

MODULE ON GOVERNANCE

**Insight on Board Processes &
Board Financial Oversight**

Developed By: CPA Services

Overview

Section 1: Board Processes

Section 2: Board Financial Oversight

Section 3: Processes related to Incorporation Laws

Section I: Board Processes

I. Governance Structure

Understanding two-tier structure

In governance, the highest body consists of group of persons who subscribe to the objective of the organization. They are known as members. This group has the final responsibility for the organization. This group is known as General body. This is called “**tier one**” in a two tier structure.

Thereafter, this group creates another smaller group providing a closer oversight/supervision of the affairs of the organization. This is known as “Governing body/Board/Executive committee”.

Board is final point of reference for the management. The primary responsibility of the General body is to elect the board, receive and approve the financial statement and annual activity report as well as appointment of auditor. Further, the responsibility of amendment to the bye laws also lies with the General body.

All the other governance functions are delegated to the Board. In such structure, the Board is “**tier two**” and therefore, the structure is called a “**two tier**” structure.



II. Meetings

The General Body and the Board only meet a few times during a year. The obvious question which comes to the mind is:

Well, how do they take important decisions then? How do they function?

Both the bodies of a two tier structure have clear set of duties to perform and they function through “Meetings”.

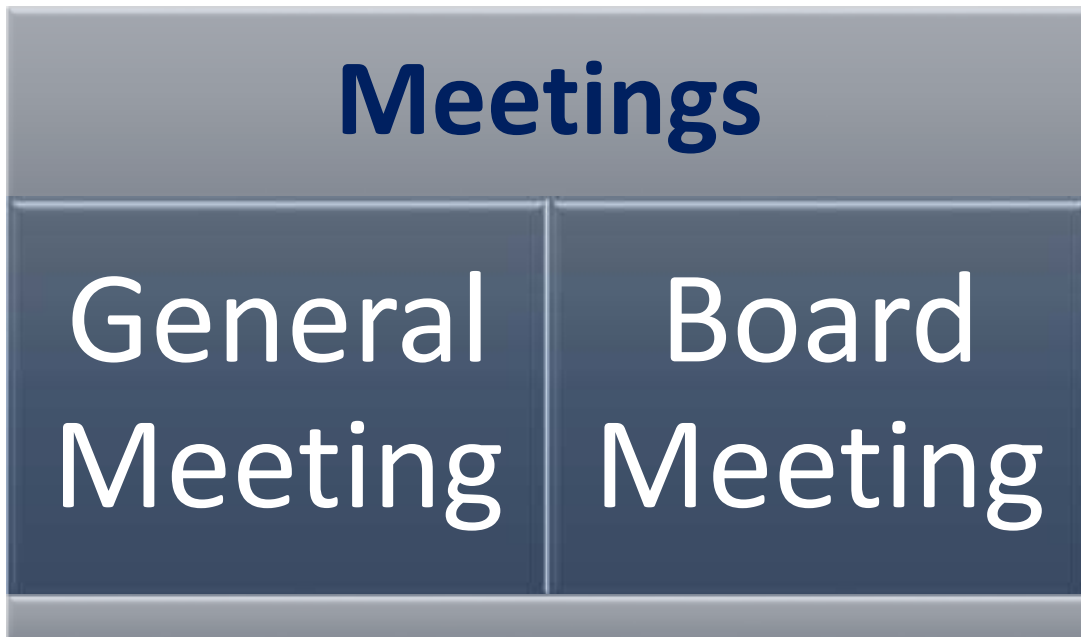


Therefore, meetings play a very important role. Let us now understand more about meetings and the types of meetings that happen in an organization.

Sound governance largely depends on the effective interaction between the decision making persons of the organizations. It is very important that regular meetings are conducted for various policy matters and legislative and executive decision making.

The General members and the Board exercise the power entrusted to them as per the governing documents such as the Bye laws, Memorandum of Association (MoA) and Articles of Association (AoA). The provisions of the statute of registration also regulate the procedure for conducting Board and General Meetings.

In a NPO two types of meetings are normally held:



A. General Meeting

A meeting of the General Members normally should be held at least once in a year to discuss and approve important matters like:

- Approval of audited accounts
- Appointment of Statutory Auditors
- Review of activities during the year
- Election of the Board Members.

This meeting is called **Annual General Meeting (AGM)**. It is normally conducted within six months from the end of the financial year and all the activities and accounts for the previous financial year are placed before the General Body for adoption.

Apart from the AGM, General Meetings can also be called during the year if the circumstances demand so. All General Meetings other than the AGM are normally called as Extraordinary General Meeting (EGM) or Special General Meeting (SGM).

Whether it is an Annual General Meeting or Special General Meeting, all the members of the organization have the right to participate and vote. Therefore, all the decisions of enduring significance should be taken in a General Meeting.

B. Board Meeting

The meeting of the Governing Body or the Board of an organization should ideally be held at least once in every three months. The Board may meet more frequently if it is required.

A Board meeting in every quarter is not legally mandated under any central statute. Even Section 8 Company registered under the Companies Act 2013 has been mandated to have Board meeting only once in every six calendar months. All other registered companies are required to hold at least four Board meetings in a year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board. However, section 8 companies are exempted from this provision and liable to conduct one meeting in every six calendar month.

The constitution document of an organization may specifically provide for the number and procedure of Board meetings to be held during the year.

Highlights of Meetings:

1. Two types of meeting: General Meeting and Board Meeting
2. All General Meetings except Annual General Meeting(AGM) are Extraordinary General Meetings (EGM)
3. Annual General Meeting is held once in a year, Board Meeting should be held atleast once in every six months or as mentioned in the bye laws whichever is higher. Ideally, the Board meeting should be held once every quarter.

III. Notice & Agenda

Notice is a communication to the members about the upcoming meeting of the board.

- It is a legal document and has to be legally served.
- The time lines for serving notice for the meeting is part of the incorporation law or the bye laws of the organization

How the notice is to be served?

In the earlier days, the notices were being served as hard copies through registered post or with Certificate of posting. This would provide evidence that the notice was actually served. However, in recent times with the e-mail being the mode of communication, the question arises whether it is necessary to follow the usual route of serving notice through hard copy. In case, the byelaws do not specifically mention about notice being served through hard copy, email communication would be acceptable.

What the notice should contain?

The following should be part of the notice:

1. Name of the organization
2. Date, place and time of the meeting
3. It should be mentioned the type of Meeting i.e. whether it is “Annual General Meeting” or “Extra ordinary General meeting” or “Board Meeting”.
4. The agenda to be discussed should be attached with the notice.
5. Any pre-meeting materials relevant to the agenda should be attached with the notice
6. The notice should be served by the person authorized by the Board (Secretary/Managing Trustee etc.)



In addition to aforesaid general insights about the Notice, the following table will help you understand how few characteristics of a Notice are specific for a General Meeting and Board Meeting

S. No.	General Body	Board/Governing Body
1.	<p>Authority to Convene</p> <p>The Board or the Governing Body of the NPO is the authority for convening all general meetings including the Annual General Meeting. The Board should convene a general meeting <i>suo motu</i> or on the requisition by the members. The decision for convening the general meeting should be passed in a meeting of the Board or the Governing Body through a resolution.</p> <p>If the Board or the Governing Body of the NPO fails to convene a general meeting even after the requisition by the members. Then the members who make the requisition may call the meeting. All NPOs should have clear bye-laws regarding the circumstances where the General Members can call a general meeting through requisition. There should be</p>	<p>Authority to Convene</p> <p>The General Secretary/Secretary/Chief Functionary or any Board Member has the authority for convening all Board meetings, unless otherwise specified in the bye laws.</p>

S. No.	General Body	Board/Governing Body
	<p>a norm of minimum number of General Members required to requisition a general meeting. The requisition should be first made to the Board or the Governing Body. If the Board or the Governing Body fails to convene a general meeting, then after a reasonable time period the General Members themselves may issue a notice for the General Meeting.</p> <p>A recommended number of General Members for requisition of general meeting could be 5 members or 20% of the total members whichever is higher. The members may wait for 30 days for convening of the meeting by the Board, thereafter they may convene the meeting by issuing a notice.</p>	
2.	<p>Time limit of the Notice</p> <p>Care should be taken to provide for the length of the notice while framing the bye laws of the organization. In the absence of any time limit of notice in the bye-law, it is desirable to give 21 days' notice for a General Meeting.</p>	<p>Time limit of the Notice</p> <p>The notice should be given as per the time mentioned in the by-law of the organization, in the absence of any time limit of notice in the bye-law, it is desirable to give 7 days' notice for a Board Meeting.</p>

Agenda

Along with the notice of a meeting it is necessary to enclose the list of items to be discussed/resolved, such list is known as AGENDA.

It is very important that the agenda of a meeting is sent in advance preferably with the notice, it helps a member to prepare for the meeting. Issue of a meticulous agenda in advance shows the transparency and democratic functioning of an organization. It may be noted that any

matter which requires special or unanimous resolutions should be supported with an explanatory statement along with the notice.



Key Areas to be covered

The agenda should include broadly the following sections:

1. Welcome & adoption of the agenda
2. Review of previous meeting & decisions
3. Programme
4. Financial
5. Organizational
6. Any other matter

Following issues to be kept in mind while drafting an Agenda:

1. Distributing the approximate time to be allotted to each agenda item
2. The key person responsible for initiating or leading the discussion
3. Any relevant papers to be attached as agenda notes
4. Synchronizing the numbering of the agenda to the probable resolutions that may be taken as an outcome of the agenda item.

Highlights for Meeting & Agenda

1. The reasonable time to give notice should be mentioned in the bylaws, if nothing is mentioned then minimum 21 days' notice is desirable for General Meeting and 7 days' notice is desirable for a Board Meeting.
2. The notice should specify the day, date, time and venue of the meeting with complete address. The notice should be in writing.
3. The notice should be served by the person authorized by the Board
4. A meticulous Agenda and pre-meeting materials should be attached with the Notice

IV. Attendance, Quorum & Proxy

A. Attendance

- ✓ There are four categories of attendees in a board meeting, full members, ex-officio members, invitees and in-attendance
 - ✿ **Full members** are those who are elected to serve in the Board through a proper process. They have a right to vote.
 - ✿ **Ex officio members** are present by virtue of the position they hold in the organization. Generally, the Chief Executive Officer (CEO) is an ex-officio to the Board meetings. The ex-officio members can be both voting and non-voting members as described in the bye-laws of the organization.
 - ✿ **Special Invitees** are those members who are invited for a particular meeting/topic. They can contribute to the meeting/topic but have no right to vote. Therefore, they cannot influence the decision making process.
 - ✿ **In- attendance** are those who are invited to observe and support the smooth conduct of the meeting. They can be secretarial staff and others who provide support in order to run the meeting efficiently. They are neither asked to contribute to the discussion nor take part in the decision making process.
- ✓ For all the above categories, attendance should be marked in the attendance register.
- ✓ An attendance register is a register to record attendance of the members. This is maintained in a separate register meeting wise chronologically.
- ✓ In case a member is not present; leave of absence should be granted and recorded as such in the register

B. Quorum

- ✓ Quorum is a threshold limit of members necessary for conducting a valid meeting. The quorum varies from one organization to another and is generally defined in the bye laws of the organization.
- ✓ The quorum is calculated on the basis of full members present and excludes ex-officio and invitees.
- ✓ The quorum can be anywhere from 1/3rd to half the number of members as presented in the bye laws of the organization.
- ✓ No business can be transacted unless there is quorum in the meeting.



- ✓ In case a meeting is called and cannot be held for want of quorum, then it is adjourned for an hour and can be reconvened. For the re-convened meeting, there is no requirement for quorum.

C. Proxy

- ✓ Proxy is an arrangement where in case the member is unable to attend, he/she can nominate someone else to attend on his/her behalf.
- ✓ Since board meetings have individuals as members and their expertise is critical for the meetings it is a good practice not to have the provision of proxy for board meetings.
- ✓ Proxy may be used in a General Meeting. Any member of an organization who is entitled to attend and vote at General Meetings is also entitled to appoint a proxy who can also attend & vote. A proxy has to carry an authorization form; the member entitled to attend the meeting should authorize his/ her representative in writing in a proxy form.
- ✓ A proxy form should be deposited in advance at the registered office of the organization at least two days before the date of the meeting



Highlights of Attendance, Quorum and Proxy

1. A hard bound attendance register should be maintained.
2. Normally the bye-laws of an organization specify the quorum required for different meetings.
3. Proxy should be appointed in writing in authorized form.
4. Proxy are not allowed in BM and as good governance practice CSOs should not authorize proxies in their GMs.

V. Minutes & Resolutions

Minutes are the record of the proceedings of a meeting. This is a legal document and can be enforced and even produced in the court of law as evidence.

Steps for recording the minutes

- It should include the names of members, ex-officio members and in-attendance present for the meeting. If there are any apologies, that should also be recorded as well.
- The minutes should correspond to the agenda and discussion under each agenda item should be recorded.
- The minutes should provide a brief background to the proposal and rationale/need for the decision to be made. In case there are background papers presented, they can be provided in the annexure to the minutes as well.
- In the decision, it should be mentioned if it was an unanimous decision or by majority. In case it was by majority, the opinion of the dissenting voices should also be recorded.
- The Chairperson should initial each page of the minutes and sign on the last page specifying the date on which the minutes were signed.



Resolutions

All decisions should be passed through resolutions. After the discussions, it must be mentioned in the minutes that “It was resolved that”

There are three types of resolutions: Ordinary resolution, Special resolution and Resolution by circulation

1. Ordinary resolution:

Ordinary resolutions are passed to make decisions which are in the ordinary course of business. For example- Approving the activity report, Financial statements, Change of signatory in Bank accounts etc. The ordinary resolutions can be passed with simple majority from among the members present.

2. Special Resolution

Special resolutions are those resolutions which are passed to make certain significant decisions for the organization. Further, to protect the organization from sudden decisions of a group of members, the organization makes it a requirement through bye laws or Governance manual that the significant

decision would require a special resolution. A special resolution can be passed by 2/3rd or 3/4th members of the board who need to be present and vote. In other words, just passing a resolution by 2/3rd or 3/4th members present in the meeting is not enough. The 2/3rd or 3/4th members of the board should be involved in making the decision. Further, the intent to pass a special resolution should be part of the agenda and should have been circulated beforehand. Some examples regarding special resolution are change in objective or bye-laws of the organization, purchase /sale of high value fixed assets, hiring of CEO etc.

3. Resolution by Circulation

In between two board meetings, if a decision is required to be made, then a resolution can be passed by circulation. The resolution should be ordinary resolution and can be passed by a simple majority. However, all the resolutions by circulation have to be ratified in the subsequent board meeting. Examples of a resolution by circulation is, change of signatory of a bank account etc.

Who can inspect the Minutes?

The minutes of the **General meeting** can be inspected by any member or the statutory Auditor of the organization. The minutes may also be inspected by government auditors or auditors/evaluator appointed by major donors where there is substantial funding from the government or the donors, as the case may be. The minutes may also be inspected by the officers of the Registrar of Societies or any other Statutory Government Authority.

The minutes of the **Board meeting** can be inspected by any Board Member or the Statutory Auditor of the organization. The General Members, normally do **not** have rights to inspect Board meetings minutes. The minutes may also be inspected by government auditors or auditors/ evaluator appointed by major donors where there is substantial funding from the government or the donors, as the case may be. The minutes may also be inspected by the officers of the Registrar of Societies or any other Statutory Government Authority.





Alteration of Meeting Minutes

Any alteration or correction to the minutes should only be made in the subsequent meeting with formal approval of the members present in that meeting. The fact that alteration or correction were made should also be recorded in the minutes.

However, any alteration or correction to the minutes which are minor or grammatical in nature may be made without having the approval in the subsequent meeting.

Preservation of Meeting Minutes

The minutes of the meetings being fundamental to the organization have to be preserved permanently. Utmost care should be exercised to protect them from any external threat like fire etc.

Office copies of notice, agenda, agenda notes and other related paper should be preserved in good order for as long as they remain relevant for or 10 years whichever is later and may be destroyed later on under the authority and supervision of the board.



Highlights of Meeting Minutes

1. Minutes for each meeting should be approved in next meeting by chairperson.
2. The minute are valid legal enforceable document in court of law and should be preserved for years as many as possible.
3. The alteration or correction in meetings can only be made after prior formal approval of members present in subsequent meeting

Section II: Board Financial Oversight

Introduction

A board has to understand the delicate difference between governing and managing. A board is not supposed to manage an organisation but it is supposed to oversee and control the management of an organisation.

There is a delicate difference between governance and management. While the Board is ultimately accountable for the functioning of the organization, the large part the work of the organization is actualized or implemented by the Management. Board delegate's power and responsibilities to the management but delegation of responsibility does not absolve the Board of its accountability towards the organization and the different stakeholders of the organization. Therefore, there is a need for devising a suitable mechanism for establishing Board control and oversight over the affairs of the organization. A mechanism by which it directs and manages the management team without participating in the management process.

Out of the various oversight functions, one of most important function is that of financial oversight. However, one has to be careful in designing oversight function as it may lead to two extremes, where the (i) Board is too interfering or (ii) Board is too passive. The ideal oversight function is to strike a balance between two extremes.



SEVEN COMPONENTS OF FINANCIAL OVERSIGHT



How to strengthen the Financial Oversight function of the board?

a. Induction of a board member(s) who specializes in NPOs financial management

Approving of annual financial statements does not merely mean signing the financial statements. It is imperative that the Board understands what the financial statements mean. Therefore, it is best that the board has at least one or more members who have sound understanding of the NPOs financial management.

b. Introduction of a finance committee/Treasurer

The Board should establish a Finance Committee where resources permit, or appoint a Treasurer, or introduce a mechanism to oversee the NPO's financial planning, management and reporting matters, including the use of grant/donations. Further, it is required that the Committee/Treasurer/Mechanism should alert the Board on critical areas and provide

recommendations and deliver reports for the Board's approval/information. These recommendations should be pertaining to the NPO's finance and accounts including, annual budget, audited accounts, budgets, financial reports of activities and appointment of auditors. The chair of the committee/treasurer should have deep knowledge about the financial management of NPOs. In case of finance committee, the other members need not possess deep knowledge; however, serving on this committee is a great way for new and even veteran members to learn basics of financial management.

c. Robust financial policy

Another important way of strengthening the financial oversight is the financial policy document. These policies are developed jointly by staff in consultation with finance committee/Treasurer. However, they are approved by the entire Board. The comprehensiveness of the policy will depend upon the size and purpose of the organization, but every organization from brand new to well established must have financial policy document.

d. Conduct internal audit in addition to statutory audit

Statutory audit is mandatory by law and therefore is conducted by every organization. However, it is rare that the Board requests for a management letter from the auditor. The management letter is issued by the auditor for the management and it includes all critical areas that need attention. Such letter is an important tool for the Board to have an oversight of the critical areas of the organization's financial health.

Further, whether or not to conduct internal audit is a big question! For many smaller organizations, the cost of obtaining an audit may far outweigh the benefits. However, it is important to note that in the current scenario, the donor agencies are more inclined towards the internal audit reports. And internal audit, if done well, is an objective look behind an organization's financial curtain.

e. Reviewing of financial statements as one of the meeting agenda in regular intervals.

It should be made a practice that at every board meeting, financial statements are reviewed. During these meetings, the following financial information, at a minimum, must be Included in the board packet:

- ✓ Statement of Financial Position (Balance Sheet)
- ✓ Statement of Activities (Income & Expenditure or Receipt & Payment Statement)
- ✓ Cash Flow Projection
- ✓ Current annual budget (usually presented with Statement of Activities)

Further, the Treasurer/Finance Committee must regularly review these statements. At board meetings, more summarized form of information should be shared with the members. However, such summary should sufficiently detail the financial picture.

It is important that the Treasurer and finance committee should report on the state of the organization's finances and highlight any areas of concern.

f. Board financial training

Most likely not all board members will feel comfortable or competent interpreting financial statements or conducting a budget review. Thus it's important that financial literacy training be provided to members in regular intervals. The goal of these trainings is to develop a baseline level of knowledge that members can use to assess the organization's financial stability.

To achieve this, consider

- including a session on financial literacy at the board's annual retreat
- incorporating financial literacy into every new board member orientation
- providing financial literacy learning moments at board meetings
- identifying workshops or webinars offered by other agencies that focus on financial literacy and encouraging your board members to attend

How Management will support what Board will do?

- ✓ Ensure implementation of finance policy
- ✓ Preparation of Budget vs Actual variance report
- ✓ Take proactive steps to address the issues mentioned in the management letter. Present the action taken report to the board
- ✓ Ensure that all the funds are accurately recorded in books of accounts and capably managed
- ✓ Ensure timely completion of audit
- ✓ Ensure the compliance to all applicable laws of the land

The abovementioned Board financial oversight functions can be categorized into three major heads

- A. Financial Management
- B. HR Processes
- C. Compliance with regulatory requirements

A. Financial Management Component

The Financial Management includes the Board oversight in the areas of:

1. Policy
2. Budgeting
3. Internal controls
4. Audit and Reporting.

1. Policy

A policy document is a set of rules and guidelines which drives the organization. Policies provide a standardized framework under which an organization works. It helps in considerably minimizing the risks related to various operational aspects of the organization.



Key aspects for the Board

Developing and approving a policy which ensures that:

- i. The provisions in the policy are within the legal framework of the laws in existence
- ii. The provisions maintain balance between good practices and relevance for the organization
- iii. Ensuring that the policies are implemented
- iv. Review of existing policy every year

2. Budget



A budget describes the funds/income that an organization plans to raise and spend for a set purpose over a given period of time. It is a comprehensive and coordinated plan of action, expressed in monetary terms, for the operation and utilization of resources of an organization for a specific period in the future.

When we look at the definition of Budget we notice some of the terms that are crucial in defining the term Budget, they are:

- ♦ Plan
- ♦ Monetary Term
- ♦ Resources and
- ♦ Specific period in future

Key aspects for the Board

Board should ensure that the management presents the detailed budget before the Board.

1. Approve the annual organizational budget as well as project specific budget

- a. Ensure that the proposed activities are in line with the vision and mission of the organization.
 - b. Board should confirm whether the funds are assured for the prepared budget or not, the budget should not be too ambitious.
2. Review the budget vs actual variance report in regular intervals
3. Ensure whether action taken report is prepared by the management referring to the reasons of variances and action taken.

3. Internal Control

Internal control mechanisms help the organizations to handle everyday risks of mistakes, confusion or fraud. They also protect staff from the suspicion of wrongdoing. Internal controls are designed to ensure:

- a. Safeguarding of assets
- b. Prevention and detection of fraud or error
- c. Accounting records are accurate, complete and up-to-date
- d. Compliance with relevant laws
- e. Employees are protected from themselves and each other



Key aspects for the Board

Ensure that there are adequate policies to warrant sound internal control systems

1. Verify the implementation of policy.
 - Ensure that in the TOR of Internal auditor, “evaluating adequacy of the control systems” & “Assessing the implementation of existing policies” are one of the terms of references.
 - In case the organization does not have the practice of internal audit. Ensure that the auditor assesses the implementation of policies and submit notes to the board.
2. Instruct management to prepare action taken report/response based on the auditor’s observations on the internal control procedures
3. Process of:
 - Approval of bills of chief functionary
 - Major capital item purchase

- Signing of significant contracts/agreements
- Internal control framework based on the areas of internal control
- Assigning signatories for operating the bank accounts

4. Audit & Reporting

Audit is an independent examination of organization's activities and concludes whether such activities are in good order or not. Audits can seem threatening, but they bring two important benefits:

- a. Firstly, audits allow an organization to provide evidence that it is being honest in its financial statements, or that it is following procedures properly.
- b. Secondly, audits provide useful learning opportunities. Auditors can provide advice on financial controls or systems.



Key aspects for the Board under Auditing

1. Recommending the internal and statutory auditor to the General body.
2. In order to ensure the independence of the audit:
 - a. The auditor should be appointed by the Board.
 - b. The auditor should report directly to the Board.
 - c. The Board should introduce the aspect of rotation of auditor in regular interval of time.
3. Ensuring that there is no conflict of interest involved with the auditor
 - a. The auditor should not have any vested interest within the organization
 - b. The auditor should not be related to any of the Board members or the management
 - c. If the auditor is also the consultant, the consultancy fees should be less than the audit fee
3. Statutory Audit/Internal Audit:
 - a. If the auditor gives a qualified report, Board should take strict action towards management as such report indicates that the way of management's working is fundamentally wrong.

- b. If the auditor shares a management report, the Board should instruct management to prepare action taken report based on the auditor's report/management letter
- 4. Project Audit:
 - a. This is a special purpose audit focusing a specific stakeholder
 - b. Board should see whether donor guidelines are fulfilled.
 - c. Board should see whether all the conditions mentioned in the Grant agreement are adhered.
- 5. Board should invite the auditor to attend at least one Board meeting every year.

Reporting is a broad subject however it can be classified into two types; External Reporting and Internal Reporting.

External reporting is for two parties:

- a. Reporting to statutory authority
- b. Donor reporting

On the other hand, internal reporting is basically means preparing various MIS from time to time in order to monitor the functioning of the organization

Key aspects for the Board under Reporting

- 1. Board should ask for reporting matrix in every meeting.
- 2. External Reporting:
 - a. Timeliness of submitting donor reports
 - b. Finalization of annual activity report and audited financial statements
- 3. Internal reporting:
 - a. The Board should specify preparation of certain reports to be received by the Board. For example:
 - i. Budget variance analysis report
 - ii. Overview of various projects being implemented

Highlights of Financial Management Component

- 1. Seven major areas of oversight are Budget, Policy, Controls, Compliances, HR Functions, Audit & Reporting
- 2. Policy should be in legal framework of all existing laws in the country
- 3. Policy should be properly implemented and reviewed yearly
- 4. Budgets should be properly approved and should be in line of the mission and vision of the organization.

5. Review the budget vs actual variance report in regular intervals, and one action taken reports should be prepared by the management and shared with the Board.
6. Board is responsible for effective internal controls in the organisation, the Board should review the internal controls on periodic basis
7. The independence of internal audit team should be ensured by the management.
8. A reporting matrix should be prepared the management and reviewed by the Board on quarterly basis.

B. The Human Resource Component

There should be clear segregation between the Board and Management. The management derives its authority from the board and at the same time the board has the final responsibility for the organization. Therefore, the board should have certain oversight over the recruitment and appraisal process of the organization.

What to oversee?

- a. Recruitment policy
- b. Human resource development procedure
- c. Conflict of interest
- d. Performance evaluation

How to oversee?

1. Board should undertake periodical review of recruitment process.
 - a. Checking the recruitment process documentation randomly
2. In the TOR of internal auditor also mention “Review of conflict of interest violation incidences” & “Review the effectiveness of grievance redressal system”
 - a. Ensuring that the management has taken appropriate action on such violations reported in internal audit report
 - b. Ensuring that the management addresses the grievances in proper manner
3. Facilitating the recruitment process in case of recruitment of chief functionary and being part of such process in case of recruitment of a senior staff.
4. Conduct the performance evaluation of management and senior staff members.
 - a. Approve/Determine management’s and senior staff member’s remuneration.

Highlights of the Human Resource Component

1. Board should do periodic review of recruitment process of the organization
2. Board should conduct the performance evaluation of management and senior staff members.
3. Board should take part in recruitment of Chief Functionary and other senior staffs.

C. The Compliance Component

The Board has a fiduciary duty regarding compliance with legal requirements applicable to the organisation. So the Board needs to fully understand or appreciate the importance of their fiduciary obligations with respect to compliance.



In order to have an effective compliance, and thereby reduce the fines imposed on the organization, the Board must be “knowledgeable about the content and operation of the compliance,” and must “exercise reasonable oversight with respect to the implementation and effectiveness of the compliance.”

Here, we are providing a list of compliances that an NPO needs to comply with during a financial year, along with the list of basic minimal documents that the organization should prepare in order to implement effective compliance in the organization.

S. No.	Compliance Category	Date Due	Status
1	Taxes		
1.1	Monthly Tax Deduction at Source (TDS) deposited.		
1.2	Quarterly TDS returns to be filed with Income Tax Department		
1.3	Annual Returns for FY 2016-2017		
2	Incorporation law		
2.1	Annual Filing of Return		
2.2	Any other compliance which is applicable by virtue of incorporation law		
3	FCRA		
3.1	Annual Returns for the FY		
3.2	Quarterly Foreign Contribution details uploaded on Website		

S. No.	Compliance Category	Date Due	Status
3.3	Form FC 6, if any in case of change/addition/deletion of bank account, address or change in more than 50% of Board members		
4	Provident Fund		
4.1	Monthly deductions deposited to Provident Fund Authority		
5	Audit		
5.1	Quarterly/Six monthly Internal Audit completed (of transaction and controls) and report available		
5.2	Statutory audit for the FY		
6	Finance Policy		
7	Conflict of Interest Policy		
8	Governance Manual		
9	Others		
9.1	Quarterly Financial Report shared with Board Members		
9.2	Quarterly Programme Report shared with Board Members		

The Board should review on periodic basis the extent of completion of all above mentioned compliance.

Highlights of the Human Resource Component

1. Board has fiduciary duty of compliance legal requirements applicable on the organization.
2. A yearly compliance calendar should be prepared by the management and the Board should review the same and the extent of completion of compliances on periodic basis

Section 3: Processes related to Incorporation Laws

A. Filing of Returns

The societies registered under The Goa Co-operative Societies Act, 2001 has to file an annual return with the registrar of societies every year. This annual return is to be filed within 30 days of commencing Annual General Meeting for that year.

Along with annual return the society shall also file the below mentioned documents with the registrar of the society along with the filing fees as may be prescribe:

- a. Annual audited or unaudited statement of accounts;
- b. Report of the board of directors;
- c. Auditors report;
- d. Audit rectification report, if any;
- e. Notice convening the annual general meeting;
- f. Name and address of the directors and their terms of office;
- g. List of amendment to the bye-laws, if any;
- h. Declaration regarding the date of holding of the general meeting and number of members who attended such meetings

B. Conformance with Principles and By-laws

Every society registered under Goa shall frame bye-laws conforming to the following principles of co-operation, namely;

- a. Membership of a co-operative society shall be voluntary and available without restriction
- b. Co-operative societies are democratic organizations. Their affairs shall be administered by persons elected or appointed in a manner agreed to by the members and accountable to them
- c. Share capital shall receive a limited rate of dividend, if any;
- d. The economic results, arising out of the operations of a co-operative society, belong to the members of that co-operative Society and shall be distributed in such a manner as would avoid one member gaining at the expense of others,
- e. Co-operative societies shall make provision for the education of their members, office-bearers and employees and of the general public, in the principles and techniques of co-operation, both economic and democratic;

C. Amendment of bye-laws of society

- a. The amendment in the by-laws society can be done after obtaining consent of at least two third of the members in the general meeting.
- b. A copy of the amendment by laws shall be forwarded to the registrar along with prescribed fee in order to get it registered.
- c. Every application for registration of an amendment of the bye-laws shall be decided and communicated to the society by the Registrar within a period of forty- five days from the date of its receipt.
- d. In case of refusal of amendment, if the decision is not communicated to the society, with the reasons therefor, within the said period of forty-five days, the said amendment of the bye-laws shall be deemed to have been registered.
- e. Where the Registrar registers an amendment of the bye-laws of a society or where the amendment of the bye-laws is deemed to have been registered, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.
- f. The society can appeal against a decision of registrar to refuse to register amendment of the bye-laws of a society, to the Co-operative Tribunal within a period of 60 days from the date of communication of such decision.

D. Process of Name Change

- a. A society may change its name by passing a resolution in general meeting and with the approval of Registrar.
- b. Such change in name shall not affect any right or obligation of the society, or any of its members, or past members, or deceased members.
- c. In case of name change any legal proceedings pending before any person, authority or court may be continued by or against the society, under its new name.
- d. Where a society changes its name, the Registrar shall enter the new name in its place in the register of societies and shall also amend the certificate of registration accordingly.

E. Register of Members

Every society shall keep a register of its members and enter therein the following particulars, namely:

- a. the name, address and occupation of each member;
- b. in the case of a society having share capital, the share held by each member; (c) the date on which each person was admitted as a member;
- c. the date on which any person ceased to be a member;
- d. such other particulars as may be prescribed

Provided that, where a society has by or under this Act, permitted a member to transfer his share or interest on death to any person, the register shall also show against the member concerned the name of the person entitled to the share or interest of the member, and the date on which the nomination was recorded.

The register shall be prima facie evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member.

Annexure 1: Meeting Through Video Conferencing

INTRODUCTION

The Board Members of an NPO can be located in different geographical locations and it is always difficult for a member staying in faraway places to attend Board meetings regularly. The administrative and travel cost is also an important issue in case of NPOs. Therefore, it becomes important to understand the legally acceptable ways of conducting general and Board meetings with the help of technology and video conferencing.

There is no rule or guidance under the Societies or Trust Act regarding holding meetings through video conferencing. However, the Ministry of Corporate Affairs, Govt. of India has issued directions and guidelines regarding holding of meetings through electronic means and video conferencing for companies. The guidelines issued by the Ministry of Corporate Affairs, Govt. of India can be a great reference document for conducting meetings through electronic medium in the NPO sector.

IS THE HOLDING OF BOARD MEETING OR AGM FOR NPOs OTHER THAN SECTION 8 COMPANY THROUGH VIDEO CONFERENCING LEGALLY PERMISSIBLE?

SOCIETY

There is no rule or guidance under the Societies Act, 1980 regarding holding of meetings through video conferencing. In other words, the Central Act is silent about the mode (whether physical meetings or through video conferencing) of the meetings that needs to be held in the Society. Since the Central laws is silent about the mode of the meeting, any state specific society laws or rules contained therein should be referred for the mode of meetings through video conferencing.

The guidelines issued by the Ministry of Corporate Affairs, Govt. of India can be a reference document for conducting meetings through electronic medium in the Societies wherein the specific laws are silent about the mode of conducting meetings. Here, it should be reiterated that the Societies are not legally bound to adopt such practices; however, at the same time, some of the practices mentioned in the Company Law can be adopted as best practices for holding such meetings.

HOW TO GIVE NOTICE FOR VIRTUAL MEETINGS?

Notice to members can be sent through email, where the same is available. A copy of the notice shall also be prominently displayed on the website, if any, of the organization. In case the e-mail addresses are not

registered with the organization, the organization shall contact all those members over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members.

A best practice the notice for such meetings should be made as per the bye laws of the organisation. In case of Board meetings, all the Board members should be informed and confirmation should be obtained. In the absence of confirmation, it may be presumed that the particular Trustee/Board member may physically attend the meeting. The notice should contain contact number, email address of the Secretary or designated person responsible for convening the meeting.

The notice should provide information regarding the available facility of video conferencing and also about the access and participation in the meeting.

In case of AGM, where the contact details of any of members are not available with the entity or could not be obtained, it shall cause a public notice by way of advertisement to be published immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the entity is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district and specifying in the advertisement the following information:

- i. That the entity intends to convene an AGM in compliance with applicable provisions and for the said purpose it proposes to send notice to all its members by e-mail after at least 3 days from the date of publication of the public notice;
- ii. The details of the e-mail address along with a telephone number on which the members may contact for getting their e-mail addresses registered for participation and voting in the AGM.

Further the Chairman of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all efforts feasible under the circumstances have indeed been made by the company to enable to participate and vote on the items being considered in the meeting

MINIMUM STANDARDS THAT NEED TO BE FOLLOWED?

Ensure that the Meeting through Video Conferencing (VC)/ other audio-visual mode (OAVM) facility allows two ways teleconferencing for the ease of participation of the members. The VC/OVAM facility should have a capacity to allow at least the members equal to total number of members at any given period of time.

TIME FRAME FOR VC/OVAM FACILITY?

The VC/OVAM facility shall be kept open at least 15 minutes before the scheduled time of the meeting and shall not be closed till the expiry of 15 minutes after the conclusion of the meeting.

HOW QUORUM WILL BE COUNTED?

Attendance of all members through VC/OAVM shall be counted for quorum. A roll call could also be made at the conclusion of the meeting or at re-commencement of the meeting after every break to ensure presence of quorum throughout the meeting.

HOW VOTING WILL BE DONE?

The entity shall provide a designated e-mail address to all members at the time of sending the notice of meeting so that the members can convey their vote, when a poll is required to be taken during the meeting on any resolution, at such designated email address.

The members shall cast their vote on the resolutions only by sending their email addresses which are registered with the company and the said emails shall only be sent to the designated email address circulated by the company in advance.

HOW CHAIRMAN FOR THE MEETING WILL BE ELECTED?

Unless the articles require any specific person to be appointed as a Chairman for the meeting, the Chairman for the Meeting shall be appointed by a poll conducted through the registered e-mail during the Meeting.

MINUTES & RECORDING OF MEETING THROUGH VIDEO CONFERENCING

All meetings made through video conferencing should be recorded and proper arrangement should be made for storing the soft copies with adequate back up. In addition to the video recording, the minutes of the meeting should be written as usual. The draft minutes of the meeting should be circulated in soft copy within 7days to all the members/Directors/Trustees who participated and doubts or clarification should be incorporated. If the doubts or clarification are serious and have a direct bearing on the resolution, then such issues should be taken up in the next meeting.

The minutes should also disclose the mode of attendance of various members/Directors/Trustees in all the past meetings.

FILING OF RESOLUTIONS WITH RESPECTIVE AUTHORITIES?

All resolutions, passed in accordance with this mechanism shall be filed with the relevant statutory authority within the prescribed time limits mentioned in the respective acts, clearly indicating therein that the mechanism provided herein were duly complied with during such Meeting

HOW RECORDS WILL BE MAINTAINED?

The recorded transcript of the meeting shall be maintained by the entity and be shared with all the members in case any member requires for documentation purposes.

RECORDING ATTENDANCE & SIGNING OF RECORDS

All the members or Trustees who have given consent for attending the meeting and have participated in the meeting, will be deemed to have signed the attendance and the records and minutes as may be required. All the records pertaining to minutes shall be placed and signed by the Chairperson, who has to be physically present. In the subsequent meetings, the minutes of the last meeting should be placed before the Chairperson and should be the first agenda item for confirmation.

PLACE FOR SUCH MEETING

The place of the Chairperson and Secretary should be considered as the place of the meetings only in the cases of Board meeting. In case of General Meetings, the registered office or approved place should only be used for conducting meetings.

ADJOURNMENT OF MEETINGS THROUGH VIDEO CONFERENCING

Normally Board meetings are adjourned to future date if the quorum is not present and the number of persons present in such future meeting automatically form the quorum. The question arises whether in the meetings through video conferencing also the same norm for quorum apply in case of adjournment. It is desirable that even if a meeting through video conferencing is adjourned, the quorum requirement should not be lifted in an adjourned meeting. It may be noted, generally in an adjourned Board meeting the quorum requirement are waived and the members present form the quorum. Such waiver should not be given in case of adjourned meetings through video conferencing.

If the quorum is not complied in an adjourned meeting held through video conferencing, then such meeting should be adjourned to a further date and physical Board should be convened. In such meetings where Board is required to be physically present, the norms pertaining to quorum in case of adjourned meeting can be applied. In other words, the norms pertaining to quorum in case of adjourned meeting should not be applied to meeting through video conferencing but can be applied in meetings where members are physically present.

CAN A TRUSTEE/DIRECTOR TOTALLY AVOID PHYSICAL PRESENCE

All Trustee/Directors should attend at least one meeting in a year physically. The organisation should ensure that the Directors do not skip the physical presence throughout the year.

ADDITIONAL RESPONSIBILITIES OF CHAIRPERSON/ SECRETARY

- a. To safeguard integrity of meeting.
- b. To ensure availability of proper video conferencing or audio-visual facility.
- c. To record proceedings and prepare minutes of the meeting.
- d. To store, safekeeping and marking recordings of the meetings before the time of completion audit of that particular year.
- e. To ensure that only concerned Board members are attending meeting.
- f. To ensure that the required quorum is present throughout the meeting.
- g. To ensure that participants are able to hear and see the other participants clearly during the course of the meeting.
- h. To ensure that notice of the meeting shall be sent to all the board members accordingly

Highlights

1. AGM and BM both can be held through Video Conferencing.
2. Notice of virtual meeting should be given through mail, over phone when email id is not available and should also be displayed on website.
3. Attendance of all members through VC/OAVM shall be counted for quorum.
4. In case of BM, the place of Chairperson and Secretary will be considered as place of meeting but in case of GM registered office will be considered as place of meeting.
