INTER face

Vol. XIII Issue 2 October 2013 - March 2014

Highlights:

- TDS on Award Based on Competence & Merit Contest
- FCRA - Applicability to Gifts received by Individuals
- Renewal of registration under FCRA
- Producer Company – An Overview
- Vouchers – An Overview
- Board Committees

and many more.....

fmsf

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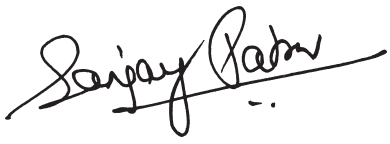
Lesson of Life

In a Management seminar, the trainer conducted an exercise. There were 50 participants. Each participant was provided with a balloon. They were asked to inflate it and write their name on it. After everybody had finished, the trainer collected all the balloons and put them in another room. Then he asked the par ticipants to go and find their balloon.

What followed were a complete pandemonium and a near stampede situation. Everybody was pushing the other in order to grab their own balloon. No one was able to find their balloon out of the balloons floating around in the room. Some of the balloons were even burst in the process. Then, the trainer asked everyone to stop and come out of the room.

The trainer changed the game a bit. He told the participants to go into the room, pick up one balloon, find the person whose name was on it and hand it over to that person. There was a radical change in the environment and a posi tive shift. Within a few minutes, everyone was holding their balloon with their name on it.

The trainer concluded, 'this is the lesson of life'. When we push our own interests and priorities, we end up creating confusion and it is a 'lose lose' situation. The moment we help other people and have their interests in our mind, the world becomes a better place to live and above all, everybody's interest is secure.



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

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Editorial Team: Sanjay Patra & Sandeep Sharma
Published by Sanjay Patra on behalf of
Financial Management Service Foundation
"ACCOUNTABILITY HOUSE", A-5, Sector-26, NOIDA 201301
Tel: 00-91-120-4773200, Fax: 00-91-120-4773299
E-mail: fmsf@fmsfindia.org; Web-site: www.fmsfindia.org

Legal Section

TDS ON AWARD BASED ON COMPETENCE & MERIT CONTEST

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.01 Tax Deduction at Source (TDS) is normally required to be deducted on any lottery or award given to anybody. However, there are many competition and awards where prizes are given to organisations or individuals based on the merit or performance. It has been legally debated whether TDS should be deducted against such awards.

1.1.02 The provisions of Section 2(24) (ix) read with Section 194B of the Income Tax Act, 1961 require that TDS should be deducted against any prize money or award given to anybody in a game of 'lottery' or any other game whatsoever. In this context the issue arises whether award money given to various candidates/entities for their merit will also be subjected to TDS. For instance, if a Chamber of Commerce or Trade Association grants award to the best entrepreneur or innovator in a particular field, will such payment attract TDS provisions under Section 194B, or an NPO is awarded prize money for best presented annual report will attract TDS provisions?

1.1.03 In this issue we shall concentrate on the law and controversies in this regard. A summarized overview is provided as under:

a) Any award or lottery based on participation fee and chance is subject to TDS under section 194B of the Income Tax Act, 1961.

b) However, awards given based on merit and performance may not fall under the provisions of section 2(24) (ix) read with section 194B.

c) The short listing of such award process should be based on the merit and past work / performance of the

applicant. In other words, the process should only unravel the pre-existing or inherent merit and competence. The participants should not win through lot or chances.

d) Such award money is not covered by the definition of "income" section 2(24) (ix), as it cannot be considered as a lottery or game of any sort, with or without an element of chance.

e) Section 194B is not applicable where the money is given in recognition of preexisting or inherent merit and competence.

f) The award given to the winners should be treated as voluntary grant towards advancement of the objectives.

g) For the purposes of TDS, in our opinion there is no other provision which applies to voluntary grants given to the winners of this particular event.

h) The TDS provisions shall remain the same even for grant given by commercial organisations though deductibility of such award as business expenditure might be a subject matter of case to case applicability.

DOES SUCH AWARD MONEY FALL UNDER SECTION 2(24) (IX)

1.2.01 The first important issue to be understood in this regard is whether the award money given to the awardees, falls within the definition of income as defined under Section 2(24)(ix) in order to attract TDS provisions of Section 194B. The text of Section 2(24) (ix) is as under:

"[(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;]

[Explanation: For the purposes of this sub-clause,

(i) "lottery" includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;]"

1.2.02 Section 2(24) (ix) was amended by the Finance Act, 2001 effective from the assessment year 2002-03. The scope of the section was broadened by insertion of two explanations. The explanation (i) to Section 2(24)

(ix) states that *"lottery" includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;*

In the instant context the question arises whether the words ***"or in any other manner whatsoever"*** could in any way be implicated to deem that the awards given on merit are income for the purposes of Section 2(24) (ix).

1.2.03 **In our opinion the explanation (i) to Section 2(24) (ix) is confined to the term "lottery" irrespective of the fact whether it is awarded through lots or chance or any other manner.** Therefore, any award or prize money given to deserving candidates which is not based on equal chance of winning, should not fall within the scope of Section 2(24)(ix). In this context the important thing to note here is that equal chance of winning and equal opportunity of winning are two distinct issues.

1.2.04 It may also be noted that the Memorandum and the Notes to the Finance Bill, 2001 wherein the amendments to Section 2(24) (ix) were made, also clarify that the section applies only to "lottery" or any other game whatsoever. After the amendment the widened scope of Section 2(24) (ix) now includes any kind of lottery or game whether played on "chances" or otherwise.

IS THE AWARD A CHARITABLE ACTIVITY

1.3.01 When the award is given by a charitable organisation it is important to ensure that such award can be considered as a charitable activity towards advancement of general public utility. The issues which makes a merit based award distinct from a lottery or a game are as under:

- The participation is not open to all, only participants fulfilling the criteria of competence and merit can participate.
- The award money is provided without any consideration and the participants do not pay any participation fees. Therefore, it will be analogous to a grant or voluntary contributions.
- The identification of the winners is done through objective and scientific processes where the entire participants do not have equal chance of winning. **They have an equal opportunity of winning but the chance of winning is not equal.** It is more like unraveling a pre-existing fact. A winner is declared based on a preexisting or inherent attribute/skill.

1.3.02 The methodology of selecting or short listing the awardees may

create an illusion of a chance based scheme. Even then, in our opinion, the methodology used for selecting winners cannot override the overall charitable purpose. The more important issue is whether the programme can be treated as a charitable activity and whether the awardees can be treated as valid beneficiaries of a charitable programme. There is no plausible infirmity on both counts.

1.3.03 Further under the current definition of "Charitable Purpose" there is no scope for engaging into lottery or game (the way it is defined under the income tax act) for advancement of charitable activities. Therefore, if the award money were to fall under section 194B then the larger question of charitable nature of the organisation/activity will arise.

WHEN TDS UNDER SECTION 194B IS DEDUCTED

1.4.01 Any entity should deduct tax at source under section 194B if it is engaged in (i) lottery (ii) crossword puzzles (iii) card games or any other game of any sort any form or nature whatsoever.

1.4.02 A merit based award should not be called as "other game of any sort" nor could it be called as "lottery" or "crossword puzzle" or "card games".

1.4.03 The statutory provisions are fairly unambiguous regarding the applicability of Section 194B. In our opinion Section 194B is not applicable and TDS is not required to be deducted. There are some case laws which are cited below to understand the legal ratio of the issue.

1.4.04 In the case *Income tax officer v. Malayala Manorama Co. Ltd. (2005) 94 ITD 195 (Cochin-Trib),* the assessee conducted contest 'World cup Football Forecast Contest' and did not deduct tax at source on the winners who were selected on draw only. The facts related to assessment year 1998-99 and at that time the Explanation to section 2(24)(ix) was not there in the statute. Only the Finance Act, 2001 inserted the Explanation to section 2(24)(ix), explaining the term "lottery". The Tribunal hence held that for to be categorized as a lottery there must be two ingredients, viz. distribution of property by chance or lot among the participants and the participants have either paid or agreed to pay a valuable consideration for the privilege of participation in the scheme. In this case it clear that section 194B applies only to "lottery" and "games" were there is an element of chance and there is a consideration flowing from the participants.

1.4.05 In the case *Sampanna Kuries (P.) Ltd.* v. *ITO* [2004] 141 Taxman 615 (Ker.) the essential elements of 'lottery' were discussed and the following was held : (*i*) a prize or some advantage in the nature of a prize; (*ii*) distribution thereof by chance; and (*iii*) consideration paid or

promised for purchasing the chance. Thus, unless all the three elements are satisfied, the prize scheme cannot be considered as a lottery. A price must be charged for participating in the draw. The chance of a person getting the prize could not be treated as part of the bargain unless independent consideration was there with respect to the prize awarded. Similar views were also taken in the case *Canaan Kuries & Loans (P.) Ltd. v. Income-tax Officer* [2005] 142 TAXMAN 249 (KER.).

IS TDS REQUIRED TO BE DEDUCTED ON GRANT OR VOLUNTARY CONTRIBUTIONS

1.5.01 The payment made to the awardees in case of a merit based award, in our opinion, is a voluntary contribution in the absence of any *quid pro quo* or any contractual rights on the part of the recipient. Here again the issue arises, should TDS be deducted on payment of grant or voluntary contributions. In the case *Addl. CIT v. K. Ramabrahmam & Sons (P.) Ltd.* [1978] 115 ITR 369 (AP), it was decided that any gift or voluntary payments which were not bound by any obligation were not subject to TDS. The relevant extract is as under:

> *"Payments were voluntarily made by the assessee in connection with its business. The payments represented cash receipts in the hands of the recipient and there was no contractual obligation on the part of the assessee to make payments; nor was there any right on the part of the non-residents to receive these amounts. In these circumstances, these payments could not be regarded as income chargeable under the Act. There was no obligation on the part of the payer, and no right to receive the same by the recipient. Payments did not arise out of any contract or obligation between the assessee and the recipients. There was no obligation either by virtue of a contract or in law to make these payments. They were made voluntarily by the assessee towards entertainment of the crew. Therefore, it was held that 195(1) was not attracted in the instant case."*

1.5.02 It may be noted that this case pertains to the period when gifts were not included under section 56 as income but from a TDS perspective this case is still relevant. The TDS provisions shall remain same even for grant given by commercial organisations though deductibility of such award as business expenditure might be a subject matter of case to case applicability.

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(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

FCRA-APPLICABILITY TO GIFTS RECEIVED BY INDIVIDUALS

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 The new Foreign Contribution Regulation Act (FCRA), 2010 includes individuals under its scope. Therefore, the issue arises whether gift received by individuals from foreigners is subject to FCRA. This issue becomes even more confusing by reading the FAQs issued by Ministry of Home Affairs, FCRA Department, which clarifies that gifts and donations received by individuals are covered under FCRA. Therefore, all gifts/ donations received by individuals from foreign source are subject to FC approval. The relevant MHA FAQ's no. 3, 6, 9 and 10 are provided in ***Annexure 1*****.**

1.1.2 The Rule 6 of Foreign Contribution Regulation Rules (FCRR), 2011 provide that only gift received from relatives (who are foreigners) shall be exempted. An intimation in Form FC-1 has to be sent to the Home Ministry if the amount exceeds ' 1 lakh in a year. Such rule is causing undue hardship to people; for example old parents of receiving money from children staying abroad having foreign citizenship. Such parent has to file intimation to FCRA department if the amount exceeds ' 1 lakh. The issue is whether such rule is sustainable when the act does not debar any such receipts.

1.1.3 Similarly, the Rule 6A of Foreign Contribution Regulation Rules (FCRR), 2011 provides that individuals can receive articles from foreign source to the extent* of ' 25,000.00 in a year. It may be noted that there is no provision for receiving cash or currency. The issue again is whether such rule is sustainable when the act does not debar any such receipts.

1.1.4 In this issue we are technically analysing the applicability of FCRA on gifts/contribution received by individuals for personal consumption. It may be noted that receiving foreign

contribution for a definite purpose and for personal consumption are two different things. It seems that despite the rules and the FAQs, FCRA laws does not apply to gifts/contribution received by individuals for personal consumption, unless the person is debarred from receiving FC. It may also be noted that section 3 of FCRA debars only certain specific persons from receiving FCRA. The text of section 3 is provided in ***Annexure 2***. Persons other than the one mentioned in section 3 can receive foreign contribution subject to the provisions pertaining to prior permission and registration.

LAW PERTAINING TO CONTRIBUTIONS (INCLUDING GIFTS) FOR PERSONAL PURPOSES

1.2.1 The term 'person'** includes individuals. Therefore, all individuals except the prohibited category can receive foreign contribution subject to the compliance of FCRA 2010. The FCRA, 2010 has confusing provisions in this regard. However, the overall intent seems to be towards regulating all foreign contributions received by individuals from foreign source.

1.2.2 An individual may receive foreign contribution or gift for personal consumption or as a trustee to execute any specific programme, research, activity etc. Some foreign donors do send money in individual bank accounts for charitable project. The issue is whether both types of foreign contribution receipts shall be covered by the act or not.

1.2.3 Section 11(1) of the FCRA provides that any person receiving foreign contribution for a definite programme should apply for registration. In other words, it implies that any person receiving foreign contribution for personal use may not apply for registration. This provision creates confusion on whether individuals receiving gifts or contribution for personal purposes are exempted from the law. Further section 12(4)(a)(vi) provides that any person applying for registration or prior permission shall not use foreign contribution for personal gain or divert it for any undesirable purpose.

1.2.4 To sum up, the registration and procedural provisions of the act have been structured only to cover contribution received for a definite purpose, but the statutory definition of foreign contribution and inclusion of individuals in the definition of the term 'person' makes it applicable on all individuals who receive foreign contribution from a foreign source. But at the same time the act is not clear how such contribution received by individuals will be regulated when the registration and prior permission are required to be taken only when foreign contribution is received for definite purpose.

1.2.5 In other words, the application of the act on an individual is very clear. Further gifts from foreign sources also seem to be covered under the definition of foreign contribution. But the act does not regulate personal gifts or contribution and therefore,

individuals or even institution, technically can receive gifts from foreign sources without prior permission or registration. The regulation of personal receipts and gifts from foreign sources has not been properly articulated. Further, the act does not debar receiving gifts and contribution for personal purposes. The act provides for reporting of gifts received from relatives above ' 1 lakh, but it is silent about reporting of gifts received from foreign source. Further, the preamble of the act as provided in the beginning of the act, states that the act is to regulate the foreign contribution or foreign hospitality of only certain individuals, associations or companies. In other words, the act at the outset also makes it clear that it does not apply to all categories of persons. The preamble is reproduced as under:

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

1.2.6 Overall, it seems that the act applies to all persons for foreign contribution received **for a definite purpose**. In other words, the act would not apply to foreign contribution received for personal use or as gift. Only the specified individuals under section 3 are debarred from receiving FC except gifts from relatives.

TREATMENT OF FOREIGN REMITTANCES RECEIVED FROM A RELATIVE

1.3.1 Rule 6 of FCRR, 2011 provides any gift received from a relative in excess of ' 1 lakh, per annum, needs to be intimated to the Central Government. It may be noted that no prior permission is necessary to receive gifts from relatives staying abroad but intimation has to be sent within 30 days in Form FC-1. Rule 6 of FCRR 2011 is reproduced as under:

"6. Intimation of receiving foreign contribution from relatives. - *Any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution."*

1.3.2 **In this context it may be noted that the FCRA law would not apply if the relative is an Indian holding valid Indian passport.** The Form FC-1 is available on the website *http://mha.nic.in/fcra/forms/fc-1.pdf.*

1.3.3 Since even the persons specified in Section 3 of FCRA 2010, i.e., persons not permitted to accept foreign contribution, are also permitted to accept gifts from their relatives under Section 4(e) of the Act, subject to the provisions of Section 10, it is obvious that any other person in general is also permitted to accept gift from his/her relative.

1.3.4 Rule 6A creates an anomalous situation which is described as under:

- A gift from relative holding Indian passport is totally exempted for everybody.
- A gift from non-relative holding Indian passport is also totally exempted for everybody.
- A gift from relative who is a foreigner is also totally exempted for everybody, but intimation has to be sent within 30 days in Form FC-1, if the amount exceeds ' 1 lakhs in a year.
- A gift from non-relative who is a foreigner is also totally exempted for everybody, and it seems that no intimation has to be sent within 30 days in Form FC-1.

1.3.5 Therefore, the contradiction in applying Rule 6A has to be addressed under the primary provisions of the Act and therefore, foreign contribution including gift for personal consumption does not seem to be under the regulatory scope of FCRA.

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(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

FAQs ISSUED BY MHA* RELATING TO GIFTS & DONATIONS

Q.3 Section 2(c)(i) of repealed FCRA, 1976 inter alia defined foreign contribution as the donation, delivery or transfer made by any foreign source of any article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees. What limit has been prescribed in FCRA, 2010 in respect of such articles?

Ans. The limit has been specified as Rs. 25000/- through insertion of the following Rule 6A in FCRR, 2011 *vide* the Foreign Contribution (Regulation) Amendment Rules, 2012 G.S.R. 292 (E) dated 12th April, 2012]:

"**6A. When articles gifted for personal use do not amount to foreign contribution.**

Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed rupees twenty-five thousand shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2)."

Q.6 Who cannot receive foreign contribution?

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

(a) a candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) Judge, government servant or employee of any Corporation or any other body controlled on owned by the Government;

(d) member of any legislature;

(e) political party or office bearer thereof;

(f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (i) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

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

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

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

Ans. Yes. Donation from an Indian who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO card holders and to Overseas Citizens of India. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship.

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

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

Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution. This form is available on the website *http://mha.nic.in/fcra/forms/fc-1.pdf*.

Annexure - 2

PERSONS BARRED FROM RECEIVING FOREIGN CONTRIBUTION

As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by certain specified persons. The text of Sec. 3(1) is as under:

"3.(1) No foreign contribution shall be accepted by any

(a) A candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

(c) Judge, Government servant or employee of any corporation or any other body controlled on owned by the Government;

(d) member of any Legislature;

(e) political party or office bearer thereof;

(f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.

(g) association or company engaged in the production or broadcast of audio news or audio visual needs or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

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

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(*3*) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency

(a) to any person other than a person for which it was received, or

to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received."

OPPORTUNITY TO COMPOUND OFFENCE FOR FOREIGN LIAISON AND BRANCH OFFICES

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 The Reserve Bank of India (RBI) has issues a circular RBI/2013-14/9 July 01, 2013, Master Circular No.9/2013-14 for all liaison and branch offices of foreign agencies working in India without having formal permission under Foreign Exchange Management Act (FEMA), 1999. *See Annexure 1*

1.1.2 This circular allows all such agencies to compound there offences and regularize their existence in India within a period of 12 month i.e. before 1st July 2014.

1.1.3 All such agencies who have not obtained approval under FEMA, 1999 should avail this opportunity. It may be noted that there are many liaison and branch offices of foreign agencies (particularly NGOs) which have not regularised their existence in India. As a matter of fact in the year 2011 RBI had issued a Circular no. RBI/2011- 12/112, A.P. (DIR Series) Circular No. 02, dt.15.07.2011 wherein all the LO/BO in existence prior to enactment of FEMA were asked to approach the RBI for regularisation of their status under the FEMA within 90 days from the date of issue of the Circular. *See Annexure 2.*

LEGAL ISSUES FOR FOREIGN NGOs WORKING IN INDIA

1.2.1 It is important to understand that a foreign NGO is legal entity registered outside India, and therefore it cannot be considered as an Indian NGO. After the enactment of *Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA)*, all foreign NGOs are required to take permission from Reserve Bank of India (RBI) for operating in India. It may be noted that prior to

the enactment of FEMA many foreign donor offices were granted 'No Objection Certificate' by RBI under the erstwhile *Foreign Exchange Regulation Act, 1973 (hereinafter referred to as FERA)* as FERA did not prohibit or regulate the offices of foreign donors in India. Therefore, all permission for liaison office granted under *FERA* became invalid w.e.f. 1st June 2000 (the day of enactment of FEMA 1999).

1.2.2 Foreign NGOs having their branch/ liaison offices in India are required to take approval from the RBI under the provisions of FEMA. FEMA was enacted in the year 1999 and it became effective from 1st June, 2000. Prior to that, all the foreign exchange matters were regulated under the Foreign Exchange Regulation Act, 1973.

1.2.3 Somehow under FERA there was no provision for a specific permission to be obtained by foreign NGOs to operate in India. Therefore, many foreign NGOs were having their branch/liaison offices without getting any formal permission from any authority. Prior to the enactment of FEMA, many foreign NGOs sought permission from RBI to set up liaison offices. All such applications made prior to 1st June, 2000, were issued a 'letter of no objection' by RBI. Many foreign NGOs having their liaison offices/ branch offices in India construed this 'letter of no objection' as an open-ended approval, which was not correct. The reality is that RBI was not regulating foreign NGOs prior to 1st June 2000. All foreign NGOs remained virtually unregulated by any specific law or regulation. However, after enactment of FEMA, the law is very categoric and clear about the legal formalities required to be complied by a foreign NGO. They have to seek permission for setting up liaison offices and the permission is generally granted for 3 years only. The liaison offices can be upgraded to branch offices at the discretion of RBI.

DOES FCRA APPLY TO LIAISON OR BRANCH OFFICE IN INDIA

1.3.1 It should be noted is that the FCRA (Foreign Contribution Regulation Act, 2010) is an internal security legislation regulated by the Home Ministry unlike the FEMA which is a fiscal legislation regulated by the Finance Ministry. Both the Acts have their specific applicability and are not mutually exclusive. FCRA would generally not apply to liaison and branch offices of foreign agencies unless they receive foreign contribution from sources other than inward remittance from Head quarter.

OPPORTUNITY TO REGULARISE BY COMPOUNDING OF OFFENCE

1.4.1 All the existing LO/BO prior to FEMA, 2000 which have not acted in response to the circular dt. 15/07/2011, their operations in India may be considered without the required mandate of RBI and therefore they

should immediately take necessary steps for regularizing their status.

1.4.2 Such organisation should submit their application for regularizing in terms of above referred Circular together with condonation petition (one of the reason may be that the relevant circular has not come to their notices nor their AD (Authorised Dealer category) bank has informed them about the same.)

1.4.3 They should also file a compounding petition in terms of the Master Circular No.9/ 2013-14 dt. 01/07/2013.

1.4.4 The application is normally routed through the AD bank, however, a compounding of offence petition should be made to the following authority:

To,
The Compounding Authority,
Cell of Effective Implementation of FEMA
Foreign Exchange Department,
Reserve Bank of India, 5th Floor,
Amar Building, Sir P.M. Road, Fort,
Mumbai 400001

1.4.5 It is advisable to file the application form (discussed hereinunder) along with compounding of offence petition to the above authority.

GENERAL CONDITION FOR LIAISON & BRANCH OFFICES

1.5.1 A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. The applications from such entities in **Form FNC** will be considered by Reserve Bank under two routes:

Reserve Bank Route—Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.

Government Route Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations/ Non - Profit Organisations/ Government Bodies /Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

1.5.2 The following additional criteria are also considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

- **Track Record**
  For Branch Office a profit making track record during the immediately preceding five financial years in the home country
  For Liaison Office a profit making track record during the immediately preceding three financial years in the home country

- **Net Worth** [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name].
  - For Branch Office not less than USD 100,000 or its equivalent.
  - For Liaison Office not less than USD 50,000 or its equivalent.

1.5.3 The application for establishing BO/LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the Chief General Manager-in- Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents Including:

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
- Latest Audited Balance Sheet of the applicant entity.

1.5.4 Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies can submit a **Letter of Comfort** from their parent company**,** subject to the condition that the parent company satisfies the eligibility criteria as prescribed above. The designated AD Category - I bank should exercise due diligence in respect of the applicant's background, antecedents of the promoter, nature and location of activity, sources of funds, etc. and also ensure compliance with the KYC norms before forwarding the application together with their comments/ recommendations to the Reserve Bank.

1.5.5 The Branch/Liaison offices established with the Reserve Bank's approval will be allotted a **Unique Identification Number** (UIN) (www.rbi.org.in/scripts/Fema.aspx).

1.5.6 The BOs/LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

DOCUMENTS TO BE FILED

1.6.1 The following documents are required to be filed through the designated AD Category-I bank to the Chief General Manager-in-Charge, (5) Overview of the activities, mission and vision of the foreign NGO.
(6) Power of the attorney in favour of the consultant, if any.

WHO SHOULD SIGN THE FORM FNC?

1.7.1 Form FNC should be signed by the Overseas authorized signatory of the Foreign NGOs and not the Indian representative.

WHO SHOULD SIGN THE POWER OF ATTORNEY?

1.8.1 The power of attorney should be signed by the overseas authorized signatory of the Foreign NGOs and not the Indian representative.

TIME TAKEN FOR PROCESSING THE APPLICATION

1.9.1 No time-limit has been prescribed in FEMA. We were told that the RBI normally takes 2-3 weeks for processing such applications. But in the case of charitable organisation, all applications are referred to the Finance Ministry, Government of India. It can be a time consuming process. It may take 6-12 months to get the first approval for liaison office, but renewal is done at the designated bank level only, which should not take more than 2-3 weeks.

DOCUMENTS TO BE FILED ANNUALLY

1.10.1 Branch Offices/Liaison Offices have to file Annual Activity Certificates (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category I bank and a copy to the Directorate General of Income Tax (International Taxation), New Delhi.

1.10.2 The certificates are to be filed by the following offices as applicable:
(a) In case of a sole BO/LO, by the BO/ LO concerned;
(b) In case of multiple BO/LO, a combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/LOs.

1.10.3 The designated AD Category-I bank shall scrutinize the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank. In the event of any adverse findings being reported by the Auditor or noticed by the designated AD Category -I bank, the same should be reported immediately by the designated AD Category I bank to the respective Regional Office of the Reserve Bank in respect of LOs and to the Central Office of the Reserve Bank in the case of BOs, along with the copy of the Annual Activity Certificate and their comments thereon.

SETTING UP OF ADDITIONAL LIAISON OFFICE

1.11.1 Requests for undertaking activities in addition to what has been permitted initially by the Reserve Bank may be submitted through the designated AD Category I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central

Office, Mumbai, justifying the need with comments of the designated AD Category - I bank.

1.11.2 Requests for establishing additional BO / LOs may be submitted through fresh FNC form, duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India as explained above. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

If the number of Offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s.

The applicant may identify one of its Offices in India as the Nodal Office, which will coordinate the activities of all Offices in India.

RENEWAL OF THE LIAISON OFFICE APPROVAL

1.12.1 The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted by the Reserve Bank, if the applicant has complied with the following conditions and the application is otherwise in order.

- The LO should have submitted the Annual Activity Certificates for the previous years and
- The account of the LO maintained with the designated AD Category I bank is being operated in accordance with the terms and conditions stipulated in the approval.

1.12.2 Such extension has to be granted, as expeditiously as possible, within a period of one month from the receipt of the request under intimation to the Regional Office concerned of the Reserve Bank and to the Chief General Manager in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, quoting the reference number of the original approval letter and the UIN.

1.12.3 The application for extension of the validity period of the LOs of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank and Insurance Regulatory and Development Authority (IRDA), respectively as stipulated by them, as hitherto. Further, no extension would be considered for LOs of entities which are NBFCs and those engaged in construction and development sectors **(excluding infrastructure development companies).** Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

OTHER CONDITIONS APPLICABLE TO BRANCH/LIAISON OFFICES

1.13.1 (i) Without prior permission of the Reserve Bank, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China can

establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.

(ii) Partnership / Proprietary concerns set up abroad are not allowed to establish Branch /Liaison/Project Offices in India.

(iii) Entities from Nepal are allowed to establish only Liaison Offices in India.

(iv) Branch/Project Offices of a foreign entity are permitted to acquire immovable property by way of purchase **for their own use** to carry out permitted/ incidental activities. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India for a Branch/Project Office without prior RBI approval.

All Branch/Project Offices, including Liaison Offices, have general permission to carry out permitted/ incidental activities from **lease** property subject to lease period not exceeding five years.

(v) Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.

(vi) Transfer of assets of Liaison/ Branch Office to subsidiaries or other Liaison/ Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.

(vii) Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected

a) A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year

b) A Chartered Accountant's certificate certifying

i. the manner of arriving at the remittable profit

ii. that the entire remittable profit has been earned by undertaking the permitted activities

iii. that the profit does not include any profit on revaluation of the assets of the branch.

(viii) Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/ airline companies.

CLOSURE OF BRANCH/LIAISON OFFICES

1.14.1 At the time of winding up of Branch/ Liaison offices the company has to approach the designated AD Category-I bank with the following documents:

a) Copy of the Reserve Bank's permission/approval from the sectoral regulator(s) for establishing the BO/ LO.

b) Auditor's certificate- i) indicating the manner in which the remittable

amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.

c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.

d) Confirmation from the applicant/ parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.

e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.

f) Any other document/s, specified by the Reserve Bank while granting approval.

1.14.2 The designated AD Category - I banks has to ensure that the BO / LOs had filed their respective Annual Activity Certificates with the Reserve Bank for the previous years, in respect of the existing Branch/Liaison Offices. Confirmation about the same can be obtained from the Central Office of the Reserve Bank in the case of BOs and from the Regional Office concerned in the case of LOs.

1.14.3 Closure of such BO/LO has to be reported by the designated AD Category - I bank to the Reserve Bank (the Regional Office concerned for LOs and Central Office for BOs), along with a declaration stating that all the necessary documents submitted by the BO/LO have been scrutinized and found to be in order. If the documents are not found in order or cases are not covered under delegated powers, the AD Category-I bank may forward the application to the Reserve Bank, with their observations, for necessary action. All the documents relating to the BO/LO operations may be retained by the AD Category - I bank for verification by the internal auditors of the AD/ inspecting officers of the Reserve Bank.

REGISTRATION WITH THE RoC, NEW DELHI FOR ALL LIAISON OFFICES

1.15.1 It may also be noted that after receiving an approval from RBI for setting up of liaison office, the foreign NGO is also required to register itself with the Registrar of Companies (RoC), New Delhi. The RoC, New Delhi keeps a register of branches and liaison offices of foreign entities. A foreign NGO is required to record its name in that register. **However, such law applies only to those foreign NGOs which are registered as companies in their country.**

CAN A LIAISON OFFICE SIGN MOUs WITH INDIAN PARTNERS

1.16.1 This is a legally debatable issue and therefore divergent views are available. There are some foreign NGOs who sign MoUs in India through their liaison offices. On the other hand, there are some other foreign NGOs who send the documents to the head quarters for the purposes of signing.

1.16.2 In our opinion, this issue should not be confused with the liaison office. The issue is whether a representative of a foreign NGO can enter into a valid legal MoU by signing the document in India. In our opinion an authorised representative can enter into a valid MoU on behalf of its parent body provided he/she is properly authorized to do so. The authorisation to sign MoUs should be given to an individual rather than the liaison office. As a liaison office is not a separate legal entity, all valid legal documents, in any case, will be signed on behalf of the parent body. Further, signing of a document is not an activity, *per se.* The place of signing cannot change the activities embedded in the MoU. Therefore, more importantly it has to be ensured that the liaison office does not engage in any kind of prohibited activity. The moot point is that the character of a liaison office is of 'representative' in nature and, therefore, it has to confine to that only. Signing of MoU can be done in representative capacity without infringing the rules of FEMA, in our opinion.

CAN FUNDS BE TRANSFERRED TO FCRA PARTNERS

1.17.1 A liaison office cannot receive funds on behalf of the partners and therefore it cannot transfer any funds to its partner NGOs having FCRA registration. Liaison office can receive funds only and to the extent of its administrative expenses. Further, all the administrative expenses should be made out of inward remittances only. However, if RBI specifically allows grant making then a liaison office may undertake grant making subject to FCRA laws.

CAN LIAISON OFFICE HOLD WORKSHOPS AND CONFERENCES WITH INTERNATIONAL PARTICIPANTS

1.18.1 In our opinion liaison office cannot hold conferences or workshop with international or even local participants, going by the rules of FEMA. However, the FCRA department in its FAQ requires that all liaison offices should obtain prior permission from the FCRA Department for receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/ programmes, etc. in India.

1.18.2 Therefore such activities will be possible only if permitted by RBI under FEMA.

ROLE OF LIAISON OFFICE IN TRAINING, EVALUATION, WORKSHOP, CONSULTANCY, ETC.

1.19.1 If the training, evaluation, workshop, consultancy etc. are conducted by third parties, then the liaison office can facilitate all such activities. All payments should be made directly to such third parties by the head office. The liaison office can only play a catalytic role in representative capacity. In this regard, it is important to note that the involvement of liaison office will be determined in terms of money spent from its account. Therefore, care should be taken to avoid monetary transactions.

DOES LIAISON OFFICE OF FOREIGN NGO NEED 12A REGISTRATION

1.20.1 The liaison office is not expected to have any income or activity in India. Therefore, 12A registration is not necessary. 12A registration is required by only those organisations which are generating taxable income in India including grants from other entities whether from India or abroad.

INCOME TAX REPORTING REQUIREMENT FOR LIAISON OFFICES

1.21.1 The Finance Act, 2011 has made a very significant amendment, by virtue of which all liaison offices of foreign NGOs working in India will have to report to the Assessing Officer within 60 days from the end of the financial year. The rules and forms in this regard will be notified later. It may be noted that liaison offices, currently, are not required to file any return/ document, unless they have income in India. The proposed
Section 285 is as under:
"Every person being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed."
This provision became effective from 01.06.2011.

DOES BRANCH OFFICE OF FOREIGN NGO NEED 12A REGISTRATION

1.22.1 A branch office can have activities resulting in taxable income in India. However, it may apply for Income Tax exemptions on par with other Indian NGOs. Section 11 of the Income Tax Act does not require the NGO to be established or registered in India. Therefore, even a foreign NGO would be entitled to apply for registration under section 12A and 10(23C). Foreign NGOs can also avail exemptions on their income, if any, earned in India. Such exemptions shall be subject to having activities in India.

1.22.2 It may be noted that foreign NGOs will need exemptions under section 12A and 10(23C) only if they are collecting grant /donations from sources other than inward remittances from head quarters or they are having any income which is generated in India.

1.22.3 It may further be noted that foreign NGOs shall not be entitled for income tax exemptions if they are not having any considerable activity inside India. In other words, if the income is generated in India for the purposes of repatriation outside India, then such foreign NGOs shall not be entitled for income tax exemptions.

CASE LAWS IN FAVOUR OF FOREIGN NGOs GETTING EXEMPTIONS

1.23.1 In *Educational Institute of American Hotel and Motel Association* v. *CIT* [1996] 219 ITR 183 (AAR), the issue of a foreign organisation came before the court of the authority for advance ruling. The issue was whether, the applicant would be entitled to exemption under section 10(*22*) of the Income-tax Act, 1961, in respect of its various amounts of income from the following sources in India: 1. Conducting various courses and certification programmes in hospitality management and operations. 2. Providing educational and training materials. 3. Conducting seminars, workshops and other programmes. 4. Providing training, course materials and instructional resources to the in-house faculty of various institutions. It was held that exemptions under section 10(*22*) will be available. It was observed that to avail exemption the conditions under section 10(*22*) required the following (*a*) the educational institution must actually exist (*b*) a society need not itself be imparting education and it is enough if it runs some schools or colleges (*c*) it should exist only for educational purposes and not for profit (*d*) the income would be entitled to exemption provided it is directly relatable to the educational activity. The AAR found that the assessee was satisfying all the above conditions, therefore exemptions under section 10(*22*) were available.

1.**23.2** The issue of eligibility of exemptions for foreign charities working in India also came up before the Supreme Court of India in *Oxford University Press* v. *CIT* [2001] 247 ITR 658. In this case though the ruling was against the assessee but the legal reasons on which the case was decided apparently was in favour of granting exemptions to foreign charitable institutions. The court found that the work of the Indian branch of Oxford University was not charitable in nature. It was engaged in publications, distribution and sales of books which could not be considered as an educational activity under section 2(*15*). It was observed that the label "university press" was not sufficient to establish that it was engaged in any educational activity. The purpose of the existence of the assessee in this country as appeared from the material on record, was possibly to earn profit.

1.23.3 Supreme Court clarified that if a foreign charity engaged in charitable activities in India is able to justify its activities are of charitable nature and it does not exist for profit, then there is no reason why exemption under section 11 should not be given.

1.23.4 The Supreme Court gave a landmark judgement in *American Hotel & Lodging Association Educational Institute vs. CBDT (2006) 206 CTR (Del) 601 : (2007) 289 ITR 46 (Del)*. In this case the assessee NGO was a branch office of an American NGO. It was not doing any charitable activity in India and all its income in India was repatriated to USA.

1.23.5 The Supreme Court was of the opinion that exemptions under section 10(23C) was not available if all the activities were outside India though 10(23C) did not specifically make it mandatory for the activities to be done in India. In other words, Supreme Court opined that NGOs registered under section 10(23C) may have some activities outside India but to claim exemptions they should primarily be working in India, only.

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(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

Annexure - 1

RBI MASTER CIRCULAR ON COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

RBI/2013-14/9 **July 01, 2013**

Master Circular No.9 /2013-14

To,
All Authorised Dealer Category - I banks and Authorised Banks

Madam / Sir,

Master Circular on Compounding of Contraventions under FEMA, 1999

1. The compounding of contraventions under Foreign Exchange Management Act (FEMA), 1999 is a voluntary process by which an applicant can seek compounding of an admitted contravention of any provision of FEMA, 1999 under Section 13(1) of the FEMA, 1999.

2. This Master Circular consolidatesthe existing instructions on the subject of "Compounding of Contraventions under FEMA, 1999" at one place. The list of underlying circulars / notifications, consolidated in this Master Circular, is furnished in the Appendix.

3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on July 1, 2014 and be replaced by an updated Master Circular on the subject.

Yours faithfully,

(Rudra Narayan Kar)
Chief General Manager-in-Charge

1. General

1.1 In terms of Section 13(1) , Chapter IV of FEMA 1999, if any person contravenes any provision of FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where the amount is quantifiable or up to Rupees Two lakh, where the amount is not quantifiable and where the contravention is a continuing one, further penalty which may extend to Rupees Five thousand for every day after the first day during which the contravention continues. The provisions of Section 15 of FEMA, 1999 permit compounding of contraventions and empower the Compounding Authority to compound any contravention as defined under Section 13 of the Act on an application made by the person committing such contravention. In terms of rule 4 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, the powers to compound the contraventions have been prescribed for compounding authorities with regard to the sum involved in such contravention and no contravention shall be compounded unless the amount involved in the contravention is quantifiable.

1.2 The Government of India has, in consultation with the Reserve Bank placed the responsibility of administering compounding of contraventions with the Reserve Bank, except contraventions under Section 3(a) of FEMA, 1999. Accordingly, Foreign Exchange (Compounding Proceedings) Rules, 2000 have been framed by the Government of India empowering the Reserve Bank to compound contraventions under FEMA, 1999 with a view to provide comfort to individuals and corporate community by minimizing transaction costs, while taking severe view of willful, *malafide* and fraudulent transactions.

2. Compounding Powers

2.1 The compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE), respectively, are as under:

(a) Reserve Bank has been empowered to compound the contraventions of all the Sections of FEMA, 1999, except clause (a) of Section 3 of the Act, ibid.

(b) Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA, 1999 (dealing essentially with Hawala transactions).

2.2 For effective implementation of compounding process under FEMA, 1999, the Government of India has framed the procedure for compounding of contraventions. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener.

3. Delegation of Powers

3.1 As a measure of customer service and in order to facilitate the operational convenience, compounding powers were delegated to the Regional Offices of the Reserve Bank of India mentioned below to compound the contraventions of FEMA involving (i) delay in reporting of inward remittance, (ii) delay in filing of form FC-GPR after allotment of shares and (iii) delay in issue of shares beyond 180 days (viz. paragraphs 9(1)(A), 9(1)(B) and 8, respectively, of the Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated 3rd May 2000 and as amended from time to time:

a) Paragraphs 9 (1) (A) and 9 (1) (B) of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Bhopal, Bhubaneshwar, Chandigarh, Guwahati, Jaipur, Jammu,Kanpur, Kochi, Patna and Panaji for amount of contravention below Rupees One hundred lakh only (Rs. 1,00,00,000 /-).

b) Paragraphs 9 (1) (A), 9 (1) (B) and 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000 - Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi for amount of contravention without any limit.

4. Process of Compounding

4.1 An application for compounding of a contravention under FEMA, 1999 may be submitted to the Compounding Authority (CA) on being advised of a contravention under FEMA, 1999, either through a memorandum or *suo moto* on being made or on becoming aware of the contravention. The format of the application is appended to the Foreign Exchange (Compounding Proceedings) Rules, 2000 (Annex-I).

4.2 Along with the application in the prescribed format, the applicant may also furnish the details as per the enclosed Annexes (Annex-II) relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, a copy of the Memorandum of Association and latest audited balance sheet along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc. in order to complete the compounding process within the time frame.

4.3 All applications for compounding whether on the advice of the Regional Office concerned or suo-moto, relating to the contraventions mentioned at paragraph 3.1 (a) and (b) above and up to the amount of contravention stated therein, may be submitted by the companies/individuals falling under the jurisdiction of the aforesaid Regional Offices directly to the Regional Office concerned, together with the prescribed fee of

Rs.5000/- by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the concerned Regional Office. Applications for compounding of all other contraventions together with the prescribed fee of Rs.5000/-by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at Mumbai may be submitted to: The Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, 5th floor, Amar Building, Sir P.M. Road, Fort, Mumbai-400001.

4.4 On receipt of the application for compounding, the proceedings would be concluded and an order issued by the CA within 180 days from the date of the receipt of the application for compounding. The time limit for this purpose would be reckoned from the date of receipt of the completed application for compounding by the Reserve Bank.

4.5 The CA may call for any additional information, record or any other document relevant to the compounding proceedings. Such additional information/ documents are required to be submitted within the period as may be specified by the CA and the application may be rejected if such information/documents are not submitted within the prescribed time.

4.6 The application will be examined in terms of sub rule (1) of rule (4) of the Foreign Exchange (Compounding Proceedings) Rules, 2000 to assess whether the contravention is compoundable and the amount of contravention is accordingly quantified.

4.7 The nature of contravention is ascertained keeping in view, inter alia, the following indicative points:

a) whether the contravention is technical and / or minor in nature and needs only an administrative cautionary advice;
b) whether the contravention is serious in nature and warrants compounding of the contravention; and
c) whether the contravention, prima facie, involves money-laundering, national and security concerns involving serious infringement of the regulatory framework.
d) However, the Reserve Bank reserves the right to classify the contraventions as stated above and neither the contravener nor others have any right to classify any contravention as technical suo moto.

4.8 It is clarified that whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide (i) whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice; (ii) whether it is material and, hence, is required to be compounded for which the necessary compounding

procedure has to be followed or (iii) whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE). However, once a compounding application is filed by the concerned entity suo moto, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of Foreign Exchange Management Act, 1999 read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

4.9 The disposal of the compounding application is made by issue of a Compounding Order specifying the provisions of FEMA,1999 or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999, in respect of which contravention has taken place.

4.10 Where there is sufficient cause for further investigation, the Reserve Bank may refer the matter to the Directorate of Enforcement for further investigation and necessary action under FEMA, 1999, or to the Anti-Money Laundering Authority instituted under the Prevention of Money Laundering Act (PMLA), 2002 or to any other agencies, as deemed fit. Such applications will be disposed of by returning the application to the applicant.

5. Scope and Manner of Compounding

5.1 The CA will exercise jurisdiction in respect of the contraventions admitted to have been committed in relation to any of the provisions of the FEMA, 1999, or any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, 1999.

The application for compounding will be disposed of on merits, upon consideration of the records and submissions and at the absolute discretion of the CA. The following factors, which are only indicative, may be taken into consideration for the purpose of passing the Compounding Order and for arriving at the quantum of sum on payment of which contravention shall be compounded:

(i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;

(ii) the amount of loss caused to any authority /agency / exchequer as a result of the contravention;

(iii) economic benefits accruing to the contravener from delayed compliance or compliance avoided;

(iv) the repetitive nature of the contravention, the track record and / or history of noncompliance of the contravener;

(v) contravener's conduct in undertaking the transaction and disclosure of full facts in the application and submissions made during the personal hearing; and

(vi) any other factor considered relevant and appropriate.

6. Issue of the Compounding Order

6.1 An opportunity for personal hearing is given to the applicant for further submission of documents in person in support of the application within a specified period. The contravener or its authorized representative can choose not to appearin person or make any submissions before the CA for personal hearing The CA will proceed with the processing of the compounding application on the basis of information and documents available in the application for compounding.

6.1.1 It is clarified that appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. The applicant may enclose full information relating to the case as prescribed in AP (Dir series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011 respectively, with the application or thereafter and may exercise his discretion with regard to appearing for hearing. Further, if the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented/ accompanied by legal experts/consultants, as compounding is only for admitted contraventions. (as amended vide Press release no. 2012-2013/ 1215 dated January 18, 2013)

6.2 The Compounding Authority will pass a compounding order on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings, if any.

6.3 Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of FEMA, 1999 as the case may be, one copy of the compounding order made under sub rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 will be provided to the applicant (the contravener) and also to the Adjudicating Authority.

7. Post-compounding procedure

7.1 The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of Rule 8 of Foreign Exchange (Compounding Proceedings) Rules, 2000 is payable by way of a demand draft in favour of the "Reserve

Bank of India" within fifteen days from the date of the order of compounding of such contravention. The demand draft has to be deposited in the manner as directed in the compounding order.

7.2 On realization of the demand draft for the sum for which contravention is compounded, a certificate in this regard shall be issued by the Reserve Bank subject to the specified conditions, if any, in the order.

7.3 The provisions of the Rules do not confer any right on the contravener, after a compounding order is passed, to seek to withdraw the order or to hold the compounding order as void or request a review of the order passed by the CA.

7.4 In case of failure to pay the sum compounded within the time specified in the compounding order, it shall be deemed in terms of Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000, that the contravener had never made an application for compounding of any contravention under these Rules.

7.5 In respect of the contraventions of FEMA, 1999 (as defined in section 13 of the FEMA, 1999), which are not compounded by the Compounding Authority, other relevant provisions of FEMA, 1999, including reference to the Directorate of Enforcement shall apply.

8. Pre-requisites for compounding process

8.1 In respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded. Such contravention would be dealt with under relevant provisions of the FEMA, 1999 for contravention. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

8.2 Contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the authorities concerned.

8.3 Cases of contravention, such as, those having a money laundering angle, national security concern and/or involving serious infringements of the regulatory framework or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action under FEMA,

1999 or to the authority instituted for implementation of the Prevention of Money Laundering Act 2002, (PMLA) or to any other agencies, for necessary action , as deemed fit.

8.4 The Reserve Bank generally advises the persons concerned of their choice and option to make an application for compounding as and when such contraventions come to its notice. The facts constituting such contraventions will be brought to the notice of the Directorate of Enforcement in case no application for compounding is made within the time indicated by the Reserve Bank. Authorised Dealers may take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions to Reserve Bank so that contraventions of provisions of FEMA, 1999 due to the acts of omission and commission of the Authorised Dealers do not occur. In terms of Section 11(3) of FEMA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank. (as amended vide AP DIR Circular No.76 dated January 17, 2013)

Foreign Exchange (Compounding Proceedings) Rules, 2000

Notification No. G.S.R.383(E) dated 3rd May 2000

As amended vide

G.S.R.443(E) dated November 2, 2002 G.S.R. 609 (E) dated September 13, 2004 and G.S.R. 613 (E) dated August 27, 2008

In exercise of the powers conferred by section 46 read with sub-section (1) of section 15 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Central Government hereby makes the following rules relating to compounding contraventions under chapter IV of the said Act, namely:-

1. Short title and commencement
   (1) These rules may be called the Foreign Exchange (Compounding Proceedings) Rules 2000.
   (2) They shall come into force on the 1st day of June, 2000.

2. Definitions - In these rules, unless the context otherwise requires -
   (a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
   (b) 'authorised officer' means an officer authorised under sub-rule (1) of rule 3;
   (c) 'applicant' means a person who makes an application under section 15 (1) of the Act to the compounding authority;
   (d) 'Compounding Order' means an order issued under sub-section (1) of Section 15 of the Act;
   (e) 'Form' means a form appended to these rules;
   (f) 'section' means a section of the Act;
   (g) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. (1) 'Compounding Authority' means the persons authorised by the Central Government under sub-section (1) of section 15 of the Act, namely;
   (a) an officer of the Enforcement Directorate not below the rank of Deputy Director or Deputy Legal Adviser (DLA).
   (b) An officer of the Reserve Bank of India not below the rank of the Assistant General Manager.

4. Power of Reserve Bank to compound contravention -

[(1) If any Person contravenes any provisions of Foreign Exchange Management Act, 1999 (42 of 1999) except clause (a) of Section 3 of the Act.]

(a) in case where the sum involved in such contravention is ten lakhs rupees or below, by the Assistant General Manager of the Reserve Bank of India;
(b) in case where the sum involved in such contravention is more than rupees ten lakhs but less than rupees forty lakhs, by the Deputy General Manager of Reserve Bank of India;
(c) in case where the sum involved in the contravention is rupees forty lakhs or more but less than rupees hundred lakhs by the General Manager of Reserve Bank of India;
(d) in case the sum involved in such contravention is rupees one hundred lakhs or more, by the Chief General Manager of the Reserve Bank of India;

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

Explanation: For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer specified under sub-rule (1) of rule 4 of the Reserve Bank of India shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Governor of the Reserve Bank of India.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai along with a fee of Rs. 5000/-by Demand Draft in favour of compounding authority.

5. The Power of Enforcement Directorate to compound contraventions -

[(1) If any Person contravenes provisions of Section 3(a) of Foreign Exchange Management Act.]
(a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;
(b) in case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;
(c) in case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;

(d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;

(e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate.

Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

(2) Nothing contained in sub-section (1) shall apply to a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under these rules.

Explanation: For the purposes of this rule, any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

(3) Every officer of the Directorate of Enforcement specified under sub-rule (1) of this rule shall exercise the powers to compound any contravention subject to the direction, control and supervision of the Director of Enforcement.

(4) Every application for compounding any contravention under this rule shall be made in Form to the Director, Directorate of Enforcement, New Delhi, along with a fee of Rs.5000 by DD in favour of the Compounding Authority.

6. Where any contravention is compounded before the adjudication of any contravention under section 16, no inquiry shall be held for adjudication of such contravention in relation to such contravention against the person in relation to whom the contravention is so compounded.

7. Where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16, such compounding shall be brought by the authority specified in rule 4 or rule 5 in writing, to the notice of the Adjudicating Authority and on such notice of the compounding of the contravention being given, the person in relation to whom the contravention is so compounded shall be discharged.

8. **Procedure for Compounding** -

(1) The Compounding Authority may call for any information, record or any other documents relevant to the compounding proceedings.

(2) The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible as and not later than 180 days from the date of application.

9. **Payment of amount compounded** -

The sum for which the contravention is compounded as specified in the order of compounding under sub-rule (2) of rule 8, shall be paid by demand draft in favour of the

Compounding Authority within fifteen days from the date of the order of compounding of such contravention.

10. In case a person fails to pay the sum compounded in accordance with the rule 9 within the time specified in that rule, he shall be deemed to have never made an application for compounding of any contravention under these rules and the provisions of the Act for contravention shall apply to him.

11. No contravention shall be compounded if an appeal has been filed under section 17 or section 19 of the Act.

12. **Contents of the order of the Compounding Authority** -

(1) Every order shall specify the provisions of the Act or of the rules, directions, requisitions or orders made there under in respect of which contravention has taken place along with details of the alleged contravention.

(2) Every such order shall be dated and signed by the Compounding Authority under his seal.

13. **Copy of the order** - One copy of the order made under rule 8(2) shall be supplied to the applicant and the Adjudicating Authority as the case may be. 3 GSR

Format of Application

Form (See Rule 4 or 5)

(To be filled in duplicate and shall be accompanied by certified copy of the Memorandum issued)

1. Name of the applicant (in BLOCK LETTERS)
2. Full address of the applicant (including Phone and Fax Number and email id)
3. Whether the applicant is resident in India or resident outside India [Please refer to
4. Section 2(v) of the Act]
5. Name of the Adjudicating Authority before whom the case is pending
6. Nature of the contravention [according to sub-section (1) of Section 13]
7. Brief facts of the case
8. Details of fee for application of compounding
9. Any other information relevant to the case

I/We declare that the particulars given above are true and correct to the best of my/our knowledge and belief and that I/We am/are willing to accept any direction/order of the Compounding Authority in connection with compounding of my/our case.

Dated:

(Signature of the Applicant)

Name

Details to be furnished along with application for compounding of contravention relating to

Foreign Direct Investment in India

- Name of the applicant
- Date of incorporation
- Nature of activities under taken
- Brief particulars about the foreign investor
- Details of foreign inward remittances received by Applicant Company from date of incorporation till date

TABLE A

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Reported to RBI on*	Delay, if any
Total					
* date of reporting to RBI and not AD					

TABLE B

Name of Investor	Date of allotment of shares	Number of shares allotted	Amount for which shares allotted	Date of reporting to RBI	Delay, if any
Total					

TABLE C

In case there is excess share application money

Sl. No.	Name of Remitter	Total Amount (INR)	Date of Receipt	Excess share application money	Date of refund of share application money	Amount in forex	RBI approval letter and date
Total							

TABLE D

Authorised Capital

Sl. No.	Date	Authorised Capital	With effect from	Date of Board meeting	Date of filing with ROC

A= B+C Please give supporting documents Table A- Copies of FIRC with date stamp of receipt at RBI Table B- Copies of FCGPR with date stamp of receipt at RBI Table C letter seeking refund/ allotment of shares- approval letter from RBI A2 form

- Copies of Balance Sheet during the period of receipt of share application money
- and allotment of shares
- Nature of contravention and reasons for the contravention
- A declaration that they are not under investigation of any agency such as DoE,
- CBI, etc

Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing

• Name of the applicant			
• Date of incorporation			
• Nature of activities under taken			
• Brief particulars about the foreign lender			
• Is the applicant an eligible borrower?			
• Is the lender eligible lender?			
• Is the lender an equity holder?			
• What is the level of his holding at the time of loan agreement?			
Details of ECB			
• Date of Loan agreement			
• Amount in Foreign Currency and Indian Rupee •			
• Rate of interest			
• Period of loan			
• Repayment particulars			
• Details of draw down Amount in Amount down Foreign Currency in INR	Date of draw Down	Amount in Foreign Currency	Amount in INR
• Details of LRN Number - application and receipt			
• Details of ECB 2 returns submitted; Period of return: Date of submission			
• Details of Utilization of ECB in Foreign Currency and Indian Rupee			
• Nature of contravention and reasons for the contravention			
• All supporting documents may be submitted			
• A declaration that they are not under investigation of any agency such as DoE, CBI,			

Details to be furnished along with application for compounding of contravention relating to Overseas Investment

- Name of the applicant
- Date of incorporation
- Nature of activities under taken
- Name of Overseas entity
- Date of incorporation of overseas entity
- Nature of activities under taken by overseas entity
- Nature of entity- WOS/JV
- Details of remittance sent- Date of remittance; Amount in FCY and in INR
- Details of other financial Commitment
- Details of UIN applied and received
- Date of receipt of share certificate
- Approval of other regulators if required
- Details of APRs submitted: For the period ended; date of submission
- Nature of contravention and reasons for the contravention
- All supporting documents may be submitted
- A declaration that they are not under investigation of any agency such as DoE, CBI, etc.

List of Rules/ A.P. (DIR Series) Circulars consolidated in the Master Circular Compounding of contraventions of FEMA, 1999

Rules Sl No.	Rules No.	Date
1	Foreign Exchange (Compounding Proceedings) Rules, 2000	May 3, 2000
2	Foreign Exchange (Compounding Proceedings) Rules, 2002 (Amendment)	November 2,2002
3	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	September 13, 2004
4	Foreign Exchange (Compounding Proceedings) Rules, 2004 (Amendment)	August 27, 2008

A.P.(DIR Series) Circular No. 56 dated June 28, 2010.
A.P.(DIR Series) Circular No. 57 dated December 13, 2011.
A.P.(DIR Series) Circular No. 11 dated July 31, 2012.
A.P.(DIR Series) Circular No. 76 dated January 17, 2013.
Press release no. 2012 2013/1215 dated January 18, 2013.

Annexure - II

RBI CIRCULAR FOR REGULARISATION OF REGISTRATION OF LO/BO

RBI/2011-12/ 112 **July 15, 2011**
A.P. (DIR Series) Circular No. 02

To
All Authorised Dealer Category - I banks

Madam / Sir,

Regularization of Liaison / Branch Offices of foreign entities established during the pre-FEMA period

1. Attention of Authorised Dealer Category I (AD Category-I) banks is invited to Notification No. FEMA 22/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, as amended from time to time, read with A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009, in terms of which a person resident outside India requires the prior approval of the Reserve Bank of India for establishing a Liaison Office (LO) /Branch Office (BO) in India. Further, attention of the AD Category - I banks is invited to A.P. (DIR Series) Circular No. 23 dated December 30, 2009 in terms of which applications from foreign Non-Government Organisations (NGOs) / Non-Profit Organisations (NPOs) / Government bodies / Departments for establishing BO / LOs in India are considered by the Reserve Bank in consultation with the Government of India, Ministry of Finance.

2. It has come to the notice of the Reserve Bank that certain BOs / LOs established by the foreign NGOs, NPOs, news agencies and other foreign entities are continuing to function in India, without the approval of the Reserve Bank, after the Foreign Exchange Management Act (FEMA), 1999 came into force from June 1, 2000. Under the provisions of FEMA, 1999, ibid, the request of such entities to open an office in India is considered by the Reserve Bank in consultation with the Government of India, wherever required.

3. Accordingly, the foreign entities who have established LO or BO in India and continuing to function without obtaining permission from the Reserve Bank of India should approach the Reserve Bank within a period of 90 days from the date of issue of this circular for regularization of establishment of such offices in India, in terms of the extant FEMA provisions.

4. The foreign entities who may have established LO or BO with the permission from the Government of India may also approach the Reserve Bank along with a copy of the said

approval for allotment of a Unique Identification Number (UIN) by the Reserve Bank of India.

5. All such applications/ requests should be submitted to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai 400 001 in form FNC and should be routed through the AD Category I bank where the account of such LO /BO is maintained.

6. AD Category - I banks may bring the contents of this circular to the notice of their constituents/ customers concerned and forward such application/ request to the Reserve Bank, after complying with the instructions contained in A.P. (DIR Series) Circular Nos. 23 and 24 dated December 30, 2009. Further, they may also ensure that their constituents operating LO/ BO in India have valid approval from the Reserve Bank for the same and that a copy of such approval is kept on record.

7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge

RENEWAL OF REGISTRATION UNDER FCRA

- Dr. Manoj Fogla, FCA

INTRODUCTION

1.1.1 The new FCRA 2010 has made a very important change with regard to the validity of the registration certificate of an organisation having FC registration. In the old law the registration was virtually permanent in nature, however, the new law has reduced the validity of the FC certificate to five years. In this article we were discussing the various important issues to be kept in mind, in this regard.

WHAT IS THE PERIOD OF VALIDITY OF FCRA REGISTRATION

1.2.1 The new FCRA 2010 has limited the validity of the registration certificate for a period of 5 years. It may be noted that in the old law FCRA registration was virtually permanent in nature unless it was revoked. FCRA 2010 provides for renewal of registration of organisations after every 5 years. The provision of section 16 of FCRA 2010 on renewal of registration is as under :

*"**16.**(1) Every person who has been granted a certificate under section 12 shall have such*
certificate renewed within six months before the expiry of the period of the certificate.

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the

certificate within the said period of ninety days, it shall communicate the reasons therefore to the applicant.

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder."

WILL THE EXISTING ORGANISATIONS HAVE TO APPLY FOR RENEWAL IMMEDIATELY

1.3.1 No. The Act has provided relief of renewal to all the existing organisations for the first 5 years from the date of FCRA 2010 coming into force. In other words, all existing organisations have to renew their registration at the end of the period o 5 years from the date when of FCRA 2010 came into force, i.e., 1st May, 201.1 This implies that the renewal of registration of all the existing organisations will become due on 1st May 2016.

PROCEDURE FOR APPLYING FOR RENEWAL

1.4.1 Rule 12 of FCRR, 2011 provides the procedure for renewal of registration. All organisations have to apply in Form FC-5 six months before the due date. Therefore, all the existing organisations have to file their application in FC-5 form for renewal on or before 1st November 2015. The Rule further provides that organisations implementing ongoing multi-year projects shall be eligible to apply for renewal twelve months before the date of expiry of the certificate of registration. The prescribed FC-5 form for submission of application for renewal of registration is available at MHA website *http://mha.nic.in/fcra/forms/fc-5.pdf.* The procedure for renewal, as provided in Rule 12 of FCRR, 2011, is as under:

"12. Renewal of registration certificate. -

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

(2) Every person shall apply to the Central Government in Form FC-5, six months before the date of expiry of the certificate of registration, for its renewal.

(3) A person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.

(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of ' 500/- (Five Hundred only).

(5) The fee for renewal of the certificate of registration shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

(6) In case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have

ceased from the date of completion of the period of five years from the date of the grant of registration.

Illustration.- A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016. A request for renewal of the registration certificate shall reach the Central Government, accompanied by the requisite fee, by the 30th June, 2016. If no application is received or is not accompanied by the renewal fee, the validity of the registration certificate issued on the 1st January 2012 shall be deemed to have lapsed with effect from the close of the day on 31st December, 2016.

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

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee, but not later than four months after the expiry of the original certificate of registration."

MORE THAN 50% CHANGE IN BOARD MEMBER

1.5.1 Under FCRA, any change in the board members in excess of 50% shall be made with prior permission. This condition is a part of the undertaking provided by the applicant at the time of making application for 'registration' or 'prior permission'. Therefore, even though it is not mentioned in the Act or the Rules, it becomes binding on all the organisations by virtue of the undertaking given at the time of making application for 'registration' or 'prior permission'. This provision is a part of both the old and new FCRA. Therefore, it is necessary to seek prior approval in case of more than 50% change in board members. **Further, those organisations who have not taken permission, even after such change has occurred, should apply for permission and condonation. This issue becomes even more important keeping in view that FCRA registration is subject to renewal every 5 years.** In other words, such organisations should immediately inform the changes in the board to the FCRA department to avoid any problem at the time of renewal.

DIFFERENT TIME LIMIT FOR APPLICATION FOR RENEWAL FOR ORGANISATIONS IMPLEMENTING MULTI-YEAR PROJECTS

1.6.1 Rule 12(3) provides that a person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of

the certificate of registration. In other words, those organisations which are having incomplete projects shall have to apply for renewal one year prior to the date of expiry of the registration. For example, the certificate of registration granted on the 1st May, 2011 shall be valid till the 30th April, 2016. A request for renewal of the registration certificate shall reach the Ministry of Home Affairs, accompanied by the requisite fee, by the 30th October, 2015 in case of normal organisations and in the case of organisations, which are having multi-year projects, the application for renewal should be submitted on or before 30th April 2015.

HOW MUCH FEE TO BE SENT WITH APPLICATION FOR RENEWAL

1.7.1 An application made for renewal of the certificate of registration shall be accompanied by a fee of '500/- (Five Hundred only). The fee for renewal of the certificate of registration shall be remitted by demand draft or banker's cheque in favour of the "Pay and Accounts Officer, Ministry of Home Affairs", payable at New Delhi.

WHAT HAPPENS IF NO RENEWAL APPLICATION IS MADE

1.8.1 Rule 12(6) provides that in case no application for renewal of registration is received or such application is not accompanied by the requisite fee, the validity of the certificate of registration of such person shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of registration. For example, if no application is received or is not accompanied by the renewal fee, the validity of the registration certificate valid/issued on the 1st May 2011 shall be deemed to have lapsed with effect from the close of the day on 30th April, 2016.

WHAT HAPPENS IF THERE IS A DELAY IN MAKING RENEWAL APPLICATION

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

WHAT HAPPENS IF THE REGISTRATION CERTIFICATE LAPSES FOR FAILURE TO APPLY FOR RENEWAL

1.10.1 In case an organisations fails to apply for renewal within the due date or fails to make a delayed application as discussed above, its registration shall become invalid. In such circumstances the organisation cannot apply for renewal. However, it can apply for normal registration under FCRA 2010 as per Rule 9 of FCRR, 2011.

WHAT IS THE TIME LIMIT FOR GRANT OF RENEWAL

1.11.1 The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of registration subject to such terms and conditions as it may deem fit and grant a certificate of renewal for period of five years. In case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefore to the applicant. Further the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or Rules made there under.

WHAT ARE THE INFORMATION AND DOCUMENT TO BE FILED WITH FORM FC-5

1.12.1 Form FC-5 requires, apart from the basic data, the following:

- Details of the names and addresses of the members of the executive committee/ governing council.
- The nature of activity.
- Details of the existing registration and PAN.
- Details of the foreign contribution received during all the years since its registration with yearly break up.
- Details of utilisation of funds.
- Declaration that all the provisions of FCRA 2010 were complied.
- Reasons for seeking renewal.
- Details of information, if any, regarding the organisation if it had been blacklisted/ debarred from receiving any aid and/or assistance by any other Ministry/ Department of Central and/or State Government or any Statutory Authority.
- A copy of the registration certificate.

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(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

PRODUCER COMPANY - AN OVERVIEW

- FMSF Research Team

1.1 INTRODUCTION

The Companies Act 1956 recognized only three companies- companies limited by share; companies limited by guarantees; and unlimited companies. After the Companies Act 2002 came into effect (an act to further amend the Companies Act 1956), a fourth category 'Producer Company' was added to the Companies Act 1956.

Section 581A to 581ZT (part IXA) of the Companies Act 1956 dealt with Producer Companies. As per the new Companies Act 2013, this section has been replaced and section 465 of the Companies Act 2013 deals with Producer Companies.

Section 465 says that the provisions of part IXA of the Companies Act 1956 shall be applicable to the Producer Companies, in a manner as if the Companies Act 1956 has not been repealed until a special act is enacted for Producer Company.

1.2 HISTORY AND EVOLUTION

The cooperative experience in our country has not been a very pleasant one. Both members of cooperatives and the public at large do not consider cooperatives as economic institutions at par with other business organizations in view of the predominant role being played by the government through exercise of vast powers that the law provides. The cooperative institutions are controlled by the State through the Registrar of Cooperative Societies who has overriding powers to direct and regulate cooperatives on his/her own terms. Thus, cooperatives have never emerged as successful business enterprises but only as extended arms of the State.

The Mutually Aided Cooperative Societies (MACS) Act which was introduced has been an attempt to improve the condition, but it has been accepted only in few states and

even there, not many commodity cooperatives have migrated to the MACS Act.

The concept of producer companies was introduced in 2002 by incorporating a new Part IXA into the Companies Act 1956 based on the recommendations of an expert committee led by noted economist, Y. K. Alagh. The Committee was given the mandate to frame a legislation that would enable incorporation of cooperatives as companies and conversion of existing cooperatives into companies, while ensuring the unique elements of cooperative business with a regulatory framework similar to that of companies.

1.3 MEANING OF 'PRODUCER' & 'PRODUCER COMPANY'

'Producer' means any person engaged in any activity connected with or relatable to any primary produce.

'Producer Company' means a body corporate having objects or activities specified in section 465 of Companies Act 2013 and registered as Producer Companies under this Act.

1.3 OBJECTS OF PRODUCER COMPANY

1) The objects of the producer company shall relate to all or any of the following matters, namely:

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit;

(b) processing including preserving, drying, distilling, brewing, venting, canning and packing of produce of its members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its members;

(d) providing education on the mutual assistance principles to its members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interest of its members;

(f) generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facilities for the benefit of members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) which include extending of credit facilities or any other financial services to its members;

(k) financing of procurement, processing, marketing or other activities specified in clause (a) to (j) which include extending of credit facilities or any other financial services to its members.

2) Every Producer Company shall deal primarily with the produce of its active members for carrying out any of its objects specified in this section.

1.4 FORMATION AND REGISTRATION OF PRODUCER COMPANY

Any ten or more individuals, each of

them being a producer or any two or more producer institutions, or a combination of ten or more individuals and producer institutions, desirous of forming a Producer Company having its objects specified in section 465(Companies Act 2013) and otherwise complying with the requirements of this part and the provisions of this act in respect of registration, may form an incorporated company as a Producer Company under this act.

A Producer Company so formed shall have the liability of its members limited by the memorandum to the amount, if any unpaid on the shares respectively held by them and be termed a company limited by shares. On registration, the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this part apply, without, however, any limit to the number of members thereof and the Producer Company shall not, under any circumstance whatsoever become or be deemed to become a public limited company under this act.

1.5 MANAGEMENT OF PRODUCER COMPANY

Every Producer Company is to have at least five and not more than 15 directors. A director shall hold the office for a period not less than one year but not exceeding five years as may be specified in the article.

A full time Chief Executive is to be appointed by the Board who shall be an ex-officio director and will not be liable to retire by rotation. He shall be entrusted with substantial powers of management as the Board may determine.

The Board may constitute Committees for the purpose of assisting the Board in the efficient discharge of its functions provided that the Board shall not delegate any of its power or assign the powers of the Chief Executive, to any Committee.

At least four Board meetings shall be held every year wherein the quorum shall be one-third of the total directors, subject to a minimum of three.

1.6 ANNUAL GENERAL MEETING

Every producer company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a producer company and that of the next.

A producer company shall hold its first annual general meeting within a period of 90 days from the date of its incorporation.

The members shall adopt the articles of the producer company and appoint directors of its board in the annual general meeting.

The proceedings of every annual

general meeting along with the Director's report, the audited balance-sheet and the profit and loss account shall be filed with the registrar within 60 days of the date on which the annual general meeting is held.

1.7 INTERNAL AUDITS

Every producer company shall have internal audits of its accounts carried out, at such interval and in such manner as may be specified in article, by a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the chartered accounts act, 1949.

1.8 TAXATION OF PRODUCER COMPANY

The Producer Companies are taxable on par with the Private Limited Companies and Public Limited Companies. However, the following are some of the various tax incentives available to the Producer Companies:

- The Income derived by a Producer Company through agricultural activities is defined in Income Tax Act, 1961 as amended from time to time, is treated as agricultural income and is exempted from taxation.
- The government of India has vide the Finance Act, 2012, reduced the customs duty on the import of agricultural equipment and their parts which would benefit the Producer Companies engaged in agricultural activities to a great extent.
- Producer Companies engaged in the business of growing and manufacturing tea or coffee or rubber are eligible for deduction in respect of deposit of any amount with a National Bank or any other bank in accordance with scheme as approved between the Company and the respective Board.

1.9 AMALGAMATION, MERGER OR DIVISION

A producer company may by a resolution passed in its general meeting decide to transfer its assets and liabilities to any other Producer Company or divide itself into two or more new Producer Companies.

Any two or more Producer companies at a general or special meeting decide to amalgamate and form a new Producer Company or Merge one Producer Company with another Producer Company.

1.10 RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY

Any producer company, being an erstwhile interstate co-operative society, formed and registered under this part, may make an application to re-convert it to inter-state co-operative society:-

a) After passing a resolution in the general meeting by not less than two-third of its members present and voting; or

On request by its creditors representing three-fourth value of its total creditors, to the High Court for its reconversion to the inter-state co-Operative society.

1.11 DIFFERENCE BETWEEN PRODUCER CO-OPERATIVES AND PRODUCER COMPANY

FEATURES	PRODUCER CO-OPERATIVE	PRODUCER COMPANY
Registration	Co-operative Society Act	Companies Act
Membership	Open only to individuals and co - operative	Only those who participate in the activity
Relationship with other co-operatives /NGOs/ Business houses	Transaction Based	A Producer and a co -operate entity can together float a Producer Company
Voting Rights	One person, one vote. However, government and RCS hold veto power	One person one vote. Those who do not having transactions with the company cannot vote
Reserves	Can be created if there are profits	Mandatory to create reserves every year
Role of registering authority	Significant	Minimal
Administrative control	Overbearing	None
Borrowing Power	Restricted	More freedom and alternatives
Dispute Settlement	Through co - operate management	By Arbitration

1.12 CAN NGOs AND PRODUCER COMPANY WORK TOGETHER?

Those NGOs who are directly working with the primary producer groups can introduce the concept of 'Producers Company' for the economic enhancement of the producers.

There are other NGOs who are interested in the concept but are not working with the primary producer. Such NGOs can take the initiative for mobilizing people to start a 'Producer Company'.

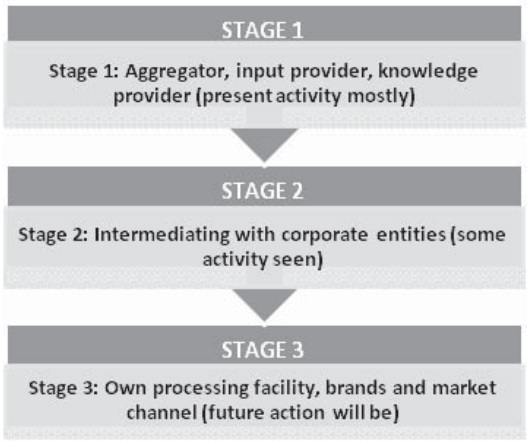
1.13 FUTURE OUTLOOK OF PRODUCER COMPANY

Most of the companies that are emerging in the 'producer companies' sector are start-ups rather than existing co-operatives transforming into producer companies. Further, almost all of them have been promoted by a sponsor institution like a development agency or an NGO.

Most of them are performing the function of providing technical services and inputs to farmers or pooling produce for collective marketing. This is the **First stage** of evolution.

In the **Second stage,** more activities can be seen in the emergence of producer companies like that promoted by Fabindia, where corporate come together with farmers to share prosperity with the farming community through commercial farmer corporate/ retailer partnerships. Producer

Companies having their own processing infrastructure, and developing their own identity, brands and supply chain will be the **Third stage.** Only then will the producers be able to directly connect with and have command over the markets. The evolution stages of Producer Companies are depicted below:



1.13 CONCLUSION

As the concept of Producer Companies spans in India, they will require larger capital from the banking system. This will be a major challenge for banks, as the producer companies may not have much else than the producer member equity to leverage borrowings.

However, regardless, the benefits ascertained by producer companies to its members are humongous, some of which are listed below:

- Pooling of produce which enables the members to have better bargaining position in the market
- Elimination of intermediaries resulting in reduced costs and enhancement of returns
- Development of greater command over domain knowledge in the produce, ultimately leading to enhancement of quality, productivity and returns
- • Aggregation of demand for inputs enabling bulk purchases resulting in availing greater discounts
- Acquisition of better technology resulting in enhanced quality and productivity
- Timely and easy availability of inputs

References:

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2. Taxmann's Comparative Study of Companies Act 2013 and Companies Act 1956
3. http://rna-cs.com/pdf/Producer%20Companies.pdf
4. http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf
5. Report of the High Powered Committee on Cooperatives , May 2009, Ministry of Agriculture, Govt. of India

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Finance Section

VOUCHERS - AN OVERVIEW

- Sanjay Patra, FMSF

1. INTRODUCTION

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

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

2. UNDERSTANDING VOUCHERS

Vouchers are helpful for following reasons:

2.1. Proper **recording of transactions**

2.2. Providing proper **evidence/supporting of financial transactions**

2.3. Establishing safe **administrative procedures**

2.1. Recording of transactions:

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

2.2. Evidence/Supporting:

Vouchers as a record of transaction contain evidence of occurrence of

such transaction, activity or event. The evidence may be bills, receipts, invoices, purchase orders, agreement paper and other summaries like list and signature of participants (in case of training, workshop, etc.)

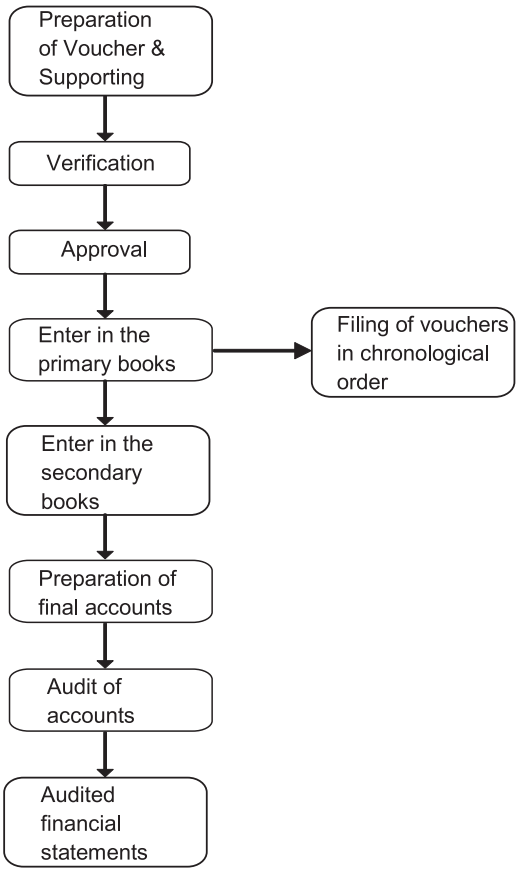
2.3. Administrative Procedure:

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

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

For voluntary organizations dealing with more than one project and funding agencies, the project name or number and the funding agency to which the expenditure is required to be charged should also be disclosed in the voucher. This would provide information as to under which the expenditure has been incurred.

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



3. TYPES OF VOUCHERS

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

3.1. Contra Voucher
3.2. Payment Vouchers
3.3. Receipt Vouchers
3.4. Journal Vouchers

3.1. Contra Voucher is used to indicate transfer of funds from:

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

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

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

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

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

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

4. COLOR CODING

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

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

5. HOW TO ENHANCE THE QUALITY OF VOUCHER DOCUMENTATION?

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

5.1. Clarity
5.2. External evidence
5.3. Verifiability

5.1. Clarity

Vouchers should provide clarity in terms of:

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

5.2. External Evidence

The supporting documents that are attached with the vouchers such as bills, invoices, receipts and summaries are called external evidence.

5.3. Verifiability

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

6. WHAT ARE VALID SUPPORTINGS?

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

7. WHAT TO DO WHEN VALID SUPPORTING DOCUMENTS ARE NOT AVAILABLE?

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

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

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

8.TEN POINTS TO REMEMBER WHILE PREPARING VOUCHERS

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

8. 1. The accountant who prepares the vouchers should be well versed with a accounting policies.

8. 2. Vouchers should be prepared and filed separately on a daily basis.

8. 3. Voucher should be prepared for each and every entry made in the books of account.

8. 4. All vouchers should be computer generated, if there is computerized accounting.

8. 5. Each voucher should be serially numbered and such numbers should be mentioned in the respective original books of account maintained in order to facilitate cross-reference.

8. 6. Various types of vouchers should be printed in different colors to help in easy identification.

8. 7. For payment above INR 5,000, a revenue stamp of 8. 8. appropriate value must be affixed and the payee or the person 8. 9. authorized by the payee should sign and write his/her name and address.

8. 8. To ensure correct accounting to the respective funding agency, a rubber stamp in the name of the respective funding agency should be stamped on the voucher and the supporting documents.

8. 9. In order to avoid double payments, it is desirable to put a '**Paid**' stamp on the voucher as well as the supporting documents.

8. 10. Neither the voucher nor the supporting document should be overwritten and correction fluid should not be used. In case, correction is to be made, it should be approved by the authorized person. Therefore, one should be very cautious while writing vouchers.

9. CONCLUSION

Vouchers are very crucial document for an organization. Voucher should be kept by the organization for at least 7 years from the end of the financial year as per Income Tax Act 1961. A good voucher system is important for future reference for the auditors and the statutory authorities. Therefore, it is important that a voucher be filled correctly with requisite narrations and supporting, so that the person verifying it can easily obtain the required information that is being sought.

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(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD COMMITTEES - EXECUTIVE COMMITTEE

- Sanjay Patra, FMSF

1. INTRODUCTION

In any organization the Board is the highest and ultimate decision-making body. However, as the organization grows in size, it may not be possible for the Board to make all the decisions directly. This is more so since the Board consists of volunteers who sacrificially give their time in governing the organization. Therefore, the Board decides to delegate certain responsibilities to the management team and provides oversight. Basically, the Board makes a distinction between governance and management function.

While the governance functions are retained at the Board level, the management functions are delegated to the management. However, even though the management functions are delegated to the management, the Board cannot absolve itself of its overall responsibility. Hence, certain oversight functions even in the management have to be maintained at the Board level.

In case of delegation of authority, the Board is still accountable for the outcome even though the work is not done under its direct supervision. So the responsibility of the Board is to form different Committees that can be assigned with various responsibilities. Here, the Board performs its oversight role and acts as a yardstick for the proper functioning of the organization.
However, it needs to be kept in mind that the Board cannot delegate its core oversight obligations to any subsequent Committees.

It is necessary to remember that the Committees cannot replace the Board. They are supplementary to the Board. There are many types of Committees that can be formed by the Board. These Committees can be broadly classified into:

- Standing Committee for Specific purpose

- Adhoc Committee for Specific purpose
- Standing Committee for Generic purpose

The Executive Committee falls into the category of the Standing Committee for generic purpose.

Type of Committee	Purpose	Example
Standing Committee for Specific purpose	Formed for long term purposes and comprises of a specialized group of people on continuous basis on a very focused area	Finance Committee
Adhoc Committee for Specific purpose	Formed for a specific purpose on short term basis	Building Construction Committee
Standing Committee for Generic purpose	Formed for a continuous basis based on the bye laws or the constitutional documents	Executive Committee

It must be noted that the Standing Committee cannot take policy decision. It can only take operational decision. All decisions must however be presented to and ratified by the Board.

2. NEED FOR COMMITTEES

There are many reasons as to why it is desirable to form Committees:

- The Board is large making it difficult to call a meeting and obtain a quorum on short notice
- The Board members are dispersed over a wide geographic area and are difficult to reach, or travel frequently making it difficult to convene a meeting in an emergency, making it impossible for the Board to meet on regular basis
- Committees subsists the Board in crucial decision-making through thorough research and in depth study on the issue. The Committees are the extended executive arms of the Board, who can make exhaustive research for the Board on various executive and legislative issues like handling complex, time-taking, specialized issues that require persistent attention
- Committees may have invited external members who can provide expertise in areas that the Board may not have expertise in
- Also, the formation of Committees may be mandated by the byelaws of the organization making it necessary for the Board to constitute them

3. CHARACTERISTICS OF AN EXCECUTIVE COMMITTEE

As the name suggests, the Executive Committee is formed with the purpose of performing executive functions only. They don't possess legislative powers. It is the most powerful Standing Committee of permanent nature.

- The Executive Committee

meets and works in between the Board meetings to take executive decisions. In other words, Executive Committee provides the oversight function on behalf of the Board. The mandate of the Executive Committee is prescribed in the bye-laws of the organization. In the absence of such clear bye-laws, the Board can decide on the mandate of the Executive Committee.

- The Committee is required to report directly to the Board, hence making them accountable to the Board.
- The Committee is formed from within the Board but it can have external members as invitees from among the Stakeholders and the society at large, to fulfill the need for specific expertise and specialization which might not be present within the Board.

4. COMPOSITION OF AN EXECUTIVE COMMITTEE

The Executive Committee primarily comprises of Board members. The CEO is generally an Ex-officio member of the Executive Committee. There are divergent views as to whether a CEO should have a right to vote in the meetings or not. However, it has been seen that having the CEO as an Ex-officio member with a voting right brings in greater ownership, accountability and trust. However, in the decisions where the CEO is an interested party, he/she should be excused from the meeting.

Generally, the Chairperson of the Board, the Secretary, the Treasurer and one or two Board members constitute the Executive Committee. The size of the Executive Committee is smaller than the Board and may vary from 4 to 10 members. The Committee can have external members who are eminent persons in their field of expertise.

4.1. Meetings

An ideal frequency of Executive Committee meeting is four meetings in a year i.e. one meeting every quarter. These meetings are convened by the convener of the Executive Committee. Generally, the convener is the CEO or the Secretary of the Board. The Minutes of the meetings of Executive Committee must be maintained along with the attendance register. The meetings are chaired by the Chairperson of the Board if he/she is a part of the Executive Committee. If the Chairperson is not a part of the Executive Committee then one of the members of the Executive Committee is appointed as the Chairperson of the Executive Committee. Generally, it is provided in the rules and regulations of the organization.

5. ROLES & RESPONSIBILITIES OF AN EXECUTIVE COMMITTEE

The role and responsibilities enshrined upon the Executive Committee are:

- General management of the organization
- To make necessary operational decisions on behalf of the Board and get them ratified in the subsequent Board meetings

- Prepare annual plans, budgets and other reports; present the same to the Board; and finally implement them once approved by the Board
- Handle issue related to recruitment, appraisals and capacity building
- Ensure operational implementation of policies and procedures
- Guide and direct the management in the implementation of various programs.
- Review of various risks and take necessary mitigation measures

6. CONCLUSION

As the name suggests, the Executive Committee has executive powers as laid down in the byelaws. Also, there must be checks and balances to see that the Committee does not overstep the authority of the Board. It is always important to strike a critical balance between the role of the Board and that of the Executive Committee so that they can play complementary roles which will result in better oversight and governance of the organization.

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(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD COMMITTEES - AUDIT COMMITTEE

- Sanjay Patra, FMSF

1. INTRODUCTION

It is well established fact that the board should exercise its oversight functions efficiently in order to make the governance effective. It has been reiterated time and again that board is the highest decision making body within an organization and thereby the highest body where accountability finally rests. In order to efficiently exercise its oversight function, the board works through setting up various committees. One very important committee which a board can set up is "Audit committee".

Before going into the formation and other issues around the audit committee, it is important to develop a basic understanding on audit. Audit is an independent assessment of the true and fairness of the financial statements prepared by the organization. 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 even though the management of an organization is given the task of preparing financial statements, it is eventually the responsibility of the board to ensure that the financial statements are properly prepared. The duty of the auditor is to express his/her opinion on the financial statements.

Apart from the mandatory statutory audit, the board should also ensure regular Internal Audits. Internal Audits are not mandatory in nature. 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.

Another type of audit is special purpose audit or project audit. Project audits are

conducted depending on the conditions of the project contract with the donor agencies.

2. NEED FOR AUDIT COMMITTEE

Audit is basically an inspection of an organization's accounts, typically by an independent body. Since, the management of an organization is subjected to audit; it is a good practice to hold this function at the highest level within the organization i.e. at the board level. This is to ensure that the audit process is independent and free from any influence from the persons who are subjected to the audit process.

When the organization is small, the board collectively can discharge this function. However, as the organization grows in size and complexity, the audit function requires more time and even specialised skills. Therefore, generally the board appoints a standing committee which is known as "Audit Committee" to oversee this function. The audit committee being a subcommittee of the board remains independent of the management and deals with audit issues within the organization.

An audit committee is one of the committee of the Board charged with oversight of financial reporting and disclosure, reducing risk, and maintaining donor and other stakeholder's confidence. An audit committee not only minimizes such risks, but also instills confidence in prospective donors and stakeholders. An audit committee provides the Board with a clear, independent voice to address financial matters.

However, it is important to remember that the creation of an audit committee does not absolve the individual board members of their responsibilities.

3. COMPOSITION

The audit committee should have a minimum of three members of whom two should be board members. Generally, the treasurer of the organization is part of the audit committee and is designated as Chairperson/Convener of the Committee. Apart from the two members, the board can nominate one/two person's (who can be from outside the board) to be co-opted based on the specialised skills in the areas of financial management.

The Chief Functionary and the Head-Finance desk generally, participate in the meeting as invitees and they will have a limited role to facilitate the meeting with documents etc. This practice ensures independent functioning of the committee. Therefore, the composition of the audit committee will look somewhat like this:

COMPOSITION OF AUDIT COMMITEE		
Chairperson/ Convener	Treasurer	1 Person
Members	Board Members	1 to 2 Person
Co-opted Members	Outside the Board	1 to 2 Person
In attendance as invitees	Chief Functionary and Head - Finance	2 Person

4. MANDATE

4.1. To oversee the financial reporting and disclosure practices: One of the primary responsibilities of the audit committee is to oversee the accounting and reporting practices and financial statements. This includes making sure that the financial statements are understandable and transparent.

4.2. Hiring, performance and independence of external auditors: Overseeing the external process is one of the key responsibilities of the audit committee. The audit committee is responsible for appointment, independence, audit scope and compensation. Further, the committee also addresses the audit observations and action to be taken thereon.

4.3. To have oversight on regulatory compliances: The committee is generally given the responsibility to ensure that the statutory and other contractual compliances are complied with on time. This includes filing of returns required under various laws and regulations as well as any other donor reporting requirements as well.

4.4. To monitor internal control and risk management processes: While the audit committee's key focus is on financial reporting controls, audit committees should oversee controls that ensure legal and regulatory compliance. It is the responsibility of the audit committee to understand key controls and financial reporting risk areas as assessed by the external auditor, the internal auditors and other parties, as well as mitigating controls and safeguards.

Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained.

The need for an internal audit function will vary depending on organization specific factors including the scale and diversity of the organization's activities, the number of employees, and the cost/benefit considerations.

4.5. To oversee the performance of internal audit function (if any): In those organization where there is an internal audit process in place, it is the responsibility of the audit committee to ensure that the internal audit is effective, timely and the reports are internally processed as well as recommendations are properly implemented within the organization.

5. ENGAGEMENT WITH THE BOARD

The audit committee by virtue of being a subcommittee of the board gets its mandate from the board. Therefore, it has to function within the parameters of the mandate given by the board. The minutes of the Audit Committee meeting is generally circulated to the board members and the decisions taken are ratified by the board in its subsequent meetings.

6. FREQUENCY OF MEETINGS, AGENDAS, MINUTES

Generally, it is expected that the audit committee would meet at least two times and maximum four times a year. As a good practice, it is encouraged that the audit in an organization is undertaken twice a year. Therefore, the audit committee should meet soon after the conclusion of audit in order to review the findings and observations. In the meeting, the auditor is invited to make a presentation on the audit findings. On the basis of these discussions, necessary plan of action is evolved. Apart from the audit issues, the audit committee also reviews the compliances, internal controls and risk management issues as well.

The agenda for the meeting is set by the Chairperson who is generally the treasurer of the organization in consultation with Chief Functionary and Head Finance Desk. The minutes are recorded by the Head-Finance desk and approved by the Chairperson-Audit Committee. As mentioned above, the minutes of each meeting are circulated to board members for information and later on they are ratified in subsequent board meeting.

7. CONCLUSION

An audit committee must understand its responsibilities and monitor its effectiveness, identifying improvement needs and opportunities.

A well-informed, responsible audit committee can provide accountability, as the very purpose of setting up an audit committee is to help maintain the organization's overall integrity, financial credibility and long-term viability.

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(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD COMMITTEES - FINANCE COMMITTEE

- Sanjay Patra, FMSF

1. INTRODUCTION

It is the fiduciary responsibility of the Board of an organization to be accountable for the finances. In other words, the Board is expected to oversee the financial affairs of the organization and is accountable to the donors, government, community and society at large. Therefore, the Board has the ultimate responsibility for the financial affairs of the organization.

This would mean that there should be a lot of hands-on work for the Board members to keep a strict oversight on the financial affairs of the organization. However, there may be issues of capacity and time at the Board members' end to effectively discharge this responsibility. Not all Board members would have the financial management accumen. Secondly, since the Board members provide voluntary service to the organization, they may not have adequate time to devote to detailed financial oversight. Therefore, the Board sometimes appoints a Finance Standing Committee consisting of some Board members and specialists. A Standing Committee is an on-going Committee with a clear mandate whereas adhoc (which denotes specific purpose) Committees are setup for a particular task/ time period and after the task in accomplished, they stand dissolved.

The Finance Committee is generally a Standing Committee of the Board that works with the senior staff team (Chief Functionary and Head Finance) to monitor the finances of the organization.

2.WHY DO WE NEED FINANCE COMMITTEE?

The Finance Committee supports the Board in fulfilling its fiduciary responsibilities.

- It can protect the organization from legal challenges;
- It provides oversight to financial

management;

- Protects the organization from actual as well as apparent conflict of interest;
- Acts as the Boards's eye and ears in financial operations;
- Acts in advisory capacity in financial operations;
- Can be helpful in recruiting strategic finance staff;
- Can facilitate audit process;
- Can interpret the audit report for the Board;
- Can liaise with the auditors.

3.RESPONSIBILIES OF FINANCE COMMITTEE

The major responsibilities of the Finance Committee are:-

- To oversee the financial affairs of the organization;
- To oversee annual audit process;
- Oversight of the financial management;
- To ensure that there is clear linkage between Program and Finance;
- To report to the Board about the financial management of the organization on regular basis.

4. WHO CAN BECOME THE MEMBERS OF A FINANCE COMMITTEE?

The following individuals can become the members of the Finance Committee:

- Treasurer (Ex-officio Chair);
- Two Board members;
- Two/three persons having expertise in NPO finance management/related fields (from outside the Board) like Chartered Accountants (CA), Advocate, Bankers, Finance Head and other persons with related experience;
- Chief Functionay and Head Finance participate as invitees.

5.HOW TO CREATE AND MANAGE FINANCE COMMITTEE?

5.1 Create a mandate

It is very important to clearly develop a Terms of Reference (ToR) for the Finance Committee. Generally, the ToR or the mandate of the Finance Committee is determined by the Board. The mandate would depend upon the willingness of the Board to delegate the financial responsibilities. One important issue to be kept in mind is that the ultimate responsibilty for the organization rests with the Board. Therefore, strategic and critical decisions should not be delegated to any of the sub-committees of the Board. The Finance Committees should have more of supervisory and advisory role rather than a critical decision making role.

5.2. Choose the members

There should be a clear guideline for choosing memberso of the Finance Committee. The Board should select the Finance Committee in its Annual General Meetings (AGM) every year. The composition of the members of the Finance Committee should be a combination of Board members, staff, as well as certain subject matter

experts. A broad combination of the Finance Committee has been mentioned in point no.4.

5.3. Establishing processes

The Board should determine the number of times the Finance Committee should meet. Generally, the Finance Committee meets three to four times a year. The minutes of the meeting should be clearly recorded and circulated to all the Board members for information. Major actions taken by the Finance Committee should be placed before the next Board meeting for ratification.

5.4. Induction plan

There should be a clear induction plan for the new members of the Finance Committee. For the induction process, the Chair of the Finance Committee (generally the Treasurer) and the Chief Functionary should be involved. Certain key documents i.e. finance policy, human resource policy and other major policies, audited financial statements for last three years, annual activity report and any other relevant papers need to be provided. The induction process can happen before the first Finance Committee meeting.

6. ROLE OF CHAIR OF FINANCE COMMITTEE

As mentioned earlier, generally the Treasurer acts as the Chairperson of the Finance Committee. Therefore, the following roles are envisaged as the Chair of the Finance Committee:

- Chairing the meetings;
- Finalizing the agenda with the Chief Functionary and Head of Finance;
- Ensuring that clear and proper minutes of the meetings are recorded;
- Ensuring that decisions are implemented in appropriate time and reported back to the committee;
- Keeping the Board informed about the issues and decisions of the Finance Committee, at periodic intervals.

7. CONCLUSION

Although, the entire Board carry the overall responsibility of the organization, the Finance Committee provides a leadership role in the area of financial transactions. Further, Finance Committees can also be assigned with ensuring compliance and /or developing policies that further serve to protect the organization and manage its exposure to financial risks. An organization with a good financial systems i.e. where policies and procedures pertaining to risk mitigation are in place is an indicator of an organization that is actively developing strategies to carefully use the financial resources, necessary to support activities towards the fulfillment of its mission and vision.

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(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD COMMITTEES - HUMAN RESOURCE COMMITTEE

- Sanjay Patra, FMSF

1. INTRODUCTION

In non-profit organizations, human resource plays a key and pivotal role. Human resource is also an important asset of the organization. Therefore, it is important to develop, nurture, preserve and protect the very human resource of an organization.

As we have seen in the previous issues, the Board is responsible for proper governance and management of the organization. This would also include management of human resource of the organization. In case of medium or large organizations, the Board generally sets up a human resource (HR) Committee to support itself in discharging the HR Functions.

2.OBJECTIVES OF HUMAN RESOURCE COMMITTEE

The objective of the HR Committee is to oversee the following functions:

- Recruitment of key personnel
- Appraisals
- Compensation packages
- Service conditions
- Discipline
- Succession

3. RESPONSIBILIES OF HUMAN RESOURCE COMMITTEE

The specific responsibilities that the Committee carries out on behalf of the Board are as follows:

- To review, monitor and makes recommendations to the Board on human resource strategies and policies that pertain to staffing, compensation, benefits, and related issues of strategic importance;
- To conduct an assessment of the performance of the Chief Functionary at least on an annual basis. In addition to it, review the compensation on an annual basis; To review and provide

recommendations to the Board concerning the approval or amendments to the Human Resource policy;

- To identify and meet the training/ capacity building needs of existing staff;
- To report its actions and recommendations, if any to the Board after each Committee meeting.

4. STRUCTURE OF THE HUMAN RESOURCE COMMITTEE

The HR Committee is said to be a sub-committee of the Board. In other words, the Committee's functions are determined by the Board. The Board may delegate certain functions related to Human Resource to the HR Committee. Therefore, the HR Committee derives its mandate from the Board and also reports back to the Board.

The HR Committee should have a minimum of three members of whom two should be Board members. The Board can nominate members from among them who have expertise or interest in the areas of human resource management. Further, depending on the size and needs of the organization, the Board can also opt for one/two person's (who can be from outside the Board) to be co-opted based on the specialized skills.

The Chief Functionary and the Head-Human Resource desk generally, participate in the meeting as invitees and they will have a limited role to facilitate the meeting with documents etc. This practice ensures independent functioning of the committee.

The Board shall appoint the Chairperson of the Committee who shall be independent. Further, the appointment and removal of Committee members shall be the responsibility of the Board.

5. HOW TO CREATE AND MANAGE HUMAN RESOURCE COMMITTEE?

5.1. Create a Mandate

It is important to have a predefined mandate that clarifies the role, purpose and responsibilities given to the Committee. The Board is entrusted with the responsibility of finalizing the mandate as they are the ones who are delegating their function and know what they expect from the committee. In other words, mandate provides terms of reference for the HR Committee.

5.2. Meetings

The Board depending on the size and needs of the organization shall determine the frequency of HR Committee meetings. Generally, the Committee shall meet twice annually, with pre-determined dates and agendas, and shall hold special meetings as and when required. Further, since the Committee members are also occupied at other places, it is recommended to have an annual work plan for the year, and Committee meets regularly with pre-determined dates and agendas.

5.3. Reporting

A reporting mechanism should be in place so that the Board can be kept up to date with progress, consider proposals from the Committee and ratify any decision taken by the Committee within its terms of reference. The Committee shall also provide to the Board such other information as the Board may require.

6. CONCLUSION

It is important to have proper set up of human resource management in an organization to avoid losses i.e. both financial and goodwill. To overcome such situations, organizations put a lot of effort and energy into setting up strong and effective human resource management practices. Thus, the Board which has the oversight responsibility delegates its function to the HR Committee which is a small group of experts focusing in detail on a particular issue. This allows the Board to ensure that sufficient attention is being paid to specific issues and in a timely manner.

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(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

Others

WORKSHOP ON INTERNAL CONTROL SYSTEMS FOR PAKISTAN

The Internal Control workshop was organized for BftW Pakistan Partners from 20th March to 21st March, 2014 in Kathmandu, Nepal. There were 12 participants from 6 BftW Pakistan Partner Organizations and 2 participants from a consultancy firm also based in Pakistan, CHIP Training & Consultancy (Pvt.) Ltd.

The workshop brushed through various aspects of financial management system such as internal control system; audit; financial formats/tools like travel report, cash flow, budge variance analysis report; risk management; BftW Requirements; and Policy setting specific to Pakistan.

Mr. Sandeep Sharma was the key facilitator for all the sessions. The session on Policy setting was taken up by Mr. Muhammad Irfan Farid from CHIP Training and Consulting (Pvt) Ltd. Ms. Gerlind Schneider, was also present for the workshop from Bftw.

The response from the participants was overwhelming. They expressed that all sessions were very beneficial and suggested that such workshops should be organized for Pakistan partners at regular intervals.

WORKSHOP ON INTERNAL CONTROL SYSTEMS FOR NEPAL PARTNERS

The workshop on Internal Control was organized by FMSF on 19th and 20th February, 2014 for BftW partners at Kathmandu, Nepal. There were 29 participants from 14 BftW Partner organizations in Nepal. The workshop was facilitated by Mr. Sanjay Patra and Mr. Sandeep Sharma. The topics that were covered during the workshop were internal control; financial management and financial manual; Policies on common cost, conflict of interest; clarification on notional cost; BftW requirements; review of existing policy; risk assessment, control, risk mitigation strategy, etc

BFTW PARTNER AUDITORS MEET 2014
18th FEBRUARY 2014, NEPAL

The Auditor Meet was organized by FMSF on 18th February, 2014 for BftW Partners auditors at Kathmandu, Nepal. There were 10 auditors as participants who were auditors of 10 different BftW Partner organizations in Nepal. The meet was facilitated by Mr. Sanjay Patra and Mr. Sandeep Sharma.

The topics that were covered during the meet were audit issues related to project management such as financial statements; audit framework; quality of voucher support evidence; separate bank account for project; concept of notional expenditure, own means of contribution, allocation of common cost; exchange rate gain; utilization of project assets for other projects; Management Letter, etc. Experiences of external financial evaluations were also shared.

WORKSHOP ON GOVERNANCE,
12th & 13th NOVEMBER, 2013, BANGALORE

The workshop on Governance was organized by FMSF on 12th and 13th November, 2013 for BftW partners in India. Workshop was attended by 19 participants from 10 partner organizations. The workshop was also attended by Ms. Roswita Kupke, Head South Asia Desk, BftW Germany and Ms. Ishani Skanthakumar from PALTRA, Sri Lanka. The resource persons for the workshop were Mr. Sanjay Patra, Executive Director and Mr. Sandeep Sharma, Head Program Desk, from FMSF.

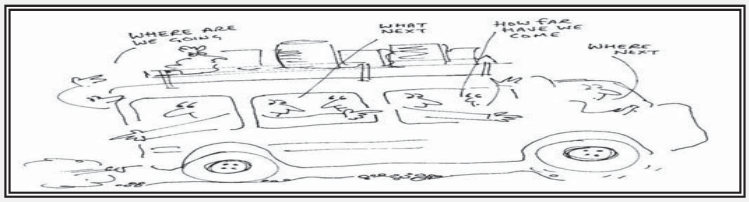
The topics that were covered during the workshop were Board Recruitment & Orientation Process; Board processes; roles and responsibilities of CEO and Board; Oversight Function of Board, Risk Management, Conflict of Interest.

The following were the take away that were shared with the partner:

1. Review the last three years Board meeting minutes and identify the number of decisions that have been taken. This exercise would help them to analyze the productivity of the Board meetings.
2. Develop a Governance Manual
3. Develop a Conflict of Interest Policy
4. Identify Risk and develop a mitigation plan with time frame.

The participants needed to implement them in their organization as good governance practices.

NPO GOVERNANCE PROGRAMME
(4 MONTHS CERTIFICATE PROGRAMME)



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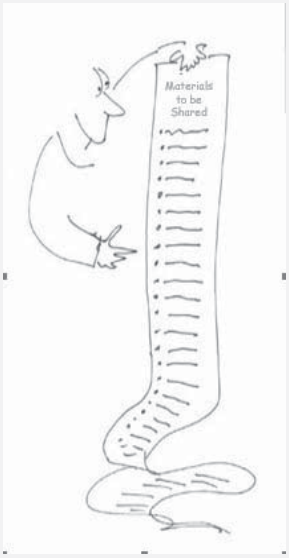

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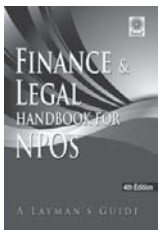

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ISSN 0972-7248

9 770972 724006

Design & Print : Crystal Communications 98119 13799