

INTER *face*

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Supreme Court Judgement on Educational Institutions
Overview and Analysis of the Framework on Social
Stock Exchange (SSE)
International Standards on Auditing (ISA) - 800

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Dear Partners, colleagues and friends,

I step out of the leadership role of FMSF and this will be my last communication through "Interface".

"We're so high up, it's good the nest will always keep us safe," said the Baby bird.

"My child, you will always be safe," said the Papa bird, "not because of the nest, but because of your wings."

All these years, our wings, which is our knowledge and expertise, have kept us flying high. May it continue to do so and never for a moment a sense of pride enter our minds that we are higher up.

It has been a phenomenal journey for me and I wish you all a wonderful journey with the new leadership. I am sure FMSF will continue to enjoy your solidarity and co-operation as it has been all these years.



Saijy Babu

Acknowledgment

We are grateful to the authors who have contributed for the articles in this edition.

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Intricacies of the Newly Inserted Rule 17AA Specifying Books of Accounts & Other Documents

Introduction

Prior to the Finance Act, 2022, there was no specific requirement under section 12A to maintain books of account by trusts and institutions. Although, certain provisions made it an implicit requirement to maintain the books of account.

The Finance Act, 2022 has introduced additional condition to maintain books of account by the trusts and institutions under section 12A(1)(b)(i) with effect from the assessment year 2023-24.

The Finance Act, 2022 inserted Section 13(10) and 13(11) with effect from the assessment year 2022-23 to provide that if the trust or institution has not maintained the books of account, the income chargeable to tax shall be computed after allowing a deduction for only those expenditures specified in these section.

Rule 17AA w.e.f. 10th August, 2022

CBDT has notified Rule 17AA w.e.f. 10/08/2022 providing form and manner of the books of account to be maintained and also providing for place at which such books of accounts to be kept and the period for which books of accounts to be preserved.

Rule 17AA has four (4) Sub Sections [(1) to (4)] and it provides for -

- a) Books of Accounts and Other documents required to be maintained [17AA(1)(a)(b)(c)&(d)],

- b) Form of keeping Books of Accounts & Other documents [17AA(2)],
- c) Place of maintaining such books of accounts and other documents [17AA(3)],
- d) Period for which books of accounts & other documents should be kept [17AA(4)].

The specified books of accounts shall include cash book, ledger, journal as well as copies of serially numbered receipts, original copy of invoices, etc.

In addition to books of accounts as mentioned in Rule 17AA (1)(a)(b)&(c), there is another requirements of keeping other documents for maintaining records of ten specific items, as given below:

- a. Record of all the projects and institutions run by the person,
- b. Record of income of the person during the previous year,
- c. Record of application out of the income during the year,
- d. Record of specified application out of the income of preceding years,
- e. Record of voluntary contribution with a specific direction to form Corpus,
- f. Record of contribution received under 80G(2)(b) being treated as corpus,

- g. Record of Loans and Borrowings,
- h. Record of properties held by the assessee,
- i. Record of specified persons, as referred to in sub-section (3) of section 13 of the Act,
- j. Any other document.

The books of account and other documents specified in sub-rule (1) may be kept in written form or in electronic form or in digital form or as print-outs of data stored in electronic form or in digital form or any other form of electromagnetic data storage device.

Under Rule 17AA(3), the books of account and other documents as specified shall be kept and maintained at its "registered office".

If the accounts are maintained other than the registered office or at various project locations, then the concerned organisation is required to intimate to the Assessing Officer in writing, giving full address of the other places and such intimation shall be duly signed & verified by the person who is authorised to sign the return and this should be supported by resolution of the board.

The books of account and other documents specified in sub-rule (1) shall be kept and maintained for a period of ten years from the end of the relevant assessment year.

Insertion of Explicit Provision to Maintain Books of Accounts by The Finance Act, 2022

The Finance Act, 2022 amended Section 12A(1)(b), imposing an explicit requirement to maintain books of account by charitable institutions.

Text of Section 12A(1)(b): "(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount, which is not chargeable to income-tax in any previous year,-

- (i) the books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed; and
- (ii) the accounts of the trust or institution for that year have been audited by an accountant defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed;".

Requirement to maintain books of account

The Finance Act, 2022 amended Section 12A(1)(b) to provide that where the total income of the trust or institution without giving effect to an exemption under Section 10(23C) or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. This amendment is effective from the assessment year 2023-24.

Requirement to maintain books of accounts is an additional condition

It is to be noted that this condition to maintain books of accounts is in addition to the conditions requiring the trust or institutions to

get registration, audit of the books of accounts and filing of return of income. Thus, if the trust fails to comply with any of these conditions, the benefit of exemption under Section 11 and 12 shall not be available.

Applicable, if total income exceeds INR 2,50,000

This provision regarding maintenance of prescribed books of account and other documents is applicable only if the total income of the charitable institution as computed under the Act, without giving effect to the provisions of sections 11 and 12, exceeds the maximum amount, which is not chargeable to income tax in the previous year.

Form and Manner and Place to Maintain the Books of Accounts

Section 12A(1)(b) provides that books of account shall be kept and maintained in such form and manner and at such place, as may be prescribed.

Which books of account are required to be maintained?

The term 'books of account' has been defined in section 2(12A) as under: "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device; Thus, as per the definition under section 2(12A), the books of accounts include the following:

- a) Ledgers,
- b) Day-books,

- c) Cash books,
- d) Account books,
- e) Other books.

Books of Accounts Required to be Maintained [17AA(1)(A)(B)&(C)]

17AA. (1) Every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents under clause (a) of tenth proviso to clause (23C) of section 10 of the Act or sub-clause (i) of clause (b) of sub-section (1) of section 12A of the Act shall keep and maintain the following, namely:-

- a) books of account, including the following, namely:-
 - (i) Cash book;
 - (ii) Ledger;
 - (iii) Journal;
 - (iv) Copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee, and copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by the assessee;
 - (v) Original bills wherever issued to the person and receipts in respect of payments made by the person;
 - (vi) any other book that may be required to be maintained in order to give a true and fair view of the state of the affairs of the person and explain the transactions effected;

- b) books of account, as referred in clause (a), for business undertaking referred in sub-section (4) of section 11 of the Act;
- c) books of account, as referred in clause (a), for business carried on by the assessee other than the business undertaking referred in sub-section (4) of section 11 of the Act.

Hence, Organisation having income subject to section 11(4) and 11(4)(a) is required to maintain separate set of books of account of such income in line with the provision under Income Tax Act.

It is to be noted that the books of accounts as defined under section 2(12A) includes copy of day-books and ledgers but the books of accounts specified under Rule 17AA also includes copy of bills, receipts, etc.

Moreover, the requirement of 17AA is the original bills in respect of the application of income, whereas the practice of receiving softcopy of bills has been started. Hence, it needs to be clarified what shall constitute original bills for the purpose of meeting the requirement of Rule 17AA.

Other Documents Required to be Maintained [17AA(1)(D)]

In addition to books of accounts as mentioned in Rule 17AA (1)(a)(b)&(c), there is another requirements of keeping other documents for maintaining records of ten specific items, details of which is summarised herein below:

- (i) **record of all the projects and institutions run by the person containing details of their name, address and objectives;**
- (ii) **record of income of the person during the previous year, in respect of,-**

- (I) voluntary contribution containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
- (II) income from property held under trust referred to under section 11 of the Act along with list of such properties;
- (III) income of fund or institution or trust or any university or other educational institution or any hospital or other medical institution other than the contribution referred in items (I) and (II);

(iii) record of the following - out of the income of the person during the previous year :-

- (I) application of income in India, containing details of amount of application; name and address of the person to whom any credit or payment is made and the object for which such application is made; amount credited or paid to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, containing details of their name, address, permanent account number and the object for which such credit or payment is made;
- (II) application of income outside India, containing details of amount of application, name and address of

the person to whom any credit or payment is made and the object for which such application is made;

- (III) deemed application of income referred in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act containing details of the reason for availing such deemed application;
 - (IV) income accumulated or set apart as per the provisions of the Explanation 3 to the third proviso to clause (23C) of section 10 or sub-section (2) of section 11 of the Act which has not been applied or deemed to be applied containing details of the purpose for which such income has been accumulated;
 - (V) money invested or deposited in the forms and modes specified in sub-section (5) of section 11 of the Act;
 - (VI) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act;
- (iv) **record of the following - out of the income of the person of any previous year preceding the current previous year:-**

- (I) application out of the income accumulated or set apart containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;

- (II) application out of the deemed application of income referred to in clause (2) of Explanation 1 of sub-section (1) of section 11 of the Act, for any preceding previous year, containing details of year of deemed application, amount of application during the previous year out of such deemed application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

- (III) application, other than the application referred in item (I) and item (II), out of income accumulated during any preceding previous year containing details of year of accumulation, amount of application during the previous year out of such accumulation, name and address of the person to whom any credit or payment is made and the object for which such application is made;

- (IV) money invested or deposited in the forms and modes specified in sub-section (5) of section 11 of the Act;

- (V) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act;

- (v) **record of voluntary contribution made with a specific direction that they shall form part of the corpus, in respect of,-**

- (I) the contribution received during the previous year containing details of name of the donor, address,

- permanent account number (if available) and Aadhaar number (if available);
- (II) application out of such voluntary contribution referred to in item (I) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- amount credited or paid towards corpus to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during the previous year containing details of their name, address, permanent account number and the object for which such credit or payment is made;*
- (III) the forms and modes specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during the previous year, is invested or deposited;
- (IV) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during the previous year, is invested or deposited;
- (V) application out of such voluntary contribution, received during any previous year preceding the previous year, containing details of the amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (VI) amount credited or paid towards corpus to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during any year preceding the previous year, containing details of their name, address, permanent account number and the object for which such credit or payment is made;
- (VII) the forms and modes specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during any previous year preceding the previous year, is invested or deposited;
- (VIII) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such voluntary contribution, received during any previous year preceding the previous year, is invested or deposited;
- (IX) amount invested or deposited back in to such voluntary

contribution (which was applied during any preceding previous year and not claimed as application) including details of the forms and modes specified in sub-section (5) of section 11 in which such voluntary contribution is invested or deposited.

(vi) record of contribution received for the purpose of renovation or repair of temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G which is being treated as corpus as referred in Explanation 1A to the third proviso to clause (23C) of section 10 or Explanation 3A to sub-section (1) of section 11, in respect of,-

- (I) the contribution received during the previous year containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
- (II) contribution received during any previous year preceding the previous year, treated as corpus during the previous year, containing details of name of the donor, address, permanent account number (if available) and Aadhaar number (if available);
- (III) application out of such voluntary contribution referred to in item (I) and item (II) containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;

amount credited or paid towards corpus to any fund or institution or trust or any university clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution registered under section 12AB of the Act, out of such voluntary contribution received during the previous year containing details of their name, address, permanent account number and the object for which such credit or payment is made;

- (IV) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;
- (V) money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such corpus, received during the previous year, is invested or deposited;
- (VI) application out of such corpus, received during any previous year preceding the previous, year, containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (VII) amount credited or paid to towards corpus any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act or other trust or institution

registered under section 12AB of the Act, out of such voluntary contribution received during any year preceding the previous year, containing details of their name, address, permanent account number and the object for which such credit or payment is made;

- (VIII) the forms and modes specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited; money invested or deposited in the forms and modes other than those specified in sub-section (5) of section 11 of the Act in which such corpus, received during any previous year preceding the previous year, is invested or deposited;

(vii) record of loans and borrowings,-

- (I) containing information regarding amount and date of loan or borrowing, amount and date of repayment, name of the person from whom loan taken, address of lender, permanent account number and Aadhaar number (if available) of the lender;
- (II) application out of such loan or borrowing containing details of amount of application, name and address of the person to whom any credit or payment is made and the object for which such application is made;
- (III) application out of such loan or borrowing, received during any previous year preceding the previous year, containing details

of amount of application, name and address of the person to whom any credit or payment is made;

- (IV) repayment of such loan or borrowing (which was applied during any preceding previous year and not claimed as application) during the previous year;

(viii) record of properties held by the assessee, with respect to the following, namely,-

- (I) immovable properties containing details of,
 - 1) nature, address of the properties, cost of acquisition of the asset, registration documents of the asset;
 - 2) transfer of such properties, the net consideration utilised in acquiring the new capital asset;
- (II) movable properties including details of the nature and cost of acquisition of the asset;

(ix) record of specified persons, as referred to in sub-section (3) of section 13 of the Act,-

- (I) containing details of their name, address, permanent account number and Aadhaar number (if available);
- (II) transactions undertaken by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution with specified

persons as referred to in sub-section (3) of section 13 of the Act containing details of date and amount of such transaction, nature of the transaction and documents to the effect that such transaction is, directly or indirectly, not for the benefit of such specified person;

- (x) **any other documents containing any other relevant information.**

Form of Keeping Books of Accounts & Other Documents [17AA(2)]

The books of account and other documents specified in sub-rule (1) may be kept in written form or in electronic form or in digital form or as print-outs of data stored in electronic form or in digital form or any other form of electro magnetic data storage device.

The above definition enables an organisation to maintain books in any form including electronic or in digital form. This is a landmark shift which will enable the organisations to maintain books of account only in digital or electronic form. Normally, physical printouts of cash book and ledgers were required to be taken even in case of electronic or digital book keeping. However, organisations should be extremely careful in not keeping physical copies of the books of accounts because such books have to be kept in safe custody for more than 10 years.

With regard to documents, one has to keep the hard copies where the originals were generated in hard form. Further, one should ensure the admissibility of any supporting document in electronic/digital form before doing away with the physical copies.

Place of Maintaining Such Books of Accounts & Other Documents [17AA(3)]

Under Rule 17AA(3) the place for maintaining books of accounts has been provided as under:

"(3) The books of account and other documents specified in sub-rule (1) shall be kept and maintained by the fund or institution or trust or any university or other educational institution or any hospital or other medical institution at its registered office:

Provided that all or any of the books of account and other documents as referred to in sub-rule (1) may be kept at such other place in India as the management may decide by way of a resolution and where such a resolution is passed, the fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall, within seven days thereof, intimate the jurisdictional Assessing Officer in writing giving the full address of that other place and such intimation shall be duly signed and verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee."

In the light of the above provision, all organisations are required to keep the books of account at the registered office. If the organisation keeps all books of account or a portion of books of account at some other place then the following procedure should be followed:

- The place should be approved through Board Resolution,

- Informed to Assessing Officer within 7 days of decision with full address of such other place. This intimation should be signed and verified by the same person who is authorized to verify the Income Tax Return.

Hence, if the accounts are maintained other than the registered office or at various project locations, then the concerned organisation is required to intimate to the Assessing Officer in writing, giving full address of the other places and such intimation shall be duly signed & verified by the person who is authorised to sign the return and this should be supported by resolution of the board.

Period for Which Books of Accounts & Other Documents Should be Kept [17AA(4)]

The books of account and other documents specified in sub-rule (1) shall be kept and maintained for a period of ten years from the end of the relevant assessment year:

Provided that where the assessment in relation to any assessment year has been reopened under section 147 of the Act within the period specified in section 149 of the Act, the books of account and other documents which were kept and maintained at the time of reopening of the assessment shall continue to be so kept and maintained till the assessment so reopened has become final.

Under Rule 17AA(4), books of account and other documents are required to be kept for a period of ten years from the end of the relevant Assessment Year.

This is a change which will have far reaching impact because organisations will effectively be required to preserve the books of account

for 11 years. It may be noted under Foreign Contribution Regulation Act, 2010 (FCRA 2010) the requirement of preservation is limited to 6 years. However, in the light of this amendment in the Income Tax rules, even the FCRA records will have to be preserved for 11 years.

It is to be noted, that for the purpose of preservation, the books of accounts as specified in Rule 17AA(4), shall also include copies of all the bills & supporting documents and not only the cash book, bank book & ledger.

Other Related Issues

Effective Date of Notification

Notification for maintaining specified books of account and other records is effective from 10th August 2022, the question arises about the implication for the accounts already maintained i.e. from 01/04/2022 to 10/08/2022. In our opinion, the effective date will be 10/08/2022 and it will not be treated as a violation if some documents or information are not maintained in a specified manner between the period 01/04/2022 to 10/08/2022.

Implication of Non-Maintenance of Books of Account

The Finance Act, 2022 inserted Section 13(10) and 13(11) with effect from the assessment year 2022-23 to provide that if the trust or institution has not maintained the books of account, the income chargeable to tax shall be computed after allowing a deduction for expenditure incurred for the objects of the institution as specified in this section.

The newly inserted section provides that the income chargeable to tax shall be computed after allowing the deduction for the

expenditure (other than capital expenditure) incurred in India for the objects of the trust or institution, subject to fulfilment of the following conditions, namely:

- a) Such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;
- b) Such expenditure is not from any loan or borrowing;
- c) Claim of depreciation is not in respect of an asset, acquisition of which has been claimed as an application of income in the same or any other previous year; and
- d) Such expenditure is not in the form of any contribution or donation to any person.

The provisions of Section 40(a)(ia), Section 40A(3) and Section (3A) shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". Therefore, the disallowance shall be made for the cash payment of expenditure and non-deduction or non-payment of TDS on the sum payable to a resident.

Further, no deduction of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

Overview of the Proposed Scheme and Rules under Social Stock Exchange

Social Stock Exchange Framework - Regulations

The Social Stock Exchange (SSE) will provide social enterprises with an additional avenue to raise funds. At the same time, the private sector will be able to search for their CSR implementing partners. With regard to SSE, Securities and Exchange Board of India (SEBI) has notified various framework for the social stock exchange (SSE) by making the following amendments:

- Amending the SEBI (Issue of Capital and Disclosure Requirements (ICDR)) Regulations, 2018. The amended regulations shall be called the SEBI (ICDR) (Third Amendment) Regulations, 2022. For amended regulation kindly follow the link below:- https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2022_61171.html
- Amending the SEBI (Listing Obligations and Disclosure Requirements (LODR)) Regulations, 2015. The amended regulations shall be called the SEBI (LODR) (Fifth Amendment) Regulations, 2022. For amended regulation kindly follow the link below:- [\[disclosure-requirements-fifth-amendment-regulations-2022_61169.html\]\(https://www.sebi.gov.in/legal/regulations/jul2022/securities-and-exchangeboard-of-india-alternative-investment-funds-third-amendment-regulations-2022_61169.html\)](https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchangeboard-of-india-listing-obligations-and-</div><div data-bbox=)

- Amending the SEBI (Alternative Investment Funds (AIF)) Regulations, 2012. The amended regulations shall be called the SEBI (AIF) (Third Amendment) Regulations, 2022. For amended regulation kindly follow the link below: https://www.sebi.gov.in/legal/regulations/jul2022/securities-and-exchangeboard-of-india-alternative-investment-funds-third-amendment-regulations-2022_61156.html

All the above amendments are effective from 25th July, 2022.

Terminal and Access to SSE

The SSE will be a separate segment of the recognised stock exchanges having nationwide trading terminals permitted to register Non-Profit Organizations (NPOs) or list of securities issued by NPOs. SSE is only accessible to:

- Institutional Investors, and
- Non-Institutional Investors

SEBI may permit other classes of investors, as it deems fit.

Eligibility Criteria to be Identified as a Social Enterprise

Presented below are the organizations eligible to be classified as Social Enterprise and accordingly participate in the SSE:

(i) Non-Profit organisations (NPOs) which are defined as:

- A Charitable Trust registered under the Trusts Act, 1882,
- A Charitable Trust registered under the public trust statute of the state,
- A Charitable Society registered under the Societies Registration Act, 1860,
- A Company incorporated under Section 8 of the Companies Act, 2013,
- Any other entity as may be specified by SEBI in future.

However, NPOs should also establish primacy of its Social intent to be eligible for SSE.

(ii) For-Profit Social Enterprise which are defined as a company or body corporate operating for profit but having "social intent" and impact as their primary goal. Further, certain ineligibility criteria for Social Enterprises has also been mentioned in Rule 292H of the notification. Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure and housing companies (except affordable housing) shall not be eligible to be identified as a Social Enterprise. Accordingly, they will not be able to participate in the SSE.

Proving the Primacy of Social Intent

In order to be eligible for SSE, Social Enterprises as defined above should follow the following conditions:

- i.) Shall engage in at least one of the **Sixteen (16) defined activities**. Further, SEBI may define additional activities from time to time;
- ii.) Shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of central and/or state governments;
- iii.) Shall have at least 67% of its activities (activity as said in point 'i' above) towards the target population (as defined in point 'ii' above). The said activities shall be at least 67% of the immediately preceding 3-year:
 - **average of revenues** from providing eligible activities to members of the target population OR
 - **average of expenditure** incurred for eligible activities to members of the target population OR
 - **average of the total customer base and/or total number of beneficiaries** for members of the target population to whom the eligible activities have been provided.

Sixteen activities designated for establishing social intent:

The eligible Social Enterprise shall engage in at least one of the following activities:

- i.) eradicating hunger, poverty, malnutrition and inequality, promoting health care including

- mental healthcare, sanitation and making safe drinking water available;
- ii.) promoting education, employability and livelihoods;
- iii.) promoting gender equality, empowerment of women and LGBTQIA+ communities;
- iv.) ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation;
- v.) protection of national heritage, art and culture;
- vi.) training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
- vii.) supporting incubators of Social Enterprises;
- viii.) supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building;
- ix.) promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector;
- x.) slum area development, affordable housing and other interventions to build sustainable and resilient cities;
- xi.) disaster management, including relief, rehabilitation and reconstruction activities;
- xii.) promotion of financial inclusion;

- xiii.) facilitating access to land and property assets for disadvantaged communities;
- xiv.) bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection;
- xv.) promoting welfare of migrants and displaced persons;
- xvi.) any other area as identified by the Board or Government of India from time to time

Requirements of Mandatory Registration of NPOs With a SSE

Before raising any funds through a SSE, NPOs should mandatorily seek registration with a Social Stock Exchange. The minimum requirements for registration of a NPO shall be specified by SEBI from time to time.

Fund Raising Options for NPOs

Zero Coupon Zero Principal Instrument:

It will have zero coupon rate and no principal amount shall be payable on maturity. Further, it can be issued only for a specified project or activity which falls under the list of eligible activities specified under regulation 292E and for a specified project duration.

The procedure and conditions for public issuance of it have been defined in regulation 292K, 292L and 292N. Termination of listing of it from the SSE has been defined in regulation 292P.

Donations through Mutual Funds Schemes:

NPOs shall be eligible to receive donations

through mutual fund schemes. It should be noted that currently there are certain mutual funds which give a part of their income for charitable purposes. In future, an NPO will have to be registered with the SSE to access such funds.

Any other means as may be specified by SEBI in future.

Fund Raising Options for Profit Social Enterprise

- (i) Issuance of Equity Shares
- (ii) Issuance of Debt Securities
- (iii) Any other means as may be specified by SEBI in future

Disclosure Requirement

Disclosure by NPOs:

A NPO registered on SSE shall be required to make annual disclosures to the SSE on specified matters within 60 days from the end of the financial year or as subsequently specified by SEBI.

Disclosure by For Profit Social Enterprise:

A For-Profit Social Enterprise whose designated securities are listed on the SSE shall comply with the disclosure requirements contained in these regulations with respect to issuers whose specified securities are listed.

Intimation and disclosure of events or information to the SSE are:

- a) The Social Enterprise shall frame a policy for determination of materiality, duly approved by its board or management, which shall be disclosed on the SSE.

- b) The board and management of the Social Enterprise shall authorize one or more of its Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to the SSE and the contact details of such personnel shall also be disclosed to the SSE.

- c) A Social Enterprise shall disclose the event, comprising details of the event including the potential impact and the steps being taken by the Social enterprise to address the same, to the SSE within 7 days of any event that may have a material impact on the planned achievement of outputs or outcomes. Further, relevant updates shall be provided to the SSE on a regular basis with relevant explanations till the time concern events remains material.

- d) The Social Enterprise shall provide specific and adequate reply to all queries raised by the SSE, with respect to any events or information.

The Social Enterprise shall also disclose on its official website all such events or information which have been disclosed to the SSE, under this regulation.

Disclosure with respect to Social Impact are:

- a) A Social Enterprise, shall be required to submit an annual impact report to the SSE in the format specified from time to time.
- b) The annual impact report shall be audited by a Social Audit Firm employing Social Auditor.

- c) The SSE may specify parameters, in addition to those specified by the SEBI, which shall also be required to be disclosed on an annual basis.

Disclosure with respect to Statement of Utilization of Funds:

- a) A listed NPO shall submit to the SSE, category-wise amount of money raised, utilised & balance unutilised on a quarterly basis and till the issue proceeds have been fully utilised or the purpose has been achieved.
- b) The unutilised amount shall be kept in a separate bank account and shall not be co-mingled with other funds.

Other Issues

- The SEBI (AIF) Regulations, 2012 has been applicable to the Social Enterprises.
- A Social Impact Fund (SIF) or schemes of SIF may also issue social units. However, each scheme of the SIF shall have a corpus of at least Rs. 5 Crores.

- Individual investor can invest a minimum of Rs. 2,00,000/- in securities of NPOs listed on an SSE through Social Impact Fund (SIF).
- A social impact fund or schemes of a social impact fund launched exclusively for a NPO, shall be permitted to deploy or invest 100% of the investable funds in the securities of NPOs registered or listed on a social stock exchange.
- At least seventy-five percent of the investable funds shall be invested in unlisted securities or partnership interest of social ventures or in units of social ventures or in securities of social enterprises. However, existing SIF may invest the remaining investable funds in securities of NPO registered or listed with the prior consent of at-least 75% of the investors by value of investment.

Overview and Analysis of the Framework on Social Stock Exchange (SSE)

The Securities and Exchange Board of India (SEBI) issued a detailed framework on the Social Stock Exchange (SSE) vide circular No. SEBI/HO/CFD/PoD-1/P/CIR/2022/120 dated 19th September, 2022. The Social Stock Exchange (SSE) is a regulated structure that will facilitate an additional avenue of fund raising for social enterprises to raise funds. The framework lists the minimum requirements for registration with SSE along with the regulatory disclosures requirements for non-profit organisations (NPOs) registered with the SSE. The detailed framework mentions about the following points:

- Minimum requirements for registration with SSE to be met by a NPO,
- Minimum initial disclosure requirement for NPOs raising funds through Zero Coupon Zero Principal Instruments,
- Annual disclosure by NPOs registered with SSE,
- Disclosure of Annual Impact Report (AIR) by all social enterprises registered with SSE,
- Quarterly statement of utilization of funds,
- Guidance notes for registered NPOs on disclosure of General, Governance and Financial aspects,

- Guidance notes for all Social Enterprises (SEs) on Annual Impact Report (AIR).

A copy of this circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework/Circulars".

MINIMUM REQUIREMENTS FOR REGISTRATION WITH SSE

Which type of NPOs are notified as an eligible entity for registration with SSE?

The following types of entities registered in India can register with SSE subject to the required criteria are met:

- a charitable trust registered under the public trust statue of the relevant state,
- a charitable trust registered under the Societies Registration Act, 1860,
- a charitable trust registered under the Indian Trusts Act, 1882,
- a company incorporated under section 8 of the Companies Act, 2013.

Will the Societies Registered under the State Societies Registration Act will be allowed for registration with SSE?

The Societies Registration Act, 1860 has been adopted by most of the State Governments

with/without further amendments. Also, the effective date of its applicability differed from state to state. When the state Governments adopted the Act with amendments in it, the same act was named differently such as The West Bengal Societies Registration Act, 1961, Madhya Pradesh Societies Registration Act, 1973, etc. These state societies registration acts have also been enacted under the power for amendment conferred to the States under the Societies Registration Act, 1860. Therefore, the Societies registered under the State Societies Registration Act will also be eligible for registration with SSE.

Will the Corporate foundations, political or religious organizations, or organizations having exemptions under sub-clause (iv) or (v) or (vi) or (via) of section 10(23C) of the Income Tax Act will be allowed for registration with SSE?

As per Regulation 292E (3) of ICDR Regulation, following organizations shall not be eligible to be identified as a Social Enterprise:

- Corporate Foundations,
- Political or Religious Organizations or activities,
- Professional or Trade Associations,
- Infrastructure and Housing Companies, except affordable housing.

Also, the eligibility criteria for registration with SSE does not mention the registrations under sub-clause (iv) or (v) or (vi) or (via) of section 10(23C) of the Income Tax Act as valid document in lieu of registration certificate under section 12A/ 12AA/ 12AB of the Income Tax Act.

Therefore, corporate foundations, political or religious organizations or organizations having registrations under sub-clause (iv) or (v) or (vi) or (via) of section 10(23C) of the Income Tax Act will not be allowed for registration with SSE subject to further amendments in the rules relating to SSE.

What are the Eligibility criteria for for-Profit Social Enterprises for registration with SSE?

Chapter IX-A "Obligation of Social Enterprises" has been inserted in SEBI (LODR) Regulations through SEBI (LODR) (Fifth Amendment) Regulations, 2022. Regulation 91A of the chapter mentions that the provision of the chapter shall apply to:

- (a) For-Profit Social Enterprise whose designated securities are listed on the applicable segment of the Stock Exchange(s);
- (b) Not for-Profit Organization that is registered on the Social Stock Exchange(s).

As per the existing provision, a For-Profit Entity is permitted to list its securities on Main Board, on Small and Medium Enterprises (SME) Exchange, or the Innovators Growth Platform (IGP), as the case may be depending on what fits best. In reference to the above mentioned regulation, this is clear that the existing provision which applies to a for-profit organization with regards to the listing on the applicable segment of the Stock Exchange(s), will also apply to the for-profit social enterprises who wants to list their securities on the applicable segment of the stock exchange(s) including Social Stock Exchange (SSE). Further, a For-Profit Social Enterprise whose designated securities are listed on the

Stock Exchange(s) shall comply with the disclosure requirements contained in "Chapter IX-A, Obligation of Social Enterprises". The eligible criteria to be a Social Enterprise would have been mentioned regulation 292E of the SEBI (ICDR) Regulations and the same should apply in this case as well.

What are the documents required and other minimum requirements for NPOs for registration with SSE?

The minimum requirements and required set of documents for registration with SSE are:

- a) **Registration Certificate**
Must have age of minimum 3 years and the certificate is valid for next 12 months at the time of registration with SSE.
- b) **Governing Document (MOA & AOA / Trust Deed / Bye-laws / Constitution)**
Should disclose if NPO is owned and/ or controlled by Government or Private.
- c) Valid Permanent Account Number (PAN)
- d) Address Proof
- e) **Registration Certificate under section 12A/12AA/12AB under Income Tax Act**
Should be valid for at least next 12 months and does not have a notice or ongoing scrutiny by Income Tax.
- f) Valid 80G Registration Certificate under Income Tax Act, 1961
- g) **Audited Financial Statement for last three financial years**

(Including Receipt & Payment Account/ Fund Flow Statement)

It should not contain material qualifications or material irregularities reported by its Auditor.

- h) **Minimum Fund Flow Requirement** is spending of Rs. 50 lakhs and funding of Rs. 10 lakhs:

- Annual spending/ payments against expenditures as per the audited Receipt & Payment Account/ fund flow statement in the past financial year must be at least Rs. 50 lakhs, and
- Annual Funding/ Receipts from audited Receipt & Payment Account/ Fund Flow Statement in the past financial year must be at least Rs. 10 lakhs.

- i) **Eligible to be Social Enterprise:** Regulation 292E of ICDR Regulation prescribe the eligibility conditions for being identified as a Social Enterprise as:

- Shall be indulged in at least one of the seventeen (17) specified activities,
- shall target underserved or less privileged population segments or regions recording lower performance in the development priorities of central or state governments,
- shall have at least 67% of its activities, qualifying as eligible activities to the target population, to be established through one or more of the following:

- at least 67% of the immediately preceding 3-year average of revenues comes from providing eligible activities to members of the target population;
- at least 67% of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities to members of the target population;
- members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries.

Will the provisional registration under section 12A and 80G of the Income Tax Act will be treated as valid registration for registration on SSE?

The provisional registrations under section 12A and 80G are granted to the registered Societies, Trust and Section 8 Companies which are making fresh application for the first time registration under the section 12A and 80G of the Income Tax Act.

Further, though the provisional registration under section 12A and 80G is granted for 3 years of validity, it is subject to further application in form 10AB within 6 months from the start of programme or within 6 months before the expiry of its validity for grant of regular approval. Also, the approval for regular registrations are granted only after further assessments by the Income Tax Department.

Therefore, the provisional registration under section 12A and 80G of the Income Tax Act does not meet the criteria of having validity for at least next 12 months and also would not

meet the minimum fund requirement threshold as prescribed condition for registration of NPOs on SSE.

CAN THE CSR PROJECTS BE IMPLEMENTED THROUGH SSE?

The Corporate Social Responsibility concept in India is governed by Section 135 of the Companies Act, 2013 ('Act'), Schedule VII of the Act and Companies (CSR Policy) Rules, 2014 wherein the criteria has been provided for assessing the CSR eligibility of a company, Implementation and Reporting of their CSR Policies.

Also, the Ministry of Corporate Affairs (MCA) has established National CSR Exchange portal to establish an interactive platform for CSR Stakeholders. The National CSR Exchange Portal serves as an e-marketplace hosting PAN India social welfare projects where the stakeholders such as implementing agencies can put up its CSR projects and companies can select projects for CSR spending as per their preferences and vice versa. The link for the national CSR exchange portal is <https://csrxchange.gov.in>.

However, the framework on Social Stock Exchange (SSE) as notified by the SEBI, does not align the CSR policies. Some of the mandatory requirements under CSR implementation which has not been addressed under the framework are mentioned below:

- CSR Registration through form CSR-1 is mandatory for CSR implementation, however is not under required criteria for registration at SSE.
- Corporate Foundations can implement CSR projects but those foundations are not allowed to register at SSE.

- Organizations having exemptions under section 10(23C)(iv)(v)(vi) (via) of the Income Tax Act have been allowed for CSR implementation, however those entities are not allowed for registration at SSE.

Therefore, as per the current framework on SSE issued by SEBI, it can be said that CSR projects cannot be implemented through SSE. However, the alignment of SSE with CSR rules are subject to further notifications and amendment of CSR rules or further guidelines with respect to SSE.

CAN THE FOREIGN CONTRIBUTIONS BE RECEIVED THROUGH SSE?

Receipts and utilization of foreign contributions in India is governed by Foreign Contribution (Regulation) Act and related rules. The framework on Social Stock Exchange (SSE) does not address the mandatory requirements under FCRA such as:

- As per FCRA, foreign contribution can only be received in the designated FCRA account maintained with SBI, New Delhi Main Branch.
- The FCRA registered entity should maintain separate books of account for receipt and utilization of foreign contribution. However, the instruments at SSE does not bifurcate separate instruments for foreign contribution funds.

Therefore, as per the current framework on SSE issued by SEBI, it can be said that foreign contributions cannot be received through SSE. However, the alignment of SSE with FCRA are subject to further notifications and amendment in FCRA or its rules and/or further guidelines with respect to SSE.

WILL THERE BE ANY ADDITIONAL TAX BENEFITS TO THE INVESTORS ON INVESTMENTS IN THE INSTRUMENTS LISTED AT SSE?

The 80G registration is mandatory for the NPOs to register on the SSE. Therefore, the 50% tax exemption can be claimed under Section 80G of the Income Tax Act by the investors of the securities listed at SSE.

However, the framework by SEBI or Income Tax Act does not provide any additional benefit other than exemption under section 80G. Therefore, any additional benefits to the investors is currently not available. The further notifications and amendments in this regard can be looked into by the investors to claim the income tax exemptions.

MINIMUM DISCLOSURE REQUIREMENT FOR NPOs RAISING FUNDS THROUGH ZERO COUPON ZERO PRINCIPAL (ZCZP) INSTRUMENTS

Brief about ZCZP:

Regulation 292I of the ICDR Regulations provides that, ZCZP instruments shall be issued without any coupon and no principal amount shall be payable on its maturity. Further, Regulation 292K of the ICDR Regulations states that, in order to raise funds through issue of ZCZP instruments, the NPO should file a draft fund-raising document along with the fees and an application seeking in-principle approval for listing of ZCZP instruments with an SSE.

Minimum Initial Disclosure Requirements for issuance of ZCZP Instruments:

SSE under the guidance of SSE Governing Council (SGC) shall mandate the structure of the draft/final fund raising

document and shall host such requirements on its website. The complete requirement in this regard is yet to come from the SSE. However, SEBI has asked SSE to ensure the following minimum disclosures:

- **Vision:** The organization should disclose its activities, interventions and programmes to prove that they are in line with its aims and objects stated in its constitution/ incorporation documents such as MOA, Trust Deed, etc.
- **Target Segment:** The organisation should define its target segment and reach to accomplish its planned activities. Clear identification and understanding of the target segment (those affected by the problem and how are they affected). The NPO must disclose how its approach intends to improve Inclusion for its customers / recipients.
- **Strategy:** The organization should disclose its strategy formulation towards accomplishing vision should take into account capabilities and learning from challenges.
- **Governance:** The organization should disclose the details of its governing body, composition, dates of board meetings held along with the key items covered in the governing body meeting.
- **Management:** The organization should disclose the details of key managerial staff such as those in charge of Programmes, Fundraising, Marketing, Communication, Finance, HR. Also, the organization should disclose that whether it provides letters to staff and volunteers defining

roles and responsibilities, has a periodic performance appraisal process, etc.

- **Operations:** The organisation should have a physical existence, is operational and shares its address for visits.
- **Finance:** The organization should disclose its audited financial statements for last three Financial Years in accordance with guidelines for NPOs issued by Institute of Chartered Accountants of India (ICAI).

"Note: As mentioned in the framework issued by SEBI, ICAI is in the process of publishing the uniform accounting and reporting framework for NGO."

- **Compliance:** The organization should make available, annual accounts duly audited for the latest three financial years and there are no material qualifications or material irregularities reported by its auditor. Further, the compliances with respect to Income Tax, FCRA, notices received etc. should also be disclosed.
- **Credibility:** The organization should prove its credibility by sharing the documents such as Registration certificate, Trust Deed/ MoA and AoA, Address Proof, IT PAN, 12A/12AA/12AB Certificate, FCRA certificate and returns, remuneration to governing members, etc.
- **Social Impact:** The organization should disclose the details of past social impact in terms of parameters specified by SEBI. The specified

parameters have been discussed in further section of this article.

- **Risks:** The organization should disclose the risks that the NPO sees to its work and how it proposes to mitigate these. Further, it should also disclose the unintended consequences that the NPO sees from its work and how it proposes to mitigate these.

ANNUAL DISCLOSURE BY NPOs WHICH ARE REGISTERED WITH SSE

An NPO registered on an SSE shall be required to provide following disclosures on annual basis within 60 days from the end of the financial year:

A. Disclosure on General Aspects

- i. Name of the organization (both legal and popular name),
- ii. Location of headquarters and location of all operations,
- iii. Vision / Mission / Purpose,
- iv. Organizational goals, activities, products and services,
- v. Outreach of organization (Type and number of direct, indirect and institutional beneficiaries / stakeholders reached),
- vi. Scale of operations (Including Employee and Volunteer strength),
- vii. Details of top donors or investors of organisation - List of Top 5 donors or investors (budget wise),
- viii. Details of top 5 programs in disclosure period - List of Top 5

interventions/programs (budget wise).

B. Disclosure on Governance aspects

- i. Ownership and legal form,
- ii. Governance Structure: Have to outline board and management committee structures, mandates, membership, charters, policies and internal controls,
- iii. Details of governing body including names of the members of the body,
- iv. Executives with key responsibilities,
- v. Number of meetings by governing body and other committees formed by them along with attendance and the process of performance review,
- vi. Organisation level potential risks and mitigation plan,
- vii. Reporting of related party transactions,
- viii. Mechanisms for advice and concerns about ethics, along with conflict of interest and communicating other critical concerns,
- ix. Remuneration Policies,
- x. Stakeholder grievance, process of grievance redressal and number of grievance received and resolved,
- xi. Compliance management process and statement of compliance from senior decision maker,
- xii. Organisation registration certificate and other licenses and certifications (12A, 80G, FCRA, GST, etc.).

C. Disclosure on Financial Aspects

- i. Financial Statement (Balance Sheet, Income & Expenditure statement and Receipt & Payment Account or Cash Statement). Also program wise fund utilization for the year has to be disclosed.

As per the guidance note issued by SEBI, ICAI is in the process of publishing the uniform accounting and reporting framework for NGO. However, the following disclosures shall be made by the NPO in respect of Financial Aspects:

- Balance Sheet,
- Income statement,
- Cash Statement,
- Program wise fund utilization certificate,
- Percentage of organizational budget this 'issue' represents,
- Breakup of organizational budget and expenditure,
- Split of the budget across partners of the project/initiative is being jointly executed.

- ii. Auditors report and auditor details

A guidance note in respect of the above disclosure aspects has been provided as annexure-1 of the framework on SSE.

In addition to the above mentioned disclosures, the Social Stock Exchange (SSE) may specify matters that shall be disclosed by the NPO on an annual basis.

DISCLOSURE OF ANNUAL IMPACT REPORT BY ALL SOCIAL ENTERPRISE (BOTH NPOs AND FOR-PROFIT SOCIAL ENTERPRISE) REGISTERED WITH SSE

Who needs to submit the Annual Impact Report?

All Social Enterprises (SEs), both NPOs and for-profit Social Enterprises, will have to provide Annual Impact Report (AIR) duly audited by Social Auditors to SSE.

What is the timeline for submission of AIR to SSE?

The AIR should be submitted to SSE within 90 days from the end of Financial Year.

What shall be captured in the AIR?

The AIR shall capture the qualitative and quantitative aspects of the social impact generated by the entity and where applicable, the impact that is generated by the project or solution for which funds have been raised on SSE.

In case an NPO is only registered without listing any security, the AIR must cover the NPO's significant activities, intervention, programs or projects during the year and the methodology for determination of significance must be explained.

Additionally, if there is an activity, intervention, program or projects covered under a listed security, it will qualify as a significant activity, intervention, program or project.

Specific requirement for a Social Impact Fund:

SEs must disclose an overall AIR for the fund covering all investee/grantee organizations where the fund is deployed.

What are the minimum aspects to be covered in AIR?

The AIR should cover the following minimum aspects:

A. Strategic Intent and Planning

- i. What is the social or environmental challenge the organization and/or the instrument listed is addressing? Has this changed in the last year?
- ii. How is the organization attending to the challenge or planning to attend to the challenge? Has this changed in the last year?
- iii. Who is being impacted (target segment)? Has this changed in the last year?
- iv. What will be the outcomes of the activities, intervention, programs or project? Disclosure should include positive and potential unintended negative outcomes.

B. Approach

- i. What is the baseline status / situation analysis / context description at the start of the activity / intervention/ programs or project and at the end of the last reporting period?
- ii. What has been the past performance trend? (if relevant)
- iii. What is the solution implementation plan and the measures taken for sustainability of activity/ intervention/programs or project outcomes? Has there been any material change in your implementation model in the last one year?

- iv. Please brief out alignment of solution to Sustainable Development Goals (SDGs) / national priorities / state priorities / developmental priorities.
- v. How have you taken into consideration stakeholder feedback in this reporting period?
- vi. In the last year, what have you seen as the biggest risks to the achievement of the desired impact? How are these being mitigated?

C. Impact Score Card

- i. What are the metrics monitored and what has been the trend?
- ii. Briefly include narratives of impact on target segment(s) in the reporting period.
- iii. Beneficiary / Stakeholder validation through surveys and other feedback mechanisms.

A guidance notes in respect of the aspects to be covered in AIR has been provided as annexure-II of the framework on SSE.

SSE may specify additional parameters that may be required to be disclosed by SE in its AIR.

QUARTERLY STATEMENT OF UTILISATION OF FUNDS

Who needs to submit the statement of utilization of funds?

The regulation 91F of LODR Regulations states that a listed NPO should submit to the SSE(s) a statement in respect of utilisation of the funds.

What is the frequency and timeline for submission of the statement of utilization of funds?

The statement of utilization of funds should be submitted on a quarterly basis and within 45 days from the end of the quarter.

In which manner the statement of utilization of funds should be submitted?

The quarterly statement of utilization of funds should be submitted to the respective SSEs in the following manner:

- Category-wise amount raised,
- Category-wise amount utilised,
- Balance amount remaining unutilised: The unutilised amount should be kept in a separate bank account and shall not be co-mingled with other funds.

Supreme Court Judgement on Educational Institutions

INTRODUCTION

The Supreme Court of India in the case of M/s New Noble Education Society vs. The CCIT 1 and Anr., Civil Appeal No. 3795 of 2014 dated 19th October 2022 has given a landmark judgement which will have far reaching impact on educational institutions subject to exemption u/s 10(23C)(vi). This ruling will also have impact on other charitable institutions as far as incidental business activities are concerned.

The major conclusions from the judgement are summarized as under:

- a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.
- b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C)(vi) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in

the course of providing education or educational activities.

- c. The seventh proviso to Section 10(23C), as well as Section 11(4A) refer to profits which may be 'incidentally' generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.
- d. The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is 'incidental' to educational activity - as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.
- e. The reasoning and conclusions in *American Hotel and Lodging Association v Central Board of Direct Taxes*, (2008) 10 SCC 509 and *Queen's Education Society v Commissioner of Income Tax*, (2015) 8 SCC 47 so far as they pertain to the interpretation of expression 'solely' are hereby disapproved. The judgments are accordingly overruled to that extent.

- f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in *American Hotel* (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts - it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

- g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.

CAN A "SOLELY" EDUCATIONAL INSTITUTION HAVE OTHER CHARITABLE ACTIVITY

The basic provision granting exemption u/s 10(23C)(vi) requires that the educational institution should exist 'solely for educational purposes and not for any other charitable object.

The Supreme Court in this respect has discussed and clarified the meaning of the word 'solely' in the phrase 'solely for educational purposes and not for purposes of profit'. It has been held that the plain and grammatical meaning of the term 'sole' or 'solely' is 'only' or 'exclusively'.

Reference has been made to P. Ramanath Aiyar's *Advanced Law Lexicon* which explains the term 'solely' as exclusively and not primarily".

The Cambridge Dictionary has also been referred which defines 'solely' to be, "only and not involving anyone or anything else".

The synonyms for 'solely' are "alone, independently, single-handed, single-handedly, singly, unaided, unassisted" and its antonyms are "inclusively, collectively, cooperatively, conjointly etc." It is, therefore, clear that term 'solely' is not the same as 'predominant / mainly'. The term 'solely' means to the exclusion of all others. The following para from the judgement will provide greater clarity in this regard:

"Para 51 The ruling further states that a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education.

Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation."

The Supreme Court overruled its own judgement in *American Hotel and Lodging Association v Central Board of Direct Taxes*, (2008) 10 SCC 509 and *Queen's Education Society v Commissioner of Income Tax*, (2015) 8 SCC 47 with regard to the interpretation of expression 'solely'. It may be noted that in these judgements it was held that if the organisation was dominantly engaged in educational activity, then some other activity will not have any effect on the 'solely' educational character.

In the light of the above 'solely' educational institution under section 10(23)(vi) have to exclusively be engaged only in educational activity and not dominantly.

MEANING OF THE TERM 'EDUCATION' REAFFIRMED

With regard to the scope of the term 'education' while delivering this judgement the Supreme Court has also observed that it is not the broad meaning of the expression which is involved in this case. As was held in *T.M.A Pai Foundation vs. State of Karnataka*, (2002) 8 SCC 481: AIR 2003 SC 355 education in the narrower meaning of the term as scholastic structured learning is what is meant in Article 21-A, Articles 29-30 and Articles 45-46 of the Constitution. As to what is 'education' in the context of the IT Act, was explained in *Loka Shikshana Trust v. Commissioner of Income Tax* [1975] 101 ITR 234 (SC) in the following terms:

"5. The sense in which the word "education" has been used in section 2(15) is the instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge.... All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

Thus, education i.e., imparting formal scholastic learning, is what the IT Act provides for under the head of "charitable" purposes, under Section 2(15). In other words the Supreme Court reaffirmed that education will continue to have a narrow scope covering only formal education.

CAN A "SOLELY" EDUCATIONAL INSTITUTION HAVE PROFIT MAKING ACTIVITY

The Supreme Court in this ruling has held that a "solely" educational institution should engage only in educational activity it cannot engage in any other charitable or profit making activity. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities. If the educational institution seems

to be working with a profit motive i.e., the fees collected from the student is substantially more than the cost of services then such organisation will not be eligible for exemptions. The effect of the ruling will apply to all charitable organisations who charge their beneficiaries.

The ruling further states that there is no bar in having surplus provided such surplus is generated in the course of providing education or educational activities. In other words an educational institution can generate profit from its beneficiaries provided it is reasonable and there is no dominant profit motive. It is pertinent to quote another Supreme Court ruling where the reasonableness of permissible surplus was decided. The Hon'ble Supreme Court in the case of Islamic Academy of Education v. State of Karnataka on 14 August, 2003, WP (Civil) 350 of 1993 held that an educational institution can have reasonable surplus upto 6% to 15% every year without affecting its charitable character.

It is also held that any other activity such as non-recognised courses, Management Development Programmes etc., which do not result in recognised degree, will not be treated as advancement of educational objective. Further, such activities cannot be treated as incidental business activity unless they have a direct nexus with the main activity or the beneficiaries under the main activity. It is important to note that the Apex Court has held that the various incidental business activities which are not related to the main object or to the beneficiaries then such activity will neither be treated as a charitable activity nor as an incidental business activity. The relevant para 72 and 73 is reproduced as under:

".....It was held that if an institution facilitated learning of its pupils by sourcing and providing text books, such activity would be 'incidental' to education.

Similarly, if a school or other educational institution ran its own buses and provided bus facilities to transport children, that too would be an activity incidental to education. There can be similar instances such as providing summer camps for pupils' special educational courses, such as relating to computers etc., which may benefit its pupils in their pursuit of learning."

73. However, where institutions provide their premises or infrastructure to other entities, trusts, societies etc., for the purposes of conducting workshops, seminars or even educational courses (which the concerned trust is not actually imparting) and outsiders are permitted to enrol in such seminars, workshops, courses etc., then the income derived from such activity cannot be characterised as part of education or 'incidental' to the imparting education. Such income can properly fall under the other heads of income."

"74. It is unclear from the record whether R.R.M Educational Society was providing hostel facility only to its students or to others as well. If the institution provided hostel and allied facilities (such as catering etc.) only to its students, that activity would clearly be 'incidental' to the objective of imparting education."

In the light of the above the impact on incidental business activity will be as under:

- (i) Any income from use of property and infrastructure for any activity including workshop, seminar or even educational courses will not be treated as incidental business income.
- (ii) The business activity must be actually linked with the advancement of the primary charitable objective.

THE MEANING OF THE WORD 'INCIDENTAL' TO DETERMINE PERMISSIBLE BUSINESS ACTIVITY

The Supreme Court has taken a very narrow view of the term incidental in context of incidental business activities. In the past the Supreme Court has been taking a very liberal interpretation of the term 'incidental'. For instance Supreme Court in the case of Asstt. CIT v. Thanthi Trust [2001] 115 Taxman 126, had held that if the income generated from a business of publishing newspaper is totally used for charitable purposes then such business should be considered as incidental.

In this New Noble Educational Society case (supra) the Supreme Court observed that incidental has to be something related with the main activity of the society. A business cannot be said to be incidental only because the surplus from it is applied for charitable purposes. The Supreme Court cited its own judgment in Delhi Cloth & General Mills Co. Ltd. v Workmen & Ors. 1967 (1) SCR 882 where the meaning of 'incidental' was explained in the following manner:

"21. [T]he word 'incidental' means according to Webster's New World Dictionary: 'happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated.'"

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct."

The seventh proviso to Section 10(23C) and Section 11(4A) provide that a charitable or religious organisation can engage in incidental business activities. Prior to the Supreme Court ruling virtually any kind of business was allowed to be undertaken as incidental business activity provided the entire surplus was used for charitable or religious purposes. However, in this case Supreme Court has taken a very strict view of the term "incidental", it has held that 'incidental' business activity has to be incidental to educational activity for example activities such as sale of text books, providing school bus facilities, hostel facilities, etc.

After this Supreme Court ruling educational institutions shall not be permitted to undertake income generation activity with anybody who is not the primary beneficiary. For example, even providing infrastructure to non students for training for seminar purposes will not be treated as "incidental" activity as discussed earlier.

This Supreme Court ruling will have very far reaching implication on the incidental and other business activity of educational as well as other charitable or religious institutions. An incidental business activity should have a direct relationship with the advancement of the main objective. For example, selling books to students can be incidental business activity but the same activity for non student will not be treated as an incidental business activity.

WILL THE JUDGEMENT AFFECT INCIDENTAL BUSINESS ACTIVITIES OF ALL OTHER INSTITUTIONS REGISTERED UNDER SECTION 12AB ALSO

The judgement will have an far reaching affect on the incidental and other business activity of all category of charitable or religious institutions. This judgement is not confined

only to educational institutions as far as business activities are concerned. It may be noted that the provisions pertaining to incidental business activity of organisation approved under 10(23C) are covered under seventh proviso to that section. However, the Supreme Court has also analysed section 11(4A) which applies to the incidental business activities of all category of charitable or religious institutions. The Supreme Court has even specifically stated that these two provisions are identical and therefore the law shall apply equally to all types of charitable or religious institutions. The relevant extract from the decision is as under:

"Thus, the underlying objective of seventh proviso to Section 10(23C) and of Section 11(4A) are identical. These have to be read in the light of the main provision which spells out the conditions for exemption under Section 10(23C) - the same conditions would apply equally to the other sub-clauses of Section 10(23C) that deal with education, medical institution, hospitals etc."

POWER OF CIT TO EXAMINE BOOKS GRANTING APPROVAL OF ACCOUNTS AT THE TIME OF

The court has given crucial directions with regard to the power of the Commissioner or any other designated authority at the stage when it approaches the authority for approval under Section 10(23C). The Court modified its earlier decision in *American Hotel and Lodging Association vs. CBDT* (2008) 10 SCC 509 where it was held that the Commissioner of Income Tax cannot call for records at the time of granting registration. The Court held that records may not be called for new charities but can be called in case of existing charities. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

However the court has defined the limitation in the nature of enquiry regarding books of accounts and held as follows:

"63. The Commissioner or the concerned authority, while considering an application for approval and the further material called for (including audited statements), should confine the inquiry ordinarily to the nature of the income earned and whether it is for education or education related objects of the society (or trust). If the surplus or profits are generated in the hands of the assessee applicant in the imparting of education or related activities, disproportionate weight ought not be given to surpluses or profits, provided they are incidental. At the state of registration or approval therefore focus is on the activity and not the proportion of income. If the income generating activity is intrinsically part of education, the Commissioner or other authority may not on that basis alone reject the application."

The ITAT Hyderabad in the case of *Fernandez Foundation vs. CIT(E)* ITA No.1884 & 1885/Hyd/2019 and ITA No.299/Hyd/2020 dated 08.12.2022 has held that the CIT(E) is well within his rights to scrutinize and analyse document and information in the light of the Supreme Court judgement in *New Noble Educational Society* (supra). The relevant extract is as under:

"Further from the reading of ratio laid down by the Hon'ble Supreme Court in the case of New Noble Educational Society [2022] 143 taxmann.com 276 (SC) (supra), it is abundantly clear that the Id. CIT(E) was well within his right to examine the audited records / other financial statements with a view to deciphering the nature of the activities. Undoubtedly, in the present case, the Id. CIT(E) has brought on record that the activities of the assessee are commercial in

"Further from the reading of ratio laid down by the Hon'ble Supreme Court in the case of New Noble Educational Society [2022] 143 taxmann.com 276 (SC) (supra), it is abundantly clear that the Id. CIT(E) was well within his right to examine the audited records / other financial statements with a view to deciphering the nature of the activities. Undoubtedly, in the present case, the Id. CIT(E) has brought on record that the activities of the assessee are commercial in nature. In our view, the argument of the learned counsel for the assessee that only the data for the period 03.08.2018 to 25.02.2019 can only be considered is without any basis and is contrary to Form 56 / Form 10A and the judgment of the Hon'ble Supreme Court, in the case of New Noble Education Society (supra). In our view, the above said proposition of the assessee cannot be accepted, in case of the assessee, as the assessee was not a beginner or new starter. Rather the present case is a case of conversion of a profit making company into a section 8 Company. In fact, the assessee was earning huge profit as a private company, which was later on converted into section 8 company w.e.f. 03.08.2018. As mentioned hereinabove, the assessee was having surplus of Rs.15,96,02,014/- in the financial year 2018-19 and Rs.34,82,52,005/- for financial year 2019-20, which only shows that the assessee has been charging cost plus unreasonable mark up on its services. Further, if we accept the argument of the learned counsel for the assessee that only the subsequent document should be taken into consideration, despite the fact that the assessee, being a profit earning private company prior thereto, then it will be a handy tool for an otherwise profit-making company to conveniently convert into a so-called charitable company and avoid payment of due taxes to a welfare state."

WHETHER AT THE TIME OF GRANTING APPROVAL THE COMPLIANCE WITH STATE LAW IS REQUIRED

It is held that wherever registration of trust or a charity is obligatory under a state or local laws, then the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021. The following para from the judgement will provide greater clarity in this regard:

"70. In view of the above discussion, it is held that charitable institutions and societies, which may be regulated by other state laws, have to comply with them- just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other concerned authority, while deciding applications for approval under Section 10 (23C)."

THE JUDGEMENT WILL APPLY PROSPECTIVELY

The Supreme Court has clarified that the judgement will apply prospectively, in other words the Apex Court has provided transition time to the existing organisations to make the necessary changes. The relevant para 78 of judgment reads as follows:

"This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the present judgment operates hereafter. As a result, it is hereby directed that the law declared in the present judgments shall operate prospectively."

WAY FORWARD FOR INSTITUTIONS HAVING CONSIDERABLE INCOME GENERATION ACTIVITY

The institutions which are having incidental business activity which do not have a direct nexus with advancement of their main object will have to discontinue such activities or create separate institutions to undertake such activities from the court ruling it seems that following activities may not be undertaken by section 10(23C)(vi) approved educational institution :

- Income from consultancy, research, training etc. from non-beneficiaries
- Use of infrastructure by persons and organisations not related with the advancement of education of the beneficiary.
- Any activity where the organisation fails to establish an nexus with advancement of the main activity.

Further, the same ratio of law shall apply to all kinds of charitable and religious institutions as far as incidental business activities under section 11(4A) is concerned.

Ratio Analysis

Objectives

The main objective of this article is to provide guidance on the use of ratio analysis in assessing the social accountability of an NPO.

Introduction

Ratio Analysis, hereinafter referred to as RA, is a comparative study between two variables in order to derive certain meaningful information. For example, in a military store, if there are 2000 guns and 500 bullets then such figures do not make any sense independently except being statistical data. But if we say that the ratio between guns and bullets is 4:1 then certainly the information becomes very meaningful and may even require immediate action. In this example, the military personnel may realise that there is only one bullet available against four guns, which may result in further and immediate procurement of bullets. From the above example, it can be seen that certain information may not make too much of sense if read individually. But if we make a comparison between two informations or variables then suddenly we may get a very deep insight into the state of affairs with the help of the ratios.

RA compares two sets of information and provides the relative strain of each other. The common features of RA are as under:

- A ratio is the relationship between two variables,
- These variables should have logical relationship with each other,

- Comparative calculations of financial figures are brought,
- The ratios derived are interpreted. Such interpretation may or may not be on the basis of pre determined norms.

Ratios generally used in profit sector as under:

- Working Capital Turnover Ratio,
- Current asset Turnover Ratio,
- Inventory Turnover Ratio,
- Average Holding Period Ratio,
- Raw Material Inventory Turnover Ratio,
- Work-in-process Inventory Turnover Ratio,
- Finished-goods Inventory Turnover Ratio,
- Receivables Turnover Ratio,
- Average Collection Period Ratio,
- Cash Turnover Ratio,
- Cash Holding Period Ratio,
- Payables Turnover Ratio (Times),
- Average Payment Period Ratio,

Similarly, NPOs can also make meaningful analysis of its state of affairs through use of Ratio Analysis. Some of the important ratios are discussed herewith.

Corpus Fund to General Fund Ratio

A corpus fund to general fund ratio gives an idea about the proportion of perpetual long term funds in comparison to the unrestricted funds available. Suppose the ratio is 1:20, which means the corpus fund is Rs. 100 and the general fund is Rs. 2000. In such a case, the NPO can consider increasing the corpus fund by transferring some fund from the general fund. On the contrary, if the ratio is the other way round i.e. 20:1, it would imply that the NPO is accumulating and hoarding too much of funds with practically no resources available for its general activities.

It is desirable that a healthy balance is maintained between corpus fund and general fund, 1:1 may denote an active as well as relatively sustainable NPO.

Corpus Fund to Restricted Fund Ratio

This ratio provides a comparison between the corpus fund and the restricted funds of the NPO. The balance sheet of an NPO may look very healthy due to large amount of restricted fund but it would not mean that the NPO is financially healthy or sustainable as the restricted funds do not belong to the NPO. With the help of this ratio, an NPO can ascertain how healthy and sustainable it is in terms of finances.

The ratio should not be unduly lopsided on either side. A very high corpus would imply that the NPO is comparatively dormant and a very low corpus would denote insecurity about its future.

Restricted Fund to Unrestricted Fund Ratio

Both restricted fund and unrestricted fund may be used for various activities but unrestricted fund are within the discretionary powers of the NPO. With the help of this

ratio, an NPO can know the quantum of discretionary funds available for designation of activities, of its own choice. When the unrestricted funds are seen in proportion to the restricted funds then it is easier to analyse the materiality and importance of such funds in relation to the overall activities.

Comparative existence of unrestricted funds show the ability of the NPO to mobilise funds from its own sources and to that extent it reflects upon its ability to sustain itself and its programme.

Designated Fund to Restricted Fund Ratio

Both designated fund and restricted fund have been set aside for specific purposes and therefore changes cannot be made in their application pattern. This ratio helps the NPO in analysing the quantum of funds it was able to generate and designate in comparison to the restricted funds. Greater quantum of designated funds reflects financial and social soundness of the NPO.

If there is a healthy ratio of designated funds, it denotes the availability as well as the commitment of the NPO towards specific programme from its self generated funds.

Corpus Asset to Project Asset Ratio

Corpus asset are the long-term assets available with the NPO. Project assets are generally created from restricted fund and belong to the respective fund/ donor. In a way, project assets do not belong to the NPO and at the end of the project period, they are either merged with corpus assets or disposed off as per the terms of the project agreement. This ratio provides an insight into the net worth and the financial strength of the NPO.

If the quantum of corpus asset is high then it implies that the NPO has greater ability to sustain in the long run and if the quantum of project asset is higher then it implies that the NPO is able to handle large number of projects but its sustainability in the long run could be a matter of concern.

Total Income to External Grants/Donations Ratio

This is a very important ratio. Normally NPOs are largely dependent on external sources for their activities. NPOs also have certain income of their own, which could be through:

- Income generation activities,
- Interest earned from various unrestricted fund,
- Rent received,
- Membership fees,
- Miscellaneous sources, etc.

The income from own sources reflect sustainable and long term attributes of the NPO. On the other hand external funding reflect the ability of the NPO to enter into meaningful partnership with other stakeholders, however it may not reflect attributes of long term sustainability and independence.

Through this ratio, one can analyse the quantum of dependence of external funding. It would be very useful, if this ratio is analysed for the past 4 to 5 years. Through such an analysis, one can find whether the NPO is making successful efforts towards becoming financially independent in the long run.

Fund Balances to Investment Ratio

It is very important to see that what proportion of the closing fund balances is invested in proper securities or is held in the bank. It may so happen that the funds are showing very high balances but they are supported by inferior or fictitious asset. Some of the instances are as under:

- A loan could have been given to some other NPOs/ functionaries,
- Programme and other advances might have been given to staff and other functionaries,
- Immovable properties or dead investment might have been made.

This is one of the most important ratio because unless a fund remains invested properly, the balances available are meaning less. An analysis of the quality of the asset available against each fund is possible through this ratio. Ideally, the ratio should be 1:1 in terms of qualitative investments available against the fund balances.

Administrative Expense to Programme Expense Ratio

As the nomenclature suggests this ratio is important in order to know the cost of implementing the projects and programmes. Very high administrative expenses would denote that the funds available for programme are reduced and very low administrative expenses may raise issues pertaining to the systems and quality of the programme. There is no benchmark on the percentage of administrative expenses and it also varies according to the nature of work.

All NPOs should make an annual declaration of the ratio of administrative expenses to programme expenses. It is also necessary that administrative

expenses of the NPO and administrative expenditure pertaining to the programme are also distinguished.

Gender Equity in Human Resources Ratio

A healthy male female ratio right from the board to the grass root level reflects the ability of the NPO in succeeding in main streaming and integrating women in all sphere of work.

A 1:1 gender ratio should be considered as ideal unless the specific traits of the activity or the function warrant otherwise.

Executive Travel Vs. Programme Staff Travel Ratio

The work of NPOs being spread in remote places of the country requires huge amount of travel expenses. Therefore, it is important to analyse the quality and relevance of such expenditure. The travel by senior management and the board is essentially administrative in nature, therefore it is desirable to distinguish it from the programme travel cost.

It is desirable that the ratio of programme travel is higher than the administrative nature travel.

Summing Up Notes:

- Ratio analysis should be done to give a meaningful interpretation about the relationship between two variables and take important decisions.
- Major ratios for NPOs are:
 - a. Corpus Fund to General Fund
 - b. Corpus Fund to Restricted Fund
 - c. Restricted Fund to Unrestricted Fund
 - d. Designated Fund to Restricted Fund
 - e. Corpus assets to project Asset
 - f. Total income to external grants
 - g. Fund balances to Investment

An Overview of Risk Management in NPOs

Background

The concept of risk management in non-profit sector is rather recent, if not completely uncharted. In this ever-evolving sector, the non-profits are continuously on the brim of many potential risks. Risks if left unattended may not only affect the achievement of organizational objectives, it also affects the relationship with the donor and beneficiaries. Before moving ahead with risk management, let us understand what the word "risk" means.

What is "Risk"?

In dictionary terms, "risk" is a possibility of something dangerous or unpleasant happening. In the context of an NPO, risk holds a slightly different meaning. Risk is a possibility that something different (positive or negative) will occur from what is expected. This means that risk does not necessarily lead to a negative outcome; it can sometimes also create potential opportunities for achieving organization's objectives. Thus, it is necessary to think about risk in its broadest sense, rather than focussing solely on its negative connotation.

Some risks are inevitable and cannot be fully eliminated. While risks are not something that can be avoided, right action at the right time may definitely help in reducing the adverse impacts or even turn it into opportunities.

Types of Risks

There are various types of risks that exist in a

non-profit organization. However, it is important to understand that the risks that an NPO faces is hugely dependent on its size, nature, programmes, processes, etc. Broadly speaking, risks exist due to factors operating at two levels - internal and external. Risks due to internal factors are caused by factors existing within the organization and can be mitigated or controlled. While at an external level, the risks are caused by uncontrollable external factors like government regulations, natural calamities, cultural shift, and so on.

In a non-profit organization, the risks can be broadly categorized under Governance, Operational, Financial, Legal & Donor Compliance, and External risks. Some examples of risks under these areas are:

Governance

Inappropriate organizational structure, Board members with inadequate skills, Absence of conflict of interest policy

Operational

Work quality & efficiency, employment issues, health and safety issues, fraud

Financial

Misutilization of funds, improper budgeting, erroneous and delayed reporting

Legal & Donor Compliance

Violation of legal and donor requirements/provisions

External

Adverse publicity & public perception, changes in government policy, demographic changes

It is also important to be able to differentiate between "causes" and "risks", as sometimes causes can be wrongly identified as risks. A cause is something that leads to emergence of a risk, while risk is a resultant of a cause. For example - because of poor staff policies (cause), there is a risk of high staff turnover (risk).

What is Risk Management?

Simply understanding that risks exist in an organization is not sufficient. Instead, it is the very first step in the larger process - risk management. Risk management, in simple terms, is preparing for the risks. It is a systematic process of identifying the risks, analysing them and accordingly respond to them. The process of risk management can be summarized as under -

✓ **Identifying** - The very first step to manage any risk is the identification of risk. This is the most important step as without proper identification; the further steps will not lead to anything significant. At this stage, it becomes extremely important to differentiate between cause and risk. The objective of this step is to identify all the potential risks that an organization may be exposed to. This stage necessitates involvement of staff at all levels, documenting the risks and communicating wherever required. Any risks overlooked at this step would fail to be captured in the subsequent stages.

✓ **Analysing** - Once the risks have been adequately identified, the next step is to analyze them. This is done by measuring the risk based on its attributes.

Attributes of Risk

In the whole process of risk management, it is imperative to measure the risks based on certain attributes. Without measuring, it is impossible to assign priority for treatment, which in turn might result into a recipe for disarray. Every risk has two major attributes - Likelihood of Occurrence and Impact.

A risk's likelihood is an expression of the chance that the risk will occur, while impact is an expression of the effect if the risk occurs. These two attributes are crucial in assessing the overall impact of a risk.

It is important to note that the likelihood and impact of a risk may differ from organization to organization depending upon the size, objectives, nature of activities, structure and other such factors. For instance, the risk of non-compliance

to gratuity may not be as risky for an organization which has less than 10 employees as opposed to an organization which has more than 10 employees.

✓ **Responding** - After analyzing the risk, the next step is to work on ways to control or respond to the risks based on the analysis. This could be done by forming an internal committee or seeking help from external resources depending on the nature of risk. Traditionally, there are five risk management strategies that can be used to respond to a risk :

- **AVOID:** Eliminating the risk by removing the cause.
- **TREAT:** Taking actions to mitigate the impact and/or reducing the probability of occurrence of the risk.
- **TRANSFER:** Shifting of risk to a third party to avoid direct impact.
- **ACCEPT:** Accepting the risk as it is; either because the cost of response is too high or options to treat are limited.
- **TAKE THE OPPORTUNITY:** Realizing the opportunity of a positive risk and taking action.

To choose the most appropriate treatment option, it is important to undertake a cost benefit analysis. It is also critical to document the findings and map the risks according to their likelihood and impact in a tool such as Risk Register. This would help in prioritizing the risks and choosing the most appropriate risk management strategy.

Monitor and Review

Risk management must be a continuous process, as the factors causing risk tend to shift from time to time. By monitoring the risks and the risk treatment plans on a regular basis, an organization would be better prepared to deal with the constant changes. Typically, an organization should review and update its Risk Register on a fixed periodic basis (half-yearly or annually depending upon the size and requirements of the organization). More often than not, the conditions defining the impact and likelihood of risks may change over time. Only through periodic monitoring, an organization would be able to review the risks in light of its current context and take appropriate actions.

Conclusion

Risk management is not a one-time activity; rather, it is an ongoing activity that ensures that all the risks are being treated using a cumulative approach. It must be a fiduciary duty of the Board or those responsible for governance to take stock of the risk management process and whether those are being managed in line with the Risk management policies and framework.

Inculcating sound risk management practices in an organization not only ensures sustainability of an organization, but it also puts the organization in a better place to respond to the changes that may affect the overall attainment of organization's objectives.

International Standards on Auditing (ISA) - 800

Introduction:

International Standards on Auditing (ISA) are professional standards for the performance of audit of financial information. The International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB), issued the standards which came into effect in the year 2009. These standards are a set of guidelines, developed by the board, which are universally accepted for application while conducting a financial audit. ISA are issued to enhance the quality and establish a consistent practice throughout the world thereby strengthening public confidence in the global auditing profession. There are 36 International Standards on Auditing.

Background:

Out of the total 36 standards, IAASB had issued ISA 800 in the context of a complete set of financial statements prepared in accordance with a special purpose framework. The issued ISA 800 was later amended and ISA 800 (Revised) became effective for audits of financial statements for periods ending on or after December 15, 2016.

Scope:

ISA 800 (REVISED) is "Special Considerations - Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks (SPF)". SPF means financial reporting framework designed to meet the financial information needs of specific users.

There are four stages in an audit of financial statement to be conducted in accordance with the International Standards on Auditing:-

- i. Acceptance of Audit Engagement
- ii. Planning the Audit Engagement
- iii. Performing the Audit Engagement
- iv. Forming an Opinion and accordingly Reporting

The ISA's issued by the board are developed to address all the above stages.

The objective of the auditor, when applying ISAs in an audit of financial statements prepared in accordance with a special purpose framework, is to address appropriately the special considerations that are relevant to these stages.

Special Considerations:

The special considerations that are relevant to the stages of the audit are:

a) Acceptance of the audit engagement:

The Board issued ISA 210 - "Agreeing the Terms of Audit Engagements" in order to provide guidance to the auditor on terms of engagement and response to the request of client in case of any change in the terms of engagement. In other words, it generally deals with the auditor's responsibilities in agreeing to the terms of audit engagement with management and, where appropriate, those charged with governance. While agreeing the terms of audit engagement two major aspects

are to be considered by the auditor. Firstly, the auditor needs to establish the fact that preconditions for an audit are present. The other is developing a common understanding with the management.

Similarly, the auditor shall also apply ISA 210 while conducting an audit of financial statements prepared in accordance with a special purpose framework. However, it further needs to obtain a comprehensive understanding of -

- The purpose for which the financial statements are prepared;
- Intended users; and
- The steps taken by management to determine that the applicable financial reporting framework is acceptable in the circumstances.

b) Planning the Audit:

In order to plan the audit engagement, board had issued ISA 200 "Overall Objectives of the Independent Auditor and the conduct of an Audit in accordance with International Standards on Auditing". This requires the auditor to comply with all relevant ISAs (for instance ISA 300 "Planning an Audit of Financial Statements" etc.) while planning the audit. In other words, ISA 200 assist in setting out the overall objectives of the auditor to accordingly design the nature and scope of an audit. Upon summarizing the requirements of ISA 200, the auditor needs to comply:

- Relevant ethical requirements, including those pertaining to independence,
- Application of all ISAs relevant to the audit.

With regard to planning the audit of financial statements prepared in accordance with a

special purpose framework, the auditor shall determine whether application of the ISAs requires special consideration as per the circumstances of the engagement. This means the auditor needs to identify whether the entire ISA needs to be applied or some of the requirements of the ISA may not be relevant in exceptional circumstances. In such cases, the auditor may judge it necessary to depart from a relevant requirement in an ISA by performing alternative audit procedures to achieve the aim of that requirement.

c) Performing the Audit Engagement:

While performing audit engagement, the auditor may apply multiple relevant ISAs such as: ISA 230 "Audit Documentation", ISA 240 "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements", ISA 250 "Consideration of Laws and Regulations in an Audit of Financial Statements", ISA 265 "Communicating Deficiencies in Internal Control to Those Charged with Governance and Management", ISA 330 "The Auditor's Responses to Assessed Risks", ISA 500 "Audit Evidence" etc. Similarly, ISA 315 "Identifying and Assessing the Risks of Material Mis-statement through Understanding the Entity and Its Environment" may also be applied. In this, the auditor needs to identify and assess the risks of material mis-statement, whether due to fraud or error, at the financial statement and assertion levels thereby providing a basis for designing and implementing responses to the assessed risks of material mis statement. In the case of financial statements prepared in accordance with special purpose framework, the auditor shall obtain an understanding of any significant interpretations that management made in the preparation of those financial statements. An interpretation is significant when adoption of another reasonable interpretation would have produced a material difference in the information presented in the financial

statements. With this understanding of the significant interpretation, the auditor needs to assess if the interpretation of the management is reasonable as per the circumstances. Hence, it will provide a basis for defining the nature, timing and extent of further audit procedures necessary in this regard to obtain appropriate audit evidences while performing the audit.

d) Forming an Opinion and accordingly Reporting:

The Board has issued ISA 700 "Forming an Opinion and Reporting on Financial Statements" to form an opinion on the financial statements. It also deals with the form and content of the auditor's report issued as a result of an audit of financial statements. This ISA applies to an audit of a complete set of general-purpose financial statements. However, with some exceptions, this ISA shall also apply to audits conducted for financial statements prepared in accordance with special purpose framework.

As per ISA 800, the audit report to be issued for financial statements prepared in accordance with special purpose framework should also describe the purpose for which the financial statements are prepared and the intended users. Further, it shall include the explanation of management's responsibility for determining whether the applicable financial reporting framework is acceptable in the circumstances. In the cases of financial

information to be supplied by an organization to specialized users, the user sometimes defines a prescribed format for the auditor's report. Such prescribed reports may not conform to the requirements of ISA 700. For example, in the prescribed report, the user may require a certification of fact when an expression of opinion is more appropriate or user may require an opinion on matters outside the scope of the audit. When requested to report in a prescribed format, the auditor should consider the substance and wordings of the prescribed report and, when necessary, should make appropriate changes to conform to the requirements of ISA 700, either by rewording the form or by attaching a note to the report.

Conclusion

ISA 800 shall come into application whenever the financial statements are prepared for specialized users to meet their specific needs for instance financial reporting framework that employs either a cash, tax, regulatory, contractual, or other basis of accounting termed as Special Purpose Framework. In SPF, the financial reporting is based on Generally Accepted Accounting Principles (GAAPs) only; however, it does not comply with all its requirements. Therefore, all the relevant international standards on auditing shall be applied keeping special purpose framework in mind.

Governance Process and Oversight Functions

Introduction

Not-for-Profit Organizations (NPOs) are made up of people who share common values, a vision for future and a commitment towards fulfilling its purpose of existence. In view of the above, the Governing Body of NPOs play a crucial role in casting the vision and translating the vision into action. The primary role of the governing mechanism is derived from the legal and statutory requirements articulated at the time of its legal incorporation. The overall statutory requirements from the Governing Body are in terms of ensuring effective management, audit and the reporting of its program and activities to its constituencies/stakeholders. As the apex policy making body of the organization, it should ensure that effective policies are in place to guide the organization towards its goals in a systematic way. Finally, one of the most important roles of the Governing Body is to ensure accountability of the leadership of the Organization to which they delegate their authorities. John Carver's 'Policy Governance Model' needs a special mention here.

According to John Carver, *"Policy Governance refers to a governance system that enables boards to focus on ownership (moral or legal), the future of the organization and its own governance processes, while empowering the CEO and his/ her staff to manage the organization within pre-defined boundaries. The system strengthens the organization through board adoption of a comprehensive set of policies and protects the organization through board monitoring of policy compliance"*. Therefore, it is essential for the Board to ensure accountability of the

leadership of the organization through appropriate 'Governance Controls'.

1. Accountability of the Leadership or Management Team

Les Stahlke & Jennifer Loughlin, in their book 'Governance Matters' have talked about seven deadly sins of organizations which have the potential to affect the core processes of the organizations. One of the deadly sins as described by them is 'Weak Governance, Leadership & Management' which will eventually lead to poor quality & inefficiency in service delivery of the organization. In fact, weak governance leads to ineffective leadership & poor management. On the other hand, a governance mechanism that ensures accountability of the leadership helps in establishing efficient leadership and eventually effective delivery of services to the beneficiaries.

Ownership Vs Trusteeship

An organization is an artificial legal entity (artificial person) separate from its members. Thus, an organization can sue and be sued in its own name; has its own rights and duties; can enter into contractual relations of its own accord; own properties of its own distinct from its owners and so on. When in certain cases, this concept of an organization's artificial personality is abused or misused, the judiciary has the right to disregard the corporate identity and **'lift the corporate veil'**. The usage of the concept has acquired various names like 'lifting the curtain', 'piercing

the veil', breaching the wall of the corporation' etc. 'Lifting the Corporate Veil' describes a legal decision where a shareholder or director of a corporation is held liable for its debts or liabilities of the corporation despite the general principle that shareholders are immune from suits in contract or tort that otherwise would hold only the corporation liable. This doctrine is also known as 'disregarding the Corporate Entity'.

Thus, the judiciary may on its own accord crack open the corporate shell in circumstances it deems fit in the interest of justice. Now the circumstances under which the Corporate Veil can be lifted are many. Some of them are:

- i.) Reduction of the number of members below minimum
- ii.) Misrepresentation of the Company's name
- iii.) Fraudulent Conduct
- iv.) Evasion of Tax
- v.) Contempt of Court
- vi.) Fraud

The circumstances given above are some of the situations in which the Corporate Veil may be lifted. There are many other such circumstances in which the Corporate Veil may be lifted. This device merely seeks to strike a balance between the interests of the public and the concept of a separate entity and is desirable in certain cases to ensure accountability of the organization.

Now, let us try to draw a parallel here in the Not-for-Profit Sector. An NPO primarily operates on the basis of donation and grants received. The fund on which NPOs primarily

operate is for a specific purpose and the NPO is merely a custodian of the funds & the Governing Board, on behalf of the NPO is entrusted with the task of carrying out a specific development activity or activities. Therefore, trust plays a crucial role in the operation of the Not-for-Profit organizations. Since the Board is entrusted with the task governing the organization, parallel can be drawn from corporate practices regarding 'lifting of the Corporate Veil'. Therefore, it is the primary obligation of the Board to ensure that the organization operates in a free and fair manner & is serving the purpose for which it was created.

Derived Authority Demands Accountability

The authority of the Chief functionary of an NPO is a derived one. The Board assigns him/her with the authority as well as the responsibility of managing the organization. Thus, it follows that the Chief functionary is accountable to the Board for his/her performance & conduct. Accountability of the Chief Functionary plays the crucial role of balancing the authority that rests with him/her.

How can it be done?

It is now clearly understood that it is extremely important for the Board to ensure the accountability of the leadership. But the question that emerges at this juncture is how the Board goes about it or to put it in other words, what are the basic 'Governance Controls' in the context of Not-for-Profit Organizations? Monitoring & Measuring are the two components of the Accountability Process. Therefore, the Governance controls in any organization should address these two components.

GOVERNANCE CONTROLS



In the context of Not-for-Profit Organizations, the four basic areas through which accountability of the leadership can be ensured are:

- Policy Compliance
- Sub-Committees
- Audits
- Evaluations

The areas of *Policy Compliance* & *Sub-committees* take care of the component of monitoring whereas the areas of *Audits* & *Evaluations* involve the component of measuring. Together, they would ensure the accountability of the leadership of the organization. Each of these areas will be dealt with in greater detail in the succeeding section.

Policy Compliance

A governing board is a board that controls the organization through policies rather than managing the daily affairs of the organization. The Chief Functionary should operate &

function within the policy framework set by the Governing Board of the Organization. In general, the policy framework should include:

- Finance Policy:** The finance policy of an NPO can include its travel, payment, support documentation, advance, investments, and audit policies of the organization.
- Program Policy:** The program policy should include the key objectives stated in the vision & mission of the organization and the activities planned to achieve them.
- Human Resource Policy:** This would include personnel recruitment, staff appraisal, staff salary, staff welfare schemes like P.F, Gratuity, etc.
- Administrative Policy:** The administrative Policy should include the details of maintenance & use of office equipment, leave procedures, internal discipline & overall office management. It is the responsibility of the chief Functionary to adhere to the

policy framework and prepare a report on the policy compliance. The policy compliance report should be submitted to the Board along with the supporting evidence. This would ensure that all the policies set by the Board are being complied with. If not, the reasons for doing so have to be explicitly stated in the report. Apart from the Chief Functionary, the Policy Compliance Report should be signed by two other employees of the leadership level.

Sub Committees

The idea behind forming sub-committees is to delegate some of the Board's authority & responsibility to various small groups. A committee may also be formed to handle a specialized management function that the board decides not to delegate to the Chief Functionary. Sometimes, committees are also formed to mirror the work of the organization. They are designed to monitor management decisions and to maintain a familiarity with the daily issues the organization faces. Such committees are helpful in keeping the board members more closely informed on the changing environment in which the organization is operating. Some of the common sub-committees are finance committee, board development committee, advisory committee, etc. It has to be ensured that some of the board members are part of these sub-committees. This will help them monitor the work of the committees from close quarters & help the board to be abreast with developments therein.

Audits

An audit is an independent assessment of the fairness by which an organization's financial statements are presented by its management. Audits are performed to ascertain the validity and reliability of information and also provide

an assessment of an organization's internal control. It is important to recognize that it is the board which is primarily responsible for the preparation of financial statements. The duty of the auditor is to express his/ her opinion on the financial statements. The audit report should be submitted to the Board with a Management Letter.

Apart from the mandatory statutory audit, the board should also ensure regular Internal Audits. Internal Audits are not statutory. The internal audit keeps a check on the systems of the organization. The internal audit report should be presented to the Board of the Organization. This would provide a clear view of the internal state of affairs. It would be advisable if the internal audit is not conducted by the auditor who conducts the mandatory external audit.

Evaluations

Evaluation in the context of development work refers to a systematic and objective assessment of an on-going or completed operation, program or policy, its design, implementation and results. Any evaluation should aim to assess or measure the relevance, effectiveness, impact, efficiency, sustainability & replicability of the concerned development program.

The effectiveness of evaluation as a tool lies in its vast scope. Evaluations can cover financial, programmatic, governance as well as administrative aspects of an organization's operation. An evaluation that covers all these aspects would provide a holistic view of the organization's work and operation. In other words, evaluations of development programs & projects is basically about describing, judging and explaining what has been done, how activities have been performed, what has been achieved and what should be the future course of action. It is the primary responsibility of the Board to have evaluation

at regular intervals. This would act as a reality check and provide a clear picture of the organization's standing vis-à-vis its vision & mission. However, an evaluation should not be seen as a threat by the Board but as an opportunity to have an independent external view of the organization.

If a Board truly chooses to govern, then it will delegate the authority to the Chief functionary for managing the organization while setting the boundaries through appropriate policy framework. Because the board's governance function is distinct from the staff's management function, the board must determine its own definition of governance and then decide how it will actually govern. All board members should clearly understand why the board exists; the purpose is not to oversee staff but rather to define the future on behalf of the moral ownership and to ensure that the future is achieved in a legal, ethical, and prudent manner. The board must be accountable for its own performance & make the leadership of the Organization accountable for their performance. Some of the tools to ensure accountability of the leadership are already mentioned in the article. Apart from these, there are other tools like Appraisals, interaction with Staff & other stakeholders that can be used for ensuring the effective functioning of the organization.

2. Oversight Functions of Board and the Management

A board has to understand the delicate difference between governing and managing. A board is not supposed to manage an organisation but it is supposed to oversee and control the management of an organisation. For example, in some sports like tennis we have the concept of a non-playing captain. A non-playing captain is a person who is involved in each and every aspect of the game but is not actually playing. A board has to devise a similar mechanism, where it directs and manages the

management team without participating in the management process. One has to be very careful in designing the governance process and the role of the board.

It may result in two extremes:

- i.) The board becomes too interfering and troubles the management at each and every step
- ii.) The board becomes passive and the management stops reporting to the board and its role is relegated to endorsing the management decision at periodic interval.

Developing the ideal oversight function is to strike a balance between the above two extremes.

Characteristics of an Ideal Board Oversight Mechanism

Developing a governance structure where the board is playing the ideal role which is controlling as well as empowering the CEO and the management is the art and challenge for every organisation. Some attributes of such a mechanism are as under:

- As discussed above, the board should not try to manage the activities or the functions of the organisation. It is the job of the team headed by the CEO to execute all activities and functions. Therefore, the board should develop a mechanism of MIS and reporting by the management team.
- The board should set controls in the management journey, in other words, it should set a mechanism where crucial or large value decisions are routed through the board.
- The board should retain with itself all strategic learning and decision making.

For instance, whether a building should be constructed or not should be the prerogative of the board, but how the building will be constructed, who will be contracted etc. should be the prerogative of the management. Another way of looking at it is that board level decisions could be to take all long-term decision. The decision whose impact will be for a long period i.e. multiple year may be approved at the board level only.

- The board should setup a mechanism whereby it ensures that all timelines and compliances are being met by the management. The management should be made accountable for any deviation.
- The board should also clearly define the role, function and mandate of the management team and thereafter should monitor the various execution, delivery, timelines and compliances without interfering into the process. The board should become pro-active only if there are violations or failures in execution, delivery, timelines and compliances of various functions and processes.

Examples of Division of the Functions of the Board and the Management

There is a lot of confusion regarding the division of role and mandate between the board and the management. In succeeding paras, we are providing some key areas where the board should or should not take the decision making or execution at its level.

Long Term & Perspective Planning

The long term and perspective planning is analogous to the mission and vision in the mission of an organisation. Any resolution or decision pertaining to long term or

perspective planning should be carried out at the board level only. The management should be responsible for providing data and inputs for such planning processes. In other words, the management should play a support and complementing role to the board.

The Annual Plan & Annual Budget

The annual plan and annual budget should be the responsibility of the management of the organisation. The board should not interfere into the annual planning process. However, all annual budgets and plans should be placed before the board for approval. In case of large organisation or organisation where multifaceted plan and budgets are being prepared, the approval may be taken on case to case basis. The board may also consider reviewing and interim plan or budget at a periodic interval to ensure that there is no need for course correction. However, the mandate of annual plan and budget should remain within the domain of the management of the organisation.

System Related Policy Documents

All system related policy documents such as Finance Policy, Procurement Policy and Staff Policy, etc. should be prepared by the management and approved by the board. In case of smaller NPOs, such policy document may be prepared at the level of the board in consultation with the management staff.

Enduring and Constitutional Policies or By Laws

All enduring and constitutional policies or by laws such as:

- Changes in the objects or Memorandum
- Changes in the objects or Rules and by laws

- Vision Statements
- Mission Statements
- Governance Policy
- Conflict of Interest Policy
- Transparency and Disclosure Policy
- Gender Policy etc. should be prepared by the board and the management may provide inputs on case to case basis at the discretion of the board. Certain issues such as:
 - Changes in the objects or Memorandum
 - Changes in the objects or Rules and bye laws
 - Vision Statements
 - Mission Statements should be recommended by the board to the general body for its approval.

3. Financial Oversight

Accounting & Management of Funds and Assets

The accounting & management of funds and assets shall be the responsibility of the management. The board should be entitled to periodic reporting and course correction if any.

Internal Audits & External Audits

It is the responsibility of the board to appoint the internal and external auditors. In case of statutory auditors, the appointment of board needs to be further approved by the general body. Ideally the internal auditor should directly report to the board which will

empower him/her to be able to report about the management to the board. The statutory auditors should submit the management letter directly to the board.

Monitoring & Inspection

The monitoring and inspection for various processes and systems is the responsibility of the management. If consultant and external experts are hired, they can be appointed by the management, unless the monitoring and inspection involves a scrutiny or review of the functions of the CEO and Senior Management. The board shall be entitled to receive MIS and reports from the management in a manner which may have been laid down.

Evaluation & Impact Analysis

The overall evaluation and impact analysis of the programmes should be carried on by the board. The management should support in carrying out of such processes.

Appointment, Appraisal & Promotion of Staff

The entire process of appointing, appraisal & promotion of staff shall be the responsibility of the CEO and Management of the Organisation. The board shall determine and approve the process of appointing and appraisal of the CEO or selected very senior staff. In case of other staff, the board shall be entitled to receive MIS and reports from the management in a manner which may have been laid down.

Training & Capacity Building of the Staff

The entire process of training and capacity building of staff shall be the responsibility of the CEO and Management of the Organisation. The board shall determine and approve the process of capacity building of the CEO or very senior staff. The board may

further determine the process and mechanism for the sensitization of the board members. In case of other staff, the board shall be entitled to receive MIS and reports from the management in a manner which may have been laid down.

Stakeholder & Donor Engagement

The responsibility of stakeholder & donor engagement shall be with the CEO and Management of the Organisation. The Management should manage and maintain the various relation, delivery, communication and compliances required for various stakeholders. The board should support in stakeholder engagement, particularly with regard to fund raising and image building of the organisation. The management should interact with all the stakeholders including the donor, beneficiaries etc.

4. Risk and Compliance

There are various risks which are associated with the NPOs which affects the organization adversely either internally or externally. All NPOs should carefully analyze the legal risk involved in their activities and interaction with stakeholders. An NPO may face various kinds of legal risk which may range from suspension to dissolution to heavy financial penalties. The Board members and Trustees of an NPO may also be subjected to various kinds of legal risk. The board is primarily responsible for all legal obligation and legislative issues. However, it is the responsibility of the CEO and Management of the Organisation to ensure legal compliances at all stages. The board approves and signs all legal documents unless some specific powers are delegated to the CEO. Some of the important areas which may involve legal risk are discussed as under:

Legal Risk

Legal Risk pertaining to the key documents

An organization should carefully study its key document including the Trust deed, Memorandum of Association, Articles of Association, Contract documents, Policy document, etc. For instance, the Trust deed or Memorandum of Association should empower the NPO to conduct various activities and take major policy decision. A small disabling clause in the Trust deed, Memorandum of Association may endanger the existence and the various licenses of an NPO. A clause pertaining to commercial activity or power to invest may be in violation of the law of the land. Similarly, there could be various kinds of risk in the documents we make and use in our day to day functioning.

Legal Risk pertaining to Liability of the Organization and the Board/Trustees

An organization should carefully study the legal risk; it may face in the shape of liability towards external stakeholders due to non compliance or non performance of various organizational responsibilities. Some issues pertaining to legal liabilities are discussed as under:

- An organization may face legal liabilities with regard to various staff and consultancy contracts. An organization should understand the law of land and take proper legal advice in issuing contracts to staff and consultant.
- An organization may face legal liabilities with regard to various contracts signed. An organization should understand the law of land and take proper legal advice before entering into any kind of contract.

- The board of directors or the trustees may also be subjected to criminal or civil liability if violation of the law is being made with a malaise intention. Contrary to the common believe the board members or the trustees may not enjoy immunity of limited liability if any deliberate or malaise act or noticed.
- An organization may suffer legal risk for the misconduct or any illegal act of any of its directors or senior member done in representative capacity. For instance, if there is violence in a formal protest or rally organized by an NPO, then the entire board or the organization may suffer even if the violation is made by 1 to 2 individuals.

Legal Risk pertaining to terror and money laundering

An organization should carefully study the sources and the credential of its funding and donors. Just like banks which are subjected to KYC (Know Your Customer) norms, the NPOs effectively are also subjected to KYD (Know Your Donor) norms. An NPO may face criminal prosecution, if it is found to have received funds from dubious, anonymous or prohibited sources, whether from within the country or Abroad.

Legal Risk pertaining to non compliance of law

An organization should carefully comply with the requirement of all the statutes applicable to it. An NPO may face various kinds of legal risk ranging from financial liability to criminal liability to cancellation of registration.

Legal Risk pertaining to intellectual property, copyright, patent, trademark, etc.

An organization should carefully understand the national and international law pertaining to intellectual property, copyright, patent, trademark etc. It should ensure proper compliance in use of material / intangible assets belonging to the NPO as well as others. Proper registration and approval should be taken wherever applicable. Some such issues are discussed as under:

An organization should ensure that the internet domain and email id's etc. are formally registered and any possibility of loss of right is prevented. An organization should ensure that all its intellectual properties such as:

- i.) Books or Research Materials
- ii.) Logos or Trademarks
- iii.) Videos and Designs
- iv.) Other Development or Scientific/ Social Innovations, etc. are registered with the Appropriate Authority.

Any newsletter or dissemination material should also be properly approved and should be as per the law of the land.

Human Resource Risk

All NPOs should carefully analyze the issue pertaining to all the human resources involved. Apart from the legal risk which has been already discussed above, there are various other risks which may create crisis for an NPO. Some of such additional important areas which may involve human resource risk are discussed as under:

- An NPO should ensure that all the human resources right from the board to the grassroots worker are adequate and competent.
- An NPO should ensure that all the human resources right from the board to the grassroots worker are adequate and competent.
- An organization is always under the threat of human resource turnover and the deficit of appropriate expertise required for each specific position.
- An NPO should ensure that all the staff is provided with a safe and fair environment to work. It should also ensure that promotions, appraisals, dispute resolution are being done in a very objective, independent and fair manner in order to avoid resentment and legal litigation.
- An NPO should ensure that all the human resources are provided with insurance and social security support as far as possible. It not only secures and satisfies the employees but also safeguard the organization against any financial liability in case of a contingency.
- An NPO should ensure that all the termination and retirement policies are as per the law and transparent.
- An NPO should verify the credentials and antecedents of all the human resources right from the board to the grassroots worker. It is advisable to take a self-declaration regarding the social, criminal and civil conduct of past.

- An NPO should verify the legal eligibility and authenticity of qualification and experience of all the human resources right from the board to the grassroots worker. For instance, in case of volunteer from overseas the appropriate visa to work in the country should be verified. In case of staff a test check of qualifications should be made directly from the various universities or institutions.

Conflict of Interest Risk

There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The conflict of interest transaction is most dangerous for an NPO and may create legal threat to its basic existence itself. Therefore, conflict of interest issues are not only ethical issues but may have a serious legal risk attached to them. Some of the transactions/ decision which may be regarded as material interest is as under:

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

- Having direct or indirect relationship with the donor or done organizations.
- When contracts are awarded to relatives of the Board members.

All NPO should check the law of the land regarding the permissibility of various conflict of interest transactions. For instance, in India, any kind of benefit provided to any trustee or board member may result in cancellation of registration under the Income Tax Act. The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

Integrity and Corruption Risk

All NPOs are managed by human beings where all kinds of persons exist. We may find people with very high values and ethics; on the other hand, there might be people who are prone to corruption and unethical practices. Therefore, all organization needs strong systems to negate the possibility of unethical practices. Strong systems can only be built and sustained if there is a mechanism of identifying the various risk pertaining to human integrity and corruption. An NPO may take remedial measures against various risks, once they are properly identified. Certain common processes also may prevent corruption which sometimes looks very innocuous. For instance, the possibility of a thief entering a house with hostile pet dogs is lesser than a house without any such protection. To take this example further sometimes just the sign "Beware of Dog" may deter a thief, even if a real dog is not present.

In other words, an organization should identify the risk and establish tangible as well as

subtle systems to negate any integrity loss or corruption. Some of the popular practices which go on to reduce the possibility of integrity loss or corruption are:

- Joint authorization or joint signatory in processes.
- Multiple controls by different people.
- Use of banking channels for financial transactions.
- Rotation of senior staff responsibility.
- Rotation in the board and leadership.
- Independence and effectiveness of Audit process etc.

Efficiency Risk

An NPO may be good but still not good enough. Loss in efficiency in various functions is one of the most dangerous risks attached in an organization's functioning. The efficiency risk generally goes unnoticed because of the lack of comparable standards of performance. In intellectual and intangible work, it is very difficult to quantify the quality and efficiency of the output. If NPOs don't remain vigilant then organizational lethargies may set in. Some large organization conduct efficiency audits but it is more important to understand the larger principle of efficiency risk and look for organization specific solutions.

Skills and Expertise Risk

An NPO may face the mismatch of skills and expertise required for the various human resources. All the system and infrastructure will be of no use, if appropriately qualified/skilled persons are not available with the NPO. The board of the NPO should analyze the adequacy of the existing skills &

expertise and should also assess the risk attached in future regarding the loss of such skills & expertise due to staff turnover or changes in technology or external environment.

Communication and Articulation Risk

An NPO should also analyze the risk related with the communication and articulation systems. For instance, in India, any dissemination of public information or current affairs on the website or through print media may result in cancellation of registration under the Foreign Contribution Regulation Act, 2010. Similarly, failure to disclose key information including conflict of interest also has considerable legal and other risk. Therefore, all NPOs should carefully study the various documents and reports they produce and analyze the risk, if any. Even the learning materials or the training modules should be carefully studied to ensure that they do not contain any objectionable or sensitive content.

Systems Risk

An NPO should also analyze and understand the functioning of all the existing systems. There could be risk pertaining to failure or inadequacy or performance of system. For instance, due to change in technology the existing systems may have to be replaced, which may involve sudden financial expenditure. Integration and compatibility of various systems also is an area which needs to be carefully analyzed for plugging any loophole or risk in it. For instance, integration of financial data from field level could be an area of risk.

Governance & Leadership Risk

The leadership and governance risk is another area which mostly goes unnoticed. An NPO may fall into the hands of a specific individual or a group of individuals, who may have conflict of interest attached to it. An independent risk analysis of the board and the leadership processes is necessary to ascertain the quality of governance in an NPO. Even the NPOs which have dynamic leaders may face a governance and leadership risk if they don't have a contingency plan for any unexpected event resulting in loss of key individuals. Further, undemocratic election processes may also pose considerable risk.

Values and Direction Risk

Another important risk in the functioning of an NPO is the possibility of deviating from the original mission and fall in the level of ethics and values. The organization's board should carefully analyze the risk involved in various activities which may affect the values and direction of the organization. For instance, an NPO engaging itself in unrelated projects may lose sight of its own mission and become donor driven. Similarly, an NPO should also develop its organization culture and value through various practices. It should also study the various existing systems and processes and see the risk involved with regard to the values and mission.

Mandatory CSR Reporting in Form CSR-2

The Government of India has been pushing Indian corporates to conduct their businesses with greater transparency, reinforce governance practices and provide comprehensive reporting of their CSR activities.

In this context, to further strengthen the compliance norms, Ministry of Corporate Affairs (MCA) with its notification dated 11th February, 2022 has introduced a new annual reporting requirements under CSR. The notification has brought the Companies (Accounts) Amendment Rules, 2022 with effect from 11th February, 2022. The amendments brought through this notification are discussed here.

INTRODUCTION

The Central Government has newly introduced form CSR-2 which is a web-based online Form, available on the portal of MCA and filed on an annual basis. Also, the form is mandatory for every company to which the provisions of CSR under Section 135 of the Companies Act are applicable. Further, any company who are doing CSR activity on a voluntary basis wants to report on voluntary basis can report through this form CSR-2.

DUE-DATE FOR FILING THE FORM CSR-2

For Financial Year 2020-21:

Form CSR-2 was supposed to be filed as a separate web-based form on or before 31st March 2022 after filing of Form AOC-4.

However, for those companies who did not filed the form CSR-2, the Due-Date for the financial year 2020-21 has lapsed, hence the same can be filed with fines and penalty, as applicable.

For Financial Year 2021-22:

As per the original notification, the Form CSR-2 was to be filed as an addendum to the Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

However, vide MCA notification dated 31st May, 2022, the filing date of Form CSR-2 for the Financial Year 2021-2022 was extended and shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be, instead of filing it as addendum to the AOC-4 Form. Notification is available at the link: <https://egazette.nic.in/WriteReadData/2022/236165.pdf>.

For Upcoming Financial Years (2022-23 and onwards):

The Form CSR-2 shall be filed as an addendum to the Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be. It is to be noted that the Due-Date applicable for AOC-4 (including form CSR-2) is within 30 days from the date of AGM. For simplification, the Due-Date for AOC-4 (including CSR-2) is mentioned in the table below:

Date of AGM	Due Date for CSR-2 (as addendum to form AOC-4)
31st August, 2023	Within 30 days of AGM i.e. 30th September, 2023
30th September, 2023	Within 30 days of AGM i.e. 30th October, 2023
1st October, 2023	Non-Compliance in conduct of AGM within the Due-date but the Due-Date for CSR-2 would still be 30th October, 2023

Note: For Financial Year 2022-23 and onwards, the filing of form CSR-2 as separate form or as addendum to AOC-4 may be subject to any further notification in this regard by the Central Government.

HOW TO FILE THE FORM CSR-2?

Central Government has issued a detailed Instruction kit for providing assistance in filing CSR-2 form and same can be accessed at: https://www.mca.gov.in/Ministry/pdf/CSR_2_help.pdf

CONTENT OF FORM CSR-2

In the sub-rule (1B) of Rule 12 of Companies (Accounts) Rules, 2014, the form "CSR-2: Report on Corporate Social Responsibility" has been inserted in the Annexure, after Form AOC-4 CFS, the form.

The form CSR-2 contains a very detailed report in the prescribed format and is in addition to "The Annual Report on CSR Activities to be Included in The Board's Report". Under the form CSR-2, following major details should be included:

- The details pertaining to the entity and criteria of CSR applicability,
- Constitution of CSR committee,
- Disclosures on the website of the company about CSR project, CSR Committee and CSR policy,
- About impact assessment, if applicable,

- Net profits and other details for preceding 3 financial years,
- CSR obligation, expenditures, set off amount, if any and transfer to CSR unspent account, etc.
- Project wise details of amount spent in the preceding financial years about ongoing projects and other than ongoing projects,
- Project wise details of the CSR amount unspent during preceding financial years which has been spent during the financial year,
- Unspent amount of CSR, transfer of unspent CSR account,
- Assets wise details of capital assets created or acquired through CSR spent such as description, address and location of assets, date of creation, amount and details of owners (including name, address and CSR registration number of owners, if applicable).

The Companies (Accounts) Amendment Rules, 2022 along with the annexure form "CSR-2: Report on Corporate Social Responsibility (CSR)" can be accessed at <https://www.mca.gov.in>.

Recent Amendments in Corporate Social Responsibility (CSR) Rules

Central Government has issued a Gazetted Notice on 20th of September, 2022 to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014. The amended rules, the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 has come into force with effect from 20th September, 2022. In total, there are six amendments in CSR Rules and the major impact is only with regard to the following:

- Constitution of CSR Committee
- Applicability of CSR Provisions Has Been Widened
- Categories of CSR Implementing Agencies Are Broadened
- Limit of Expenditure Towards Impact Assessment is Reduced

MANDATORY CONSTITUTION OF CSR COMMITTEE FOR HAVING ANY AMOUNT IN UNSPENT CSR ACCOUNT

Constitution of CSR Committee in Case of Ongoing (Multiyear) CSR Projects:

Rule 3 of Companies (CSR Policy) Rules has been amended and through this amendment, constitution of CSR Committee has become mandatory for the Companies having any amount in 'Unspent CSR Account', even if the CSR obligation of that financial year does not exceed Rs. 50 Lakhs.

It is to be noted that Section 135(6) of the Companies Act mandates the companies to open an unspent CSR Account for every financial year separately, in case the company is not able to spend the full CSR obligation of that financial year and the unspent amount is relating to the ongoing CSR projects of the Company.

As per the existing provision of Section 135(9) of Companies Act, 2013, if the amount for CSR to be spent by a company in a financial year does not exceed Rs. 50 lakhs, the company shall not be required to constitute a CSR Committee and the functions of such committee shall be required to be discharged by the Board of Directors of such Company.

Constitution of CSR Committee in Case of Other Than Ongoing CSR Projects:

This particular amendment in Rule 3 of Companies (CSR Policy) Rules has been amended would not impact the organization who have planned single year CSR projects. This is because the unspent CSR Account is specifically required to open in case of ongoing (multi-year) project only and the unspent CSR amount in case of single year project has to be transferred to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial years.

However, as per the existing provision of Section 135(9) of the Companies Act, constitution of CSR Committee would be mandatory, if the CSR obligation in a financial year exceeds Rs. 50 lakhs.

APPLICABILITY OF CSR PROVISIONS HAS BEEN WIDENED AND EXEMPTIONS PROVIDED TO CERTAIN CATEGORIES OF COMPANIES HAS BEEN WITHDRAWN

Amendment in Rule 3(1):

Applicability of CSR provisions namely, Section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014, has been widened by amending Rule 3(1). Therefore, with effect from 20th September, 2022 both Section 135 and CSR rules would be applicable to every company including its holding or subsidiary, and a foreign company having its branch office or project office in India, shall comply with the provisions of section 135 of the Act and these rules subject to fulfilment of the following criteria:

- Turnover of Rs. 1,000 crore or more or Net profit of Rs. 5 crore or more or Net worth of Rs. 500 crore or more in immediately preceding financial year, **OR**
- is having any amount in its Unspent Corporate Social Responsibility Account with respect to ongoing (multiyear) CSR projects.

The amended rule 3 (1) for reference is mentioned here as, "(1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfils the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules.

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet

and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

[Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.]"

Does the second proviso of Rule 3(1) specify full or partial applicability of Section 135 of the Companies Act?

The Second Proviso to Rule 3 (1) specifically mentions for the applicability of sub sections 2 to 6 of Section 135 of the Companies Act, 2013. However, the full Section 135 have 9 sub-sections. On careful analysis of the Rule 3(1) and all the sub-sections of Section 135, it is noted that all the CSR provisions, both Section 135 and CSR Rules, has been made applicable in full even if the company does not fall under the applicability section 135(1) but have any unspent CSR amount remaining in its unspent CSR Account specifically opened in case of ongoing (multi-year) CSR projects. The full applicability is mentioned because of the following reasons:

- Section 135(1) is the applicability section and the applicability has been specifically mentioned in the second proviso of rule 3 (1) through this amendment.
- Section 135(7) is the penal provision with respect to default in complying with the provisions of sub-section (5) or sub-section (6) and sub section 5 and 6 both are made applicable to companies which have any unspent CSR amount remaining in its unspent CSR Account.

- Section 135(8) is the specific power given to Central Government for notifying any specific direction to companies to ensure compliance of provisions of Section 135.
- Section 135 (9) exempts the companies to constitute CSR Committee, if the CSR obligation for a financial year does not exceed Rs. 50 Lakhs. However, this constitution of CSR Committee has been made mandatory, by amending CSR rule 3(1) to companies which have any unspent CSR amount remaining in its unspent CSR Account.

Does the CSR provisions (both Act and Rules) was previously not applicable to companies having obligation only towards the unspent CSR amount and no other CSR obligation?

The concept of unspent CSR Account in case of ongoing CSR projects was brought in by inserting sub-section 6 in Section 135 of the Companies Act with effect from 22.01.2021. In this case, only the sub-section 6 was applicable which specified that obligation towards the ongoing CSR projects should be spent within a period of three financial years, failing which, the company shall transfer the unspent CSR fund to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

However, apart from Section 135(6), the other CSR provisions of Section 135 and the CSR Rules was not applicable to such companies who did not fall under the limits specified Section 135(1) for 3 consecutive financial years. Now, with this amendment in CSR Rule 3, all the CSR provisions would be applicable unless the company fulfils its CSR obligation of a particular financial year completely.

Omission of Rule 3 (2):

Rule 3(2) was to provide exemption from applicability of CSR provisions namely, Section 135 of the Companies Act and CSR Rules. The exemption was allowed to such companies which ceased to be covered under CSR applicability for three consecutive years. Therefore, with omission of Rule 3(2), every company as mentioned Under Heading "Amendment in Rule 3(1)" has to comply with all the CSR provisions with effect from 20th September, 2022.

The omitted rule 3 (2) for reference is mentioned here as, "Every company which ceases to be a company covered under sub section (1) of section 135 of the Act for three consecutive financial years shall not be required to -

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (6) of the said section' till such time it meets the criteria specified in sub-section (1) of section 135"

CATEGORIES OF CSR IMPLEMENTING AGENCIES ARE BROADEN TO INCLUDE REGISTERED TRUST, SECTION 8COMPANY AND SOCIETY HAVING EXEMPTION UNDER SECTION 10(23C) (IV) (V) (VI) OR (VIA)

Amendment in Rule 4(1):

This amendment has addressed a wide range of entities, having registrations under Section 10(23C) (iv), (v), (vi) or (via) of the Income Tax Act and also having approval under section 80G of the Income Tax Act, to make eligible to act as CSR Implementing agency in addition to the previously allowed entities. However,

as per Rule 4(2) of the CSR Amendment Rules, 2021, CSR registration through online filing of e-form CSR-1 to the Ministry of Corporate Affairs is mandatory with effect from 1st April, 2021.

The above mentioned sub-clauses represents to the following:

- Sub-clause (iv) of clause (23C) of section 10 - Charitable purposes
- Sub-clause (v) of clause (23C) of section 10 - Public religious purposes
- Sub-clause (vi) of clause (23C) of section 10 - Educational purposes
- Sub-clause (via) of clause (23C) of section 10 - Hospital

Which Type of Entity Can Undertake/ Implement the CSR Activities of a Company?

As per CSR Rule 3, Board of the Company has to ensure that the CSR Activities of the company are undertaken by the company itself or through the organizations who are having a valid CSR Registration, which can be obtained by filing e-form CSR-1 to the Ministry of Corporate Affairs (MCA).

Which entities are allowed for CSR Registration?

The list of entities eligible for CSR registration has also been updated in e-form CSR-1 to effect the amendment in Rule 4(1). With this amendment the course of entity being eligible for CSR registration through form CSR-1 is widened to include the following organizations:

Newly added entities through amendment of Rule 4(1) and e-form CSR-1

- Company established under section 8, Registered public trust, Registered society exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 and approved under section 80G of the Income Tax Act, 1961 and having an established track record of at least three years in undertaking similar activities. However, the established track record of three years would not be required if these entities has been established by the company, either singly or along with any other company.

Entities allowed without amendment of Rule 4(1) and e-form CSR-1

- Company established under section 8, Registered public trust, Registered society, registered under section 12A and approved under section 80G of the Income Tax Act, 1961 and having an established track record of at least three years in undertaking similar activities. However, the established track record of three years would not be required if these entities has been established by the company, either singly or along with any other company.
- Company established under section 8 or registered Trust or registered Society established by the Central Government or State Government.
- Entity established under an Act of Parliament or State Legislature.

Can Educational Institutions or hospital/ medical institution with annual receipts up to Rs. 5 crores can obtain CSR Registration and be a CSR Implementing Agency?

An educational institution or hospital/

medical institution having income receipts up to Rs. 5 crores can claim full exemption under the sub-clause (iiia) and (iiiaa) of clause (23C) of section 10 of Income Tax Act respectively without requiring a separate approval or registration. Therefore, these entities cannot obtain CSR registration without taking separate approval under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 because of the following reasons:

- CSR registration can be obtained by Company established under section 8, Registered public trust, Registered society exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 and approved under section 80G of the Income Tax Act, 1961.
- Also, for obtaining 80G registration, self-certified copy of existing order granting approval under clause (23C) of section 10 of the Income Tax Act would be required.

THE LIMIT FOR EXPENDITURE TOWARDS IMPACT ASSESSMENT OF CSR PROJECTS HAS BEEN REDUCED FROM 5% TO 2%

As per rule 8(3)(c), the company may book expenditure towards the impact assessment of CSR projects as CSR spending. However, the amount of expenditure towards the impact assessment of CSR projects shall not exceed 2% of total CSR obligation for the relevant financial year or Rs. 50 lakhs, whichever is higher. *The earlier rule had allowed up to 5% of the total CSR obligation for the relevant financial year or Rs. 50 lakhs, whichever was lower.*

After the Amendment in Rule 8 (3) (c), the amended provision is, *"A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two*

percent (previously five percent) of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher (previously "whichever is lower")".

Which companies need to do Impact Assessment?

As per CSR Rule 8 (3) (a), the companies having average CSR obligation of ten crore rupees or more, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of:

- their CSR projects having outlays of one crore rupees or more, and
- which have been completed at least one year before undertaking the impact study.

Having said that, impact assessment would not be necessary for individual CSR projects of amount less than one crore or which has not completed one year of time.

REVISED FORMAT FOR THE BOARD'S REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

As per Rule 8(1), every Company to which the provisions of CSR Rules are applicable (as defined in Rule 3(1) which is also discussed in Under Heading "Amendment in Rule 3(1)" shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable in its Board's Report. The Central Government has modified the format for the Board's report on CSR activities by substituting the old Annexure II through revised Annexure II.

As far as the impact is concerned, there is not a major change in the Board's report on CSR Activities. However, there is minor changes in

the format and content of the Board's report on CSR activities.

What are the changes brought in the Board's report on CSR activities?

The changes in the format of Board's report on CSR Activities are discussed below:

- In the revised format of Board's report on CSR Activities, only the total amount spent on CSR projects (both ongoing project and other than ongoing project) has to be reported. Earlier the details of CSR Amount spent against ongoing projects and other than ongoing projects has to be given in much detail through separate tables in the Board's report on CSR activities.

However, it is to be noted that the detailed information regarding amount spent against ongoing projects and other than ongoing projects has been made part of the form CSR2: Annual report on Corporate Social Responsibility. In this case, it can be said that the above changes have been done just to avoid the duplicity in reporting of CSR activity.

- The other change is with regard to reporting on creation or acquisition of capital assets through CSR spent during the financial year. The reporting of capital assets (both movable and immovable) has to be reported in quite detail and in the prescribed tabular format. Assets wise detail to be reported are:
 - date of creation or acquisition,
 - amount of CSR spent for such creation or acquisition,
 - Details of entity or public authority or beneficiary under whose name

such capital assets is registered, their address etc.,

- Details of capital assets created or acquired (including complete address and location of the capital assets),
- Pin Code of the property (*Newly added*),
- CSR Registration Number of entity/ authority/ beneficiary of the registered owner, wherever applicable (*Newly added*),
- In note it is specified that "all the fields should be captured as appearing in the revenue record, flat no, house no, municipal office/ municipal corporation/ gram panchayat is to be specified and also the area of the immovable property as well as boundaries. (*Newly added*).

HOW MANY TIMES THE CSR RULES HAVE BEEN AMENDED?

The principal rules namely "the Companies (Corporate Social Responsibility Policy) Rules, 2014" were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification number G.S.R. 129(E), dated the 27th February, 2014 and subsequently amended by notification numbers;

- G.S.R. 644(E), dated the 12th September, 2014,
- G.S.R. 43(E), dated the 19th January, 2015,
- G.S.R. 540(E), dated the 23rd May, 2016,

- G.S.R. 895(E), dated the 19th September, 2018,
- G.S.R. 526(E), dated the 24th August, 2020,
- G.S.R. 40(E), dated the 22nd January, 2021, and
- G.S.R. 715(E), dated the 20th September, 2022 (latest amendment which is discussed in the write-up above). The notification from the Ministry of corporate affairs (MCA) can be seen at: <https://www.mca.gov.in>.

FINANCIAL MANAGEMENT SERVICE FOUNDATION

Financial Due Dates Calendar for 2023-24

Months	Particulars	Due Date	Form No.
Apr-23	Payment of ESI and PF Contribution cum filing of Return for the month of March 2023	15-Apr-23	Electronic Challan
Apr-23	Payment of TDS deducted for the month of March 2023	30-Apr-23	Challan No. 281
May-23	Payment of TDS deducted during the month of April 2023	7-May-23	Challan No. 281
May-23	Payment of ESI and PF Contribution cum filing of Return for the month of April 2023	15-May-23	Electronic Challan
May-23	Filing of Statement of donations received during FY 2022-23 (Statement of particulars to be filed by reporting person under clause (viii) of sub-section (5) of section 80G)	31-May-23	Form 10 BD
May-23	Filing of TDS Return for the Quarter: Jan to Mar 2023	31-May-23	26Q and 24Q
Jun-23	Payment of TDS deducted during the month of May 2023	7-Jun-23	Challan No. 281
Jun-23	Issue of Certificate for TDS on non-salary payment for the Quarter ending March 2023	15-Jun-23	Form 16A
Jun-23	Issue of Certificate for TDS on Salary for the financial year 2022-23	15-Jun-23	Form 16
Jun-23	Payment of Advance Income Tax by all assessee other than 44AD (upto 15% of Income Tax payable)	15-Jun-23	Challan No. 280
Jun-23	Payment of ESI and PF Contribution cum filing of Return for the month of May 2023	15-Jun-23	Electronic Challan
Jul-23	Payment of TDS deducted during the month of June 2023	7-Jul-23	Challan No. 281
Jul-23	Payment of ESI and PF Contribution cum filing of Return for the month of June 2023	15-Jul-23	Electronic Challan
Jul-23	Filing of Income Tax Return for FY 2022-23 by assessee other than company whose accounts are not required to be audited under any law	31-Jul-23	Various ITR Forms *
Jul-23	Filing of TDS Return for the Quarter: Apr to Jun 2023	31-Jul-23	26Q and 24Q
Aug-23	Payment of TDS deducted during the month of July 2023	7-Aug-23	Challan No. 281
Aug-23	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Apr to Jun 2023	15-Aug-23	Form 16A
Aug-23	Payment of ESI and PF Contribution cum filing of Return for the month of July 2023	15-Aug-23	Electronic Challan
Sep-23	Payment of TDS deducted during the month of August 2023	7-Sep-23	Challan No. 281
Sep-23	Payment of Advance Income Tax by all assessee other than 44AD (upto 45% of Income Tax payable)	15-Sep-23	Challan No. 280
Sep-23	Payment of ESI and PF Contribution cum filing of Return for the month of August 2023	15-Sep-23	Electronic Challan
Sep-23	Every individual who holds DIN as on 31st March 2023 and who has not filed DIR 3 KYC form previously or there is a change in email id and mobile number (Applicable for Section 8 Companies)	30-Sep-23	DIR-3 KYC
Sep-23	Every individual who has previously filed form DIR-3 KYC and there is no change in email id and mobile number (Applicable for Section 8 Companies)	30-Sep-23	DIR-3 KYC Web
Sep-23	Audit Report in Form 10B for NGOs availing exemption under section 11	30-Sep-23	Form 10B
Oct-23	Payment of TDS deducted during the month of September 2023	7-Oct-23	Challan No. 281
Oct-23	Payment of ESI and PF Contribution cum filing of Return for the month of September 2023	15-Oct-23	Electronic Challan
Oct-23	Filing of Income Tax Return for FY 2022-23 by Company and other than Company whose accounts are required to be audited under any law	31-Oct-23	ITR-7
Oct-23	Filing of TDS Return for the Quarter: Jul to Sep 2023	31-Oct-23	26Q and 24Q
Oct-23	Filing Financial Statement and other documents to Registrar for the F.Y. 2022-23 [Applicable for Section 8 Companies]	With in 30 days from the date of AGM	AOC-4
Nov-23	Filing Annual Return by a company to Registrar for the F.Y. 2022-23 [Applicable for Section 8 Companies]	With in 60 days from the date of AGM	MGT-7
Nov-23	Payment of TDS deducted during the month of October 2023	7-Nov-23	Challan No. 281
Nov-23	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Jul to Sep 2023	15-Nov-23	Form 16A
Nov-23	Payment of ESI and PF Contribution cum filing of Return for the month of October 2023	15-Nov-23	Electronic Challan
Dec-23	Payment of TDS deducted during the month of November 2023	7-Dec-23	Challan No. 281
Dec-23	Payment of Advance Income Tax by all assessee other than 44AD (upto 75% of Income Tax payable)	15-Dec-23	Challan No. 280
Dec-23	Payment of ESI and PF Contribution cum filing of Return for the month of November 2023	15-Dec-23	Electronic Challan
Dec-23	Annual uploading of audited FC Financial Statements (Balance Sheet, Receipts & Payments Account, and Income & Expenditure Account for the financial year 2022-23)	31-Dec-23	Organization's own web-site
Dec-23	Online Filing of Annual Return under FCRA in Form FC-4 for the financial year 2022-23	31-Dec-23	Form FC-4
Jan-24	Payment of TDS deducted during the month of December 2023	7-Jan-24	Challan No. 281
Jan-24	Payment of ESI and PF Contribution cum filing of Return for the month of December 2023	15-Jan-24	Electronic Challan
Jan-24	Filing of TDS Return for the Quarter: Oct to Dec 2023	31-Jan-24	26Q and 24Q
Feb-24	Payment of TDS deducted during the month of January 2024	7-Feb-24	Challan No. 281
Feb-24	Issue of TDS Certificate for TDS on non-salary payments for Quarter: Oct to Dec 2023	15-Feb-24	Form 16A
Feb-24	Payment of ESI and PF Contribution cum filing of Return for the month of January 2024	15-Feb-24	Electronic Challan
Mar-24	Payment of TDS deducted during the month of February 2024	7-Mar-24	Challan No. 281
Mar-24	Payment of Advance Income Tax by All assessee covered under 44AD (upto 100% of Income Tax payable)	15-Mar-24	Challan No. 280
Mar-24	Payment of Advance Income Tax by All assessee other than 44AD (upto 100% of Income Tax payable)	15-Mar-24	Challan No. 280
Mar-24	Payment of ESI and PF Contribution cum filing of Return for the month of February 2024	15-Mar-24	Electronic Challan
Mar-24	Due date to file belated Income Tax return for FY 2022-23	31-Mar-24	Various ITR Forms *
Mar-24	Due date to file revised Income Tax return for FY 2022-23	31-Mar-24	Various ITR Forms *
* Check the applicable ITR Forms			



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