

***1ST INTERNATIONAL
CONFERENCE
ON***

***INNOVATION BY NGOS IN
DIABETES CARE***



**Regulatory Frameworks
for
Non-Government Organizations
in India**

**- Presentation by
CA Kaushik Patel
Partner - Manubhai & Shah LLP**

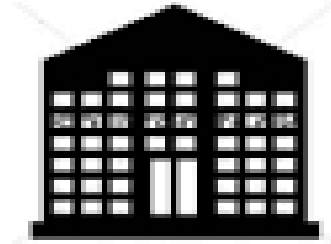


Why Regulations?

- Principle of Trusteeship and Monitoring
- Preventing Misuse of Funds
- Governance for Effective utilization of Funds
- Consideration of National Security
- Business activity under the guise of 'Charity'
- Supplementing various Government Programs

Regulatory Provisions applicable to

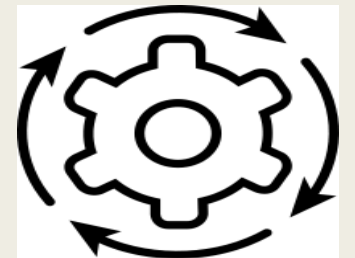
Setting up of an Entity



Sources of Funds



Operations



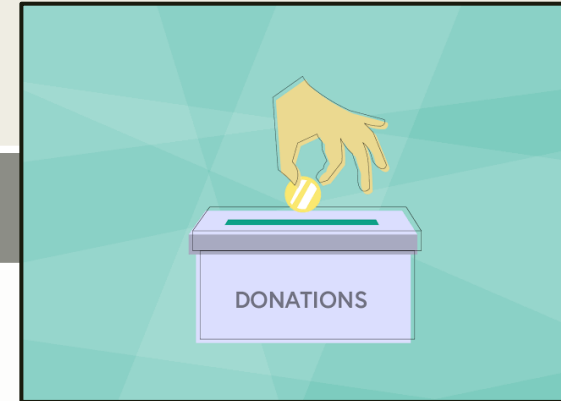
Setting Up of Legal Entity–Applicable Laws

Areas of comparison	Trust	Society	Section 8 Company
Statute/ Legislation	Relevant State Trust Act or Indian Trust Act, 1882	Societies Registration Act, 1860	The Companies Act, 2013
Jurisdiction	Charity Commissioner	Registrar of Societies	Registrar of Companies
Document required for Entity Creation	Trust Deed	Memorandum of Association and Rules and Regulations	Memorandum and Articles of Association
No. of Members required	Minimum – <i>2 Trustees</i>	Minimum – <i>7 members</i>	Minimum – <i>2 members (in case of Private Company)</i> Minimum – <i>7 members (in case of Public Company)</i>
Appointment of Board of management	Appointment or Election	Appointment or Election by members	Election by members
Source of Funds	<i>Donation</i>	<i>Membership Fees and Donation</i>	<i>Share Capital – Membership Fees – Donation</i>
Investments of Fund	In the securities approved by Charity Commissioner	In the securities approved by Charity Commissioner (Particularly applicable to Societies registered in Gujarat)	No Regulatory approval is required. However, investment beyond certain limit can be made with approval of members in General Meeting.

Sources of Funds

Donations

- *By NGOs*
- *By Households*
- *By Corporates*



Foreign Contribution



Government Grants



Donations from NGOs/Households

- General Donation
- Corpus Donation
- Specific Donation for acquisition of asset or for any project

Charitable Institution having sole object of Medical Relief not liable to Contribution to office of Charity Commissioner



Exemption of Income from Tax



- Income of NGO exempt from Income Tax on fulfilment of following conditions:
 - Its activities should fall under definition of ‘Charitable Purpose’ as per Income Tax Act.
 - It must obtain **registration** from **Commissioner of Income Tax**.
 - It must **apply**, for Charitable purpose, **85% of the income** during the year.

If 85% is not applied

a.) Accumulate the unapplied amount for Maximum 5 years, after furnishing Form No. 10 electronically and invest the same in “Safe investments” as per Section 11(5)

b.) Deemed to have been applied in Previous year if whole/part of the income has not been received.

c.) If amount accumulated is not spent within 5 years ,the unspent amount will be taxable in the year of default

Exemption of Income from Tax-Special Provisions

Also, Section 10(23C) of Income Tax Act, 1961 deals with exemption of income of certain entities which includes Hospital/other medical Institution. The exemption is available to Institutions

- *wholly or substantially financed by Government (Government grant exceeding 50% of total receipts); or*
- *having annual receipts not exceeding Rs. 1 Crore in Financial year.*

The exemption is also subject to compliance of conditions which are on similar line to those prescribed under Section 11.

Income in the form of voluntary contributions as “**Corpus Donation**” (with specific direction in writing from Donor) is **fully exempt** as long as it is not applied for Charitable purpose.

Relief
available to
Donors:

Deduction from Gross Total Income equal to **50%** of the amount of Donation to Institutions which obtain recognition under Section 80G.

Deduction, as **business expenditure**, of amount of Contribution to **approved Scientific Research institution**.

Anonymous Donations (Voluntary contributions without any record of Identity) received are taxable; except for trust/ institutions for wholly religious purposes.

- **Taxable @ 30%** on Anonymous Donations exceeding exemption limit
- **Exemption limit is higher of: 5% of Total donations received or Rs. 1,00,000**

Taxability of Anonymous Donations in certain cases

Donation by Corporates

- Spending on Corporate Social Responsibility (CSR) is an obligation as per Provisions in Companies Act which forms a source of Funds for NGOs in Health Care Sector.

- **Applicability of CSR**

A company satisfying any of the following criteria during the immediately preceding financial year has to comply with CSR provisions:

Turnover	Net worth	Net Profit
INR 1000 Crore or More	INR 500 Crore or More	INR 5 Crore or More

- Amount to be spent on CSR – 2% of the average Net Profit during immediately preceding 3 Financial Years.
- Modes of implementation of CSR activities
 - Self-implementation
 - Implementation through eligible implementing agencies
 - Joint implementation with one or more companies



Requirement to act as Implementing Agency for CSR

- **Public agencies** with established track record of at least three years of undertaking CSR activities eligible for undertaking CSR Contribution.
- **Entity may be:**
 - Section 8 Company
 - Registered Public Trust
 - Registered Society
 - Registered under section 12A and 80 G of the Income Tax Act, 1961
- ***The entities which want to undertake CSR Activities have to get themselves registered with MCA by filing form CSR-01. Once registered, such entities will receive Registration Certificate.***
- ***Activities relating to Malnutrition, promoting health care including Preventive healthcare is a part of CSR for receiving contribution.***



Donation/Contribution received from Foreign Source



- *The Applicable law- Foreign Contribution (Regulation) Act, 2010 (FCRA), which*
 - *regulates the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies*
 - *prohibits acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest*
 - *provides for matters connected therewith or incidental thereto*
- *FCRA permits receipt of foreign contribution by NGOs subject to following conditions:*
 - *It must have a definite cultural, economic, educational, religious or social program.*
 - *It must obtain the FCRA registration/ prior permission from the Central Government.*

FOREIGN CONTRIBUTION

- **Foreign Contribution** means **Donation, Delivery or Transfer (Directly/Indirectly)** made by any Foreign Source (Including Interest Accrued thereon) :

Of any article
Exception : Market value of Gift up to Rs
1,00,000

Of any currency (Indian/ foreign)

Of any Security
(as defined by SCRA, 1956 and FEMA, 1999)

- **Foreign Contribution does not include:**

Amount received for fees in
educational institute in India

Cost in lieu of Goods/
Services in ordinary course
of business

Contribution received from
agent or foreign source
towards fees or cost

Acceptance of Contribution under FCRA



Registration

- Eligible for a period of 5 years
- Contribution received cannot be used for Speculative activities and admin expenses exceeding 20% of total contribution
- Once cancelled, cooling period of 3 years

Prior Permission

- Eligible for completion of the specific purpose
- Contribution received cannot be used for Speculative activities and admin expenses exceeding 20% of total contribution

Requirements for obtaining Registration/Permission

Normal Registration	Prior Permission
<p>1.) The applicant must be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 8 of the Companies Act, 2013</p>	<p>1.) It should be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 8 of the Companies Act, 2013.</p>
<p>2.) Normally be in existence for at least three years.</p>	<p>2.) submit a specific commitment letter from the donor indicating</p> <ul style="list-style-type: none"> • the amount of foreign contribution • the purpose for which it is proposed to be given
<p>3.) It has undertaken reasonable activity for minimum threshold of Rs. 15 Lacs on its core activities (excluding administrative expenses) spent during the last three years.</p>	<p>3.) For Indian recipient organizations and foreign donor organizations having common members, FCRA Prior Permission shall be granted to the Indian recipient organizations subject to :</p> <ul style="list-style-type: none"> • The Chief Functionary of the recipient Indian organization should not be a part of the donor organization. • At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization. • In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization. • In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

Compliances and Restrictions under FCRA

■ Compliances:

- **Annual Return** must be filed in form FC-4 within **due date** that is **31st December**, every year (including Nil report if no contribution received).
- **Open separate Bank Account**, for receiving Foreign Contribution, in specified branch of **State Bank of India**.
- Any **change in name, address, aims, objectives** of the organization, after obtaining registration, to be **reported to MHA** within **30 days** of the change.
- Any **change in the office bearers**, resulting into **50% or more**, as reported to MHA **cannot be made** without prior approval of Ministry.
- **Report on the audit of Books of Accounts** in the **prescribed form** to be submitted to the Ministry.

■ Restrictions:

- On transfer of Foreign Contribution received to another person.



Government Grants – NGO DARPAN

- *DARPAN registration has been made mandatory for NGOs to apply for government grants and track the status of their application.*
- *Also, it helps in improving the credibility and goodwill of the NGO.*
- *Not only for government grants but for registration under FCRA and recognition u/s 80G of Income Tax Act, Unique DARPAN ID is required.*
- *There is no annual compliance relating to the same. However, NGOs have to update the latest governing body details as and when there is any change.*

Regulatory Requirements relating to Operations

- Obtaining license under Shops and Establishments Act
- Compliance of Labour Laws relating to:
 - *Provident Fund (PF)*
 - *Employees State Insurance (ESI)*
 - *Bonus/Gratuity*
 - *Professional Tax (Subject to State laws)*
- Local Bodies Regulations relating to property, waste disposal, taxes etc.
- Goods and Service Tax
 - *Donations received not liable to GST*
 - *Health care services by a Clinical Establishment and Medical practitioner is exempt from GST.*

Key Takeaways

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INNOVATION BY NGOs IN DIABETES CARE



- Building up Image/Goodwill/ Brand
- Ensuring that donations received do not get frittered away in taxes
- Ensuring utilization for the objects at NGO
- Investments of unutilized funds as permitted by Law under Trust Act/ Income Tax Act
- Regular Compliances to avoid Penal Actions

INNOVATION

Innovation is the ability to see change as an opportunity – not as threat.” –Steve Jobs

THANK YOU!