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# *Contents in Brief*

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♦	CONTENTS IN BRIEF	(i)
♦	CONTENTS IN DETAILS	(ii)
♦	LIST OF ANNEXURES	(vi)
CHAPTER 1	IDENTIFICATION & SELECTION OF PROSPECTIVE BOARD MEMBERS	01
CHAPTER 2	THE ISSUES WHICH A PROSPECTIVE BOARD MEMBER SHOULD ANALYSE	09
CHAPTER 3	INDUCTION & ORIENTATION OF BOARD MEMBERS	13
CHAPTER 4	BOARD MEMBERS COMMITMENT TOWARDS THE ORGANISATION	20
CHAPTER 5	BOARD MEMBERS OWN ASSESSMENT OF COMMITMENT	23
CHAPTER 6	DELEGATING ROLE OF THE BOARD	27
CHAPTER 7	VARIOUS COMMITTEES OF THE BOARD	34
CHAPTER 8	EXECUTIVE COMMITTEE	41
CHAPTER 9	FINANCE COMMITTEE	45
CHAPTER 10	AUDIT COMMITTEE	50
CHAPTER 11	BOARD'S ROLE IN CRISIS MANAGEMENT	54
CHAPTER 12	RISK MANAGEMENT IN NPOS	63
CHAPTER 13	LEGAL RISK IN FUNDAMENTAL DOCUMENTS	76
♦	ANNEXURES	84

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# *Contents in Detail*

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<b>Chapter 1</b>	<b>IDENTIFICATION &amp; SELECTION OF PROSPECTIVE BOARD MEMBERS</b>	<b>01</b>
	♦ INTRODUCTION	01
	♦ POLICY REGARDING BOARD RECRUITMENT	02
	♦ BOARD IDENTIFICATION IS RELATED WITH THE NATURE AND SIZE	03
	♦ PROFILING THE EXISTING BOARD FOR NEED ASSESSMENT	04
	♦ THE RECRUITMENT SHOULD BE RELATED WITH THE EXISTING WORK AND MANDATE OF THE BOARD	05
	♦ CREATING A SUPPORT BASE OF POTENTIAL BOARD MEMBERS	06
	♦ ENGAGING THE PROSPECTIVE MEMBERS PRIOR TO RECRUITMENT	07
	♦ SELF ASSESSMENT QUESTIONS	08
 <b>Chapter 2</b>	 <b>THE ISSUES WHICH A PROSPECTIVE BOARD MEMBER SHOULD ANALYSE</b>	 <b>09</b>
	♦ INTRODUCTION	09
	♦ OVERVIEW OF THE POSITIONING & PROGRAMMES IN RELATION TO THE VISION/MISSION	10
	♦ STATUS OF LEGAL COMPLIANCES & MAJOR OBLIGATIONS	10
	♦ THE OVERALL & INDIVIDUAL MANDATE OF THE BOARD MEMBERS	11
	♦ CONFLICT OF INTEREST ISSUES	11
	♦ SOCIAL POSITIONING & FINANCIAL HEALTH	11
	♦ SELF ASSESSMENT QUESTIONS	12

---

<b>Chapter 3</b>	<b>INDUCTION &amp; ORIENTATION OF BOARD MEMBERS</b>	<b>13</b>
	♦ OVERVIEW OF THE INDUCTION PROCESS	13
	♦ MATERIALS TO BE SHARED	15
	♦ CONCLUSION	18
	♦ SELF ASSESSMENT QUESTIONS	18
<b>Chapter 4</b>	<b>BOARD MEMBERS COMMITMENT TOWARDS THE ORGANISATION</b>	<b>20</b>
	♦ INTRODUCTION	20
	♦ NEED OF COMMITMENT SHEET	20
	♦ PROCESS TO BE FOLLOWED	21
	♦ CONCLUSION	22
	♦ SELF ASSESSMENT QUESTIONS	22
<b>Chapter 5</b>	<b>BOARD MEMBERS OWN ASSESSMENT OF COMMITMENT</b>	<b>23</b>
	♦ INTRODUCTION	23
	♦ COMFORT LEVEL WITH THE MISSION & VALUES	23
	♦ COMMITMENT OF TIME & EFFORT	24
	♦ MAPPING THE EXPECTATION OF THE ORGANISATION	24
	♦ MAPPING THE LEARNING POTENTIAL	25
	♦ SELF ASSESSMENT QUESTIONS	26
<b>Chapter 6</b>	<b>DELEGATING ROLE OF THE BOARD</b>	<b>27</b>
	♦ INTRODUCTION	27
	♦ UNDERSTANDING DELEGATION OF AUTHORITY AND ITS NUANCES	27
	♦ OVERVIEW OF BOARD LEVEL DELEGATION	28
	♦ OVERVIEW OF THE VARIOUS AREAS WHICH THE BOARD COULD DELEGATE	30
	♦ OVERVIEW OF THE VARIOUS AREAS WHICH THE BOARD SHOULD NOT DELEGATE	31
	♦ DEFINING THE DELEGATION IN THE BYE LAW OR TRUST DEEDS	32
	♦ SELF ASSESSMENT QUESTIONS	33
<b>Chapter 7</b>	<b>VARIOUS COMMITTEES OF THE BOARD</b>	<b>34</b>
	♦ OVERVIEW	34
	♦ WHY IT IS DESIRABLE TO HAVE COMMITTEES	34

---

	♦ NATURE & TYPES OF COMMITTEES	36
	♦ CHARACTERISTICS OF COMMITTEES	37
	♦ KEY ISSUES IN DEVELOPMENT OF COMMITTEES	38
	♦ SELF ASSESSMENT QUESTIONS	40
<b>Chapter 8</b>	<b>EXECUTIVE COMMITTEE</b>	<b>41</b>
	♦ OVERVIEW OF EXECUTIVE COMMITTEE (EC)	41
	♦ SCOPE & OVERALL MANDATE OF EC	42
	♦ COMPOSITION OF EC	42
	♦ ROLE AND FUNCTION OF EC	43
	♦ MEETINGS	43
	♦ ANNUAL ASSESSMENT OR SELF ASSESSMENT	44
	♦ SELF ASSESSMENT QUESTIONS	44
<b>Chapter 9</b>	<b>FINANCE COMMITTEE</b>	<b>45</b>
	♦ OVERVIEW OF FINANCE COMMITTEE (FC)	45
	♦ SCOPE & OVERALL MANDATE OF FC	46
	♦ COMPOSITION OF FC	46
	♦ ROLE AND FUNCTION OF FC	47
	♦ MEETINGS	48
	♦ ANNUAL ASSESSMENT OR SELF ASSESSMENT	48
	♦ SELF ASSESSMENT QUESTIONS	49
<b>Chapter 10</b>	<b>AUDIT COMMITTEE</b>	<b>50</b>
	♦ OVERVIEW OF AUDIT COMMITTEE (AC)	50
	♦ SCOPE & OVERALL MANDATE OF AC	50
	♦ SIZE & COMPOSITION OF AC	51
	♦ ROLE AND FUNCTION OF AC	51
	♦ MEETINGS	52
	♦ ANNUAL ASSESSMENT OR SELF ASSESSMENT	53
	♦ SELF ASSESSMENT QUESTIONS	53
<b>Chapter 11</b>	<b>BOARD'S ROLE IN CRISIS MANAGEMENT</b>	<b>54</b>
	♦ INTRODUCTION	54
	♦ DISTINGUISHING CRISIS FROM CHANGE	54
	♦ DISTINGUISHING CRISIS FROM RISK	55
	♦ NEGATIVE TYPES OF CRISIS	56
	♦ POSITIVE TYPES OF CRISIS	57

---

	♦ CRISIS MANAGEMENT PLANNING & STRATEGIES	58
	♦ SELF ASSESSMENT QUESTIONS	62
<b>Chapter 12</b>	<b>RISK MANAGEMENT IN NPOS</b>	<b>63</b>
	♦ INTRODUCTION	63
	♦ OVERALL OBJECTIVE OF RISK ANALYSIS	64
	♦ LEGAL RISK	65
	♦ HUMAN RESOURCE RISK	67
	♦ CONFLICT OF INTEREST RISK	68
	♦ INTEGRITY AND CORRUPTION RISK	69
	♦ EFFICIENCY RISK	70
	♦ SKILLS AND EXPERTISE RISK	71
	♦ COMMUNICATION AND ARTICULATION RISK	71
	♦ SYSTEMS RISK	72
	♦ GOVERNANCE & LEADERSHIP RISK	72
	♦ VALUES AND DIRECTION RISK	72
	♦ CATEGORISATION OF RISK	73
	♦ SELF ASSESSMENT QUESTIONS	75
<b>Chapter 13</b>	<b>LEGAL RISK IN FUNDAMENTAL DOCUMENTS</b>	<b>76</b>
	♦ INTRODUCTION	76
	♦ TRUST DEED & MEMORANDUM OF ASSOCIATION	76
	♦ BYE LAWS OR ADMINISTRATIVE DOCUMENTS	77
	♦ MAJOR POLICY DOCUMENTS	78
	♦ THE PROJECT AGREEMENTS	79
	♦ TITLE DOCUMENTS	79
	♦ CONSULTANCY CONTRACTS	80
	♦ GENERAL CONTRACTS	81
	♦ MINUTES OF MEETINGS	81
	♦ SELF ASSESSMENT QUESTIONS	82

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# List of Annexures

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<b><i>Annexure 1</i></b>	EVALUATE POTENTIAL MEMBERS FOR THE SUPPORT BASE	<b>84</b>
<b><i>Annexure 2</i></b>	ANALYSIS OF INDUCTION TOOL KIT	<b>85</b>
<b><i>Annexure 3</i></b>	CONSENT FORM OF THE BOARD MEMBER	<b>87</b>
<b><i>Annexure 4</i></b>	FORMAT FOR RESOLUTION OF THE BOARD MEMBER APPOINTMENT	<b>88</b>
<b><i>Annexure 5</i></b>	BOARD MEMBER'S ANNUAL COMMITMENT SHEET	<b>89</b>

## Chapter 1

# IDENTIFICATION & SELECTION OF PROSPECTIVE BOARD MEMBERS

## INTRODUCTION

**1.1.1** In any organization the Governing body is the *de facto* ultimate structure for decision making and governance. The trustees or board members are mostly volunteers and do not work for any personal gain. Some organizations also have an Executive committee that is below the Governing Body. Executive committee comprises of some board members, key staff and some volunteers. In order to ensure that the governance of an organisation remains seamless for long periods it is very much necessary to create a base of prospective board members from where the organization can pick up its future Board members. Maintaining such a resource base is not mandated legally but is a desirable practice that an organization may choose to follow. The size of the prospective base should be around 2 times the size of the existing Governing Body, so that in case of rotation/change of Board members the organization will have ample choices to opt from. Keeping all this in mind, an organization has to systematically create a support base of potential Board members.

**1.1.2** All NPOs should have appropriate strategies for a continuous

and sustainable board. An NPO is generally perpetual in nature, and therefore, it is bound to face cycles of change in the people who govern the organisation. Therefore, it becomes important to have appropriate systems with regard to the long term sustainability of the leadership and the governing body. In this chapter we shall discuss various strategies pertaining to identification of new board members for a stable and sustainable board.

## **POLICY REGARDING BOARD RECRUITMENT**

**1.2.1** Generally, NPOs appoint or identify new board members in an unsystematic and haphazard manner. Some organisation appoint the board from the existing general member through nomination and election. Mostly board member get elected or selected within a close circle of known people or familiar stakeholders.

**1.2.2** However, in case of NPOs the following problems may arise if a proper board recruitment policy is not in place :

- ♦ An organisation may not get competent replacement when key board members retires/resigns.
- ♦ The board may continue to remain within a close group of people where by the decision making can be dominated one or two individuals.
- ♦ An organisation may not get the desired diversity in the board composition, in terms of overall skills and competence.
- ♦ The board which are elected through election from the general members, generally lack diversity. Such boards may also be biased towards a particular group of stakeholders.
- ♦ An organisation may face leadership and governance crisis if there is any unnatural resignation or death of key board members.



- ♦ An organisation may face lack of balance in the board, if appropriate members are not identified and appointed. As a result the capacity of the board to take holistic and prudent decision might be paralysed.

## **BOARD IDENTIFICATION IS RELATED WITH THE NATURE AND SIZE**

**1.3.1** An organisation, depending, on its nature and size should develop appropriate strategies of identifying potential board members. There cannot be a common recommendation to all types of NPOs. The issues involved with regard to the nature and size of an organisation are as under :

- ♦ The source of funding and the nature of income largely dictates the nature of board. For example a corporate foundation which is receiving funds from a particular private group of Companies, would normally like to have a board under the control of such Companies. In such cases the governance of the commercial organisation will have an overriding influence on the governance of the NPO. Similarly public trust created out of private property sometimes have permanent or very strictly controlled board structure. Such organisations even though are for public purposes depend largely on individual specific sources of funds. Therefore, the governance might be determined by such sources. However, if such organisation start taking funds from various public sources then they should also look for more open board structures.
- ♦ Some organisations are membership based, for example a National Federation of NPOs. In such organisation the diversity in the board becomes difficult as the board members are elected from the members only. Such organisation also should have appropriate strategy for getting a balanced board.

- ♦ Some organisations might be dependent on government or some dominant donor for funding. In such organisations, the board recruitment might be influenced by such donors through ex-officio and other powers to nominate.
- ♦ Grassroot level small organisation may find it difficult to have a board from various places due to logistic and cost issues.
- ♦ The bye laws of the organisations also influence the rotation or continuation of existing board members. Some organisation have strict bye laws regarding rotation, for instance there are organisations where the board member cannot be reappointed beyond two or three terms. On the contrary there are organisations where the bye laws provide that certain key positions shall remain permanently with specific individuals, for life

**1.3.2** Therefore, in the light of the above, the board recruitment strategies discussed in this chapter should not be treated as a sacrosanct gospel. They may be applied based on the circumstances, nature and type of organisation.

## **PROFILING THE EXISTING BOARD FOR NEED ASSESSMENT**

**1.4.1** In order to have a proper strategy for new board members, the first thing is to understand is the existing composition and the norms pertaining to the board. Some issues which can be looked in this regard are as under :

- ♦ It is important to understand the legal requirements regarding recruitment of board as per the law of enactment and the bye laws. For instance some organisation may restrict the board to a particular gender or a particular community or place.

- ♦ The existing board diversity and profile should be documented. A analysis of the retiring members should be prepared. For example if a member from financial or legal background is going to retire then effort should be made to find a replacement with similar skills and competence.
- ♦ The organisation should have an overall as well as individual profile of the board. In other words the kind of expertise needed for individual members and the job description can be prepared as a written document. Similarly there should be a written document regarding the overall profile of the board. An organisation can assess the need of new board members based on the existing profiles and try to fill up the areas which remain unrepresented or deficient.

## **THE RECRUITMENT SHOULD BE RELATED WITH THE EXISTING WORK AND MANDATE OF THE BOARD**

**1.5.1** An organisation should assess the nature of the existing role and mandate of the board and accordingly the need assessment of new board members can be made. The mission, the large programmes and initiatives of the organisation can also act as an indicator on the type of deficiencies a board is having, which needs to be filled in. Some instances could be as under :

- ♦ An organisation which is very efficient in implementing programmes, might be facing funding and resources crunch. Such organisation may look for board members who could be helpful in identifying or play a catalytic role in sourcing funds. Sometimes people of great eminence by their sheer presence can also attract partners and donors.
- ♦ An organisation which is very efficient in implementing programmes, might be facing problems with administrative

and financial systems. Such organisation may look for board members who could be helpful improving the management and financial systems.

- ♦ An organisation which is having assured source of funding (could be CSR or corporate foundation), but is facing problems in identifying good implementing organisations. Such organisation may look for board members who could help in assessing and identifying prospective partners.

## **CREATING A SUPPORT BASE OF POTENTIAL BOARD MEMBERS**

**1.6.1** An organisation should also create a pool of potential Board members. The pool of potential board members should be based on diversity requirements of the organisation. The organization has to set the skills/expertise that is required in the Board so that new dimensions can be brought into the Board. Finding potential members from diverse backgrounds with positive attitude to join the Board is essential.

**1.6.2** Possible sources from which an organization can identify members for the support base are :

- ♦ Board members of similar sized organizations.
- ♦ CEOs of other unrelated charitable organizations.
- ♦ Inviting volunteers
- ♦ Advisory committee members
- ♦ Community leader
- ♦ Staff of un-related donor agencies
- ♦ Domain specialists
- ♦ Technical experts

- ♦ Eminent people from cross section of society
- ♦ Employee representation (subject to bye laws)
- ♦ Board members of partner organisation
- ♦ Ex-employees, CEOs etc.
- ♦ Ex-consultants, Auditors etc.
- ♦ Ex-officio positions, for example, the CEO of certain specific type of organisation could be looked for.

## **ENGAGING THE PROSPECTIVE MEMBERS PRIOR TO RECRUITMENT**

**1.7.1** Just creating a data base or pool of prospective board members or volunteers is not enough for an organization. Even though these groups of people are legally not part of the governance process of the organization, efforts must be made to involve them in the organization in various ways. They can be made part of the organization in various ways. They can be made part of any sub-committee of the organization. Some ways of engaging with the prospective board members are as under :

- ♦ Nurturing the prospective board members by making them aware about the organisation through constant engagement viz. by sending news letters, inviting to important occasions etc.
- ♦ Inviting them to select committees or in advisory roles.
- ♦ In case of volunteers by making them feel respected and valued and making them understand what the organization stands for.
- ♦ Sharing information regularly with the prospective base so that they are well informed about the organization.

**1.7.2** By doing all this, an organization can create a strong base which can later be turned into effective Board members who can add value to the organization. There is a tool kit given in ***Annexure 1*** by which prospective board members can be selected to be part of the support base. The kit consists of few parameters to decide upon the selection of a prospective board member for the support base.

### **SELF ASSESSMENT QUESTIONS**

1. Why it is important on the part of the NPO to identify and explore for prospective board members ?
2. What are the concerns which may arise if proper board selection and recruitment policy is not in place ?
3. Why the board identification process is related with the nature and size of an organisation ?
4. How an NPO can profile its existing board ?
5. How a support/data base of potential board member can be created ?
6. What are the ways of engaging with prospective board members ?

## *Chapter 2*

# THE ISSUES WHICH A PROSPECTIVE BOARD MEMBER SHOULD ANALYSE

## INTRODUCTION

**2.1.1** Any person who is invited to join the board of any NPO should also look into various aspects of the organisation. He/she should also look into his own compatibility as well as ability to play a effective role in the governance of the organisation.

**2.1.2** If an proper analysis of the prospective NPO is not made the prospective board member may end up joining an organisation which either may not be compatible or might be inefficient or even corrupt.

**2.1.3** A prospective board member should also understand by becoming a board member he/she is also taking certain amount of legal and social risk. Further he/she might be subjected to various civil and criminal liabilities in future. Sometimes a person may suffer for mistake or misconduct of others. Therefore, understanding and analysing a prospective NPO is a very important issue. Some issues which should be analysed by the prospective board member are discussed in this chapter.

## **OVERVIEW OF THE POSITIONING & PROGRAMMES IN RELATION TO THE VISION/MISSION**

**2.2.1** All prospective board member should carefully study the vision/mission of the organisation and also have look at the existing programmes and projects. It is necessary that the ongoing programmes and projects are in sync with the stated mission. It should also be seen that how the programmes are conducted, whether they are donor or externally driven or does the organisation possesses a proper strategic plan. It may also be seen whether the organisation has a system in place for review and evaluation of its overall journey towards its mission.

**2.2.2** For instance, an NPO may be heavily donor driven which sometimes deviates it from its original mission viz. engaging in various contrasting programme simultaneously such as working on disaster rehabilitation on one hand and on international advocacy on another. The prospective board member should ensure that the NPO is focussed and understands its own core competence and mandate and does not fritter away its resources and energy on various unrelated areas

## **STATUS OF LEGAL COMPLIANCES & MAJOR OBLIGATIONS**

**2.3.1** All prospective board member should also ensure that the organisation is legally compliant and is fulfilling all its legal duties and obligations. In order to ensure that all the compliances are being fulfilled, the board members should verify the necessary documents, which normally come as a part of the induction kit. The manner in which the various document of the kit should be verified is provided in *Annexure 2*.



## **THE OVERALL & INDIVIDUAL MANDATE OF THE BOARD MEMBERS**

**2.4.1** All prospective board member should carefully study the role of the board as a whole. As discussed earlier, the board of some organisation may interfere into the execution and some may not engage with the executive team, actively. It should be ascertained what kind of oversight function the board plays in the governance. Further one should also study the individual job description of specific board members. By making such an analysis, a person can evaluate the efficacy of the board and also the prospects of having space for effective contribution to the governance of the organisation.

## **CONFLICT OF INTEREST ISSUES**

**2.5.1** All prospective board member should carefully study the structure of the board from a 'conflict of interest' perspective. An organisation might be dominated by people who have conflict of interest or depend on the organisation for their occupation and survival.

**2.5.2** It is important to assess the presence of totally independent members on the board otherwise transparent decision making may become an issue. The 'conflict of interest policy' if any, of the organisation should also be studied. From such policies a person can understand the systems within the organisation to handle conflict of interest of the board members.

## **SOCIAL POSITIONING & FINANCIAL HEALTH**

**2.6.1** All prospective board member should carefully study the financial health of the organisation, both from a short term and long term

perspectives. Further, the role of the board in the control over finances and related decision making should be studied. The board is the legal guardian of all the assets and resources which have to be applied for various public purposes.

**2.6.2** The social perceptions and the positioning of the organisation as a charitable or religious organisation is also of paramount importance. A person should try to understand the status and work of the NPO from the point of view of other stakeholders and society at large.

### **SELF ASSESSMENT QUESTIONS**

1. Why it is important for a prospective board member to understand and analyse the NPO.
2. What are the important areas which a prospective board member to understand and analyse before joining an NPO.

## *Chapter 3*

# INDUCTION & ORIENTATION OF BOARD MEMBERS

## OVERVIEW OF THE INDUCTION PROCESS

**3.1.1** 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:

- ♦ Genesis, vision and values of the Organisation.
- ♦ Work precedence and social positioning
- ♦ Mission and primary strategies of intervention
- ♦ Financial Overview
- ♦ The role of Board in governance
- ♦ Legal obligations and liabilities (particularly in case of Trust\*)

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\* Liabilities of the trustees in case of a Trust can be unlimited, for example, if a trust has taken loan from bank, then the trustee at personal level also will be liable in case of a default.

- ♦ 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,
- ♦ Relationships with the other stakeholders.
- ♦ An overview of the website.
- ♦ Site visits to key programme areas.
- ♦ The various committee and sub-committees.
- ♦ The important advisors, auditors and consultant.
- ♦ Any unique aspect of the organisation which provides it special status or recognition in the society.

**3.1.2** 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.

**3.1.3** 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.

**3.1.4** 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 environment within which the board operates.

## MATERIALS TO BE SHARED

**3.2.1** 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 :

**3.2.2 *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.

**3.2.3 *Brochure or Note on the genesis, vision, mission & values :*** An organisation should prepare a note on the genesis, vision, mission & values of the organisation. This note should provide information about the real nature and identity of the organisation. Through this note the board member or any other members should understand the principles and values for which the organisation stands. It should also provide the information about the focus and core competence of the organisation.

**3.2.4 *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.

**3.2.5 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.

**3.2.6 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.

**3.2.7** 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.

**3.2.8 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.

**3.2.9 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

**3.2.10** 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.

**3.2.11 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.

**3.2.12 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.

**3.2.13** 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.

**3.2.14 *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.

**3.2.15 *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.

## CONCLUSION

**3.3.1** A well organized induction or sharing information to the new members integrates them into the organization and they develop better understanding of the Organization. The manner in which the various document of the kit should be verified is provided in *Annexure 2*, which will be useful to new members in processing the information, shared by the organization.

## SELF ASSESSMENT QUESTIONS

1. Provide an overview of the induction process of a board member ?



2. What are the key information which should we shared with a new board member ?
3. What are the materials, documents and literature which should we shared with a new board member ?

## *Chapter 4*

# **BOARD MEMBERS COMMITMENT TOWARDS THE ORGANISATION**

## **INTRODUCTION**

**4.1.1** It has been seen that in many Organizations the Board processes are not formally documented in a systematic way. The various processes, right from identifying to recruiting and developing the Board are quite critical to an organization's Governance. However, the only place that it is documented is in the minutes of the Board meetings. Again, taking minutes is another important skill and therefore, if the minutes are not properly taken, then the process is not even documented.

**4.1.2** It needs to be recognized that membership in any Board is a formal & legal process and therefore there is a need to document it carefully. This chapter re-emphasizes the need to document the recruitment process in a systematic manner & also explains how to do it.

## **NEED OF COMMITMENT SHEET**

**4.2.1** Board member when appointed takes up his/her roles &

responsibility with the understanding to be effective and being committed towards the Vision & Mission of the Organization. However, this implicit Commitment does not get expressed formally many times in written form. There are no Commitment papers available to reaffirm it. Therefore, in order to uphold the mutual accountability, a Board member Commitment sheet needs to be signed. *“Board member Commitment sheet is both a legal as well as a moral document. It is a charter between the Organization and the Board member to fulfill certain responsibilities and stay accountable to each other”.*

## PROCESS TO BE FOLLOWED

**4.3.1** When important initial documentation is to get the consent of the person to act as a Board member. After he/she goes through the materials thoroughly and gets convinced with all the documents and if he/she feels that this is an Organization to associate with, then a written consent is required to join the Board. The format for the consent of Board member is provided in **Annexure 3**. This written consent is then placed before the Board for approval. Issues related to the election/appointment of the individual, the term for which he will be appointed, etc are discussed and then a clear resolution has to be passed. The format for resolution is provided in **Annexure 4**. After the resolution is passed, the appointment is to be communicated to the member and then the Board member has to sign a Commitment sheet. The format of commitment sheet is provided in **Annexure 5**.

**4.3.2** Commitment sheet provides a clear understanding of the responsibilities of each Board member. With a Board commitment sheet, no one could say that they did not understand what they were getting into when they joined the Board. Once the Board members sign this sheet, there is a formal commitment of Board member to remain accountable to the Organization. This sheet needs to be reviewed and signed every year so that the Board members does not forget about it and stays

committed to the work; else it may be signed once during the appointment and then forgotten. This sheet should be filled and signed in duplicate. One copy has to be retained by the Board member and another copy should be kept in the Organization's Files.

## CONCLUSION

**4.4.1** It may be noted here that the Board members Commitment sheet should be looked at as a good practice rather than a mere compliance requirement. Unless these processes are internalized, they lose their relevance and essence. The Board member Commitment Sheet is another tool to further strengthen the Governance processes in Organization.

## SELF ASSESSMENT QUESTIONS

1. What do you understand by board members commitment towards an organisation ?
2. Why it is important to execute a formal commitment sheet with a board member ? What are the important components of a commitment sheet ?

## *Chapter 5*

# **BOARD MEMBERS OWN ASSESSMENT OF COMMITMENT**

## **INTRODUCTION**

**5.1.1** A Board Member before joining any organisations should not only ask questions about the prospective organisation, but should also introspect and analyse his/her own interest, compatibility and commitment towards the prospective job of a board member. Some issues which the board member should analyse are discussed in this chapter.

## **COMFORT LEVEL WITH THE MISSION & VALUES**

**5.2.1** A prospective board member should carefully analyse and understand the mission and values of the organisation. At individual level he should also believe in similar type of ethos and activities. A board member should not join organisation where he/she is not comfortable with the interventions or strategies being implemented. For example, in a child rights organisation; some organisations believe in the child worker's right to work in a safe and hygienic condition, while many other

organisation believe that a child should not work at all. So each organisation may have its own understanding about a particular issue and the interventions required. A prospective board members should be totally comfortable and believe in the work, values and perspective of the organisation.

## **COMMITMENT OF TIME & EFFORT**

**5.3.1** A prospective board member should analyse his/her own ability to provide time and effort towards the expected role and functions. A person might be appropriate for particular organisation but may not be able to give enough time, in such circumstances it is better to avoid being a passive board member. He/she should also analyse the formal requirement of time and effort, for instance :

- ♦ how many meetings in a year to be attended,
- ♦ the time required for specific responsibility if any,
- ♦ time required as a part of various committees, special assignments, special events.

## **MAPPING THE EXPECTATION OF THE ORGANISATION**

**5.4.1** A prospective board member should also try to gauge the actual expectation or motivation of the organisation in inviting him/her to the board. Sometimes organisations approach influential persons with the hope of fund raising or financial contribution. Some other organisation may not have financial expectation but might be expecting to leverage the formal capacity or position of the prospective board member. There is nothing good or bad about such organisational expectations, but a board

member should understand and anticipate them. A board member should make a conscious decision regarding his willingness to play the role expected by the prospective organisation.

**5.4.2** The prospective board member and the organisation should also analyse if there is a conflict of interest in becoming a board member. For instance :

- ♦ A prospective board member might be craving for the recognition or social access it might get, on the other hand the NPO might be looking forward to use his/her formal position or clout to its advantage. Some issues may not be legally wrong but if consciously analysed, then might look unethical even to the persons party to it.
- ♦ The board member, craving for social recognition, might be exceptionally rich or be in a vantage position from a fund raising point of view. On the other hand the NPO might be looking forward to the funds he/she might generate. Again such issues might be legally permissible but the individual motivation of both the person and the NPO could be questioned at an ethical plane.

## **MAPPING THE LEARNING POTENTIAL**

**5.5.1** A prospective board member should also try to gauge the learning potential in the prospective organisation. A board member can enrich himself/herself in various ways including :

- ♦ Interaction with other eminent and expert board members.
- ♦ Learning through the induction process and other board capacitation processes, if any
- ♦ Getting exposure to the various systems and decision making processes.

- ♦ Getting exposure through field visit and interaction with reference community.
- ♦ Getting an opportunity to interact with various diverse categories of stakeholders.

### **SELF ASSESSMENT QUESTIONS**

1. What is self assessment of commitment by a board member ?
2. What are the important aspects of assessing own commitment by a board member ?
3. How a board member can map the learning potential in an NPO ?



## Chapter 6

# DELEGATING ROLE OF THE BOARD

## INTRODUCTION

**6.1.1** Any person or group of person cannot conduct all the task by itself unless the work assigned is a small specific duty. All important, large and multifaceted work have to be done by a group of person working as a team. A manager or a management body has to delegate its powers and authority to its sub-ordinates. The process of allocation and sub-allocation of powers to various downward persons and committees is called delegation of authority.

**6.1.2** In this chapter we will try to understand the various aspects related with delegation of authority. This chapter may be read with the chapter “Oversight Functions of the Board” for greater clarity on the subject.

## UNDERSTANDING DELEGATION OF AUTHORITY AND ITS NUANCES

**6.2.1** *What is Authority* : In case of an NPO and particularly the board

of an NPO the term 'Authority' can be defined as the inherent ability of a person or a body to take decision, direct people and committees, to pass orders and to hold and manage resources in order to attain the organisation's mission. A person may or may not delegate the power or authority he/she may possess, but he/she should be the ultimate point for such power or authority or should be drawing direct mandate from the ultimate point of authority. For example, a King has the power to pardon or punish a criminal; if he gives a death sentence to a criminal, then it is not necessary that he himself will kill or execute the criminal.

**6.2.2** All individuals and bodies should understand the domain and scope of authority they possess. The term 'Authority' in some sense denotes absolute powers (within the defined limits) to command over the subordinates, it normally has a top to down flow. The delegation of authority normally does not imply that the responsibility or the onus has also shifted. In other words the person who delegates will remain liable for the outcome even if the work is not done through him/her even if somebody else is executing the work.

**6.2.3** In this context we should also understand that when a work is delegated the responsibility to execute shifts to the sub-ordinate to whom the work is delegated but the accountability of the work still remains with the delegating authority.

## **OVERVIEW OF BOARD LEVEL DELEGATION**

**6.3.1** The delegation of authority by the board of an NPO has to be designed and implemented based on the specific facts and circumstances of each NPO. In case of smaller NPOs the delegation function might be more simple and minimal and in case of large NPOs the delegation function can be multifaceted and complex. A general overview of the

delegation of authority of the board has been provided which may be internalised and fine tuned according to the requirements of each individual NPO.

**6.3.2** A board may decide to delegate responsibility for the operation and execution of various functions. The board may have two broad divisions of its delegation of authority :

- i) Delegation of authority to various committee, sub committee and advisors.
- ii) Delegation of authority to the CEO and the Executive Team.

**6.3.3** The delegation of authority has a direct relationship with size and nature of an NPO. In smaller NPOs the delegation can happen on adhoc basis, but as the organisation becomes big then the board looks for supporting hands in its own decision making processes. As a result the delegation of authority to Executive team and various Committees, Sub-Committees and Advisors becomes important. Such delegation are more systemic rather than as command over the subordinates.

**6.3.4** All large organisation should build appropriate policies and strategies regarding the delegation of authority to Executive team and various Committees, Sub-Committees other persons or positions as might be needed. Many organisation have the guidelines of such delegation in the bye laws itself, by defining various committees, sub committees etc. and also defining the scope of their authority and how the reporting to be made to the board.

**6.3.5** The delegation of authority to the CEO and the Executive Team is a very delicate issue because board is not supposed to execute the work or engage in the operations. Therefore, there has to be a well defined mechanism of delegation of authority to the executive team and the accountability and responsibility of both the board and the executive thereof.

## **OVERVIEW OF THE VARIOUS AREAS WHICH THE BOARD COULD DELEGATE**

**6.4.1** The board may, generally, delegate the following type of functions to the executive or sub-ordinates :

- ♦ Planning for various programmes and services, except long term plan related with the mission and vision.
- ♦ Annual Planning & Budgeting functions may be delegated wherein all material amounts or financial estimation should be subject to boards approval.
- ♦ Preparation and signing of most of the Contracts can be delegated to the CEO and the executive, subject to the limits and policies laid down by the board.
- ♦ All system related policy documents such as Finance Policy, Procurement Policy, Staff Policy etc. should be prepared by the management and approved by the board.
- ♦ All expenditure approval and operational decisions may be delegated to the CEO and the executive, subject to the limits and policies laid by the board.
- ♦ The accounting & management of funds and assets can be delegated to the CEO and the executive.
- ♦ The monitoring and inspection for various processes and systems may be delegated to the CEO and the executive.
- ♦ The entire process of appointing, appraisal & promotion of staff may be delegated to the CEO and the executive, except may be the CEO and some key positions as the board may decide.
- ♦ The entire process of training and capacity building of staff may be delegated to the CEO and the executive, except may be the CEO and some key positions as the board may decide.
- ♦ The stakeholder & donor engagement may be delegated to the CEO and the executive.

## **OVERVIEW OF THE VARIOUS AREAS WHICH THE BOARD SHOULD NOT DELEGATE**

**6.5.1** The board should not, generally, delegate the following type of functions to the executive or sub-ordinates :

- ♦ The long term and perspective planning which is analogous to the mission and revision in the mission of an organisation. The executive should support in such exercise.
- ♦ All enduring and constitutional policies or bye laws such as :
  - Changes in the Objects, Trust Deed or Memorandum of Association
  - Changes in the Administrative aspect of the trust deed or Rules and bye laws
  - Vision Statements
  - Mission Statements
  - Governance Policy
  - Conflict of Interest Policy
  - Transparency and Disclosure Policy
  - Gender Policy
  - Risk management policy
  - Crisis management policy
  - Change management policy
- ♦ The overall evaluation and impact analysis of the programmes should be carried on by the board, the executive should support in such exercises.
- ♦ The appointment of internal and statutory auditor should always remain with the board.
- ♦ All legal obligation and legislative issues.

## **DEFINING THE DELEGATION IN THE BYE LAW OR TRUST DEEDS**

**6.6.1** It is very important that the bye-laws or trust deed of the organisation should clearly define the mandate and limits of the board. The executives and the sub ordinate bodies should also have a clear idea about the authority and the powers to delegate available with the board. If the bye-laws or the trust deeds are drafted with clarity then there will be clarity and protection to all the persons involved in management and execution.

**6.6.2** Some issues which should be provided in the bye-laws or trust deeds are as under :

- ♦ The definition, authority, role and responsibility of each key functioning such as the chairman, secretary, treasurer, CEO etc. should be provided.
- ♦ The manner of appointment/selection/election of each key functional position should be provided.
- ♦ The various committee and the manner of appointment of such committee should be provided.
- ♦ There should be a policy about delegation and further delegation, normally further delegation is not permissible.
- ♦ The scope and limits of delegation should be articulated and the remedial measure or the authority for conflict resolution should also be provided.
- ♦ The basis and criteria for various policies should be laid down based on the local laws and various comparable national and international standards.
- ♦ Procedure regarding reconsideration of decision and grievance redressal, should also be provided.

## **SELF ASSESSMENT QUESTIONS**

1. What do you understand by delegation of authority ?
2. Provide an overview of board level delegation of authority ?
3. What are the areas which the board should delegate ?
4. What are the areas which the board should not delegate ?

## *Chapter 7*

# VARIOUS COMMITTEES OF THE BOARD

## OVERVIEW

**7.1.1** In this chapter we shall discuss about the various committees of the board of an NPO. Normally it is advisable to create various types of committees, unless the NPO is too small. Committees become necessary for various reasons which may include specialised task or important matters or as per the bye laws. A committee under a board normally denotes a smaller group of the board member working on a specific issue or for a specific purpose.

**7.1.2** A committee may also have invited external member to fulfill the dearth of expertise and specialisation which might not be available within the board.

## WHY IT IS DESIRABLE TO HAVE COMMITTEES

**7.2.1** Normally, the board of an NPO meets occasionally (2 to 6 times) in a year for half a day or so. Therefore, the structure of board meeting is



such that it is very difficult to provide key inputs into the decision making on crucial issues. For analysis of key issues the board normally depend on the executive force. However, all matters cannot be worked upon at the executive level only, there are certain issues which require considered view or intervention of the board, therefore, it is necessary to have various types of committees. NPOs form committees primarily for the following reasons :

- ♦ If the matter is complex and requires detailed study or attention of the board then a sub group can be created to look into it. For example, if there is a labour or staff problem or a grievance matter etc.
- ♦ If the matter is extensive or very detailed which requires lot of time and attention of the board then a sub group can be created to look into it. For example, doing due diligence of implementing partners in a large programme. Or matter related with creation of large infrastructure or systems.
- ♦ If the matter is too specialised which requires lot of time and attention of the board then a sub group can be created to look into it. For example, legal contingencies, tax issues, specialised programmes etc.
- ♦ If the constitution of a committee is provided in the bye laws. Many bye laws provide for standing or adhoc committees for specific purposes.
- ♦ The committees are also helpful in carrying out research and in depth study of various crucial projects and investments. The committees can provide various options or pros and cons of various important decisions, they can also provide recommendations which can help the board to take decision.
- ♦ Committees can also be provided with legislative and executive powers to worked on behalf of the board.

- ♦ Constitution of a committee, sometime, is very helpful on issues where there is a serious difference of opinion within the board. Appropriate committee can be very useful in handling difficult and ticklish situations/decisions.

## NATURE & TYPES OF COMMITTEES

**7.3.1** Various types of committees should or can be constituted by the board of an NPO. The broad category of committees can be as under :

- ♦ Standing Committee for Specific purpose
- ♦ Adhoc Committee for Specific purpose
- ♦ Executive Committee (Standing Committee for Generic purpose)

**7.3.2 *Standing Committee for Specific purpose*** : Such committees are formed for long term purposes. NPOs may form committees for various ongoing activities on a continuous basis. For example an NPO may have a Finance Committee for major financial decision and monitoring; or it may have a committee for purchases etc. The idea behind such committees is to provide a specialised group of people on continuous basis on very focussed areas. If a group of person are focussed on a particular issue/area then it is easier to find the appropriate type of people for that committee.

**7.3.3 *Adhoc Committee for Specific purpose*** : Such committees are similar to standing committee but are form formed for short term purposes. NPOs may form committees for various issues on a case to case basis depending the need and circumstances. Such committees are usually constituted for a specific purpose on short term basis. For example, an NPO may have a Conference Committee for major function. The idea behind such committees is to provide a specialised group of people on an adhoc basis for a very focussed purpose. If a group of person are focussed on a particular issue/area then it is easier to find the appropriate type of

persons for that committee. If required persons from outside the board can also be invited and representation from the executive/staff team (with or without voting power) can also be invited.

**7.3.4 Standing Committee for Generic purpose (Executive Committee) :** A Standing Committees which is constituted to take the general executive function of the board is known as an Executive Committee. NPOs may form an Executive Committees for the general management purposes. Such committees are usually constituted on a continuous basis, based, on the bye laws or the constitutional documents. An Executive Committee as the name suggests has well defined 'executive powers' which are normally provided in the bye-laws. The general body or the board may also constitute the scope and powers of the executive committee. An Executive Committee normally does not possess any legislative powers.

## CHARACTERISTICS OF COMMITTEES

**7.4.1** Various committees of board have certain inherent executive and legislative attributes. Some of such attributes of committees are as under :

- ♦ Committees remain on par with the board and they do not play a sub-ordinate function. However that does not imply that they are independent of the board. They have to work and perform within the parameters laid down by the board.
- ♦ Committees provide their inputs, recommendations or decisions to the entire board or the general body depending on the bye laws and the mandate. The committees do not work for the Chairman, Chief Functionary or any other functionary or smaller group of the board, unless the circumstances so demand or it is laid down in the bye laws.
- ♦ The committees are the extended arms of the board, in other words through the committees the board (as a whole) can make more in depth or more considered resolution and decision.

- ♦ The committees have a reporting role before the board and are also bound by performance and accountability. However, committees report to the board on a systemic principle which does not make them sub-ordinate to the board.
- ♦ Generally at the committee stage the decision/resolutions are recommendatory in nature or possess a pre sanction of the board. Sometimes the board may authorise the committees to take direct decision and pass direct order to the executive.
- ♦ Committees are generally formed from within the board however, a committee may also have invited external member to fulfill the dearth of expertise and specialisation which might not be available within the board. The committee may also have members from staff as invitees or with formal powers.

## **KEY ISSUES IN DEVELOPMENT OF COMMITTEES**

**7.5.1** All NPOs should bear in mind the various characteristics and nature of the various committees, in order to make them effective. Some of the key issues which should be considered during the formation of committees are elaborated as under :

- ♦ All committees should directly or indirectly have the sanction of the bye laws and constitution of the NPOs. Certain NPOs specifically provide for constitution of various standing and adhoc committees. Even in the absence of any such clause NPOs do have the power to constitute committees unless it is specifically barred in the constitutional documents. Sometimes the Chairperson of the board meeting or the members present, may decide to form an Adhoc Committee on any issue to get a more detailed and incisive understanding.
- ♦ Committees are support systems for effective governance of an organisation. Most of the committees normally add value,

precision and fairness in the decision making of the board. Therefore, the committees should, ideally, work between the board meetings. For instance if a board is meeting every quarter then specific committee can meet on monthly basis and apprise the board on quarterly basis. The committees should be willing to provide more time and effort in a structured, focussed and formal manner which should be documented.

- ♦ The committees are normally formed out of the board members but it is always advisable to invite specialised people from the stakeholders or society at large, to participate in various committees. Such members should also have equal voting rights on par with other members.
- ♦ The committees are normally formed out of the board members but it is always also advisable to invite CEO/staff member for their considered views. Such members may or may not have equal voting rights on par with other members.
- ♦ The committees are normally formed with a small number of people. The total number of persons in a specific committee should be between 3 to 7 members. Some times the nature and the purpose of the committees may require a large number or a very miniscule number of members. An organisation has to decide, on case to case basis, the ideal size of the various committees. For instance, a committee for a National Conference may require a large number of members with various sub-committees thereof. On the contrary a committee for fact finding of an internal grievance or dispute can be comprised with a small team of one or two members.
- ♦ An NPO may consider inviting the CEO as Ex Officio member of the various committees. However, from the point of view of independent decision making the CEO may not be a part in some sensitive committees such as the Audit Committee or the Grievance Redressal Committee etc. Again an organisation has to decide, on case to case basis, the committees in which the CEO should or should not participate. In some committees the CEO should participate as a invitee only without any voting power.

- ♦ All Committees should have a pre decided Anchor or a Facilitator to lead the process. The head of the committee should normally be declared upfront. In the absence of any resolution regarding the chair or the head of the committee, the existing committee members should elect a person as the chair. The Chairperson of the committee should also possess the powers, normally, available to a chairperson of any meeting. Such powers can include the power of exercising the casting vote, the power to convene the meeting or to call for persons and information.

## **SELF ASSESSMENT QUESTIONS**

1. Why it is necessary to have committees in an NPO ?
2. Write briefly on the nature and types of various important committee ?
3. What are characteristics of committees ?
4. What are the key issue and development of committees ?

# EXECUTIVE COMMITTEE

## OVERVIEW OF EXECUTIVE COMMITTEE (EC)

**8.1.1** As discussed earlier, standing committees are long term and ongoing committees. Standing committees are an integral part of effective governance of an organisation. Normally the Constitutional documents or Bye laws provide for the various standing committees which should be constituted, some popular examples of standing committees are Executive Committee, Finance Committee etc. In this section we shall discuss issues relating to Executive Committee (EC) which should be constituted in all medium and large NPOs depending on their need and circumstances.

**8.1.2** EC is probably the most important standing committee in any organisation. In some NPOs EC is mandated as a constitutional body by the bye-laws or trust deed etc. An Executive Committee as the name suggests has well defined 'executive powers' which are normally provided in the bye-laws. The general body or the board may also constitute the scope and powers of the executive committee. An Executive Committee normally does not possess any legislative powers.

## SCOPE & OVERALL MANDATE OF EC

**8.2.1** An EC may be defined *“as a group of persons comprising members mostly from board to act on behalf of the board within the scope and powers of management granted to it by the board.”* As the name suggests the EC is the ultimate body for the executive aspects of the governance process of an organisation. The legislative and judicial aspects are normally not in the domain of EC.

**8.2.2** The EC is probably the most powerful standing committee of permanent nature. It acts on behalf of the board and in some sense carries out the role and functions of the board, it reports to the board and is empowered by the board in terms of the bye-laws.

**8.2.3** Unlike the board, the EC does not possess any legislative powers, it is the executive arm of the board. The EC is expected to meet more frequently and take responsibility of the managerial functions on an NPO. The EC also acts as the advisor to the chairperson and the board for important decision making.

## COMPOSITION OF EC

**8.3.1** Normally the EC consists of board members i.e. a smaller group of board members are authorised to function as the EC. However, the CEO is also, under normal circumstances, an Ex-Officio member of the EC, with equal rights including the right to vote. The Chairman of the board, the Secretary and the Treasurer also participate in the EC. The size of the EC is generally smaller than the board and may comprise 4 to 10 members.

**8.3.2** It is not necessary that only board members can become members in an EC. The board may decide to have experts and eminent persons to be a part of the EC.



## ROLE AND FUNCTION OF EC

**8.4.1** Some of the important role and function of the EC are discussed hereunder :

- ♦ To undertake the general management of the NPO.
- ♦ To act on behalf of the board, sometimes the EC may become too pro-active and the board might be reduced to a role of endorsement only. Therefore, a balance has to be maintained between the functions of the board and the EC.
- ♦ To prepare the annual plans and budget (which are approved by board) and also implement them.
- ♦ To handle the Human Resource (HR) issues including recruitment, appraisal, capacity building etc.
- ♦ To ensure the operational implementation of all the policies and systems.
- ♦ To decide and propose major events and activities.
- ♦ To prepare various annual reports and statements to be presented before the board and other authority.
- ♦ Enter into various kinds of contracts necessary in the execution of the managerial function.
- ♦ To engage in the process of identification and orientation of prospective board members.
- ♦ To review legal risk and crisis management issues.

## MEETINGS

**8.5.1** The meetings of EC are normally conducted on a more frequent basis. The EC member should meet more regularly in order to remain in control of the various management tasks. The required frequency of meetings will depend on the nature and size of the organisation. However,

the recommended number of meeting should be on monthly or bi-monthly basis. The meetings are convened on the directions of the Chairperson, who is also the Chairperson of EC.

**8.5.2** The minutes of the EC should be maintained along with attendance register just like the board minutes. The agenda, notice and resolutions should also be prepared on similar terms.

## **ANNUAL ASSESSMENT OR SELF ASSESSMENT**

**8.6.1** The board should make an annual assessment of the EC with regard to its performance and effectiveness. The assesment should also cover the issues and challenges faced by EC.

**8.6.2** The EC should also conduct self assessment once or twice in a year. The rationale of such assessment is to improve the relevance and effectiveness of the EC.

## **SELF ASSESSMENT QUESTIONS**

1. What do you understand by an Executive Committee ? Also explain its scope, mandate and composition ?
2. What are the major roles and functions of an Executive Committee ?
3. Write briefly on Executive Committee meetings and assessment processes.

# FINANCE COMMITTEE

## OVERVIEW OF FINANCE COMMITTEE (FC)

**9.1.1** FC is probably the most important standing committee for specific purposes in any organisation. NPOs handle private & public funds as Trustees for public purposes. Therefore, it becomes very important that the key financial aspects such as :

- ♦ Safeguard and custody of assets
- ♦ Funds Management
- ♦ Investment Management
- ♦ Mobilisation and Utilisation of funds
- ♦ Transparency and compliance in financial and legal transactions

are being done in the most ethical, prudent and efficient manner. In some NPOs FC is mandated as a constitutional body by the Bye-laws or Trust Deed etc. A Finance Committee as the name suggests has well defined 'fiscal powers' which are normally provided in the Bye-laws or the Trust Deed. The general body or the board may also constitute the finance committee if it is not specifically provided in the Bye-laws or Trust Deed.

The scope and powers of the Finance Committee may be determined by the board or the general body if it is not properly articulated in the Bye-laws or Trust Deed. An Finance Committee normally does not possess any legislative powers. It is the fiscal management arm of the board.

## **SCOPE & OVERALL MANDATE OF FC**

**9.2.1** The FC is a very important standing committee of permanent nature. It acts on behalf of the board and in some sense carries out the role and functions of the board pertaining to the fiscal management of the NPO. Unlike the board, the EC does not possess any legislative powers it is the financial watchdog of the board. The FC also acts as the advisor to the chairperson and the board for important decision making.

## **COMPOSITION OF FC**

**9.3.1** Normally the FC consists of board members i.e. a smaller group of board members are authorised to function as the FC. However, the CEO is also, under normal circumstances, an Ex-Officio member of the EC, with equal rights including the right to vote. The Treasurer of the board normally is the Chairperson of the FC. The size of the FC is generally smaller than the board and may comprise 4 to 10 members.

**9.3.2** It is not necessary that only board members can become members in an FC. The board may decide to have experts and eminent persons to be a part of the FC.

**9.3.3** The presence of CEO on the finance committee needs to be carefully analysed in resolutions such as identification of statutory or internal auditor etc. In other words the CEO should not participate in those decisions where the performance or the integrity of the CEO and the Executive team could be subjected.

## ROLE AND FUNCTION OF FC

**9.4.1** Some of the important role and function of the FC are discussed hereunder :

- ♦ To be the advisor and anchor of the fiscal management processes and systems of the NPO.
- ♦ To monitor and engage in the annual and long term budgeting processes, which are recommended to the board for approval.
- ♦ To ensure systems and safeguard for all assets and investments of the organisation.
- ♦ To have oversight management function over the financial transaction both on the income and expenditure side.
- ♦ To monitor and engage in the preparation of audited statements, which are recommended to the board for approval.
- ♦ To ensure the operational implementation of all the financial and procurement policies and systems.
- ♦ To monitor the legal compliances and the contractual obligations. It should keep oversight over all the legal contracts and the various legal compliances made by the NPO.
- ♦ To develop investment and cash management strategies in order to ensure efficient management of funds yielding highest return for the NPO.
- ♦ To oversee the fund raising and other aspects of financial sustenance in the long term.
- ♦ To ensure and watch over conflict of interest transaction or contracts if any.
- ♦ To evaluate the competence and capacity of the finance department including the people and systems.
- ♦ To participate in recruitment and capacity building of the personnel in the finance department.

- ♦ To make an assessment of financial and legal risk involved in implementation of various programme and the day to day function, from time to time.

## MEETINGS

**9.5.1** The meetings of FC are normally conducted on a more frequent basis. The FC members should meet more regularly in order to remain in control of the various issues pertaining to financial management. The required frequency of meetings will depend on the nature and size of the organisation. However, the recommended number of meeting should be on bi-monthly or quarterly basis.

**9.5.2** The meetings are convened on the directions of the Chairperson of the Finance Committee, who is normally the Treasurer of the NPO.

**9.5.3** The minutes of the FC should be maintained along with attendance register just like the board minutes. The agenda, notice and resolutions should also be prepared on similar terms. Most of the resolutions of the FC are recommendatory in nature but it is very important to maintain the formal documentation and trail for transparency and fixation of accountability in future.

## ANNUAL ASSESSMENT OR SELF ASSESSMENT

**9.6.1** The board should make an annual assessment of the FC with regard to its performance and effectiveness. The assesment should also cover the issues and challenges faced by FC.

**9.6.2** The FC should also conduct self assessment once in a year. The rationale of such assessment is to improve the relevance and effectiveness of the FC.

## **SELF ASSESSMENT QUESTIONS**

- 1.** What do you understand by an Finance Committee ? Also explain its scope, mandate and composition ?
- 2.** What are the major roles and functions of an Finance Committee ?
- 3.** Write briefly on Finance Committee meetings and assessment processes.

# AUDIT COMMITTEE

## OVERVIEW OF AUDIT COMMITTEE (AC)

**10.1.1** In large NPOs for audit purposes, an independent audit committee is formed for having oversight over various financial control processes and the integrity of the financial statements. The AC helps the board in fulfilling its fiduciary and legislative duties. An Audit Committee as the name suggests has well defined powers for audit and control purposes. It can play a very effective role in providing assurance to the various audit processes and financial statements.

## SCOPE & OVERALL MANDATE OF AC

**10.2.1** The AC is a very important standing committee of permanent nature. It acts on behalf of the board and in some sense carries out the role and functions of the board pertaining to the audit and internal control of the NPO. Unlike the board, the AC does not possess any legislative powers it is the body which helps in the audit and control of various



financial processes. The AC also acts as the advisor to the chairperson and the board for audit or other financial control. The AC sometimes is empowered to appoint internal auditors and review various financial statements and audit reports.

**10.2.2** The AC is, normally, constituted in slightly larger size NPOs. In large NPOs the audit function is divested from the finance committee in order to keep the audit function totally independent of the people involved in the management of the organisation, in some way or the other.

## SIZE AND COMPOSITION OF AC

**10.3.1** An Audit Committee may comprise of 3 to 5 members. Normally such committee are kept independent of the CEO and the management. The CEO may be invited to the AC whenever needed, but should not be a member of such committee.

**10.3.2** The rationale is to create a body which provides space to the auditor to interact and report about the management. The absence of the CEO and the management also ensures that there is no conflict of interest inside the committee. An NPO may invite eminent experts from outside, if the required expertise is not available within the board.

## ROLE AND FUNCTION OF AC

**10.4.1** Some of the important role and function of the AC are discussed hereunder :

- ♦ To be the advisor and anchor of the audit processes and financial control systems of the NPO.
- ♦ To monitor the internal control over various financial reportings and MIS. In other words AC ensures the integrity and effectiveness of various control mechanisms in place.

- ♦ To monitor and ensure the qualification, independence and competence of the statutory auditor.
- ♦ To monitor and ensure the qualification, independence and competence of the internal auditor.
- ♦ To assist the board in performing its fiscal responsibility as a trustee. The board is responsible for the safeguard of assets and resources.
- ♦ To assess and apprise the board about the financial risk through review of various audit and internal control processes.
- ♦ To review the various accounting principles and financial policies followed in presentation of financial statements.
- ♦ To review the impact of various changes in law and accounting pronouncements on the financial statements.
- ♦ To review and determine the non-audit services to be provided by the statutory auditors or externally appointed internal auditors. For instance engaging the auditor for tax compliances etc.
- ♦ To review the various engagements with the statutory auditor and point out any significant issue which may affect the independence of the auditor.
- ♦ To review the fees and compensation of the statutory and internal auditor.
- ♦ Periodically interact with the Internal and Statutory Auditors directly without the involvement of the CEO and the management.

## MEETINGS

**8.5.1** The meetings of AC are normally conducted based on the functions of the AC. Unless the organisation is very large the AC members should meet once in a quarter. Because the role of the AC is more

legislative in nature. The AC member should meet more regularly in NPOs where continuous internal audit or concurrent audit processes are in place. The required frequency of meetings will depend on the nature and size of the organisation. The meetings are convened on the directions of the Chairperson of the AC.

**8.5.2** The minutes of the AC should be maintained along with attendance register just like the board minutes. The agenda, notice and resolutions should also be prepared on similar terms.

## **ANNUAL ASSESSMENT OR SELF ASSESSMENT**

**8.6.1** The board should make an annual assessment of the AC with regard to its performance and effectiveness. The assessment should also cover the issues and challenges faced by AC.

**8.6.2** The AC should also conduct self assessment once in a year. The rationale of such assessment is to improve the relevance and effectiveness of the AC.

## **SELF ASSESSMENT QUESTIONS**

- 1.** What do you understand by an Audit Committee ? Also explain its scope, mandate and composition ?
- 2.** What are the major roles and functions of an Audit Committee ?
- 3.** Write briefly on Audit Committee meetings and assessment processes.

# BOARD'S ROLE IN CRISIS MANAGEMENT

## INTRODUCTION

**11.1.1** All organisation should have the ability to handle unexpected situations and circumstances. Nobody can plan and predict all the future events and activities, therefore, all organisation should build some inherent capacity to handle unexpected situations. All unexpected events which are likely to create a spot of bother for the organisation can be called as crisis.

**11.1.2** Contrary to the common perception a crisis need not necessarily be negative in nature. In this chapter we shall try to understand various issues pertaining to the probable crisis and its management in case of an NPO.

## DISTINGUISHING CRISIS FROM CHANGE

**11.2.1** A 'crisis' should be distinguished from 'change'. A 'change' is a much broader concept, an organisation may face various challenges of

change, which we shall discuss in the next chapter. A change may happen with or without a crisis, a change may be required even without a crisis. All organisation are also subject to life cycle wherein the needs and the ability to respond may differ from time to time. Just like the needs and preferences of a child may differ from the needs and preferences of an adult.

**11.2.2** NPOs like human beings also undergo various phases and changes in their life, which may produce various kinds of challenges such as :

- ♦ The very existence of an NPO may be threatened based on an external or internal change. For example, the NPO preaching Swadeshi through Khadi and other indigenous skills and habits may have to adapt to the changes in people preference and other indigenous innovations.
- ♦ The skills of an NPO may become redundant on an external or internal change. For example, the NPO providing vocational training on repair of traditional radios and televisions may find difficult to survive due to change in technology.
- ♦ An NPO may be subjected to the so called 'future shock' where the external environment changes so rapidly, making it difficult to keep the pace.

## **DISTINGUISHING CRISIS FROM RISK**

**11.3.1** A 'crisis' should also be distinguished from 'risk'. A 'risk' is a probability attached to the happening of a crisis or an event. A risk pertaining to a crisis may or may not be under the control of an organisation. For instance a risk pertaining to a sudden legal change or withdrawl of a donor due to the change in policy of the country, are the type of risk which are difficult to anticipate and control.

**11.3.2** A risk might be difficult to anticipate by an organisation but may be reasonably controlled. For instance a risk pertaining to a unexpected natural disaster can be controlled and mitigated by following certain constant precautions. It is like continuously wearing seat belts and helmets even when one is not expecting an accident.

**11.3.3** A risk might be easy to anticipate by an organisation but can be difficult to handle. For instance a risk pertaining to the phase out of the primary donor can be easily anticipated, but may be difficult to control and mitigate the impact.

## NEGATIVE TYPES OF CRISIS

**11.4.1** As discussed above an NPO should be prepared for all kinds of crisis situation which may be negative or positive. Some of the probable negative crisis situation in case of an NPO are discussed below :

- ♦ An NPO dependent on grant and external project funding is always under the risk of a funds crisis, particularly the NPOs which are largely dependent on one or few sources of funding.
- ♦ An NPO may face programmatic crisis with changes in external environment. For example, in a vocational training programme the skills and capacity imparted by the NPO become redundant due to technological advancements.
- ♦ An NPO may face crisis of expertise and communication due to the death or unavailability of a key functionary. Many organisations exist only in the memory of the key persons and they face crisis when such persons are not available. The skill and expertise of an NPO are heavily dependent on specific individuals which is a subject matter of a probable crisis.
- ♦ An NPO may face crisis due to attrition and turnover of staff. The organisational capacity and expertise for running various activities may become difficult to sustain.

- ♦ An NPO may face various types of organisational disasters or unexpected events such as :
  - Legal cases against the organisation by stakeholders including government, donor etc.
  - Suspension of registration due to inquiries and show causes which may or may not be true.
  - Major cases of corruption or embezzlement of funds within the management or staff of the NPO.
  - Death or illness of key staff of the NPO.
- ♦ An NPO may face crisis if its properties are mortgaged with banks and is unable to repay the loan.
- ♦ An NPO may face crisis due to disasters like earthquake, flood, epidemic, fire, accident, civil unrest etc.

## **POSITIVE TYPES OF CRISIS**

**11.5.1** As discussed above an NPO should be prepared for all kinds of crisis situation which may be negative or positive. Some of the probable positive crisis situation in case of an NPO are discussed below :

- ♦ An NPO may face programatic crisis with changes in external environment. For instance improvement in government delivery system may make the programmes of NPO less relevant. To explain it further, suppose the defunct government schools/ dispensary start functioning in a village, then the relevance and purpose of similar initiatives of an NPO may have to be redefined. In the above example if the government run schools/ dispensary become operational or effective, it is a great news for the society, but at the same time can create a crisis for the NPO.

- ♦ An NPO dependent on grant and external project funding may suddenly receive funding for large projects which are much higher than the fund/program management capacity of the NPO. For example during the Tsunami disaster in 2006 in India and Sri Lanka, many NPOs were flooded with unprecedented amount of funds which was much beyond their capacity to handle.
- ♦ An NPO may receive unprecedented response from volunteers for its activities. For example an NPO may call for volunteer in a afforestation drive and a huge number of volunteers turn up and the NPO does not have the capacity or resources to use so many people.
- ♦ An NPO may be selected for higher responsibilities, for instance one of the NPO in a network of NPOs may be invited to lead a large project/initiative by a donor or government.
- ♦ An NPO may receive unprecedented response from beneficiaries for some of its proposed activities. For example when an NPO proposes to conduct cataract operations for affected people in a particulars area, the number of beneficiaries turnout is much more than the anticipation or capacity of the NPO.

## **CRISIS MANAGEMENT PLANNING & STRATEGIES**

**11.6.1** It is always difficult to plan for something which is not known. An NPO may never be able to anticipate all the crisis situation it may face in future. However, an NPO can make various broad systemic and fundamental allowances to handle various kinds of crisis situation. Some of the strategies/characteristics which will help in better management of



crisis are discussed as under :

- ♦ **Organisational Vigilance :** All NPOs should develop a continuous mechanism of alertness and vigilance. An organisation should not be caught off guard for any crisis or problem which is brewing within. *It is said that even the most devastating fires of the world could have been prevented by a cup of water at the right time.* For instance if an organisation is facing constant reduction in funds it should start simultaneous reduction in various fixed and variable cost. It may have to reduce activities, it may have to layoff staff etc. Therefore, the board should develop a checklist of various key areas and analyse the possibility of any impending crisis. The board may, once in every six month, review the issues such as; adequacy of finances, legal compliances, adequacy of the internal control and audit system etc.
- ♦ **Organisational Ability to scale up or scale down :** All NPOs should have the organisational ability to scale up and scale down the activities and functions, if required. For instance, the board of an NPO may make a mock exercise and try to see its ability to respond, if it is required to work under the following circumstances :
  - The project funds are reduced by more than 50%.
  - The project funds are increased by more than 300%.
  - The geographical area is increased manifold.
  - It has to close down most of its project office which have permanent infrastructure and staff.
  - It is required to play a role at the national level from the district level activities it was doing.
  - It requires high number of staff and technology to manage diversified activities and multiple funding.

In the above instances which are just illustrative in nature, an organisation can easily identify its ability to face various situation and it can take remedial measures in its existing systems. For instance if an NPO is not certain about future funds mobilisation it may consider hiring additional staff only on short term contract. Or an NPO which anticipates the possibility of a considerable increase in its geographical area, may start networking with diverse NPOs spread in a larger geographical area. The moot point is the ability of the organisation to be flexible and receptive in order to adapt to various kinds of circumstances which may unfold in future.

- ♦ ***Precautions and Insurance*** : All NPOs should analyse the possible precautions and insurance they can make against future contingencies. An NPO should insure against any major calamity or contingencies through various insurance policies which the board may decide from time to time. Further, one cannot get insurance policies against everything therefore, the board should also identify and put in place various precautionary measures against various risk such as litigations, corruptions, death of key people etc.
- ♦ ***Corpus and Endowments*** : All NPOs should try to create reasonable resources of permanent nature which can sustain them in adverse circumstances. Generally corpus is not a very good idea as it barter the present with future. However, it is always desirable to create certain basic resources, assets and funds which can support the organisation in its basic activities.
- ♦ ***Sustainable Options*** : All NPOs should also try to create options of sustainable activities. Sustainability is a multifaceted issue and can be aspired in many ways, some popular method of sustainability are as under :
  - Smaller NPOs and sustain various activities through multi

tasking, because they may not have resources to hire the required number of staff with specific skills. Or a full time staff for specific type of skill might not be necessary.

- Sustainable programmes can be created, for example, many NPOs run Non Formal Education (NFE) centres, dispensaries, primary schools on cost to cost basis with local resource persons.
  - The core cost can be kept at reasonable level for greater sustainability.
  - Constant capacity building of staff and board members can help in a sustainable work force with adequate experience, even if there is attrition or turnover of staff.
  - The sources of income and funds are kept diverse so that if some sources are not available even then the work of the NPO can continue.
- 
- ♦ ***Second Line of Leadership*** : All NPOs should try to create a second line of leadership both at legislative and executive level. Most NPOs depend on one or two charismatic persons and therefore, face problem when such persons are not available in future. A healthy rotation policy in the board with strong democratic practices can help in handling leadership crisis. Similarly a group of empowered senior staff can also be useful if some senior staff are not available in future.
  - ♦ ***Data & Knowledge back up*** : All NPOs should create a proper back up for all kinds of data and knowledge resources available. The back up could be of the electronic data or the legal documents or even the organisational ethos and history. Many organisation exist only in the memory of the key people and they face crisis when such person are not available. Effort should be made to make the organisation independent of individuals and contingencies in terms of the data and knowledge available. NPOs

should use modern technology to preserve its data and knowledge available in all possible form such as visuals, photos, data, voice data etc. Further modern methods of storing such as cloud storing or external disk etc. should be used.

### **SELF ASSESSMENT QUESTIONS**

1. What do you understand by Crisis Management ?
2. How Crisis Management is different from Risk Management and Change Management ?
3. Write briefly about negative type of Crisis ?
4. Write briefly about positive type of Crisis ?
5. Discuss some Crisis Management planning and strategies ?

# RISK MANAGEMENT IN NPOs

## INTRODUCTION

**12.1.1** In the last chapter we discussed about crisis management. All crisis are related with certain amount risk, though it does not imply that if the risk is higher then the crisis would be severe. One may face a severe crisis where the risk is considered to be very low and the contrarily a severe crisis may where no risk was perceived.

**12.1.2** A 'crisis' should be distinguished from a 'risk'. A 'risk' is a probability attached to the happening of a crisis or an event. A risk pertaining to a crisis may or may not be under the control of an organisation. For instance a risk pertaining to a sudden legal change or withdrawl of a donor due to the change in policy of the country, are the type of risk which are difficult to anticipate and control.

**12.1.3** The perception of risk may not be the most precise indicator of the impending crisis, however risk analysis always helps an organisation to minimize the possible threats to a great extent. A risk analysis, sometimes, can overlap with a crisis analysis because risk has to be analysed in relation to a future event which may or may not result in a

crisis. Therefore, risk analysis is a much broader concept and it applies even to such cases which may not result in a crisis.

**12.1.4** A crisis happens only rarely but risk analysis and management should be done on a continuous basis. For example, a person may purchase insurance policies against accidents and wear seat belts throughout his life, but may not face any accident in his/her entire life. Then the question may arise that the insurance and the precaution were totally wasted as there was no crisis. The risk was always there but the crisis never came.

**12.1.5** Therefore, risk analysis is something which should inherently and concurrently be embedded in almost all activities, systems and events of an organisation. All the issues pertaining to risk analysis cannot be generalised and will always remain organisation specific, however, in this chapter we are discussing some broad issues and parameter pertaining to risk analysis.

## OVERALL OBJECTIVE OF RISK ANALYSIS

**12.2.1** All NPOs should carefully analyse the purpose of risk analysis and what objective it may achieve in the organisation. Some of the assumption vis-a-vis objectives are short listed as under :

- ♦ Unattended Risk may affect the efficiency and quality of the work and various input processes.
- ♦ Unattended Risk may affect the efficiency and quality of the work and various output processes.
- ♦ Unattended Risk may affect the safety of human resources.
- ♦ Unattended Risk may affect the safety of assets and other resources.
- ♦ Unattended Risk may affect the fund mobilisation and income of the NPO.

- ♦ Unattended Risk may affect the capacity to face catastrophic events.
- ♦ Unattended Risk may affect the capacity to face legal litigation against non compliances and other contingencies.

## LEGAL RISK

**12.3.1** All NPOs should carefully analyse the legal risk involved in their activities and interaction with stakeholders. An NPO may face various kinds of legal risk which may range from suspension to dissolution to heavy financial penalties. The Board members and Trustees of an NPO may also be subjected to various kinds of legal risk. Some of the important areas which may involve legal risk are discussed as under :

- ♦ ***Legal Risk pertaining to the key documents*** : An organisation should carefully study its key document including the Trust deed, Memorandum of Association, Articles of Association, Contract documents, Policy document etc. For instance the Trust deed or Memorandum of Association should empower the NPO to conduct various activity and take major policy decision. A small disabling clause in the Trust deed, Memorandum of Association may endanger the existence and the various licences of an NPO. A clause pertaining to commercial activity or power to invest may be in violation of the law of the land. Similarly there could be various kinds of risk in the documents we make and use in our day to day functioning. Some of the important risk pertaining to various key documents has been discussed in **Chapter 13**.
- ♦ ***Legal Risk pertaining to Liability of the Organisation and the Board/Trustees*** : An organisation should carefully study the legal risk, it may face in the shape of liability towards external stakeholders due to non compliance or non performance of

various organisational responsibilities. Some issues pertaining to legal liabilities are discussed as under :

- An organisation may face legal liabilities with regard to various staff and consultancy contracts. An organisation should understand the law of land and take proper legal advice in issuing contracts to staff and consultant.
  - An organisation may face legal liabilities with regard to various contracts signed. An organisation should understand the law of land and take proper legal advice before entering into any kind of contract. This issue has been discussed in *next chapter*.
  - The board of directors or the trustees may also be subjected criminal or civil liability if violation of the law is being made with a malafide intention. Contrary to the common believe the board members or the trustees may not enjoy immunity of limited liability if any deliberate or malafide act or noticed.
  - An organisation may suffer legal risk for the misconduct or any illegal act of any of its directors or senior member done in representative capacity. For instance, if there is violence in a formal protest or rally organised by an NPO, then the entire board or the organisation may suffer even if the violation is made by 1 to 2 individuals.
- 
- ♦ ***Legal Risk pertaining to terror and money laundering*** : An organisation should carefully study the sources and the credential of its funding and donors. Just like banks which are subjected to KYC (Know Your Customer) norms, the NPOs effectively are also subjected to KYD (Know Your Donor) norms. An NPO may face criminal prosecution if it is found to have received funds from dubious, anonymous or prohibited sources, whether from within the country or Abroad.
  - ♦ ***Legal Risk pertaining to non compliance of law*** : An organisation should carefully comply with the requirement of



all the statutes applicable to it. An NPO may face various kinds of legal risk ranging from financial liability to criminal liability to cancellation of registration.

- ♦ ***Legal Risk pertaining to intellectual property, copyright, patent, trademark etc. :*** An organisation should carefully understand the national and international law pertaining to intellectual property, copyright, patent, trademark etc. It should ensure proper compliance in use of material/intangible assets belonging to the NPO as well as others. Proper registration and approval should be taken wherever applicable. Some such issues are discussed as under :
  - An organisation should ensure that the internet domain and email id's etc. are formally registered and any possibility of loss of right is prevented.
  - An organisation should ensure that all its intellectual properties such as (i) books or research materials (ii) logos or trademarks (iii) videos and designs (iv) other development or scientific/social innovations etc. are registered with the appropriate authority.
  - Any newsletter or dissemination material should also be properly approved and should be as per the law of the land.

## **HUMAN RESOURCE RISK**

**12.4.1** All NPOs should carefully analyse the issue pertaining to all the human resources involved. Apart from the legal risk which have been already discussed above, there are various other risk which may create crisis for an NPO. Some of such additional important areas which may involve human resource risk are discussed as under :

- ♦ An NPO should ensure that all the human resources right from the board to the grassroot worker are adequate, competent and

sustainable. An organisation is always under the threat of human resource turnover and the deficit of appropriate expertise required for each specific position.

- ♦ An NPO should ensure that all the staff are provided with a safe and fair environment to work. It should also ensure that promotions, appraisals, dispute resolution are being done in a very objective, independent and fair manner in order to avoid resentment and legal litigation.
- ♦ An NPO should ensure that all the human resources are provided with insurance and social security support as far as possible. It not only secures and satisfies the employees but also safeguard the organisation against any financial liability in case of a contingency.
- ♦ An NPO should ensure that all the termination and retirement policies are as per the law and transparent.
- ♦ An NPO should verify the credentials and antecedents of all the human resources right from the board to the grassroots worker. It is advisable to take a self declaration regarding the social, criminal and civil conduct of past.
- ♦ An NPO should verify the legal eligibility and authenticity of qualification and experience of all the human resources right from the board to the grassroots worker. For instance in case of volunteer from overseas the appropriate visa to work in the country should be verified. In case of staff a test check of qualifications should be made directly from the various universities or institutions.

## **CONFLICT OF INTEREST RISK**

**12.5.1** There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The conflict of interest transaction are

most dangerous for an NPO and may create legal threat to its basic existence itself. Therefore, conflict of interest issues are not only ethical issues but may have a serious legal risk attached to them. Some of the transactions/decision which may be regarded as material interest are as under :

- ♦ Appointment of relatives in Board or senior management.
- ♦ Ownership or partial ownership in organisations which are engaged or may seek business or consultancies.
- ♦ Payment of fees and remuneration.
- ♦ Directorship or management position in other NPOs.
- ♦ Providing consultancies in personal capacities.
- ♦ Having commercial interest in any decision or resolution.
- ♦ Having direct or indirect relationship with the donor or donee organisations.
- ♦ When contracts are awarded to relatives of the Board members.

**12.5.2** All NPO should check the law of the land regarding the permissibility of various conflict of interest transactions. For instance, in India, any kind of benefit provided to any trustee or board member may result in cancellation of registration under the Income Tax Act. The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

## **INTEGRITY AND CORRUPTION RISK**

**12.6.1** All NPOs are managed by human beings where all kinds of persons exist. We may find people with very high values and ethics, on the other hand there might be people who are prone to corruption and

unethical practices. Therefore, all organisation need strong systems to negate the possibility of unethical practices. Strong systems can only be built and sustained if there is a mechanism of identifying the various risk pertaining to human integrity and corruption. An NPO may take remedial measures against various risks, once they are properly identified. Certain common processes also may prevent corruption which sometimes look very innocuous. For instance, the possibility of a thief entering a house with hostile pet dogs is lesser than a house without any such protection. To take this example further sometimes just the sign “Beware of Dog” may deter a thief, even if a real dog is not present.

**12.6.2** In other words an organisation should identify the risk and establish tangible as well as subtle systems to negate any integrity loss or corruption. Some of the popular practices which go on to reduce the possibility of integrity loss or corruption are :

- ♦ Joint authorisation or joint signatory in processes.
- ♦ Multiple controls by different people.
- ♦ Use of banking channels for financial transactions.
- ♦ Rotation of senior staff responsibility.
- ♦ Rotation in the board and leadership.
- ♦ Independence and effectiveness of Audit process etc.

## **EFFICIENCY RISK**

**12.7.1** An NPO may be good but still not good enough. Loss in efficiency in various functions is one of the most dangerous risk attached in an organisation’s functioning. The efficiency risk generally goes unnoticed because of the lack of comparable standards of performance. In intellectual and intangible work it is very difficult to quantify the quality

and efficiency of the output. If NPOs don't remain vigilant then organisational lethargies may set in.

**12.7.2** Some large organisation conduct efficiency audits but it is more important to understand the larger principle of efficiency risk and look for organisation specific solutions.

## **SKILLS AND EXPERTISE RISK**

**12.8.1** An NPO may face the mismatch of skills and expertise required for the various human resources. All the system and infrastructure will be of no use, if appropriately qualified/skilled persons are not available with the NPO. The board of the NPO should analyse the adequacy of the existing skills & expertise and should also assess the risk attached in future regarding the loss of such skills & expertise due to staff turnover or changes in technology or external environment.

## **COMMUNICATION AND ARTICULATION RISK**

**12.9.1** An NPO should also analyse the risk related with the communication and articulation systems. For instance, in India, any dissemination of public information or current affairs on the website or through print media may result in cancellation of registration under the Foreign Contribution Regulation Act, 2010. Similarly failure to disclose key information including conflict of interest also has considerable legal and other risk. Therefore, all NPOs should carefully study the various documents and reports they produce and analyse the risk, if any. Even the learning materials or the training modules should be carefully studied to ensure that they do not contain any objectionable or sensitive content.

## SYSTEMS RISK

**12.10.1** An NPO should also analyse and understand the functioning of all the existing systems. There could be risk pertaining to failure or inadequacy or performance of system. For instance due to change in technology the existing systems may have to be replaced, which may involve sudden financial expenditure.

**12.10.2** Integration and compatibility of various systems also is an area which needs to be carefully analysed for plugging any loophole or risk in it. For instance, integration of financial data from field level could be an area of risk.

## GOVERNANCE & LEADERSHIP RISK

**12.11.1** The leadership and governance risk is another area which mostly goes unnoticed. An NPO may fall into the hands of a specific individual or a group of individuals, who may have conflict of interest attached to it. An independent risk analysis of the board and the leadership processes is necessary to ascertain the quality of governance in an NPO. Even the NPOs which have dynamic leaders may face a governance and leadership risk if they don't have a contingency plan for any unexpected event resulting in loss of key individuals. Further, undemocratic election processes may also pose considerable risk.

## VALUES AND DIRECTION RISK

**12.12.1** The another important risk in the functioning of an NPO is the possibility of deviating from the original mission and fall in the level of ethics and values. The organisation's board should carefully analyse the risk involved in various activities which may affect the values and direction

of the organisation. For instance, an NPO engaging itself in unrelated projects may lose sight of its own mission and become donor driven.

**12.12.2** Similarly an NPO should also develop its organisation culture and value through various practices. It should also study the various existing systems and processes and see the risk involved with regard to the values and mission.

## CATEGORISATION OF RISK

**12.12.1** An organisation should categorise the risk in the following categories which will help it in handling the various potential threats in a more informed and competent manner.

- ♦ ***Risk which can be avoided*** : The first category is the risk which can be avoided. For instance the risk of financial loss through accident of a vehicle can be avoided by having an insurance policy. Or the risk of data loss can be avoided by having proper backup. The risk which can be avoided are required to be mitigated by taking the appropriate remedial measures.
- ♦ ***Risk which can be distributed*** : The second category is the risk which cannot be avoided but can be spread or distributed. For instance the risk of decrease in resources from a donor can not be avoided but can be handled by reducing the expenditure in a planned manner over various activities so that there is no serious implication on any specific individual or function. The risk which cannot be avoided but can be spread or distributed are required to be mitigated by taking the appropriate remedial measures in advance in a planned manner.
- ♦ ***Risk which can be minimised*** : The third category is the risk which cannot be avoided but can be minimised. For instance the risk of failure in cataract operations or road accidents cannot be totally eliminated but with proper precautions and safe practices

such events can be minimised to a great extent. The risk which cannot be avoided but can be minimised are required to be mitigated by improving the quality and systems and also enhancing the efficiency level.

- ♦ ***Risk which has to endured*** : The fourth category is the risk which cannot be avoided and has to be endured. For instance the risk of under going a legal scrutiny by a government department viz. the Income Tax Department randomly selects organisations for thorough scrutiny of all books and records. In case of such risk the organisation should prepare itself for the eventuality as it cannot be avoided or minimised.
- ♦ ***Risk which cannot be anticipated*** : The fifth category is the risk which neither can be avoided nor can be anticipated. For instance :
  - The risk of sudden death of the chief functionary
  - The risk of sudden withdrawl of donor due to change in country policy
  - The risk of suspension of licences due to court cases

In case of such risk the organisation should analyse and see whether it is totally dependent on certain persons or circumstances. Taking the above three instances :

- The risk of sudden death of the chief functionary can be mitigated by creating a capable pull of senior person.
- The risk of sudden withdrawl of donor due to change in country policy can be mitigated by making the NPO multi funded or diverse in nature.
- The risk of suspension of licences due to court cases can be mitigated by the NPO through strong legal due diligence of all the activity and processes and also by strictly following the law of the land.



## SELF ASSESSMENT QUESTIONS

1. What do you understand by Risk Management ? How it is different from Crisis Management.
2. Discuss various types of Legal Risk ?
3. Write briefly on Human Resource Risk ?
4. Write briefly on Conflict of Interest Risk ?
5. Write briefly on Integrity and Corruption Risk ?
6. Write briefly on Efficiency Risk ?
7. Write briefly on Skills & Expertise Risk ?
8. Write briefly on Communication & Articulation Risk ?
9. Write briefly on Systems Risk ?
10. Write briefly on Governance & Leadership Risk ?
11. Write briefly on Value & Direction Risk ?
12. Write with examples about the various categories of Risk & How they can be handle ?

## *Chapter 13*

# LEGAL RISK IN FUNDAMENTAL DOCUMENTS

## INTRODUCTION

**13.1.1** In this chapter we shall discuss some major risk and issue involved with regard to the various fundamental documents. Any lapse in drafting of these documents may result in irreparable losses and legal litigation for an organisation.

## TRUST DEED & MEMORANDUM OF ASSOCIATION

**13.2.1** The Trust deed or the Memorandum of Association is the principal document of constitution and sustenance of an organisation. All organisation can function only within the parameters provided in these documents. In other words even if something which is, otherwise, legally permissible cannot be done if the Trust deed or the Memorandum of Association prohibit it. These documents are like a legal statute specifically made for the concerned organisation. Some of the common issues which may create legal risk pertaining to Trust deed or the Memorandum of

Associations are provided as under :

- ♦ The scope of the object clause determines the activity which an organisation can or cannot do. An NPO should carefully study its object clauses. A clause pertaining to commercial activity or power to invest may be in violation of the law of the land. For instance, in India, a clause pertaining to business activity or international activity or prohibited investments may create problem under income tax law. Similarly a clause pertaining to political activity, speculative business activity or public news or current affairs may create problem under Foreign Contribution Regulation Law.
- ♦ In case of organisation registered as Trust, the Trust deed should empower the trustees to make any changes relating to address or management issues. Absence of any such clause poses the risk of going to court of law for approval for any such amendment. It may be noted that generally trust deeds (unlike other documents such as Memorandum of Association or Articles of Association) cannot be amended unless it is provided in the trust deed itself. Further any power to the trustees to make fundamental changes such as change in object clause may render the trust revocable and void. Therefore, drafting of trust deed becomes very important to avoid legal risk in future.

## **BYE LAWS OR ADMINISTRATIVE DOCUMENTS**

**13.3.1** The bye laws of an organisation is the principal document for the management and administration of the organisation. In case of Trust the Trust deed itself contains a section on the administration and management. In case of Companies registered as a Societies the bye law document is known as Articles of Association. There could be various

types of risk some of them could be :

- ♦ The election and composition of board is a very important area any lack of clarity may create legal issue related with ownership and governance.
- ♦ The specific power of functionaries is another area which may create future conflict. Particularly the delegation legislative function of the board should be properly articulated.
- ♦ Any lapse in the guidelines related with meetings, notices, quorum, special resolutions, casting vote etc. also may create legal risk and future litigation.
- ♦ The provision pertaining to amendment of bye laws should also be carefully articulated.
- ♦ The provision related to title of assets and control and safeguard of all resources should also be carefully articulated.
- ♦ The guidelines pertaining to various policies, committees and their implementation as well as changes thereof should also be carefully articulated.

## MAJOR POLICY DOCUMENTS

**13.4.1** Major policy document should also be carefully studied, because all the major systems or procedures are based on the policies of an organisation. There could be various types of risk some of them could be :

- ♦ A wrong policy on investment may pose the risk of heavy losses and the corpus being eroded
- ♦ A wrong policy regarding authorisation or control may lead to fraud and embezzlement
- ♦ A wrong policy relating to procurement may lead to sourcing of inferior or costly materials

- ♦ A wrong policy pertaining to delegation of authority may result in concentration of power and harassment of staff.
- ♦ Absence of policy regarding violence and harassment at work place may result in legal litigation.
- ♦ Absence of policy regarding confidentiality of information may result in legal litigation.
- ♦ Absence of policy regarding use of social media and technology may result in legal litigation, for instance in India the NPOs depending on foreign funds are not allowed to engage in dissemination of public information and current affairs.

## THE PROJECT AGREEMENTS

**13.5.1** The project agreements with the donors/partners should also be carefully analysed. There could be clauses which may create various kinds of legal risk which could be :

- ♦ An indemnity clause may legally compel a partner to indemnify and incur financial liabilities.
- ♦ A clause pertaining to special audit and investigation may provide the other partner to scrutinize the investigate.
- ♦ A clause pertaining to deviation and budget variance may result in violation of contract and disallowance of expenditure.
- ♦ A clause pertaining to common expenditure and notional expenditure may reduce the risk of appropriation of project funds etc.

## TITLE DOCUMENTS

**13.6.1** Title documents are another area where considerable risk is

involved. There could be issues which may create various kinds of legal risk which could be :

- ♦ if the title is not in the name of the organisation it may create legal risk of losing exemption under various statutes, further it also endangers the safety of the assets in favour of the organisation
- ♦ If the mutation of the title in favour of the organisation has not been made, it poses the risk of disputes and legal litigation.
- ♦ The title documents for old assets or assets purchased from unorganised markets poses legal risk of legitimate ownership, in such cases the title should be legitimatised through corroborative evidence.

## CONSULTANCY CONTRACTS

**13.7.1** Consultancy contracts should also be carefully analysed for legal risk if any. There could be issues which may create various kinds of legal risk which could be :

- ♦ The timeline of execution should be clearly mentioned otherwise the legal recourse against delays and nonperformance shall not be available.
- ♦ The specific deliverables and performance clauses should be clearly mentioned in order to ensure efficiency and desired quality.
- ♦ Indemnity clause can provide protection against any loss or damage.
- ♦ The jurisdiction clause may protect an organisation from legal litigation in places away from its office.

## GENERAL CONTRACTS

**13.8.1** General contracts for supply and services should also be carefully analysed for legal risk if any. There could be issues which may create various kinds of legal risk which could be :

- ♦ The timeline of execution should be clearly mentioned otherwise the legal recourse against delays and nonperformance shall not be available.
- ♦ The specific deliverables and performance clauses should be clearly mentioned in order to ensure efficiency and desired quality.
- ♦ Indemnity clause can provide protection against any loss or damage
- ♦ The jurisdiction clause may protect an organisation from legal litigation in places away from its office
- ♦ compliance to the local law in execution should be ensured, for instance in case of construction, the local pollution, fire protection, requisite plans/approvals should be followed.

## MINUTES OF MEETINGS

**13.9.1** The minutes of an organisation are the permanent records as well as evidence of an organisation functioning. In case of a legal litigation the minutes of an organisation are, probably, the most important evidence for determining the actual facts, therefore it becomes important to carefully right and maintain the minutes to minimise future legal risk. The minutes helps in identifying the ownership of various decisions taken in board or general meetings. There could be issues which may create various kinds of legal risk which could be :

- ♦ The attendance register should be signed by the attendants which

will create the legal evidence of the participation and ownership of the decisions.

- ♦ The dissent or support expressed by the members against or for any resolution or motion should be carefully recorded. It will create the legal evidence of the participation and ownership of the decisions.
- ♦ The voting processes and the result of votes (including casting vote) should be as per the defined procedure and should be recorded with evidence to avoid future litigation.
- ♦ All major decision should ideally pass through board or authorised committees in order to determine the accountability in case of a future dispute or legal litigation.
- ♦ All important issues raised by members should be recorded, even if they are not approved, in order to determine the future accountability of other member involved in contentious decision if any in future.
- ♦ The record of notices is being served and leave of absence should be properly maintained, in order to determine the future accountability of members involved in contentious decision if any in future.

## **SELF ASSESSMENT QUESTIONS**

1. What are the legal risk attached to Trust Deed & Memorandum of Association ?
2. What are the legal risk attached to Bye-laws & Administrative Documents ?
3. What are the legal risk attached to Major Policy Documents ?
4. What are the legal risk attached to the Project Agreements ?



5. What are the legal risk attached to the Title Documents & Agreements ?
6. What are the legal risk attached to the Consultancy Contracts ?
7. What are the legal risk attached to the General Contracts ?
8. What are the legal risk attached to the Minutes of Meetings ?

*Annexure 1***EVALUATE POTENTIAL MEMBERS  
FOR THE SUPPORT BASE****EVALUATE POTENTIAL MEMBERS FOR THE SUPPORT BASE***Rate on a scale of 1-5 (1 being the lowest and 5 being the highest)*

Name of Potential Member	Alignment with vision /mission	Past Experience	Experience on other Boards	Qualification	Time Availability	Independence/ conflict of interest	Total

**Score Card:****Scores Obtained:****Maximum Marks: 30****INTERPRETING THE RESULTS:**

- ♦ If the total score is more than 20 the member may be considered for the organization.

**Annexure 2****ANALYSIS OF INDUCTION TOOL KIT**

<b>Name of Document</b>	<b>What to Look for</b>	<b>Take Notes</b>
<b>MoA, Trust Deed etc.</b>	♦ The main object clause	
	♦ Any restrictive clause	
	♦ Is the documents enable all kind of existing activity	
	♦ Risks Observed, if any	
<b>Bye laws or Governing Documents</b>	♦ Total number of members	
	♦ Term & size of board	
	♦ Election/Selection process	
	♦ Key roles & responsibilities	
	♦ How many meetings	
	♦ Risks Observed, if any	
<b>Annual Report</b>	♦ Organizational Hierarchy	
	♦ Focus Activities	
	♦ Major Projects	
	♦ Achievements	
	♦ Challenges	
<b>Annual Financial Statements</b>	♦ General Funds	
	♦ Designated Funds	
	♦ Total Income	
	♦ Total Expenditure	
	♦ Major Donors	

	♦ Significant Liabilities	
	♦ Key Assets	
<b>Budget</b>	♦ Overall funding	
	♦ Key expenditure heads	
	♦ Overhead costs	
<b>Sub-committees</b>	♦ Various sub-committees	
	♦ Mandate	
<b>Conflict of Interest</b>	♦ Areas of Conflict	
	♦ Disclosures	
	♦ Risks Observed, if any	
<b>Board Manual</b>	♦ Role of Board	
	♦ Sub-committees	
	♦ Key decisions to be made	
	♦ Roles of office bearers	
	♦ Appointment/ Appraisal of Chief Functionary	
<b>Brochure/Publications</b>	♦ Background	
	♦ Key Activities	
	♦ Future Plans	
<b>Minutes</b>	♦ Major decisions taken	
	♦ Concerns, if any	
<b>Profile of Board Members</b>	♦ Key Persons	
<b>Audit &amp; Evaluation Reports</b>	♦ Major concerns	
	♦ Good Practices	

***Annexure 3***

**CONSENT FORM OF THE BOARD MEMBER**

I the undersigned, hereby give my consent to act as a member of the Board of ..... (Organization name), if appointed. Once appointed, I will uphold my duties and shall do my best to ensure that the Organization performs its mission and achieves its goals.

Signed: \_\_\_\_\_

Date:

**(Name of the proposed member)**

***For Office use only***

1) Recommended to the Board for approval

Signed: \_\_\_\_\_

Date:

**(Chairman of nomination committee)**

2) Approved in the Board meeting held on ..... (Date of meeting) Vide minute no. .... Dated .....

Signed: \_\_\_\_\_

Date:

**(Secretary of the Board)**

**Annexure 4**

**FORMAT FOR RESOLUTION OF  
THE BOARD MEMBER APPOINTMENT**

**Agenda item no. .... / .....**

**Appointment of Mr. /Ms .....  
as member of Board of trustees/Director**

The nomination committee presented the name of Mr./Ms. ....  
..... to be a member of the Board for the term ..... to .....  
Mr./Ms ..... is a skilled professional in the area  
of ..... having high commitment to the development sector. He  
has been approached by the nomination committee and after satisfying  
himself about the relevance and importance of the .....  
(Organization name), he would like to offer himself to be part of the Board  
as an ordinary member. His consent form has also been received. The  
nomination committee in its meeting held on ..... (Date of  
meeting) has considered his/her credentials and proposes his name to be  
a Board member.

The members discussed in detailed about the nomination tabled. The  
Chairperson ensured that no member had any objection or material  
evidence against the proposed name. It was unanimously resolved to  
appoint Mr. /Ms ..... As a member of the Board against  
regular vacancy for the period ..... to ..... . The secretary  
of the Board was authorized to assign the letter communicating the  
decision to the new incoming members and obtain consent form.

Signed: \_\_\_\_\_  
(Secretary, Society name)

Date:

*Annexure 5*

**BOARD MEMBER'S ANNUAL COMMITMENT SHEET**

**Name & Address of the Organization .....**

**BOARD MEMBER'S ANNUAL COMMITMENT SHEET**

I, recognizing the important responsibility I am undertaking in serving the Board of Directors of ,hereby pledge to carry out in a trustworthy and diligent manner the duties and obligations in my role as a Board member.

I acknowledge that my primary role as a Board member is to contribute to defining of the Organization's mission and Governing the fulfillment of that mission and to carry out my responsibilities in ethical and legal manner to ensure that the Organization does the best work possible in pursuit of its goals.

My role as a Board member will focus on the development of broad policies and Governing of its implementation for institutional plan & purposes. As a Board member, I understand that I have duties of care, loyalty and obedience to the Organization.

I Would:

- ♦ try my best to give a high priority to attendance at all Board & committees meeting on which I serve, arriving on time & staying for the full agenda, unless I have otherwise notified the Board President or Committee Chair in advance.
- ♦ come prepared to discuss the issues to be addressed at schedule meetings, having read the agenda and all background material.

- ♦ abide by the rules & regulations as stated in the Organizations By-laws.
- ♦ maintain a courteous conduct in all Board & committee meetings.
- ♦ respect the opinions of my peers and leave my personal prejudice out of all Board discussions.
- ♦ always act for the good of the Organization & respect the interests of all people served by the Organization.
- ♦ refrain from interfering with the administrative issues that is responsibility of management except to monitor the results and remediate activities in conflict with the policies and mission statement.
- ♦ avoid conflict of interest between my position as a Board member and my personal life. This includes using my position for the benefits of my friends & family members. If such a conflict does arise, I will declare that conflict before the Board & refrain from voting on such matters.
- ♦ accept my responsibility for providing oversight of financial affairs of Organization.
- ♦ participate in the annual strategic planning retreat, Board self-evaluating programs and Board development workshops, seminars and other training events that enhance my skill as Board member.
- ♦ respect the confidentiality of Board's decision as well as decision making processes.

### **COMMITMENT:**

By signing this document, I am acknowledging that Board engagement demands a three-way commitment i.e. Board members individually, collectively and the Organization as a whole. I understand that the Organization will rely on commitment of its Board members in formulating its plan and executing its strategy.



If for any reason, I find myself unable to carry out the above duties to its best. I agree to resign my position as a Board member.

Signed: \_\_\_\_\_

Date:

**Board Member**

Signed: \_\_\_\_\_

Date:

**Board Chairperson**