E-NEWSLETTER

A GUIDE ON EXPLORING INVESTMENT OPTIONS FOR NGOS

ISSUE NO 32. | MAY 2021 | Volume II

ngoenabler

E-Mail: ashis@ngoenabler.com
Contact No: 9038966010

The NGOs always find themselves in a dilemma while exploring the options for investment of their surplus funds. Although there are innumerable investment opportunities but the restrictions under various acts makes it limited for them. Moreover, certain options are allowed for investment under one Act but is restricted by the other, which further adds to the confusion of such organizations. However, it is pertinent to note that the basic purpose of these investments for charitable organizations is not earning profits out of it. Since the funds with such organizations are to be utilized for the welfare of the society at large, safety and security of such funds is of utmost importance and is also the requirement of certain acts to keep such unutilzed funds invested. Another view which can be considered for making such investments is optimum utilization of surplus funds so that the extra revenue earned can either be deployed in charitable activities itself or can be used to meet the administrative expenses of the organizations. So we have compiled various investment options along with restrictions from different acts that might be applicable to NGOs.

INVESTMENTS ALLOWED UNDER INCOME TAX ACT, 1961

INVESTMENT SPECIFIED SECTION 11(5)

The investments in which the funds can be invested by charotable organizations have been specified u/s 11(5) of the Income Tax Act.

1. Investments in savings certificates and other securities or certificate issued by the Central Government
2. Deposit in any acocunt with the Post Office Savings Bank
3. Deposit in any scheduled bank or a cooperative society engaged in carrying on the business of banking
4. Investment in units of Unit Trust of India
5. Investment in any security for money created and issued by the Central or State Government.
6. Investment in any debentures issued by or on behalf of the company or corporation where both the principal and interest are fully and unconditinally guaranteed by the Central or State Government.
7. Investment or deposit in any public sector company
8. Deposit or investment in any bonds issued by the financial corporation engaged in providing long term finance for industrial development in India
9. Deposit or investment in any bonds issued by the a public company engaged in providing long term finance for urban infrastructure or construction or purcahse of residential houses in India.
10. Investment in immovable property.

OTHER MODES OF INVESTMENTS PRESCRIBED U/S 11(5)

The forms and modes of investment or deposits under clause (xii)of Section 11(5) are as follows:

i)Investment in the units issued under any mutual fund schemes referred in Section 10(23D) of the Act.

ii)any transfer of deposits to the Public Account of India.

iii) Deposits with any authority constituted under any law in India for the purpose of dealing with and satisfying the need for housing accomodation or for planning, development or improvement of cities, villages, towns etc..

iv) Investment by way of acquiring equity shares of a depository, of an incubatee by an incubator or of National Skill Development Corporation.

v) Investment in equity share capital or bonds or debentures of a company which is engaged in operations of retail payments system or similar activities in India and abroad and is approved by RBI and atleast 51% of equity shares are held by National Payments Corporation of India.

vi)Investment in Debt instruments isssued by any infrastructure finance company registered with RBI

MODES OF INVESTMENTS AND/OR RESTRICTIONS AS PER OTHER STATUTORY ACTS

RESTRICTIONS AS PER FCRA 2010

The FCRA, 2010 does not prescribe any specified modes of investment for registered organizations. However, on the contrary, as per the FCRA Regulations formulated by the Ministry of Home Affairs, there are certain restrictions on investment.

As per Rule 4 of FCRR, 2011, where speculative activities have been defined, it is an indirect investment restriction on the organizations.

1. Any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to the market forces, including investment in mutual funds or in shares.
2. Participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organization or association.

However, it has also been mentioned that a debt-based secure investment shall not be treated as speculative investment.

OUR VIEWS

From the above, it is clear that mutual funds and any investments linked to market forces or which proomises high returns and not linked to the main objects of the organization, have been specifically excluded. So, in our view, fixed deposits with banks or even corporate fixed deposits where the rate of return is fixed without any fluctuations whatsoever, are the safest investment for FCRA Registered Organizations. In short, it can also be said that any investments which does not fluctuate and is not impacted by the market forces, can be vested upon for purposes of investment.

INVESTMENT ALLOWED UNDER THE INDIAN TRUSTS ACT, 1882

Section 20 of the Trust Act lays down that where the trust property consists of money and cannot be applied immediately or at an early date towards the purposes of the trust, the trustees are bound to invest such trust money in the following modes and forms of investment (subject to any specific direction contained in the Trust Deed):

i)in promissory notes, debentures, stock or other securities of any State or Central Government under the condition that both the principal and interest thereon shall have been fully and unconditionally guaranteed by any such Government.

ii) in stock or debentures of, or any shares in , railway or other companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council

iii) on a first mortgage of immovable property, not being a leasehold land, situated in any part of the country to which the Act extends and the value of property exceeds by one-third, or in case of building, by one-half, of the mortagage value.

iv) in units issued by the Unit Trust of India under any scheme made under the relevant Act.

v) any other security expressely authorized by the instrument of trust i.e. trust deed, or by Central Government through a notification in the Official Gazzette or by any rule which the High Court may precribe from time to time.

Considering the above investmest options and restrictions thereon under various regulations, we are of the view that before selecting any investment option, first the provisions of the relevant applicable Acts should be checked and then the directions laid down in the Trust Deed or Bye-laws & Memorandum of Association should be verified. However, above all, the safety of funds are of utmost importance for NGOs as it is the fund created for the welfare of public at large. The NGOs, being a custodian of such funds, should apply all propriety in its utiilization and maintain transparency in its workings for the benefit of all stakeholders.