friendly legislation and practices have come into existence only due to the initiatives of NPOs. Therefore, the Government should be sensitive while enacting laws pertaining to NPOs. On one hand the Government has allowed commercialization through education, medical services etc. in the name of NPO. The

Government has alsofailed to control the NPOs who indulge in questionable practices and misrepresent facts. For example, out of a donation of Rs. 1,000/- to an NPO towards the education of a child or any other deprived beneficiary, it is likely that 50 to60% of it might be going to the tele caller who called and convinced the donor to pay the donation. These facts are not shared with the donor. There are many such questionable practices which the Government should have curbed. Having said that the Government cannot impose unfair laws to compensate for its failure to appropriately legislate and control the NPO sector.

The proposed amendments in the Finance Bill 2020 needs to be sensitively drafted to ensure that a draconian action like cancellation of registration is not surreptitiously taken under a routine renewal process. It will only result in huge number of litigations without any benefit to Government or the NPOs.

FAQs on Section 8 Companies**

Who can apply for registration of a Section 8 Company?

Any person or an association of persons intending to register a limited liability company for objects specified below can opt to apply for registration of Section 8 Company. The following have to be proved to the satisfaction of the Central Government that:

(a) Its objects includes promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) The company after incorporation intends to apply its profits, if any, or other income in promoting such objects only; and

(c) The company intends to prohibit the payment of any dividend to its members.

What is the meaning of persons or association of persons as mentioned in Section 8?

The term "person" is not defined under the Companies Act, 2013.

Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company, or association or bodyof individuals, whether incorporated or not.

Therefore such a person can be natural or a legal person.It is also relevant to note that by virtue of provisions of section 8(3), even a partnership firm can be a member of Section 8 Company.

What is the procedure for incorporation of a Section 8 Company?

To incorporate a Section 8 Company, an application shall be made to the Registrar of Companies in Form no. INC.12, which shall be accompanied, inter alia, by the following documents:

i. Draft Memorandum of Association (MOA) and Articles of association (AOA) of the Company in prescribed format (Form no. INC - 13) where the photographs of subscribers are affixed.

ii. A Declaration is to be attached in Form no. INC-14 (on the stamp paper, duly notarized) by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and all the requirements under section 8 have been complied with.

Source: The Companies Act, 2013 Series By The Institute of Companies Secretaries of India

iii. An estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure.

iv. A declaration (in Form no. INC-15) on stamp paper duly notarized by each of the persons making the application and

v. Form no. INC-9 from each subscribers and first directors, on appropriate stamp paper of the State and duly notarized.

Can a Company with unlimited liabilities be registered as a Section 8 Company?

No. Rule 20(1) of the Companies (Incorporation) Rules, 2014provides that only a limited company registered under this Act or under any previous company law shall make an application to the Registrar for issue of license. Therefore, a company with unlimited liabilities cannot be registered as a Section 8 Company.

Is it necessary that Section 8 Companies are to be incorporated as a limited company with share capital?

Section 8 Company may be incorporated as a company limited by shares or by Guarantee (with or without share capital).

Is it mandatory that the name of section 8 Company shall include the words like - Foundation, forum, association, federation, chamber, confederation, Council, electoral trust etc.?

Yes. As per rule 8(7) of the Companies (Incorporation) Rules, 2014, for the Companies under Section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc.

Whether a Section 8 Company can have objects incidental and ancillary to the attainment of the main objects?

Rule 19(2) of the Companies (Incorporation) Rules, 2014 provides that the memorandum of association of the Section 8 Company shall be in Form No.INC.13.
Review of Form INC 13 clarifies that a memorandum of association of a Section 8 Company may inter-alia provide for the doing of all such other lawful things as considered necessary for the furtherance of the objects for which the company has been incorporated.

Whether a foreign company can be registered as a Section 8 Company in India?

Section 2(42) of the Companies Act, 2013 defines the term "Foreign Company" and means any company or body corporate incorporated outside India which-

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

Now since a Company or a body corporate incorporated outside India for doing not for profit activities, which hasopened a branch/liason office in India, cannot fall in definition of a foreign company as business activity is missing. Therefore, such company cannot be termed as foreign company. However, subject to compliance of FEMA regulations, it can open branch/liason offices.

Such not for profit companies or bodies corporate incorporated outside India can promote and register a Section 8 Company in India as a distinct entity.

If a Trust can become member of a Section 8 Company?

There is no restriction in the provisions of the Companies Act, 2013 for a registered Trust to become a member of Section 8 Company. In case of unregistered trusts, provisions of section 89 would be applicable.

Whether a Co-operative society can become subscriber/ member of a Section 8 Company?

In terms of section 8, any person or an association of persons intending to register a limited liability company for objects specified in section 8(1)(a), subject to the restrictions provided in section 8(1)(b) and (c), can opt to apply for registration of Section 8 Company.The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that "person" shall include any Company or association or body of individuals, whether incorporated or not.

Section 11 of the Indian Contract Act, 1872 provides that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind and is not disqualified from contracting by any law to which he is subject.

Therefore a Co-operative society can be regarded as Person and thus capable of becoming subscriber of a company including Section 8 Company.

Can Section 8 Companies receive contributions from overseas or non residents?

There are special requirements to be complied with under the Foreign Contribution and Regulation Act, 2010 before a Section 8 Company can receive any contributions or donations from overseas/outside India from non-residents. The provisions of the said Act are in addition to the provisions under the Companies Act.

Can a Section 8 Company alter its Memorandum of Association or Articles of Association by only passing a special resolution?

A Section 8 Company can alter the provisions of its Memorandum or articles by passing a special resolution, however such alteration requires the approval of the Registrar of Companies [vide MCA notification dated 21st May, 2014].

Further, if alteration in Memorandum or Articles results in conversion of Section 8 Company to any other kind of company, prior approval of Central Government is required. Such power is delegated to Regional Director.

Whether existing section 25 companies registered under the Companies Act, 1956 are required to obtain license under section 8 of the Companies Act, 2013?

No, the existing section 25 companies are not required to obtain license under Companies Act, 2013.The existing registrations and licenses issued under the 1956 Act, (upon repeal) shall be protected under section 465 of the Companies Act, 2013.

Can a Society registered under the Societies Registration Act, 1860 be registered / converted into Section 8 Company?

Yes. Section 8(1) of the Companies Act, 2013 allows person or association of persons to be registered as a Section 8 Company on fulfillment of certain conditions and procedure as prescribed therein. The term "person" has not been defined in the Companies Act, 2013. Section 2(41) of the General Clauses Act, 1897 provides that

"person" shall include any Company, or association or body of individuals, whether incorporated or not. Accordingly, a Society registered under the Societies Registration Act, 1860 is a person. Therefore, Society can be registered / converted as a Section 8 Company. imprisonment for a term not less than 6 months which may extend to 10 years and shall be liable for a fine which shall not be less than the amount involved in the fraud which may extend to three times the amount involved in the fraud. It is a non-compoundable offence. (Proviso to Section 8(11).

Whether a Section 8 Company can maintain its books of accounts on cash basis?

Section 128 of the Companies Act, 2013 provide for maintenance of books of accounts on accrual basis and according to the double entry system of accounting. Thus, even a section 8 company can not maintain its books of accounts on cash basis.

For what period a Section 8 Company is required to keep its books of accounts?

Section 128(5) of the Companies Act, 2013 provides that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a periodless than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. However where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

The exemption notification issued under the Companies Act, 1956 provided that the provisions of section 209(4A) of the Companies Act, 1956 shall apply with modification to section 25 companies and the section 25 companies were required to preserve the books of account relating to a period of not less than four years immediately proceeding the current year.

No such exemption notification has been issued in respect of Section 8 Companies under the provisions of the Companies Act, 2013. Accordingly the companies registered under the provisions of section 8 of the Companies Act, 2013 shall also be required to maintain books of accounts for the period of 8 years.?

Can a Section 8 Company be amalgamated with Can a Section 8 Company be amalgamated with a company which is not a Section 8 Company?

No. Section 8(10) provides that a company registered under section 8 shall amalgamate only with another company registered under section 8 company and having similar objects.

In view of section 8(10), Section 8 Company cannot be amalgamated with a company which is not a Section 8 company.

Another Section 8 Company? Is amalgamation allowed if the objects of the two Section 8 Companies are different?

Section 8 Company can be amalgamated with another Section 8 Company. However section 8(10) provides that the other company be "having similar objects". What are similar objects is not specified. Therefore a view is possible that so long as the main objects of two section 8 companies are within the objects specified under section 8 (1) (a) the objects will be considered similar because the similarity between the objects is established by the fact that with either of such objects the said companies can be registered as section 8 companies. It is not necessary that the objects of the two section 8 companies be identical. The words "having similar objects" should not be read in a limited sense.

Social Stock Exchange- Challenges and Opportunities

A "working group" was constituted by Security and Exchange Board of India (SEBI) in view of establishing a "Social Stock Exchange" (SSE) as mentioned by Hon'ble Finance Minister in her Budget speech for FY 2019-20. The intent behind to create SSE is to provide platform to NPOs for fundraising and also incorporate a set of procedures by which social impact will be measured and reported by the NPOs.

The SSE will work under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund etc. The SSE is not only a place where securities or other funding structures are "listed" but also a set of procedures that act as a filter, selecting-in only those entities that are creating measurable social impact and reporting such impact.

Responsibilities of "Working Group"

The "Working Group" so created has to broadly review and recommend the following:

- Possible structures and mechanisms, within the securities market domain, to facilitate raising of funds by social enterprises and voluntary organizations
- Associated regulatory framework inter-alia covering the issues relating to eligibility norms for participation, disclosures, listing, trading, oversight etc.

Role of Social Stock Exchange in India

1. *To effectively deploy the fundraising instruments and structures available under the regulatory guidelines towards social enterprises, such as:*

For	Fundraising Instruments
For Profit Enterprises (FPEs)	Equity and Social Venture Funds (SVFs)
Non Profit Enterprises (NPEs)	Zero coupon zero principal bonds, SVFs, Mutual Funds (MFs), various pay- for-success structures, other securities and units that may evolve
Section 8 Companies	Equity and Debt

2. *Creating of capacity building unit to foster overall sector development, which will be responsible for:*

- Encouraging the setting up of a Self-Regulatory Organization (SRO) that will bring together existing Information Repositories (IRs), in the immediate term for extending requisite support to SSE.
- Implementing the reporting standard for all social enterprises that benefit from the SSE
- Operating the "capacity building fund" for enhancing reporting capabilities by NPOs (particularly the smaller NPOs). Creating awareness and driving adoption of this fund among NPOs, philanthropists, and donors.
- Actively raising awareness and promoting the fundraising instruments / structures available on the SSE among social enterprises and Non-profit organizations.

How Indian SSE different from other countries SSE?

Indian SSE provides a comprehensive solution for both FPEs and NPOs, instead of catering to one of these categories in isolation.Goes beyond pure matchmaking/discoveryto:

- Institutionalization of a common standard for reporting
- Open up avenues for direct listing and streamlining funding mechanisms for NPOs
- Innovation of new fundingins truments and funding structures and
- The encouragement and development of an ecosystem to support the growth of social finance

Need for SSE in India

- SSE provides means for social enterprises (both for profit and Nonprofit organizations) to raise funds through a regulated mechanism. Fund raising through SSE also ensures accountability, transparency and periodic reporting of impact.
- SSE allows trading for equities issued by FPEs, although tax incentives will be in place to encourage patient capital. And for NPOs, the SSE will open up avenues for direct listing, will streamline a whole range of funding mechanisms, and will provide a reporting standard and other incentives that will pull investors onto it.
- SSE India lays out a common minimum reporting standard for all social enterprises, whether they are FPEs or NPOs. The unification of elements and common approaches for the two under the SSE umbrella.
- SSE mandates a minimum reporting standard for the beneficiaries of the mechanism, that minimum reporting standard will be a key factor in overcoming the information problems that typically come in the way of funders and investors discovering worthy and deserving NPOs.
- The SSE will enable the routing of grants and donations to NPOs in a variety of ways. But it will go further, in also enabling the routing of risk capital to NPOs
- The SSE will enable the routing of risk capital to NPOs via funding structures that can catalyse larger and more efficient deployment of capital for them.
- The SSE will ensure credibility and legitimacy of NPOs by requiring beneficiary NPOs to report on social impact in a standardized format. NPOs can also signal their credibility and legitimacy to investors/ funders by registering with IRs.
- The SSE is uniquely poised to become an important component of India's policy response to Covid19.
- The SSE will also provide capacity building support to these smaller organisations to enhance their capabilities to meet the reporting norms laid out in the report.

Recommendations by "Working Group"

After consultation with key stakeholders: non-profits (varying in size, causes, and geography of operation), donors and philanthropic foundations and, on the for-profit side, social enterprises and impact investors; and after conducting two surveys on

- survey of 546 retail donors
- survey of 215 non-profits

The "Working Group" has provided following recommendations:

Recommendations for NPOs

- Activate and main stream social capital to NPOs as zero coupon zero principal bonds to be directly listed on the SSE
- Activate and main stream already available funding structures, i.e. SVFs and MFs

- Implement common minimum standards for reporting on social impact
- Implement common minimum standards for reporting on governance and financials
- Develop new institutions that provide sector-level infrastructure
- Enable new funding mechanisms: pay-for-success (social impact bonds; development impact bonds)
- Provide capacity building support for reporting requirements
- Provide fiscal benefits to NPOs and donors
- Fine-tune regulations to unlock more funds

Recommendations for FPEs

- FPEs will use the SSE to raise equity capital. They will, therefore, list on the SSE, which will be a segment of an existing high-turnover stock exchange such as the BSE and/or NSE. The equity instruments will be tradeable.
- Listing criteria will apply for FPEs, just as they apply for for-profit conventional enterprises who list on the main board of the BSE or NSE
- To ensure that only bonafide FPEs are able to associate with SSE, SEBI, in consultation with the existing specialist entities, should work out a mechanism for assessing credentials of the social impact dimensions self-declared by the FPEs.
- FPEs will also be able to raise funds using funding structures such as SVFs. In order to kickstart activity on the SSE for FPEs, we recommend tax incentives to investors (such as exemptions from the Security Transactions Tax and Long Term Capital Gains Tax) and tax relief to FPEs (for 5 years). Further, the reference to "muted returns" in the current SVF guidelines needs to be revisited as the term is misleading and a deterrent for investment.
- FPEs will have to demonstrate that they are in the business of "creating positive social impact". This will enable them to access a kind of capital that conventional for-profit enterprises do not have access to.

Concept of Minimum Reporting and IR

In order to benefit from the SSE, i.e., avail of the fundraising instruments and structures, an NPO must commit to reporting in accordance with the minimum standard. In addition, an NPO may choose to register with an Information Repositories (IR) in order to further signal credibility and legitimacy to investors/ funders.

A minimum reporting standard outlined by the "Working Group" and It is mandated to follow from day 1 of the SSE's launching for all social enterprises, FPEs as well as NPOs, that wish to benefit from the SSE. The minimum reporting standard is envisioned to grow in rigour, approaching the desired ideal state of widespread standardized impact measurement and impact reporting.

To ensure that the minimum reporting standard is met by all social enterprises that wish to raise funds on the SSE will largely depends SSE itself but a specific policy is recommended by "Working Group" for how this could become possible, through the means of a capacity building fund that will create an ecosystem of social auditors and information repositories (IRs). This will help social enterprises do the reporting. There is large possibility that many social enterprises, and especially many of the smaller NPOs, may not have the financial capacity to do the minimum reporting, and a specific recommendation in the policy is made that the capacity building fund can pick up some of the costs of reporting for such social enterprises, especially in the immediate term.

IRs are needed because there is a dire lack of robust information on NPOs, unlike in the for- profit sector. Although some

intermediaries do provide information on NPOs, this information covers only a small fraction of all NPOs. Nevertheless, these intermediaries can start functioning as IRs for the SSE in the immediate term.

The IRs would perform the functions of enumeration (listing of active NPOs and their activities), standardization (articulating a standard reporting format for NPOs and helping them to do information reporting), and verification (due diligence).

Social impact measurement and reporting

The minimum reporting standard is to be enforced in the immediate term. Over time, the reporting requirements can begin to incorporate more rigor in a graded and deliberate manner. The key aspects of long term reporting would include

- Clearer and more refined statements of intent to create social impact
- More rigorous assessments of the social impact that is being created and more graded evaluations
- A greater shift towards outcomes-oriented measurement in place of input-output oriented measurement.
- A gradual shift towards articulating the sector-level or policy-level impact of activities.
- More granular disclosures of governance mechanisms and financial operations
- Development of ecosystem of social auditors required to do independent audit of reporting done By NPOs.

"Policy Recommendations by Working Group"

A.Need of developing appropriate policy

To sustain and grow the flow of funds through the exchange, a multi-dimensional policy intervention is required that will mitigate the various impediments to the seamless flow of funds towards the social sector, and also route new sources of funding to social enterprises, including those listed in the social stock exchange. A framework for such a policy intervention could consist of three broad categories:

- **Regulations:** aimed at reducing non-tax compliance and smoothening wrinkles in the major regulations governing the flows of funds to the social sector
- **Market Making:** aimed at kick starting activity on the SSE
- Tax Policies: aimed at reducing tax compliance costs, increasing donor/ investor participation, and rationalizing anomalies in tax incidence

B. Smoothenin regulatory requirements under various Acts

- Allow funding to NPOs on SSE to count towards CSR commitments of companies
- Allow CSR contributions to fund outcomes in the SSE's funding structure
  - Allow CSR capital to be parked into an escrow account for a period of 3 years
  - Allow accelerator grant to an NPO up to 10% of the program cost (in case outcomes are exceeded) to be counted as CSR expenditure.
  - The board and management of the corporate providing CSR funds should not be related to the NPO to avoid conflict of interest.
- The MCA may authorize the trading of CSR spends between companies with excess CSR-spends and those with deficit CSR-spends, and the SSE can provide a platform for this purpose.
  - Allow expenditure by corporate on building capacity for the SSE to count towards their CSR commitments
  - The zero coupons zero principal bonds of NPOs will have to be notified as a security under SCRA.

- Enable foreign entities to invest in SVFs listed on the SSE. (under FCR Act 2010)
- Lowering of the minimum corpus requirement and minimum ticket size for SVFs to be suitably examined by SEBI (under AIF regulations)

C. Market Making

- Consider running a widespread and high intensity awareness campaign for social enterprises to list in the SSE.
- Consider setting up a INR 100 crore "capacity building fund" to create a capacity building unit that will foster overall sector development

D. Tax Policy Changes

In order to provide an impetus for fund raising mechanisms and create a vibrant, deep and liquid market for social investments, it will be paramount to provide certain tax incentives. The government may consider the following recommendations:

- Exempt investors from paying Securities Transaction Tax (STT) for trades made on the SSE.
- Exempt investors from paying Capital Gains Tax (CGT) on long term capital gains accruing from sale of securities in the SSE.
- Allow philanthropic donors to claim 100% tax exemption for their donations to all NPOs that benefit from the SSE.
- Allow all investments made in securities/ instruments of NPOs listed on SSE to be tax deductible.
- Allow corporates to deduct CSR expenditure that goes to the SSE from their taxable income
- Remove the 10% cap on income eligible for deduction under 80G
- Allow first time retail investors to avail a 100% tax exemption on their investments in the SSE MF structure, subject to an overall limit of Rs. 1 Lakh
- Allow a tax holiday of 5 years to FPEs listed on the SSE, from the time of first listing.
- Enable ease of getting certifications for NPOs under 12A, 12AA and 80G
- Re-evaluate the current budget proposal to revalidate registration of NPOs under section 12A/12AA for NPOs
- Re-evaluate the current budget proposal to make renewal of registration for NPOs under 80G periodic.
- Increase the limits under the IT Act on NPOs raising funds from commercial or semi-commercial activities to 50% from the current 20%
- Allow revenue generated by stock exchanges through SSE to be tax deductible.

Fundraising Instruments & Structures

Particulars	Fundraising Instruments
For Profit Enterprises (FPEs)	- Equity - Social Venture Funds
Non- Profit Organisations	- Zero Coupon Zero Principal Bond - Mutual Funds - Social Venture Fund - Pay for success structures
Section 8 Companies	- Equity - Debt

Fiscal Benefits to Donors

- Retain Section 80G in new tax structure
- Allow philanthropic donors to claim 100% tax exemption for their donations under 80G
- Allow all investments in securities/ instruments of NPOs listed on SSE to be tax deductible
- Allow corporates to deduct CSR expenditure from their taxable income
- Remove the 10% cap on income eligible for deduction under 80G, for donations to all NPOs
- Allow first time retail investors (who are investing in the SSE for the first time) to avail a 100% tax exemption
- Enable fast-tracking of getting certifications for 12A, 12AA and 80G for all NPOs
- Re-evaluate the current budget proposal to make renewal of registration under 80G periodic
- Increase the limits under the IT Act for commercial activities to 50% from the current 20%.

Board Evaluation

The Board is the final and highest decision-making body within an organization. Mandatorily, it is required that every organization has a duly constituted Board. However, in actual practice it has been seen that while some Boards work in a very effective manner, there are others who exist for the sake of records.

A regular, well-structured Board evaluation process helps in enhancing efficiency and effectiveness. However, it is important to have a clear political will at the highest leadership level to implement a Board evaluation process.

Need of Evaluation

- Reviewing the past performance of the Board as a whole and of individual Board members
- Examine what has changed in the external environment that shapes the work of the NPO and the Board - for example; Are there new risks that threaten the NPO, like change in legal framework, resource crunch, etc?
- Looking at what can be done to improve the way the Board functions and conducts meetings.
- Making future plans based on realistic assessment of what has happened in the past.

There are no legal or statutory compulsions on the part of the Board to undertake its own evaluation. However, for a learning and pro-active Board, it always adds valueto its functioning and effectiveness to evaluate itself. Further, it also needs to be recognized that the Board being part of the organization also faces challenges from external as well as internal environment, from time to time. Atthe same time, with the growth of the organization it becomes necessary for the Board to review itself in order to ensure that it is equipped in terms of the systems and processes to meet the governance requirements of the organization.

As the organization grows in terms of team size, project size and capacity; the organization's need for effective governance and management also increases. The Board needs to keep pace by examining the organization's mission, objectives and processes. Some Boards function well, while some others suffer from lack of shared vision. Board members may also have different perceptions about the organization's purpose.

Board Members' Self-Evaluation

The process requires members to assess themselves in respect of their effectiveness. Self-evaluation is like introspection of oneself. Usually, it is effective where it is not possible for all members to come together at one time for group evaluation. It is cost effective as compared to group evaluation where the group needs to come together. However, the drawback in this form of evaluation is the possibility on the part of the individual to provide incorrect assessment and can be quite subjective.

Evaluation of Board as a Corporate Body

Conducting a Board evaluation is difficult. It is important to allow sufficient time for such evaluation process. The most important aspect of an evaluation process is to decide what is to be evaluated. Each group may want to evaluate something different.

A good practice for conducting an evaluation is to appoint a Committee to lead the evaluation process. Sometimes an external professional is hired to bring in the necessary independence and expertise. Before conducting the evaluation, it is important to develop the necessary evaluation instrument. Generally, the evaluation instrument is a set of questions or a questionnaire focusing on efficiency and effectiveness of Board functioning, Committees, relationships among Board Members and CEO.

After the evaluation instrument is finalized, the next step is to conduct the evaluation. Sometimes the evaluation is conducted in an extended executive session of the Board which is attended only by the Board members. There are two stages to the evaluation process. In the ?rst stage, the Board members are asked to ?ll in the questionnaire, individually. After filling up the questionnaire, it is collected by the evaluators. Then in second stage, there is discussion based on the certain leading questions. The leading questions are based on the decisions and discussions that took place in the Board during the past period. These can be collected from the minutes of the Board meetings, other relevant files, documents, etc. This session is moderated by the evaluators. At the end of the second stage, the evaluation Committee sits together and analyzes the questionnaires as well as outcome of the discussion. Then the evaluation Committee comes up with a short report and key recommendations which is presented in the next Board meeting and necessary recommendations. Primarily, the decisions are taken to implement the responsibility to implement the recommendations is with the Board Chair. Sometimes some other processes are also used for Board evaluation They are:

- Engaging with staff to assess their view on the effectiveness of the Board
- Engaging with various stakeholders i.e. donors, community and other related
- organizations to obtain their views

When to Conduct Evaluation?

It is ideal to conduct Board Evaluations on a yearly basis. However, in certain organizations it may not be practical to undertake such evaluations every year. In that case assuming that the term of the Board is for three years, one can decide to taken to implement theconduct a mid-term evaluation at the end of one and half years. A mid-term evaluation provides an opportunity to the Board to assess its effectiveness and take necessary measures to change and adapt the recommendations of the mid-term evaluation. At the end of three years a final evaluation can be conducted.

To Conclude

The Board evaluation process, reinforces accountability of the members to the organization, the greater community served and the resources generated and utilized. Board evaluation aims to help a Board do its job better by improving members' understanding of their roles and responsibilities. It can help the Board become a stronger team, improve their decision-making process and most importantly increase their accountability and effectiveness towards the organization?

CEO Performance Evaluation

The board members of an organization collectively referred to as Board set the vision, mission, strategy and structure of the organization. However, the board vests the responsibility of management and day-to-day operations of the organization to the Chief Executive Officer (CEO) (here CEO refers to the Chief Functionary)

The chief executive officer is the key link between the organization and the board. The primarily responsible is to carry out the strategic plans and policies as established by the Board.Since the CEO is the head of management there is generally a relationship of trust between the board and the CEO. On one hand the board holds the CEO accountable for running the organization and on the other hand the board also sets the mandate of the CEO by providing set of guidelines and roles/responsibilities. The board should also provide a clear reporting framework to the CEO to be accountable. Generally, on behalf of the board the Chairperson acts as the reporting of?cer for the CEO.

The CEO owes the board accurate, thorough and timely information about the organization, its environment and its activities by providing quarterly/ six monthly reports. Further, processes like evaluation and appraisal of the CEO can also act as mechanisms for ensuring his/her accountability to the board.

The CEO's performance should be measured in relation to his or her job description, and the evaluation may cover the following activity areas:

- Staff relations;
- Administration;
- Planning;
- Leadership;
- Fiscal management;
- External public relations;
- Effectiveness in working with the board to fulfill the annual plan; and, effectiveness in helping the board fulfill and demonstrate its accountability to external stakeholders.

CEO's BOARD or BOARD's CEO

This is an issue which has plagued the nonpro?t sector for many years. This is also due to the way in which the NPOs evolve. In the evolution of NPOs, sometimes it is founder driven. The founder has the vision, the ideas and the connections to bring success to the organization. At the same time the founder also leads the organization as CEO. In such a scenario, the board plays a more supportive and advisory role and it becomes a CEO's board. On the other hand, when the board appoints, manages and evaluates the CEO then it is a Board's CEO.

The success of CEO's evaluation depends on the relationship between CEO and Board and vice-versa. It is important to understand the level of involvement of CEO in the Board matters. Similarly, the Board's level of

involvement in day to day affairs of the organization which fall under the domain of CEO, would determine the success of the evaluation process. Ideally, the role of the CEO in the board is to proactively communicate, to have transparency, to seek Board's input on strategic matters and demonstrates commitment to the organization and not policy making. Thus, if the CEO leads rather than being led by the board, the purpose of evaluation fails.

While the Board and the CEO are on the same team, they do not have the same roles. The Board's job is to govern and the CEO's job is to manage. It is important not to confuse the two. The healthiest Board/CEO relationships occur when both parties work closely together with a common aim of furthering the organization's goals and objectives.

The CEO and the Board share responsibility for leadership within the organization but they ful?ll this responsibility in different ways. The Board has the authority to set the vision, mission, strategies, policies etc. whereas CEO's role is more immediate, involving day-to-day management. It is important that both the Board and the CEO are fully aware of where their roles begin and end. If there is any confusion in an organization about roles and responsibilities, it can lead to convict, inefficiency and low morale.

Board members need to have enough confidence in the CEO to trust that the operational issues are managed well and they do not pay too much attention on operational issues while neglecting their governance role.

Thus, the Board/CEO has to play an act of balancing and be aware of the line i.e. where their roles and responsibilities start and end.

Importance of Evaluation

The evaluation process identifies areas of strength and weakness and suggests opportunities for improvement. The performance of the CEO, and the relationship between the CEO and the Board, are critical factors in successful governance and fulfillment of the organization's vision & mission.

CEO performance evaluation requires asking key questions in terms of what the objectives were and whether they were achieved, what is working well, and what needs improvement.

The evaluation brings the CEO and the board together to discuss how the performance and priorities contribute to the effectiveness of the organization.

- Assess how well the organization's vision and mission are fulfilled
- Examine and reset, if necessary, goals for the organization and the CEO
- Support the CEO by providing constructive feedback on performance
- Develop plans to address issues that arose during the evaluation process
- Foster communication between the board and CEO

Through evaluation, boards can systematically ensure accountability for the actions of the CEO. The evaluation process should be a regular and formal to avoid or reduce subjective judgments of performance. By employing a formal evaluation process, performance expectations can be made clear for CEO.

Types of CEO Evaluation

The CEO evaluation can be conducted at two levels. At the first level it can be done by the Board and at the second level, evaluation of CEO at 360 degrees.

Evaluation by Board

A good practice for conducting an evaluation is to appoint a Committee to lead the evaluation process. The board must clearly understand its role in order to set up the most appropriate system to achieve the best results from the process.

There are two stages to the evaluation process. In the ?rst stage a written Self-Assessment form is prepared based on the objectives and agreed- upon goals. The self-evaluation gives the opportunity to the CEO to be a part in the evaluation and have a voice in the process.

In the second stage a questionnaire is designed to assess the CEOs performance. The questionnaire covers a wide range i.e. from the CEO's role in achieving the vision and mission of the organization to the staff relationship. The Board members are asked to ?ll in the questionnaire, individually. After filling up the questionnaire, it is collected by the evaluators. At the end of the second stage, the evaluation Committee sits together and analyzes the questionnaires as well as self assessment form. Then the evaluation Committee comes up with a short report and key recommendations which is presented in a formal discussion with CEO.

360° Evaluation

In the 360° evaluation process, the boardinvites multiple people to provide feedback about the CEO. Feedback may be requested from the board, senior staff or any staff under the CEO, donors etc.

A 360° evaluation takes a good deal of time not only from the board but from everyone who is asked to give input, and it makes the most sense to use the opportunity not only to learn about the CEO, but about the organization. The 360° evaluation can be practiced over a period of time as it is very helpful for a board to get a sense of how it's CEO and the organization as a whole is perceived by volunteers, staff, patrons, clients, members, funders, collaborative partners, and others.

The questionnaire used for evaluation by Board can be used in this process or it could be modified based on the needs of the organization. The process of conducting evaluation is the same as discussed in the first method.

When to Conduct CEO Evaluation

The CEO evaluation is the primary and most formal process the Board has for measuring CEO performance. The evaluation should include reference to the responsibilities listed in the job description and goals for the year.

Ideally, the evaluation should be conducted once in two years, as it provides sufficient time to a CEO to perform. However, for a newly appointed CEO, the evaluation can be done annually for the first 3 years as the initial years are crucial and it is important to provide feedback on job performance regularly

Conclusion

The objective of a CEO evaluation process is to enhance the relationship between the CEO and the board, performance measurement and in addition improving the overall performance of the organization. The feedback from the CEO performance evaluation process is important to the CEO as well as the Board. Through the evaluation process the CEO gains a clear understanding of the Board's goals, receives feedback on accomplishments, and gets an opportunity to clarify the Board's expectations around performance of the CEO role. However, it should be kept in mind that evaluation is a learning process and not a fault finding

Virtual Meetings

The unprecedent outbreak of COVID-19 has restricted free movements of peoples, and it became difficult for companies to call and conduct the meeting at the registered office or any place as permitted under the Companies Act, 2013. MCA has given relaxation to Companies follows calendar year as financial year to conduct the AGM till September 30, 2020 also allowed companies to conduct the AGM through video conferencing or other audio-visual means vide General Circular No. 20/2020 dated May 05, 2020.

It is to be noted here that the provisions related conducting Board Meetings through video conferencing or other audio- visual means was already covered under section 174 of the Companies Act 2013 read with Rule 3 and 4 of Companies (Meetings of Board and its powers) Rules, 2014. So after this notification the NPOs which are registered as section 8 company can now hold BM as wells AGM through video conferencing (VC) or other audio-visual mode (OAVM). Here we are going to discuss the detailed provisions related to holding BM and AGM through video conferencing or audio-visual mode (OAVM).

Board Meetings through Video Conferencing

The Board Members of an NPO can be located in different geographical locations and it is always difficult for a member staying in far away places to attend Board meetings regularly. The administrative and travel cost is also an important issue in case of NPOs. Therefore, it becomes important to understand the legally acceptable ways of conducting general and Board meetings with the help of technology and video conferencing.

There is no rule or guidance under the Societies or Trust Act regarding holding meetings through video conferencing. However, the Ministry of Corporate Affairs, Govt. of India has issued directions and guidelines regarding holding of meetings through electronic means and video conferencing. Section 173 of the Companies Act 2013 and The Companies (Meetings of Board and its Powers) Rules, 2014 issued by the Ministry of Corporate Affairs, Govt. of India can be a great reference document for conducting meetings through electronic medium in the NPO sector. The Board Meetings are permissible through video conferencing under the aforesaid rules which are applicable to all section 8 companies. Trust and Societies can take umbrage of these provisions subject to any specific restriction in their Bye Laws or the local statute.

Provisions regarding VC and OAVM

The provision regarding meeting through VC and OAVM under Sub Rule 3 of The Companies (Meetings of Board and its Powers) Rules, 2014 are as under: Meetings of Board through video conferencing or other audio visual means.-A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-
   a) To safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
   b) To ensure availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
   c) To record proceedings and prepare the minutes of the meeting;
   d) To store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
   e) To ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
   f) To ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.

(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.

(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

(e) The director, who desire, to participatemay intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-
   (a) Name;
   (b) The location from where he is participating;
   (c) That he has received the agenda and al the relevant material for the meeting; and

(d) That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

(5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Explanation-A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, which shall be in India, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

(9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other aud io visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation-For the purposes of this rule, "video conferencing or other audio visual means" means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Matters not to be dealt with in a BM through VC and OAVM

The provision regarding meeting through VC and OAVM under Sub Rule 4 of The Companies (Meetings of Board and its Powers) Rules, 2014 are as under:

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- The approval of the annual financial statements;
- The approval of the Board's report;
- The approval of the prospectus;
- The Audit Committee Meetings for consideration of accounts; and
- The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Passing of resolution by circulation

The provision regarding meeting through VC and OAVM under Sub Rule 5 of The Companies (Meetings of Board and its Powers) Rules, 2014 are as under:

A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax. In the light of the above any urgent resolution can also be passed through circulation.

Issues for NPOs in using other electronic mediums for Meetings

It has to be understood that the minutes of a meeting are the most important evidence for legal purposes. Therefore, an organisation should be careful about ensuring the evidence value of all the meetings.

The legal frequency of NPOs is also important, the NPO registered as a section 8 Company is required to have minimum two board meetings in a year. The remaining forms of organisation i.e. Society and Trust are subject to various state laws and their own bye laws may require to have one or two compulsory board meetings. Therefore, an NPO should confine to the legitimate and approved methods of board meeting for at least 2 meetings in a year.

For quick decision making, NPOs may also have electronic meetings through Zoom, Skype, Tele-conference or other video conference platform. In case of meeting through audio or tele conference, the minutes should be signed by circulation or in future meetings for legitimacy. Further, only specific resolutions should be passed in such meetings. For video meetings the guidelines provided by the Companies (Meetings of Board and its Powers) Rules, 2014 should be followed.

Can Directors & Trustees participate through intermediaries

It is not permissible to participate through electronic mode with the help of an intermediary. The persons who are not tech-savvy cannot be allowed any support person for participation in such meeting. Such persons have to be physically present

Role & Responsibility of the Chairperson or Secretary

The Chairperson or Secretary of the Meeting should ensure the following:

- To take attendance at the beginning of the meeting and ensure the quorum throughout the meeting. The name of the persons absent should also be declared and confirmed. If the meeting gets disconnected then the quorum and attendance should be taken again at the time of re-commencement.
- Every member, Trustee, Director should provide the full name, location and a declaration that no other person is participating in the meeting.
- Every member, Trustee, Director should confirm that the audio and video quality is good and they are comfortable with it.
- In case of dissent over any motion, the Chairperson or Secretary should make another roll call and record the dissent and assent.
- Should safeguard and ensure the integrity and decorum of the meeting.
- Should ensure that the video conference facility and equipments are available to all the participating persons.
- To ask for repetition or reiteration of any statement if it is not clear or any participant request for such repetition or reiteration.
- To prepare the minutes of the meeting.
- To provide a summary of the meeting at the end of the meeting. The chairperson of the meeting shall announce summary of decisions taken at the meeting in respect of each agenda item and names of the directors who have consented/dissented to those decisions.

Is the ho Adjournment of Meetings through Video Conferencing

Normally Board meetings are adjourned to future date if the quorum is not present and the number of persons present in such future meeting automatically form the quorum.

AGM and EGM through Video Conferencing

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 various policy matters and legislative and executive decision making. The general members and the Board/trustees exercise the power entrusted to them as per the governing documents such as Trust Deed, Memorandum of Association and Articles of Association. The provisions of the statute of registration also regulate the procedure for conducting Board and General Meetings.

A meeting of the general members normally should be held at least once in a year to discuss and approve important matters like approval of audited accounts, appointment of statutory 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. 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) or Special General Meeting (SGM).

The NGO's are constituted either as a Trust or Society or as a Section 8company. Though the Societies and Section 8

Companies are required to hold AGM & EGM of the members but in case of Trust there is normally no concept of general Body or members and in the case of trust only meeting of the trustees are held.

The Members of an NPO can be located in different geographical location and it is always difficult for member staying in far away places to attend meetings and this has become very difficult due to regular lockdowns in various part of the county due to COVID19. Hence the option of holding EGM and AGM through video conferencing or electronic mode becomes a necessity.

There is no rule or guidance under the Societies or Trust Act regarding holding meetings through video conferencing. However, the circulars issued Ministry of Corporate Affairs, Govt. of India and The Companies (Meetings of Board and its Powers) Rules, 2014 issued by the Ministry of Corporate Affairs, Govt. of India can be a great reference document for conducting board meetings through electronic medium in the NPO sector. All section 8 Companies can directly avail the benefits of the various circulars and Trust and Societies can avail the benefit of the provisions subject to any specific restriction in their Bye Laws or the local statute.

Circular 14 dated 8th April 2020 on Ordinary and Special Resolutions : The Ministry of Corporate Affairs, Govt. of India issued Circular No. 14/2020 dated 8th April 2020 provided in Annexure 1. In this circular it is mentioned that there is no specific provision in the Companies Act 2013 to hold generalmeetings through VC or OAVM. Further, though section 108 allows for e-voting (including remote e-voting) for general meeting, but section 110 allows company to pass resolutions through postal ballot (including electronic ballot).2.02 In relaxation of the above legal procedures, this circular provided the guideline for holding EGM on or before 30.06.2020.

Circular 17 dated 13th April 2020 on Ordinary and Special Resolutions :The Ministry of Corporate Affairs, Govt. of India issued Circular No. 17/2020 dated 13th April 2020 provided in Annexure 2 , further clarifying that a notice for such meeting could be served through e-mails registered with the company. Further, a notice may be posted in the website of the company regarding the meeting, particularly for the benefit of members whose e-mail id are not available. Further, the company may use other mode of communication and if contact details are not available, then a public notice may be published by way of advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and also in English language in English newspaper. Both the newspapers should preferably have electronic editions.

Circular 18 dated 21st April 2020 on Extension of Time for AGM :The Ministry of Corporate Affairs, Govt. of India has issued Circular No. 18/2020 dated 21st April 2020 provided in Annexure 3. In this circular the time for holding Annual General Meeting (AGM) has been extended from 6 months to 9 months for those companies whose financial year ended on 31st December2019. In other words, such companies can hold their AGM by the 30th September 2020.

Circular 20 dated 5th May 2020 on AGM through VC or OAVM : The Ministry of Corporate Affairs, Govt. of India issued Circular No. 20/2020 dated 5th May 2020 provided in Annexure 4. In this circular the companies have been allowed to hold AGM through VC or OAVM during the calendar year 2020.

Procedure for holding AGM through VC and OAVM

Ministry of Corporate Affairs has given relaxations to Companies to conduct the meeting through Video Conferencing or other audio-visual means vide General Circular No.

20/2020 dated May 05, 2020.Due to Outbreak of COVID-19, and continued restriction on free movements, it is difficult for Companies to call and conduct the meeting at the registered office or any place as permitted under the Companies Act, 2013. MCA has given relaxation to Companies that follows Calendar year as financial year to conduct the AGM till September 30, 2020.Based on the circular and the best governing practices prevalent in the sector, we have tried to note down some of the ways in which we can implement the procedures to be followed in an AGM.

Notice for AGM: Notice to members can be sent through email, where the same is available. A copy of the notice shall also be prominently displayed on the website, if any, of the organization.In case the e-mail addresses are not registered with the organization, the organization shall contact all those members over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members; orWhere the contact details of any of members are not available with the company or could not be obtained, it shall cause a public notice by way of advertisement to be published immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district and specifying in the advertisement the following information:

- That the company intends to convene an AGM in compliance with applicable provisions and for the said purpose it proposes to send notice to all its members by e-mail after at least 3 days from the date of publication of the public notice;
- The details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM.

Further the Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable to participate and vote on the items being considered in the meeting.

Notice issued prior to the lockdown restrictions :

The organizations which have already sent their notices for calling AGM, should be required to send out fresh notices containing the fact that meeting will conducted through VC/OAVM.In our view, the length of AGM notices can remain 21 days unless the bye- laws prescribe a shorter notice.

Minimum standards of VC/OVAM facility : Ensure that the Meeting through VC/OAVM facility allows two way teleconferencing for the ease of participation of the members. The VC/OVAM facility should have a capacity to allow at least the members equal to total number of members at any given period of time.

Time frame for VC/OVAM facility : The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the EGM and shall not be closed till the expiry of 15 minutes after the conclusion of the EGM.

Quorum: Attendance of members through VC/OAVM shall be counted for quorum

Voting by the member present : The company shall provide a designated e- mail address to all members at the time of sending the notice of Meeting so that the members can convey their vote, when a poll is required to be taken during the Meeting on any resolution, at such designated email address. During the Meeting held through VC/OVAM facility,

where a poll on any item is required, the members shall cast their vote on the resolutions only by sending their email addresses which are registered with the company. The said emails shall only be sent to the designated email address circulated by the company in advance.

Election of chairman : Unless the articles require any specific person to be appointed as a Chairman for the meeting, the Chairman for the Meeting shall be appointed by a poll conducted through the registered e-mail during the Meeting

Filing of resolutions : All resolutions, passed in accordance with this mechanism shall be filed with the relevant statutory authority within the prescribed time limits mentioned in the respective acts, clearly indicating therein that the mechanism provided herein were duly complied with during such Meeting

Maintenance of recorded transcript : The recorded transcript shall be maintained by the company and be shared with all the members in case any member requires them for documentation purposes.

Suggested Way Forward for Societies and Trust

The aforesaid circulars issued by Ministry of Corporate Affairs, Government of India are specifically applicable to companies registered under the Companies Act 2013. These circulars do not specifically apply to NPOs registered as Societies and Trust.The NPOs registered as Trust are subject to the specific clauses in the Trust Deed. If any restrictive clauses regarding the Board and General Meeting are not there in the Trust Deed, then such institution may conduct the meetings through VC and OAVM.

The NPOs registered as Society are subject to the specific clauses in the Articles of Association and also the respective Societies Registration Act of the statein which the registered office is situated. If any restrictive clauses regarding the Board and General Meeting are not there, then such institution may conduct the meetings through VC and OAVM.Further, NPOs may pass those resolutions which are required for statutory purposes such as approval of annual accounts etc. subject to ratification of such resolutions in the EGM or AGM to be held in a legally valid manner in future

Other Key Issues

Proxy : 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.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.A proxy is not permissible for Board meetings and should be used in General Meetings only. Proxy should preferably be avoided in a voluntary organisation.

Moreover, one need to refer the constitution document and the relevant societies act before going for the use of Proxy in case of an organization registered as a society or as trust.

Resolution by Circulation : The Board or the Trustees may pass resolutions by circulation when it is not possible to call a physical board meeting.However, the practice of passing Resolution through circulation is not applicable for resolution required to be passed by general members.

Annexure 1

MCA Circular 14 dated 8th April 2020

General Circular No. 14/2020

F. No. 21/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P Road, New Delhi - 110001
Dated : 8th April 2020

To
All Regional Director,
Ministry of Corporate Affairs
All Registrar of Companies, All Stakeholders

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to pass ordinary and special resolutions of urgent nature, in view of the difficulties faced by the stakeholders on account of the threat examined considering the overall situation at present.

2. The Act does not contain any specific provision for allowing conduct of members' meetings through video conferencing (VC) or other audio visual means (OAVM). It has been noted that section 108 of the Act and rules made thereunder provide for relevant companies to allow e-voting (including remote e-voting) in case of general meetings convened by them. Section 110 of the Act, on the other hand, allows the companies to pass resolutions (except items of ordinary business and items where any person has a right to be heard) through postal ballot (which includes electronic ballot and electronic voting under section 108). In view of the current extraordinary circumstances due to the pandemic caused by COVID-19 prevailing in the country, requiring social distancing, companies are requested to take all decisions or urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of postal ballot/e-voting in accordance with the provisions of the Act and Rules made thereunder, without holding a general meeting, which required physical presence of members at a common venue.

3. However, in case holding of an extra ordinary general meeting (EGM) by any company is considered unavoidable, the following procedure needs to be adoptedfor conducting such meeting on or before 30.06.2020, in addition to any other requirement provided in the Act or the rules made thereunder

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility

I. EGMs, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shall be maintained in safe custody by the company. In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website (if any) of the company.

II. Convenience of different persons positioned in different time zones shall be kept in mind before scheduling the meeting.

III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow atleast 1000 members to participate on a first-come-first-served basis. The large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come-first-served principle.

IV. The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.

V. Before the actual date of the meeting, the facility or remote e-voting shall be provided in accordance with the Act and the Rules.

VI. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

VII. Only those members, who are present in the meeting through VC or OAVM facility and have not cast their vote on resolutions through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through e- voting system or by a show of hands in the meeting.

VIII. Unless the articles of the company require any specific person to be appointed as a

Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner.

IX. The Chairman present at the meeting shall ensure that the facility of e-voting system is available for the purpose of conducting a poll during the meeting held through VC or OAVM. Depending on the number of members present in such meeting, the voting shall be conducted in the following manner:

a. where, there are less than 50 members present at the meeting, the voting may be conducted either through the e-voting system or by a show of hands, unless a demand for poll is made in accordance with section 109 of the Act, in which case, the voting shall be conducted through the e-voting system.

b. In all other cases, the voting shall be conducted through e-voting system.

X. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there is not requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. However, in pursuance of section 112 and section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

XI. At least one independent director (where the company is required to appoint one), and the auditor or his authorised representative, who is qualified to be the auditor shall attend such meeting through VC and OAVM.

XII. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.

XIII. The notice for the general meeting shall make disclosures with regard to the manner in which framework provided in this Circular shall be available for use by the members and also contain ar instructions on how to access and participate in the meeting. The company shall also provide a helpline number through the registrar and transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting. A copy of the meeting notice shall also be prominently displayed on the website of the company and due intimation may be made to the exchanges in case of a listed company.

XIV. In case a notice for meeting has been served prior to the date of this Circular, the framework proposed in this Circular may be adopted for the meeting, in case the

consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.

XV. All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly compiled with during such meeting.

B. For companies which are not required to provide the facility of e-voting under the Act -

I. EGM, wherever unavoidable, may be held through VC or OAVM and the recorded transcript of the same shallbe maintained in safe custody by the company. In case of a public company, the recorded transcript of the meeting, shall as soon as possible, be also made available on the website (if any) of the company.

II. Convenience of different persons positioned times zones shall be kept in mind before scheduling the meeting.

III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow atleast 500 members or members equal to the total number of members of the company (whichever is lower) to participate on a first-come-first-served basis. The large share holders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stake holders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come-first-served principle.

IV. The facility for joining the meeting shall be kept open at least 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.

V. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

VI. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner.

a. where there are less than 50 members present at the meeting, the Chairman shall be appointed in accordance with section 104.

b. in all other cases, the Chairman shall be appointed by a poll conducted in a manner provided in succeeding ub-paragraphs.

VII. At least one independent director (where the company is required to appoint one), and the auditor or his authorised representative, who is qualified to be the auditor shall attend such meeting through VC and OAVM.

VIII. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there if not requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. However, in pursuance of section 112 and section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

IX. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.

X. The company shall provide a designated email address to all members at the time of sending the notice of meeting so that the members can convey their vote, when a poll is required to be taken during the meeting on any resolution, all such designated email address.

III. All care must be taken to ensure that such meeting through VC or OAVM facility allows two way teleconferencing or webex for the ease of participation of the members and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the e-mail address of the company. Such facility must have a capacity to allow atleast 500 members or members equal to the total number of members of the company (whichever is lower) to participate on a first-come-first-served basis. The large share holders (i.e. shareholders holding 2% or more shareholding), promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stake holders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come-first-served principle.

IV. The facility for joining the meeting shall be kept open at least 15 minutes before the

time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.

V. Attendance of members through VC or OAVM shall be counted for the purpose of reckoning the quorum under section 103 of the Act.

VI. Unless the articles of the company require any specific person to be appointed as a Chairman for the meeting, the Chairman for the meeting shall be appointed in the following manner.

a. where there are less than 50 members present at the meeting, the Chairman shall be appointed in accordance with section 104.

b. in all other cases, the Chairman shall be appointed by a poll conducted in a manner provided in succeeding ub-paragraphs.

VII. At least one independent director (where the company is required to appoint one), and the auditor or his authorised representative, who is qualified to be the auditor shall attend such meeting through VC and OAVM.

VIII. A proxy is allowed to be appointed under section 105 of the Act to attend and vote at a general meeting on behalf of a member who is not able to attend personally. Since general meetings under this framework will be held through VC or OAVM, where physical attendance of members in any case has been dispensed with, there if not requirement of appointment of proxies. Accordingly, the facility of appointment of proxies by members will not be available for such meetings. However, in pursuance of section 112 and section 113 of the Act, representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting in the meeting held through VC or OAVM.

IX. Where institutional investors are members of a company, they must be encouraged to attend and vote in the said meeting through VC or OAVM.

X. The company shall provide a designated email address to all members at the time of sending the notice of meeting so that the members can convey their vote, when a poll is required to be taken during the meeting on any resolution, all such designated email address.

XI. The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained by the company at all times. Due safeguards with regard to authenticity of email address(es) and other details of the members shall also be taken by the company.

XII. During the meeting held through VC or OAVM facility, where a poll on any item is required, the members shall cast their vote on the resolutions only be sending emails through their email addresses which are registered with the company. The said emails shall only be sent to the designated email address circulated by the Company in advance.

XIII. Where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act. Once such demand is made, the procedure provided in the proceeding sub-paragraphs shall be followed.

XIV. In case the counting of votes required time, the said meeting may be adjourned and called later to declare the result.

XV. The notice for the general meeting shall make disclosures with regard to the manner in which framework provided in this Circular shall be available for use by the members and also contain clear instructions on how to access and participate in the meeting. The Company should also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using technology before in meeting. A copy of the notice shall also be prominently displayed on the website of the company.

XVI. In case a notice for meeting has been served prior to the date of this Circular, the framework proposed in this Circular may be adopted for the meeting in case the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures in consonance with this Circular is issued consequently.

XVII. All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting clearly indicating therein that the mechanism provided herein alongwith other provisions of the Act, and rules were duly compiled with.

4. The companies referred to in paragraphs 3 (A) and 3 (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures inspection of related documents by members or authorisations for voting by bodies corporate etc. as provided in the Act and the articles of association of the company are made through electronic mode.
5. This issues with the approval of the competent authority.

Yours faithfully,
(K.M.S. Narayanan)
Assistance Director

MCA Circular 17 dated 13th April 2020

General Circular No. 17/2020

F. No. 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated: 13th April, 2020

To
All Regional Directors,
All Registrar of Companies
All Stakeholders

Subject: Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.

Sir/Madam,

Reference is drawn to this Ministry's General Circular No. 14/2020 dated 8th April, 2020 on the subjected cited above. After the issue of the said circular the Ministry has received representations from stakeholders for clarification on some of the elements in the framework laid down therein. The stakeholders have highlighted the difficulties in serving and receiving notices/responses by post in the current circumstances. In view of the same and with a view to brining in greated clarity on the modalities to be followed by companies for conduct of EGSs during the COVID- 19 related social distancing norms and lockdown for the period as indicated in the said Circular, or till further orders, whichever is earlier, the following clarifications are hereby given:

Manner and mode of issue of notices to the members before convening the general meeting:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility:

1. In view of the present Circumstances in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules), the notices to members may be given only through e-mail registered with the company or with the depository partipant/depository.
2. While publishing the public notice as required under rule 20(4)(v) of the rules, the following matters shall also be stated, namely :-
   a. a statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with General Circular

14/2020, dated 8th April, 2020 and this Circular.

b. the date and time of the EGM through VC or OAVM;
c. availability of notice of the meeting on the website of the company and the stock exchange.
d. the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting.
e. the manner in which the members who have not registered their email addresses with the company can get the same registered with the company.
f. any other details considered necessary by the company.

3. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable members to participate and vote on the items being considered in the meeting.

B. For companies which are not required to provide the facility of e-voting under the Act:

1. In view of the present circumstances, in accordance with the provisions of rule 18 of the Companies (Management and Administration) Rules, 2014 (the rules) the notices to members may be given only through e-mails registered with the company or with the depository/depositary participant.
2. A copy of the notice shall also be prominently displayed on the website, if any, on the company.
3. In order to ensure that all members are aware that a general meeting is proposed to be conducted in compliance with applicable provisions of the Act read with General Circular No. 14/2020, dated 8th April, 2020, the company shall :
   (a) contact all those members whose e-mail addresses are not registered with the company over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all it's members; or
   (b) where the contact details oany of members are not available with the company or could not be obtained as per (a) above, it shall cause a public notice by way of advertisement to be published immediately at least once in vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaer having wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information.

      i. That the company intends to convene a general meeting in compliance with applicable provisions of the Act read with the General Circular No.

14/2020, dated 8th April 2020 and this Circular, and for the said purpose it proposes to send notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice.

ii. the details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the general meeting.

4. The Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable members to participate and vote on the items being considered in the meeting.

Requirement for voting by show of hands: In sub-paragraph A - IX of para 3 of the General Circular 14/2020, dated 8th April, 2020 relevant companies were allowed to pass resolutions in certain cases through show of hands. Considering the dissimilarities involved in e-voting and voting by show of hands, the said sub-paragraph is substituted as under:

"IX. The Chairman present at the meeting shall ensure that the facility of e- voting system is available for the purpose of voting during the meeting held through VC or OAVM."

Passing of certain items only through postal ballot without convening a general meeting :

(a) In the General Circular No. 14/2020, dated 8th April, 2020. It was stated that the companies may pass resolutions through postal ballot/e-voting without holding a general meeting unless it is so required as per section 110(1)(b) of the Act. Clarification have been sought on the issue of dispatch of notices by companies by post and communication by the members of their assent or dissent on relevant resolutions by post under the current circumstances.

(b) The matter has been examined and the attention is invited to rule 22(15) of the rules which provides that the provisions of rule 20 regarding voiting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means. Therefore, for companies covered in para 3-A of the General Circular No. 14/2020, dated 8th April, 2020, while they are transacting any item only by postal ballot, upto 30th June 2020, or till further orders, whichever is earlier, the requirements provided in rule 20 of the rules as well as framework provided in the General Circular No. 14/2020, dated 8th April, 2020 and this circular would be applicable mutatis mutandis. The company would send notice by email to all its shareholders who have registered their email addresses with the company or depository participant/ depository. The company would also be duty bound to provide a process of registration of e-mail addresses of members and state so in its public notice. The

communication of the assent or dissent of the members would only take place through the remote e-voting system, as no meeting will be required to be called.

Sending of e-mails by members, where a poll on any item is required for companies covered in para 3-B of the General Circular No. 14/2020, dated 8th April, 2020:

Clarification has been sought as to whether the members are required to take part in the poll on items considered during the meeting by sending e-mails in advance to the companyh before the meeting is actually held through VC or OAVM facility. The matter has been examined and it is hereby clarified that sub-paragraph B-XII of para 3 of the General Circular No. 14/2020, dated 8th April, 2020 does not provide for polling by members at any time before the general meeting. The poll will take place during the meeting, and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

This issues with the approval of the competent authority.

Yours faithfully,
(K.M.S. Narayanan)
Assistance Director

Annexure 3

MCA Circular 18 dated 21stApril 2020

General Circular No. 18/2020

F. No. 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated: 21st April, 2020

To
All Regional Directors,
All Registrar of Companies
All Stakeholders

Subject: Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019

Sir/Madam,

1. Several representations have been received from stakeholders with regard to difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. These representations have been examined and it is noted that the Companies Act, 2013 (Act) allows a company to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM.

2. On account of the difficulties highlighted above, it is hereby clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly.

3. This issues with the approval of the competent authority.

Yours faithfully,
(K.M.S. Narayanan)
Assistance Director

MCA Circular 20 dated 05th May 2020

General Circular No. 20/2020

F. No. 2/1/2020-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R. P. Road, New Delhi - 110001
Dated: 05th May, 2020

To
All Regional Directors,
All Registrar of Companies
All Stakeholders

Subject: Clarification on holding of annual meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)

Sir/Madam,

Several representation have been received in the Ministry for providing relaxations in the provisions of Companies Act, 2013 (the Act) or rules made thereunder to allow companies to hold annual general meeting (AGM) in a manner similar to the one provided in General Circular No. 14/2020, dated 08.04.2020 (EGM Circular-I) and General Circular No. 17/2020 dated 13.04.2020 (EGM Circular-II), which deal with conduct of extraordinary general meeting (EGM).

2. In the meanwhile, by virtue of the General Circular No. 18/2020, dated 21.04.2020, the companies whose financial year ended on 31st December, 2019, have been allowed to hold their AGM by 30th September, 2020.

3. The matter has been further examined and it is stated that in view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calender year 2020, subject to the fulfillment of the following requirements :

A. **For companies which are required to provide the facility of e-voting under the ACt, or any other company which has opted for such facility-**

   I. The framework provided in para 3 - A of EGM Circular-I and the manner and mode of issuing notices provided in sub-para (i)-A of EMG Circular - II shall be applicable mutatis mutandis for conducting the AGM

II. In such meetings, other than ordinary business, only those itmes of special business, which are considered to be unavoidable by the Board, may be transacted.

III. In view of the prevailing situation, owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report. Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email tothe members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

IV. Before sending the notices and copies of the financial statements, etc. a public notice by way of advertisement be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a ide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information

a. statement that the AGM will be convened through VC or OAVM in compliance with applicable provisions of the Act read with this Circular.
b. the date and time of the AGM through VC or OAVM.
c. availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company.
d. the manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting orthrough the e-voting system during the meeting.
e. the manner in which the persons who have not registered their email addresses with the company can get the same registered with company.
f. the manner in which the members can give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means.
g. any other detail considered necessary by the company.

V. In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the divident warrant/cheque to such shareholder by post.

VI. In case, the company has received the permission from the relevant authorities to conduct its AGM atits registered office, or at any other place as provided under section 96 of the Act, after following any advisories issued from such authorities, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OVAM, so a to allow other members of the company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e-voting system.

B. For companies which are not required to provide the facility of e-voting under the Act -

I. AGM may be conducted through the facility of VC or OAVM only by a company which has in itsrecords, the email addresses of at least half of its total number of members, who-

a. In case of a Nidhi, hold shares of more that one thousand rupees in face value or more than oneper cent of the total paid up share capital, whichever is less;

b. in case of other companies having share capital, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as given a right to vote at the meeting.

c. in case of companies not having share capital, who have the right to exercise not less that seventy five per cent. of the total voting power exercisable at the meeting.

II. The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.

III. The framework provided in Para 3-B of EGM Circular-I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular-II shall be applicable mutatis mutandis for conducting
the AGM.

IV. In such meetings, other that ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

V. Owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

VI. The Companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the divided warrant/cheque to such shareholder by post.

4. The companies referred to in paragraphs 3 (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/registers by members, or authorisations for voting by bodies corporate, etc as provided in the Act and the articles of association of the company are made through electronic mode.

5. The companies which are not covered by the General Circular No. 18/2020. dated 21.04.2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extention of AGM at a suitable point of time before the concerned Registrar of Companies under Section 96 of the Act.

6. This issues with the approval of the competent authority.

Yours faithfully
(Sridhar Pamarthi)
Joint Director

FAQs on Board related to Section 8 Companies**

While fixing the time, date and place of annual general meeting, whether Board is bound to consider directions, if any, given by the members in its general meeting.

Yes, in pursuance of the second proviso to section 96(2), the time, date and place of each annual general meeting is required to be decided upon before hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

Can a Section 8 Company hold a meeting of the members with less than 21 days notice?

Yes, Section 8 Company can hold a meeting with minimum 14 days notice as against 21 days notice otherwise applicable under section 101 (1) of Companies Act.

The words "twenty one days" was substituted with the words "fourteen days" vide notification G.S.R. 466(E) dated 5th June, 2015.

What is the time period required under section 136(1) for sending copies of financial statements to various stakeholders for section 8 companies?

In view of the exemption notification, copy of audited financial statements shall be sent to various recipients not less than 14 days before the date of meeting. Earlier, the period was twenty one days as notified vide notification G.S.R. 466(E) dated 5th June, 2015.

3.4 In view of the exemption notification, section 160 of the Companies Act 2013 is not applicable to companies whose articles provide for election of directors by ballot. Does this mean that if the Articles of a section 8 company donot provide specifically for election of directors by ballot then Section 160 applies and consequentially a deposit of Rs. 1 lac is mandatorily required to be taken from persons standing for directors election as per section 160?

Yes, if election of directors by ballot is not prescribed in the Articles, then, section 160 applies and consequentially a deposit of Rs. 1 lac is mandatorily required to be taken from persons standing for director's election.

Is Section 8 Company required to comply with requirements of recording minutes of proceedings of the general meetings, Board etc as prescribed under section 118 of the Companies Act 2013?

No, in view of exemption notification G.S.R. 466(E) dated 5th June, 2015. Section 118 does not apply as a whole except that minutes may be recorded within 30 days of the conclusion of the meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

Source: The Companies Act, 2013 Series By The Institute of Companies Secretaries of India

Are there any prescribed criteria with respect to Minimum and Maximum number of directors in a Section 8 Company?

The prescription under section 149(1) of Companies Act 2013 as to having Minimum of three directors for public limited company and two directors for private limited company and maximum of fifteen directors is not applicable to section 8 company and thus there is no prescription with respect to minimum or maximum directors in a section 8 Company.

However, second proviso to section 149(1) requires a woman director in prescribed class of companies. Also section 149(3) requires every company to have a resident director.

Is it mandatory for a Section 8 Company to appoint an Independent Director?

No, Section 8 Companies are exempted from the requirement of appointment of independent director and all the consequential provisions relating to Independent directors under section 149(1) of the Companies Act, 2013 vide exemption notification dated June 05, 2016.

Whether a Section 8 Company can pay bonus to its employees? And what if, an employee is also a member?

Clause 5(ii) of the Form INC 13 provided under rule 19(2) of the Companies (Incorporation) Rules, 2014 provides that - "No portion of the profits, other 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 persons claiming through any one or more of them." In view of the above there is no restriction in payment of bonus to employees, however bonus can not be paid to a member, even in his capacity as an employee.

Is there is any restriction in payment of remuneration to an employee/director, who is also a member by such Section 8 Company? If he can be provided any other benefit in money or money's worth?

There is not any restriction in payment of remuneration toan employee/director. In case the employee is also a member, no remuneration or other benefit in money or money's worth can be given to him 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.

If there is any restriction in payment of any fees to a member by a Section 8 Company against actual services rendered?

In terms of clause 5(v) of the draft memorandum of association of Section 8 Company in form INC 13, such company may in good faith pay prudent remuneration to any of its members in return for any services (not being services of a kind which are required to be rendered by a member), actually rendered to the company

If a Section 8 Company can take loan from its members and pay interest thereupon?

Yes, a section 8 company can take loan from its members and pay interest thereupon, subject to the provisions of Chapter V of the Act read with rules made thereunder.

If a Section 8 Company can pay rent towards the property taken on lease by such Section 8 Company?

In terms of clause 5(v) of the draft memorandum of association of Section 8 Company in form INC 13, Section 8 Company can pay reasonable & proper rent to the member on premises let to the company.

How many meetings of Board of Directors of section 8 companies are required to be held in a year?

In view of exemption notification read with section 173(1), section 8 companies are required to have atleast one meeting within every six calendar months.

What is the quorum for board meetings of section 8 companies?

As per section 174(1) read with exemption notification, quorum for board meetings of section 8 companies is eight directors or 25% of its total strength, whichever is lower. However, the quorum shall not be less than two members.

When there is no requirement for Section 8 Companies to appoint an independent director, what is the criterion for the composition of Audit Committee on the Board of Section 8 Company?

The audit committee of Section 8 Company need not have an independent director. As per section 177(2), Audit Committee of Section 8 Companies shall consist of minimum 3 directors. Further, its proviso requires majority of members including the Chairperson with the ability to read and understand financial statements.

What are the other exemptions to section 8 companies with respect to Board Committees?

Section 8 Companies need not constitute a nomination and remuneration committee and stakeholder's relationship committee, which are otherwise prescribed under Section 178 of the Companies Act, 2013.

Also, if the company has more than 1000 members or shareholders, still the requirement of having Stakeholders Relationship committee does not arise under section 178(5) of the Companies Act, 2013. Section 178 as a whole does not apply to Section 8 Company vide exemption notification dated 05th June, 2015.

When there is no requirement for Section 8 Companies to appoint an independent director, what is the criterion for the composition of Audit Committee on the Board of Section 8 Company?

The audit committee of Section 8 Company need not have an independent director. As per section 177(2), Audit Committee of Section 8 Companies shall consist of minimum 3 directors. Further, its proviso requires majority of members including the Chairperson with the ability to read and understand financial statements.

What are the other exemptions to section 8 companies with respect to Board Committees?

Section 8 Companies need not constitute a nomination and remuneration committee and stakeholder's relationship committee, which are otherwise prescribed under Section 178 of the Companies Act, 2013.Also, if the company has more than 1000 members or shareholders, still the requirement of having Stakeholders Relationship committee does not arise under section 178(5) of the Companies Act, 2013. Section 178 as a whole does not apply to Section 8 Company vide exemption notification dated 05th June, 2015.

If a director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements and abstain from participation or in certain cases only?

Yes, like directors of any other company, the director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements.

Whether a Section 8 Company can maintain its books of accounts on cash basis?

Section 128 of the Companies Act, 2013 provide for maintenance of books of accounts on accrual basis and according to the double entry system of accounting. Thus even a section 8 company can not maintain its books of accounts on cash basis.

For what period a Section 8 Company is required to keep its books of accounts?

Section 128(5) of the Companies Act, 2013 provides that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. However where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

The exemption notification issued under the Companies Act, 1956 provided that the provisions of section 209(4A) of the Companies Act, 1956 shall apply with modification to section 25 companies and the section 25 companies were required to preserve the books of account relating to a period of not less than four years immediately proceeding the current year.

No such exemption notification has been issued in respect of Section 8 Companies under the provisions of the Companies Act, 2013. Accordingly, the companies registered under the provisions of section 8 of the Companies Act, 2013 shall also be required to maintain books of accounts for the period of 8 years.

If a Section 8 Company is required to prepare its annual accounts in Schedule III of the Companies Act, 2013?

Rule 4A of the Companies (Accounts) Rules, 2014 provides that the financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable. No exemption has been provided in respect of section 8 companies.

If a director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements and abstain from participation or in certain cases only?

Yes, like directors of any other company, the director of a Section 8 Company is required to make disclosure regarding his interest in all contracts and arrangements.

Voucher Preparation

Generally, an accounting system includes various procedures for documenting and reporting accurate and up-to-date financial information. The system should also contain procedures to assist management in controlling day-to-day operations/transactions. Any financial transaction has to be supported by documents, which validate that the said transaction has actually taken place. .This is where vouchers play a crucial role.

Vouchers refer to the documents that summarize the transaction along with the supporting documents as evidence for the same. Vouchers are known as 'cash equivalent', which means that for every payment, we generate a cash/bank voucher. Therefore, in effect, vouchers assume the same importance as that of cash.

Vouchers are also required for transactions other than cash & bank. These vouchers are required while passing adjustment entries and are known as Journal Vouchers.

Objective of Vouchers

Vouchers are prepared to have proper\ evidence / supporting of financial transactions. The presence of a proper vouchers makes a financial transaction independent and verifiable. The vouchers also are necessary to establish safe administrative procedures and enable proper recording of transactions.

Understanding Vouchers

Vouchers are helpful for following reasons :

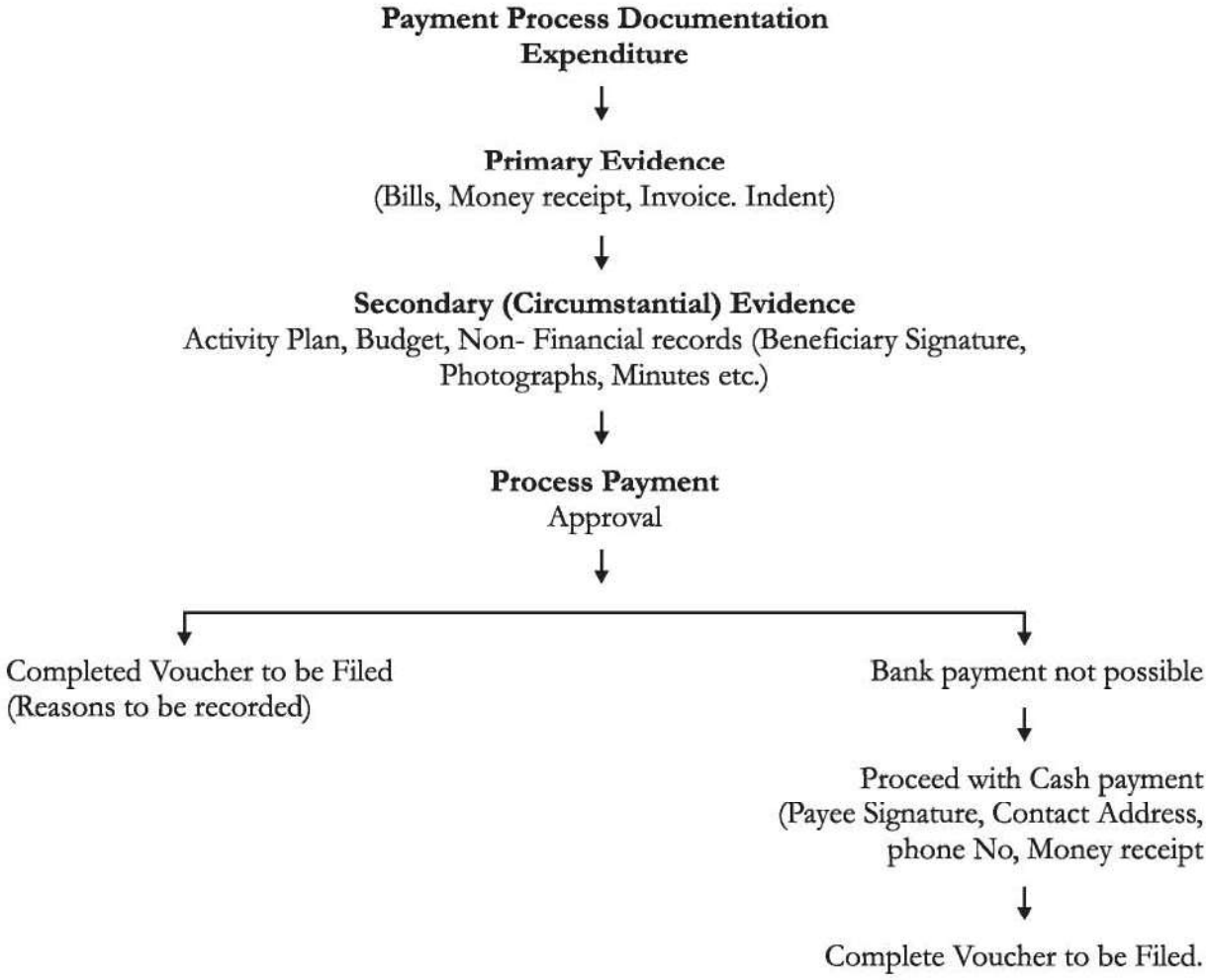
- Proper recording of transactions
- Providing proper evidence/supporting of financial transactions
- Establishing safe administrative procedures

Recording of transactions: When any activity/transaction occur, the first place where the recording is done is the voucher. Various information that are required for basic bookkeeping such as the date, account head, mode of payment, etc. are captured in the voucher.

Evidence/Supporting : Vouchers as a record of transaction contain evidence of occurrence of such transaction, activity or event. The evidence may be bills, receipts, invoices, purchase orders, agreement paper and other summaries like list and signature of participants (in case of training, workshop, etc.) For example, all capital items purchase require that three quotations from three different vendors must be obtained and then the purchase order should be placed based on the comparative analysis. It would be important to mention here that all capital items above the value of Euro 410 require three competitive quotations as part of documentation.

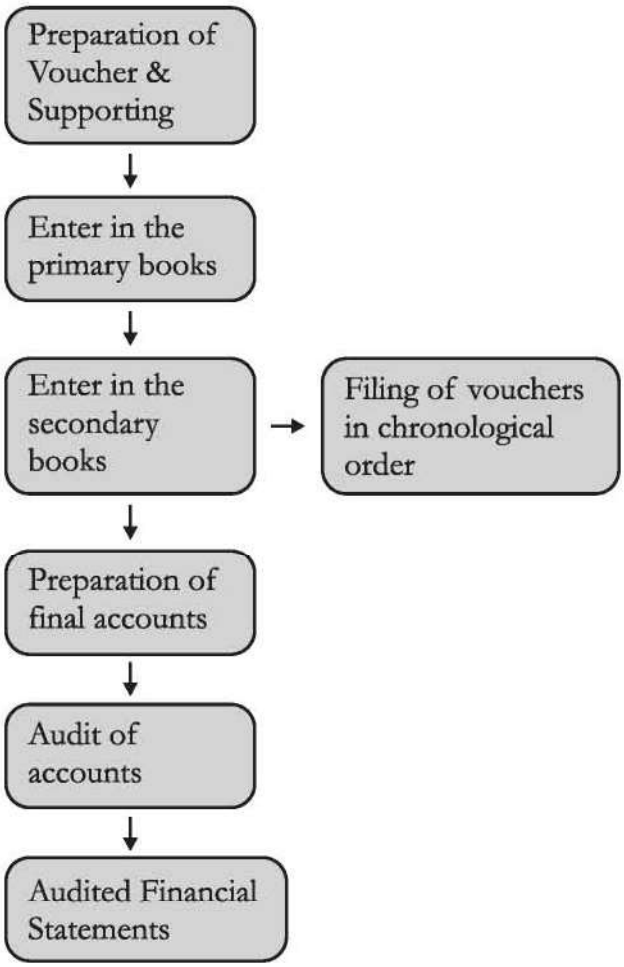
Administrative Procedure : Voucher makes the requirement of verification and approval compulsory and properly followed. Therefore, it promotes healthy internal processes.

Vouchers make the financial transaction independent and verifiable. Normally, a voucher discloses information such as details of the goods purchased, amount paid for the goods purchased, date and mode of payment, name of the supplier, name of persons passing or approving the purchase, name of the person making the payment and purpose for which the purchase was made.



For voluntary organizations dealing with more than one project and funding agencies, the project name or number and the funding agency towhich the expenditure is required to be charged must also be disclosed in the voucher. This would provide information as to under which the expenditure has been incurred. If, there are common costs, which are part of more than one project, the basis of allocation should be mentioned clearly on the voucher and the supporting document. The supporting document in that case should contain the information of both the projects and the amount charged to each project.

The steps involved in vouching i.e. from voucher preparation to its use during audit are depicted in the diagram below:



Notes in Preparation of Vouchers

All vouchers should contain the following information:

- Voucher Number
- Date of transaction
- Nature of transaction
- Amount in words and figures
- Account head to be debited/ credited
- Person who has prepared the voucher
- Authority who has passed it
- Supporting documents

Each voucher should be supported by third party documents such as bills, cash memos, letters, etc. Where secondary support documents are not available then self attested documents may be given in their place. In such cases all the details must be narrated so as to make it convincing to the auditors, funding agency and statutory authorities. The self-generated vouchers should be approved specifically by the requisite authority.

All vouchers, whether cash or bank or journal, should be approved by an authorised person, other than the accountant who prepares the vouchers.

For payment above `5000/- a revenue stamp of appropriate value must be affixed and the payee or the person authorised by the payee should sign and write his/her name and address.

If the voucher is supported by a third party bill cash memo then no receipt on the voucher with a revenue stamp is required.

It is suggested that a rubber stamp in the name of the respective funding agency should be stamped on the voucher and its support. This would ensure its correct accounting to the respective funding agency.

It is also suggested that a 'Paid' stamp be put on the supportings and voucher in order to avoid double payments being made for the same support.

The vouchers or the support documents should not be overwritten and white correction fluid should not be used unless it becomes absolutely necessary and is approved by the chief functionary.

Types of Vouchers

Many types of vouchers are used for recording the transactions as a source document in accounting. The standard vouchers in accounting comprises of Vouchers are classified into three categories:

- Contra Voucher
- Payment Vouchers
- Receipt Vouchers
- Journal Vouchers

Contra Voucher is used to indicate transfer of funds from:

- Bank account to Cash account
- Bank account to Bank account
- Cash account to Bank account
- Cash account to Cash account

In other words, cash deposited in bank or cash withdrawn from bank are recorded through contra voucher. 'Contra' means both sides. Therefore, a contra voucher is recorded in both the receipt as well as in the payment side.

Payment Voucher is a document prepared at the time when payment is to be effected and it serves as evidence for payment of goods and services that were purchased by the organization.

Receipt Voucher is documentary evidence that the sum stated thereon has been received on behalf of the organization.

Journal Voucher is documentary evidence of formal entries that need to be made in case of non-cash transactions. It records all transactions that do not involve cash and bank. Usually, journal vouchers are prepared under the following circumstances:

- Correction of accounting errors arising from mis classification
- Carrying out adjustments or transfers between accounts i.e. provision for payment in future, for depreciation, etc.

Color Coding: Vouchers are also identified on the basis of colors. For example, the following color coding may be used :

- Cash Voucher (White in color)
- Bank Voucher (Yellow in color)
- Journal Voucher (Pink in color)

Travel Form: Organisation are advised to use two type of travel form. One for the payment to resource person and participants from outside for attending programme/meetings and other for the programme staff. Both the form should provide relevant information about the activity or the purpose for which the travel was made or reimbursed. Such form should be supported by the original secondary documents such as tickets, petrol bills, etc.

Internal Billings and Notional Expenditure

Sometimes it is observed that organizations prepare internal invoices to charge for certain services provided by the organization itself to the project. For Example: Rent of a training center (which is owned by the organization) or Vehicle Usage (Owned by the organization) on flat rate basis charged to the project. Such kind of expenditures are not allowed within the BftW Cooperation framework. The expenses charged to the project should not be accumulated within the organization. The principle is that for every expenditure the two parties involved have to be different. The payer and the payee cannot be the same party. However, if there are some costs actually incurred as part of common costs (e.g: electricity or water charges), part of it can be charged based on a clear basis of such allocation. In that case copy of the invoices should be kept as part of the payment voucher.

How to enhance the quality of voucher documentation?

Vouchers are primary documents in accounting which gives the overall view of a particular transaction and the trail of events before and after. The characteristics of vouchers are:

- Clarity
- External evidence
- Verifiability

Clarity : Vouchers should provide clarity in terms of:

- Project number
- Date of transaction
- Person who has prepared the voucher
- Person who has authorized the transaction
- Purpose of the transaction
- Amount in words and figures
- Account head which has to be
- debited/credited

External Evidence: The supporting documents that are attached with the vouchers such as bills, invoices, receipts and summaries are called external evidence. The voucher should have other circumstantial evidence as well through which the authenticity can be enhanced. For example, if petrol is purchased for vehicle, then the vehicle number and the meter reading at the point of putting the petrol should be mentioned. Similarly, for stationary purchase, the purpose should be documented. If there are food bills, then it should be related to the program for which it is incurred.

Verifiability : The verifiability of a voucher can be tested if the external evidence/supporting documents provided with the vouchers can be independently verified, when required.

What are valid supporting?

It is very essential that each voucher should be accompanied by third party documents such as bills, cash memos, letters, etc. These documents should be such that they are self-sufficient to justify the occurrence of the transaction without one being there to give explanations

What to do when valid supporting documents are not available?

In case of NGOs who operate at remote locations, setting appropriate external evidence as described in previous sections can be a challenging task. In most of the locations, it is not possible to get proper bills, invoice, money receipts, etc. In such cases, the external evidence becomes very weak as only kachha bills are available. Therefore, these evidences have to be strengthened through circumstantial evidence.

A circumstantial evidence is indirect evidence that supports the fact that the expenditure has been incurred. For example, if there is expenditure on food for a meeting at the village level, circumstantial evidence can be list of participants in the meeting, their signatures, the activity plan of the organization signifying that the meetings was planned has taken place, minutes of the meeting, photographs and certification by the field coordinator. These will all provide greater evidence to support the incurred expenditures. For local travel, the purpose of travel with the number of Taxi/rickshaw and if possible, the signature of the driver should be obtained.

All vouchers and for that matter circumstantial evidences should be approved by an authorized person other than the accountant who prepares the vouchers.

Internal vs External

Internal : The internal side refers to the internal processes of a voucher. They are the voucher details like date, voucher no., head of account, narrative explanation etc., and internal steps like Prepared, Checked and Approved.

External : The external side of the voucher is as (or even more) important than internal side. The external side vouchers is for the payment by an external party and thereby strengthens the claim of payment. Examples of external process are:

- Bills
- Money receipt
- Invoice
- Way bill
- Challan

Ten Points for Voucher Preparation

Vouchers are the base of whole accounting system. Therefore, the accountant has to be very careful while preparing them. The following points have to be kept in mind while writing vouchers:

- The accountant who prepares the vouchers should be well versed with a accounting policies.
- Vouchers should be prepared and filed separately on a daily basis.
- Voucher should be prepared for each and every entry made in the books of account.
- All vouchers should be computer generated, if there is computerized accounting.

- Each voucher should be serially numbered and such numbers should be mentioned in the respective original books of account maintained in order to facilitate cross-reference.
- Various types of vouchers should be printed in different colors to help in easy identification.
- For payments, the payee or the person authorized by the payee should sign and write his/her name and address along with contact telephone number for verification.
- To ensure correct accounting to the respective funding agency, a rubber stamp in the name of the respective funding agency should be stamped on the voucher and the supporting documents.
- In order to avoid double payments, it is desirable to put a 'Paid'stamp on the voucher as well as the supporting documents.
- Neither the voucher nor the supporting document should be overwritten and correction fluid should not be used. In case, correction is to be made, it should be approved by the authorized person. Therefore, one should be very cautious while writing vouchers.

Vouchers are very crucial document for an organization. Vouchers should be kept by the organization for at least 10 years after the close of the project period as per BftW guidelines. A good voucher system is important for future reference for the auditors and the statutory authorities. Therefore, it is important that a voucher be filled correctly with requisite narrations and supporting, so that the person verifying it can easily obtain the required information that is being sought.

Filing and Documentation of records

All organisations including NPOs should build proper filing systems. It is very important that all the useful and important documents and records are properly filed and kept in a secured way in order to ensure easy and systematic accessibility. Usually tracing the papers and documents becomes a time taking and tedious job if proper filing system is not in place. A good filing system enhances the efficiency and institutional memory of the organisation.

Files should be numbered and they should have an identifiable place from where they can be easily retrieved. Files may be classified as :

Cash payment voucher file
- Cash Receipt Voucher file
- Bank payment voucher file
- Bank receipt voucher file
- Journal voucher file
- Fixed assets file
- Fixed deposits file
- FCRA record file
- Foreign contribution projects file
- Local contribution file
- Income tax files
- Registrar of Society file
- Telephone bill file
- Electricity bills file
- Water bill file
- Municipal taxes bill file
- Management reports file
- Audited accounts file
- Budget file
- Contract files for each of the contracts
- Files for each of the staff
- Files containing important papers like that of the property documents, F.D. receipts, investments documents etc.
- Files related to Insurance papers
- Files related to Leave Records.
- Purchase order file
- Quotation file, etc.- Requisition file for programme expenses
- Workshop/Meeting File Most of these files should be continued from year to year except the cash, bank and journal files which should be changed every year.

Documentation of Immovable Assets

Immovable properties such as land & buildings should be supported by the following documents:

- Original sale deed
- Parent documents (if any)
- Sketch of the property
- Encumbrance certificates
- Legal opinion regarding the title of the property
- Land tax receipts
- Patta
- If leasehold, then lease agreements
- Donor details and documents related to donated assets.
- In case of constructed building plan approved by the respective authority and valuation report from an approved valuer as to the value of the building

Documentation of Movable Assets

In case of vehicles the following documents should be kept:

i) Original Invoice
ii) Registration Certificate Book
iii) Road tax receiptsiv) Insurance policy bond
v) In case of hypothecation, the documents pertaining to loan and hypothecation

In case of other movable assets the following documents should be kept:

I) Original Invoice or Cash Memo
ii) Proof of payment or cash receipts
iii) Donor consent in case of a contribution in kind, such consent should create a valid
iv) Documents pertaining to annual maintenance contract
v) Insurance policy, if any
vi) Details in Form FC-6 in case of foreign contribution receipt in kind.

SUMMING UP NOTES

- Filing should be proper so that it ensures security and easy accessibility.
- Documentation and filing of fixed as sets should be properly supported by third party documents for future reference and use.

Social Audit and Stakeholder Participation

Social Audit implies the ability and responsiveness of an organisation to open itself for scrutiny/audit by its stake holders. Social Audit is evolving and the current practice is to involve the communities at the village level with external facilitators to evaluate and audit the acitivities pertaining to that village or the project.

This is an important and integral aspect of social audit, however, true social audit involves the participation of various stakeholders into the entire functioning of NPOs. An NPO should be open and transparent about all of its functions and processes to its stakeholders. It may be defined as the willingness of an NPO to get itself evaluated by its stakeholders in terms of the efficiency of its processes, relevance of its work. Social audit also involves an initiative on the part of the management of a NPO to justify itself in a holistic way.

Social Audit is one of the most important exercise which provides greater clarity on the work and activities of an NPO. Financial accounting and audits are limited to cash and legal transactions only. But charitable work may include much more important and broader aspects, which do not find a place in the financial or other formal statements.

One more important aspect of social audit is its bottom up approach unlike financial statements. A social audit begins at the community or the activity level and it may extend to the system and processes right up to the board level. In other words, social audit is a process of verifying various activities, processes and systems from a social perspective. NPOs being trustees of public funds have a larger responsibility than the legally or technically appropriate utilisation or management of funds. Historically it has been noticed that many activities of NPOs which are appropriate and acceptable from financial or legal standards but may not be desirable in terms of the opportunity lost or from the point of view of some other stakeholder. For instance:

- A large corpus may be desirable from an angle of institutional sustainability but it may cause reduction in availability of funds for ongoing activities against which the other stakeholders may have a different perspective.
- An error of judgement by the management due to lack of participative decision-making at community level may raise serious question under social audit. For example, building a rehabilitation colony far away from the place of work of the beneficiaries may result in failure of the project.
- High infrastructure or administrative cost per beneficiary may not result in any financial discrepancy but socially it is not acceptable.
- The effective cost of delivery of services may be very high due to lack of clarity between categorisation of programme and administrative expenses. In such cases a social audit using different parameters could be useful. The parameter such as cost per beneficiary, disproportionate

allocation of funds to budget heads where less important issues have greater allocations. That is a stakeholder's perspective on prioritising of various expenses could be of much help.

- The field level work entails contributions from various stakeholders and the village level resources & assets are also mobilised. Only through a social audit such aspects of development work could be assessed and highlighted.

Therefore, a social audit is an overall value based participative exercise, which can be done right from the grassroots to the board level. The NPO should be willing to open all or any aspect of its functioning for a 'value for money/efforts/resources analysis' by a external set of persons including stakeholders. The external team should be empowered enough to make the NPO and its board accountable. The NPO is required to develop proper policies and methodology in this regard.

Social Audit Principles

Social audit aspires to address the issue of holistic sustainability, relevance and effectiveness of the programmes, activities and systems of the NPO. The fundamental principles of social audit are as under:

- It is an exercise which is independent of the management of the NPOs. It should be initiated by the management, but conducted by a team of other stakeholders including external experts.
- The audit team should be independent and empowered enough to question and make the NPO accountable.
- The scope of social audit should be open and all inclusive, covering all aspects of the NPO.
- Social audit should be based on verifiable and comparable criteria.
- Social audit results should be shared with the wider section of stakeholder including communities.

Social Audit Process

A social audit in an NPO can be conducted by constituting a team of stakeholders comprising an expert consultant and members from various interest groups of stakeholders.

Specific To R and questionnaires should be prepared keeping in view the various stakeholders who will participate in the process.

For instance, if a specific project of an NPO is to be subjected to social audit, then it could require the following steps:

- The financial, governance and activity related information available with the NPO needs to be compiled in a verifiable and comparable frame work.
- Suitable questionnaire and methodology should be prepared for getting inputs from stakeholders and as well as counter verification.
- Documentation of perception and views of the actual beneficiaries in terms of the process and delivery.
- Documentation of perception and views of experts in terms of relevance, effectiveness and opportunity losses of the resources and finances incurred.
- Perception and views of the representatives of larger target community other than the beneficiaries.
- The opinion and explanations provided by the management against its own variance analysis that is the difference between the planned activities and the actual activities.
- The opinion and explanations provided by the management against the external views and opinions gathered.
- A score sheet of the performance of the NPO shall be prepared by the social audit team on the basis of the above processes.
- The management should respond with a position paper and way forward to the audit process

Case Studies

Some real life case studies which raise accountability issues and therefore the necessity of a social audit, have been discussed below. For confidentiality these examples are treated as illusory in nature :

Example-1 A shelter home built with an investment of 20 million rupees and a recurring cost of 1 million rupees ultimately manages to provide shelter to 7-8 beneficiaries. The reason for its failure is that it was built 60 kms. away from the area of operation of the NPO. In such cases the financial statements would not reflect any irregularity.

Example-2 The land and corpus of an NPO is in excess of 1000 million rupees which is 50 times the average annual budget. The NPO is closely held by friends and relatives of the CEO. The stakeholders are not aware of the title documents. Such issues get accumulated over a long period of time therefore do not find a reflection in any given periods audit report or evaluation report.

Example-3 An NPO engaged in rehabilitation programme transfers only 40% of the available fund to the project office account. Therefore, 60% of expenditures are incurred from the head quarters. But the administrative expenditure technically are only 10% of the total expenses. In such circumstances a stakeholder based participation in distribution of expenses can only take place through an independent social audit.

Example-4 3 million rupees were spent in capacitating 10 village level accountants. The capacity building process to the same set of accountants continues with a recurring cost of another 0.5 million rupees. But the accountants even during the project period starve with a salary of 2 euro or ` 100/- a month.

Example-5 1.3 million rupees is spent on the travel of board members, but crucial field visits by programme staff could not be done for the want of ` 200/- or 4 euro per month.

Example-6 2 million rupees are spent on the aesthetics of a primary school with another 0.5 million recurring expenditure. The total number of students are not even 50, and most of them are children of the staff.

Example-7 Most of the blankets and relief materials which were shown as application of funds in the head quarters account remained unutilized at the project office godowns. The beneficiaries were unaware of any such allocation.

Example-8 Substantial funds in the revolving credit are transferred to a joint bank account between the representative of beneficiaries and the CEO. The amount is shown as fully utilized for the stated purposes. The funds revert back to the organisation after lying undisturbed for five years.

The above examples are an account of the activities of some of the popular NPOs. Each of the above case study raises the issue of empowerment and participation of the marginal stakeholders. The above case studies may not have happened had a transparent participation of stakeholders been in place both at planning and at social audit stages. To change such a scenario it is imperative that social audit is somehow provided its rightful place on the platform of accountability. The onus of bringing a strong culture of social audit lies not only on the management but also on the stronger stakeholders such as the donors.

SUMMING UP

- Some of the important questions and issues pertaining to SocialAudit could be as under:
- Has the organisation initiated any social audit of its project activities?
- Has the organisation initiated any social audit of its administrative and management functions?
- In terms of funds and resources, what is the percentage or proportion of activities subjected to social audit.

Myths and Mysteries of Draft CSR Rules' 2020

The Ministry of Corporate Affairs, Government of India has issued draft of "The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020". The Government has invited comments and feedbacks to these rules. These Rules have proposed considerable and far reaching changes in the existing Companies (CSR) Rules 2014. Some of the major issues and recommendations thereof are discussed here.

International Organization Under CSR

The sub clause 3 of Rule 4 of the proposed Rules provide that under CSR a company may engage international organizations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

The company may also engage an international organization for implementation of a CSR project subject to prior approval of the central government.

In other words, international organisations can participate both as consultant and also as implementing partner. The implementation work by international organisation can only be done with prior approval of Government but there is no such requirement for international entity working as consultants.

Definition of International Organisation : The proposed amendment has defined under Rule 2(f) as "International Organization" means an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply."

With the above, the CSR space shall be open to international consultants and implementors. However, in India international organisations can engage in charitable activities subject to the provisions of Income Tax Act, FCRA and FEMA. It is not clear how these laws will apply to such institutions.

Administrative Expenses & Impact Assessment

The existing Rule 4(6) provides that the expenditures on capacity building and expenditure on administrative overhead shall not exceed 5% of total CSR expenditure of the company in one financial year. The existing rule further provides that the Companies may build CSR capacities of their own personnel as well as of their Implementing agencies through Institutions with established track records of at least three financial years. This Rule 4(6) has been deleted.

The above situation is covered under proposed rule 7(1) which provides:"CSR Expenditure:

(1) The board shall ensure that the administrative overheads incurred in pursuance of sub-section (4) (b) of section 135 of the Act shall not exceed five percent of total CSR expenditure of the company for the financial year.

Provided that a company undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8, may incur administrative overheads not exceeding ten percent of total CSR expenditure for that financial year."

Implication of proposed change

(a) **5% cap on administrative expenses:** The proposed rule 7(1) provides that the board shall ensure that the administrative overheads incurred in pursuance of section 135(4)(b) of the Act shall not exceed five percent of total CSR expenditure of the company for the financial year.

(b) **10% cap on administrative expenses PIUs impact assessment :** In addition to the above, a company undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8, may incur administrative overheads not exceeding ten percent of total CSR expenditure for that financial year A company having the obligation of spending average CSR amount of Rs 5 Crore or more in the three immediately preceding financial years in pursuance of sub section 5 of Section 135 of the Act, shall undertake impact assessment for their CSR projects or programmes, and shall disclose details of the same in its Annual Report on CSR.

© The exclusion of the words 'expenditure on capacity building including expenditure on administrative head' in the proposed rules implies that the expenditure on capacity building of employees will no longer be covered under the cap of administrative expenditure. However, clarity is needed in this whether capacity building of employees can be treated as CSR expenditure and if so to what extent.

(d) Moreover, the requirement of having established track record of at least three Financial Years for any implementing agency to act as a consultant to build CSR capacities is also done away with. This change will result in dilution of the importance of reputed charitable organisation and companies will be free to work with anybody including a new and inexperienced organisation.

The cap on administrative expenditure is only 5% and it will result in implementation challenges. It seems that the administrative expenses cap shall not apply to salaries of personnel engaged in implementation. However, such clarity has to be provided in the rules. For instance, the Rule 5 of FCR Rules 2011 provides a 50% cap on administrative expenditure, it further provides that administrative expenditure shall not include expenses on direct implementation such as salary of doctor, teacher etc.

Recommendation: The 5% cap should be reconsidered as administrative expenditure including those on programme administration may not be feasible within 5%. Further, a proviso should be added similar to Rule 5 of FCR Rules 2011 clarifying that administrative expenditure shall not include expenses on direct implementation.

Clarity is needed in this whether capacity building of employees can be treated as CSR expenditure and if so to what extent There should be some minimum criteria regarding experience and expertise of implementing organisations.

Confusion on whether Society/ Trust can implement CSR Activities

CSR Implementation - The proposed Rule 4(1) states as under: "The Board shall ensure

that the CSR activities are undertaken by the company itself or through:

(a) a company established under section 8 of the Act, or

(b) any entity established under an Act of Parliament or a State legislature.

Provided that such company/entity, covered under clause (a) or (b), shall register itself with the central government for undertaking any CSR activity by filing the e-form CSR-1 with the Registrar along with prescribed fee."

As per the present Rule 4 (2) provides that : The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism.

Trust and Societies barred under Rule 7(3) and not clearly included under Rule 4(1): When we compare the proposed rules with the present rule, we find all words in bold letters out of the present rule has been deleted and therefore, it can be interpreted as under.

The present rule covers :

(a) a registered trust, society or section 8 company established by the corporate implementing CSR.
(b) an entity established by the central government state and

(c) and the Proviso cover other entities in the form of registered trust, registered society or a Sec. 8 company, provided they have 3 years track records.

The new rules have deleted the proviso which implies that only a Sec. 8 Company or an entity established by the state are eligible to implement the CSR activities. The Trust and Society have not been specifically mentioned.

Further, when we read the proposed modification as per Rule 7(3) which provides that CSR assets can only be held by the company established under Sec. 8 of the companies act or by a public authority and all assets created prior to the commencement of proposed rule shall comply with this requirement within the indicated time frame. **In other words, Rule 7(3), at least, clearly excludes trust and societies from holding CSR assets, which would technically make trust and societies ineligible even if, they are covered under Rule 4(1).**

There is also a new requirement of registration by CSR-1 form for the entities which are eligible to implement the CSR activities and this form needs to be certified by a practicing chartered accountant. A certification by chartered accountants would also required clarification whether Rule 4(1) would cover Trust and Societies also.

Can the rules be interpreted to include almost any entity: The above rule has not clearly stated that an NGO registered as a trust or society shall beeligible to implement CSR programme or not. It is a subject matter of interpretation whether the clause "any entity established under an Act of Parliament or a State legislature" shall include a trust or a society or not. Even if the above clause includes a trust or a society, it lacks clarity and it will be difficult for a corporate to work with a trust or society unless the Rules are amended or a clarificatory circular is released.

For technical analysis it may be noted that with regard to a registered trust, MCA had clarified that if a trust is unregistered (in India oral and unregistered trust are also valid), then the registration under Income Tax shall be considered as the document of registration. The MCA vide general circular 21/2014 had issued this clarification with respect to a registered trust. As per the clarification, the registered trusts would include trusts registered under income Tax Act, 1961 for those states where registration of trust is not mandatory.

The proposed Rule 4(b) clearly states that any entity established under any act of parliament or state legislature can undertake the CSR activity. There is a distinction between an entity established under any act of parliament or state legislature and established by any act of parliament or state legislature. For instance, an university or a national level institution like IIM, Ahmedabad is established by an act of parliament. In other words, a particular institution is created by the parliament or state legislature. But the word used in the proposed Rule 4(b) is under and not by, therefore, any entity established under any act of parliament or state legislature should qualify under this rule.

The language of Rule creates doubt and confusion. On one hand it seems only section 8 company and certain privileged institutions are eligible for CSR while on the other hand it may be interpreted to allow all kind of institutions to conduct CSR. This is in consonance with the other amendment regarding allowing international institutions to implement CSR. All entities are registered under some law enacted by the parliament or the state legislature. A society is established under Societies registration Act which is a state legislature. A public charitable trust is established under the state legislature in few states like Maharashtra and Gujarat. In states where there is no specific legislation for registration of public charitable trusts, to establish a trust only a trust deed is registered under the Indian Registration Act, 1908 (an act of parliament).

Implications if Trust or Societies are barred from CSR: If Trusts or Societies are barred from CSR, there will be lot of chaos and harassment without any real threat to existing trust and societies engaged in CSR. The Board of such organisations will start registering section 8 company and obtain provisional registration under section 12AB of the Income Tax Act. It may be noted that the amended income tax law allows provisional registration under section 12AB without any verification. The proposed rules for CSR have not prescribed any minimum experience (years of existence) for implementing institutions.

Recommendation: The Rule 4(1) should clearly state that all the three i.e. Section 8 company, trust and society shall be eligible for implementation of CSR programme. The rules should not allow other non-charitable or commercial entities to implement CSR programme. A charitable entity implements the activity as a trustee and a consultant implements them as a contractor. The distinction between the two needs to be maintained.

The Rule 7(3) should not be restricted only to section 8 company, there is no intelligible differentia between section 8 company and a trust or society, therefore, such provision would be violative of article 14 of the Constitution of India.

Lastly, the Rule 4(1) should not be broad and vague to allow any kind of entity whether commercial or charitable, whether inexperienced or experienced. Such provisions will only encourage misuse of CSR provisions.

Unspent balance towards fulfilment of CSR obligation

National Unspent Corporate Social Responsibility Fund: The Proposed Rule 10 provides that"(1) The Central Government shall establish a fund called the "National Unspent Corporate Social Responsibility Fund" (herein after referred as "the Fund") for the purposes of sub-section (5) and (6) of section 135 of the Act. The Fund shall be utilized for the purposes of undertaking CSR projects in the in areas or subjects specified in schedule VII of the Act. Provided thatuntil such fund is created the unspent CSR amount in terms of provisions of sub-section (5) and (6) of section 135 of the Act shall be transferred by the company to any fund as specified in schedule VII of the Act.

The manner of administration, authority for administration of the Fund shall be in accordance with such guidelines as may be prescribed by the Central Government from time to time."

Transfer of Unspent Balance to Special Account "Unspent Balance Social Responsibility Account" : The Proposed rule 7(4) provides that :"Unspent balance, if any, towards fulfilment of CSR obligation at the time of commencement of these Rules shall be transferred within a period of thirty days from the end of Financial Year 2020-21 to special account viz., 'Unspent Corporate Social Responsibility Account' opened by the company and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year."

Penalty for Unspent Balance and Transfer to Special Account " Unspent Balance Social Responsibility Account" : The Proposed section 135(7) of the companies act provides that :" If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.";

In the light of the above amendments any Unspent balance towards fulfilment of CSR obligation shall be required to be transfer to a special account called "Unspent Corporate Social Responsibility Account" and this amount shall have to be spent within a period of three financial years. Any unspent balance after the indicated time frame shall have to be transferred to "National Unspent Corporate Social Responsibility Fund" to be constituted by the government.

The under spending in CSR amount shall also result in penalties to be paid both by the Company and by every officer of the company who is in default and amount of penalty needs to transferred to unspent Corporate Social Responsibility Fund/unspent Corporate Social Responsibility Account.

Recommendation: The Rule regarding transfer of fund to "National Unspent Corporate Social Responsibility Fund" and

penalties for under spending in CSR amount should be revisited for following reasons:

(i) Any under spending will be hastily transferred to other organisation under Rule 4(1). Under the current law the grant itself will be treated as utilisation in the books of the company.

(ii) Under spending sometimes is unavoidable and such circumstances needs ot be factored in.

Excess spending over the CSR obligation and carry forward

Proposed proviso to section 135(5) provides that :"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub- section for such number of succeeding financial years and in such manner, as may be prescribed."

Hence the proposed amendment allows the excess expenditure incurred during any year to be set off out of their obligation in the succeeding Financial Years in such manner as may be provided by the rules.

No requirement of CSR committee in certain cases

Proposed new sub-section 9 to section 135 provides that :"Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company."

Hence as per the proposed modification, constitution of CSR committee is not required in case where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees and under such cases functions of such Committee be discharged by the Board of Directors of such company.

Use of CSR fund towards corpus and for creation or acquisition of assets

Existing Rule 7 allowing CSR expenses to include contribution towards corpus has been deleted. The Proposed Rule 7(3) provides that :"The CSR amount may be spent by a company for creation or acquisition of assets which shall only be held by a company established under section 8 of the Act having charitable objects or a public authority."

Provided that any asset created by a company prior to the commencement of Companies (CSR Policy) Amendment Rules, 2020, shall within a periodof One hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the board based on reasonable justification."

CSR amount may be spent on creation or acquisition of assets but shall be held only by section 8 company having charitable objectives or a public authority. Existing assets created out of CSR shall comply with the requirement of above rule meaning all the existing assets need to be transferred to section 8 company within the indicated time line in the proposed rule.

Recommendation: This Rule 7(3) is arbitrary needs to be revisited for the following reasons:

(I) It does not distinguish between a project asset and a corpus assets. Even a bank term deposit is a corpus assets. Further, project assets such as hospital building cannot be considered as an asset in the sense of investment. This Rule will create confusion regarding assets particularly required for programme.

(ii) If the reference is to project asset then only section 8 company cannot be empowered to hold such assets. On the contrary if the reference is to asset in the nature of investment then there is no reason to allow companies to park such funds in a section 8 company

CSR activities and employees as beneficiary

Rule 2 to proposed CSR Rules provides that the following activities shall not be included in CSR:"activities that significantly benefit the employees of the company and their families.

Provided that in case of any activity having less than twenty five percent employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules."

Hence as per proposed amendment if any activity that significantly benefits the employee of the company or their families, shall not come under the coverage of CSR activities. However, the Proviso provides an exception allowing activity towards less than 25% of employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.

The above proposed amendment can be subject to subjectivity and interpretations on the following situations:

a) The first condition that the activities that significantly benefit the employees and their company or families shall not be included as a CSR activity. The phrase "significantly benefit" is a subjective issue and shall always be under debate as to what shall constitute significantly benefit.

b) There may be of situation where the CSR activity covers only 10% of the employees i.e. less than 25% as provided for but it represents more than 25% of the CSR expenses or say 70%, then whether such activity shall quality CSR or not?

c) If some activity is towards the benefits of a select group of privileged employees, even then such expenses will be treated as valid CSR expenses.

functions of such Committee be discharged by the Board of Directors of such company.

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CSR amount may be spent on creation or acquisition of assets but shall be held only by section 8 company having charitable objectives or a public authority. Existing assets created out of CSR shall comply with the requirement of above rule meaning all the existing assets need to be transferred to section 8 company within the indicated time line in the proposed rule.

Recommendation: This Rule 7(3) is arbitrary needs to be revisited for the following reasons:

(I) It does not distinguish between a project asset and a corpus assets. Even a bank term deposit is a corpus assets. Further, project assets such as hospital building cannot be considered as an asset in the sense of investment. This Rule will create confusion regarding assets particularly required for programme.

Recommendation: The Rule 2(iv) should be modified suitably as the current provisions are vague and prone to misuse.

- Firstly, there should be a financial limit for providing benefits to employees,

- Secondly such benefit should be generic or kind of common facilities with the onus on the company to justify why it should not be considered as business expenditure which otherwise should have been incurred by the company,

- Lastly it should be ensuring that the benefits reach the poorest and deserving employees

FAQs on CSR related to Section 8 Companies**

Is a Section 8 Company, which is itself engaged in CSR activities also required to mandatorily comply with provisions of section 135 and contribute towards CSR?

Yes, in view of the report of Corporate Laws Committee, section 135 applies to every company including section 8 company fulfilling the criteria laid down in that section.

Relevant Extract of Report of Companies Law Committee is as under:

> "The Committee, however, felt that it would not be appropriate to give differential treatment to section 8 companies in the matter of providing exemptions from compliance of CSR provisions, as there are certain areas where examples could be found of section 8 and other companies co-existing, for example, companies in microfinance business. Further, there should not be a difficulty in section 8 companies using the prescribed percentage of its surplus for CSR activities. Thus, it was decided not to recommend for exemption of Section 8 companies from the CSR provisions of the Act".

Is Section 8 Company compliant if it contributes the CSR amounts towards its own activities which may be charitable in nature and in line with the CSR approved areas of spent?

No, spending by the company in its own activities will not qualify as CSR spend. The amount needs to be spend on activities other than normal activities of the company and not for the benefit of the company or its employees. Further, MCA General circular No 21/2014 dated June 18, 2014 clarifies that contribution to corpus of a Trust / Society / Section 8 Companies etc. will qualify as CSR expenditure as long as :

(a) the Trust / Society / Section 8 Company etc. is created exclusively for undertaking CSR activities or

(b) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

If a 'for profit Company', which has promoted a Section 8 Company for carrying out its Corporate Social Responsibility (CSR) activities and that Section 8 Company is a Subsidiary/ associate/Joint venture Company, if such for profit Company is required to consolidate the annual accounts of such Section 8 Subsidiary/associate/Joint venture Company?

Yes, No specific exemption from consolidation of such section 8 Company. However, exemption as per the provisions of section 129(3) read with rile 6 of the Companies (Accounts) Rules, 2014, if applicable, may be available.

Source: The Companies Act, 2013 Series By The Institute of Companies Secretaries of India

If a Section 8 Company meeting all other prescribed thresholds for applicability of filing of annual accounts in XBRL format, be required to file the same in XBRL?

Yes, if a section 8 company falls in the parameters specified in rule 3 of the Companies (Filing of documents and forms in XBRL) Rules, 2015. The rule provides that the following class of companies shall file their financial statement and other documents under section 137 of the Act the Registrar in e-form AOC-4 XBRL given in Annexure-l for the financial years commencing on or after 1st April 2014 using the XBRL taxonomy given in Annexure II, namely:-

i. all companies listed with any Stock Exchange(s) in India and their lndian subsidiaries; or

ii. all companies having paid up capital of rupees five crore or above;

iii. all companies having turnover of rupees hundred crore or above; or

iv. all companies which were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, lnsurance, Power Sector and Non Banking Financial companies are exempted from XBRL filing.

FINANCIAL MANAGEMENT SERVICE FOUNDATION

Financial Due Dates Calendar for 2020-21

MONTH	STATUTORY DUES	DUE DATE	FORM NO
APRIL 2020	Payment of PF Cont. cum filing of Return of previous month	15-Apr-20	Electronic Challan
	Quarterly intimation of FC receipt by associations for the quarter ending 31.03.2020	15-Apr-20	FCRA portal
	Payment of TDS deducted for the month of march	30-Apr-20	Challan No. 281
MAY 2020	Payment of TDS deducted in previous month	7-May-20	Challan No. 281
	Payment of PF Cont. cum filing of Return of previous month	15-May-20	Electronic Challan
JUNE 2020	Payment of TDS deducted in previous month	7-Jun-20	Challan No. 281
	Payment of PF Cont. cum filing of Return of previous month	15-Jun-20	Electronic Challan
	Payment of Advance Income Tax by All assessee other the 44AD (upto 15% of income tax payable)	15-Jun-20	Challan No. 280
JULY 2020	Payment of TDS deducted in previous month	7-Jul-20	Challan No. 281
	Quarterly intimation of FC receipt by associations for the quarter ending 30.06.2020	15-Jul-20	FCRA portal
	Payment of PF Cont. cum filing of Return of previous month	15-Jul-20	Electronic Challan
	Filing of TDS Return for the Quarter January to March 2020	31-Jul-20	26Q and 24Q
	Filing of TDS Return for the Quarter April to June 2020	31-Jul-20	26Q and 24Q
AUG 2020	Payment of TDS deducted in previous month	7-Aug-20	Challan No. 281
	Payment of PF Cont. cum filing of Return of previous month	15-Aug-20	Electronic Challan
	Issue of TDS Certificate for TDS on non salary payments for Quarter April to June 2020	15-Aug-20	Form 16A
	Issue of Certificate for TDS on non salary payments for the Quarter January to March 2020	15-Aug-20	Form 16A
	Issue of Certificate for TDS on Salary for the year 2019-20	15-Aug-20	Form 16
SEP 2020	Payment of TDS deducted in previous month	7-Sep-20	Challan No. 281
	Payment of Advance Income Tax by All assessee other the 44AD (upto 45% of income tax payable)	15-Sep-20	Challan No. 280
	Payment of PF Cont. cum filing of Return of previous month	15-Sep-20	Electronic Challan
OCT 2020	Payment of TDS deducted in previous month	7-Oct-20	Challan No. 281
	Quarterly intimation of FC receipt by associations for the quarter ending 30.09.2020	15-Oct-20	FCRA portal
	Payment of PF Cont. cum filing of Return of previous month	15-Oct-20	Electronic Challan
	Filing of TDS Return for the Quarter July to September 2020	31-Oct-20	26Q and 24Q
	Audit Report (10B) for NGOs availing expemtion under section 11	31-Oct-20	10B
NOV 2020	Payment of TDS deducted in previous month	7-Nov-20	Challan No. 281
	Payment of PF Cont. cum filing of Return of previous month	15-Nov-20	Electronic Challan
	Issue of TDS Certificate for TDS on non salary payments for Quarter July to Sept. 2020	15-Nov-20	Form 16A
	Filing of Income Tax Return for FY 2019-20 by company and other than company whose accounts are required to be audited under any law	30-Nov-20	ITR-7
	Filing of Income Tax Return for FY 2019-20 by other than company whose accounts are not required to be audited under any law	30-Nov-20	Various ITR forms
DEC 2020	Payment of TDS deducted in previous month	7-Dec-20	Challan No. 281
	Payment of Advance Income Tax by All assessee other the 44AD (upto 75% of income tax payable)	15-Dec-20	Challan No. 280
	Payment of PF Cont. cum filing of Return of previous month	15-Dec-20	Electronic Challan
	Online Filing of Annual Return under FCRA in FC-4 for the year 2019-20	31-Dec-20	FC-4
	Annual uploading of audited Balance sheet, Receipt and Payment Account and Income & Expenditure A/c for the year 2019-20 at the organization website	31-Dec-20	Respective organization's website.
	Revalidation of registration under 12A/80G/10(23C)	31-Dec-20	Online (Forms yet to be notified)
JAN 2021	Payment of TDS deducted in previous month	7-Jan-21	Challan No. 281
	Quarterly intimation of FC receipt by associations for the quarter ending 31.12.2020	15-Jan-21	FCRA portal
	Payment of PF Cont. cum filing of Return of previous month	15-Jan-21	Electronic Challan
	Filing of TDS Return for the Quarter October to December 2020	31-Jan-21	26Q and 24Q
FEB 2021	Payment of TDS deducted in previous month	7-Feb-21	Challan No. 281
	Payment of PF Cont. cum filing of Return of previous month	15-Feb-21	Electronic Challan
	Issue of TDS Certificate for TDS on non salary paymrnts for Quarter Oct. to Dec. 2020	15-Feb-21	Form 16A
MAR 2021	Payment of TDS deducted in previous month	7-Mar-21	Challan No. 281
	Payment of Advance Income Tax by All assessee other the 44AD (upto 100% of income tax payable)	15-Mar-21	Challan No. 280
	Payment of Advance Income Tax by All assessee covered under 44AD (upto 100% of income tax payable)	15-Mar-21	Challan No. 280
	Payment of PF Cont. cum filing of Return of previous month	15-Mar-21	Electronic Challan

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