

Governance & Disclosure Practices

Learning Series for Voluntary Organisations, Issue - I, 2012

Overview of Governance & Board of Voluntary Organisations



Credibility Alliance
Improving Governance Building Trust

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

*F*oreword

There was a period of time when very few books or articles to read on the subject Governance of Voluntary Organisations were available, no consultants to hire, and no governance resources. In the last fifteen years, however, thinking about non-profit governance has evolved considerably.

The complexity and the challenges involved therein can be attributed to many factors such legal framework, lack of proper guidance and broad economic challenges faced by Organisations. While these factors cannot be attributed to lack of understanding on governance, it is an inescapable fact that they can only be met successfully with good governance. There has never been a more important time to examine our boards of trustees and seek to improve their structure and functioning. The lessons we learn will be equally applicable—and valuable—in good times and in difficult ones. Good governance is an everyday responsibility that cannot be neglected or ignored.

Setting forth the basic principles of good governance, for the benefit of board chairs and board members, is the objective of this Learning Series. However, there is no one-size-fits-all prescription.

This Learning Series on Governance and Disclosure Practices is a maiden effort by Credibility Alliance which aims to bring it on a regular basis to improve and strengthen good Governance Practices that are accountable and transparent.

S. P. Selvi
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Overview of Governance & Board of VOs

Ownership & Governance of VOs

- 1.01** Voluntary Organisations (VOs) deal in public money for public utility purposes, however for legal and practical purposes the ownership of all funds lie with a group of people. In other words, VOs are privately held and privately managed organisations for public purposes.
- 1.02** A good VO should exemplify openness & transparency by having desirable criteria for selection and rotation of Trustees/Board Members.
- 1.03** The VO law normally varies from country to country and normally within the country also there are various kinds of registration which permit different Board and trustee structure. For instance a public charitable trust can be formed with two or more trustees who are permanent in nature. Such law belong to an era when charities were entirely based on the funds/assets bequeathed by a particular donor/author. But when such trust is registered for fund raising and donor based projects, it raises a serious question on the public ownership of the VO. Similarly various other forms & registration also provide the possibility of the ownership being in the hands of a private group of persons.
- 1.04** VOs also struggle in defining the role and responsibilities of the Trustees which results in a governance imbalance where the Board may hinge from being dormant to overactive and interfering.
- 1.05** The different forms of registration also create different ownership structures, for instance under trust law there is no provision for General Body, but in case of a society there can be a General Body which appoints the Board.

- 1.06** The diversity of skills and the ability of the Board member to assume and exercise authority also require careful support from the policies and norms. This issue endeavours to address some of such issues.

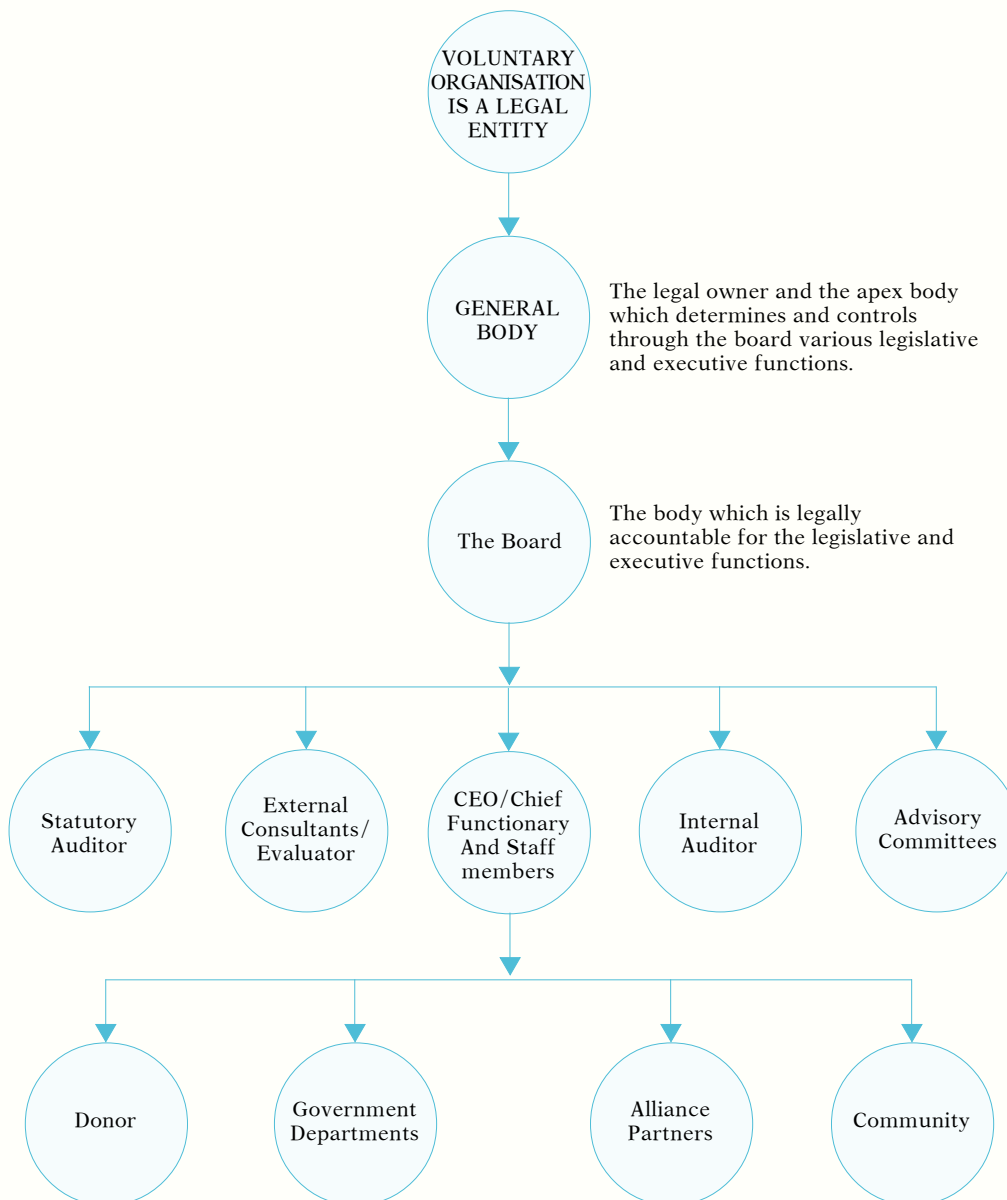
Technical Overview of Governance in a VO

- 1.07** *Adrian Cadbury Committee Report*¹ defined governance as a system which directs and controls an organisation. A VO is an artificial legal person therefore, it is governed by various group of people having a very clearly defined role to play.
- 1.08** All registered voluntary organisations are a distinct legal entity and therefore an artificial legal person. The legal status of an organisation comes with legal obligations such as :
- i) Statutory audit of accounts
 - ii) General & Board Meetings
 - iii) Filing of Returns
 - iv) Adhering to the Bye-laws
 - v) Area of operation
 - vi) Election of office bearers etc.
 - vii) Working only for the definite objectives
- 1.09** The above mentioned are some of the *de jure* aspects of the governance system of a voluntary organisation. An organisation has to complement and add upon these aspect to build a sound governance system, keeping in view the size and the nature of the activities. The flow chart on the next page depicts an overall picture of various person/committees which go on to build an effective governance system.
- 1.10** All VOs are accountable to the laws under which they are enacted and avail subsequent registration. Some of such statutes in India are :
- i) Societies Registration Act, 1860 (along with state enactment)
 - ii) The Companies Act, 1956 (for Section 25 company)

¹ In 1992 Adrian Cadbury Committee submitted a report on Corporate Governance and the social responsibilities of corporate organisations. In this report the issue of effective and fair governance was raised internationally. Consequently, raising the quality and standards of corporate governance has been taken as a very serious issue throughout the world and lot of legal and managerial changes have come in order to ensure that the governance an organisations is just and fair to all stakeholders. In the VOs sector similar efforts for reform are also underway.

- iii) Income Tax Act, 1961
- iv) Foreign Contribution Regulation Act, 2010
- v) Various others statues as an when applicable.

Flow Chart Showing the Organisational Structure



General Body and its Importance

- 1.11** General Body is the ultimate body which it regulates and controls through the Board. A General Body is like the people of a democratic country who can determine or replace the parliament, but cannot assume the functions of the parliament. General Body constitutes and reconstitutes the Board and keeps control over certain statutory issues and key functions of the Board. Major legislative and statutory decisions are taken by the General Body, however, all key issues are normally recommended by the Board for the approval of the General Body.
- 1.12** Important and statutory nature decisions are taken at the General Body level. Some of such decisions could be as under :
- (i) Annual General Meeting
 - (ii) Appointment of Auditor
 - (iii) Election of Office Bearers
 - (iv) Amendment of bye-laws
 - (v) Purchase of large properties, etc.
 - (vi) Approval of Annual Secretaries Report.
 - (vii) Such other decision as may be provided in the Memorandum of Association
- 1.13** The general members play a very effective role in the governance of an organisation. A large and empowered General Body can only ensure that the organisation functions on democratic principles. Many organisations have a very small General Body or even a co-terminus committee i.e. both the Board and the General Body comprise same set of persons. Such organisations do not reflect sound democratic structure of governance.

The Board and its Importance

- 1.14** The Board happens to be the *de facto* most powerful body of an organisation and in the absence of an effective Board it is very difficult to ensure good governance in any organisation. The Board is legally accountable for the legislative and executive functions. The Board is responsible for determining all the policies, systems and processes. The Board is also responsible for the safe guard and optimum utilisation of the funds, assets and resources. All decisions of enduring nature are taken at the Board level and the

Board delegates authority and responsibilities to the CEO and other managerial persons.

Roles & Responsibilities of Board

- 1.15** The Board should formulate the mission statement of the organisation and should revisit it every three years in order to ensure that the programmes and resources are in consonance with it.
- 1.16** The Board should formulate the structure of authority and responsibility to be delegated to the CEO and other staff.
- 1.17** The Board should determine the procedure of electing/selecting the CEO and the compensation thereof.
- 1.18** The Board should formulate important policy documents and guidelines on gender, human resource, finance etc.
- 1.19** The Board should appoint the statutory auditor and the internal auditor if required. Both the auditors should directly report to the Board. The appointment of statutory auditor should be finally approved by General Body on recommendation of the Board.
- 1.20** The Board should determine and approve the annual budget and allocations.
- 1.21** The Board should determine and approve the bank accounts to be operated and the signatories thereof.
- 1.22** The Board should develop proper policy and systems regarding the title, safeguard, location and verification of fixed assets.
- 1.23** The Board should ensure strict adherence with all statutory compliances. It should also ensure that requirements/obligations towards other stakeholders is diligently done.
- 1.24** The Board should constitute Advisory Committees for special functions or for specific purposes.
- 1.25** The Board should review the performance of the CEO and other senior management staff on annual basis.
- 1.26** The Board should prepare a position paper every three years on issues such as (i) Resource Mobilisation (ii) Financial and

Institutional Sustainability, (iii) Programmatic relevance, reach and impact, (iv) Risk and contingencies.

1.27 The Board should carefully position its involvement in the management of the affairs of the organisation. Generally the Board should not be interfering in nature, however, certain powers of approval should be retained by the Board depending on the size of the VO. A suggested list of the additional functions of Board could be as under :

- approval of projects and activities to be undertaken
- periodical perusal of the reports from the Secretary/CEO and other key functionaries
- approval of purchase of assets for large financial transactions
- approval of project budgets and investments
- finalising annual financial statements
- staff capacity building measures
- appointment of staff
- internal control measures
- resource mobilisation, etc.
- control over admin. expenses
- corpus and institutional sustainability

Composition of the Board

1.28 The Board should be ideally between 5 to 12 members unless the legal requirements are different.

1.29 The Board should, normally, not have members who are permanent in nature except the case of institutional nomination. In case of a trust normally a clause regarding permanent trustees is found, in such instances it is desirable that the total voting right of the founder trustees is less than 50%.

1.30 The composition of the Board should be clearly defined in terms of the diversity of the skills required for discharge of the Board functions. The balance of the Board should be maintained in terms of gender, finance & other specialised skills, stakeholders and distance & availability.

Presence of Employees on the Board

- 1.31** Not more than 2-3 employees should be Board members with voting rights or at any point the employees participation should not exceed 40-50% of the Board members. If two or more employees are on the Board then they should not be relatives. The main issue is to keep the Board independent of the execution functions. If people involved in execution and implementation are dominating the Board then the Board shall cease to be an independent body.
- 1.32** In the context of the issue of employees on Board it is generally misunderstood with participation of employees on Board as a stake holder. However, this issue is much larger than inviting representatives from the employee fraternity on Board. This issue is about the presence of members who are compensated for the services rendered on whole time basis. Such members could be :
- Representatives of employees who become Board member by virtue of being an employee.
 - Elected Board members who are in whole time service in terms of the bye laws.
 - Pre-defined executive heads like CEO or ED who find an ex-officio position in the Board.
- 1.33** One or more of the above circumstances may be relevant depending on the bye laws and governance structure of the organisation.
- 1.34** It may be noted that the sum total of all such Board members should not have any material influence on the decision making of the Board.

Election/Selection of the Board Members

- 1.35** There should be a clearly defined policy for recruitment, election, selection of trustees or Board members. The induction of new trustees should be through an open process providing the opportunity of being elected/selected to a wider group of stakeholders. The process should include use of methodologies such as advertising for new trustees through various medium.
- 1.36** The Board members should retire and be re-elected on the basis of rotation. For instance every two years a third of the Board can

retire. Though the Board members usually get re-elected but the technical possibility of replacing the entire Board in an election process should be avoided.

Board Processes

- 1.37** There should be a process for orienting and sensitising of the trustees regarding their responsibilities in particular as well as in general.
- 1.38** There should be a process through which clear distinction between strategic matters and operational matters should be made and a position paper should be drafted and revisited annually.
- 1.39** The Board should set key performance indicators for themselves.
- 1.40** The Board should, ideally, meet once in every quarter, however, it is recommended that the Board should meet at least twice in a year i.e. once in every six month.
- 1.41** An annual report on the financial or other contributions of the Board members should be prepared to assess the stakes and ownership of the Board members.

Legislative and Executive Functions

- 1.42** A legislative body or function generally pertains to something legal or statutory in nature. In a country the parliament is the legislative body and the bureaucracy generally implements or executes the legislations passed by the parliament. However, in context of a VO a legislative body does not imply creating statutory legislations which in any case are binding on everybody. The legislative functions imply creating legislations and policies for the organisations which may or may not be statutorily required by the law of the land. Some legislative documents of an VO are :
- Memorandum of Association
 - Articles of Association
 - Various policy documents

- Various resolutions passed by the General Body and Board etc.

1.43 The General Body is the highest body for legislative decisions and the Board is the highest body for executive decision making. However, for all practical purposes both the legislative and executive functions are held by the Board, though certain key and statutory legislative decisions are approved by the general members only. The legislative functions cannot be delegated, they include :

- Legal compliances
- Custodian of assets and functions
- Amendment and Compliance with the stated Memorandum of Association, Trust Deed etc.
- Compliance with the stated Articles of Association, By laws etc.
- Laying down policies and norms of execution.

1.44 The Board is also responsible for effective and optimum execution of all the activities and responsibilities of the VO. Normally the management team headed by the CEO is delegated the executive functions. The Board plays an oversight role in the execution. The Board delegates the executive functions depending on the size of the VO and operations. In very small organisations the Board may play a more proactive role in the execution/implementation. However, it is generally expected that the Board should play the role of controlling and directing the various activities and processes without itself being involved in the direct execution.

Grievance and Judicial Function

1.45 The governance structure, as per the registration, provides the legislative and executive powers to the Board. However, inherently the Board also possesses judicial or conflict resolution powers which are generally not very well articulated.

1.46 All accountable VOs should have a conflict resolution and grievance mechanism within the organisation. It could be through constitution of 'grievance committees'. However, it has to be ensured that all employees and stake holders have an equal opportunity in representing themselves in such committees. If the complaints are against the CEO or any Board member then there should be a mechanism in place to ensure a fair trial to the complainant.

Closely and widely held VO

- 1.47** When an organisation has a Board of less than 7 members and General Body of less than 12 members for long periods, (say 7 years) it can be considered as a closely held organisation. A closely held organisation is legally permissible, however, such structure are generally created when a corporate, family or group of people create a VO for public purposes from their internal properties and funds. A VO which accesses donations and grants from organisations and public at large should not be closely held by a small group of people.

Permanent or long term Board members

- 1.48** As discussed in the above para organisations should not have a majority of long term or permanent Board members unless it is privately funded.
- 1.49** The name and percentage of trustees or Board members who have served for more than 15 years on the Board either continuously or through intermittent tenures should be separately declared.

Executive Leadership & Legislative Leadership

- 1.50** A good governance structure should maintain a clear distinction between executive leadership and legislative leadership. The examples of such distinctions are :
- The Chairman should not be the Executive Director or CEO
 - The employees should not have an influencing impact on the Board decision making.

Difference between A CEO & General Secretary

- 1.51** A General Secretary of a VO is the legal representative of the Board as far as its legislative functions are concerned. The General

Secretary may or may not retain the executive functions. A CEO is the highest executive position and it does not possess legislative powers.

- 1.52** The General Secretary is an integral part of the Board of a VO. A CEO may or may not be provided an *ex-officio* position on the Board as the representative of the employees responsible for execution and implementation.

Advisory Committees

- 1.53** The Board is normally supported by advisory committees which consists of members possessing specialised expertise and mandate. An organisation may have, for example, committees on finance, purchase, specific programme, etc. Certain VOs also have advisory Boards which are independent and external.

CEO and Management Staff

- 1.54** The CEO and staff members are responsible for the day to day management of the organisation. The CEO happens to be the focal point around which the entire organisation revolves. He is the executive head of the organisation, the CEO generally does not possess legislative powers. The CEO interacts with most of the stakeholders such as donors, alliance partners, communities and also with the Board etc.

Conflict of Interest

- 1.55** There should be a clearly defined policy to ensure that any conflict of interest is properly dealt with. The issues which may be regarded as material interest are as under :
- Appointment of relatives in Board or senior management.

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

1.56 The Board of Directors of the trustees should declare such interests. The interested trustees and directors should not participate in the decision making and voting process for that particular resolution. An annual declaration of such interests should be placed in the annual general meeting.

Independent Directors

1.57 The term ‘independent director’ is more relevant in the corporate world. In the voluntary sector most of the directors are in any case expected to be independent. Clause 49 of the listing agreements on corporate governance defines independent directors as follows: *“For the purpose of this clause the expression ‘independent directors’ means directors who apart from receiving director’s remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the Board may affect independence of judgment of the directors.”*

1.58 The non-executive independent directors are not supposed to receive any financial consideration except the sitting fees.

1.59 In case of VOs all the directors are not supposed to take any kind of benefit or privilege from the organisation. Therefore, in letter and spirit all the directors in case of VOs are independent in nature. However, as a concept it needs to be ensured that the directors or trustees are not enjoying any undue benefit or are not involved in any conflict of interest transaction. One of the ways of keeping the independence of the Board is to have a well articulated ‘conflict of interest’ policy.

Ex-officio Board Members

- 1.60** The memorandum of association of the society can be suitably drafted so as to have provision regarding *Ex-officio* Board members. An *Ex-officio* Board member denotes the right of a particular formal position holder to participate and vote in the Board proceedings. For instance, an VO may provide that the District Magistrate will be one of the Board members, then who ever is the District Magistrate will automatically have the right of a normal Board member.

General Members

- 1.61** The VOs registered under the Societies Registration Act or under the Companies Act or any other law which require both the General Body and the Board, should ensure that there is a transparent & appropriate policy regarding general members and general meetings.
- 1.62** The General Body should be the body of general members with equal voting rights. The membership should be open to all section of stakeholders. The size of the General Body is determined by the nature of VOs work, generally movement based VOs have larger General Body. However normally the size of General Body should vary between 10 to 30 members. The General Body should always be larger than the Board, ideally 3 times or more the size of the Board.



About Credibility Alliance

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

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

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

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

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



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