INTER*face*

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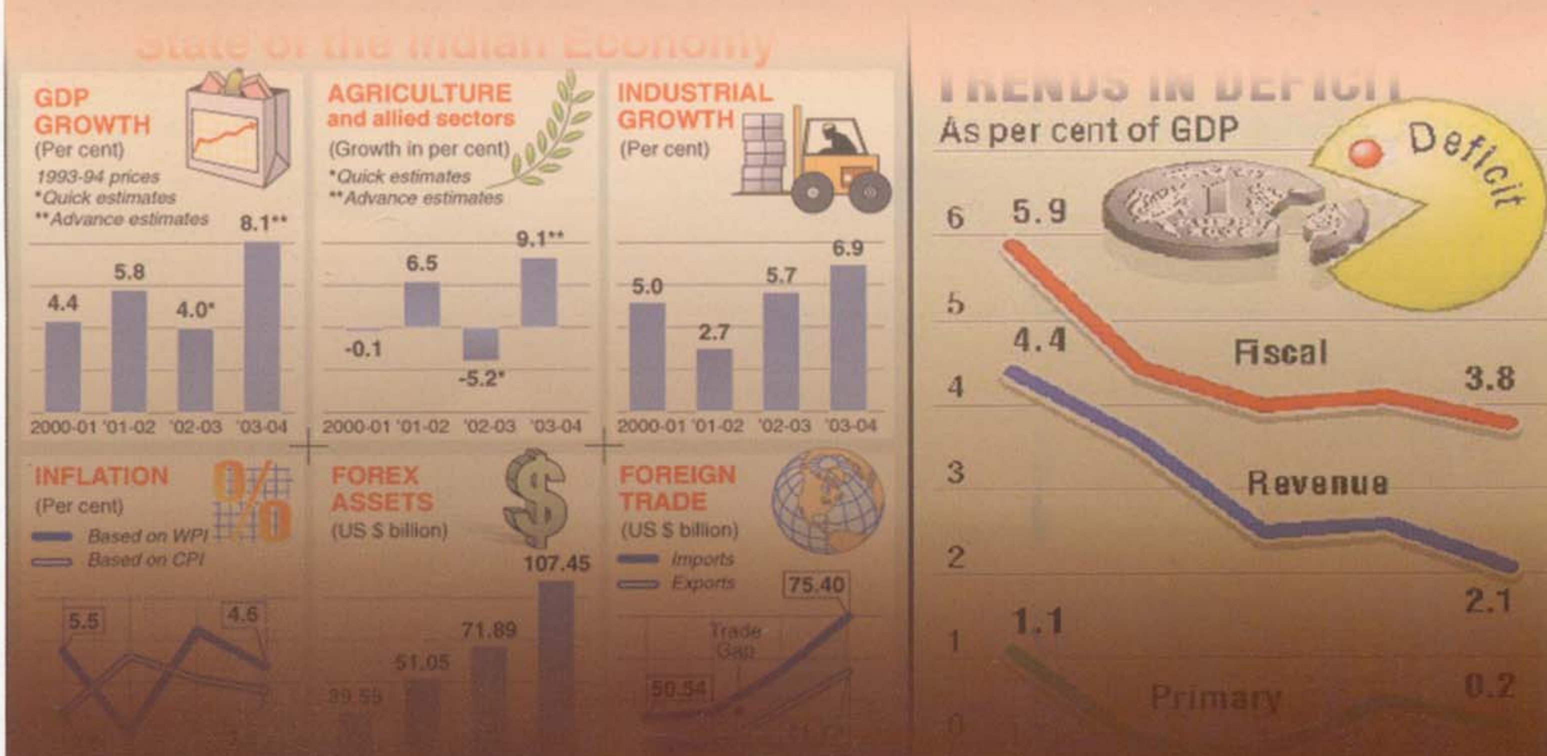
Cover Feature

Union Budget 2008



An Interesting Death

One day all the employees of an organization reached their office and they saw a big notice on the door on which it was written: “Yesterday the person who has been hindering your growth in this organization passed away. We invite you to join the funeral in the room that has been prepared in the basement”.

In the beginning, they all felt sad for the death of one of their colleagues, but after a while they started getting curious to know who was that person who hindered the growth of his colleagues and the organisation itself.

The excitement in the basement was such that security persons were ordered to control the crowd within the room. The more people reached the coffin, the more the excitement heated up. Everyone thought: “Who is this person who was hindering my progress? Well, at least he died!”

One by one, the thrilled employees got closer to the coffin, and when they looked inside it, they suddenly became speechless. They stood near the coffin, shocked and in silence, as if someone had touched the deepest part of their soul.

There was a mirror inside the coffin: everyone who looked inside it could see himself. There was also a sign next to the mirror that said: “There is only one person who is capable to set limits to your growth: it is YOU. You are the only person who can revolutionize your life. You are the only person who can influence your happiness, your realization and your success.

You are the only person who can help yourself”.

The world is like a mirror: it gives back to anyone the reflection of the thoughts in which one has strongly believed.

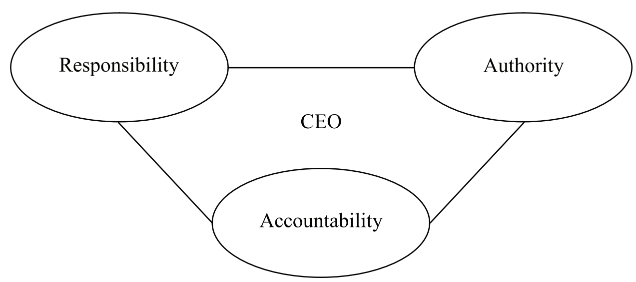
Your life does not change
when your friends change,
when your parents change, when your partner changes or
when your organisation changes.
Your life changes only
when YOU change,
when you go beyond your limiting beliefs and
when you realize that you are the only one responsible for your life.

Roles & Responsibilities of the Chief Executive Officer of NGOs

- Sanjay Patra, F.C.A.
&
- Madhuchhanda Mishra, FMSF

A basic tenet of good governance is that management and governance are kept separate and the line of distinction between governance & management is clearly demarcated. This demarcation between governance and management involves a division of both responsibilities and persons to carry out those responsibilities. Here in comes the crucial role of the Chief Executive Officer (CEO). While the board governs, the CEO manages. The responsibility of the Board is to steer the organization in the right direction in order to attain its vision & mission. But it faces a lot of practical restraints as it does not get to meet the staff on every day basis. The role of the board is primarily restricted to the domain of governance of the organization. For running the organization on a day to day basis, the board delegates the responsibility of the management of the organization to the Chief Executive Officer. In doing so, the board takes the responsibility of setting the parameters or framework by setting policy, providing strategic direction, or exercising oversight. It remains the principal decision making body and the CEO is accountable/answerable to the board for his/her actions.

However, the delegated responsibility should also be accompanied by delegated authority. The board has to ensure that there is a critical balance between the responsibility & authority. The third dimension that needs to be addressed here is that of accountability. It should be ensured that effective accountability mechanisms for the CEO are in place.



Responsibility without authority ends up in weak leadership. Authority without responsibility leads to power abuse. Authority with responsibility leads to accountability.

2. WHAT ARE THE QUALITIES OF A CEO?

The CEO should have a compelling vision & a sense of core purpose. He/She should be a motivator who has the ability to relate with the staff and possess the tact, to diffuse tense situations. He should also have the ability to marshal resources and uses them effectively and efficiently to the best of use. In terms of work, he/she should display high goals or standards of performance for self, subordinates, others, and the organisation. He/she should display compassion about people's work and non-work difficulties and is available to help.The CEO should know the personal strengths and limitations of his colleagues and handle them appropriately, and assess the need to modify personal behaviors to deal with changing demands and circumstances. He/She must also display approachability.

Apart from the above, he/she should have the necessary competency and skills and keep himself abreast with the current developments of the sector and should possess thorough understanding of the programs of the NGO.Above all, the CEO should possess the vision or ability to paint the larger picture and chart out a plan to move in the direction for achieving it.

2. PROCESS OF HIRING THE CEO:

The board of the organization generally hires the CEO by undertaking a careful search process to find the most suitable individual.The board should establish procedures to identify suitably-qualified candidates through an open and transparent process.The board should also decide the CEO's compensation, ensure that he/she has that moral and professional support needed to advance the goals of the organization and periodically evaluate his/ her performance.

To begin the process of recruitment of the CEO, the board must advertise the opening for the position through appropriate channels like the newspapers, job search websites etc. After receiving considerable number of applications for the post the board must undertake a process of screening of all the applications received for the post. The screening process should lead to the short listing of the suitable applications.The short listed candidates should be informed about the decision a clear and concrete process of recruitment like (conducting thorough personal interviews, group discussions etc) should be adopted by the board to select the right candidate amongst the short listed ones.

Special care must be taken to ensure that the process of hiring the CEO is a transparent one and does not entail any kind of personal interest.

It would also be advisable to have a clear position description for the CEO. It is always good to spell out the board's expectations in writing.

3. RESPONSIBILITIES OF THE CEO:

The strategic direction of the organization is set by the governing body or the board of the organization, but it is the responsibility of the CEO to further develop and implement the strategy in terms of the activities of the organization.

(i) **Providing Programmatic Direction: The** CEO should possess an in-depth understanding of the programmatic issues of the organization. He/she should be primarily responsible for providing the organization with appropriate guidance in programmatic areas in order to achieve its goals and overall objective.

(ii) **Hiring of the Staff: The** CEO is responsible for recruiting staff for the organization. It should be done in consultation with the senior leadership team within the organization.

Procedures for appointing staff at different levels should be clearly in place. For instance for the purpose of recruitment of senior level employees for the organization, the CEO must consult the board. Criteria for selection of persons should be clearly charted out and agreed upon.

(iii) **Staff Appraisals:** Periodically evaluating the performance of the staff within the organization is very essential. The CEO should ensure that annual staff appraisals are in place which review the performance of the staff and provide feedback on their work. This would help them enhance their performance and work on the areas that require attention. The process of staff appraisal should be designed very objectively and should not leave any room for biases & prejudices. However, it is also required of the CEO to provide opportunities for individual growth and staff development.

(iv) **Fund Management:** Financial resources are very crucial to the operation of any organization. NGOs must practise sound financial oversight and comply with a diverse array of legal and regulatory requirements. It is the duty of the CEO to ensure that the organization receives fund timely and the funds are managed in an appropriate and effective way. The annual budget should be prepared keeping in line the activities and operations of the organization.

(v) **Managing & Evaluating programs and operations:** The overall responsibility of managing the programs and operations of the organization rest with the CEO. He/she has to ensure that the programs are run effectively and are meeting the needs of the beneficiary community. The CEO is the manager of the organisation, responsible for the effective and efficient operation and functioning of the organisation. Moreover, the reporting of the activities to the stakeholders in an appropriate way also needs to be done and this has to be ensured by the CEO.

(vi) **Alliance Building:** Building alliance with other like- minded agencies, various donor agencies as well as key government players is pivotal for any development organization. Promoting the organization amongst the wider community and establishing its credibility is very essential for the success of any organization. It is the responsibility of the CEO to carry out this activity effectively.

(vii) **Supporting the Board in its work:** The board's basic duties include safeguarding the mission of the organization; setting values & standards; ensuring resources and extending outreach. The CEO by every means should provide support & cooperation to the Board in its work.

4.ACCOUNTABILITY TO THE BOARD:

The CEO is accountable to the Board of the organization. The CEO owes the board accurate, thorough and timely information about the NGO and its environment. The board not only should monitor the work of the CEO, it should at the same time play a mentoring role.

As a part of the accountability mechanism, the board should regularly review the performance of the chief Executive in the form of annual appraisal. The process of appraisal of the CEO should be based on pre-determined criteria, such as written job description and stated annual goals. The appraisal will help the CEO in understanding his/her role in a better way as well as highlight the areas that require improvement.

For the purpose of appraising the CEO, the 360 degree appraisal would be very helpful. The 360 degree appraisal invloves feedback from subordinates, peers, and managers in the organizational hierarchy, as well as assessment by oneself. In some cases, it also includes feed back from external stakeholders like donor representatives. This kind of apprasial would give a complete picture of the work and effectiveness of the CEO in totality.

Ideally, the chair person of the board should take the lead in the process of conducting the CEO's appraisal. Nevertheless, the board members collectively should be involved in the process. The feedback and recommendations given by the board during the appraisal should be documented.

5. CONCLUSION:

A well balanced role of the CEO is very critical for the success of any organization. The board & the CEO should work in close partnership and should cooperate with each other in the fulfilling the needs of the organization. Most importantly, a very careful and a sensitive balance needs to be maintained as far as the three important dimensions of authority, responsibility and accountability are concerned. Any imbalance in these three areas of the CEO would be detrimental to the growth and functioning of the organization. All said and done, the CEO is primarily responsible for guiding the organization in the right direction. He/She is responsible for translating the vision and mission into activities & deliverables and hence assumes a very critical & important role in the organizational structure.

Union Budget 2008-2009

- S.P. Selvi & Pooja Bagga, FMSF

Union Budget 2008 was presented by the Finance Minister Shri Chidambaram on 29th February, 2008 for the Financial Year 2008-09. This article brings out some of the salient aspects of the Union Budget 2008-09.

The Union Budget 2008 presented by the Finance Minister Shri. P Chidambaram is the fifth and the last budget of the United Progressive Alliance Government in the present tenure. The budget aims to look at the year 2008, as a year of consolidation of the measures taken by it and wants to make growth inclusive.

The estimate of Plan Expenditure is placed at Rs.243,386 crore. As a proportion of total expenditure, it will be 32.4 per cent. Non-Plan Expenditure is estimated at Rs.507,498 crore.

1. ECONOMY: AN OVERVIEW

Before going into the salient aspects of the budget, an overview of the economy provided by the Finance Minister informs the following :

- In the last 3 years, the economy has recorded a growth rate of over 8 per cent in 12 successive quarters up to December 31, 2007. During this period, the Gross Domestic Product (GDP) increased by 7.5 per cent, 9.4 per cent and 9.6 per cent and with the estimate of growth rate of 8.7 per cent for the current year, the average growth rate is expected to be of 8.8 per cent.

- The sectors that accelerates this growth remains to be "services" and "manufacturing", which are estimated to grow at 10.7 per cent and 9.4 per cent, respectively.

- The growth rate of the Agriculture Sector in the last financial year 2007-08 has not been very remarkable, a mere 2.4% . India, being the agricultural economy, this poor growth rate is a matter of concern.

- Food grain production in 2007-08, estimated at 219.32 million tonnes-an all time record. Rice production at 94.08 million tonnes, maize at 16.78 million tonnes, soya bean at 9.45 million tonnes, cotton at 23.38 million bales each, an all time record.

- Rashtriya Krishi Vikas Yojana launched with an outlay of Rs. 25,000 crore, National Food Security Mission with an outlay of Rs. 4,882 crore under National Policy for Farmers in the Eleventh Five Year Plan.

- However, with the prices of crude oil, commodities and food grains rising sharply in the World Market during 2007-08, the prices of essential commodities also rose in the domestic market, especially, wheat and rice which increased by 88% and 15%. The other commodities includes the prices of iron ore, copper, lead, tin, urea etc.

- Government is set to monitor and moderate capital inflow to ensure stability in the stock market as in the second half of the year 2007-08, the stock market faced a lot of ups and downs.

- Budget estimate for the year 2008-09 for planned expenditure has increased to an estimated Rs 243,386 crores as against the Rs. 205,100 crores for the year 2007-08. The unplanned expenditure is estimated for the year 2008-09 at Rs. 507,498 crores from Rs.435,421 crores for the year 2007-08

- The defence allocation has increased by 10% from the Rs.96,000 crores of the year 2007-08 to 105,600 crores for 2008-09.

- The revenue deficit for 2007-08 is 1.4% against the budget estimate for revenue deficit of 1.5%.

- The fiscal deficit for 2007-08 is 3.1% against the budgeted estimate of 3.3%. The growth rate of per capita income for 2007-08 is projected as 7.2% which is the average of the five years to the current year.

- For Bharat Nirman, the allocation has been proposed to be increased from Rs.24,603 crores to Rs.31,280crores for the year 2008-09.

Some of the salient aspects of this budget are :

2. AGRICULTURE:

Agriculture was the focus sector of this year's budget with the following measures :

- New financial institution IWRFC to be launched with an initial outlay of Rs. 100 crore to mobilize funds for agriculture.

- 500 Soil Test Labs to start via PPP.

- Rs. 175 crore allocated for Mobile Soil Testing Units in 200 districts by March, 2009.

- Rs. 20 crore allocated to Tea Research Institute.

- National Agricultural Insurance to continue for Kharif, Rabi crops.

- Fertiliser subsidy to continue

- New Nutrient Based Fertiliser Subsidy Regime to be launched.

- Prof. Vaidyanathan Committee recommendations on micro-credit to be implemented.

- Agricultural credit doubled and is estimated to reach a level of Rs.240,000 crore by March 2008.

- One of the major schemes announced in this budget is the Scheme of Debt Waiver and Debt Relief for farmers:
  - Scheme to cover all loans disbursed by scheduled commercial banks, regional rural banks and

cooperative credit institutions up to March 31, 2007 and overdue as on December 31, 2007 are covered under the scheme;

- Complete waiver of all loans that were overdue on December 31, 2007 and which remained unpaid until February 29, 2008 for marginal farmers and small farmers;
- Agricultural loans restructured by banks through special packages. All such loans will be eligible for waiver under this scheme.
- One Time Settlement (OTS) scheme in respect of other farmers for all loans
- Govt to allocate Rs. 60,000 crore for this scheme
- Implementation of the Debt Waiver Scheme to be completed by 30th June, 2008.

3. SOCIAL:

- The Mid-day Meal Scheme has been extended to upper primary classes in 3,479 educationally backward blocks. The scheme will now be extended to benefit an additional 2.5 crore children, taking the total number of children covered under the Scheme to 13.9 crore.

- For Bharat Nirman, Rs.31,280 crore is provided including the North Eastern Region (NER) component, as against Rs.24,603 crore in 2007-08.

- The total allocation for the education sector (including North East Region) will be increased by 20 per cent from Rs.28,674 crore in 2007-08 to Rs.34,400 crore in 2008-09.

- Of this, Sarva Shiksha Abhiyan (SSA) will be provided Rs.13,100 crore; the Mid-day Meal Scheme will be provided Rs.8,000 crore; and secondary education will be provided Rs.4,554 crore.

- The focus of SSA will shift from access and infrastructure at the primary level to enhancing retention; improving quality of learning; and ensuring access to upper primary classes.

- Jawahar Navodaya Vidyalayas which are quality schools to be made more accessible to SC and ST students. Plans are drawn to establish Navodaya Vidyalayas in 20 districts that have a large concentration of Scheduled Castes and Scheduled Tribes. Rs.130 crore in 2008-09 is to be allocated for this purpose.

- For the health sector, it is proposed to allocate Rs.16,534 crore (including NER) which is about 15 per cent increase over the allocation in 2007-08.

- The National Aids Control Programme will be provided Rs.993 crore.

- Rs.1,042 crore is provided in 2008-09 to eradicate polio with a revised strategy with focus on the high risk districts in Uttar Pradesh and Bihar.

- Two major interventions are planned to be started in 2008-09. The first is the Rashtriya Swasthya Bima Yojana that will provide a health cover of Rs.30,000 for every worker in the unorganised sector falling under the BPL category and his/her family. Rs.205 crore is provided as the Centre's share of the premia in 2008-09.

- The other major intervention is for the elderly. A National Programme for the Elderly with a Plan outlay of Rs.400 crore is to be started in 2008-09.

- The allocation to the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) which is the main vehicle for improving urban infrastructure and urban governance is to be increased from Rs.5,482 crore in 2007-08 to Rs.6,866 crore in 2008-09.

- The allocation to the Rajiv Gandhi Drinking Water Mission is to be increased to Rs.7,300 crore in 2008-09 as against Rs.6,500 crore in 2007-08.

- Three new IITs have been proposed in Andhra Pradesh, Bihar and Rajasthan along with 2 IISERs at Bhopal and Tiruvanthapuram and schools for Planning and Architecture in Bhopal and Vijayawada.

- The allocation to the Ministry of Minority Affairs to be increased to Rs.1000 crores for 2008-09 from Rs. 500 crores in 2007-08.

- Rs.7,200 crores in 2008-09 proposed to the Ministry of Women and Child Development representing an increase of 24% over the allocation of 2007-08.

- LIC to scale up the Janashree Bima Yojana to cover all SHG's that are credit linked to the banks. · Rs.32,667 crores being provided for food subsidy under PDS and welfare schemes.

- Additional Rs.1,000 crores placed with the LIC to cover another 1 crore poor households under the Aam Aadmi Bima Yojana scheme.

- It is proposed to allocate Rs.3,443 crore to the Indira Gandhi National Old Age Pension Scheme in 2008-09 as against Rs.2,392 crore in 2007-08.

- Housing for the poor, which is one of the six elements of Bharat Nirman, is implemented through the Indira Awas Yojana (IAY). It is proposed to enhance the subsidy per unit in respect of new houses sanctioned after April 1, 2008 from Rs.25,000 to Rs.35,000 in plain areas and from Rs.27,500 to Rs.38,500 in hill/difficult areas. The subsidy for upgradation of houses will be increased from Rs.12,500 per unit to Rs.15,000.

- A sum of Rs.32,667 crore is being provided next year for food subsidy under the Public Distribution System (PDS) and other welfare programmes. In the measure to strengthen the PDS, it is proposed to deliver subsidies to the target group through smart cards. A pilot scheme for the Smart Card Based Delivery System, is to be launched in the State of Haryana and the Union Territory of Chandigarh.

4. DEFENCE

- The defence allocation has increased by 10% from the Rs.96,000 crores of the year 2007-08 to 105,600 crores for 2008-09.

5. INVESTMENT, INFRASTRUCTURE, INDUSTRY AND TRADE

- The Year 2007-08 saw the saving rate and investment rate estimation to be 35.6 per cent and 36.3 per cent, respectively. During the same period, the Foreign Direct Investment (FDI) amounted to US$ 12.7 billion and Foreign Institutional Investors (FII) to US$ 18 billion.

- Support to Central Public Sector Enterprises (CPSEs) is another focus area. Government is to provide Rs.16,436 crore as equity support and Rs.3,003 crore as loans to CPSEs in 2008-09. As on date, 44 CPSEs are listed. Government policy is to list more CPSEs in order to unlock their true value and improve corporate governance.

- Allocation of Department of information technology has been enhanced from Rs.1500 crores to Rs.1680 crores for 2008-09.

- Schemes for Integrated Textile Parks and the Technology Up-gradation Fund to be continued.

- The allocation for the Golden Quadrilateral, the National Highway Development Programme (NHDP) is enhanced from Rs.10,867 crore in 2007-08 to Rs.12,966 crore next year.

- Under the Oil and Gas category, the 7th round of bidding under the New Exploration Licensing Policy (NELP) was launched in December 2007. It is estimated that the bids invited for 57 exploration blocks will fetch investment of the order of US$3.5 billion to US$8 billion for exploration and discovery.

- The two principal schemes of the Ministry of Textiles - the Scheme for Integrated Textile Parks (SITP) and the Technology Upgradation Fund (TUF) - will be continued in the Eleventh Plan period. It is proposed to maintain the provision for SITP at Rs.450 crore in 2008-09. The provision for TUF will be increased from Rs.911 crore in the current year to Rs.1,090 crore in 2008-09.

- For the development of the handloom sector, the allocation is increased to Rs 340 crore in 2008-09. Also over 17 lakh families of weavers will be covered under the health insurance scheme.

- It is proposed to create a risk capital fund in the Small Industries and Development Bank of India (SIDBI).

6. FINANCE SECTOR

- Two recommendations of the final report of the Committee on Financial Inclusion has been accepted :
  - to advise commercial banks, including RRBs, to add at least 250 rural household accounts every year at each of their rural and semi-urban branches; and
  - to allow individuals such as retired bank officers, ex-servicemen etc to be appointed as business facilitator or business correspondent or credit counsellor.

- Financial inclusion is proposed to be taken forward by expanding the reach of NABARD, SIDBI and NHB and it is proposed to create the following funds:

  (i) a fund of Rs.5,000 crore in NABARD to enhance its refinance operations to short term cooperative credit institutions;

(ii) two funds of Rs.2,000 crore each in SIDBI - one for risk capital financing and the other for enhancing refinance capability to the MSME sector; and

(iii) a fund of Rs.1,200 crore in NHB to enhance its refinance operations in the rural housing sector.

Each of these funds will be governed by the general guidelines that are now applicable to RIDF with some modifications.

- Proposal to fix the borrower's eligibility criteria as annual family income of Rs.18,000 in rural areas and Rs.24,000 in urban areas under Differential Rate of Interest (DRI) scheme to the weaker sections of the community engaged in gainful occupations.

- Requirement of PAN to be extended to all transactions in the financial market subject, however, to suitable threshold exemption limits.

- A non-profit corporation is to be established with the entrusted mission to address the challenge of imparting the skills required by a growing economy. It is planned to garner about Rs.15,000 crore as capital from Governments, the public and private sector, and bilateral and multilateral sources. To begin with, Rs.1,000 crore is put as Government's equity in the proposed non-profit corporation.

- Under the Unorganised Sector Workers' Social Security Bill, 2007 (in anticipation of the Bill being made into law), the Government has introduced three schemes that are designed to provide social security to workers in the unorganised sector in a phased manner. These are:

  - the Aam Admi Bima Yojana that will provide insurance cover to poor households. In the first year of the Yojana, LIC will cover one crore landless households by September 30, 2008. Rs.1,500 crore is already placed with LIC. In the second year, in order to cover another one crore poor households, it is proposed to place an additional sum of Rs.1,000 crore with LIC in 2008-09.

  - the Rashtriya Swasthya Bima Yojana that will be implemented with effect from April 1, 2008; and

  - the Indira Gandhi National Old Age Pension Scheme that was enlarged with effect from November 19, 2007 to include all persons over 65 years falling under the BPL category. It is proposed to allocate Rs.3,443 crore in 2008-09 as against Rs.2,392 crore in 2007-08.

- The Government, in realization of the need to put in place effective monitoring, evaluation and accounting systems for the large sums of money that are disbursed by the Central Government to State Governments, district level agencies and other implementing agencies, has proposed a new system. It proposes to put in place a **Central Plan Schemes Monitoring System** (CPSMS) that will be implemented as a Plan scheme of the Planning Commission. A comprehensive Decision Support System and Management Information System will also be established.

7. TAX PROPOSALS

- Tax to GDP ratio was 9.2 per cent in 2003-04. Now at the end of 2007-08, that ratio is estimated to have increased to 12.5 per cent.

8. INDIRECT TAXES

- The peak rate of Customs Duties for non-agricultural products which was at 20% during January 2004 now stands at 10%.
- Otherwise, no change in the peak rate of customs duty.
- However, Customs Duty is reduced on Project Imports from 7.5 per cent to 5 per cent with a proposal to impose the 4 per cent special CVD on a few specified projects in the power sector.
- Customs Duty is also proposed to be reduced :

  - on steel melting scrap and aluminium scrap from 5 % to nil;

  - on certain specified life saving drugs from 10 % to 5 % as well as to totally exempt them from excise duty or countervailing duty;

  on vitamin premixes and mineral mixtures from 30 % to 20 % ;

  - on phosphoric acid from 7.5 % to 5 % ;

  - on bactofuges from 7.5 % to nil.
- Under Excise Duties, it is proposed to reduce the general CENVAT rate on all goods from 16 per cent to 14 per cent.
- Ad valorem part of the excise duty on unbranded Petrol and Diesel being abolished and replaced by an equivalent specific duty of Rs.1.35 per litre.
- The threshold limit of exemption for small service providers increased from Rs.8 lakhs to Rs.10 lakhs per year for Service Tax.
- 4 new services brought under the service tax net namely asset management service provided under ULIP, services provided by stock/commodity exchanges and clearing houses, right to use goods where VAT is not payable and customized software.
- Central sales tax rate reduced from 3% to 2% from 1st April 2008.

9. DIRECT TAXES – INDUSTRY

- No changes made in Corporate Tax rates.

- A new tax called Commodities Transaction Tax(CTT) is proposed to be levied on taxable transactions entered in a recognized association as per specified rates.

- Proposed to remove TDS on any interest payable to a resident on any security issued by a company where such security is in a dematerialized form and is listed on a recognized stock exchange.

- New clause 11a in Sub section(1) of Section 35 added to allow weighted deduction of 125 per cent on any amount paid by a person or company to be used for scientific research under certain conditions.

- Tax arising from saplings and seedlings grown in a nursery exempted.

- Benefit of amortization of certain preliminary expenses under Section 35 D allowed to the assessee in the service sector.

- Crèche facilities, sponsorship of an employee – sportsperson, organizing sports events for employees and guest houses excluded from the purview of FBT.

- Rate of short term capital gains under section 111A and Section 115 AD has been proposed to be increased from 10% to 15%.

- Banking Cash Transaction Tax being withdrawn with effect from 1st April 2009.

10. DIRECT TAXES-SOCIAL SECTOR

- Definition of the Charitable purpose has been amended. Section 2(15) has been proposed to be amended so as to provide that the " the advancement of any other object of general public utility" shall not be a charitable purpose if it involves the carrying on of-

  a) Any activity in the nature of trade, commerce or business or,
  b) Any activity of rendering of any service in relation to any trade, commerce or business,for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity or the retention of such income, by the concerned entity.This amendment would take effect from 1st April 2009

11. DIRECT TAXES- INDIVIDUAL

- Thresh hold limit of exemption for personal income tax raised to Rs. 150000. The new Tax slabs and rates are :
  - Upto Rs.150,000 Nil
  - Rs.150,001-Rs.300,000 10%
  - Rs.300,001-Rs.500,000 20%
  - Rs. 500,001 and above 30%

- In case of women assesses the threshold limit has been increased from Rs.145,000 to Rs.180,000 and for senior citizens from Rs. 195,000 to Rs. 225,000.

- Scope of eligible saving instruments enlarged under section 80 C. investments like 5 year time deposit in an account under Post Office Time Deposit Rules, 1981 and Deposit in an account under the Senior Citizens Savings Scheme Rules ,2004also included

- Additional deduction allowed of upto Rs.15,000 under section 80D to an individual assessee on any payment made to effect or keep in force an insurance on the health of parent(s). If either of the assesses parent who is insured, is a senior citizen, the deduction would be allowed upto Rs.20,000.Amendment with effect from 1st April 2009.

12. TAX DEDUCTED AT SOURCE

- Any association of persons or body of individuals, whether incorporated or not shall be liable to deduct income tax at source under sub section(1) of section 194C.

- Amendment proposed u/s 195(1) proposes to provide that the person responsible for deduction of Income tax shall furnish the information relating to payment of any sum to the non-resident or to a foreign company in a form and manner as prescribed by the Board.

13. DIRECT TAXES-GENERAL

- Proposal to amend clause(ii) of sub section (2) of section 143 to provide that the notice under sub section (2) of section 143 shall be served on the ssessee within a period of 6 months from the end of the financial year in which the return is furnished.

- It is proposed to amend the due date for filing of return of income fron 31st October to 30th

September. Similarly the due date for filing the return for fringe benefits is also advanced to 30th September of the assessment year.

Overall, the budget 2008-09 has brought in more allocations that are development and welfare oriented. However, as in the past, the concern is if these allocations and provisions will achieve its purpose. The other initiative, that is setting up a Central Plan Schemes Monitoring System (CPSMS) is seen as a welcome step that will ensure the funds allocated are effectively monitored and accounted for.

Impact of Finance Act 2008 on Business Activities of NGOs

- Manoj Fogla, F.C.A.

CHANGES MADE BY FINANCE ACT, 2008 W.E.F. 1-4-2009

1.01 The Finance Act, 2008 w.e.f. 1-4-2009 has amended the definition of 'charitable purpose'under section 2(15) and consequently certain specific group of NGOs will not be allowed to have any business activity whether incidental or otherwise, the amended section is as under :

"charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility. :

Provided *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;*

1.02 In effect the above amendment has excluded the residual category of trusts from carrying on any kind of trade or business related activities. As can be seen that the definition of 'charitable purpose' can be divided into 4 parts, viz. (i) relief of poor, (ii) education, (iii) medical relief, (iv) advancement of any other object of general public utility. After the above amendment takes effect from 01.04.2009 it seems that income from trade, commerce or business pertaining to those Trust which are coming under the fourth category of charitable purpose shall not be treated as charitable activity and therefore the entire exemption of such Trust will be lost. The trade or business related activity carried out in relation to the other three categories of charitable purpose would still remain charitable in nature. Therefore, any income from such source will be considered as from incidental activities and the provisions of section 11(4) and (4A) as discussed in this chapter will apply accordingly.

QUICK SUMMARY OF THE CHANGES MADE BY FINANCE ACT, 2008 W.E.F. 1-4-2009 AND ITS RAMIFICATIONS

1.03 The Finance Act, 2008 w.e.f. 1-4-2009 has amended the definition of 'charitable purpose' under section

2(15) which may have far reaching ramifications, a brief overview of the resulting scenario is as under :

(*i*) The definition of 'charitable purpose' can be divided into 4 parts, viz. (i) relief of poor, (ii) education, (iii) medical relief, (iv) advancement of any other object of general public utility. However, the Finance Act, 2008 w.e.f. 1-4-2009 has excluded any trade, commerce or business related activity by any trust or NGO engaged in the fourth category i.e. advancement of any other object of general public utility, from the purview of 'charitable purpose'.

(*ii*) Therefore, w.e.f. 01.04.2009, it seems that income from trade, commerce or business pertaining to those Trust which are coming under the fourth category of 'charitable purpose' shall not be treated as charitable activity and the entire exemption of such Trust will be lost. And consequently such organisations will not be eligible for any exemption under section 11 or other provisions which provide exemptions towards charitable purpose. It may be noted that the issue of incidentality of business will not be relevant to such group of NGOs under section 11(4A) as they will cease to remain charitable organisations. For other organisations, section 11(4) and (4A) and other provisions pertaining to business activities shall be applied without any changes. And even unrelated businesses (for example, publishing newspapers) held by them shall be eligible for exemption if the entire income is used for charitable purposes.

(*iii*) It is important to note that the exclusion of trade or business related activities is discriminatory and will apply to only a particular group of NGOs or Trusts as discussed above. All the remaining charitable organisations shall be eligible for exemption under section 11 including the income from trade or business.

(*iv*) Newly inserted proviso to section 2(15) lays down the 'specified activities' and they are :

- Carrying on of any activity in the nature of trade, commerce or business (hereafter referred to as 'the trade'); or
- Carrying on of any activity of rendering any service in relation to the trade, for a fee or cess or any other consideration.

The proviso further lays down that if the specified activities are pursued in pursuit of the fourth object, it would not be considered as a charitable purpose irrespective of the nature of use of application or retention of income arising from the specified activities.

(*v*) It may be noted that NGOs or trusts engaged in the fourth objective shall continue to be eligible under section 11 unless they engage in trade or business related activity.

(*vi*) It may be noted that the current amendments are prohibiting business activity and not *profit making*. In other words such fourth category NGOs may still have some profit through various sources other than business. Therefore, going by various case laws activities such as sale of greeting cards, charity shows, rent from property, income from Mandaps or conferences facilities shall still be permissible and valid.

(*vii*) Other charitable organisations such as chamber of commerce, professional associations, etc shall not be affected by the amended provisions unless they are specifically charging fees towards promotion of trade or commerce. Because the activity of Chamber of Commerce, Port Management etc are *per se* considered as charitable activities, therefore, will not be affected by the amendments even if some surplus are generated in the normal course.

(*viii*) All Trusts or NGOs pursuing the fourth objective need to analyse their activities and find out the activities for profit, if any, related with business trade or commerce. All such activities need to be stopped otherwise w.e.f. 1.4.2009 they will cease to remain charitable organisation.

2008 AMENDMENTS ARE SOFTER THAN THE 1961-1984 POSITION

1.04 The current amendment in some sense are taking back the legal position to the period between 1961 to 1984. It may be noted that when the act was enacted in 1961 the definition of charitable purpose stood as under :

"Charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility *not involving the carrying on of any activity for profit.*

1.05 The words '*not involving the carrying on of any activity for profit*' were added in 1961 they were not there in the 1922 act. Secondly, the words were added only to the fourth limb of the definition of the charitable purpose. In other words, only the activities towards advancement of general public utility should not involve carrying on any activity for profit. For the other three limbs medical, education and relief to poor profit making activity was permissible. This position was again reverted back to 1922 level by the amendments made by the Finance Act 1983 w.e.f. 1-4-1984 when the words '*not involving the carrying on of any activity for profit*' were omitted and the fourth limb i.e. advancement of general public utility was brought on par with the other three limbs of the definition of charitable purpose. Now the current amendment has brought back the legal position to a period prior to 1-4-1984. As a matter of fact, on a strict analysis the current amendments are in a diluted form because the words '*not involving the carrying on of any activity for profit*' have not been re-enacted. In other words profit making is still permissible provided it should not come from activities related with trade business and commerce. In the past various types of profit making activities have not been held as business activities such as charity source or running Kalyan Mandapam or even printing and selling new year cards. Such activities once they are out of the purview of business income should still be considered permissible even after this amendment which was not possible prior to 1-4-1984.

EXPLANATORY STATEMENT AND LEGAL INTENT

1.06 The stated legal intent is to deny exemption of purely commercial and business entities which wear a mask of a charitable organisation. It needs to be seen to what extent these amendments prove appropriate in context of the intended objectives. The memorandum explaining the provisions of the Finance Bill, 2008, read as under :

"Section 2(15) of the Act defines 'charitable purpose' to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claimingexemption on their income either under section 10(23C) or section 11 of the Act on theground that they are charitable institutions. This is based on the argument that they are engaged in the 'advancement of an object of general public utility' as is included in the fourth limb of the current definition of 'charitable purpose'. Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision. With a view to limiting the scope of the phrase 'advancement of any other object of general public utility', it is proposed to amend section 2(15) so as to provide that 'the advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of –

(a) any activity in the nature of trade, commerce or business, or (b) any activity of rendering of any service in relation to any trade, commerce or business. for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or the retention of such income, by the concerned entity.

1.07 It is also worthwhile to note the following relevant extracts from the reply of the FinanceMinister to debate in the Lok Sabha on 29-4-2008 on Finance Bill, 2008 : "6, Clause 3 of the Finance Bill, 2008 seeks to amend the definition of 'charitable purpose' so as to exclude any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature or use of application, or retention, of the income from such activity. The intention is to limit the benefit to entities which are engaged in activities such as relief of the poor, education, medical relief and any other genuine charitable purpose, and to deny it to purely commercial and business entities which wear the mask of a charity...... I once again assure the House that genuine charitable organisations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organisations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility."

CHARITABLE PURPOSE, BUSINESS ACTIVITY AND PROFIT MOTIVE

1.08 In the light of the amendments made by the Finance Act, 2008 w.e.f. 1-4-2009 it has become imperative to carefully understand the differences and implications of the scope ofcharitable purpose, business activity and profit motive. The legal scenario in this regard could be as under :

(*i*) A particular class of NGOs will loose their recognition as a charitable organisation if they have any activity in the nature of trade, commerce or business irrespective of whether it is incidental activity or not. The NGOs coming under this category are those which are pursuing advancement of any other object of general public utility. Therefore, section 11 to 13 will not apply to such NGOs.

(*ii*) Business or trade activities of other NGOs pursuing any of the three objectives (i) relief of poor, (ii) education, (iii) medical relief will not effect the charitable nature of such NGOs and therefore, section 11 to 13 will apply accordingly. Though under section 11(4A) only incidental business activity is considered but there is a strong judicial precedence including Supreme Court rulings where even unrelated businesses held as property of the trust are treated as incidental provided the entire income is applied for charitable purposes. Ironically, the amendments made by The Finance Act, 2008 w.e.f. 1-4-2009 do not seem to be affectingthis position and eligible NGOs shall enjoy a *status quo* as far as the law pertaining to business income is concerned.

(*iii*)In the definition of 'charitable purpose' the words "*not involving the carrying on any activity for profit*" were deleted by The Finance Act, 1983 w.e.f. 1-4-1984. Therefore, business or profit making activity *per se* are not excluded from the overall scope of charitable purpose. But the debate still remains that 'profit motive' and 'activity for profit' are two different notions and the existence of the former may affect the charitable nature of the NGO, and therefore, may also endanger the exemptions available under section 11. In a recent case *Vodithala Education Society* v. *ADIT (Exemptions) II, Hyderabad* : [2008] 20 SOT 353 (HYD.) it was held that assessee had collected money over and above prescribed by concerned authority for admission of student, such an amount was to be classified as capitation fee and it could be said that assessee's case was a clear case of sale of education by assessee and, therefore, it could not be considered as charitable institution under section 2(15) because the purpose of the organisation as a whole was to make profit.

1.09 The above three are the broad categories of business related activities which may threaten the exemptions available under section 11. Subject to the specific exclusions made by The Finance Act, 2008 w.e.f. 1-4-2009 the law relating to business activities stands to remain unaffected, though not bereft of possible controversies.

1.10 Satisfying the criteria of 'charitable purpose' is the fundamental pre-requisite for the purposes of income-tax registration and availing the exemptions under section 11 of the Income-tax Act, 1961. The amendment made by The Finance Act 2008 will have wide implication on a large number of Trusts and NGOs which are coming under the fourth arm of 'charitable purpose' i.e. *the advancement of any other object of general public utility*. Now onwards the scope and interpretation of the clause *the advancement of any other object of general public utility* shall become one of the most important issue as far as the taxation and exemption of Trusts and NGOs is concerned.

PROFIT IS NO LONGER A RELEVANT FACTOR

1.11 The words *"not involving the carrying on of any activity for profit"*, were not there in the 1922 Act and were added for the first time only when the new Act was enacted in 1962, and after 22 years, these words were again deleted by Finance Act, 1983, w.e.f. 1-4-1984 consequently, the old legal position was restored, i.e. profit making was no longer considered as a prohibited activity. The profit generated by a charitable organisation shall not, in principle, affect its charitable nature, however, if the motive primarily is to generate profit then the charitable nature can be questioned. As discussed earlier in this chapter in *Vodithala Education Society* v. *ADIT (Exemptions) II, Hyderabad* : [2008] 20 SOT 353 (HYD.) it was held that assessee had collected money over and above prescribed by concerned authority for admission of student, such an amount was to be classified as capitation fee and it could be said that assessee's case was a clear case of sale of education by assessee and, therefore, it could not be considered as charitable institution under section 2(15) because the purpose of the organisation as a whole was to make profit.

1.12 Even after the amendments of 2008 the existence of profit shall not affect any NGO including the aforesaid fourth category NGOs. But if there is an outright motive to earn profit then it can bequestioned and all category of NGOs may loose exemptions. And if there is a business activity then only the fourth category of NGOs will loose exemption. Thanthi Trust ruling and the amendment by Finance Act, 2008 w.e.f. 1-4-2009.

1.13 In the case *Asstt CIT Vs Thanti trust (2001)247 ITR 785(SC),* the Supreme Court had given an landmark decision wherein it was held that if the income generated from a business is totally used for charitable purposes then such business should be considered as incidental. In this case the assessee was having the business of publishing newspaper and the entire income was used for charitable purposes. The delicate issue to understand here is that newspaper publication as a charitable activity is not permissible, but if such business is held as a property under trust, then it is permissible. The Finance Act, 2008 w.e.f. 1-4-2009 has made a very fundamental change by excluding a group of Trusts from engaging into trade and business related activities.

CONCLUSION

Therefore, those trusts which are pursuing the fourth category of objects under 'charitable purpose' i.e. advancement of any other object of general public utility are debarred from having any trade or business related activity. The issue to understand here is that a particular group of trusts or NGOs have been excluded *ab initio* that is from the very beginning before section 11(4) or (4A) become relevant. Therefore, in our opinion the legal and judicial position (as taken in Thanti case) should remain intact as far as the business or trade related income is concerned, even after the amendments made by Finance Act, 2008 w.e.f. 1-4-2009. The controversy is around the nature of charitable purpose which a trust is pursuing if it does not fall in the category of (i) relief of poor, (ii) education, (iii) medical relief, then any trade or business related activity whether incidental or not shall result in revocation of the entire exemption.

Plans and Budgets

- Sanjay Patra, F.C.A.
&
- Pooja Bagga, F.C.A.

A budget is a translation of a plan in financial terms. Budgeting process is one of the most crucial aspects of a voluntary organization as it determines the blue print for further activities.

Voluntary organizations are involved in rendering service to the community. Many times they deal with large resources. Therefore, planning gains more significance as each program needs to be planned and budgeted to ensure proper inflow of funds, either from local or outside sources. A good framework for planning can be established by having a clear linkage between the activities and finance. In a voluntary organisation, the activities are focused to attain the mission of the organization, the timeframe for implementation of such activity and the finance plan ensures that these activities are implemented well.

All the planning processes need to ensure that:

- the project or the programme plan is towards achieving the overall vision, mission and goal of the organisation.
- the programme plan is relevant to meet the needs of the target group.
- the projected plan is converted into a concrete action plan.
- the action plan is converted into cost plan by effective budgeting.

Hence, planning is imperative in order to carry out its activities and programmes in a systematic manner.

The process of planning is a dynamic one. It basically involves the following sequential steps:

- Planning
- Implementation
- Monitoring
- Evaluation

The above components are the integral part of an organization's internal control and monitoring procedures, which is termed as the Planning, Monitoring and Evaluation System (PME System).

1. APPROACH TO PLANNING

As there are several stakeholders to whom the organisation is accountable, the planning process needs to include the needs of the target group and the activities must be in line with the vision and mission of the organisation. The activity plan and the financial plan need to be clearly linked so that the resources can be put to optimal use in an efficient and effective manner.

2. TYPES OF PLANS

Generally in a voluntary organisation broadly there are 2 types of plans

a. Strategic Plan
b. Operational Plan

a. Strategic Plan: The strategic plan essentially is a long term plan which aims at achieving the vision and mission of an organisation. It is a process through which vision, mission, goals and objectives are identified and effective methodology are adopted for attaining them.

b. Operational Plan: Operational Plans are more detailed road maps aimed at achieving the strategic plan. In operational plan, the different actions required to achieve the strategic plan are identified and listed out. A format for preparing operational budget is enclosed as per Annexure-A. The table given below illustrates the issue further.

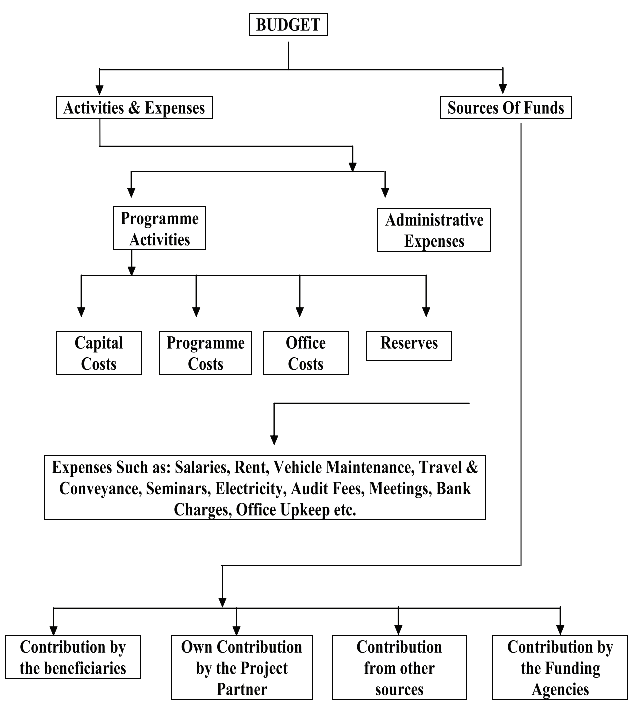
The Three Main Questions	How to Approach	Expected Results
What to Do? "Strategic Planning"	1. Identify the Needs 2. Develop an action plan as to how to meet those needs and ensure that it is appropriate and feasible 3. ensure "SMART" objectives are in place (**SMART**: **S**pecific, **M**easurable, **A**chievable, **R**ealistic & **T**ime Bound)	Emergence of a Perspective Plan.
How to do it? " Operational Planning" "Planning for Implementation"	1. List out all required actions 2. Give all actions a logical order	Clarify on which of the actions to be taken up and when.
How Much does it cost and how to finance it?	1. List of all resources needed. 2. Cost of such resources. 3. How these costs can be recovered.	Budget.

3. UNDERSTANDING BUDGETING

In simple words, budgeting is defined as planning in financial terms. It is important that the plans are translated into financial terms. Budget should include a clear time plan, cash inflow, people/organisation contribution and quantum of funding expected from donors. Budgeting is very crucial in the planning process as it facilitates effective allocation of limited resources, effective utilization and monitoring of the same.

The following flowchart explains the budgeting process in a step wise manner.

Flowchart showing the Budgeting process



4. BUDGETING AS A MONITORING MECHANISM

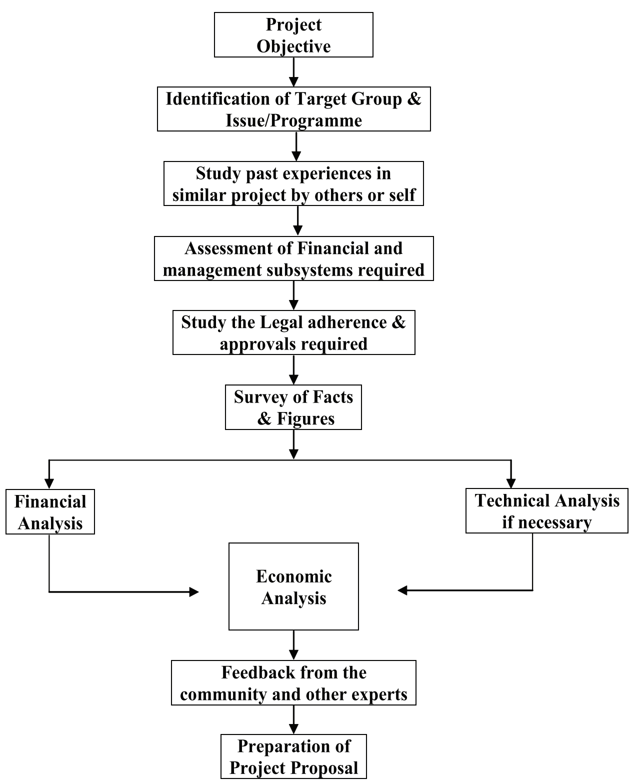
Many times it is understood that budget is prepared to access funding. Therefore, after the funds are secured, the budget is hardly referred to. However, it is important to understand that budget is very important for monitoring the expenses. In fact budget is a fundamental framework which determines the utilization of funds for various planned activities. Therefore, before any amount is spent, basic question that needs to be asked is "Whether this amount was foreseen in the budget?" Further for donors, the budget V/S actual statement is a very important tool for monitoring purposes. In fact within a voluntary organisation a budget variance analysis needs to be prepared on a monthly/ quarterly basis in order to track the expenditure vis-à-vis the budget, and take necessary corrective measures wherever required. A sample format for budget variance analysis is enclosed as per Annexure B.

5. BUDGET MODELS

There are various approaches to preparation of a budget in voluntary sector. However, the following 3 key models are explained below which are considered important approaches and covers most of the different practices.

5.1. *Core Budget Model*: under this model the organization prepares a core plan or a master plan along with the budget which is funded by one or more donors. Under this plan, the organization identifies the core activities which it wishes to undertake. That becomes the main budget of the organization. There are various donors who may be interested in funding these activities and they also contribute to the core budget.

5.2. *Project Budget Model*: under this model each project is planned separately with a separate budget. Therefore, there may not be a common organizational budget. Under the overall organizational banner, there may be various project budgets funded by various donors. In this case the problem generally is to cover the common administration component of the organisation. This is generally charged as the percentage to various projects. In other words the common administration budget in apportioned to different projects the organisation may be holding. A flowchart for such an approach is given as follows.



5.3. *Mixed Model*: this is a combination of core model and the project budget model. The characteristic of this model is that there is a core programme which is funded by a core consortium of donors and along with it there are individual donors based on the thematic areas. It is found that more and more organizations are opting for this model of budgeting.

6. OWN/PEOPLE'S CONTRIBUTION

It is also very important to understand that not all the plans are fully funded by the donors. The donors expect the project partner to show some ownership of the project and also contribute some funds raised form local sources. It is important to note that when a project is planned it should be duly clarified and put on paper what would be partners own contribution. To put this on paper, it should be clearly identified what would be the sources from which the local donation would be raised. These estimates should not be superficial amounts, but should be based on relevant facts and figures. A clear data of "what, how and when" the own contribution would be raised in the planned document with a quantitative figure along with it is necessary.

7. PREPARATION OF THE BUDGET

All budgets have 2 sides. One side is the **Cost Plan**. The cost plan shows the various activities to be undertaken along with the cost to be incurred in each item. The cost plan is the guiding framework for incurring expenditures during implementation. The other side is called the **Finance Plan**. In the finance plan the revenue to be generated from donor agencies, individuals, community, own contribution of the voluntary organisations etc. further it is necessary to ensure that both sides of budget i.e. cost plan and finance plan are balanced. This is because if the cost plan is higher than the finance plan, then the implication is that the proposed expense is not fully covered by income. On the other hand if the finance plan is higher that the cost plan, this should imply that we have more money than we need.

We will now discuss about the process of budget prepration. For the budget preparation process the reference community and the staff of the organization should jointly participate for the sake of transparency it is important to involve the community in the budget preparation process. In fact a bottom up approach for preparation of budget is finalized it should be approved by the governing board of organization.

8. CONCLUSION

Budget is, thus, a very important tool of financial management. It helps in estimating in advance the probable receipts and payments and it also helps in comparing the variances after the completion of the project activities are conducted.After completion of the activities the actual expenditures are compared with the budgeted expenditure, the variances help in understanding the terms of budgeting as well as implementation.

Annexure A

Sample Organisational Budget

S.No	Cost Component	Year 1	Year 2	Year 3	Year 4	Total	Total % of Budget
1	Activity 1						
1.1	Programme Activities						
1.2	Programme travel						
1.3	Programme Salary						
2	Activity 2						
2.1	Programme Activities						
2.2	Programme travel						
2.3	Programme Salary						
3	Administration cost						
2.1	Administrative Staff Salaries						
2.2	Travel						
2.3	Rent						
2.4	Vehicle maintenance						
2.5	Office Costs						
2.6	Audit costs						
3	Capital Expenditure						
4	Contingencies						

Forms of Registration of an NPO
- A Comparative Analysis

- Resource Team, FMSF

Any person, entities have the right to carry on development work irrespective of any formal registration. However, it is important that all voluntary organizations should get themselves legally registered. Some of the reasons of getting an organization registered are as follows:

- Properties can be lawfully vested in the name of the organization;
- Bank accounts can be opened in the name of the organization;
- It becomes a legal entity which can sue and be sued;
- It can be registered under the Income Tax Act, Foreign Contribution Regulation Act and various other legal authorities;
- It provides greater credibility in sourcing funds as well as implementing programmes;
- It can have sustained longevity independent of its founders;
- The liability of the members generally becomes limited;

1. FORMS OF REGISTRATION

1.1. In India various options of registration of an organization are available. The most convenient & popular form of registration is under The Societies Registration Act, 1860.

1.2. An organization can also be registered as a Trust under the Indian Registration Act, 1908. The other relevant acts are:

- The Charitable & Religious Trust Act, 1920
- The Bombay Public Trusts Act, 1950.

However, in the states of Gujarat and Maharastra a trust has to be registered with the Charity Commissioner.

1.3. An organization can also be registered under the Companies Act, 1956 under section 25.

The above mentioned forms of registration are prevalent in India and one has to choose keeping in view the purpose and size of the organization.

2. FORMATION AS A SOCIETY

2.1. LEGISLATION

2.1.1. In India, the most popular form of registration is as a Society. The relevant legislation is *"Societies Registration Act, 1860"*. This act is a central statute applicable to whole of India. However, for procedural purposes, each State in India has a supplementary Societies Legislation Act, which is applicable in that state only.

2.2. REGISTERING AUTHORITY

2.2.1. The registration is made with the Registrar of Societies of the State in which the registered office is situated. The Registrars of Societies in some States is also known as the Inspector General of Registration.

2.3. REGISTRATION PROCEDURE

2.3.1 A group of seven or more persons are entitled to register an organisation under the Societies Registration Act, 1860. Such organisation should be for any literary, scientific or charitable purposes. Section 20 of the Societies Registration Act, 1860 describes in detail the purposes for which a voluntary organisation can be registered. The founders/subscribers have to prepare a memorandum of association and the bye-laws and to file the same with the Registrar of Societies.

3. FORMATION OF AN NGO AS A TRUST

3.1 INTRODUCTION

3.1.1 Formation of an organization as a Trust is fairly simple, but the statutory provisions, procedures and the laws relating to trusts are relatively confusing. Under Indian Laws, various kinds of Private and Public Trusts can be formed. For the purposes of our discussion we will confine ourselves to the laws and procedures related with a Public Charitable Trust.

3.1.2 Ironically the Indian Trust Act, 1882 is not applicable to Public Charitable Trust. Public Trusts are formed under general law, with guidance drawn from the Indian Trust Act, 1882. The other relevant acts are Religious Endowment Act, 1863, Charitable & Religious Trusts Act, 1920 and The Bombay Public Trusts Act, 1950.

3.2 LEGALISLATION

3.2.1. In India, the second most popular form of registration is as a trust. There is no specific act under which a public trust is to be registered, except in the State of *Gujarat* and *Maharastra*. A trust can be formed by just registration of the trust deed like any other legal document. The registration of the trust deed is made with the Sub-Registrar of Registration in the district in which it is situated. The registration is done as per the provisions of Indian Registration Act, 1908.

3.3 INGREDIENTS OF A VALID TRUST

3.3.1 The following are the basic ingredients of a valid trust:

i) There must be an author or settlor of the trust;

ii) There must be a trustee;

iii) There must be a beneficiary or beneficiaries;

iv) There must be clearly delineated trust property;

v) The objects of the trust must be specific.

3.3.2 The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries. The trustees are the persons who manage this property for the benefit of the beneficiaries as per the trust deed. The author himself may or may not become a trustee.

3.3.3 A public charitable trust can be formed even if immovable properties are not set aside. Normally certain funds are settled in the trust deed for the benefit and purposes as mentioned in the trust deed.

3.4 THE THREE CERTAINTIES REQUIRED

3.4.1 Three Certainties of a trust are:

i) Certainty of intention to create trust;

ii) Certainty of the objects and the beneficiaries;

iii) Certainty of the subject matter of the Trust i.e. fund or properties must be specified and settled in the deed;

3.5 WHO CAN FORM A TRUST?

3.5.1 Every person competent to make a contract and competent to deal with property can create a trust. Besides individuals, a body of individuals or an artificial person such as an association of persons, an institution, a limited company, a Hindu Undivided Family through its Karta can also form a trust. For all practical purposes two or more individuals are required to form a charitable trust.

3.6 CHARITABLE PURPOSE

3.6.1 To form a public charitable trust it is very important that the objects of the trust must be of charitable nature and of general public utility. The Charitable Endowment Act, 1890 defines 'charitable purpose' as a purpose for the relief of the poor, education, medical relief and advancement of any other object of general public utility but does not include a purpose which relates exclusively to religious teachings or worship.

3.7 TRUST DEED AND REGISTERING AUTHORITY

3.7.1 No clear-cut statutes are available for the formation of a Charitable Trust. The only

Central Legislation available is the Charitable and Religious Trusts Act, 1920. This Act is very limited in its application, and does not provide any effective control over Public Charitable Trusts.

4. FORMATION AS A COMPANY

4.1. LEGISLATION: The third available form of registration is as a company. This is a Central Statute applicable to whole of India. Unlike, the Societies Registration Act, the State Government do not have the power to frame any supplementary legislation to regulate the companies. Therefore, the regulatory authority law and procedure are uniform throughout India.

4.2. REGISTERING AUTHORITY: The registration is made with the Registrar of Companies of the State in which the registered office is situated.

4.3 NO NEED TO USE THE WORDS 'LIMITED' OR ' PRIVATE LIMITED'

The registration of charitable organisation under the Companies Act, 1956, is made along with other commercial companies. The Central Government can grant license to a Voluntary Organisation under section 25 of the Companies Act. Such license are granted allowing limited liability for the members. Further such organisation have the liberty to keep their name without the addition of the terms *"Limited"* or *"Private Limited"*.

4.4 REGISTRATION PROCEDURE

4.4.1 An application in Form I A, is to be made to the Registrar of Companies along with a fees of Rs. 500/-.

4.4.2 ***Name of the organisation -*** In this application, suitable names for the organisation in order of preference are to be given for obtaining approval. The Registrar normally, will inform about the availability of the desired name within 7 days.

4.4.3 ***Application for license -*** Once the name is approved by the Registrar, the Memorandum and Articles of Association are prepared, and an application to the Regional Director at Mumbai/Calcutta/ Kanpur/Chennai, requesting for issue of a license under section 25 is to be made.

4.4.4 ***Grant of license and certificate of incorporation -*** The Regional Director after scrutinizing the application and considering the recommendations of the Registrar will grant the license. After the receipt of the license/approval from the Regional Director, the Memorandum and Articles of Association are to be filed with the Registrar of Companies (ROC). The ROC then issues a certificate of incorporation to the organization.

4.4.5 ***Fees payable -*** The registration fees and the filing fees are very nominal. The exact amount payable at various stages should be ascertained from the concerned Registrar's Office

5 CONCLUSION:

There is very little to choose between the three modes of registration available in India, though, each one of them comes with its distinct characteristics, advantages and disadvantages.The comparative advantage or disadvantages are not alarming enough to recommend any particular form of registration. Registration as company would be a more professional and organized way of working, entailing more paper work and compliances. On the other hand, registration as a trust would be the simplest way with very minimal paper work and procedural hassles. Registration as a society will come in between and probably that is why it is the most popular form of registration. See comparative table for three forms of registration for NGOs in India given below.

TABLE
Exemptions available to Companies Registered u/s 25 of the Companies Act, 1956

Sl. No.	Notification no. and date	Provisions dispensed with	Provisions from which exemption has been granted	
			Section	**Nature of Provisions**
1	2	3	4	5
1.	Sec. 263A inserted by Act No. 65 of 1960 (28.12.60)	Provision relating to putting a resolution to vote (Provisions int he Articles of such company if any for election of Directors by ballots shall prevail	177	Voting to be by show of hands at first instance
2.	Sec. 263A inserted by Act No. 65 of 1960 (28.12.60)	Provision in articles of association relating to electing the Directors by ballots at AGM shall prevail	255, 256 & 263	Manner of appointment of Directors
3.	SO-1578 GI dated 8.7.61	Whole Provisions of Sec. 147 regarding publicatoin of name and address by a company	147	Publication of name of company
4.	-do-	Whole Provisions relating to filing with the Registrar a return stating names of members and other details	160(i)(aa)	Annual Return to accompany details

5.	-do-	Whole provisions relating to holding of AGM during business hours and on a day which is not a public holiday. (The time & place of AGM may be predetermined by Board of Directors subject to direction of the Company in its general meeting).	166(2)	AGM to be called during business hours and on a day which is not a public holiday
6.	SO-1578 GI dated 8.7.1961	Provision relating to 21 days clear notice for calling a general meeting. (Only fourteen days notice may be given for calling AGM)	171(1)	Length of notice for calling meeting
6.	-do-	Provision relating to retention of books of accounts (Books of accounts relating to a period of not less than four years need only be preserved)	209(4A)	Retention of books of account for a period not less than eight years.
8.	-do-	Whole provisions relating to leaving a notice signifying candidature for office of Directors	257	Right of persons to stand for Directorship
9.	-do-	Consent for directorship is not required to be filed with the company	264(1)	Consent of candidate for directorship to be filed with the company and consent to act as a director to be filed with Registrar
10.	-do-	Provision relating to holding of meeting of Board of Directors provided at least one meeting should be held within every six calendar months	285	Meeting of Board of Directors should be held once in every three calendar months
11.	-do-	Provision relating to holding of meeting of Board of Directors (Quorum at a meeting of Board shall be eight members of 1/4 of its total strength subject to minimum of two)	287	Quorum of meetings

12.	-do-	Interest to be disclosed in the specified manner only in respect of contracts to which Sec. 297(1&3) is applicable	299	Disclosure of interests by Directors etc.
13.	S)-1578 GI dated 8.7.1961	Register of contracts to which Sec. 297(1&3) is applicable only need by maintained	301	Maintenance of Register of contracts, companies and firms in which Directors are interested
14.	-do-	Provision relating to sending an abstract of terms of contract or variations of contract(Such information need not be sent)	302(2)	Abstarct of terms of contract or variations of contract for appointment of Managing Director and interest of any Director therin to be sent to the members
15.	SO-2767 dated 5.8.1964	Provisions relating to recording minutes. If the articles provide for confirmation of minutes by circulation, minutes may be recorded within 30 days of conclusion of every meeting	193	Minutes of proceeding of general meeting of Board and other meetings
16.	-do-	Provisions relating to obtaining Govt. approval for increasing number of Directors (Govt. approval not required).	259	Increase in number of Directors to require Govt.sanction
17.	-do-	Provisions relating to exercising/deciding of followingpowers at a Board Meeting (a) to borrow money otherwise than on debentures (b) to invest the funds of the company (c) to make loans (These powers may be exercised by circulation instead of at a meeting)	292	Certain powers to be exercised by Board only at a meeting

18.	GSR No. 73 dated 30.12.1965	Copies of balance sheet and auditors report should be sent not less than fourteen days before the date of general meeting	219(1)	Right of members to copies of balance sheet and auditor report
19.	SO-35E dated 9.2.1976	Provision relating to appointment of a Secretary (Person appointed to perform the duties of Secretary need not possess prescribed qualification)	2(45)	Secretary of a company to have prescribed qualification.

Since you asked...

Queries on various issues related to TRUSTS

- Resource Team, FMSF

In this section we deal with various legal issues on which opinion has been sought by our readers .As these issues emerge from the non profit sector, we would like to share these with our readers .We have tried to address these issues from our point of view. However please note that the above opinion of ours may not be construed to be conclusive legal status on the issue. It is advised that appropriate Acts, Rules and other pronouncements may be referred. Proper legal advice may be sought before applying the above opinion.

YOU ASKED:

On the organisation letter head should we print the address of the registered office or the national office?

WE WROTE:

The 'Registered office' as name suggests means office address specifically registered under the governing statue of an organization. The purpose behind the registration of the official address of an organization is to provide concrete indication of the situation of an organization for the purpose of official communication and notices. It also becomes the official address of the organization. Any legal process initiated for or against the organization is normally directed at the 'Registered office' of the organization.

Regarding Public Charitable Trusts, there is no Central law that governs the trusts. Inferences are drawn from the Indian Trusts Act 1882(which applies to the Private Trusts) and from the Companies Act 1956.

Accordingly we noted that Indian Trusts Act, 1882 does not make any elaboration in this regard beyond making provision for the fact that application for registration of trust should be made to the official having jurisdiction over the region in which trust is sought to be registered. So, the registered office is geographically bound by the above provision and official communication and notice by the registration authorities will be directed at registered office.

'National Office' on the other hand is designated by the governing body of an organization for the operational and administrative ease. Designation of 'National Office' does not confer on the designated office the position of 'Registered Office', however, 'Registered Office' can be designated as a 'National Office.

Companies Act makes it mandatory for the companies to mention the address of their registered office in their official letter heads and stamps. Indian Trusts Act, 1882 does not provide for similar provision.

So, in our opinion it is advisable that the address of registered office be printed on the letter head. It would facilitate future correspondence with the appropriate authorities, since the same address will be available in the records of the Registrar and the authorities. Correspondence at address other than the one mentioned in the records would unnecessary entail clarifications from the Trust by the authorities since any change of place has to be notified to them. Both the 'Registered Office' and the 'National Office' can be mentioned on the letter heads.

2. YOU ASKED:

Organisation X is a public trust, its trust deed being registered. It has exemption under section 12A of the Income Tax Act and is rendering services in field of social mobilization, Empowerment, Income generation activities and group enterprises.

It does not have any donor support and basically relies on the revenues it can generate by partnering with various agencies, government and non government. However it faces cash flow problems on many occasions, wherein it resorts to temporary loans from the trustees and other well wishers.

The question is

1. *Whether trusts can borrow money from private sources, if its articles permit and if there is a resolution by the Board.*
2. *Whether any reasonable interest can be paid on such borrowings.*

WE WROTE:

Our Opinion regarding to your questions are as follows:-

1) Whether Trusts can borrow money from private sources, if its articles permit and there is a resolution by the board?

According to the circular No.100, dated 24-1-1973 of the Income Tax Act, 1961 repayment of debt incurred for charitable purposes by a charitable trust is application of income. So, under the prevailing income tax laws repayment of loans, for earlier period expenditures are considered as valid utilization in the current period. If repayment of the loan is allowed as application of income then it can also be inferred that the trust are eligible to avail the loans also for the charitable purpose of the trusts.

Same was held also in the case of CIT v. Ram Chandra Poddar charitable trust [1987] 164 ITR 666 {cal}.

However, power to borrow funds for the charitable purpose of the trust should be explicitly given in the trust deed.

2) Whether any reasonable interest can be paid on such borrowals?

Yes, interest on borrowed fund is allowed if provided in the trust deed of the trust. However, the interest paid should be reasonable other wise it might fall into section 13(2) (section 13(2) provides circumstances where income or property of a trust is deemed to have been used or applied for the benefit of a person referred as related person), leading to disallowance of the interest paid as application of income affecting exemption under section 11 of the Income tax act.

3.YOU ASKED:

Can payment to trustees of registered public charitable trust if they work full time to meet the objectives of the trust?

WE WROTE:

We assume that your trust is registered for tax exemption under section 12A for exemption of income under section 11 of the Income Tax Act 1961.

As per section 13(1)(c), if the income of a voluntary organization is applied for the benefit of certain specified interested persons mentioned in section 13(3) directly or indirectly then the exemptions available u/s11 of the Income Tax Act will be lost . 'Trustees' of the trust are one of the persons referred in section 13(3) as a specified interested person. So, in first instance trustees are not allowed to derive any direct or indirect benefit from the trust in which they are the trustees.

Simultaneously, section 13(2)(c) of the act provides that payment of salaries or remuneration to specified person mentioned in section 13(3) for services rendered to trust or institution, in excess of what may be reasonably paid for such services will be deemed to have been used or applied for the benefit of a person referred to in section 13(3). So, if the salary or benefit is reasonable and the amount paid is not in excess of what may be reasonably paid for services rendered then it will not attract disentitlement from exemption.The key word here is reasonable, so amount paid should be commensurate with the services rendered to the trust or institution. Various case laws also supports above stand. In the case of CIT v. Tata Steel Charitable Trust (1993) 203 ITR 764(Pat.) it was held that if the trustee, relative etc. derives any benefit as an employee, then it can not be held that the income was applied for the benefit of an interested person .

So, if the monthly living expenses (wages) are paid to the trustees and if they work full time to meet the objectives of the trust as employees or otherwise and the payments are reasonable in relation to the services rendered then such payment will be allowed as deductible expenditure without affecting the tax exempt status of the trust.

Workshop on Social Accountability Standards

Social Accountability as a part of governance mechanism of NGOs has been in the focus of FMSF in the recent years. In fact, Social Accountability is an issue which all of us are trying to deal with in our own contexts. However, difficulty in formulating it in a comprehensive and integrated manner caused it to be a nebulous idea for a long time. In the light of the above drawback, FMSF started the process of developing some bench mark on Social Accountability by holding workshops on this topic with voluntary organisations in the last few years.

The process of consultations and workshop resulted into development of eleven ***"Social Accountability Standards"*** by consolidating tools and practices developed for enhancing accountability of the NGOs. Social Accountability Standards developed was published as a book named "Social Accountability Standards for Voluntary Organisations" by FMSF during March 2007.

FMSF further realised that these ***"Social Accountability Standards"*** needs to be evolved and integrated into the organisational systems which will enable us to move forward from a "conceptual" level to an "implementing" level.

In order to impart skills and training on the above standards and discuss its applicability and relevance, FMSF has been organising a series of ***"Workshops on Social Accountability Standards".*** The first slot was held on 30th & 31st July, 2007 at its premises for the region.

The **second slot for the Southern Region was organised on 7th & 8th March, 2008 at Bangalore**.

The workshop aimed to discuss the first 5 Social Accountability Standards (SAS) in these two days in 5 Technical Sessions with participatory discussions, group work and interaction. **The Standards were :**

1. **Fundamental Documents**
2. **Trustees and Board Members**
3. **Meetings and Resolutions**
4. **Accounting Policies**
5. **Social Accountability Reports**

A brief overview of the topic Social Audit was also provided during the workshop.

About 34 participants which included the Chief Functionary along with the Senior Finance Staff primarily from various organisations based in Southern India and few based in Northern India had participated. Also colleagues from EED, Ms. Anne Bohrer and Ms. Annette Becker participated in this workshop.

The resource team comprised of Mr. Sanjay Patra, Executive Director, FMSF and Mr. Manoj Fogla, FCA, both having expertise and experience in the development field.

FMSF now plans to revise these Standards in the present year and take it forward for compliance by the Voluntary Sector in the near future.

- FMSF

Workshop on Social Audit

The issue of 'Accountability' has been a part of the development debate since quite some time. Even though there is a wide consensus regarding the need and importance of greater accountability mechanisms, there is little agreement upon the kind of mechanism which will be appropriately applicable for the voluntary sector; a mechanism that would ensure transparency and at the same time take care of the heterogeneity of the voluntary sector. One such tool is the 'Social Audit'. Social Audit as a process has been implemented by various organizations and has assumed various forms. As a tool for promoting accountability, 'Social Audit' holds immense potential for development effectiveness.

Over the past 13 years, FMSF has been working towards developing tools & methodologies for enhancing & promoting the accountability standards of the voluntary organizations. One of such endeavors is the Hand book on Social Audit. The 'Handbook on Social Audit' is the result of more than three years of study and research of FMSF.

FMSF was approached by Christian Aid for conducting a Social Audit Training for its South India Partners. Christian Aid works in nearly 50 countries with 600 overseas partner organisations to tackle poverty and its causes. The workshop was held in Chennai during February 2008. There were about 28 participants.

The resource team of FMSF comprised of Mr. Sanjay Patra, Executive Director and Ms. Madhuchhanda Mishra, Research Co-ordinator who was involved in developing the Social Audit Toolkit.

The workshop discussed the issue of accountability & its relevance in the context of the voluntary Sector. The sessions included introduction to the concept of social audit, key features of Social Audit, need, importance and principles of Social Audit. The sub-processes of Social Audit - Social Accounting & Book Keeping – were taken up through group work and case studies. The 8 step methodology for Social Audit was explained through a "mock Social Audit and Role Play".

In conclusion it was agreed upon that Social Audit should not be a fault finding exercise. It should rather be a process of involving the community and taking feedback in order to improve upon the existing program.

- FMSF

News & Events

Notification on Change of FC-3 Filing Date

Ministry of Home Affairs has brought out an Amendment to Foreign Contribution (Regulation) Rules Vide Notification GSR 83 (E)No. F.No. II/21022/23(43)/2007-FCRA-II dt.08.02.2008 to the filing date of FC-3 Returns from 31st July to 31st December.

Copy of this Notification is provided herewith.

You may also log on to http://www.fmsfindia.org/fmsf/images/notification.gif or to http://www.fcraforngos.org/notification.gif to view the Notification.

However, even though, the Ministry of Home Affairs has changed rule 4(A) regarding filing of FC-3 return vide the above mentioned notification to allow that the return filing can be done within a period of 9 months from the end of the year i.e. 31st December, as per rule 8(2) also FC-3 statement along with balance sheet and receipt and payment account is required to be submitted. The period as per this rule 8(2) still states as within 4 months, i.e. 31st July. No amendment has been made to this rule. Therefore, the applicable last date for filing of return remains unclear. A suitable amendment to rule 8(2) is also required to correct the anomaly.

- FMSF

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The Gazette of India

EXTRAORDINARY

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MINISTRY OF HOME AFFAIRS

NOTIFICATION

THE GAZETTE OF INDIA : EXTRAORDINARY

News & Events

Change of Income Tax Returns Filing Date

The Finance Act, 2008 has amended Section 139, in sub-section (1), in Explanation 2, in clause (a), of the Income Tax Act, 1961, as per which, the due date for filing of return of income has been **advanced from 31st October to 30th September.**

- FMSF

News & Events

Diploma in Financial Management & Accountability (DFMA) – Registration now open for the 2nd Batch !

FMSF has launched a One Year Diploma in Financial Management & Accountability Course in partnership with Tata Institute of Social Sciences (TISS), Mumbai.

DFMA is a one year, long-distance education programme on financial management of not-for profit organizations. The course is specially designed to suit the needs of persons working in the voluntary sector or are willing to join the sector.

The registration for the First Batch was closed on 30.04.2008 and the admission process is presently going on.

Owing to the overwhelming response received for this course, we are happy to inform that we have opened the registration for the Second Batch. The last date for registration is 30.11.2008. The course for the Second Batch will commence from 01.01.2009 onwards.

For further details log on to www.fmaonline.in

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