

# Governance & Disclosure Practices

Learning Series for Voluntary Organisations, Vol.-II, Issue - IV, 2013-14

## Fundamental Documents & Due Diligence in an NPO



A joint initiative of Credibility Alliance & Oxfam India



**CREDIBILITY  
ALLIANCE**

Improving Governance Building Trust

# Governance & Disclosure Practices

Learning Series for Voluntary Organisations, Vol.-II, Issue - IV, 2013-14

## Fundamental Documents & Due Diligence in an NPO

*Advisory Support \* :*

**B. N. Makhija**, Advisor, SOSVA

**Dola Mohapatra**, Senior Development Professional

**Gayatri Subramanyam**, Convenor, National Foundation for CSR, IICA

**Jagadananda**, Former RTI Commissioner, Odisha

**Mathew Cherian**, CEO, HelpAge India

**Nisha Agrawal**, CEO, Oxfam India

**Noshir Dadrawala**, Chief Executive, CAP

**Pushpa Aman Singh**, CEO, Guide Star India

**S. P. Selvi**, Executive Director, Credibility Alliance

**Subhash Mittal**, Secretary, SRRF

*Principal Author :*

**Dr. Manoj Fogla**

A joint initiative of Credibility Alliance & Oxfam India



**CREDIBILITY  
ALLIANCE**

Improving Governance Building Trust

\* The Advisory support members have contributed to the document, however, the entire content is not necessarily the opinion of the advisory group.



1.	Introduction	01
2.	Trust Deed or Memorandum of Association	01
3.	Articles of Associations or the Bye-laws	02
4.	Project Contracts	04
5.	Annual Report of an NPO	06
6.	Credibility Alliance Due Diligence Requirement	08
7.	<b>Annexure-1</b> Checklist for Due Diligence of NPO	09

---

# Fundamental Documents & Due Diligence in an NPO

## Introduction

- 1.1.1** NGOs have a legal existence i.e. an artificial legal entity, which is bound by the principles of *Privity Cestui Que Trust*, which means the right to sue and the obligation of being sued.
- 1.1.2** Documents such as the Trust Deed, bye-laws or even project contracts are documents subject to legal rights, obligation and duties. Such documents provide the basis of the rights and duties to organisations and group of persons and can be very crucial and jeopardise the interest of various stakeholders in the short or long run. Therefore it is important to understand the implications as well as basics of legal documents which form the basis of NGO constitution and governance.
- 1.1.3** For instance, a clause in the main objectives which allows religious activities may result in rejection of registration. Or in a project agreement if there are some charges or expenses charged on percentage basis which results in a surplus may affect the '*not for profit*' nature if not drafted properly and endanger the exemptions and privileges enjoyed. Some fundamental documents and the pertaining issues are discussed in this issue, the detailed notes on preparation of each of such documents shall be taken up individually through separate issues.

## Trust Deed or Memorandum of Association

- 1.2.1** It is the legal document that is filed with the appropriate government authority at the time of registration of an NGO.

**1.2.2** The form and content of this document varies from country to country. However the issues should ideally be addressed while drafting a Trust Deed or Memorandum of Association are as under :

- ◆ Name of the organisation.
- ◆ Duration of the organisation, usually perpetual
- ◆ Purpose for which the organisation is formed.
- ◆ Provision for conducting the internal affairs of the organisation.
- ◆ Names and address of the subscribers / founders.
- ◆ Address of the registered office.
- ◆ Names and address of the Secretary and initial Board Members
- ◆ Clause for distribution of the assets on dissolution.
- ◆ Declaration regarding the not for profit nature.
- ◆ Nature of governance, an NGO can be privately managed, therefore the management can be restricted. However, it does not imply that the management should be private and restricted, it is always better to have open democratic governance.

**1.2.3** A Trust deed is a broader document than the Memorandum of Association and it can include various clauses pertaining to the policies and management of the trust. It can include clauses pertaining to election and rotation of trustees, management of bank accounts and other assets.

**1.2.4** The object clause should be broad enough to cover the mission, vision and the future perspectives and evolution. The object clause should be very focused and should not mingle unrelated or divergent objectives. For instance, in India it is not permissible to have a mixed (religious as well as charitable or private as well as public) trust.

**1.2.5** It may be noted that in a Public Charitable Trust there is no concept of "members". As such a trust generally does not have a General Body of Members. In law a Trust is not a legal entity. It can sue or be sued only in the individual names of the trustees. In a trust, the liability of the trustees is personal.

## Articles of Associations or the Bye-laws

**1.3.1** Article of Association is the legal document that is filed along with the memorandum of association with the appropriate government authority at the time of registration

of an NGO. This document comprises a set of rules and regulations which enables the organisation to govern, manage and conduct its affairs. It is necessary that the bye-laws are clearly stated, shared and understood by all the stakeholders. The issues normally addressed in bye-laws are as under :

- ◆ Interpretation of expressions used.
- ◆ Requirements pertaining to notice, frequency & quorum of board and general meetings.
- ◆ Voting criteria and procedure including use of proxy.
- ◆ The board, its size and scope of authority.
- ◆ The method of nomination, election tenure of functionaries and board members.
- ◆ Defining various executive and legislative position.
- ◆ Defining the role and mandate of various committees.
- ◆ Membership criteria, rights and duties.
- ◆ Providing the norms regarding various Board meetings.
- ◆ Providing the norms regarding various General meetings including AGM.
- ◆ Providing the norms regarding proxies, quorum, notices etc.
- ◆ Providing the norms regarding the Chairperson, Casting vote etc.
- ◆ Providing the norms regarding various ordinary and special Resolutions.
- ◆ Providing the norms regarding protection and representation of minority members and othe stakeholders
- ◆ Providing the norms regarding holding meetings through electronic medium, video conferencing etc.
- ◆ Termination of membership.
- ◆ Code of conduct.
- ◆ Custody of assets and funds.
- ◆ Bank account operations.
- ◆ Scope and authority of the chief functionary.
- ◆ Accounts and financial reporting.
- ◆ Formulating policies
- ◆ Audit.
- ◆ Indemnity.

- 1.3.2** It may be noted that the Rules and Regulations of a Society or the Articles of Association of a company are the legislative cum executive document which are legally binding on the society. The Board of the NPO may make changes to this documents subject to the approval of the Registering Authority and within the ambit of the Act under which the NPO is registered.
- 1.3.3** It may be noted that **the Trust Deed of any trust is a Contract to be executed by the Trustees, therefore, it is a legislative cum executive document which is legally binding on the Trustees. However, the trustees do not have legislative powers unlike the board of company or a society**, as the trustees do not have the power to amend Trust deeds. Trust deeds can only be amended under limited circumstances, that to with the approval of a Civil Court. The administrative and execution related clauses can be changed by the trustees if the trust deed empowers them.
- 1.3.4** Generally, in a trust, the trustees are appointed by the surviving trustees instead of being elected by the general body. Unless stated in the trust deed, a trustee may hold office for life.

## Project Contracts

- 1.4.1** An NPO works either on the support of its own funds and internal accruals or on external funding. When externally funded projects are undertaken they are usually based on a legal contract.
- 1.4.2** It is important to distinguish between a donation and a project grant. A donation or voluntary contribution does not come with a legal obligation to spend the money in any specific manner required by the donor. The NPO is free to spend such money towards purposes of the society at its discretion.
- 1.4.3** Legally a voluntary contribution can be treated as income because the funds are available unconditionally to the organisation. However, specific project grants cannot be treated as income unless the legal obligation is executed. The legal difference between voluntary contribution and project grants will have an implication on the accounting and tax treatment also.
- 1.4.4** A restricted grant comes with a legal obligation to spend the money in a specific manner required by the donor. Such grants are bound by an elaborate contract which provides the terms and conditions of the grant. The NPO is not free to spend such money towards purposes of the society at its discretion.

**1.4.5** From an accounting and income tax point of view also a restricted grant is not treated as income, whereas a donation or voluntary contribution is treated as Income. Therefore, it is very important for both the donor and donee to be careful about the legal documentation regarding project grant.

**1.4.6** A donor and NPO partnership is a legally bound activity and such partnership should have the following characteristics :

- Clarity of purpose
- Clarity of rules & functions
- Clarity of working methods
- Clarity of practice standards
- Clarity of resources & performances targets
- Clarity of accountability & ownership
- Clarity of mutual trust & commitments
- Clarity regarding performance and indemnification

**1.4.7** The basic legal requirement of a valid contracts include the following :

- Intention to create legal relationship
- Clear identification of the subject matter
- Offer & Acceptance
- Consideration
- Cognizance of the relevant laws

**1.4.8** The normal contents of a legally consistent contract should cover the following :

- Name & Address
- Duration & time
- Date of commencement
- Description of objectives
- Specification of inputs, procedures, output, activity & quality
- Methodology/Access
- Evaluation criteria
- Monitoring methods
- Finance/payment details
- Reporting procedures

- Managing change
- Managing disputes
- Indemnity & liabilities
- Sub contracting or working through other organisations
- Intellectual property rights, if any
- Secrecy and Confidentiality
- Access and Audit
- Conflict of interest
- Non discrimination
- Environmental law and practices
- Suspension and termination by either party
- Insurance
- Force Majeure, when the execution of contract is delayed, hindered or prevented by an event or events beyond the reasonable control of the parties.

**1.4.9** The various aspects of project agreement are illustrative in nature and only those clauses may be used depending on the type and nature of the contract.

## Annual Report of an NPO

**1.5.1** An Annual Report is one of the most important documents of connecting and apprising the stakeholders. It is a report on the performance of the NPO during the preceding year which reflects the key information in a systematic manner for all the existing and prospective stakeholders. All NPOs should carefully prepare an Annual Report for at least the following reasons:

- To assure all the stakeholders that the funds and resources are in safe and efficient hands.
- Transparently share the major events and the financial information.
- Provide an overview of the major accomplishment during the past year in terms of the overall vision and mission of the NPO

**1.5.2** An organisation should carefully plan for the content of an annual report. The annual report should primarily inform and assure the stakeholder on three areas (i) Governance (ii) Programmes (iii) Finance & Compliances. Some of the key

components of a good annual report are listed below :

- ◆ Organisation History & Background should briefly be mentioned in every Annual Report even at the cost of repetition.
- ◆ Vision & Mission Statements
- ◆ A one page note by the Chairperson providing the macro view.
- ◆ The report of the Chief Functionary or the Secretary providing briefly the major activities, financial transactions and status, important issues pertaining to governance and compliances.
- ◆ List of Governing Board Members,
- ◆ Details on Governing Board Meetings and Annual General Body Meeting held during the reporting year. In case of Board Meetings the dates and the number of participants who attended the meetings including leave of absence.
- ◆ Major activities undertaken during the reporting year to be stated along with relevant pictures. It should be noted that the annual report is not an activity report and therefore, the activities should be reported in order to provide a macro view.
- ◆ Disclosure regarding the salaries along with range and number of staff with gender break-up.
- ◆ Any payments, consultancies or salary paid to the Trustees or Directors should be disclosed separately. Any other conflict of interest transactions should also be disclosed.
- ◆ Abridged Audited Financial statements duly signed by the Auditor and Office Bearers.
- ◆ The organisation may also provide informative tables or charts regarding the finances and activities.
- ◆ The annual report may also provide strategic information such as
  - (a) Administrative Expenditure
  - (b) Issue-wise, region wise spread of finances and activities
  - (c) amount spent on national and international travel
  - (d) perceived risks
  - (e) registrations and compliances
  - (f) offices and contacts etc.
- ◆ List of donors and over view of fund raising.

- ◆ The annual report may also include a section on how people and institutions can get involved as members, donors, volunteers, advisers, partners etc.

## Credibility Alliance Due Diligence Requirement

**1.6.1** The due diligence requirement of Credibility Alliance regarding the various documents of an organisation are provided hereunder. The various mandatory and recommended documents provide an authentic overview of the organisation.

**1.6.2** The mandatory due diligence requirement of Credibility Alliance regarding the various documents is as under :

1. document relating to registration of the organisation
2. document relating to Income Tax Registration, FCRA Registration, TDS, PAN, TAN and related documents
3. documents relating to legal compliance (Income Tax Returns filing including Form 10B, FCRA Returns filing, Returns to Registrar of Societies)
4. Annual Audited Financial Statements including the Audit Report
5. Grant Approval letter from the Donor

**1.6.3** The recommended due diligence requirement of Credibility Alliance regarding the various documents is as under :

- Copy of the Annual report
- Copy of the Vision and Mission statement and the Annual plan
- Write up on the major donors, geographical and thematic area of intervention.
- Copy of the various policies such as finance policy, HR policy etc.
- List of staff with salary detail
- Expenses on international travel and travel at board level.
- Declaration on conflict of interest transactions

**1.6.4** The CA Accreditation related documents/information required are provided in **Annexure 1**.

**Annexure 1****Checklist for Due Diligence of NPO**

<b>S.No.</b>	<b>Relevant documents for Due Diligence Process</b>
1	Accreditation Form
2	Accreditation Declaration Form
3	Annual Report Declaration Form
4	Society Registration Certificate
5	Trust Registration Certificate
6	Trust Deed
7	Memorandum of Association
8	Rules & Regulations
9	Certificate of Incorporation from The Regional Director (E/S/N/W) Region)
10	Address Documentary Proof from VO
11	Personnel Policy/HR policy
12	Photo Copy of extracts of Minutes book in a year pertaining to :
	(a) AGM
	(b) Annual Report Approval
	(c) Finance (Audited Balance sheet )
	(d) Programmes/Plans Approval
	(e) Performance review of staff
13	(f) Board rotation proof
	A copy of Appointment Letter / Contract Letter issued to staff
14	In case VO has Volunteers then A photo copy of letter issued for Volunteer as contract etc. which includes Role and Responsibility of Volunteer
15	Income Tax Permanent Account Number (PAN No.) Card/Letter
16	TAN No. Letter (Income Tax Deducted at Source Account Number)
17	FCRA Certificate / Prior Permission letter
18	12(A) Certificate of Income Tax Department
19	80 G
19	<b>If 80G has expired:</b>
	Photo Copy of Application for renewal to the Income-tax Department

20	35 AC Letter
21	35 (1) ii letter
22	35 (1) iii Letter
	<b>Statutory Auditor's Report (for last three years) and Auditor Notes :-</b>
	(a) Form 10(B) with Balance Sheet
23	(b) Balance Sheet and Schedules (for last three years)
	(c) Income and Expenditure Statement and Schedules (for last three years)
	(d) Receipts and Payments Account and Schedules/ Fund Flow Statement with Schedules
24	Income-tax returns filed with the Income-Tax department ( <b>for last three years</b> )
25	A copy of FCRA Balance sheet( For Last Three years)
26	A copy of FC-3 Return Files(For Last Three Years)
	<b>Latest Annual Report ( For Last Three Years) must contains</b>
	(a) Board member's name, age, gender, Position in Board, receiving any Remuneration or Reimbursement.
27	(b) Salary levels along with gender break up. (As given in the Norms book if Applying for Desirable Norms)
	(c) Details of international travel. (If applying or Desirable Norms)
	(d) Brief Financial Details (Balance sheet, Income and expenditure, Receipt and payment)
28	Proof of Documents supporting list of networks/alliances of VO with others
29	In case of loan, letter of permission from charities commissioner if applicable
30	A copy of policy on purchase, and disposal/ sale of assets
31	A Copy of policy on purchase, and sale of investments
32	Sample of daily/weekly reports of staff if applicable
33	A copy of the VO Brochure or pamphlet
34	Minutes of Board Meetings and Minutes of Annual General Body Meeting

## About Credibility Alliance

Credibility Alliance (CA) is a consortium of Voluntary Organizations committed towards enhancing Accountability and Transparency in the Voluntary Sector through good Governance. Registered in May 2004 as an independent, not-for-profit Organization, CA emerged as an initiative from within the Sector after an extensive consultative process over a period of two years involving thousands of VOs all over India. As an Organization, CA aspires to build trust among all stakeholders through improving Governance within the Voluntary Sector. As an initiative whose hallmark has been the participatory approach, CA has developed suitable Norms through wide-ranging consultation with and participation of diverse Organizations within the Sector by developing a large membership base.

With the mission 'to build credibility of the Voluntary Sector through creation and promotion of Norms of Good Governance and Public Disclosure', CA's core programme areas comprise of: Accreditation, Capacity Building, Networking and Information Dissemination.

- I. **Accreditation:** Accreditation of Voluntary Organizations refers to the certification of upholding of the quality of an organization, which adheres to the minimum norms or desirable norms set by Credibility Alliance. The main purpose of the Accreditation exercise is to develop a cost effective mechanism of periodic evaluation of VOs in the country.

'Minimum Norms' are the Norms that all VOs should follow. It is mandatory for all the Accredited Members of CA to comply with the Minimum Norms or give an undertaking that they will do so within an year, whereas 'Desirable Norms' are the next level of Norms for good Governance and public disclosure. These are the practices that are at present not mandatory and some Organizations may require time to adopt such practices.

- II. **Capacity Building:** Credibility Alliance focuses on the Capacity Building process to maximize its potential and sustain its work by adopting the existing best practices. CA plans the Capacity Building initiatives for the Voluntary Organizations by identifying and outlining the gaps in the Sector, assessing the needs and finally instituting the programs to address those needs.
- III. **Networking:** Credibility Alliance facilitates interaction between experts in different areas and promotes the sharing of ideas and information between the Voluntary Organizations and the experts. CA helps VOs to seek issue-based information in the Sector that they are working in, which helps in building the professional capacities of VOs through training, thereby enabling them to increase institutional capacities.
- IV. **Information Dissemination:** Credibility Alliance sensitizes, spreads awareness, assists, educates and appraises on the recent developments, responsibilities and other critical issues pertaining to Voluntary Sector by disseminating vital information periodically to all VOs.



### CREDIBILITY ALLIANCE

401, DDA Building No. 1, District Centre, Janakpuri,  
New Delhi - 110 058. [www.credibilityalliance.org](http://www.credibilityalliance.org)

Send your feedback to :

[selvi@credibilityalliance.org](mailto:selvi@credibilityalliance.org)  
[mfogla@yahoo.com](mailto:mfogla@yahoo.com)

**Governance & Disclosure Practices** aims to provide relevant informations and guidance on Voluntary Organisations Governance, Management and Disclosures. The informations provided are correct and relevant to the best of the knowledge of the author and research panel. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner. Copyright with the Author. No part of this publication may be reproduced in any form, without permission in writing of the Author.