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***DECLARATION OF ASSETS UNDER  
THE LOKPAL ACT – APPLICABILITY  
TO NGOS’ AND RECENT  
AMENDMENTS***

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**DECLARATION OF ASSETS UNDER THE LOKPAL ACT – APPLICABILITY TO NGOS’ AND RECENT  
AMENDMENTS**

**1. Introduction:**

- 1.1 The Lokpal and Lokayuktas Act, 2013 (“**Act**”) was enacted essentially to provide for the establishment of Lokpal for the Union and Lokayuktas for states, to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.
- 1.2 The Act also requires ‘public servants’ (which includes government employee and office bearers/management of not for profit entities receiving government finance/foreign donations to make certain disclosures of their assets and liabilities as well as that of their spouse and dependent children.
- 1.3 The past few months saw the Government receiving numerous representations from various stakeholders raising concerns over the challenges being faced by not for profit entities with respect to the requirement of disclosure of assets and liabilities of officers as well as their spouse/dependent children under the Act.
- 1.4 Consequently, the Government amended the Act to substitute the erstwhile provision Section 44 (which had laid down various compliances relating to disclosures of assets/liabilities) to merely specifying that the form and manner of disclosure would be as prescribed by the Government. The deadline for the disclosures was also deferred to December 31,2016.

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1.5 Our discussion below aims at bringing out the various nuances of this much debated requirement of disclosure of assets and liabilities in light of the recent amendments brought in, and the implications thereof particularly on the not-for-profit entities being covered under the Act.

## 2. Applicability to NGOs:

2.1. The erstwhile Section 44 of the Act required a 'public servant' to furnish information/declaration/annual returns of assets and liabilities of himself and of his spouse and dependent children in the manner and format prescribed under the Act (and rules notified thereunder). 'Public servants' are defined under the Act to *inter alia* include any person who is or has been a:

- (i) Chairperson/member/officer/employee in a society/trust/autonomous body established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it;
- (ii) Director/manager/secretary/officer of every other society or association of persons/trust which is:
  - a. wholly or partly financed by the Government and the annual income of which exceeds one (1) crore rupees (with only grants/financial assistance of Central Government being taken into consideration for determining such annual income).

The above provision has however caused some confusion. Arguably it appears that only entities receiving financial assistance from the Central Government and having an annual income in excess of the above threshold would get covered (and not entities receiving financial assistance from State Government). However, it can also be argued that while entities receiving financial assistance from any Government (including even the State Government) would be covered if the entity has an annual income of One Crore (provided only the grants given by the Central Government may be taken into consideration for determining the threshold of One Crore annual income). Therefore, the applicability of this Act to state funded NGO's still remains unclear.

- b. in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten (10) lakh rupees in a year.

The requirement of filing of annual returns of assets and liabilities also continues till such time as the financial assistance received or the entire amount of the donation received stands fully utilized, as applicable.

## 3. Recent Amendments:

	<p>3.1. As mentioned above, the last date of making these filings has been deferred to December 31, 2016. Further, the original Section 44 has been replaced with a substituted Section 44 vide the Lokpal and Lokayuktas (Amendment) Act 2016 ("<b>Amendment Act</b>")<sup>1</sup> to read as under:</p> <p style="padding-left: 40px;"><i>"44. On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed."</i></p> <p>3.2. The Amendment Act also substituted Section 59(k) of the Act with the following provision:</p> <p style="padding-left: 40px;"><i>"(k) the form and manner of declaration of assets and liabilities by public servants under section 44:</i></p> <p style="padding-left: 40px;"><i>Provided that the rules may be made under this clause retrospectively from the date on which the provisions of this Act came into force;"</i></p> <p>3.3. Interestingly, the Amendment Act only refers to assets and liabilities of the public servant in Section 44 and does not include any reference to disclosure of asset and liabilities of their spouses and dependent children (as provided earlier). However, the existing formats notified under the relevant rules<sup>2</sup>, have not been amended so far and continue to contain references to assets and liabilities of spouses and dependents of the public servant.</p> <p>The Act reserves the right of the Government to stipulate the form and manner of disclosure of assets, which may be made applicable retrospectively, the actual nature of the disclosure required would become clearer when such notification is introduced by the Government.</p> <p>That said, it may be worthwhile to refer to the Report of the Standing Committee on Personnel, Public Grievances, Law and Justice on the Lokpal and Lokayuktas and Other Related Law (Amendment Bill, 2014 (although the same was never passed in the Parliament) ("<b>Standing Committee Report</b>"), which suggested that the Act be amended to so as to exclude declaration of assets acquired by the family members of the public servants through their own income or from sources independent of the public servant. Therefore, it is possible that even if spouse and dependent children are later included within the scope of Section 44, the declarations are limited to this extent.</p> <p>3.4. The amended Section 44 (unlike the earlier provision) also does not refer to publication of the information/returns of the public servant on the website of the relevant Ministry/Department. This is also in line with the Standing Committee Report's suggestions that such information/return should only be furnished to the competent authority and not be made generally available to the public to avoid misuse</p>
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of such information. Therefore, it appears that such requirement may not be imposed again by the Government when it notifies the manner and form of disclosures at a later stage.

**4. Consequences of non-declaration:**

- 4.1. In case the public servant fails to declare assets and/or gives misleading information thereof, then such assets are presumed to belong to the public servant and are presumed to be assets acquired by corrupt means. Such undeclared assets can be made subject to inquiries by the Lokpal in accordance with the Act.
- 4.2. Further, since public servants under the Act are also deemed to be a 'public servant' under the Prevention of Corruption Act, 1988, the provisions thereof also applies to such persons. As per Section 13 of PCRA, any person who "*by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage*" is said to have committed an offence of criminal misconduct, which is punishable with imprisonment for a term not less than four (4) years extendable up to ten (10) years.
- 4.3. The Act, also allows for attachment (or confiscation) of property relatable to the offence during the proceedings, which will then vest in the Central Government if the person is convicted.

**5. Concluding Remarks:**

- 5.1. The NGOs have been concerned that the wide disclosures of assets and liabilities sought under the erstwhile Act the severe consequences of non-compliance, are likely to adversely affect their operations and make it difficult for them to get experienced trustees/office bearers on board. The situation becomes further complicated as it appears that the Act also applies to resigned officers of the NGO's as the definition of public servant under the Act refers to any person "*who is or has been*" an officer of the entity in question. Therefore, it appears that even if the officers resign from their office as of the current date, they would still need to file the requisite information/returns for the years that they were in office if the entity in such years would have been covered under the Act.
- 5.2. By virtue of the recent amendments, a temporary relief seems to have been granted to public servants (which includes the office bearers of NGOs falling under the purview of the Act) from filing the requisite declarations/information/return. While, the exact nature of disclosures required would only become clear once the Government issues further notifications/clarifications in this regard, hopefully, the Government will be able to re-assess the disclosure requirements in a manner that addresses the ambiguities present therein and the other challenges that have been highlighted by the various stakeholders in the past.

**Endnotes**

<sup>1</sup> The Amendment Act received assent of the President on July 29, 2016, and has deemed to have come into force on January 16, 2014.

<sup>2</sup> Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014.

**Feedback**

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