

INTER *face*

Vol. XI

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Special Focus

Legal Issues

- FCRA
- EPF & Gratuity

Between Us

REACTING OR RESPONDING

The Incident:

At a Restaurant, suddenly a cockroach flew from somewhere and sat on a person standing there waiting for a table along with a group of friends.

He started screaming out of fear. With panic stricken face and trembling voice, he started jumping, with both his hands desperately trying to get rid of the cockroach. His reaction was contagious, as everyone in his group got affected with what was happening. He finally managed to push the cockroach to a lady in the group. Now, it was the turn of the lady to continue the show. The waiter rushed forward to their rescue.

In the relay of throwing, the cockroach next fell upon the waiter.

The waiter stood firm, composed himself and observed the behavior of the cockroach on his shirt.

When he was confident enough, he grabbed and threw it out with his fingers.

A few thoughts:

- Was the cockroach responsible for the person's histrionic behavior?
- If so, then why was the waiter not disturbed? He handled it near to perfection without any chaos or drama.
- So, it was not the cockroach, but the inability of the persons to handle the disturbance caused by the cockroach that disturbed them.

We need to realize that most of the time, it is not the shouting or scolding that disturbs us, but our own inability to handle the disturbances caused by their shouting that disturbs us.

Similarly, it's not the traffic jams on the road that disturbs us, but our inability to handle the disturbance caused in our minds by the traffic jam that disturbs us.

More than the problem, it's our own reaction to the problem that hurts us!

The Take-Away:

- The persons reacted but the waiter responded.
- We need not react in life; we need to always respond.
- Reactions are instinctive; responses are intellectual.



Sanjay Parni

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

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Legal Section

Applicability of FCRA

- Manoj Fogla, FCA

1. TO WHOM FCRA, 2010 APPLIES

1.01 As per the FCRA 2010, the law applies to whole of India including Indian 'persons' domiciled outside India. The specific section for the applicability of FCRA is reproduced as under:

*Section 1(2) It extends to the whole of India, and it shall also apply to—
(a) citizens of India outside India; and
(b) associate branches or subsidiaries, outside India, of companies or bodies corporate, registered or incorporated in India.*

1.02 It may be noted that the scope of the FCRA 2010 has been broadened. This is evident from the preamble to the Act itself which is reproduced as under:

*An Act to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by **certain individuals or associations or companies** and to prohibit*

acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

1.03 It may be noted that the act applies to certain individuals or associations or companies. These individuals or entities have been defined in the definition of the term "person" under section 2(1)(m).

2. WHO IS COVERED UNDER THE TERM "PERSON"

2.01 The individuals or entities covered in the definition of the term "person" under section 2(1)(m) is as under :

"person" includes—

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

2.02 Further the term “association” has been defined under section 2(1)(a) as under :

“association” means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860, or not, and any other organization, by whatever name called;

2.03 The term ‘association’ covers all types of associations in the widest possible sense. The Act does not specify registration as a condition precedent for the purposes of this Act. It is not necessary for an association to be a registered one but there must be some documentary evidence to establish the existence and activities of the association. All types of conceivable associations of two or more individuals are covered under the definition of the Act. All charitable organizations (educational, social, cultural, religious, political etc.), societies, trusts, companies etc. are covered under the Act. Organizations established for the promotion of science, research, literature, fine arts, libraries, museums, hospitals, trade unions come

within the purview of this Act. It also includes co-operative societies, firms registered under the Partnership Act, 1932 and chit fund societies created under the Chit Funds Act, 1982 etc.

3. WILL VILLAGE LEVEL SHGs & CBOs BE COVERED

3.01 As explained above, the term ‘association’ is very broad and wide. It includes all kinds of associations and group of persons existing for a definite purpose. It is important to refer section 11(1) of FCRA, 2010 which is as under :

*“Save as otherwise provided in this Act, no person **having a definite** cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government.”*

3.02 It can be seen that all persons including unregistered associations are subject to FCRA if they have a definite purpose of existence. Therefore, any transfer of funds to SHGs & CBOs which are not registered under FCRA and constituted for a specific purpose should be made only with prior approval under Rule 24 of FCRR 2011.

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

What is FOREIGN CONTRIBUTION & FOREIGN HOSPITALITY

- Manoj Fogla, FCA

1. THE STATUTORY DEFINITION

1.01 Section 2(1)(h) of FCRA 2010 defines 'Foreign Contribution' as follows :

“(h) “foreign contribution” means the donation, delivery or transfer made by any foreign source,-

(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf (now the sum specified is Rs. 25,000/-).

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation)

Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

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

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

Explanation 3.— Any amount received, by any person from any

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

1.02 Section 2(1)(i) of FCRA 2010 defines ‘Foreign hospitality’ as follows :

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

2. WHAT IS INCLUDED IN FOREIGN CONTRIBUTION

2.01 As is evident from the definition, the scope of foreign contribution has been broadly divided into three parts *i.e.* (i) article, (ii) currency, both Indian and foreign and (iii) foreign security received from a foreign source. The scope is broad enough to include any conceivable receipt from foreign source except those receipts which are expressly excluded.

2.02 FCRA 2010 further clarifies that the following income/receipts shall also be included as a part of foreign contribution :

- **FC received as subsequent receiver:** Any foreign contribution received from any person who has received it from any foreign source, either directly or indirectly shall also be deemed to be foreign contribution. In other words, any foreign contribution received as subsequent receiver shall also be treated as foreign contribution and shall be subject to FCRA.
- **Any Income from FC funds or Assets or Project:** Any interest or income generated from foreign contribution or foreign assets or FC projects shall also be treated as a part of foreign contribution. In other words, all income from FC assets and FC funds should be considered as a part of foreign contribution and be reported accordingly.

2.03 All ‘persons’ should be careful about the treatment of various income generated from foreign contribution and foreign assets. Such income should not be treated as local income or reflected in local books of account.

Some examples are as under:

- Interest on FC funds and investments.
- Rent from building created out of FC funds.
- Rent/Income from FC assets such as vehicle, conference facilities, photo copiers etc.
- Income generated from various programmes including micro-finance, sale of goods/services generated out of FC projects.
- Repayment received or any other receipts against FC projects.

3. CAN FOREIGN CONTRIBUTION BE RECEIVED IN RUPEES?

3.01 Yes. Any amount received from 'foreign source' in rupees or foreign currency is construed as 'foreign contribution' under law. Such transactions even in rupees term are considered foreign contribution. In this context, it is important to understand that contribution in any form received from foreign source shall be covered under FCRA 2010.

4. WHAT IS THE LIMIT OF RECEIVING ARTICLE OR GIFT FROM FOREIGN SOURCES

4.01 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)."

5. HOW FC INCOME SHOULD BE ACCOUNTED AND REPORTED

5.01 All income generated from FC assets, funds and projects should be shown as second/subsequent foreign contribution receipt in the annual return during the year in which it is earned.

- All income should be accounted as FC receipts in the year in which it is earned. All money received through banking channel should be deposited in the designated FC bank account only.

6. WHAT IS EXCLUDED FROM FOREIGN CONTRIBUTION

6.01 Explanation 3 to Section 2(1)(h) of FCRA, 2010 provides that all commercial receipts received from foreign sources shall be excluded from the purview of FCRA. It specifically provides that any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution.

6.02 FCRA 2010 has rationalized and relaxed the scope of foreign contribution by excluding commercial transactions from its purview. **As clarified in Explanation 3, foreign contribution excludes earnings from foreign client(s) by a person in lieu of goods sold or services rendered by it as this is a transaction of commercial nature.** In this regard it may be noted that any consultancy or commercial receipt should not be deposited in the designated FC bank account. Organizations and persons may receive such amount in their domestic bank

accounts subject to the provisions of FEMA and other applicable statutes.

7. FEE PAID BY THE FOREIGN DELEGATES ATTENDING A CONFERENCE/SEMINAR

7.01 “Delegate/participation Fees” paid in foreign currency by foreign delegates/participants for participation in a conference/seminar and which is utilized for the purpose of meeting the expenditure of hosting the conference/seminar is not treated as foreign contribution and as such no permission under FCRA is required.

8. MODE OF RECEIPT IS WIDE

8.01 Again, the mode of receipt has been kept extensively wide so as to cover donation, delivery or transfer made by any foreign source. For instance, contributions received in Indian rupees in India from a foreign source shall be treated as foreign contribution, and also any gift of foreign security received from foreign source will be treated as foreign contribution.

9. CONTRIBUTIONS BY INDIAN CITIZEN

9.01 It may be noted that contribution made by a citizen of India living in another country, from his personal savings, through the normal banking channels, is not treated as foreign contribution. It is advisable to obtain the passport details of the concerned citizen of India before accepting such contributions. It may be noted that, contribution received in foreign currency from an Indian citizen shall not be treated as foreign contribution, whereas, contribution from an Indian

who has acquired foreign citizenship is treated as foreign contribution. This will also apply to PIO card holders and to overseas citizen of India (OCI).

10. MEANING OF ‘FOREIGN SECURITY’

10.01 The term ‘foreign security’ has been defined under section 2(o) of the Foreign Exchange Management Act, 1999 as—

“(o) ‘foreign security’ means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;”

11. WHO CANNOT ACCEPT FOREIGN HOSPITALITY WITHOUT PRIOR APPROVAL

11.01 Section 6 of FCRA, 2010 prescribes that “No member of a Legislature or office bearer of a political party or Judge or Government servant or employee of any corporation or any other body owned or controlled by the Government shall, while visiting any country or territory outside India, accept, except with the prior permission of the Central Government, any foreign hospitality. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but, where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such

hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received by him.”

12. POWER TO PROHIBIT ANY PERSON FROM RECEIVING FOREIGN CONTRIBUTION OR HOSPITALITY

12.01 In terms of section 9 of FCRA 2010, the Central Government may prohibit any other person, not specified in section 3 or 6 (as discussed earlier), from receiving foreign contribution or hospitality. The provisions of section 9 are as under:

Section 9 - Power of Central Government to prohibit receipt of foreign contribution or foreign hospitality in certain cases –

9. The Central Government may—

- (a) prohibit any person or organization not specified in section 3, from accepting any foreign contribution;
- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which

such foreign contribution was utilized;

- (d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received.

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

- (i) the sovereignty and integrity of India; or
- (ii) public interest; or
- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

13. WHETHER APPROVAL IS REQUIRED IF FOREIGN VISIT IS UNDERTAKEN IN PERSONAL CAPACITY

13.01 No. Any person belonging to any of the categories specified in Section 6 of FCRA 2010 would require such approval only if the person concerned is seeking foreign hospitality from a foreign source. Any foreign travel made from personal sources is not covered.

14. HOW TO SEEK PERMISSION FOR RECEIVING FOREIGN HOSPITALITY?

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

- (1) Any person belonging to any of the categories specified in Section 6 who wishes to avail of foreign hospitality shall apply to the Central Government in Form FC-2 for prior permission to accept such foreign hospitality.
- (2) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.
- (3) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily

two weeks before the proposed date of onward journey.

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

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

15. WHEN PERMISSION FOR FOREIGN HOSPITALITY IS NOT REQUIRED

15.01 The following cases need not be submitted to the Ministry for grant of permission to accept foreign hospitality:-

- (i) Where the entire expenditure on the proposed foreign visit is being met by the Central/State Government or any Central/State PSU etc.
- (ii) Where the proposed foreign visit is being undertaken by a person in his/her personal capacity and the entire expenditure thereon is being met by the person concerned.
- (iii) Where the foreign hospitality is being provided by an Indian national living in a foreign country or territory.
- (iv) Cases involving acceptance of an assignment on salary, fee or remuneration etc.

- (v) Cases involving funding offered by an agency/organization which are **not** treated as “foreign source”.
- (vi) Cases involving visits undertaken by the Members of an Indian Parliamentary delegation under bilateral exchange.
- (vii) Cases involving visits undertaken in pursuance of a bilateral agreement between the Government of India and the Government of the country concerned, approved by the Ministry of Finance (Department of Economics Affairs).
- (viii) Cases involving long term/short term foreign training courses approved by the Department of Personnel & Training.

16. THE CLEARANCE TO RECEIVE FOREIGN HOSPITALITY IS NOT ADMINISTRATIVE IN NATURE

16.01 Permission accorded under FCRA, 2010 to accept foreign hospitality should not be construed as equivalent to administrative clearance, which has to be obtained separately by the person concerned from the competent authority in the concerned Ministry/Department.

17. CHECK LIST FOR APPLICATION FOR RECEIVING FOREIGN HOSPITALITY

17.01 The following should be complied with while forwarding application to the Ministry of Home Affairs, Foreigners Division:

- (i) All columns in Form FC-2 must be filled up.
- (ii) All proposals for acceptance of

foreign hospitality should be accompanied with a specific recommendation of the Administrative Ministry/ Department.

- (iii) The Administrative Ministry / Department should certify the essentiality of the foreign visit. It should also be clearly indicated whether the proposal has the approval of the Ministry of External Affairs, the cadre controlling authority (applicable in respect of training programme/ workshop/seminar/study tour organized by international agencies), and the competent authority.
- (iv) A copy of the offer/invitation containing details of the foreign hospitality being offered should be invariably enclosed with each application.
- (v) Each application for grant of permission to accept foreign hospitality, complete in all respects, should reach the Ministry of Home Affairs, Foreigners Division at least **10 working days before** the scheduled date of departure of the person(s) concerned.

18. GUIDELINES ISSUED BY CENTRAL GOVERNMENT ON ACCEPTING FOREIGN HOSPITALITY

- The Central Government has issued Guidelines for consideration of proposals for acceptance of foreign hospitality under the Foreign Contribution

(Regulation) Act, 2010 vide
Notification No. II/21022/58(97)/
2011-FCRA-I dated the 20th

September, 2011. The said
guidelines are provided in
Annexure 1.

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

Annexure-1

GUIDELINES ISSUED BY THE CENTRAL GOVERNMENT FOR PROPOSALS FOR ACCEPTANCE OF FOREIGN HOSPITALITY

Most Immediate

No. II/21022/58(97)/2011-FCRA-I
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Foreigners Division
(FCRA Wing)

NDCC-II Building, 1st Floor,
'A' Wing, Jai Singh Road,
New Delhi - 110001

Dated: the **20th September, 2011**

OFFICE MEMORANDUM

Subject: **Guidelines for consideration of proposals for acceptance of foreign hospitality under the Foreign Contribution (Regulation) Act, 2010.**

The Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011) have come into force with effect from 01.05.2011. The provisions under the Act/Rules relating to 'foreign hospitality' and guidelines to be followed for consideration of proposals for acceptance of the same are hereby circulated for information and compliance by all concerned.

2. Statutory Provisions: The relevant provisions of FCRA, 2010 are reproduced below:
Section 2 (1) (i): "Foreign Hospitality" means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

Section 2 (1) (j): "Foreign source" includes -

- (i) the Government of any foreign country or territory and any agency of such Government;

- (ii) any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g)*;
- (vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-
 - (A) the Government of a foreign country or territory;
 - (B) the citizens of a foreign country or territory;
 - (C) corporation incorporated in a foreign country or territory;
 - (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
 - (E) foreign company;
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- (ix) a society, club or other association of individuals formed or registered outside India;
- (x) a citizen of a foreign country.

*A corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation –

- (a) has a subsidiary or branch or place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories.

Section 2 (1) (k): “Legislature” means -

- (A) either House of Parliament;
- (B) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;
- (C) Legislative Assembly of a Union Territory constituted under the Government of Union Territories Act, 1963;
- (D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;
- (E) Municipality as defined in clause (e) of article 243P of the Constitution;
- (F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution;
- (G) Panchayat as defined in clause (d) of article 243 of the Constitution; or
- (H) Any other elective body as may be notified by the Central Government.

Section 2 (1)(m): “person” includes:-

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

Section 2 (1) (n): “political party” means:-

- (i) an association or body of individual citizens of India –
 - (A) to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act,1951; or
 - (B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order,1968;
- (ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No. 56/J&K/02, dated the 8th August,2002, as in force for the time being.

Section 6 - Restriction on acceptance of foreign hospitality:

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

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

Section 9 - Power of the Central Government to prohibit receipt of foreign hospitality in certain cases –

The Central Government may –

- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received;

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially –

- (i) the sovereignty and integrity of India; or
- (ii) public interest; or

- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

3. Provisions under the Rules: The relevant provisions of FCRR, 2011 are reproduced below:

Rule 7 - Receiving foreign hospitality by specifies categories of persons. –

- (1) Any person belonging to any of the categories specified in Section 6 who wishes to avail of foreign hospitality shall apply to the Central Government in Form FC-2 for prior permission to accept such foreign hospitality.
- (2) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or Department concern in case of visits sponsored by a Ministry or Department of the Government.
- (3) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.
- (4) In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within sixty days of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

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

4. Copy of Form FC-2 is available on MHA's web-site—<http://mha.nic.in/fcra/forms/fc-2.pdf>

5. List of agencies of the United Nations and other International Organizations, which are **not** treated as "foreign source", are available on MHA's website <http://mha.nic.in/fcra/intro/FCRA-exemptedAgenciesUN.pdf>

6. The following cases need **not** be submitted to this Ministry for grant of permission to accept foreign hospitality:-

- (i) Where the entire expenditure on the proposed foreign visit is being met by the Central/ State Government or any Central/State PSU etc.
- (ii) Where the proposed foreign visit is being undertaken by a person in his/her personal capacity and the entire expenditure thereon is being met by the person concerned.
- (iii) Where the foreign hospitality is being provided by an Indian national living in a foreign country or territory.
- (iv) Cases involving acceptance of an assignment on salary, fee or remuneration etc.
- (v) Cases involving funding offered by an agency/organization mentioned in Annexure-2.
- (vi) Cases involving visits undertaken by the Members of an Indian Parliamentary delegation under bilateral exchange.

- (vii) Cases involving visits undertaken in pursuance of a bilateral agreement between the Government of India and the Government of the country concerned, approved by the Ministry of Finance (Department of Economics Affairs).
 - (viii) Cases involving long term/short term foreign training courses approved by the Department of Personnel & Training.
7. The responsibility of ensuring full compliance with the provisions FCRA, 2010 lies with the person proposing to avail the foreign hospitality. It should, therefore, be ensured that the foreign visit involving acceptance of foreign hospitality is undertaken only after obtaining the requisite permission under the said Act.
8. Permission accorded under FCRA, 2010 to accept foreign hospitality should not be construed as equivalent to administrative clearance, which has to be obtained separately by the person concerned from the competent authority in the concerned Ministry/Department.
9. All Ministries/Departments are requested to ensure that the following points have been complied with while forwarding application to the Ministry of Home Affairs, Foreigners Division:
- (i) All columns in Form FC-2 must be filled up.
 - (ii) All proposals for acceptance of foreign hospitality should be accompanied with a specific recommendation of the Administrative Ministry/Department.
 - (iii) The Administrative Ministry /Department should certify the essentiality of the foreign visit. It should also be clearly indicated whether the proposal has the approval of the Ministry of External Affairs, the cadre controlling authority (applicable in respect of training programme/workshop/seminar/study tour organized by international agencies), and the competent authority.
 - (iv) A copy of the offer/invitation containing details of the foreign hospitality being offered should be invariably enclosed with each application.
 - (v) Each application for grant of permission to accept foreign hospitality, complete in all respects, should reach the Ministry of Home Affairs, Foreigners Division at least **10 working days before** the scheduled date of departure of the person(s) concerned.

(J.K. Chattopadhyay)

Deputy Secretary to the Government of India

Tel: 23071157

To:

1. All Ministries/Department of Government of India
2. The Chief Secretaries/Administrators of all States/UTs.
3. Resident Commissioners of all States/UTs
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Organizations of POLITICAL NATURE

- Manoj Fogla, F.C.A.

1. INTRODUCTION

1.01 The FCRA 2010 has amended the provision pertaining to organizations of political nature. Earlier such organizations were entitled to receive foreign contribution with prior approval. The new law has totally prohibited such organization from receiving foreign contributions. Section 3(1) (f) provides that no foreign contribution shall be accepted by organizations. The statutory definition is as under:

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

(f) Organization of a political nature as may be specified under

Subsection (1) of Section 5 by the Central Government.

2. CAN A NON POLITICAL ORGANISATION BE DECLARED AS ORGANISATION OF POLITICAL NATURE

2.01 Yes, the Central Government has framed rules for the circumstances under which any organization could be declared as an

organization of political nature. The guidelines for declaring an organization to be of a political nature, are Provided in Rule 3 of the FCR Rules 2011. The guidelines are as under:

3. Guidelines for declaration of an organization to be of a political nature, not being a political party. - The Central Government may specify any organization as organization of political nature on one or more of the following grounds:-

- (i) Organization having avowed political objectives in its Memorandum of Association or bylaws;
- (ii) Any Trade Union whose objectives include activities for promoting Political goals;
- (iii) Any voluntary action group with objectives of a political nature or which participates in political activities;
- (iv) Front or mass organizations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party;
- (v) Organization of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not

directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups;

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

2.02 From the above Rule, it can be seen that if an organization engages in various specified activities as stated above, it can be declared to be an organization of political nature. **It may be noted that once an organization is declared as an organization of political nature, it will be debarred from receiving foreign contribution for any purpose.**

2.03 It may also be noted that the nature of action may be treated as political even if the activity is apolitical in nature. In other words, the FCRA Act empowers the FCRA department to artificially deem an organization to be of political in nature if it engages in certain method of activities which normally is employed by political parties. **However, a safeguard has been provided in Section 49 of the Act which provides that any such order of declaring an organization to be of political in nature should be placed before the Parliament before becoming effective.**

3. WHAT IS A LEGISLATURE

3.01 As per section 2(1)(k) of FCRA the statutory definition of 'legislature' is as under:

(k) "Legislature" means —

(A) Either House of Parliament;

(B) The Legislative Assembly of a State, or in the case of a State having a Legislative

Council, either House of the Legislature of that State;

(C) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963;

(D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;

(E) Municipality as defined in clause (e) of article 243P of the Constitution;

(F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution;

(G) Panchayat as defined in clause (d) of article 243 of the Constitution; or

(H) Any other elective body as may be notified by the Central Government;

It may be noted that a 'Panchayat' has been included in the definition of legislature.

4. WILL WORKING WITH PANCHAYAT BE TREATED AS POLITICAL ACTIVITY

4.01 Working in rural area for development and other permissible activity is not prohibited. However, if an organization sets up candidates for Panchayat election or tries to determine/constitute the panchayat, then it may be treated as an activity of political nature. Collaborating with Panchayat in activities for the village development should not be construed as a violation.

5. PROCEDURE TO NOTIFY AN ORGANISATION OF POLITICAL NATURE

5.01 The Central Government may, under section 5 of FCRA, 2010 read with Rule 3, initiate proceedings of notifying an organization of political nature.

➤ A notice in writing shall be issued

to the organization which is proposed to be notified as an organization of political nature.

- The grounds on which the organization is proposed to be notified as an organization of a political nature shall be provided in writing.
- Such organization will have an opportunity to make a representation to the Central Government giving reasons in its defense. Such representation should be made within 30 days from the date of notice.
- If there is a delay in making representation within 30 days, then the Central Government may condone the delay if legitimate reasons are furnished.
- The Central Government may withdraw the proceedings or notify the organization as an organization of political nature within 120 days from the date of issue of notice.
- If no order is passed within 120 days then Central Government can pass the order within a further period of 60 days after recording the reasons for the delay.

5.02 The procedure of notifying an organization of political nature as provided in Section 5 of FCRA, 2010 is as under:

"5. (1) The Central Government may, having regard to the activities of the organization or the ideology propagated by the organization or the programme of the organization or the association of the organizations with the activities of any political party, by an order published in the Official Gazette, specify such organization as an organization of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3:"

Provided that the Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organization shall be specified as an organization of a political nature.

(2) Before making an order under sub-section (1), the Central Government shall give the organization in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organization of political nature under that sub-section:

(3) The organization to which a notice has been served under subsection (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organization as an organization under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organization was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organization as an organization of a political nature not being a political party and make an order under sub-section (1) accordingly.

(6) Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under subsection (2): Provided that in case no order is made within the said period of one hundred and twenty days, the Central

Government shall, after recording the reasons therefore, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

6. ORDER OF DECLARING POLITICAL NATURE TO BE LAID BEFORE PARLIAMENT

6.01 Under the section 49 of the Act provides that every order made under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament. Such order or Rules shall become effective after it is placed in both houses of the Parliament. **It may be noted that an order U/s. 5 is regarding notifying an organization to be of political nature. In other words, an organization cannot be deemed to be of political in nature unless it is placed in both houses of the Parliament.**

7. OVERALL SUMMARY

7.01 The FCRA 2010 has amended the provision pertaining to organization of political nature. Earlier such organizations were entitled to receive foreign contribution with prior approval. The new law has totally prohibited such organizations from receiving foreign contribution.

7.02 Under the new law, even a non political organization could be declared as an organization of political nature. In other

words, even if an NGO is not engaged in any political activity, certain Actions may be deemed as political activity.

7.03 NGOs should not have avowed political objectives in its Memorandum of Association or bylaws;

7.04 Any NGO, which **habitually** engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' **in support of public causes** may be declared as an organization of political nature. **However an organization can be declared to be an organization of political nature only if such order is placed in both houses of the parliament.**

7.05 It may be noted that once an organization is declared as an organization of political nature, it will be debarred from receiving foreign contribution for any purpose.

7.06 It may be noted that a 'Panchayat' has been included in the definition of legislature. NGOs should be careful about their PRI activities particularly related with **Panchayat Election and Governance.**

7.07 Working in rural area for development and other permissible activity is not prohibited. However, if an organization sets up candidates for Panchayat election or tries to determine/constitute the panchayat, then it may be treated as an activity of political nature. Collaborating with Panchayat in activities for the village development should not be construed as a violation.

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

Service Tax on NPOS AFTER BUDGET 2012

-Manoj Fogla, F.C.A.

1. INTRODUCTION

1.01 The budget 2012 has brought radical changes in Service Tax Laws. Now onwards all services shall be treated as taxable except those services which are included in the negative list of services (Refer **Annexure-1**) or are specifically exempted and notified (Refer **Annexure-2**) and shall also include certain activities that have been specified as declared services (Refer **Annexure-3**). The earlier law provided a list of taxable services and all other services were exempted whereas, under the amended law all services have become taxable other than services included in negative list or covered under exemption.

1.02. As per the existing law, all NGOs are subject to Service Tax wherever applicable. However, the budget 2012 has, exempted certain category of NGOs totally from the purview of service tax. In other words, such NGOs need not pay service tax even for providing taxable services without any financial limit. Unfortunately, very few types of NGOs have been included under

this totally exempted category. All such related matters are discussed in this issue.

2. NGOs WHICH ARE EXEMPTED

2.01 The exemption has been given to only those NGOs which are registered under section 12AA of the Income Tax Act, 1961 and carrying on one or more of the following charitable activities:

- (1) NGO engaged in public health by way of:
 - (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (b) Public awareness of preventive health, family planning or prevention of HIV infection;
- (2) NGO engaged in advancement of religion;
- (3) NGO engaged in advancement of educational programmes or skill development relating to,-
 - (a) abandoned, orphaned or homeless children;

- (b) Physically or mentally abused and traumatized persons;
- (c) Prisoners; or
- (d) Persons over the age of 65 years residing in a rural area;
- (4) NGO engaged in preservation of environment including watershed, forests and wildlife; or
- (5) NGO engaged in advancement of any other object of general public utility up to a **value of twenty five lakh rupees in a financial year** subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

In the light of the above definition, Service Tax shall be applicable –

a) To NGOs which are not registered u/s. 12AA of the Income Tax Act, 1961, for example NGOs registered u/s. 10(23C) etc. **This seems to be a drafting error as the intent could not have been to deprive NGOs registered u/s. 10(23C) etc. from the benefits which are available to NGOs which are registered u/s. 12AA.**

b) To NGOs which are engaged in relief to poor, preventive health, informal education programmes, etc.

c) In case of NGOs engaged in “advancement of any other purpose of public utility” the taxable services are exempted upto Rs 25 lakhs.

2.02 From the above it can be noted that the first 4 categories of NGOs are totally exempted from Service Tax even if they provide taxable services without any financial limits (subject to other laws). The fifth category NGOs which are for advancement of any other object of general public utility category shall be exempted only to the extent of Rs 25 lakhs. This exemption upto Rs 25 lakhs shall be available only if it had not exceeded the limit of Rs 25

lakhs in the preceding year also. It is reiterated that the limit of Rs 25 lakhs shall apply to taxable services. For example if a fifth category NGO provides taxable services to the extent of Rs 24 lakhs in a year, then it need not collect or pay any service tax. However, if the taxable services provided is Rs 26 lakhs then the entire amount of Rs 26 lakhs shall be subjected to service tax and not the additional Rs 1 lakh.

2.03 The clarification with regard to the exemption upto Rs 25 lakhs of taxable services to NGOs engaged in advancement of any other activity of general public utility is provided in the clause **6.3.2 of the explanatory circular no. D. O. F. No 334/1/2012-TRU, dated 16th March, 2012 issued by The Central Government.** The relevant extract is as under:

“What is the tax liability of a registered charity on their activities?”

If a registered charity is doing any activity falling in negative list of services or otherwise exempt, he is not required to pay service tax on that activity. In case, where his activity is covered explicitly in any of the specified charitable activities at ‘a’ to ‘d’ of the answer to 6.3.1 he is exempt from service tax without any value limit. For charitable activities mentioned at ‘e’ of the answer to 6.3.1 he is exempt up to a value of twenty five lakh rupees in a financial year if the total value of such services had not exceeded twenty five lakh rupees during the preceding financial year. However, if his activity is not for general public as defined in the notification, he is not eligible for exemption and required to pay service tax on such activities. General public is defined in the notification as ‘body of people at large sufficiently defined by some common quality of public or impersonal nature.’”

2.04 To sum up:

- The Service Tax Act has made all services taxable except those services which are specifically exempted. Under the new law, almost all services rendered by NGOs on commercial basis or on consultancy contract shall become taxable.
- However some NGOs (not all) registered under Section 12AA of Income Tax Act, 1961 are totally exempted from Service Tax, while NGOs engaged in “advancement of any other object of general public utility”, and the taxable services are exempted upto Rs 25 lakhs. Further certain NGOs such as the one engaged in ‘relief to poor’, ‘preventive health’, ‘informal education’ programmes will not enjoy any exemptions. In other words they will have to pay service tax if their taxable services exceed Rs 10 lakhs.
- **The Service Tax laws have taken a narrow definition of the term ‘charitable purpose’ which is different from the definition of charitable purpose under the Income Tax Act. There is an urgent need to align and use the same definition of the term ‘charitable purposes’ both under the Income Tax Act and the Service Tax laws.**

3. WHAT IS SERVICE?

3.01 In the new service tax system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a

person to another would be taxed under section 66B. The term ‘Service’ has been defined in clause (44) of the new section 65B of the Service Tax Act and it means –

- any activity
- for consideration
- carried out by a person for another
- & includes a declared service.

3.02 As per the above definition, an activity for consideration carried out by a person for another person can be included as service and it may also include a declared service. In other words, any service provided for a fee or when something is received in return shall be considered as a service. All services except those provided in the negative list shall be considered as taxable services.

4. WHICH ACTIVITIES WILL NOT BE INCLUDED UNDER SERVICE?

4.01 The definition under Section 66B further provides that ‘Service’ does not include –

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transaction only in (iii) money or (iv) actionable claim
- Any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

5. WHAT IS CONSIDERATION?

5.01 The word ‘consideration’ has not defined in the Act. However the master Circular issued on 16.03.2012 clarifies that:

- Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example, grants given for a research where the researcher is **under no obligation** to carry out a particular research would not be a consideration for such research.
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
- Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor.

6. WILL PROJECT GRANT BE TREATED AS A SERVICE?

6.01 Project grants and restricted funds shall not be treated as service. However, if the grant agreement has any clause where any benefit or business value is going back to the donor, then it shall be treated as a taxable service. Some example of such benefit could be as under:

- If the donor puts a clause that the implementing organization has to display its logo or name at the places of activity, then it could be considered as a taxable service.
- If the implementing organization is conducting some research, survey or activity in which the donor is interested and the implementing organization is under obligation to provide certain specified output to the donor, then the services can be considered as taxable services. For

example, if the donor keeps a condition that the implementing organization shall provide activity report or utilization statements, and then it will not be treated as taxable service. However, if the donor keeps a condition that the implementing organization shall provide specific data or specific research report as an outcome of the activity, and then it will be treated as a taxable service.

7. WILL CSR GRANT BE CONSIDERED AS TAXABLE SERVICE?

7.01 In the light of the definition of the term 'consideration' where it is provided that "*Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor*", it seems that CSR grants could be treated as taxable services if the donor company is getting any business advantage out of such donation or keeps a condition regarding display of its logo or name during the implementation process.

8. WHAT DOES THE WORD 'ACTIVITY' SIGNIFY?

8.01 'Activity' has not been defined in the Act. In terms of the common understanding of the word, activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be **active or passive** and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been

specified as a declared service under section 66E of the Act. In other words, even a promise of not doing something for a consideration can be considered as a service. For example, if an activist NGO enters into a contract for not agitating against any particular organization or any particular issue, then such services can be treated as taxable service.

9. WHAT IS NON-MONETARY CONSIDERATION?

9.01 Non-monetary consideration could be in the form of following:

- Supply of goods and services in return for provision of service
- Refraining or forbearing to do an act in return for provision of service
- Tolerating an act or a situation in return for provision of a service
- Doing or agreeing to do an act in return for provision of service

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

Annexure-1

THE NEGATIVE LIST OF SERVICES WHICH ARE EXEMPTED

The negative list as per Section 66D shall comprise of the following services, namely:—

- (a)** Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—
 - (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) Transport of goods or passengers; or
 - (iv) Support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b)** Services by the Reserve Bank of India;
- (c)** Services by a foreign diplomatic mission located in India;
- (d)** Services relating to agriculture by way of—
 - (i) Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) Supply of farm labor;
 - (iii) Processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) Loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) Agricultural extension services;
 - (vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e)** Trading of goods;
- (f)** Any process amounting to manufacture or production of goods;
- (g)** Selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h)** Service by way of access to a road or a bridge on payment of toll charges;
- (i)** Betting, gambling or lottery;
- (j)** Admission to entertainment events or access to amusement facilities;
- (k)** Transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l)** Services by way of—
 - (i) Pre-school education and education up to higher secondary school or equivalent;

- (ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- (iii) Education as a part of an approved vocational education course;
- (m)** Services by way of renting of residential dwelling for use as residence;
- (n)** Services by way of—
 - (i) Extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) Inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (o)** Service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) Railways in a class other than—
 - (A) First class; or
 - (B) an air-conditioned coach;
 - (iii) Metro, monorail or tramway;
 - (iv) Inland waterways;
 - (v) Public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tone net; and
 - (vi) metered cabs, radio taxis or auto rickshaws;
- (p)** Services by way of transportation of goods—
 - (A) a goods transportation agency; or
 - (B) a courier agency;
 - (ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
 - (iii) by inland waterways;
- (q)** Funeral, burial, crematorium or mortuary services including transportation of the deceased.

Annexure-2

EXEMPTIONS UNDER MEGA NOTIFICATION

[TO BE PUBLISHED IN THE GAZZETE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3,
SUB-SECTION (i)]

Government of India Ministry of Finance Department of Revenue
NOTIFICATION NO.12/2012-SERVICE TAX

New Delhi, the 17th March 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66 B of the said Finance Act, namely:-

- 1.** Services provided to the United Nations or a specified international organization;
- 2.** Health care services by a clinical establishment, an authorized medical practitioner or para-medics;
- 3.** Services by a veterinary clinic in relation to health care of animals or birds;
- 4.** Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
- 5.** Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
- 6.** Services provided to any person other than a business entity by -
 - (a) an individual as an advocate; or
 - (b) a person represented on and as arbitral tribunals;
- 7.** Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India;
- 8.** Services by way of training or coaching in recreational activities relating to arts, culture or sports;
- 9.** Services provided-
 - (a) to an educational institution by way of catering under any centrally assisted mid – day meals scheme sponsored by Government;
 - (b) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of transportation of students or staff;
 - (c) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education;

- 10.** Services provided to a recognized sports body by-
- (a) an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body;
 - (b) another recognized sports body;
- 11.** Services by way of sponsorship of tournaments or championships organized,-
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
 - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India, Special Olympics Bharat;
 - (c) by Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by Indian Olympic Association; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
- 12.** Services provided to the Government or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of -
- (a) a civil structure or any other original works meant predominantly for a non-industrial or non-commercial use;
 - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - (d) canal, dam or other irrigation works;
 - (e) pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii) sewerage treatment or disposal; or
 - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Finance Act;
- 13.** Services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of,-
- (a) road, bridge, tunnel, or terminal for road transportation for use by general public;
 - (b) building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
 - (c) pollution control or effluent treatment plant, except located as a part of a factory; or
 - (d) electric crematorium;
- 14.** Services by way of erection or construction of original works pertaining to,-
- (a) airport, port or railways;
 - (b) single residential unit otherwise as a part of a residential complex;
 - (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - (d) post- harvest storage infrastructure for agricultural produce including a cold storages

for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a license to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one port in India to another of the following goods -

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d) postal mail, mail bags or household effects;

(e) newspaper or magazines registered with Registrar of Newspapers;

(f) railway equipments or materials;

(g) agricultural produce;

(h) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(i) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of -

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by-

(a) air, embarking or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located

- in West Bengal; or
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
- 24.** Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
- 25.** Services provided to the Government or a local authority by way of -
- (a) repair of a ship, boat or vessel;
- (b) effluents and sewerage treatment;
- (c) waste collection or disposal;
- (d) storage, treatment or testing of water for drinking purposes; or
- (e) transport of water by pipeline or conduit for drinking purposes;
- 26.** Services of general insurance business provided under following schemes -
- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;
- 27.** Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-
- (a) the total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and
- (b) a period of three years has not lapsed from the date of entering into an agreement as an incubatee;
- 28.** Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution -
- (a) as a trade union;
- (b) for the provision of exempt services by the entity to third persons; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
- 29.** Services by the following persons in respective capacities -

- (a) a sub-broker or an authorized person to a stock broker;
- (b) an authorized person to a member of a commodity exchange;
- (c) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund;
- (d) a selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (e) a selling agent or a distributor of SIM cards or recharge coupon vouchers; or
- (f) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;

30. Carrying out an intermediate production process as job work in relation to -

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organizer to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

- (a) departmentally run public telephones;
- (b) guaranteed public telephones operating only for local calls; or
- (c) free telephone at airport and hospitals where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a service provider located in a non- taxable territory by-

- (a) the Government, a local authority or an individual in relation to any purpose other than industry, business or commerce; or
- (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities.

2. Definitions – for the purpose of this notification, unless the context otherwise requires,–

1. “advocate” has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961),

2. “appropriate duty” means duty payable on manufacture or production under a Central or a State Act, but shall not include ‘Nil’ rate of duty or duty wholly exempt,

3. “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996),

4. “authorized medical practitioner” means any medical practitioner registered with any of the Councils of the recognized system of medicine and includes medical professional having the requisite qualification to

practice in any recognised system of medicine as per any law for the time being in force,

5. “authorized person” means and includes any person whether being an individual,

partnership firm, limited liability partnership or body corporate, who is appointed as such either by a stock broker including trading member or by a member of commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange, as an agent of the stock broker or member of a commodity exchange,

6. “banking company” has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934),

7. “business facilitator or business correspondent” means an intermediary appointed under business facilitator model or business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India,

8. “clinical establishment” means a hospital, nursing home, clinic, sanatorium or an institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine, established and administered or maintained by any person or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases,

9. “charitable activities” means activities relating to -

(a) public health by way of -

(I) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(II) public awareness of preventive health, family planning or prevention of HIV infection;

(b) advancement of religion;

(c) advancement of educational programmes or skill development relating to,-

(I) abandoned, orphaned or homeless children;

(II) physically or mentally abused and traumatized persons;

(III) prisoners; or

(IV) persons over the age of 65 years residing in a rural area;

(d) preservation of environment including watershed, forests and wildlife; or

(e) advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year.

Explanation: - For the purpose of this clause, ‘general public’ means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

10. “commodity exchange” means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952),

11. “contract carriage” has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),

12. “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but does not include any discount offered on the published charges for such unit,

- 13.** “distributor or selling agent” has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorized by the lottery organizing State,
- 14.** “general insurance business” has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972),
- 15.** “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
- 16.** “health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine and includes services by way of supply of meals for the patient or transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma,
- 17.** “incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products,
- 18.** “insurance company” means a company carrying on life insurance business or general insurance business,
- 19.** “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938),
- 20.** “Original works” means -
- (a) all new constructions; or
 - (b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable,
- 21.** “Principal manufacturer” means any person who gets goods manufactured or processed on his account from another person,
- 22.** “recognized sports body” means (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organizations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level,
- 23.** “religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion,
- 24.** “residential complex” means any complex comprising of a building or buildings, having more than one single residential unit,
- 25.** “rural area” means the area comprised in a village as defined in land revenue records, excluding,-

- (i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or
- (ii) any area that may be notified as an urban area by the Central Government or a State Government,
- 26.** “single residential unit” means an independent residential unit with specific facilities for living, cooking and sanitary requirements,
- 27.** “specified international organization” means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply,
- 28.** “State transport undertaking” has the meaning assigned to it in clause (42) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
- 29.** “sub-broker” has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub brokers) (Second Amendment) Regulations, 2006,
- 30.** “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).
- 31.** This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

[F. No. 334/1/2012-TRU]
(Samar Nanda)
Under Secretary to the Government

Annexure-3

DECLARED SERVICES

In the definition of 'service' contained in clause (44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

- 1.** renting of immovable property;
- 2.** construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
- 3.** temporary transfer or permitting the use or enjoyment of any intellectual property right;
- 4.** development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
- 5.** agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- 6.** transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
- 7.** activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- 8.** service portion in execution of a works contract;
- 9.** service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

If the above activities are carried out by a person for another for consideration it would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

Analysis of **THE EMPLOYEES' PROVIDENT FUND & MISCELLANEOUS PROVISION ACT, 1952**

-FMSF Research Team

1. BACKGROUND:

The Employees' Provident Fund (EPF) & Miscellaneous Provision Act (MP), 1952 is an important piece of Labor Welfare legislation enacted by the Parliament to provide social security benefits to the workers. At present, the Act and the Schemes framed there under provides for three types of benefits -Contributory Provident Fund, Pensionary benefits to the employees/ family members and the insurance cover to the members of the Provident Fund. The object of the Act in 1952 was to institute compulsory contributory Provident Fund to the employees to which both the employee and the employer would contribute. The Employees' Provident Fund Scheme was accordingly framed under the Act and it came into effect from 1-11-1952. Initially the title of the Act was, "The Provident Fund Act 1952".

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is implemented through following three schemes:

- Employees' Provident Fund Scheme, 1952
- Employees' Deposit-Linked Insurance Scheme, 1976
- Employees' Pension Scheme, 1995

2. COVERAGE OF THE ACT:

The provisions of the Employees' Provident Fund & MP Act, 1952 extends to whole of India except the State of Jammu & Kashmir. The following are the industries/classes of establishments to which the EPF and MP Act, 1952 applies:

2.1 Every establishments which is a factory engaged in any industry specified in Schedule 1 and in which twenty or more persons are employed;

2.2 Any other establishments, employing twenty or more persons or class of such establishments, which the Central Government may specify and notify in the Official Gazette;

2.3 Any establishment employing less than twenty persons whom the Central

Government may notify in the Official Gazette after giving notice of not less than two months of its intention to do so.

2. 4 A proposal has been submitted to revise the number of employees from 20 to 10 and to increase the salary ceilings from Rs 6500 to Rs 10,000, but it is still not notified.

3. APPLICABILITY TO NGOS:

3.1 As such there is lack of clarity whether the Act applies to NGOs. The Act explicitly does not specify NGOs. However, we hold a conservative view in this regard and would suggest that NGOs consider it as applicable. In the spirit of good and fair employment conditions, Provident Fund (PF) would be one way of demonstrating it.

3.2 Some of the activities covered under the Act are:

- ✓ Educational, scientific research and training institution.
- ✓ Establishments known as hospitals.
- ✓ Societies, clubs or associations that render service to their members without charging any fee over and above the subscription for a membership fee.
- ✓ Establishment engaged in poultry farming.
- ✓ Establishment engaged in cattle feed industry.
- ✓ Establishment rendering expert services.
- ✓ Agricultural farms, fruits,

orchards, botanical garden and zoological gardens.

- ✓ Financial establishments except banks engaged in the activities of borrowing, lending, advancing or dealing with monetary transaction with a view to earn interest.

4. EXEMPTION FROM THIS ACT:

4.1 The co-operative societies employing less than 50 persons and working without the aid of power. **16(1)(a)**

4.2 Establishments under the control of state/central Govt. & employees who are getting benefits in the nature of 16(1) (b) contributory P.F. or old age pension as per rules framed by the Govt. **16(1)(b)**

4.3 Establishment set up under any central, provincial or state act and the employees who are getting benefits in the nature of contributory P.F. or old age pension as per rules. **16(1) (c)**

5. OPTIONS FOR PROVIDING EMPLOYEES PROVIDENT FUND:

Basically there are three options available to an employer for providing Provident Fund to the employees.

- The establishment employing 20 or more persons can approach Employees' Provident Fund Organization and get registered under it.
- By Creating its own PF trust.
- The establishments employing less than 20 employees can voluntarily contribute to the

provident fund by opening a Public Provident Fund account. The contribution to this account can be jointly made by the employer and employee or employer alone.

5.1 MEMBERSHIP UNDER EMPLOYEES' PROVIDENT FUND ORGANIZATION:

5.1.1 REGISTRATION:

For registration under EPFO, the employer has to fill the registration form available on <http://www.epfindia.nic.in/registration.htm> and submit it along the following documents:

- A copy of Registration Certificate issued by the Registrar in case of Societies registered under the Societies Registration Act along with a copy of the objects and Rules of the Society.
- Form 5A, which is a declaration to be filed by the establishment stating the names of owners of the organization and the person who will be ultimately liable for payment of contributions, filing of returns etc. It will be on the person named in the form 5A that the EPF organization will be initiating any penal proceedings in case of nonpayment of contribution and other offences.
- Form 13 i.e. Proforma of Coverage, which includes name and address of the establishment, date of incorporation, employment strength, details of legal set up,

details of employers, wages disbursed for the month, PAN no., details of employees, details of bank draft, etc.

5.1.2 MEMBERSHIP:

The membership of an eligible employee under the EPF & MP Act, 1952 is compulsory from the first day of his appointment. All the eligible employees in the establishment are to be extended the benefit of this Act.

5.1.3 CONTRIBUTION:

In respect of establishments employing 20 or more persons and engaged in industry notified under Section 6 of Act (other than the Establishments declared as sick) the following are the contributions to be made:

Account head	Employee's share	Employer's share
EPF Contribution	12.00%	3.67%
Administration Charges	-	1.10%
Employee Pension Scheme Contribution	-	8.33%
Employees Direct Linked Insurance(EDLI)Contribution	-	0.5%
EDLI Administrative Charges	-	0.01%
Total	12.00%	13.61%

- Statutory rate of contribution from employee is 12% of emoluments (basic wages, dearness allowance, cash value of food concession and retaining allowances if any,).
- Employer, in addition to the EPF contribution is also required to pay a contribution of 8.33% towards Employee Pension Scheme, 0.5% of the emoluments towards EDLIS and the administration charges.

- Voluntary higher contributions are also acceptable, at the joint request of the member and the employer.

5.1.4 CHALLAN OF DEPOSIT:

If the establishment is covered under the Act, the employer is required to deposit the following dues in the account noted against each:

- P.F Contribution @ 12% plus 3.67% in Provident Account No. 1
- Pension Fund Contribution @8.33% in Pension Account No. 10
- The administration charges (Provident Fund) @ 1.1% of the salary in Account No. 2
- Insurance Fund contribution @0.5% of the salary to be deposited in Account No. 21
- Administration charges (EDLI) @ 0.01% of the salary of the members.

All these remittances are remitted in one challan in the State Bank of India by a single cheque favoring SBI Account of Employees' Provident Fund. The amount can also be deposited in cash.

5.1.5 RETURN SUBMISSION:

- Remit the contributions and administrative charges before the 15th of the following month.
- File the initial returns of Form 9, Form 3(Pension Scheme), and Form 5A.
- File the monthly returns in Form 12A, Form 5, Form 10 and Challans for remitting the dues.
- Maintain the contribution card in respect of each employee in Form 3A and submit the annual

returns in Form 3A and 6A after reconciliation with Challans and form 12A. The due date for Annual returns is 25th April.

- Form 6 A is used for filling the annual contribution of each member of the establishment .It has to be submitted by 30th April.
- Form 5 is used for return of Employees who join the establishment.

5.1.6 WITHDRAWAL OF FUND:

A member can withdraw upto 90% of the amount of provident fund at credit after attaining the age of 54 years or within one year before actual retirement on superannuation whichever is later. Claim application in form 19 may be submitted to the concerned Provident Fund Office.

Amount of Provident Fund at the credit of the deceased member is payable to nominees/ legal heirs. Claim application in form 20 may be submitted to the concerned Provident Fund Office.

Partial withdrawals are allowed on completion of minimum five years of membership of the fund and such other condition for house building and seven years of membership in other cases. Even non-refundable advances (claim application in Form 31) are allowed for following contingencies:

- For acquiring immovable property
- For treatment of illness
- For marriages or post-matriculation education of children
- Damage to movable or immovable

property by calamity of exceptional nature

- Financing of member's life insurance policy.

5.1.7 PAYMENT OF INTEREST:

The rate of interest is fixed by the Central Government in consultation with the Central Board of trustees, Employees' Provident Fund every year during March/April. For the financial year 2012-13, the interest rate declared is 8.25%. The interest is payable for the whole period the amount remains with the department or with the fund of the exempted establishment, as the case may be. Such interest is payable as calculated up to the end of previous month of settlement of Member's account.

5.1.8 TRANSFER OF ACCOUNT:

In case an employee in an establishment covered by the Act has left his employment and obtained employment in any other establishment not covered by the Act, the amount of accumulations to the credit of such employee in any other establishment not covered by the Act, shall be transferred to the credit of that employee's account in the PF A/C of the establishment in which he is re-employed. Transfer Application in form 13 to be submitted by the member to the present employer for onward transmission to the Commissioner, EPF by whom the transfer is to be effected.

5.1.9 ANNUAL STATEMENT OF ACCOUNT:

As soon as possible and after the close of each period of currency of contribution, annual statements of accounts will be sent to each member through employer of the establishment where the member was last employed. The statement of accounts in

the fund will show the opening balance at the beginning of the period, amount contribution during the year, the total amount of interest credited at the end of the period or any withdrawal during the period and the closing balance at the end of the period. Any error should be brought through employer to the notice of the correctness Provident Fund Office within 6 months of the receipt of the statement.

5.2 CREATING OWN PF TRUST:

In 1952, the Indian Government introduced a mandatory savings scheme for non-government employees known as Employees' Provident Funds Scheme ('EPFS'). In this scheme, employees and their employers are required to make a contribution to the Employees' Provident Fund.

The Government has also permitted employers to establish and manage their own private PF schemes, subject to certain conditions prescribed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF Act'). One such condition was that such private PF trusts were required to seek approval under the Income-tax Act, 1961 for employees to get tax benefits.

The private PF schemes seemed to be more appealing as money remained with the in-house trust formed by the employer. The employees also gained from the tax benefits which were at par with the statutory provident fund scheme as well as speedier settlement of their claims on retirement/resignation. It has been reported that there are approximately 2,750 private PF trusts with an estimated corpus of Rs 1 lakh crores and a membership of 50 lakh employees.

5.2.1 APPROVAL OF PRIVATE PROVIDENT FUNDS:

Approval for setting up an in-house trust under the EPF Act may be granted to an entity which wants to run its own private PF scheme for its employees. The entity makes an application to the Government, through the jurisdictional Regional Provident Fund Commissioner (RPFC), to exempt it from the operation of the statutory provident fund scheme.

If the government is satisfied that the benefits provided to the employees under the private provident fund scheme are, on the whole, not less favorable than the benefits provided in the statutory scheme, then it may permit the entity to run its own scheme instead of the statutory scheme.

A private scheme can be formulated either for all the employees of the company or for a specified class of employees (e.g. managerial staff). The permission to entities to run their own PF scheme is however subject to a number of conditions. One of the important conditions relate to guaranteeing a rate of return on PF accumulations at par with the statutory scheme.

5.2.2 RUNNING OF THE TRUST:

The entity is required to create a board of trustees for governance of the PF scheme and to ensure an arm's length transactions between the entity and the trust. The entity is also liable to make good any loss caused to the trust by fraud, defalcation, wrong investment etc. The entity has to pay only an inspection charge of 0.18% of wages rather than the administrative charges of 1.10% of the wages in the case of RPFC schemes. Therefore, there is a cost saving of 0.92% of the wages. Multiple units of an entity can

also participate in a common provident fund trust.

After the PF trust is approved by the EPF authorities, they would be required to approach the income-tax authorities for approval to qualify for the various tax concessions under the Income-tax Act.

5.2.3 AMENDMENTS TO THE PRIVATE PROVIDENT FUND TRUSTS

After 31 March 2012, any private provident fund (which is eligible for tax benefits under the Income-tax Act) will need to be registered under EPF Act. Consequently, EPFO will essentially become the regulator for all private provident funds in India which are desirous of getting tax benefits. Even those establishments that are otherwise not required to be registered under the Act may have to seek coverage under the Act. There is a possibility of voluntary coverage under section 1(4) of the EPF Act, if the establishment is not statutorily coverable under the EPF Act.

5.2.4 INVESTMENT OF TRUST FUNDS:

Ministry of Finance notified the Pattern of Investment to be followed by non-Government Provident Funds, Superannuation Funds and Gratuity Funds.

5.2.5 CHALLENGES FOR PRIVATE PF TRUST:

The process of getting an approval for setting up a private PF trusts from the EPFO and the Income tax authorities is a time engaging process. It may take around one to two years to get the necessary approvals. Once the private scheme is established, the employer has to match the rate of interest declared by the EPFO which may prove a difficult task for smaller

Investment Pattern

Instruments	% of Investment
i. Central Government securities and/or units of such mutual funds set up as dedicated funds for investment in Government securities and regulated by SEBI; ii. (a) Government securities created and issued by any State Government; and/or units of mutual funds set up as dedicated funds for investment in Government securities and regulated by the SEBI/or (b) Any other negotiable securities the principal whereof and interest whereon is fully and unconditionally guaranteed by the Central Government or any State Government or multilateral funding agencies (World Bank, ADB) (c) The Trustees, subject to their assessment of the risk return prospects, may, if they so decide, divide the total portfolio under categories (i) and (ii)(a) above into tradable and non tradable categories. At least 25% of the total portfolio at the end of the preceding financial year can be treated as tradable and may be used for active management:	35%
iii. (a) Bonds/Securities of 'Public Financial Institutions' "public sector companies" including public sector banks; and/or (b) Term Deposit Receipts up to three years issued by public/private banks. (c) Collateral Borrowing and Lending Obligation (CBLO) issued by Clearing Corporation of India Limited and approved by the Reserve Bank of India. (d) Schemes of Mutual Funds primarily investing in money market instruments, regulated by SEBI. (e) Rupee Bonds issued by Multilateral agencies (World Bank, ADB)	25%
iv. To be invested in any of the above five categories as decided by their Trustees.	30%
v. Shares of companies that have an investment grade debt rating from at least one credit rating agency/ Shares of companies figuring in BSE Sensex and /or NSE NIFTY 50 and / or in equity linked schemes of mutual funds regulated by SEBI.	Upto 10%

companies. There might be chance of some defaults of the trust if the sponsoring company becomes sick, then the employees savings will become endangered. Therefore a proper cost benefit analysis has to be done before creating such trusts.

5.3 OPENING A PUBLIC PROVIDENT FUND ACCOUNT (PPF):

5.3.1 PUBLIC PROVIDENT FUND (PPF)

The PPF is a long-term, government backed small savings scheme of the Central Government started with the objective of providing old age income security to the workers in the unorganized sector and self employed individuals.

A PPF account can be opened in State Bank of India (any branch) or its subsidiaries, Head post offices or sub post offices or Branches of nationalized banks permitted to collect direct taxes. The duration for the

investment is 15 years. However, the effective period works out to 16 years i.e., the year of opening the account and adding 15 years to it. The contribution made in the 16th financial year will not earn any interest but one can take advantage of the tax rebate.

The account holder has an option to extend the PPF account for any period in a block of 5 years after the minimum duration elapses. The account holder can retain the account after maturity for any period without making any further

deposits. The balance in the account will continue to earn interest at normal rate as admissible on PPF account till the account is closed.

The minimum deposit that can be made into a PPF account in one whole financial year is Rs. Minimum Rs. 500. With a maximum limit of Rs 1, 00,000 w.e.f 01.12.2011

The amount invested is eligible for deduction under Section 80C subject to a limit of Rs. 1, 00,000. The advantage of depositing in PPF account is that on maturity, the entire amount including the interest is non-taxable.

5.3.2 INTEREST RATE:

Interest on PPF is declared by Central Government from time to time. Currently, the interest rate offered through PPF is around Interest rate w.e.f 01.04.2012 is 8.8

%, which is compounded annually. Interest is calculated on the lowest balance between the fifth day and last day of the calendar month and is credited to the account on 31st March every year. So to derive the maximum, the deposits should be made between 1st and 5th day of the month.

5.3.3 CONTRIBUTION:

Some establishments can also do voluntary contribution for their employees regarding EPF by opening a PPF account in their name and then contributing 12.5% of the basic pay, but it's not compulsory for every employee to contribute. If some employees have their personal contribution separately then the organization can issue them the cheque for the particular amount that the establishment has decided to pay and ask the PPF payment receipts from the employees.

5.3.4 WITHDRAWAL FROM THE FUND:

Any time after the expiry of five years from the end of the year in which the initial subscription was made, a subscriber may, if he so desires, apply in Form C for withdrawing from his balance to his credit, an amount not exceeding fifty per cent of the amount that stood to his credit at the end of the fourth year immediately preceding the year of withdrawal or at the end of the preceding year, whichever is lower less the amount of loan if any, remains to be repaid.

5.3.5 TRANSFER OF ACCOUNT:

A PPF account can be transferred from a branch of State Bank of India or a nationalized bank to Post Office and vice versa and also from a branch of State Bank of India to a designated branch of Nationalized Bank.

A PPF account cannot be transferred from one person to another. Even in the case of death of a depositor, the nominee cannot continue the account.

EMPLOYEES' PENSION SCHEME, 1995

1. BACKGROUND:

The scheme is applicable to all factories and other establishments to which the Employee' Provident Funds & Miscellaneous Act, 1952 applies. Employees' Pension Scheme, 1995 has been made applicable on 16.11.1995 retrospectively with effect from 1.4.1993. This new scheme replaces the erstwhile Family Pension Scheme, 1971.

2. MEMBERSHIP:

Membership of the scheme is compulsory for:

- All Provident Fund subscribers including those employed in exempted establishments contributing to the Employees' Family Pension Scheme, 1971 and
- New entrants to the Provident Fund Scheme, 1952 from 16.11.1995 onwards, automatically become members of the Family Pension Scheme, 1995.

Membership is available on optional basis for:

- Existing members of exempted and un-exempted provident fund scheme as on 15.11.1995 who are not members of the Family

Pension Scheme, 1971.

- Members of the Family Pension Scheme, 1971 who left employment between 01.04.1993 to 15.11.1995 whether they have withdrawn their benefits or not.
- Beneficiaries of Family Pension Scheme, 1971 who have died on or after 01.04.1993.

3. CONTRIBUTION:

Employee is not required to contribute separately under the Employees' Pension Scheme, 1995. Employer's share of provident fund contribution at the rate of 8.33% is diverted to pension fund every month. Central Government also contributes 1.16% of the pay to Employees' Pension Fund.

4. SERVICE FOR PENSION:

A person is entitled for pension after completing the age of 58 years with minimum service of 10 years. Six months or more shall be treated as one year and the service of less than six months shall be ignored.

5. DETERMINATION OF PENSIONABLE SALARY:

Pensionable salary shall be average monthly pay drawn in any manner including on piece rate basis during the contributory period of service in the span of 12 months preceding the date of exit from membership of EPF.

6. COMMUTATION OF PENSION:

Commutation is permissible up to 1/3 of pension amount. Commuted value will be hundred times of the monthly pension

amount so commuted. For example, if monthly pension is Rs. 1200, then commuted pension will be $1/3 * 1200 * 100 = \text{Rs. } 40,000/-$

EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME, 1976

1. BACKGROUND

The Central Government notified the Employees' Deposit-Linked Insurance Scheme, 1976 effective from 1st August, 1976.

2. APPLICABILITY:

The scheme applies to the employees of all the establishments covered under EPF & MP Act, 1952, who have been enrolled to the membership of Employees Provident Fund Scheme or any other Provident Fund Scheme which has been exempted under section 17 of the Act.

3. MEMBERSHIP:

All members of Employees' Provident Funds Scheme are deemed to be the members of Employees' Deposit-Linked Insurance Scheme, 1976, unless exemption has been obtained for Employees' Deposit-Linked Insurance Scheme, in favor of Life Insurance Corporation policy as approved.

4. EXEMPTION:

An establishment may be exempted from the operation of all or any of the provisions of the scheme, where the Life Assurance benefit of the Scheme in the establishment is more beneficial than the benefits provided under the statutory Scheme.

5. INSPECTION CHARGES:

An employer of an establishment exempted from the provisions of the Employees' Deposit-Linked Insurance Scheme is required

to pay 0.005% subject to a minimum of Re.1/- per month.

6. ADMINISTRATIVE CHARGES:

The employer is required to pay an amount equal to 0.01% of the wages subject to a minimum of Rs 2/- per month as administrative charges.

7. CONTRIBUTION:

Employees are not required to contribute under Employees' Deposit-Linked Insurance Scheme. The employer is required to contribute at the rate of 0.5% of the wages of the members on which PF has been paid.

8. ASSURANCE BENEFIT:

The benefit provided under the EDLIS is called Assurance Benefit. The amount of Assurance Benefit payable is an amount equal to the average balance in the account of deceased in the fund during the preceding 12 months or during the period of his membership whichever is less, except where the average balance exceeds Rs. 35,000/- amount payable shall be Rs. 35,000/- plus 25% of the amount in excess of Rs. 35,000/- subject to a ceiling of Rs. 60,000

Analysis of PAYMENT OF GRATUITY ACT 1972

- FMSF Research Team

1. INTRODUCTION:

Gratuity is an important form of social security benefit. It is a lump-sum payment made by an employer as a mark of appreciation for the services rendered by his employee. Gratuity is a defined benefit plan and is one of the many retirement benefits offered by the employer to the employee upon leaving his job. It is payable at the end of the employment (by way of retirement, death, termination or resignation). The law which governs Gratuity in India is the Payment of Gratuity Act, 1972.

2. APPLICABILITY:

The Gratuity Act applies to the following categories:

- Every factory, mine, oil plantation, port and Railway Company
- Every shop or establishment – if it employs 10 or more persons in the preceding 1 year.
- To any other establishment – employing 10 or more persons, in which ten or more persons are employed, or were employed, on any day of the

preceding twelve months. In addition, once this Act is applied to a shop or establishment it shall continue to be governed by this Act even if the number of persons employed gets reduced at a later date.

Gratuity is a terminal benefit payable to an employee after continuous service of *not less than 5 years*. There are three types of condition when it is payable:

- Superannuation
- Retirement or resignation
- Death due to accident or disease (5 years continuous service is not required for this).

Earlier the terminal benefit was considered as ex-gratia but now the Central Government made it obligatory on the employer by the Payment of Gratuity Act, 1972.

3. EMPLOYEES NOT ENTITLED TO GRATUITY:

Under following circumstances employees are not entitled to gratuity

- If an employee is dismissed because of willfully or negligently causing damage to,

loss of or destruction of property belonging to the employer, then his/ her gratuity will be forfeited to the extent of the damage or loss so caused.

- If an employee is dismissed for any act of moral turpitude committed in the course of his/ her employment, then the gratuity shall be wholly forfeited.
- If an employee is dismissed for riotous or disorderly conduct or violence, then his/ her gratuity shall be wholly forfeited.

4. METHODS OF FUNDING FOR GRATUITY:

There are two methods in which funding for gratuity can be done-

4.1 Funding by employer

- In this method the employer has to estimate the gratuity liability and set apart a sum every year towards gratuity.
- This fund shall be designated as a Gratuity Fund and be invested specifically for this purpose.
- As and when the gratuity is payable, the investment is en-cashed and paid to the employee.

4.2 Constitution of an Irrevocable Gratuity Trust

Employer has option to fund the liabilities for payment of gratuity by setting up an irrevocable Trust and making contributions to the Trust Fund. The other option is to purchase a gratuity policy with LIC or any other insurance company. In such case the insurance company creates a irrevocable trust in the name of the organization.

In order to estimate the gratuity liability in a scientific manner there is an

authority called an actuary who will certify the gratuity liability.

Organizations have to provide details like the period of service, salary drawn with its break up, date of birth, etc. Based on these particulars the actuary prepares a report on a scientific basis and provides a certificate. Every year the employer should estimate the gratuity liability and contribute the same into the trust based on an actuary's certificate.

For administering such a trust similar steps as for operation of PF through an employee's "Irrevocable Trust" must be followed like –

- Recognition under the Income Tax Act
- Maintenance of accounts
- Audit
- Filing of returns to the Income Tax Department
- Meeting of Board of Trustees

In case the organization has its own gratuity trust funds, the same can be invested as per the Ministry of Finance notified Pattern of Investment which is to be followed by non Government Provident Funds, Superannuation Funds and Gratuity Funds.

5. PAYMENT OF GRATUITY:

The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable. If not paid within the period stipulated above, the employer is liable to pay interest for the delayed payment. If the delay was caused due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground the interest is not payable.

Instruments	% of Investment
i. Central Government securities and/or units of such mutual funds set up as dedicated funds for investment in Government securities and regulated by SEBI; ii. (a) Government securities created and issued by any State Government; and/or units of mutual funds set up as dedicated funds for investment in Government securities and regulated by the SEBI/or (b) Any other negotiable securities the principal whereof and interest whereon is fully and unconditionally guaranteed by the Central Government or any State Government or multilateral funding agencies (World Bank, ADB) (c) The Trustees, subject to their assessment of the risk-return prospects, may, if they so decide, divide the total portfolio under categories (i) and (ii)(a) above into tradable and non tradable categories. At least 25% of the total portfolio at the end of the preceding financial year can be treated as tradable and may be used for active management:	35%
iii. (a) Bonds/Securities of 'Public Financial Institutions' "public sector companies" including public sector banks; and/or (b) Term Deposit Receipts up to three years issued by public/private banks. (c) Collateral Borrowing and Lending Obligation (CBLO) issued by Clearing Corporation of India Limited and approved by the Reserve Bank of India. (d) Schemes of Mutual Funds primarily investing in money market instruments, regulated by SEBI. (e) Rupee Bonds issued by Multilateral agencies (World Bank, ADB)	25%
iv. To be invested in any of the above five categories as decided by their Trustees.	30%
v. Shares of companies that have an investment grade debt rating from at least one credit rating agency/ Shares of companies figuring in BSE Sensex and /or NSE NIFTY 50 and / or in equity linked schemes of mutual funds regulated by SEBI.	Upto 10%

while in service and the right to receive on death. An employee may in his nomination, distribute the amount of gratuity payable to him, under this Act amongst more than one nominee.

If an employee has a family at the time of nomination, the nomination shall be made in favor of one or more members of his family, and any nomination made by such employee in favor of a person who is not a member of his

family, shall be void.

6. RATE OF GRATUITY:

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. Fifteen days wages is calculated by dividing the monthly rate of wages by twenty six.

Gratuity = Monthly rate of wage last drawn X 15

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If at the time of making a nomination the employee has no family, the nomination may be made in favor of any person but if the employee subsequently acquires a family (Form 'G'), such nomination shall become invalid.

A nomination may, be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so. Form 'H'

7. MAXIMUM LIMIT ON GRATUITY:

The amount of gratuity payable to an employee shall not exceed ten lakhs rupees (Rs.10, 00,000). However, the employer can also structure a gratuity benefit that is higher than statutory requirements in the form of an award, agreement or contract.

Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

8. NOMINATION:

The employee, who is entitled to the gratuity, has to make a nomination conferring on one or more persons the right to receive the gratuity in the event of death

9. CONCLUSION:

Non-Profit Organizations are encouraged to provide this very important social security benefit to their staff so that there is recognition to the hard work put in by them in the cause of social change.

Governance Section

Characteristics of **BOARD MEMBERS**

- Sanjay Patra, FMSF

1. INTRODUCTION

1.01 Governance for Nonprofit Organization:

Governance may be defined as “a transparent decision making process in which leadership of an organization, in an effective and accountable way, direct resources and exercises power on basis of shared value.” (*Handbook on NGO Governance; Marylin Wyatt*).

The overall goal of governance is to ensure that the objectives of the organization are achieved and the interest of various Stakeholders is protected. It has been said that proper governance requires the Board to stand outside the organization and hold it accountable to the Stakeholders interest. The various stakeholders of an organization could be target community, donor community, staff, government and public at large. Over the years, in the corporate world and even the Government sector, there has been growing need and demand for good governance practices. As an organization matures, it becomes increasingly important to focus on

governance as means of controlling the entire organization by policy, instead of managing or shadow-managing the organization. In other words Governance is like parenting.

1.02 Why Governance as an issue has not been discussed and documented extensively in a non-profit sector?

Generally, non-profit organizations (NPOs) work on grants and donations. Their work is also quite complex and therefore sometimes becomes difficult to capture the impact. Normally NPOs are not subjected to market forces and are only accountable to limited stakeholders. The Board consists of a group of volunteers and they try to support the management in achieving the objective. It has also been seen that many times the employees constitute the Board. Therefore there is hardly any difference between Governance and Management.

However, situation is changing very rapidly in this sector. The non-profit sector is experiencing greater scrutiny and

questioning on accountability issues. This is primarily due to two reasons. Firstly, the voluntary sector itself is raising questions on accountability and probity in public service and corporate sector. This catapults the NPOs also to be accountable themselves. Secondly, the resources are shrinking for the sector which again puts pressure on NPOs to be effective and efficient. The above can only be achieved through a system of good governance.

Are Board members primarily fundraisers? Cheerleaders? A rubber stamp to legitimize the actions and decisions of the management? Do they run the organization? Are they window-dressing the organization or are they seriously governing? How many meetings they attend? How do they know whether they are doing a good job, or when it is time to go? There are some of the questions which remain unanswered. Non-profit governance places high demands on Board members since NPOs are accountable to a very complex and multiple stakeholder groups. Let's discuss about the desirable characteristics/ qualities that are to be looked in for selecting a Board Member.

Finding committed, talented and willing people is a challenge that each Board faces. The Board's effectiveness will depend both on its composition and on member's conduct. The Board is basically responsible to supervise, direct, control and take decision to ensure that the desired results are obtained in the right way. Board plays a crucial role in governance by being the link between the internal organization and the external environment.

2. CORE CHARACTERISTICS OF AN EFFECTIVE BOARD MEMBER

Board members set the strategic direction of the organization. Along with providing oversight and supervision to ensure that management and operations are legal, effective and appropriate, the Board is supposed to make effective decisions. Supervising the NPOs activities and giving the right direction to the organization is the basic responsibility that the Board has to do. On the basis of its supervision, the Board has to take effective decision to control it; therefore we can say that control and decision making are inseparable twins in any governance process. Here there are few characteristics that are desirable for a Board member.

- **Alignment with Vision /Mission / Values:** Commitment comes from a clear understanding of the vision and mission and values. Board member, with adequate knowledge and understanding of the vision, mission and values that the organization stands for, becomes effective in their role.
- **Taking Responsibility:** The responsibility of overseeing the operations of the organization and taking necessary steps to control the organization for achieving desired results in line with its objective.
- **Clear Communicator:** A member who is a good communicator creates a positive environment in the organization by conveying the thoughts, ideas, need and wants clearly. It helps avoiding misunderstanding and losing the control on governance, therefore Strong and clear communication skills are the key strengths required by a successful board member.
- **Specific Skills:** There can be specific need of an organization which would

require individuals with prior experience in that particular field, certain professional skills and expertise so that their knowledge can contribute to the growth of the organization.

- **Independence:** Independence of board members plays a crucial role in effective governance. Conflict of interest is a situation where in the member has the responsibility for promoting an interest but has another competing interest at the same time. Board members need to ensure that any possibility of conflict of interest is avoided and the conflict is resolved with justice and fairness in order to promote a healthy environment in the organization.
- **Objectivity:** This is another criterion to be looked for in any member. Taking decision by evaluating other's perspective impartially without any prejudice or biasness. Focusing on the idea is important not the person who is giving it.
- **Positive Questioning:** The board must encourage the culture of questioning so that there is a spirit of discussion and there is participation from everyone. Asking good question is productive, positive, creative, and can get us what we want.

3. CERTAIN PERSONAL QUALITIES TO LOOK FOR

- Willing to dedicate time and resources to the organization.
- Maintains loyalty to the organization and to the stake holders.
- Willingness to tackle complex problems.
- Is a good team player.

- Offers constructive feedback
- Ensures legal and ethical integrity and maintains accountability
- Willingness to attend board meetings regularly and actively participating in any of the committees
- Willingness to use influence and develop linkages.
- Willingness to learn.
- Relationship of trust must be established and strengthened.

4. WHAT TO AVOID WHILE SELECTING A BOARD MEMBER

- Avoid conflict of interest, family members should not be selected as member so as to bring in objectivity in decision making.
- Member should not be a staff of the organization or any related body so that there is no abuse of power.
- Member should not be a busy person who is not able to devote time. He should not be a member of many other committees.
- Physical distance sometimes can be a problem; therefore it is advisable to select members for whom committing time and attending meetings won't be a difficult task.
- A member should not be a Government servant unless there is specific permission from the Government else there can be political issues attached to it.

5. CONCLUSION

A member having all the above qualities would be an ideal member but the question is how many board members have all these qualities in them? Does an ideal member exist? Are we going to get a complete team of Board with exactly same desired

qualities? Being idealistic is far from the reality of life and we have to be realistic in our expectations. Some of the qualities need to be there in a member and the rest can be developed by training and practice. Creating and developing an efficient team of Board members means half of the work

of governance is over and the rest half will be carried out by the Board. To be realistic, through a continuous board development process, a lot of the above can be achieved.

The Self Assessment Tool for evaluation of Board members is given in **Annexure 1**

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

Annexure-1

EXERCISE:

EVALUATE YOUR BOARD MEMBERS

Name of the Organization:

Date:

Place:

<i>Qualities</i>	<i>Always 10</i>	<i>Sometimes 5</i>	<i>Never 0</i>
<i>1.Alignment with vision/mission/values</i>			
<i>2. Taking Responsibility</i>			
<i>3. Clear Communicator</i>			
<i>4. Specific Skills in requirement with organization</i>			
<i>5. Independence</i>			
<i>6. Objectivity</i>			
<i>7.Positive questioning</i>			
<i>8. Team Player</i>			
<i>9. Attitude to learn</i>			
<i>10.Regular attendance in board meeting</i>			

SCORE CARD:

Scores Obtained:

Maximum marks: 100

INTERPRETING THE RESULTS:

- If the total score is more than 50 with minimum 5 in each parameter, the member is well suited for the Board of the Organization.
- If there is zero in any of the above parameters, then those areas need to be addressed urgently.

What Materials to be Shared WITH THE BOARD MEMBERS

- Sanjay Patra, FMSF

1. Introduction

It is important to ensure that new Board members have adequate information to become familiar with the organization they are to govern as responsible Board members/trustees. This would enable them to understand their role and any expectations clearly. The key information, that needs to be made available to them are:

- Vision, mission, values, objective and principles governing the organization.
- Significant policies and procedures.
- Relevant legal and financial information

The induction process should start as soon as a Board member's appointment takes effect. A well-designed induction programme is essential in helping new members to make relevant contribution to their work on the Board. At the same time all Board members should receive ongoing support and information from

the management so that they can develop their understanding of the overall environment within which they work.

While understanding their specific roles in the Board, members should also have a proper orientation of the particular elements and demands of governance and of the key relationships that will impact on the successful performance of their role. The existing Board members should undertake a more active role in working with newly-appointed Board members, to ensure that they are aware of the expectations for the Board and that the key responsibilities and relationships are well understood. They should brief new Board members on the particular environment within which the board operates. The briefing could include;

- nature of the Organization's work (site visits may be useful),
- the composition of the Board and its various procedures (sub-committees, expected workload, governance and management issues, etc),

- the member's responsibilities to the Chair and other Board members,
- and relationships with the other stakeholders.

2. Materials to be shared

To provide comprehensive information on the activities of the organization and its wider implications of operations etc, the following material may be shared with the Board:

2.01 Governing documents i.e.

Memorandum of Association, Bye Laws, and Trust Deed (whichever is applicable):

These are the organization's fundamental documents. They define the need for the organization's existence, its Board members, size of the Board and how it will function, roles and responsibilities of members, rules and procedures for holding meetings, electing office-bearers, and other members. These governing documents gives an idea to the members about the various incorporation compliance requirements as well.

2.02. Annual Report/Activity Report of the Organization:

An annual report is an in-depth and comprehensive report on the activities carried out by the Organization during the year. It outlines the background of the organization and accomplishments made by the organization and in some reports audited annual accounts are also published in it. An annual report needs to be published every year and information on Governing body members, Governance Structure and Organizational Chart, activities and projects carried out by the Organization during the year, achievements made etc can be reported. This document gives an idea of the

background of the organization activities, achievements etc.

2.03. Audited Financial Reports:

Audit report is the one of the most important documents, which depicts the financial picture of the organization to society at large, primary stakeholders and community members, internal stakeholders like governing body/board/employees, and other interested parties. Thus, it helps to understand the financial health of organization and by going through previous audit reports, one can gain an overall impression of the financial affairs of the organization.

2.04. Budget:

Every organization, whether small, medium or large has a limited amount of resources to accomplish its stated goals and objectives. Budget is a useful tool for planning, controlling, and directing the resources of an organization. It is also an estimate of or a view to the future, clearly showing the areas where funds will be required. It also serves as a benchmark for evaluating actual performance. It is an alert to an organization as to when a plan is failing and changes are required. A budget, if done properly can become one of the most important tools for management. Every organization must have a budget whether it goes through a formal or an informal process.

Budget is also a significant document for any organization with the donors. The budget sets out in detail what the organization will do, including where the money will be spent on and what results are to be achieved. Also, during a given time frame, the plans and budgets enable the organization to compare it with actual performance.

2.05. Document on the Sub-committees of the Board:

Sub-committees play an important role in implementation of various tasks in governance. It ensures less burden on Board and participatory decision making process. It could also be a learning experience for many others to work in some sub-committees. These sub-committees can be formed internally in the board or some outside members can also be included in these committees. An organization may have different committees to distribute the responsibility and make people accountable. Examples of the Sub-committees are Finance Committee, Procurement Committee, Program committee and Working Committee etc. These committees are recommendatory in nature and generally do not have decision making powers. They are formed as per needs of a particular Organization.

2.06. Conflict of Interest Policy, if any

Conflict of interest is a situation in which outside interests affect or are perceived to affect the ability of an individual to make fair and impartial decision on behalf of the NGO. Conflict of Interest can exist when

- Opportunities for direct material gain are involved;
- When close associates or family members stand to benefit
- Personal interests or loyalties conflict and compete with those of the NGO

A conflict of interest policy helps in resolving such situations. It helps in dealing impartially with situations in which an individual's multiple interests compete or collide. There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with.

2.07. Board Manual, if any

A Board manual serves several functions. It orients Board members towards its mission. It serves as the board's "*operating manual*" providing information on the board's structure and operations. It outlines the board members' roles and responsibilities, and generally serves as a resource about the organization and the Board. It is important that a Board Manual be kept up-to-date and familiar with each of the documents in the manual.

2.08. Brochure/ Publications of the Organization

A brochure is somewhat like an annual report but it has more crisp information about the organization and can provide quick overview. A brochure is a type of leaflet which introduces you to the organization, and inform about the objectives and activities.

If an organization has its own publications, the same can also be shared with the new Board members so that an understanding on the subject with which the organization is dealing can be developed. These handy documents can orient a new person into the organization easily and quickly.

2.09. Recent minutes of the meetings of the board and committees

Minutes forms an essential part of meetings. It serves as an evidence on the discussions and action points agreed upon. It records what actions have been decided upon, who is responsible and what the milestones and deadlines are. After the meeting, the minutes are approved in the next meeting and circulated to all the members. It serves as a record of the meeting's procedure and outcome. Minutes are an internal documentation procedure and it helps in providing information to new members.

2.10. Profile of the Board Members

Sharing of profile with new members will give them an understanding of other members and help in interaction in future. It fosters trust, cohesion and communication among board members.

3. Conclusion

A well organized induction or sharing information to the new members integrates them into the organization and they develop better understanding of the Organization. Given below as an **Annexure1** is a tool “Analysis of Induction Tool Kit”, which will be useful to new members in processing the information, shared by the organization.

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

Annexure-1

Induction Tool Kit

Name of Document	What to Look for	Take Notes
Governing Documents	• Total number of members	
	• Term	
	• Election/Selection process	
	• Key roles & responsibilities	
	• How many meetings	
	• Risks Observed, if any	
Annual Report	• Organizational Hierarchy	
	• Focus Activities	
	• Major Projects	
	• Achievements	
	• Challenges	
Annual Financial Statements	• General Funds	
	• Designated Funds	
	• Total Income	
	• Total Expenditure	
	• Major Donors	
	• Significant Liabilities	
	• Key Assets	
Budget	• Overall funding	
	• Key expenditure heads	
	• Overhead costs	
Sub-committees	• Various sub-committees	
	• Mandate	
Conflict of Interest	• Areas of Conflict	
	• Disclosures	
	• Risks Observed, if any	
Board Manual	• Role of Board	
	• Sub-committees	
	• Key decisions to be made	
	• Roles of office bearers	
	• Appointment/ Appraisal of Chief Functionary	
Brochure/Publications	• Background	
	• Key Activities	
	• Future Plans	
Minutes	• Major decisions taken	
	• Concerns, if any	
Profile of Board Members	• Key Persons	

REPORT ON NAN CONVENTION

NGO Accountants Network (NAN) is a network of Accountants and finance persons working in the Voluntary sector. It aims at providing a forum for mutual learning and sharing of experiences. FMSF & CPA jointly organized two regional convention of NAN with a special focus on FCRA & DTC. The first convention was held in Bhubaneswar from 29th to 30th Sep 2011; this convention was for the Eastern and North Eastern regional members. In this conventions, 52 participants from seven states participated. The second convention was held from 13th to 14th October, 2011 for the Northern and Central India regional members at The Royal Park, Noida. In this convention, 76 participants from fourteen states participated.

The objective of both the workshop was to-

- To understand the key features of FC(R)A Act, 2010 and FC(R)A Rules, 2011.
- To understand various new sections under DTC and its implication on the functioning of NGOS.

The Resource team for the first convention comprised of Mr. Sanjay Patra, Executive Director, FMSF, Mr. Manoj Fogla, Chartered Accountant, Mr. Suresh Kejriwal, C.A and the Resource team for the second convention comprised of Mr. Sanjay Patra, Executive Director, FMSF, Mr. Manoj Fogla, Chartered Accountant and Mr. Sameer Manocha, C.A.

The sessions included discussions and inputs on Accounting & Reporting Issues in NGOs, AUDIT Related Issues, FCR Act 2010 & FCR rules 2011 and Income Tax Act 1961 and Proposed DTC.

The Conventions were well appreciated by all the participants. There was also demand for having more and more such conventions to enhance the mutual learning. The experiences shared by the members were very helpful. Both the conventions were a great success and the overall response gathered for such conventions was extremely encouraging.

CSO PARTNERS' OUTSTANDING ANNUAL REPORT AWARDS FOR NGOs 2012

The CSO Partners' outstanding annual report award is an endeavor in creating benchmarks in the realm of NGO reporting and it is the first and only annual report awards in the voluntary sector. It is an effort to build a movement for transparency to bring in accountability.

This was the fourth award ceremony. The award was instituted by the **CSO partners** jointly with **Financial Management Service Foundation** and **Outreach partner NGO marketplace**. Not-for-profit organizations across India were invited to participate in the process. The reports received were categorized into three different categories, "**Small**" (organizations with an annual income of less than Rs. 50 lakhs), "**Medium**" (organizations with an annual income range of between Rs. 50 lakh to Rs. 5 Crore) & "**Large**" (organizations with an annual income of more than Rs. 5 Crore).

The annual reports were judged by an independent panel of evaluator who analyzed and scrutinized the reports thoroughly. The annual reports and audited financial statements of the organizations were evaluated on the three main aspects of financial reporting, 'transparency', 'reader friendliness' and 'effective communication'. The short listed annual reports were then presented to a Panel of Jury who then judged the reports and selected the winners. The entire process culminated in an "award ceremony" that was organized on the 10th of March, 2012 at the India Habitat Centre, New Delhi where all the participants were invited and winners were felicitated. Mr. Anupam Mishra, Eminent Gandhian & Environmental Activist graced this occasion with his presence as the Chief Guest of the evening.



To capacitate NGOs in reporting, an initiative was taken and a Guide to Annual Reporting was released. The overall response of the awards was extremely encouraging. The large number of reports received is recognition *of the effort by the organizers to create a platform to identify & showcase the good practices existing in the voluntary sector.*



**And the Winners of the
CSO Partners' Outstanding Annual Report Awards 2012 are...**

MEDIUM ORGANISATIONS

Winner

Community Outreach Programme

Runners Up

Sabuj Sangha

Astha Sansthan

LARGE ORGANISATIONS

Winner

The Evangelical Fellowship of India Commission on Relief (EFICOR)

Hand in Hand India

Runners Up

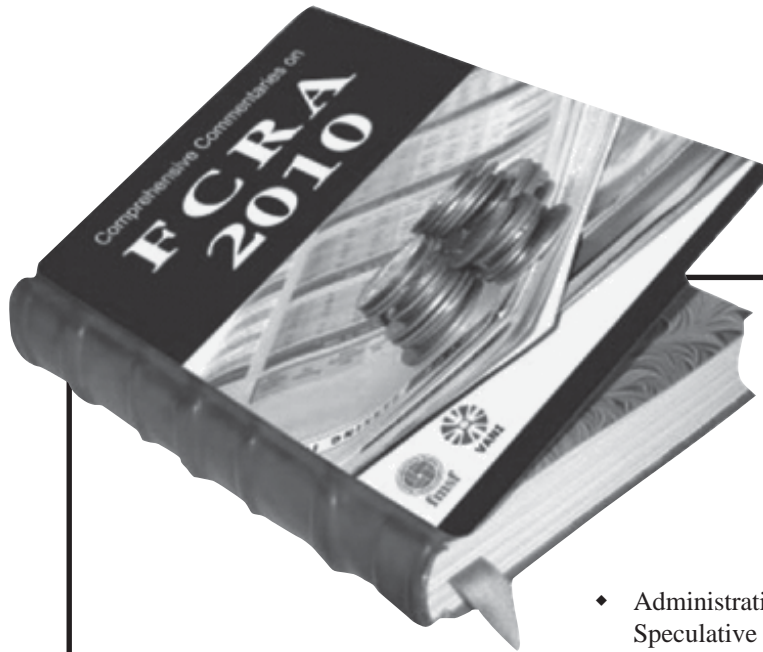
The Akshaya Patra Foundation (TAPF)

Special Citation

HelpAge India

Visit the website: www.annualreportawards.org for more details.

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- ♦ Designated & Multiple Bank Accounts
- ♦ Procedure for Change in Bank Accounts
- ♦ Procedure for change in Address, Nature or Objectives
- ♦ Role & Responsibility of Bank
- ♦ Investments & Fixed Assets
- ♦ Custody and Management of FC & Assets by Central Government
- ♦ Transfer of Funds to other FC Registered Organisations
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