

INTERface

Vol. XII

Issue 1

April - September 2012



Highlights:

- What Is Foreign Source
- Who Cannot Receive Foreign Contribution
- Income Tax - Privileges To The Donors u/s Section 80G
- Carbon Credits - An Accounting Perspective
- Board Members Commitment Sheet
- Board Diversity Matrix
- and many more.....



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Between Us

TREATING EACH OTHER

A certain monastery discovered that it was going through a crisis. Some of the monks left, no new candidates joined them, and people were no longer coming for prayer and consultation as they used to. The few monks that remained were becoming old and depressed and bitter in their relationship with one another. The head of the monastery heard about a holy man, a hermit living alone in the woods and decided to consult him. He told the hermit how the monastery had dwindled and diminished and now looks like a skeleton of what it used to be. Only seven old monks remained. The hermit told the head of the monastery that he has a secret for him. One of the monks now living in his monastery is actually the Messiah, but he is living in such a way that no one could recognize him.

With this revelation the head of the monastery goes back to his monastery, summons a community meeting and recounts what the holy hermit told him. The aging monks look at each other in unbelief, trying to discern who among them could be the Messiah. Could it be Brother Mark who prays all the time? But he has this holier-than-thou attitude toward others. Could it be Brother Joseph who is always ready to help? But he is always eating and drinking and cannot fast. The head of the monastery reminded them that the Messiah has adopted some bad habits as a way of camouflaging his real identity. This only made them more confused and they could not make a headway figuring out who was the Messiah among them. At the end of the meeting what each one of the monks knew for sure was that any of the monks, excepting himself, could be the Messiah.

From that day, however, the monks began to treat one another with greater respect and humility, knowing that the person they are speaking to could be the Messiah. They began to show more love for one another, their common life became more brotherly and their common prayer more fervent. Slowly people began to take notice of the new spirit in the monastery and began coming back for retreats and spiritual direction. Word began to spread and, before you know it, candidates began to show up and the monastery began to grow again in number as the monks grew in zeal and holiness. All this because a hermit told them that the Messiah was living in their midst as one of them. How do we treat each other?



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The opinions
expressed by the
authors are not
necessarily that of
FMSF.

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Published by Sanjay Patra on behalf of
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WHAT IS FOREIGN SOURCE

- Dr. Manoj Fogla, FCA

MEANING OF 'FOREIGN SOURCE'

1.01 Unlike the term 'foreign contribution' which has been defined specifically, the term 'foreign source' is given only an inclusive definition in FCRA. The statutory definition of 'foreign source' as per section 2(1)(j) of FCRA, 2010 is as follows :

(j) "foreign source" includes, —

- (i) the Government of any foreign country or territory and any agency of such Government;
- (ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) a foreign company;
- (iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) a multi-national corporation referred to in sub-clause (iv) of clause (g);

(vi) a company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—

- (A) the Government of a foreign country or territory;
 - (B) the citizens of a foreign country or territory;
 - (C) corporations incorporated in a foreign country or territory;
 - (D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
 - (E) foreign company;
- (vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) foreign trust or a foreign foundation, by whatever name called, or such

- trust or foundation mainly financed by a foreign country or territory;
- (ix) a society, club or other association of individuals formed or registered outside India;
- (x) a citizen of a foreign country.”

As is evident, the term “foreign source” has not been defined exhaustively. The Act has given an inclusive definition of the term ‘foreign source’ and that includes the sources mentioned in clauses (i) to (x).

Important: It may be noted that under clause (vi) above, a foreign source includes an Indian company if more than 50% of its share capital is held by persons covered under foreign source. Therefore, care should be taken before receiving local donations and grant from Indian companies and it should be ensured that more than 50% of the share capital is held by Indian promoters. Otherwise it will be treated as foreign contribution.

AGENCIES OF FOREIGN GOVERNMENT & EXEMPTED ORGANISATIONS

1.02 Agencies of Foreign Government includes their embassies and consulates in India. They are included within the purview of foreign source. Further, the Central Government has notified in the Official Gazette, the agencies of United Nations and other International Organisations which shall not be treated as ‘foreign source’ for the purposes of this Act. The details are available on the website <http://mha.nic.in/fcra/intro/FCRA-exemptedAgenciesUN.pdf>

WHAT IS A FOREIGN COMPANY

1.03 The statutory definition as per section

2(1)(g) of FCRA 2010 of ‘foreign company’ is as follows :

“(g) “foreign company” means any company or association or body of individuals incorporated outside India and includes—

- (i) a foreign company within the meaning of section 591 of the Companies Act, 1956;
- (ii) a company which is a subsidiary of a foreign company;
- (iii) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- (iv) a multi-national corporation.

Explanation:- For the purposes of this sub-clause, a corporation incorporated in a foreign country or territory shall be deemed to be a multi-national corporation if such corporation, —

- (a) has a subsidiary or a branch or a place of business in two or more countries or territories; or
- (b) carries on business, or otherwise operates, in two or more countries or territories.”

1.04 To determine whether a company is a foreign company or not, the provisions of section 591 of the Companies Act, 1956 are relevant. Basically, the provisions consider any company as foreign company, which has been incorporated outside India and has a place of business within India. Provisions of section 591 are reproduced as under:

“591. Application of sections 592 to 602 to foreign companies.—

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:—

- (a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India ; and
- (b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.”

SUBSIDIARIES ARE ALSO INCLUDED

1.05 The subsidiary of foreign company even if it is an Indian company is also considered as foreign source under FCRA. Again, to determine whether a company is a subsidiary of a foreign company or not, the provisions of section 4 of Companies Act, 1956 are relevant which are reproduced as under:

“4. Meaning of ‘holding company’ and ‘subsidiary’ - (1) For the purposes of this Act, a company shall, subject to the provisions of sub section (3), be deemed to be a subsidiary of another if, but only if,—

- (a) that other controls the composition of its Board of directors; or
- (b) that other—
 - (i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;
 - (ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c) the first-mentioned subsidiary of Company B. Company C is a company is a subsidiary of subsidiary of Company A, by virtue of clause any company which is that (c) above. If Company D is a subsidiary of other's subsidiary. Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above, and so on."

Illustration: Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above, and so on."

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

WHO CANNOT RECEIVE FOREIGN CONTRIBUTION

- Dr. Manoj Fogla, FCA

PERSONS BARRED FROM RECEIVING FOREIGN CONTRIBUTION

1.01 As defined in Section 3(1) of FCRA, 2010, foreign contribution cannot be accepted by certain specified persons. The text of Sec. 3(1) is as under:

“3. (1) No foreign contribution shall be accepted by any—

- (a) A candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office bearer thereof;
- (f) organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.

- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Explanation – In clause (c) and section 6, the expression “corporation” means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency—

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.”

IMPORTANT CHANGES IN FCRA 2010

1.02 It may be noted that FCRA 2010 has expanded the list of persons who cannot receive foreign contribution. The following are the new additions in FCRA 2010.

- *organization of a political nature as may be specified under sub-section (1) of Section 5 by the Central Government.*
- *association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of subsection (1) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;*
- *correspondent or columnist, cartoonist, editor, owner of the association or company referred to in the above clause.*

WHAT CAN BE RECEIVED BY ALL PERSONS INCLUDING THE DEBARRED CATEGORY PERSONS

1.03 It may be noted that all the above mentioned persons and other persons can receive various receipts as specified in section 4 of FCRA 2010. In other words, FCRA would not apply to the following:

- Salary or wages received from foreign sources.
- Receipt towards business transaction with foreign entities.
- Any receipt as an agent of Central/State Government from foreign sources.
- Gift to any member of government delegation within the permissible limits.
- Gift from relative
- Remittance from foreign sources in normal course of business.
- Any stipend, scholarship etc.

- (c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or
- (d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or
- (e) from his relative; or
- (f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999; or
- (g) by way of any scholarship, stipend or any payment of like nature:

1.04 The statutory provision provided in Section 4 is as under :

“4. Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,—

- (a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or
- (b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

Provided that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.”

WHETHER INDIVIDUALS NOT COVERED UNDER SECTION 3 OR A HUF CAN ACCEPT FC FOR THE PURPOSES LISTED IN SECTION 4

1.05 Yes. Since, subject to the provisions of section 10, even the persons specified

under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to receive foreign contribution for the purposes listed in section 4, it is obvious that Individuals in general and a HUF are permitted to accept foreign contribution without permission for the purposes listed in section 4. However, it should be borne in mind that the monetary limit for acceptance of foreign contribution in the form of any article given as gift to a person for his personal use has been specified as ' 25,000/ vide FCR Amendment Rules, 2012.

WHAT IS A POLITICAL PARTY

1.06 As discussed above, a political party cannot receive foreign contribution. The statutory definition of political party under section 2(1)(n) of FCRA 2010 is as under:“(n) “political party” means—

- (i) an association or body of individual citizens of India—
- (A) to be registered with the

Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or

- (B) which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- (ii) a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No.56/ J&K/02, dated the 8th August, 2002, as in force for the time being;”

1.07 As is evident from the above definition, all organisations which are formally engaged in political activity through participation in the electoral process are considered as political party. Other organisations which may have political objective are treated as organisations of political nature.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

INCOME TAX -

Privileges To The Donors u/s 80G

- Dr. Manoj Fogla

INTRODUCTION

1.01 As we already know that an NPO can avail income tax exemption by getting itself registered and complying with certain other formalities, but such registration does not provide any benefit to the persons making donations. The Income Tax Act has certain provisions which offer tax benefits to the “donors”. All NPO’s should avail the advantage of these provisions to attract potential donors. Section 80G is one of such sections.

REGISTRATION UNDER SECTION 80G

1.02 If an NPO gets itself registered under section 80G then the person or the organization making a donation to the NPO will get a deduction of 50% from his/its taxable income. The NPO has to apply in Form No. 10G to the Commissioner of Income Tax for such registration. Such approval is granted on permanent basis.

DOCUMENTS TO BE FILED WITH FORM 10G

1.03 The application form should be sent in triplicate to the Commissioner of Income Tax along with the following documents :

- i) copy of income tax registration certificate.
- ii) detail of activities since its inception or last three years whichever is less
- iii) copies of audited accounts of the institution/NPO since its inception or last 3 years whichever is less.

CONDITIONS TO BE FULFILLED UNDER SECTION 80G

1.04 For approval under section 80G the following conditions are to be fulfilled:

- i) the NPO should not have any income which are not exempted, such as business income. If, the

NPO has business income then it should maintain separate books of accounts and should not divert donations received for the purpose of such business.

- ii) the bylaws or objectives of the NPOs should not contain any provision for spending the income or assets of the NPO for purposes other than charitable.
- iii) the NPO is not working for the benefit of particular religious community or caste.
- iv) the NPO maintains regular accounts of its receipts & expenditures.
- v) the NPO is properly registered under the Societies Registration Act 1860 or under any law corresponding to that act or is registered under section 25 of the Companies Act 1956.

FOR DEDUCTION UNDER 80G OVER Rs. 10,000 MUST BE PAID IN OTHER THAN CASH

1.05 Amendment by Finance Act, 2012: A new section has been inserted by Finance Bill 2012 where no deduction shall be allowed under this section in respect of donation of any sum exceeding ten thousand rupees, unless such sum is paid by any mode other than cash.

1.06 As per the amended Act there is a new sub-section (5D) to Section 80G which provides that any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to assessment year 2013-14 and subsequent assessment years.

RENEWAL AND PERMANENT NATURE OF SECTION 80G

1.07 Income tax department used to issue this registration for period of around 2 to 5 years and after end of such period the NPO was required to apply for renewal of 80G certificate. However, with effect from 01.10.2009 the 80G certificate has become permanent in nature. In other words, all 80G certificates valid on 01.10.2009 or issued after 01.10.2009 are permanent in nature unless it is specifically withdrawn by the Income Tax Department.

1.08 All NPOs holding a valid 80G registration as on 01.10.2009 need not apply for renewal even if such certificate is expiring on a date subsequent to 01.10.2009.

1.09 This issue was clarified by the Finance Minister in the Finance Bill, 2009. However, appropriate amendments were not made in the Income Tax Act or the Rules to effect the changes. Therefore, during the past 2 years there was an environment of confusion and controversy and the Commissioner of Income Tax (CIT) have been asking the NPOs to apply for renewal even after 01.10.2009.

1.10 To resolve the controversy the Central Board of Direct Taxes (CBDT) has recently issued a circular clarifying that all 80G registration valid as on 01.10.2009 and issued thereafter shall be perpetual in nature unless specifically withdrawn by the income tax department. The circular is provided in Annexure 71. In other words all 80G registration which were valid as on 1st October, 2009 have become perpetual and there is no need to apply for renewal. Organisations may attached a

copy of the circular with the 80G certificate.

CASES CONFIRMING THE PERPETUAL EFFECT FROM 1-4-2009

1.11 In the case of Babu Hargovind Dayal Trust v. Income-tax Appellate Tribunal, Lucknow [2011] 199 TAXMAN 138 (All.)

the Allahabad High Court held that the CBDT circular dated CBDT Circular dated 3-6-2010 on the 80G registration becoming perpetual with effect from 1-4-2009, shall apply to all existing approvals, which were to expire on or after 1-10-2009. All such existing 80G certificates will be deemed to have been extended in perpetuity unless specifically withdrawn. This means that the petitioner's approval/exemption granted under section 80G, which was to expire on 31-3-2010, would be deemed to have been extended in perpetuity unless specifically withdrawn. Therefore CIT was not correct in asking for the application for renewal afresh, in accordance with law, as by virtue of operation of law, the exemption shall be deemed to be continued in perpetuity and it will continue, so long it is not withdrawn, as per the provisions of the Act.

1.12 In the case Harnam Singh Harbans Kaur v. Director of Income-tax (Exemption), Delhi [2012] 17 taxmann.com 103 (Delhi - Trib.) it was held that after omission of proviso to clause (vi) of section 80G(5) existing approval expiring on or after 1-10-2009 would be deemed to have been extended in perpetuity unless specifically withdrawn.

1.13 In the case Association for Advocacy and legal Initiatives v. Commissioner of Income-tax-I, Lucknow [2011] 11

taxmann.com 24 (Luck) it was held that in view of omission of proviso to section 80G(5)(vi) with effect from 1-10-2009 approval once granted under section 80G(5) shall continue to be valid in perpetuity unless and until a show-cause notice is issued by concerned Commissioner, showing his intention to withdraw already granted such approval.

1.14 In the case Astha Foundation v. Director of Income-tax (Exemptions) [2012] 17 taxmann.com 258 (Delhi - Trib.) it was held that a charitable institution's application dated 27-12-2010 seeking renewal of approval under section 80G could not be rejected by Director (Exemptions), unless approval was specifically withdrawn. In view of Circular No. 7/2010, dated 27-10-2010 existing approvals expiring on or after 1-10-2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn.

ILLUSTRATION OF BENEFITS UNDER SECTION 80G

1.15 The persons or organization who donates under section 80G gets a deduction of 50% from their taxable income. Here at times a confusion creeps in, that the tax advantage under section 80G is 50%, but actually it is not so. 50% of the donation made is allowed to be deducted from the taxable income and consequently tax is calculated.

1.16 The ultimate benefit will depend on the tax rates applicable to the assessee. Let us take an illustration. Mr. X an individual and M/s. Y Pvt. Ltd.,

a Company both give donation of ₹ 1,00,000/- to a NPO called Satyakaam. The total income for the year 1999-2000 of both Mr. X and Ms. Y Pvt. Ltd. is ₹ 2,00,000/-. Now assuming that the

rates are 30% for the individuals and 40% for the Companies without any minimum exemption limit. The tax benefit would be as shown in the table:

| | Mr. X | MS. Y PVT. LTD. |
|---|-------------|-----------------|
| i) Total Income for the year 2003-04 | 2,00,000.00 | 2,00,000.00 |
| ii) Tax payable before Donation | 60,000.00 | 80,000.00 |
| iii) Donation made U/S 80G | 1,00,000.00 | 1,00,000.00 |
| iv) Taxable Income after deduction 50% of Donation U/S 80G. | 1,50,000.00 | 1,50,000.00 |
| v) Tax payable after Donation | 45,000.00 | 60,000.00 |
| vi) Tax Benefit U/S 80G (ii)-(v) | 15,000.00 | 20,000.00 |
| vii) Tax Benefit U/S 80G (ii)-(v) | 15,000.00 | 20,000.00 |

Note : The tax rates and mode of computation is not actual.

QUANTUM OF DEDUCTION UNDER SECTION 80G(1)

1.17 Section 80G(1) provides the quantum of deduction available to various organisations. Under section 80G, donations to certain specified organisations are allowed 100% deduction and donations to the remaining approved organisations are allowed 50% deduction, subject to certain limits. Section 80G(2) provides the list of organisations, donation to which are eligible for deduction under section 80G. The list of the organisations alongwith the quantum of deduction available is provided as under :

- | | |
|--|------|
| (1) National Defence Fund set up by Central Government, [clause (a)(i)] | 100% |
| (2) Jawaharlal Nehru Memorial Fund, [clause (a)(ii)] | 50% |
| (3) Prime Minister's Drought Relief Fund, [clause (a)(iii)] | 50% |
| (4) Prime Minister's National Relief Fund, [clause (a)(iiia)] | 100% |
| (5) Prime Minister's Armenia Earthquake Relief Fund, [clause (a)(iiiaa)] | 100% |
| (6) The Africa (Public Contribution-India) Fund, [clause (a)(iiib)] | 100% |
| (7) The National Children's Fund, [clause (a)(iiib)] | 50% |

| | | | |
|---|------|---|------|
| (8) The Indira Gandhi Memorial Trust, [clause (a)(iiic)] | 50% | (24) The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, [clause (a)(iiihj)] | 100% |
| (9) The Rajiv Gandhi Foundation, [clause (a)(iiid)] | 50% | (25) Any other fund or institution under section 80G, [clause (a)(iv)] | 50% |
| (10) The National Foundation for Communal Harmony, [clause (a)(iiie)] | 100% | (26) The Government or Local Authority for purpose other than promotion of Family Planning, [clause (a)(v)] | 50% |
| (11) Any approved University or educational institution of National eminence, [clause (a)(iiif)] | 100% | (27) Any authority for planning development or improvement of Cities, Towns & Villages, [clause (a)(vi)] | 50% |
| (12) The Maharashtra Chief Minister's Relief Fund, [clause (a)(iiig)] | 100% | (28) Any corporation for promoting the interest of the Minority Community set up by the Central Government or the State Government [clause (a)(via)] | 50% |
| (13) Gujarat Government's Earthquake Relief Fund, [clause (a)(iiiga)] | 100% | (29) The Government or Local Authority, Institution or Association approved by the Central Government for promotion of Family Planning, [clause (a)(vii)] | 100% |
| (14) Any Zila Saksharta Samiti, [clause (a)(iiih)] | 100% | (30) Any payment towards repair or innovation of Temple, Mosque, Gurudwara, Church and other places notified by the Central Government, [clause (b)] | 50% |
| (15) The National Blood Transfusion Council, [clause (a)(iiha)] | 100% | (31) Indian Olympic Association or any other association notified by the Central Government under section 10(23) [clause (c)] | 100% |
| (16) Any State Government Fund to provide Medical Relief to the poor, [clause (a)(iihb)] | 100% | (32) Any Trust, Institution or Fund providing relief to the victims of Earthquake in Gujarat, [clause (d)] | 100% |
| (17) Central Welfare Fund of the Army, Naval Forces or the Air Force, [clause (a)(iihc)] | 100% | | |
| (18) Andhra Pradesh Chief Minister's Cyclone Relief Fund, [clause (a)(iihd)] | 100% | | |
| (19) The National Illness Assistance Fund, [clause (a)(iihe)] | 100% | | |
| (20) The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund, [clause (a)(iihf)] | 100% | | |
| (21) National Sports Fund set up by the Central Government, [clause (a)(iihg)] | 100% | | |
| (22) The National Cultural Fund set up by the Central Government, [clause (a)(iihh)] | 100% | | |
| (23) The Fund for Technology Development and Application set up by the Central Government, [clause (a)(iihi)] | 100% | | |

CERTAIN ASPECTS RELATED WITH DONATIONS UNDER SECTION 80G

1.18 The following aspects related with donations under section 80G are important :

- (i) Section 80G is applicable only to donations made in terms of money. *Explanation 5* clearly states that no deduction will be allowed in respect of any donation unless such donation is in the form of money. In other words donations in kind are not considered for deduction under section 80G.
- (ii) Deduction under 80G is available only if the assessee has some income. 80G is not available in case of losses and the benefits under 80G cannot be carried forward.
- (iii) Further the deduction is available against taxable income only. If some part of the income is not taxable then it should be excluded for the purposes of section 80G. In case the assessee has no taxable income then the deduction under 80G will not be available even if the assessee has other income, which is not subject to tax. ***Goodricke Group Ltd. (No. 1) v. CIT [1993] 201 ITR 261 (Cal.)***.
- (iv) It is not necessary for the donations to have any nexus with the business prospects of the assessee. When a donation is claimed as expenditure under section

37(1), it becomes necessary to establish a nexus of the donation with the business. But deduction under 80G can be claimed regardless of any nexus with business.

- (v) It is not necessary that the donations should have been made out of the taxable income of the assessee for the current year. If the assessee makes donations out of reserve fund or previous years income, such donations would be eligible for deduction under section 80G provided the assessee has some taxable income. However, in ***Raja Shri Sailendra Narayan Bhanja Deo v. CIT [1959] 36 ITR 94 (Ori.)***, where the assessee had both agricultural and non agricultural income, allocation of donation as between them was considered unjustified. The assessee was allowed full deduction in spite of the fact that a portion of the contribution could have been made from agricultural income.
- (vi) To claim deduction under section 80G it is necessary that the assessee should produce adequate proof of the payment. In ***Golecha Properties (P) Ltd. v. CIT [1988] 171 ITR 47 (Raj.)***, it was held that deduction under section 80G would not be available in the absence of any proof of payment. The Court observed that without any proper proof of payment, the question of giving relief based thereon would not arise.

(Dr. Manoj Fogla - Senior Chartered Accountant and a Consultant with many Voluntary Organisations.)

CARBON CREDITS - An Accounting Perspective**

- CA Vivek Raju P.

1. INTRODUCTION:

Scientists have identified the cause as increase in greenhouse gas emissions, depletion of forests, fossil fuel and industrial emissions. Global warming has the dooming effects of melting the polar ice caps, thermal expansion of water leading to an increase in the average sea levels, depletion of the ozone cover and natural calamities like the ones caused by the El Nino system leading to incessant flooding, forest fires, droughts, etc. Sea levels have risen by 20 cm over the last 130 years and are expected to rise by 1ft to 5ft in the next 100 to 300 years, which could send parts of countries like Bangladesh, Maldives, Egypt, Kiribati, Tuvalu or even cities like Shanghai, Tokyo, Mumbai, Amsterdam, London and New York under water.

The United Nations Framework Convention on Climate Change (UNFCCC) has adopted a protocol in 1997 at the summit in Kyoto, Japan. This came into effect on 16th February 2005. As of March 2012, 191 member nations have ratified the protocol with the exception

of United States which is the world's largest emitter of green house gasses. As per this protocol, 36 countries have committed to reduction of Green House Gases (GHG) produced by them by 5.2% by 2012 from the 1990 levels. The national targets, however, vary from 8% for the EU, 7% for US, 6% for Japan, 0% Russia, while others like Australia and Iceland are permitted to increase the emissions. The protocol provides for various mechanisms to control climate changes, like Clean Development Mechanism (CDM), Joint Implementation (JI), International Emission Trading (IET).

2. KYOTO PROTOCOL: HOW DOES IT WORK

Clean Development Mechanism (CDM):

It is a project based mechanism. The credits are generated by developing emission reduction projects, or from afforestation projects in non-Annex 1 nations (developing nations). This mechanism creates new CERs (Certified Emission Reduction) which is not the case in the other two mechanisms. This, when acquired, increases the amount of eligible

emissions for the Annexure 1 nations (developed nations). As a result CDM, projects must meet detailed requirements and follow the exact steps for validation, registration and verification for emission reductions. The CDM allows industrialized countries with a greenhouse gas reduction commitment to invest in emission reducing projects in developing countries as such an investment in their own countries is costly, the investment may be made in a developing country where the cost of GHG reduction project is usually much lower.

Joint Implementation (JI): This is also a project based mechanism by which a developed country with a higher GHG reduction cost invests in a project that reduces emissions or enhances the removal of carbon footprint in another developed country which has lower costs and receives credits. No new credits get created in JI; it only gets redistributed from one developed country member party to the next.

International Emissions Trading (IET): Under this mechanism, Annex 1 party may acquire or transfer Emission Reduction Units (ERU) from another party. Countries can trade in the international carbon credit market to cover their shortfall in allowances. Entities in developed countries exceeding the emission limits set for them, can buy credits from entities that generate them as a result of lesser emissions.

3.INDIA'S ADVANTAGE

Carbon credits are certificates issued to countries that reduce their emission of GHG which cause global warming. Carbon credits are measured in units of Certified Emission

Reductions (CERs). Each CER is equivalent to one tonne of carbon dioxide (CO₂) reduction. China, Brazil and India are potential beneficiaries from the newly found source of revenue. For the purpose of the protocol, a total of 36 countries have been listed in Annexure – A, which are industrialized countries who have to meet their emission reduction targets by buying GHG emission reductions in Non Annexure-1 countries of which India is a part. We need to consider only CDM as we are not in Annexure-1 for considering JI or a buyer of CERs under IET.

India is one of the countries that have credits for emitting less carbon. India and China have surplus credits to offer countries that are in deficit. China alone accounts for more than one third of the total supply of CERs in the world, which makes it the world's largest source of carbon credits through CDM, with India coming next with approximately 25% of the projects under CDM. The major projects that aid in the issuance of CERs are hydroelectric power plants, wind energy, bio mass and congregation projects. These credits are called "Carbon Offset Credits"; the other form is "Carbon Reduction Credits". These credits are gained through afforestation which traps the carbon emissions.

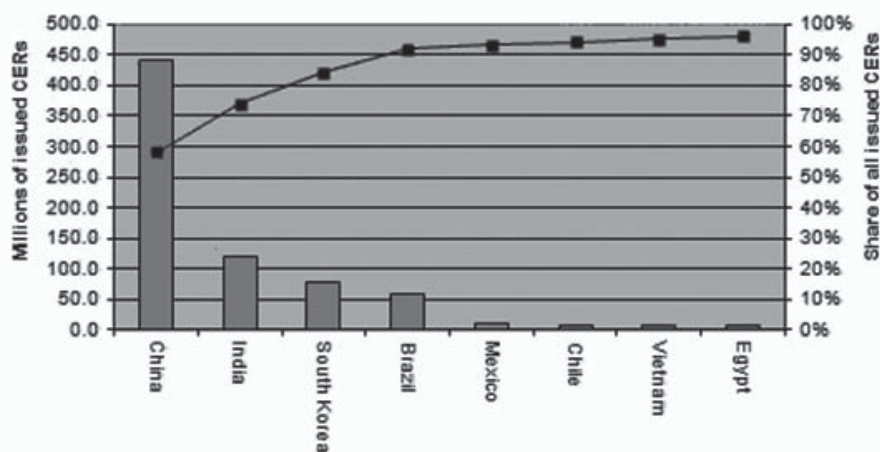
In total, 1.67 billion CERs will be generated from projects created in the period 2009-2012. At the current rate of • 9 per CER, this translates to approximately • 15 billion of opportunity for countries like China, India and Brazil. In May 2010, a World Bank report on carbon trading put the market in the world at approximately • 100 billion, which is mostly from Europe and Japan. It is expected that this will increase manifold, if US becomes a part of the Kyoto Protocol and is included in Annexure 1 therein. As of 2010, there were

520 registered CDM projects out of the total 2313 projects registered by the UNFCCC. The projects have potential to generate 43 million CERs annually.

Statistics of CDM Projects and CERs Issued as of 2011

CDM project with CERs issued

| CDM projects in the pipeline Type (rejected projects excluded) | CDM project with CERs issued | | |
|---|------------------------------|--------------|------------------|
| | Projects | Issued kCERs | Issuance success |
| Afforestation | | | |
| Agriculture | | | |
| Biomass energy | 158 | 20255 | 83% |
| Cement | 9 | 1850 | 55% |
| CO2 usage | 1 | 10 | 31% |
| Coal bed/mine methane | 19 | 9059 | 49% |
| Energy distribution | 1 | 316 | 83% |
| EE households | 2 | 28 | 60% |
| EE industry | 29 | 1690 | 82% |
| EE own generation | 87 | 33408 | 79% |
| EE service | 1 | 6 | 63% |
| EE supply side | 9 | 1094 | 97% |
| Fossil fuel switch | 37 | 23395 | 58% |
| Fugitive | 4 | 8386 | 116% |
| Geothermal | 5 | 2002 | 62% |
| HFCs | 19 | 351820 | 106% |
| Hydro | 359 | 58679 | 87% |
| Landfill gas | 76 | 19642 | 42% |
| Methane avoidance | 96 | 8167 | 49% |
| N2O | 35 | 171055 | 134% |
| PFCs and SF6 | 4 | 976 | 73% |
| Reforestation | | | |
| Solar | 5 | 107 | 108% |
| Tidal | | | |
| Transport | 2 | 359 | 47% |
| Wind | 266 | 46532 | 86% |
| Total | 1224 | 758837 | 96.2% |



Source: www.cdmpipeline.org

4. TRADING OF CERS

The CERs are given by the CDM executive board to projects in developing countries to certify that they have reduced the GHG by one tonne of CO₂ per year. The project so certified by the board is monitored to check if the reduction as envisaged is actually taking place before award of the credits. Exchanges like the Chicago Climate Exchange, EU Climate Exchange (EUCX), and Multi Commodity Exchange of India (MCX) have developed trading platforms for carbon credits. The markets for carbon credits are basically of two types:

1. Compliance
2. Voluntary (mainly US)

Compliance markets have set a “cap and trade” system whereby the total annual emissions for an industry or country are capped by law, and carbon credits can be traded between businesses or sold in trading markets. Those producers who exceed their emission reductions can trade their credits to others in the market place who have not reached their emission goals. Voluntary markets exist for businesses or individuals to lower their “carbon footprint” by voluntarily purchasing carbon credits from an investment fund or company that has aggregated credits from individual projects that reduce emissions. Compliance markets are mainly due to the Kyoto Protocol, a cap and trade system that resulted from the international Framework Convention on Climate Change

5. ACCOUNTING ASPECTS

There is currently no authoritative guidance either from the International Accounting Standards Board (IASB) or Financial Accounting Standards Board (FASB) in the

Due to the lack of any mandatory guidance on for the accounting of carbon emissions and credits, there are currently divergent accounting practices in vogue. Differences exist on the accounting for the development of the projects under CDM mechanism, generation of CERs, timing of recognition, sales and inventory valuation, etc. Currently carbon related transactions can be accounted with reference to IAS 2 (Inventories), IAS 20 (Government Grants), IAS 37 (Provisions) IAS 38 (Intangible Assets) and IAS 39 (Financial Instruments).

US for the accounting of carbon emissions and credits, although the boards have issued some guidance in the past. In 2004 IASB has issued IFRIC 3- Emission Rights, to provide guidance on this aspect, but was soon withdrawn in June 2005 due to criticism on account of potential volatility arising from recognizing changes in value of the allowances and movement of provisions for emissions in the income statement. Similarly in the US, Emerging Issues Task Force (EITF) sought to provide guidance on this aspect under EITF 03-14, but the same was also dropped from the agenda. In 2007, the two boards have again taken up a joint project to address emissions accounting but is again paused currently and a decision is likely to be taken in the coming months. Due to the lack of any mandatory guidance on this there are currently divergent accounting practices in vogue. Differences exist on the accounting for the development of the projects under CDM mechanism, generation of CERs, timing of recognition, sales and inventory valuation, etc. Currently, carbon related transactions can be accounted with reference to IAS 2 (Inventories), IAS 20 (Government Grants), IAS 37 (Provisions) IAS

38 (Intangible Assets) and IAS 39 (Financial Instruments).

Carbon credits are an entitlement to emit CO₂ in the future, they could also be sold in an active market, and to this extent they provide future economic benefits to the entity that holds them. Carbon credits can be classified as Intangible assets. It is to be noted that unlike other intangible assets like patents, trademarks, etc. the carbon credits are not created by the entities; they are created by the regulators and offered to or acquired by the corporations. Credits can be acquired either from a regulatory body or purchased in an auction or in an exchange where the credits are traded. There is a further complexity to the accounting of the carbon credits, which is should they be treated as Intangible assets or inventory, they possess both the characteristics of being assets and inventory. For a corporation that has to comply with the emission standards, it is required to buy the credits and extinguish them. The accounting practices are divergent and regulators across the world accept either treatment. The use of intangible assets treatment is supported by the erstwhile IFRIC 3 and is widely used under both IFRS and USGAAP. A brief look of the IFRIC 3 – Emission Rights (though currently withdrawn) can provide a guidance of what the IASBs position was in this regard. It provides for accounting CERs as intangible assets, the allowances that are free of charge are government grants, which will be initially recorded at fair value with a corresponding entry to deferred credit. The deferred credit is amortized over a period of time to the income statement. Allowances are derecognized on their sale or surrender to the government for emissions in excess of the target set for reduction. Companies

which have an emission related liabilities have to create a provision based on IAS 37 (Provisions, Contingent Liabilities and Contingent Assets). There are two possible methods of valuation of carbon credits: the “cost” and the “fair value” method.

There are two possible methods of valuation of carbon credits: the “cost” and the “fair value” method. Any credit purchased either in market or auction is to be recognized at cost or nominal value in case received as a government grant; however, credits may also be offered by the regulators free of cost as a result of the corporation’s use of clean technology and emission reductions. This may be recognized as a government grant. However, a question arises as to whether it is really a government grant. Also the classification in the balance sheet as a short term or a long term asset creates further complications.

Any credit purchased either in market or auction is to be recognized at cost or nominal value in case received as a government grant; however, credits may also be offered by the regulators free of cost as a result of the corporation’s use of clean technology and emission reductions. This may be recognized as a government grant. However, a question arises as to whether it is really a government grant. Also the classification in the balance sheet as a short term or a long term asset creates further complications.

The amounts received from the sale of CERs should not be treated as revenue but should be taken to other income, as the sale of CERs is only ancillary and not the main revenue generating activity of the company.

The management has to decide whether carbon credits should be treated as inventories or intangible assets as per their judgement. In case they are classified as intangible assets, they will be of finite life in the sense that their utility will be only till the end of the compliance period. Also these should be subject to impairment testing. Liability for Emitters: There have been questions as to how to measure the liability in case of emissions by companies beyond the permissible limit set. Though there is no standard guidance on this, it would be prudent for companies to create a provision as emissions occur as a charge to the income statement. The liability has to be measured based on the best estimate of the expenditure that would be required to settle the obligation. Emitters may in fact start creating a provision once the emissions exceed the allowances that they already hold. Yet another development in the carbon market has been the use of forward contracts and derivatives by the producers of CERs to hedge their price. This has been more so in the recent years as the price of CERs has been on a downward trend for the last four years to reach its lowest point in 2011. There are also questions on the accounting of these types of instruments as any guidance is lacking. These contracts may be derivatives and have to be accounted for accordingly.

6. GUIDANCE NOTE – ACCOUNTING FOR CARBON CREDITS ISSUED BY ICAI

The ED provides for the timing of recognition of CERs as assets. It mentions that when a company executes a project after successful registration under CDM, CERs will be generated as the entity meets its emission targets, however, they cannot be recognized, at this stage as they at best

represent contingent assets until the verification process is complete and cannot be recognized as per AS 29 – Provisions, Contingent Liabilities and Contingent Assets. After the verification and approval by UNFCCC, the CERs are resources controlled by the entity and can be expected to give rise to cash and cash equivalents and hence are assets.

There have been questions as to how to measure the liability in case of emissions by companies beyond the permissible limit set. Though there is no standard guidance on this, it would be prudent for companies to create a provision as emissions occur as a charge to the income statement. The liability has to be measured based on the best estimate of the expenditure that would be required to settle the obligation. Emitters may in fact start creating a provision, once the emissions exceed the allowances that they already hold.

CERs should not be recognized as assets before they are credited to the entity by UNFCCC, as they are not unconditionally available to the generating entity. The GN also touches upon the valuation of the inventories of CERs so held. Costs incurred in producing these inventories may comprise research and development costs for the clean technology implemented, project design costs, fees paid to the agencies like DOE, national authority, UNFCCC for approval. CER certification costs and operating costs to run the CDM project. However, as per AS 26 R&D, costs prior to certification may not be included in the cost of these as these are costs incurred before the asset came into existence, also costs like project design and don't result in the CERs coming into existence and cannot be inventorised,

hence as per the guidance only the cost of certification by UNFCCC which brings the CERs into existence can be taken as the cost of producing the inventories. Once the cost is ascertained following the guidance as per AS2- Valuation of Inventories, the CERs have to be carried as a part of the inventory at the lower of “cost” or “net realizable value”.

7. REVENUE RECOGNITION

Sale proceeds of CERs are to be recognised as per AS 9 – Revenue Recognition, on fulfillment of the conditions specified as per para 11 on transfer of the CERs to the buyer and the seller retains no control over them and there is no uncertainty on the amount of consideration receivable. Gujarat Flouro Chemicals Ltd, which is a leading player in carbon credits, accounts for revenue from the credits on delivery or sale of rights to the credits. Also the carbon credits are classified as inventories and included in the current assets.

8. TAXATION ASPECTS

VAT: CERs are considered as goods when read in the context of the landmark judgement of the Supreme Court in *Tata Consultancy Services Vs State of Andhra Pradesh [2004] 271 ITR 401*. Although this is a case involving computer software, it can be extended to CERs; the same position was reiterated by the SC again in the case of *BSNL v. UOI [2006] 152 Taxman 135/ 282 ITR. 273/ 145 STC 1*. The court has held out the following points in the TCS case as attributes for being classified goods. “A “goods” may be tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold’ and (c) capable of being transmitted, transferred, delivered, stored and possessed. If a software, whether

customized or noncustomised, satisfies these attributes, the same would be goods”. The Delhi VAT commissionerate, as per a ruling in 2010, has mentioned that CERs (carbon credits) are certificates having a market value and there are people willing to buy and sell the certificates. So the intrinsic value coupled with the free transferability makes it a marketable commodity and, therefore, covered under Section 2(1) of the Delhi VAT Act 2004. Here again, reference was made to the ruling by the apex court in the TCS case and held that all the three attributes specified in the judgement have been fulfilled, thus making CERs goods. The CERs have been added in entry 3 of the IIIrd schedule of the DVAT Act 2004 at 4% rate. However, as majority of the carbon credits are sold to overseas buyers, VAT will not be applicable on them; they should in essence qualify as export of goods.

The income tax department has found a new avenue of raising the tax collections in carbon credits. As per information with the department, about 200 companies large and small, are engaged in trading carbon credits. Income from sale of CERs needs to be accounted under the head income from Business & Profession or as a capital gain. However, most companies record the income under the head “Income from other sources”. However, with the implementation of the Direct Taxes Code from 2012 the position will be clarified as the income from the CERs will have to be treated as business income.

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from sale of CERs needs to be accounted under the head income from Business & Profession or as a capital gain. However, most companies record the income under the head "Income from other sources". As such there is no established guideline in this regard. However, with the implementation of the Direct Taxes Code from 2012, the position will be clarified as the income from the CERs will have to be treated as business income. Clause 33(2)(xi) of the DTC explicitly mentions income from carbon credits to be treated as business income by mentioning *"the gross earnings referred in 32(3) shall be the aggregate of the following(xi) any consideration accrued or received on transfer of carbon credits"* also the word carbon credit has been defined in Chapter XIX, Clause 314 (46).

9. THE FUTURE OF CARBON MARKETS

It is clear that the market for carbon credits is growing and is expected to fetch revenues to Indian companies that have embarked on CDM mechanism projects. However, there may be turbulence in the future due to the fall in the global CER prices, the Euro zone crisis, increase in the number of projects under CDM by the UNFCCC thereby leading to an increase in the supply of CERs.

There is also a lower possibility of the developed countries agreeing to binding commitments after the first commitment period that ends in December 2012. It will become all the more difficult post 2012 to forecast the market for carbon credits. A recent report by Fitch Ratings in November 2011 has also predicted a decline in the revenues from carbon credits to Indian companies' post 2012.

Only time will decide what happens in the future for the carbon market that has seen a spectacular growth in the past few years. The end of the first compliance period in 2012 and further negotiations between the countries will pave the way for the carbon market. Some analysts predict that the price of CER to be • 79 by 2020 as the region struggles to reach its target, but that appears to be a distant proposition with the current prices lingering around •3 to •4. Others point that the EU which is facing an economic crisis may take a very hard stand in the future. The US may also enter into some form of trading scheme or voluntary compliance increasing the demand for the CERs. One thing that is certain is that India has made its mark in the carbon market and any growth in this space will be advantage India.

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1. *Carbon Accounting Challenges: Are you ready – Deloitte center for Energy Solutions- April 2011.*
2. *Trading Carbon Offsets- A Caribbean Tale – Chinyere Nwaogwugwu, Ecological Technologies Limited; Jamaica. 2010.*
3. *Guidance Note on Accounting for Carbon Credits – Institute of Chartered Accountants of India Chartered Accountant Journal– March 2012*

(The author is a member of the Institute. He can be reached at vivekrajup@yahoo.co.in)

**** (The Chartered Accountant (originally published in November 2012, Vol. 61, No. 5).**

Governance Section

BOARD MEMBERS COMMITMENT SHEET

- Sanjay Patra, FMSF

1. INTRODUCTION:

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.

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 tool box re-emphasizes the need to document the recruitment process in a systematic manner and also explains how to do it.

2. NEED OF COMMITMENT SHEET:

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".***

3. PROCESS TO BE FOLLOWED:

After identifying the qualities to be looked in for a Board member (***NPO Governance tool box series, Vol 1, Issue 1, May 2012***) and sharing the materials with them (***NPO Governance tool box series, Vol 1, Issue 2, June 2012***), next step would come 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(***refer annexure 1 for the format for the consent of Board member***). 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(***refer annexure 2 for the format for resolution***). 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 (***refer annexure 3 for the format of commitment sheet***).

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.

4. CONCLUSION:

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.

****Formats for the Consent form, Resolution & Commitment sheet is given as Annexure (1, 2, 3) respectively.***

(Sanjay Patra-Senior Chartered Accountant and Executive Director of FMSF)

Annexure-1

CONSENT FORM

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-2

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: _____

Date:

(Secretary, Society name)

Annexure-3

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.
- 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

AREAS TO BE COVERED IN BOARD ORIENTATION PROCESS

- Sanjay Patra, FMSF

1. WHAT IS BOARD ORIENTATION?

Board orientation is a process to thoughtfully provide new Board members with the precise information they need on their role in the organization. The purpose of Board orientation is to provide important information about the organization and about the Board's roles and responsibilities. It also serves to build a working relationship among Board members and helps to recognize the various skills available within the Board.

2. WHY IS BOARD ORIENTATION IMPORTANT?

Board orientation is important and required so that new Board members can find answers to some critical questions:

- What skills and knowledge do each of us bring to the table?
- What do we need to know and learn?

- How will we function as a Board?
- Within what principles will we operate?
- What resources are available?
- How often and where should we meet?
- How will we run our meetings?
- With whom and how will we communicate?
- What administrative systems will we require?
- Will we require outside advice on legal, planning and financial matters?
- What are our legal responsibilities?
- What decision-making and problem-solving techniques will we use?

New Board members need to feel like they are an integral part of the Board as soon as possible. Providing Information about the organization and roles/responsibilities will help them to feel at ease.

3. ORIENTATION OF NEW BOARD MEMBERS:

There are steps you can take to move this process along. Conducting an orientation session of the entire Board shortly after the election is essential. It should occur well before the first Board meeting and can be as short as 2 to 4 hours or as long as a two-day special retreat which could be linked with a planning session.

It is important to spend time going over background material about the organization and bring them up-to-date on the issues facing the Board. (Refer to the earlier topic in blog “What materials to be shared with the Board”).

Getting Board members comfortable with Board responsibilities and participating in meetings is a key objective. Not only do the new board members start contributing right away during the meetings, they also develop a good working relationship with the veteran Board members.

The following are some key aspects to consider as part of the Board orientation:

- Hold a meeting with the Board Chairperson / President, Executive Director, and new Board members. The purpose of the meeting is to set the standard for conduct and achievement required from Board members, as well as to highlight the vision of the organization that the Board is endeavoring to achieve.

- Provide some of the history and evolution of the organization and review short term and long term goals.
- Provide Board members with information on organizational policies and procedures.
- Consider assigning a mentor - a senior member of the Board is assigned to tutor a new member in the operations of the Board.
- Consider incorporating teambuilding exercises for the Board as part of the orientation process.

4. DEVELOPING A BOARD ORIENTATION TIMETABLE

After the new board member has been brought onto the Board, the Board orientation process should be continued in a systematic way considering the information to be shared and time required. The first meeting should be scheduled with the chief functionary or the Chief Executive Officer (CEO) where information about the history, vision, mission and ethos of the organization is to be shared.

As a second step, the meeting should be done to introduce new board members with the staff and programs of the organization. In the third step, meeting should be scheduled with the current Board members and key individuals in the organization and also a detailed Board Manual should be provided.

Board Orientation Timetable

| Step- | Activity | Focus | Time Required |
|---------------|---|---|---------------|
| Step-1 | Initial meeting/discussion with the Chief Functionary/ Chief Executive Officer(CEO) | Understand history, vision, mission and ethos of the organization. (Refer Checklist 1 in Board Orientation Checklist) | 3 hours |
| Step-2 | Meeting with the CEO and Staff Team | Understand the staff, their roles and responsibilities, Organization's Program and services. (Refer Checklist 2 in Board Orientation Checklist) | 3 hours |
| Step-3 | Meeting with the Board | Understand the board member's role, board policies, expectation from new Board etc. (Refer Checklist 3 in Board Orientation Checklist) | 3 hours |

5. BOARD ORIENTATION CHECKLIST

Below are the items to be considered in developing an orientation session for new Board members. Much of this information will be covered in the Board Manual, but should be reviewed with new Board members to ensure they are comfortable with the information.

| Checklist-1 Information about the Organization | |
|--|--|
| ➤ History of the organization | |
| ➤ Organizational / Board / Staff structure | |
| ➤ Copy of constitution & by-laws | |
| ➤ Vision & mission of the organization | |
| ➤ Strategic priorities, goals and objectives | |
| ➤ Summary of the programs and services | |
| ➤ List of Board members / staff and their contact information | |
| ➤ Provided brochures and other promotional materials | |
| Checklist-2 Information about Staff and Financial Management | |
| ➤ Reviewed Executive's / Officers' role | |
| ➤ Reviewed staff roles | |
| ➤ Discussed Budget process | |
| ➤ Provide current year's budget | |
| ➤ Provided a copy of up-to-date audited financial statements | |
| ➤ Provided a copy of most recent annual report | |
| Checklist-3 Board Roles and Responsibilities and Other Information | |
| ➤ Reviewed Board member's role | |
| ➤ Provided copies of minutes from previous Board meetings | |
| ➤ Discussed expectations for and of new Board members | |
| ➤ Gave a tour of facilities and offices | |
| ➤ Reviewed committees and their roles | |
| ➤ Had new Board members sign required paper work (i.e. Oath of Confidentiality, Memo of Understanding regarding roles and responsibilities etc.) | |

6. CONCLUSION:

At the completion of the board orientation process, members can be encouraged to provide feedback and recommendations. This will help strengthen the process for the

future. The board chair can periodically involve the members in one-on-one reviews of the progress following the orientation.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD SIZE

- Sanjay Patra, FMSF

1. INTRODUCTION

The size of the Board is often much debated subject in governance of NPOs. When Organizations initially come into existence, they often start cautiously with a small number of members and expand as the organization grows and programs diversify.

The size of board varies from organization to organization, depending on various factors such as the type, size, the board culture and the nature of its work. Every organization is different and ideal board size may not be recommended as a norm.

The Organization to function effectively needs a board that is small in size where every board member has a significant role to play and also need a board which is large enough so that the work of the board is done with diversity of experiences.

It is important not to stick on the board size, with which initially the Organization started. The board should revisit its size

and determine the right number to carry out effective and responsible governance in the organization according to time and needs.

2. WHAT IS THE AVERAGE BOARD SIZE?

The size of the board varies from organization to organization and depends on a number of factors including:

- Type of Organization and the nature of the board's work
- Mission and purpose
- Asset size
- Board structure
- Life cycle stage of the Organization

However, one important point to be kept in mind while deciding the board size is that Organizations should choose an uneven number of board members. This helps avoid tie in voting in case there is a decision by majority. However, if there is an even number of members and there is a tie in votes, the Chairperson exercises the "casting vote option".

3. HOW TO DETERMINE THE RIGHT BOARD SIZE

The founding members/board members while setting or reviewing the size of the board have to keep in mind the following questions:

- What is the vision/mission and what the board needs to do to fulfill that mission?
- What kind of work does the board need to do at the meetings?
- Is the board a policy board or an implementing board, or a combination of the two?
- What expertise does the board need to meet its objectives?
- How would expanding or shrinking the board affect its culture, communication and work style?

The answers to the above questions will give an idea of the need and requirement of the organization and thus the ideal size of the board can be determined.

4. REGULATION OF BOARD SIZE IN THE BYLAWS

Normally the size of the board is determined

in the bylaws of the organization. It is important to set a guideline within a certain range, not an exact number, so that an unforeseen situation does not force the board to contradict its bylaws. It needs to be ensured that the bylaws have the provision for the term of the board i.e. retirement and recruitment of new members so that a continuous balance is maintained.

5. SMALL OR LARGE: ADVANTAGES AND LIMITATIONS.

A smaller board ensures that everyone looks into issues and undertakes his or her responsibility. On the other hand, larger board brings in more diversity of ideas and the better representation of various stakeholders.

The Size of the Board, as discussed earlier, depends on the requirements of the Organization. However, after studying a number of different organizations, it has been observed there are some advantages and limitations of small or large board. The analysis is provided below:

Small Board

| Advantages | Limitations |
|--|--|
| The smaller board will experience a feeling of unity, common purpose and ownership. | Small numbers limit opportunities for diversity and inclusiveness. |
| Every member can be active and engaged, which makes for a more rewarding experience. | Restricted skills and perspectives are represented at the table. |
| Board members tend to know each other better, which may make their work together more fruitful. Communication and interaction may be easier and more flexible. | With small number of board members, few members are available to serve on committees which results in heavy work load. |
| Small boards can be flexible in terms of scheduling meetings and setting agendas. | The board has less continuity in times of leadership change. |

Large Board

| Advantages | Limitations |
|--|--|
| A larger board opens more options for different skill sets, experience and professions in the boardroom. Different expertise of board members can achieve better governance. | Members may feel less individual responsibility and less ownership of the work. |
| A larger size provides enough people to more easily manage the work load of the board. | Some voices may not be heard. It may happen that a few active board members may dominate the decisions. |
| More board members help to maintain institutional memory in times of leadership change. | Large boards may not be able to engage all members, which can lead to loss of interest. Meetings are more difficult to schedule and more staff time is needed to coordinate board functions. |

In context of the above advantages and limitations of both board size i.e. small or large, the organizations which are not comfortable either with small board or with large board may use a two-tier structure, which includes a larger governing board and a smaller executive board (which sometimes is known as Executive Committee). The governing board may comprise eminent personalities, leaders from various fields and representatives from voluntary sector. The Executive Board/Committee should include smaller group of persons from the Governing Board along with key executive staff. Such structure brings more perspective and voices to the board, without increasing its size.

6. COSTS

Another very important issue to keep in mind while determining the board size is the "Costs". Even though, the positions in the board are voluntary in nature, the organization needs to meet the costs towards the meetings. This includes the travel, accommodation and other incident-

tal meeting costs. The costs are directly proportional to the board size as well as the frequency of meetings. Therefore, an organization has to strike a delicate balance between cost and benefits in terms of size of board and the geographical location of the members.

7. CONCLUSION

In line with the above parameters for determining size of board, advantages and limitations it can be said "One size does not fit all Organizations". The board of an organization should establish its own size and structure and review these periodically. Yet, before restructuring the board or changing its size, the way the board functions at present has to be looked at.

The board should have enough members to allow for full deliberation and diversity of thinking on governance and other organizational matters. Except for very small organizations, this generally means the board ideally should have a membership from 5 to 11 members.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

BOARD DIVERSITY MATRIX

- Sanjay Patra, FMSF

1. INTRODUCTION:

The Board is supposed to be the most powerful body of an Organization and in the absence of an effective Board it is very difficult to ensure good governance in any organization. Diversity plays a very crucial role in forming an effective Board. However, it has been seen that in many Organizations diversity is not given much importance. Now, the question is what does diversity mean? Diversity may conjure up a racial and ethnic mix. This is certainly a part of it, but diversity of thought, background and experience is just as important. Having diversity of skills and expertise in the Board is a very important pre-requisite for the effectiveness of Governance.

The key question is whether the diversity in the Board is intentional or accidental? This needs to be answered by every Board. In other words, the Board needs to be intentional in creating diversity rather than allowing natural processes to take control and create diversity. In reality sometimes natural process may not throw up the ideal

Diversity of the Board-

*Intentional or
accidental???*

diverse Board. Therefore, adequate thought and plan must be made to create diversity.

One of the important aspects is to analyze the degree of diversity present in the Board. This tool box has been designed for this very purpose which re-emphasizes the need of a diverse Board and also provides with a matrix to assess the diversity of the Board and to find out where to bring in more diversity (*Refer Annexure 1*).

2. NEED FOR A DIVERSE BOARD:

Board is essentially a group of individuals working together. The Board must be a fine blend of individuals drawn from different

walks of life & diverse sections of community. It is sometimes observed that few members actually discharge their responsibilities while rest are decorative or play a peripheral role. Moreover, when members are too alike, the overall thought process becomes stereotyped and predictable. Therefore, it may hamper the decision making process, since others ideas/ issues are not debated/discussed.

Diversity of background, skills and perspectives are considered essential ingredients of effective Boards. Multiple perspectives are necessary to bring in creativity and to challenge stereotype thought process. Diversity leads to more innovation, more outside box thinking and better governance.

3. PROCESS OF CREATING A DIVERSE BOARD:

Creating a diverse Board may sound lot easier than actually doing it. At first an organization has to determine the set of competencies, priorities and expertise that are necessary to be present in a Board in order to be more effective. Once the competencies are determined, the organization has to have some process for screening of these qualities. The next immediate step for an organization is to conduct a gap analysis of the Board to identify the experience & competencies that are already there in the Board and to flag off areas where it's lacking. After completing a thorough analysis, organization has to set high priority on the skills that they are looking for. However, the most important point here is to choose the members from a varied pool so that the balance of the Board is maintained in terms of gender, age, finance, governance & other specialized skills, etc.

4. POTENTIAL BENEFITS OF A DIVERSE BOARD:

More diversity leads to better Governance. A diverse Board contributes to overall Board effectiveness by safeguarding & fulfilling the mission of the Organization and enhancing fiduciary oversight. A diverse Board brings fresh perspectives to decision making. A more diverse group fosters creativity and produces a greater range of perspectives and solutions to problems.

A Board with members having different external linkages can help in easy access to resources and help in establishing connections easily. Organizations having a more diverse board can be a means of acquiring legitimacy in the view of society, media and Government.

5. POTENTIAL COSTS OF A DIVERSE BOARD:

Conflict, lack of cooperation and insufficient communication can be a hurdle for a Diverse Board since at times demographic & cultural differences may limit communication among subgroups created and create conflict & reduce interpersonal interaction and group cohesiveness.

There might be a risk of compromising with expertise & skills just for the sake of having a diverse board.

Nothing in this world is ideal and so is Diversity. It may be because of human nature that we often feel baffled, threatened or even annoyed by persons with views and backgrounds very different from our own which results in the risk of constructive disagreements turning into personal battles. However, the solution is definitely not to give up and avoid diversity. Rather the Board needs to make efforts to minimize the friction that diversity often introduces.

6. CONCLUSION:

Diversity affects the way Board behaves. It may be noted here that having a broad range of collective attributes rather than same qualities helps the Board in fulfilling its

responsibilities and should be looked at as a good practice. The Board diversity matrix is yet another tool to provide good governance and strategic oversight.

A suggestive format for Board Diversity Matrix is given below as Annexure 1

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

Annexure-1

| BOARD DIVERSITY MATRIX (Suggestive) | | | | | | | | |
|--|-----------------------|---|---|---|---------------------------|---|---|---|
| | Current Board Members | | | | Prospective Board Members | | | |
| | A | B | C | D | E | F | G | H |
| Desired Characteristics | | | | | | | | |
| Personal | | | | | | | | |
| AGE | | | | | | | | |
| 21-30 Yrs | | | | | | | | |
| 31-40 Yrs | | | | | | | | |
| 41-50 Yrs | | | | | | | | |
| 51-60 Yrs | | | | | | | | |
| 61 and above | | | | | | | | |
| GENDER | | | | | | | | |
| Male | | | | | | | | |
| Female | | | | | | | | |
| RELIGIOUS AFFILIATION (if necessary) | | | | | | | | |
| - | | | | | | | | |
| - | | | | | | | | |
| NUMBER OF YRS. IN THE BOARD | | | | | | | | |
| < 1 Yr | | | | | | | | |
| 1-3 Yrs | | | | | | | | |
| More than 3 Yrs | | | | | | | | |
| Knowledge/ Expertise | | | | | | | | |
| Financial Management | | | | | | | | |
| Governance | | | | | | | | |
| Law | | | | | | | | |

| | | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|--|
| Policy planning/ Advocacy | | | | | | | | |
| Research | | | | | | | | |
| Fundraising | | | | | | | | |
| Public / media relation | | | | | | | | |
| Proposal Writing | | | | | | | | |
| Programme Management | | | | | | | | |
| Risk Management | | | | | | | | |
| Others | | | | | | | | |
| | | | | | | | | |
| Core Competencies | | | | | | | | |
| Visionary | | | | | | | | |
| Strategic Thinker | | | | | | | | |
| Organizational Learning | | | | | | | | |
| External Linkages | | | | | | | | |
| Government | | | | | | | | |
| Media | | | | | | | | |
| NGO sector | | | | | | | | |
| Corporate sector | | | | | | | | |
| Religious Groups | | | | | | | | |
| Others | | | | | | | | |
| | | | | | | | | |

SOURCE FOR POTENTIAL BOARD MEMBERS AND CREATING A SUPPORT BASE

- Sanjay Patra, FMSF

1. INTRODUCTION:

Board Members play a crucial role in any organization. They are the trustees who hold the organization in trust. At the same time, they are volunteers, don't derive any benefit from the organization and have to act as the ultimate reference point. The motivating factor for a person to join the Board of an organization is the cause for which the organization works.

may not have time required to be in the Board. Potential Board members must be able to give time. In effect, this leaves the organization with a very limited option of persons available to be Board members. Unless, this is carefully planned and charted out it may so happen that when the time for rotation/change of members come, there may not be enough person to fill in the vacancy.

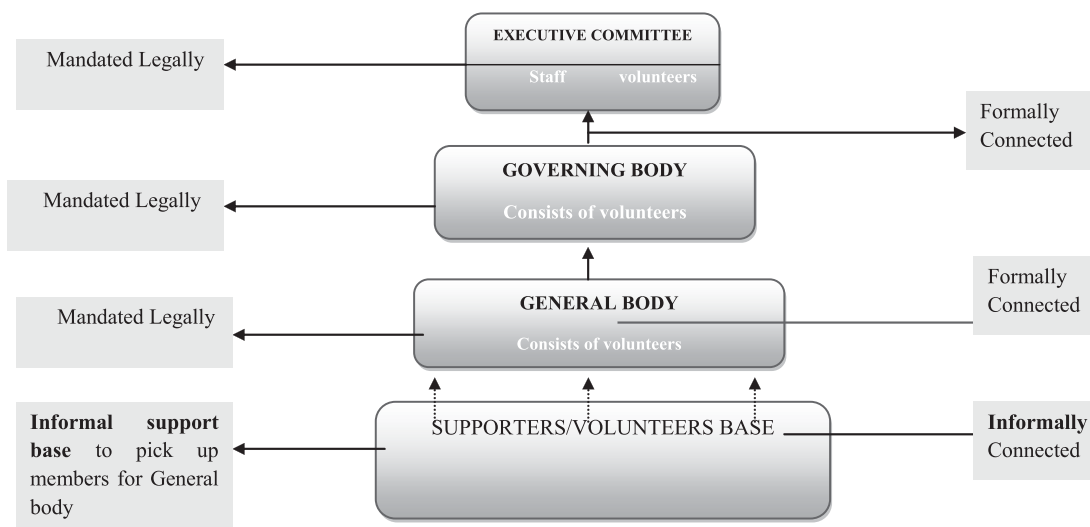
2. CHALLENGES FACED BY THE ORGANIZATION:

Many trust deed/ Articles of Association / rules & regulation of organizations provide for rotation of Board members. When the rotation falls due, it becomes a challenge to identify new members. There are no material benefits for being on the Board and at the same time, there are sacrifices of time involved. Further finding persons who understand the principle of NPO Governance is also not easy.

Another important issue is of time. People who believe/ are motivated by the cause

3. VARIOUS LEVELS IN GOVERNANCE PROCESS:

In an organization a General body and a Governing body is legally mandated and all the members are mostly volunteers. Some organizations also have an Executive committee that is above the governing body. Executive committee comprises of key staff and some volunteers. However, it is very much necessary to create a supporter or volunteer base from where the organization can pick up its potential Board members. This volunteer base is not mandated legally but is a desirable practice that an organization may choose to follow. The size of the



volunteer base should be around 2.5 times the General body size 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.

4. CREATING A SUPPORT BASE OF POTENTIAL BOARD MEMBERS:

In order to create a pool of potential Board members the first step is to have categories fixed. 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. Please refer NPO Governance Tool Box Series, Vol-1, Issue-5, Board Diversity Matrix for more details regarding introducing diversity in the Board (refer http://fmsfindia.org.in/publication_upload/gov-series/gsv1i5.pdf).

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

Just creating a data base or pool of 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.

5. ENGAGING THE SUPPORT BASE:

- Nurturing the members by making them feel respected and valued and making them understand what the organization stands for.
- Making them feel that they are part of the process.

- Sharing information regularly with our volunteer base so that they are well informed about the organization.
- Inviting members to special occasions/meetings.
- Involving them by asking them to select committees or roles they prefer and be a part of non-legislative advisory/standing committees. Organization can ask the members to share their views on other areas in which the organization needs help.

By doing all this, an organization can create a strong volunteer base which can later be turned into potential Board members who can add value to the organization.

There is a tool kit given in the following page (*annexure 1*) by which volunteers can be selected to be part of the support base. The kit consists of few parameters to decide upon the selection of volunteers for the support base.

(Sanjay Patra - Senior Chartered Accountant and Executive Director of FMSF.)

Annexure-1

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 | Time Availability | Independence | No conflict of interest | Total |
|--------------------------|-------------------------------|-----------------|-------------------|--------------|-------------------------|-------|
| | | | | | | |
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| | | | | | | |

Score Card:

Scores Obtained:

Maximum Marks: 25

INTERPRETING THE RESULTS:

- If the total score is more than 15 with a minimum of 2 in each parameter, the member is well suited for the organization.

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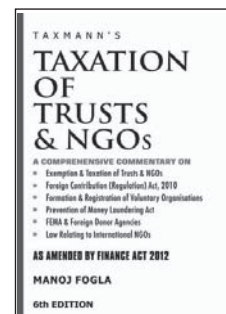
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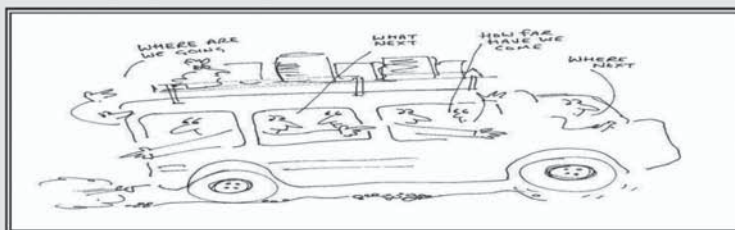
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ISSN 0972-7248

