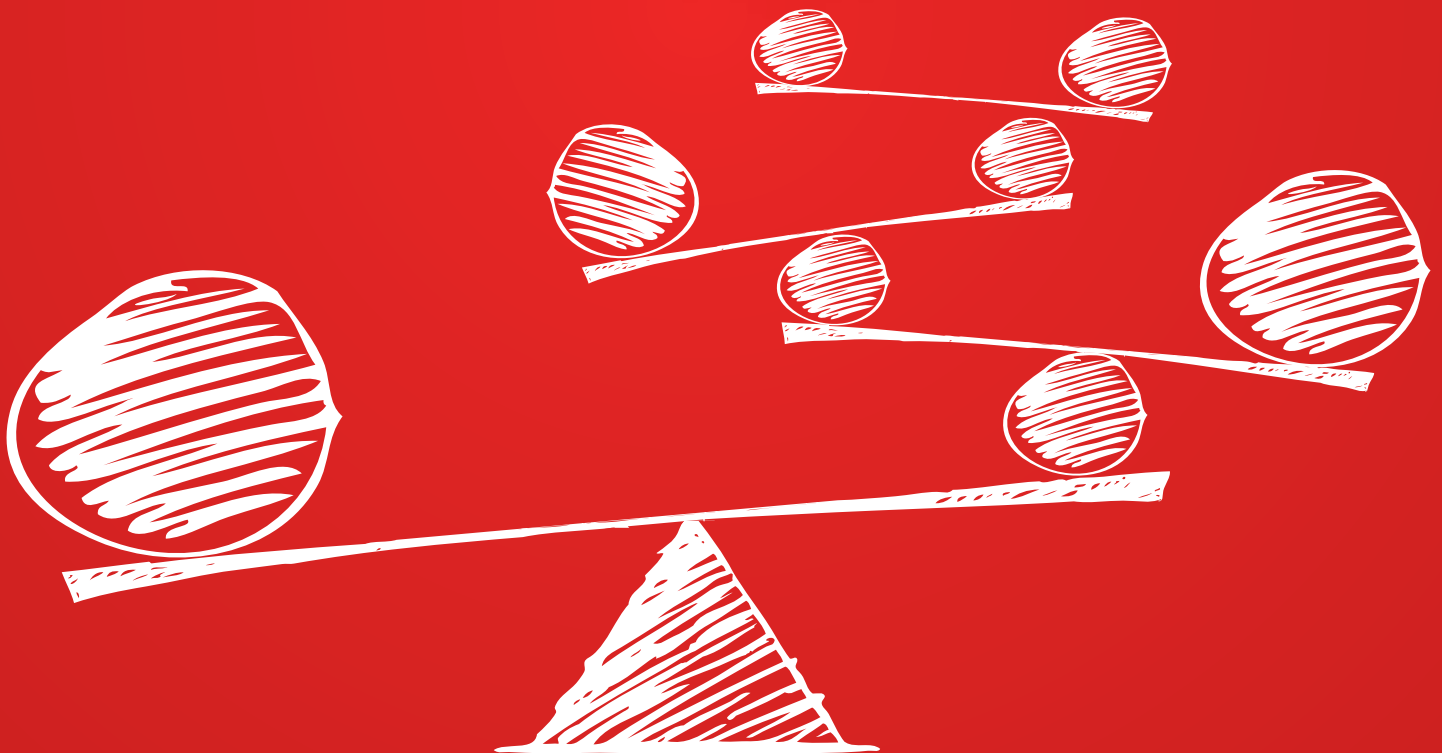


Striking the *Right*

BALANCE





About Us

Since its inception in 1986, CAP has been assisting nonprofit organisations and corporate foundations comply with the complex web of compliance issues governing charities in India.

Who We Serve

CAP's services extend to

- NGOs/nonprofits (start-up & well established)
- Social entrepreneurs
- Family and corporate foundations
- Corporate Social Responsibility (CSR) initiatives
- Individual and organisational grant-makers
- Intermediary support organisations
- Members of the legal and accountancy professions

Our Areas of Support

Compliance Advisory

All matters pertaining to legal compliance for nonprofits
Registration Guidance

- Income Tax
- FCRA
- Labour Law
- Goods & Services Tax (GST)

Capacity Building

Training & consultancy on core challenges for compliance in

- Legal
- Fundraising
- Board Governance
- Human Resources
- Volunteer Management
- Communication /Reporting
- Strategy relating to the Charter

Corporate Support

Supports companies and their social initiatives with

- Corporate Foundation Advisory
- NGO Corporate Partnerships
- CSR Compliance

Resources

Based on our experiences, resources that help you

- Print Newsmagazine for compliance news and views
- Up to date Blog for news updates
- Facebook group to connect to the community

Table of Contents

compliance

- 05** **LEGAL**
Penalties to Compound
FCRA Violations

'Online Analytical Tool'
launched by MHA

New Tax Returns for
FY 2018-19
- 08** **CSR**
Excessive Regulation will
Destroy the Spirit of CSR
- 11** **BOARD GOVERNANCE**
Check before Boarding
a Board
- 13** **HUMAN RESOURCES**
Policy - Equilibrium of
Purpose and Passion
- 16** **COMMUNICATION**
Ponder before Panicking
- 19** **FUNDRAISING**
Campaign for Your Cause
- 21** **VOLUNTEER MANAGEMENT**
Tools You can Use
- 22** **FAQS**
Ask the Experts

This newsmagazine is supported by
John and Editha Kapoor Foundation

EDITORS - Meher Gandevia-Billimoria
Noshir Dadrawala

DESIGNER - Shweta Pandharkar

PRINTER - Fine Line Digital

CAP's CIN - U73200MH1986NPL041521

To contribute to this magazine, be featured,
place an advert, send any feedback or to
receive your copy, contact us at
022 22846534 or connect@capindia.in

connect

- 24** **CONNECT**
Balance of the
Head v/s Heart
- Great Foundation
- Conservation Action Trust
- V Care



The Irish lawyer John Philpot Curran once said: "The condition upon which God hath given liberty to

man is eternal vigilance." In the Indian context one could rephrase this as: "The condition upon which government regulators hath given various registrations to NGOs is eternal vigilance." Be it under HR or trust laws, income tax or FCRA; those in decision making roles, be they governing board members or management teams; exercising vigilance and due diligence everyday and at all times is the only road to salvation, or at least a good nights' sleep!

Generally speaking, compliance refers to the NGO knowing about and obeying all the applicable laws and regulations and with regard to how it manages programs and activities, staff and volunteers. It includes a system and process of being in accordance with established standards, guidelines or legislation and accountability towards all key stakeholders.

The concept of compliance is to make sure that NGOs act responsibly but without becoming reactionary. Policies and rules help provide the framework. A good NGO compliance program can help avert errors of omission, misconduct on the part of human resource, keep programs and activities running smoothly with minimal risk and help the NGO maintain or enhance its credibility capital. The other reason compliance is so important is threat of potential litigation or compounding the same with hefty penalties.

Compliance management is a process which ensures that a set of people follow (using both head and heart) a given set of rules. The rules are often referred to as policy. In our opinion, compliance management is part of every organization's duty to its community and stakeholders.

We agree that managing compliance involves resources (human, time and financial). But, it's nowhere near as expensive as the costs associated with a breach! ■■■

Noshir Dadrawala
Programme Director
Legal & CSR Compliance



At some point or the other most NGOs have connected with CAP. In any given year we work with 300+ organisations

providing legal and other consultancy. Over 32 years of CAP, we had numerous organisations listed on our database, many since CAP's inception or theirs. As a Section 8 Company, we spent considerable time and admin energy tracking and reporting on each of their status, each year. This year we decided to ask those who were not actively engaged to give up their membership to save us that effort.

Connecting personally with many dormant organisations we discovered that the newsmagazine was much wanted and in print form!! We always debated whether our print magazine was outdated keeping in mind everyone is into e-magazines circulating swiftly. So here we are again, with a slight makeover keeping the thread of Compliance firmly woven through all our articles. With a special section on Connect which we have reserved as space for the NGOs to tell you more about their cause. Of course, for up-to-date news as it happens, stay connected to CAP's blog.

Our next cohort of 10 NGOs will be commencing on their journey for the Compliance - Complete certification. They will go through a series of workshops through the year followed by an audit process. The focus is on compliance in each but also the non-compliance aspects that balance working towards the cause - Income Tax, FCRA, Fundraising, Board Governance, Human Resources, Communication/Reporting, Volunteer Management. A demanding programme, while they grow in their knowledge of compliance, we in our learning on the nonprofit sector.

Compliance is important but as nonprofits we should never forget the core of why we exist - to do good. While calculating the quantity of outputs and outcomes, don't forget to measure the feel-good factor. Strike the right balance. ■■■

Meher Gandevea-Billimoria
Programme Director
Capacity Building & Resources

Penalties to Compound FCRA Violations

Ministry of Home Affairs has issued Notification dated 5th June 2018 S.O. 2291(E) listing offences which hitherto were not compoundable (e.g. defraying of foreign contribution beyond fifty per cent of the contribution received for administrative expenses).

What does 'compounding' mean?

Generally speaking, "offence" would mean any act or omission made punishable by any law for the time being in force and "compounding of offence" would mean a method of avoiding prolonged litigation and settling the 'offence' with the payment of a fine or penalty.

Revised penalties under FCRA

For virtually every offence the minimum penalty is a sum of Rs. 100,000/-.

The Notification also lists officers competent for compounding such offences. In all cases it is the Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act.



Offences which can be compounded

1. Whoever accepts, or assists any person, political party or organization in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of FCRA or any Rule or Order made there under, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

This offence can now be compounded with a penalty of Rs. 10,000/-

2. No person who is registered and granted a certificate under FCRA or has obtained prior permission under FCRA and receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act.

Contravention of this provision can be now compounded with a penalty of Rs. 1,00,000/- or 10% of such transferred foreign contribution, whichever is higher.

3. Organisations registered under FCRA or having prior permission are required not to defray as far as possible such sum, not exceeding fifty per cent of such contribution, received in a financial year, to meet administrative expenses, without prior permission of MHA.

Contravention of this provision can now be compounded with penalty of Rs. 1,00,000/- or 5% of such foreign contribution so defrayed beyond the permissible limit, whichever is higher.

4. No person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution without either having prior permission or registration under FCRA.

Contravention of this provision can now be compounded with penalty of Rs. 1,00,000/- or 10% of the foreign contribution received, whichever is higher.

5 a. All foreign contributions must be received only in the FCRA Bank account specified in the application for grant of prior permission or registration certificate under FCRA. Receiving foreign contribution in any account other than the specified account is an offence.

This offence can now be compounded with penalty of Rs. 1,00,000/- or 5% of the foreign contribution received in such account, whichever is higher.

5b. Not reporting the prescribed amount of foreign remittance or source and manner of such remittance by banks and authorized persons too is an offence but now compoundable with penalty Rs. 1,00,000/- or 3% of the foreign contribution received or deposited in such account, whichever is higher.

5c. Receiving & depositing any fund other than foreign contribution (local or non FC funds) in the account or accounts opened for receiving foreign contribution or for utilizing the foreign contribution is also an offence, but, **now compoundable with penalty of Rs. 1,00,000/- or 2% of such deposit, whichever is higher.**

6. Organisations are required to intimate the amount of each foreign contribution received and the source from which and in the manner in which, such foreign contribution is received both quarterly as also by filing annual return in Form FC 4.

Failure to comply can now be compounded with penalty of Rs. 1,00,000/- or 5% of the foreign contribution received during the period of non-submission, whichever is higher.

7. Every organization which has prior permission or registration under FCRA is required to maintain books of account and records of foreign contribution received and manner of its utilization.

Contravention of this provision can now be compounded with penalty of Rs. 1,00,000/- or 5% of the foreign contribution during the relevant period of not maintaining accounts, whichever is higher.

In case of multiple offences

MHA has clarified that in case more than one offence has been committed by a person/organization, the total amount of compounding for such offences shall not be more than the value of the foreign contribution involved. ■■■

'Online Analytical Tool' launched by MHA

Ministry of Home Affairs (MHA) has launched an 'Online Analytical Tool' "to keep a close eye on foreign funded NGOs". This is nothing new nor something that some of us in the voluntary sector were not already aware of!



On 21st December 2017, Ministry of Home Affairs had issued a notice that organisations having prior permission or registered under the Foreign Contribution Regulation Act (FCRA) 2010 should maintain their FCRA Bank account only with banks integrated with the Public Financial Management System (PFMS). At that time 32 Banks were in the list of PFMS integrated Banks. Currently the list has grown to 55.

Big Brother at MHA is watching you!

MHA's obsession with NGOs is now legendary. Significantly more foreign funds flow into India through Foreign Direct Investment (FDI) and through Foreign Institutional Investors (FIIs). However, these are regulated under a much softer and user-friendly Foreign Exchange Management Act (FEMA).

Foreign Direct Investment in India has averaged US \$ 1,294.03 Million from 1995 until 2018, reaching an all-time high of US \$ 8,579 Million in August of 2017. India has also received net investments of US \$ 19.79 million from Foreign Institutional Investors (FIIs) between the months of April to December 2017.

In contrast, reportedly there are only approximately 25,000 active organisations registered under the FCRA receiving foreign contributions worth Rs. 18,065 crores from foreign donors for various social, cultural, economic, educational and religious activities.

Do MHA and the Government of India really believe that 25,000 NGOs with aggregate receipts of Rs. 18,065 crores from foreign donors for various social, cultural, economic, educational and religious activities can be a "threat to National interest" or "affect prejudicially the sovereignty and integrity of India"?

The Public Financial Management System, earlier known as Central Plan Schemes Monitoring System (CPSMS), is a web-based online software application developed and implemented by the Office of Controller General of Accounts (CGA).

According to media reports MHA launched the "Online Analytical Tool" on Friday, 1st June 2018 "to analyze in real time the source, destination and the actual usage of the fund."

Reportedly, the online analytical tool will also give government "the capacity to take data-driven and evidence-based decisions regarding the compliance of the provisions of the Foreign Contribution (Regulation) Act, 2010." It has analytical features to conduct big data mining and data exploration. Its dashboard will be integrated with the bank accounts of the FCRA-registered entities through the Public Financial Management System for updating of transactional data on a real-time basis.

This is yet another instance of mistrust and regulatory excess. But, if your NGO is legally compliant, you have little to worry. Let Big Brother watch over you. Let them monitor you. Shame MHA into realizing that far from being a threat or of nuisance value, NGOs play a critical role in developing society, improving communities and promoting citizen participation within the sovereign democratic republic of India. ■■■

New Tax Returns for FY 2018-19

For Assessment Year 2018-19 (Financial Year 2017-18) the Income tax Return in Form ITR-7 has been substantially revised. In order to claim tax exemption for the fiscal year 2017-18, all mandatory criteria laid down by the tax authorities must be fulfilled and the Return should be carefully filled with all the required details.

Please ensure the following compliance:

1. The return of income in the prescribed Form ITR-7 has to be e-filed on before the due date mentioned under section 139(1) (i.e. 30th September).
2. Audit report in Form 10 B also should be e-filed along with the above stated return.
3. To claim benefit of 'deemed application' under Section 11(1), Form 9 A has to be e-filed before due date

mentioned under Section 139(1) (i.e. 30th September). This form should be signed by a trustee or principal officer of the trust.

What is "Deemed application u/s 11(1) and when e-filing Form 9A is necessary?" - According to Explanation 2 to Section 11(1), if in the previous year, a charitable organization is not able to utilize 85% of its income, due to the fact that such income was accrued but not received in the previous year or for any other reason (e.g. received towards the end of the fiscal year) then the organization has an option to apply such income in the year, immediately following the year of accrual of income.

4. To claim benefit of accumulation under u/s 11(2), Form 10 has to be e-filed before due date mentioned under Section 139(1) (i.e. 30th September). This form should be signed by a trustee or principal officer of the trust.

Why and when should Form 10 be filed? - If the trust or institution is unable to apply at least eighty-five per cent of its income in the previous year it may accumulate or set apart the unspent income for up to a maximum of five years.

In Form 10, the amount, the purpose for which the amount is accumulated or set apart, as also the period of accumulation/setting apart must be stated.

5. If in any of the projects/institutions run by the trust, one of the charitable purpose is "Any other object of general public utility" and the activity is in the nature of trade, commerce or business or service as referred to in the proviso to Section 2(15), then provide the aggregate annual receipts from such activity and its percentage in Schedule Part A.

6. In order to claim exemption under section 11, all incomes must be entered first in Schedule AI.

7. The details of projects/institutions run by the trust and details of registrations or approvals have to be necessarily provided in Schedule Part A. ■■■

The latest ITR 7 can be viewed or downloaded at:

https://www.incometaxindia.gov.in/forms/income-tax%20rules/2018/itr7_english.pdf

Stay connected to all legal news and updates as they happen. Follow the CAP Blog



Excessive Regulation will Destroy the Spirit of CSR

Within just four years Ministry of Corporate Affairs (MCA) has tightened its initial policy of 'Show or Shame' (show you have carried out CSR related activities or shame on you) to now compelling Full Compliance.

Who does Section 135 apply to?

Readers may be aware that under Indian Companies Act 2013, CSR was made mandatory for companies having either Net-worth of INR 500/- crore or more or Turnover of INR 1,000/- crore or more or Net Profit of INR 5 crore or more.

Compliance Notice

Around May 2018 MCA, through Deputy Director and Inspector e-CSPM - CSR has issued notices to various companies under section 206 of the Indian Companies Act 2013 regarding compliance of provisions of Corporate Social Responsibility (CSR) under section 135 read with Section 134(3)(o) of the Act and the Rules made there-under. The information asked for by the MCA almost borders around forensic CSR audit of companies.



Ambiguity regarding 'local area'

Additionally, General Circular No. 06/2018 dated 28th May 2018 issued by the Ministry of Corporate Affairs (MCA) seeks to address concerns raised by some stakeholders regarding non-compliance of the first proviso to sub-section (5) of section 135 of the Indian Companies Act 2013, which lays down that the company

shall give preference to the local area and areas around where it operates, for spending the amount earmarked for CSR activities.

The circular emphasizes and reiterates that this provision "has to be followed in letter and spirit". MCA fails to clarify what would qualify as local area? The City or town where the company operates or the entire district or the State? Does this mean if the company operates only in Mumbai or Pune, it cannot support activities outside the Municipal boundaries of Mumbai or Pune?

The term 'preference' in the context of this law would mean 'priority' should be given to issues or programs in and around the area where the company operates. There is nothing wrong with this principle. However, if one goes strictly by the letter of the first proviso to sub-section (5) of section 135 of the Companies Act 2013, supporting any activity outside the area where the company operates would be disallowed and considered non-compliance under Section 135(5)!

Section 135 requires the following compliance:

1. Constituting a CSR Committee of the Board
2. CSR Policy as approved by the Board
3. Report on CSR by the Board ensuring that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Additionally, Section 134(3)(o) requires: "details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year".

Implement CSR policy

MCA's focus of inspection appears to be on "implementation" of CSR as per policy developed by the company and of late it has specifically been questioning companies which have not spent the full two per cent of the company's pre-tax profit for the relevant financial year. It has also asked such companies regarding "measures and efforts taken by the Board of the company to ensure that the prescribed CSR amount is FULLY SPENT for the financial year."

While CSR activities should be undertaken within the framework of Schedule VII, some companies appear to have named their CSR projects under the head "others". MCA has asked companies for details of all projects listed under the head "others"

Comprehensive CSR compliance inspection

In some cases, it would appear as if MCA is conducting an exhaustive CSR audit asking for information such as:

1. Date when the CSR Committee was constituted;
2. CSR Policy of the company along with extracts of resolutions passed by the Board for adopting the same;
3. Details of the meetings held by the CSR committee during the relevant financial year and extracts of the minutes of such meetings;
4. If prescribed amount of two per cent as per section 135(5) of the Act is not spent, "furnish legally demonstrable specific reasons";
5. Proportion of "administrative overheads" while implementing the total CSR expenditure during each financial year;
6. Details of the implementing agencies (trust, society or section 8 company with track record of at least three years of undertaking such activities) engaged by the company with the names and addresses of such implementing agencies.

Other information sought by the MCA:

1. Calculation of net profits computed u/s 198 of the Act;
2. Average net profits of the company for the three immediately preceding financial years as computed u/s 198 of the Indian Companies Act 2013;
3. Details of members of the CSR Committee;
4. Name and contact details (current address, email and Director Identification Number) of the Board of the company;
5. Details of the projects undertaken by the company as CSR activity as per disclosure under annual return of CSR as provided under Companies (CSR) Rules 2014.
6. Certified true copy of bank statements showing transfer of money by way of "contribution to Prime Minister Relief Fund / Swatch Bharat Kosh / Clean Ganga Fund / any other central government fund".



Scale in CSR spend

The Annual CSR Tracker compiled by the Confederation of Indian Industries (CII) reveals that the number of Bombay Stock Exchange BSE-listed companies required to fulfil their CSR mandate has increased to 1,522 during Financial year 2016-17 from 1,270 in Financial Year 2015-16 and 1,181 during Financial Year 2014-15. A total of 1,522 BSE-listed companies spent INR 8,897 crore, or ninety-two per cent of the budgeted INR 9,680 crore on CSR activities in the fiscal year 2016-17, an increase of about nine per cent from the previous year.

The survey suggests a substantial increase in CSR spends as against FY 2015-16 in the areas of environment and ecology (66 per cent), gender equality (115 per cent), national heritage (153 per cent) and sports development (192 per cent). However, there was no CSR spend in the areas of technology incubation or slum development by a single public-sector enterprise (PSE) in FY 2016-17. Moreover, slum development did not receive any funds from state-owned enterprises in the previous year either.

The overall increase in CSR spends in FY 2016-17 as compared to the previous year is 8.70 per cent. Development areas that show maximum increase in the CSR spends as against FY 2015-16 are sports development, national heritage, gender equality and environment.

There was a noteworthy increase in the CSR spend with respect to armed forces veterans in FY 2016-17 amounting to INR 33 crore in comparison to FY 2015-16, where less than INR 1 crore was spent, according to the report.

FY 2016-17 also registered a huge drop in the contribution made to the Prime Minister's Relief Fund as compared to the previous fiscal year where 79 companies contributed INR 80.55 crore and 120 companies contributed INR 107.43 crore in 2014-15.



Why enforce compliance?

"Alignment of business strategy is slowly but surely happening. Companies have begun to disclose impact data, which goes beyond the requirements of the legislation. This is an indicator of improved transparency though quality of data leaves much to be desired," CII Director General Chandrajit Banerjee states in the report.

In our view what MCA is contemplating now is regulatory excesses which will kill the very spirit of voluntary CSR which has and should stem from the heart of corporate

India. The role of the regulator should be restricted to regulating and not control.

Statistics reveal that CSR spend by companies is growing and far from diminishing. Why then should there be CSR "enforcement"? CSR as the name itself suggests, is a 'social responsibility' which is a voluntary corporate value and MCA should refrain from creating an enforcement and prosecution regime.

Law should create an enabling environment

The law should create an "enabling environment" for CSR and not one of "enforcement".

CSR spend is not even allowed as a business expenditure under section 37 of the Income tax Act and thus smaller companies do not even see any incentive for spending on CSR. In fact, some even see this as an additional "charity tax" over and above corporate taxes.

Insisting that two percent of the net profits should be utilized fully will create unnecessary pressure on companies to spend only in order to meet compliance requirement. This sort of pressure will lead to giving to easy causes, thus defeating the very essence of strategic and sustainable CSR.

In our opinion, government should allow CSR to take root and grow at its own natural pace without threats of 'enforcement' and 'prosecution'. There is significant growth in CSR spending over the last four years and in our opinion, additional controls and enforcement will prove detrimental to the essence of CSR. ■■■

(Images used in this article are shared by Arvind Foundation.)

**CAP requested our Corporate Affiliate Arvind Foundation to comment on this article.
CAP thanks Niraj Lal for sharing his candid views.**

“

I have two more points to make.

1. The complete CSR budget of all CSR companies put together in a year will be less than 1% of the total social sector outlay of the Government. This small amount is then being spend for different geographies, themes, projects, programmes and target audiences. Hence, after a certain point of time, no audit can bring impact as it is too miniscule as a whole. However, for some small areas, it is significant. Corporates, whose business is to see return on investment, are the best people to judge impact and they will not allow their money to go down the drain. Hence, leaving CSRs to companies and rewarding best practices is the way to go rather than enforcing. It is not worth.

2. Extending the first point further, it takes us to the fact that the Act never looked at the money only that companies will spend. It would anyway happen as byproduct and is happening. However, the purpose was and should be, to bring corporate management expertise, innovations and newer ways of looking at social issues into the social domain and thereby creating newer and replicable models for faster dissemination. When enforced, it may not happen.

Niraj Lal

Arvind Foundation, Gujarat

Check before Boarding a Board

Asked to join a non-profit board? Here's what you should consider before signing in your acceptance.

Often friends, colleagues, or relatives already serving on a board or associated with a nonprofit, request others to join the board. You may be given some vague visions of how your service on the board can help change the world, not to mention they make usually make it sound as a very manageable commitment (e.g. You just need to attend two or three meetings in a year and that's all). It's often an honour no doubt, and one may feel quite flattered.

You can save yourself and the non-profit from an inappropriate match by taking a few simple analytical steps before committing to join a board. How do you decide, whether you will be the right fit? Is this something you really want to do and most importantly is the organisation credible enough for you to commit to? For every board there should be a good balance of governance vs management vs compliance.

First ask, why the organisation exists and is it still true to its mission.

Most nonprofits are set up from a deep sense of passion for changing the world. The passion is rooted in the vision and mission of the organisation. Examine why the organisation exists. That passion with the organisation should not be for the programs, but for the intended outcomes. Programs evolve over time based on a wide variety of factors, but vision, mission and core values must remain constant. Being passionate about the cause and mission is usually at the core of the organization through whatever change may come. It forms the bedrock of commitment.

Learn more about the organization's direction.

A primary responsibility of the board is to provide strategic direction for the organization. A related responsibility is achieving the strategic organisational goals by the staff the board hires & works together with, to implement this plan. It is also important to understand how the board governs. In many organisations the board may have developed a Board Policy Manual - a set of basic value statements or policies to guide board and staff decision making, a

central repository for all board value-driven mandates. Ask yourself, how effectively the board governs and how you will contribute to that role of governance without getting drawn into management which is not really your role as a board member.



Here are some further key questions to ask yourself

Do you have enough time to serve on a board? – The meetings may vary from monthly to twice or thrice a year. The more engaged the board, the more productive they could be.

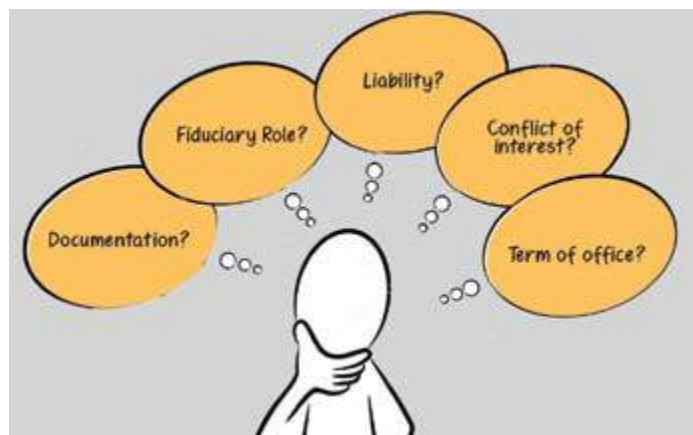
Are you good a good team player? – Boards need to collaborate and ensure cooperative action. Find out who it is you'll be working with. Find out their priorities.

Do you enjoy getting into the nitty-gritty of policy? – Boards should be macro picture oriented, not involving themselves in the day to day matters. If you are a task-oriented person, maybe a volunteer role is more suited for you.

Do you feel comfortable fundraising and mobilising resources? – Almost all organisations struggle with fundraising, most staff do not have the bandwidth to mobilise resources and few have the art. There will be no escape, so be sure you feel at ease with fundraising.

What are the Roles and responsibilities or the board members and are you equipped for them? – Understand your specific roles, what you are expected to do as an individual and collectively as a board. Some boards follow an annual board assessment to an objective standard of performance, so know how your performance is held accountable.

If you have figured out the how and why & have decided to join, what are the compliance requirements you should look at before you leap?



1. Documentation - Ask for and carefully read the organization's charter (trust deed, MoA & AA), bylaws or policy documents, if any, last three years audit accounts, returns of the last three years filed with key regulatory authorities (Charity Commissioner, Income tax, FCRA), Annual budget, a strategic plan if there is one, and other organizational materials, including website.

2. Fiduciary Role - The role of a Board member is fiduciary which essentially means relating to the onerous responsibility to take care of someone else's (public) money in a manner consistent with law, the charter of the organisation and to the satisfaction of all stakeholders

3. Liability - If the organisation is a trust or a society, the Board member's liability would be personal. However, even if it is a Section 8 company limited by guarantee, the Board member should ensure that needless liabilities are not created and generally gauge the Board's risk appetite and see if it is compatible with his/her own. How well the Board is equipped and ready to manage risks, liabilities and reputation is critical, especially if working on sensitive issues (e.g. with children, orphans)

4. Conflict of Interest - Does the organisation have a clear policy on conflict of interest and historically how well has the Board executed or managed it? A "conflict of interest," arises when a person in a position of authority over an organization, such as an officer, director, trustee or key employee, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or organizations with which the person is

closely associated. While most conflict of interest policies only addresses financial conflicts of interest, ideally it is both necessary and appropriate to require disclosure of affiliations that can give rise to conflicts of interest. Therefore, the organization's policy should define conflicts of interest to include affiliations as well as economic interests. The purpose of such disclosure is to provide the Board with a meaningful opportunity to determine whether a conflict of interest exists, by disclosing any interest that could give rise to a conflict of interest. Complete, accurate disclosure gives the Board the information they would need to fulfil their fiduciary obligations and to make decisions that are in the organization's best interests.

To reiterate, one must always stay wary of liability both for the organization and for oneself personally. As stated earlier, the liability of a Section 8 company is generally not transferred onto the directors. However, directors can be held personally liable for their acts under the Companies Act 2013, if there is a breach of fiduciary duty or instances of fraud, breach of trust, fraudulent misrepresentations etc. A director must comply with certain fiduciary duties, and any lapse on this part would make the directors personally liable in an action for tort (i.e. a wrongful act or an infringement of a right, other than under contract, leading to legal liability)

5. Term of Office - When there is no rotation, Board members tend to become complacent. Members who serve for a fixed term tend to make the most of the time they serve on Boards. 1/3rd of the Board stepping down and 2/3rds remaining for providing continuity is generally good practice. Also, one or two founder members or individuals who have core expertise needed, may remain as 'Permanent Members of the Board' or in an emeritus position to provide mentorship.

However, unless provided in the charter, generally in a trust, trustees serve for life unless they voluntarily resign. In a Society or Company there is usually a system of electing or rotating Board Members. Though here again, if the General Body of members is the same or very small, there is little or no scope for rotation. The concept of rotation should be built into the charter of every organization. Among existing organizations changes could be made in the Articles of Association by due process or in the case of a trust the appointment letter should clearly state the term of office and the newly appointed Board member should accept the same in writing under his/her signature. ■■■

Policy - Equilibrium of Purpose and Passion

Policies are not mandated by law. Sometimes managers have different approaches or employees behave in a way that may lead to confusion within the workplace or conflict, distrust and disgust among employees. In such cases, developing uniform standard and approaches through a policy has merit.

Often in nonprofit organisations, there is no designated HR head. In such cases, policies provide - written guidance for employees and managers on how to handle situations, consistency and transparency to processes and policy, which in turn creates a positive, professional organisational culture. It may take away flexibility which may be needed for some organisations, but the benefits still outnumber the demerits.

Let's keep in mind some of the important functions that policies serve

- Keep the organization in compliance with legislation
- Ensure fairness and transparency for employees
- Help management to make consistent decisions
- Communicate values and expectations setting the tone and expected standards of the organization
- Protect individuals and the organization from errors of judgement or decisions which could be deemed biased or prejudiced or detrimental to the best interest of the organization.

Important questions to consider before an organisation formulates policies

- What is the objective of the policy and what is it intended to accomplish?
- Is the organisation willing to invest the time it takes to document the policy, keep it up to date?
- Do the managers have the skills and the conviction to implement the policy fairly, enforce it uniformly and monitor it from time to time?
- Will the policy be able to attract the kind of candidates you need?
- How will the policy enhance work culture?

Consider these points before drafting the policy

- Keep your employees in mind and draft the policy in simple language that they would understand. Avoid legalese, jargon and language which may be confusing, ambiguous or difficult to understand by key stakeholders
- Define the terms clearly at the outset and use them consistently through the manual.
- Some rules may apply to all circumstances, (example fraud or sexual misconduct at the workplace would not be tolerated under any circumstances) some may allow exceptions (on a rainy day leave rules may differ).
- Draft the policy such that it reflects the organisation's core values, beliefs and culture
- Be sure that it is understood as intended.

Your policy should be a comprehensive resource to effectively implement rules and regulations around conduct, leave, termination, special privileges (if any), systems and mode of evaluation etc. You may have a great policy, but it will be no good if it is not easy to implement. It is preferred by many organisations to have their templates as annexures within the policy document itself.

“Roxana Kalyanvala, Executive Director, Bharatiya Samaj Seva Kendra has close to 100 employees at their nonprofit which works with children. They have no dedicated HR head. “It is often not possible at NGO's to have a person dedicated for HR matters/to have a HR officer. Thus, it helps tremendously to have a HR policy/An Employee policy handbook which can cover all staff related issues eg. Leave/attendance/holidays, performance management, reimbursement and travel, probation and confirmation of employees, etc This provides a consistency in practice in all HR matters with employees, employees know what to expect from the organization and is also helpful when new employees join in. I would strongly recommend an NGO to have this, this has proved to be a very useful and important document for our NGO.”



Drafting the policy

Provide clarity in your overview, regarding who it is meant for and what it intends to achieve.

Follow applicable state & central laws within the rules.

Processes or procedures if any, must be practical.

Every aspect of the policy should reflect the organisation's core values and culture.

Introduction to the policy

Purpose - The goal of the policy.

Scope - Outlines to whom the policy applies. Does it apply to only employees, or includes consultants and volunteers? Clearly state who is included and who is not.

Definitions - Clearly define any terms (e.g. employee, consultant, trainee, intern, remuneration, honorarium etc.) used within the policy. Use them consistently throughout.

Responsibilities - Who is responsible for developing, maintaining, monitoring and implementing the policy. Who is responsible for communicating the changes to the policy and how (e.g. office intra-net, notice board, email)?

Dates - Indicate the date the policy comes into effect and when it is due for review

Consent - Every policy should be approved before implementation. Indicate who approved the policy (generally it is the Board or the chairperson on behalf of the Board), the date of approval.

Rules - The main content of a policy

Rules are the statement or clauses the policy is stating.

State the rule - As per our policy, each full-time

employee is eligible for 26 number of paid leaves.

Define the rule - Leaves are classified as - Privilege leave: 15 days, Casual Leave: 7 days, Sick leave: 14 days

Clearly state any exceptions to the rule, if any - such as work from home is allowed on heavy rain days.

Define actions which will be taken in case of non-compliance - salary will be deducted for 3 days late arrival or the person will be expected to work overtime without compensation etc.

Explain the steps for execution - How to apply (tools), Who will approve, how to approve.

Assign responsibilities - Employee: Apply for leave as per guidelines. Approver: Ensure adherence to the policy & check past leave and attendance record before approving. Human Resources: Record and retrieval of leave records, ensure implementation & resolve escalations. Management: Extract accountability / final authority in case of conflicts.

Conclusion & Final Authority - More importantly indicate timelines for closure on issues (e.g. internal disputes between two project related staff will be settled within a period of two weeks or all leave applications will be disposed within a period of 48 hours. Who will be the final authority on the decision.

Adding procedures to the policy

While the policy is the formal statement or rule that members of the organization must follow, a clearly laid down procedure tells members of the organization how to carry out or implement the policy.

Policy is the "what" and the procedure is the "how to". Policies are written as statements or rules. Procedures are written as instructions, in logical steps. Lay out processes in simple flow charts for understanding. This also includes tables, templates, forms, sample applications etc.

Review, approval of the policy

It is good practice to ask select managers and employees to review the policy. It will point out gaps in understanding of the policy. Complex policies should be reviewed by a lawyer / HR consultant that specializes in labour law and HR compliance. The policy should be known to, understood and accepted by both the employer and employees. Every employee at the time of joining the organisation or accepting the appointment is deemed to have read, understood and accepted the policy.

Implementation is key

The policy should provide enough information for managers and staff to be able to effectively implement and comply with the policy. Larger organisations may need training.

Remember let your policy pave the way for effective compliance and culture of discipline, cooperation and optimizing output within the organisation. It should not be an overdose of legal complexities, nor burdened by elaborate processes nor loosely drafted rules. **Strike the right balance** in your policy with equal measure of compliance, clarity and compassion.

Regina Khurana is Manager – HR at Ummeed Child Development Center, a nonprofit with 72 employees & 11 consultants. She shares, Ummeed believes in the philosophy of working hand-in-hand with relevant stakeholders at all times. This includes seeking input from employees and relevant stakeholders when designing/ reviewing HR policies. This helps us ensure that our HR policies are employee friendly, while ensuring compliance with statutory requirements. Revisions are not just circulated as FYIs, but rather presented in all staff meetings and discussed/ debated. Ongoing reminders for internal compliance (e.g., time-sheets, investment declarations, leave reconciliations) are of course needed, but when employees have a fundamental buy-in, to the requirements, a carrot-and-stick approach is not necessarily needed.

HR COMPLIANCE CHECK LIST

- ☒ Is the Shops & Establishments Act (as relevant to the state you operate in) applicable to your NGO?
- ☒ Does your NGO observe 'work hours' and 'leave' related rules?
- ☒ Is your NGO aware and compliant with Maternity Benefit (Amendment) Act 2017?
- ☒ Is Employees' Provident Fund (EPF) mandatory for your NGO?
- ☒ Is Employees' State Insurance Scheme applicable to your NGO?
- ☒ Does your NGO pay wages according to the Minimum Wages Act?
- ☒ Is it mandatory for your NGO to pay Bonus?
- ☒ Is your NGO financially prepared for payment of gratuity?

WORKSHOP

CAP will be conducting workshops on Labour Law and HR Policy in September/October. Stay Connected.
Dates will be announced via our Facebook group and database mailer.

Ponder before Panicking

Within days of the GDPR coming into effect from 25th May 2018, NGOs driven by compliance for the sake of compliance or in some cases just to look or feel good, started sending out mails to all their 'data subjects', in most cases with not even one 'data subject' in the European Union.

We at CAP see GDPR compliance as the right example to demonstrate the fact that compliance should be need driven and should stem from core internal values. Compliance under **Global Data Protection Regulation** (GDPR) is a classic example of striking the right balance. If your NGO has 'data subjects' (e.g. those who receive your e-newsletters, regular updates, reports or appeals for donations) **in the European Union**, Articles 4 and 7 of the GDPR requires that your NGO should obtain consent from your 'data subject' (recipient of information) to be included on your mailing list. If the 'data subject' chooses to withdraw, or not give consent, your NGO should provide an "Unsubscribe" option.

Of course, it is good to verify with all those on your database whether they are interested or not in receive your e-newsletters, e-reports and e-updates. It is about being sensitive and ethical towards your stakeholders and not just telling them that we are GDPR compliant even though none of you are in the European Union! However, to reiterate, if your nonprofit or charitable institution has even one constituent in the European Union (EU), this regulation is something you need to be aware of and comply with.

What does GDPR protect?

GDPR protects certain kinds of data inside the European Union and data that flow across EU borders, including establishments in other countries that use personal data for transactions involving services or goods within the EU. GDPR covers privacy as it relates to individuals resident in the European Union, but companies and nonprofits everywhere in the world must be in compliance. Even if your organization is based in India, but, if you have any kind of constituent (an alumna, donor, student, volunteer, past or current patient, donor) living in the EU, then your organization must be in compliance. Specifically, GDPR defines personal data as, name, address, social security

number, photographs, email addresses, banking information, social media posts, medical information and IP address.

What GDPR Rules require?

The rules for GDPR require organisations to obtain consent from individuals and to collect information without using forceful means. NPOs cannot require individuals to give details that are unnecessary or unrelated to the transaction or donation. Nonprofits and charities must clearly communicate their intentions and inform their prospects accurately.

Marketing efforts by nonprofits and charities must plainly instruct their prospects on how to opt in or out of communications.

What is GDPR?

GDPR is an omnibus regulation by which the European Union (EU) intends to strengthen and unify data protection regime thereby enabling EU citizens to have more control over their personal data.

It enshrines data protection and privacy rights for European users, and holds establishments handling their data, wherever they may be, liable for violations. GDPR has introduced strict regulations and has included new rights such as 'right to be forgotten', 'right to data portability' etc. This law directly impacts data controllers and data processors.

Non-compliance will lead to huge penalties, as high as 20 million Euros or 4% of annual global revenues, whichever is greater.



The Law

This EU law has come into force on May 25 2018 and decrees that consumers or "data subjects" have right to erasure of their data and a right to port their data from one place to another. It also places a premium on the consumer's or data subject's consent to collection and processing of data.

Although the law is introduced in the EU, its ramifications extend the world over. This is because it is not focused on regulatory measures for tech companies, but rather on the protection of EU citizens and their data.



Compliance

There are many ways for nonprofits and charities to prepare for GDPR compliance. To begin with, nonprofits need to be able to explain how and why they process personal data. They must also be able to explain any data that they share with third parties, and who the third parties are.

Nonprofits need to make sure they and their workers, volunteers and representatives don't contact supporters or donors after they've withdrawn their consent or asked the nonprofit not to use their personal data.

Many charities and nonprofit organizations find that the best way to refrain from contacting people on their "do not contact" list is to use a Customer Relationship Management (CRM) system.

A CRM helps to keep lists organized and will automatically remove individuals who've opted out or revoked their consent. A CRM system works well for organizations that have multiple volunteers working on marketing campaigns because the CRM updates the system in real time.

Privacy Policy

Whether GDPR applies to your NGO or not, it would be desirable to have a clear and written 'Privacy Policy' which is made known to or made available to all your key stakeholders on your NGO's website.

You should recommend that all your stakeholders read your Privacy Policy so that they understand your approach towards the use of their Personal Information.

Your Policy should set out things like – what information your NGO collects from stakeholders, what you do with such information, how long do you retain such information etc.

It should be made clear to the 'data subject' that by visiting your NGO's website and by submitting their personal information, they agree to the collection, transfer, processing, storage, disclosure and other uses thereof as described in your Privacy Policy. **There should be a disclaimer that your NGO does not sell, rent or trade personal information under any circumstances.**

In your policy you should be clear regarding, **what data you collect** (e.g. email address, domain name, IP address), **what you do with the data** (e.g. to contact the data subject, internal record keeping or to comply with legal or statutory obligations), **how you collect the data** (e.g. your website collects certain information automatically and stores it in log files with the help of cookies. The information may include internet protocol (IP) addresses, the region or general location where the data subject's computer or device is accessing the internet, browser type, operating system and other usage information about the use of the Website, including a history of the pages the data subject views), **for how long do you retain personal data** (e.g. for as long as it may be necessary to comply with legal obligations), **Disclosures** (e.g. We do not sell, rent, share, distribute, lease or otherwise provide your Personal Information to third parties, without your prior consent).

However, your NGO should reserve the right to disclose Personal Information to legal or regulatory authorities as required in order to comply with legal obligations, including but not limited to complying with court orders, warrants, or discovery requests.

The policy should also state the rights of the data subjects such as their right to access their Personal Information in the NGO's possession, right to rectify any such information, right to limit the NGO from

processing such information, right to ask NGO to delete their information and right to have the NGO revise (to make it accurate and correct) their information and right to have the NGO 'forget' or erase information and the right to withdraw any consent that the data subject may have provided to the NGO concerning their Personal Information.

The policy should also cover information security and due diligence which the NGO would follow as also limitation of liability and where disputes (if any) would be settled.

Conclusion

On one hand NGOs are expected to be fully transparent and are required to disclose a lot of financial and programmatic information under the public's 'Right to Information'. However, at the same time, the same NGO is expected to protect the privacy and 'Personal Information' of the very public that it serves or interacts with. It's a balancing act that every NGO must play between the right to information and the right to privacy! ■■■■



BHARATIYA SAMAJ SEVA KENDRA

Vacancy in a leading position in a 40 year old Trust working for the well-being of vulnerable children and their families. Head Office Pune and 3 branches.

If you have vision, integrity, decision making abilities and are a strategic thinker please apply for the position.

Requirements: A Master's in Social Work or related Human Sciences degree. Previous experience of working in the NGO sector in a leadership position for some years.

Work Description: Leading and managing all programmes in accordance with Trust activities

Key responsibilities: Overall programme development, guided by the Board of Trustees and also able to work with funding agencies and Govt. functionaries.

Remuneration: In accordance with qualification, experience and leadership ability.

Interested candidates may kindly apply to bssk@bsskindia.org

.....
If your organisation would like to earn this certificate, know how you can join CAP's Compliance Complete programme.

See details on the back outside cover.
.....



Campaign for your Cause

We interviewed two well-known crowdfunding platforms to understand their views on crowdfunding related credibility, compliance and concerns. Piyush Jain, CEO and Co-Founder, ImpactGuru.com & Kavita Mathew, India Partnerships Consultant, GlobalGiving share their perspectives.

How would you explain the concept of crowdfunding?



An internet-enabled philanthropic process, it is the process of raising funds online through small donations from a large number of people on the internet. It uses the power of the masses to fund the smallest to the largest social causes, making sure that lack of funds don't get in the way of good intentions. Crowdfunding can help NGOs raise funds for programs and individuals to raise funds for medical treatment costs and personal causes.



The practice of collecting small amounts of money from a large number of people in order to run a project or achieve a specific goal. It is an age-old concept that has been practiced in our communities for centuries for setting up of religious buildings, community centers, etc. Today, with the power of the internet, crowdfunding can be practiced at scale, beyond your own geographical boundaries.

What is the USP of your platform?



First crowdfunding player in India to launch a smartphone app. Apollo Hospitals Group, India's largest hospital chain recently invested in ImpactGuru and has created a partnership making us the preferred crowdfunding platform for Apollo patients nationwide. Due to our strategic partnership and technology integration with GlobalGiving.org, we are the only crowdfunding platform in the world that can offer Indian, US, and UK tax benefits to Indian and international donors for nonprofits.



GlobalGiving is not just a platform. We are a partner! Being a nonprofit ourselves and having worked with over 20,000 nonprofit projects in 170 countries across the globe, we are able to bring not just the funds, but also the tools, trainings, one on one support and extra funding from corporate partners that are required for a nonprofit to reach its fundraising goals.

State three compliance measures you ensure at your end for the NGOs you support



- We ask NGOs to submit their Section 12A registration document. This helps us determine whether they have the right registrations with IT authorities.
- We check if the NGO has Section 80G registration. This helps us to determine if we should send automated 80G tax receipt to the donors of the non-profit.
- We check if the NGO has valid FCRA registration and cross check with MHA website. Foreign donations are restricted on NGO campaigns unless they have valid FCRA registration



We work hard to stay informed on data privacy and protection, from being GDPR compliant for all GlobalGiving donors to having technology that helps us catch fraudulent transactions made via our platform before they reach our nonprofit partners.

We have an entire team and systems in place to ensure that we are up-to-date on local & legal compliance regulations of different countries.

We are registered as a 501 (c) 3 in the US and as a charitable trust in the UK and maintain a four-star Charity Navigator rating, BBB accreditation, and GuideStar (USA) Platinum certification.

Crowdfunding is unregulated space In India. Do you think regulation is required? To what extent?



No, I don't believe that regulation is required yet as the sector is nascent. Moreover, donation crowdfunding is unregulated in other countries such as US, UK, and China which are raising billions of dollars every year.



Crowdfunding is currently unregulated in India, especially in the case of personal fundraising. For nonprofits, it is more regulated since they have to follow set standards and regulations. Creating an association of crowdfunding platforms to set standards of crowdfunding in the country as well as share individual learnings and data on a regular basis would add value to not just regulate the system but also grow the industry together.

Do you think that FCRA regulations are a deterrent for flow of foreign funds into India for welfare and development?



The FCRA was originally a tool to prevent money laundering, bar foreign funding of political parties and stop funding of organizations that were acting against national interests.

Yes, the current FCRA regulations are prohibiting the work of many nonprofits that could scale their interventions significantly with international funding support. I hope the Govt. changes the rules soon to make it easier for well-established nonprofit organizations to scale their social impact.



FCRA regulations were set with the intention of having better control over the flow and utilisation of foreign funds within the country and not to be a deterrent to welfare projects. However, having more transparency in the selection and rejection of projects and rigid deadlines for processing of applications would help improve the current system and ensure welfare projects are not interrupted. FCRA regulations should also serve as a reminder for us to improve the ecosystem of local philanthropy within our own communities.

Any learning over the years both from giver and recipient perspective?



Many nonprofits fail to understand that achieving success in crowdfunding requires planning, dedicated effort, and persistence. They should not pursue crowdfunding unless they are willing to put in the time, energy, and resources to mobilize funds for their cause. Many nonprofits mistakenly assume the role of a crowdfunding platform to be that of a funding agency and wrongly expect the crowdfunding platform to be 100% accountable for the performance of a crowdfunding campaign. Nonprofits should understand that crowdfunding platforms are technology companies whose mission is to make it as easy as possible for nonprofits to fundraise.



We learned over the years that donors often give but feel a lack of gratitude and connection to the projects they give to. We spent time developing tools and resources for our nonprofit partners so that they may thank their donors easily and send them updates on where a donor's gift has gone to create an experience that makes a donor want to give again.

For our nonprofit partners, we have found there is often a disappointment in the number of new donors and activity on their crowdfunding campaigns. This is usually due to unrealistic expectations about how individual fundraising works – engaging in online crowdfunding takes a lot of time, effort, and engagement of your own networks. To educate our partners on this, we created the GlobalGiving Accelerator - a training program that culminates in a fundraising campaign designed to train and support our nonprofit partners as they join GlobalGiving.

Disclaimer: The views and opinions expressed in this article are those of the contributors and do not necessarily reflect the views, opinion or policies of CAP.

Tools You can Use

CAP thanks Youth for Unity and Voluntary Action (YUVA) for sharing their Volunteer Application form. This is a guidance template. Please note that any organisation using this template must adapt it to suit their work.



TELL US ABOUT YOURSELF

Name: _____
 Date of birth: _____ Age: _____ Gender: _____
 Email ID: _____ Phone number: _____ School/College/Company name: _____

For Indian Nationals

Residential Proof: _____
 PAN/Aadhar number: _____

For Foreign Nationals

Passport number: _____
 Passport status: _____

Give us some background information

Name of college/university: _____ Course: ☐ M.A. Social Work ☐ Other _____

Area of specialisation in college/university: Year and semester:

☐ First year ☐ Second Year ☐ Other _____

Field work supervisor (from college/university): _____

References (please provide two with name, phone number, and email ID): _____

For how long can you volunteer with us? (Volunteers at YUVA receive no remuneration or reimbursements)

Field work/Internship type (Mention if block field work or concurrent): _____

Field work/Internship dates (e.g., Mon and Thurs, 15 July 2017 – 17 August 2017): _____

Part time/Full-time: _____ Languages most comfortable with: _____

Do you have any previous volunteering experience?

Have you volunteered before with any NGO? _____ Where have you volunteered? _____

What was the role? _____ What was the duration? _____

Help us understand you better

Which of the following areas we work on interests you the most (you can tick multiple options)

- ☐ Pre-school education, health and nutrition (0–6 years) ☐ Right to education and child rights (6-14 years)
☐ Working with street children ☐ Homeless and pavement dwellers

From the list below, tick off all the skills that you possess:

- ☐ Fluently in Hindi/Marathi ☐ Can translate (written) from English to Hindi/Marathi and vice-versa
☐ Can take on primary and secondary research ☐ Design skills (knowledge of Photoshop/Indesign or other software)
☐ Social Media (Facebook, Twitter, etc) and blogging ☐ Photography and/or video skills
☐ Experience in street theatre ☐ Others _____

Tell us how you feel the work of YUVA benefits society? _____

How do you feel your skills can help our organisation? _____

What do you want to learn and understand from your time at YUVA? _____

How did you hear about us? ☐ Website ☐ Social media ☐ Reference
☐ Institution ☐ Word of mouth ☐ Other _____

Thank you for taking time out to fill this form. Please email it to xxxx@gmail.com

ASK THE EXPERTS



LEGAL

Sometimes commitment and funds are received after the expense has been incurred. (e.g. schools begin in June and expenses are incurred from the NGO's funds from their domestic account). Later, a donor agrees to sponsor a classroom in July and funds come into the FCRA account only in December, then how is it possible to show an audit trail?



FCRA does not allow mixing domestic funds with FCRA funds. E.g. If funds are received in December in the FCRA account, you cannot transfer these funds to your domestic/local bank account nor claim that these FCRA funds were utilised from June to December. The Donor must either remit the funds at the start of your academic year or allow you to use the funds for other objects of your NGO ... in other words make it an unrestricted grant.



FINANCE

We allocate interest income based on the unutilised donor balance on quarterly basis. This being the first time we are doing it, we didn't realise bank is deducting TDS on FD Interest and we have allocated total interest to the donor, but the TDS will be recovered from government a year later or more. How do we account for this as we will be allocating more interest to donor than the actual balance available? We are applying for exemption certificate u/s 197 for No TDS deduction but this process will take time so in meanwhile how to allocate interest income to donor.



The application u/s 197 is now online and orders are issued quite quickly nowadays. Regarding accounting or rather reconciling TDS deducted by your bank, we could suggest options; however, we would suggest you first have a word with your CA/Auditor. There is no point our suggesting an option which he may later disapprove.



BOARD GOVERNANCE

How many board meetings does our Section 8 registered foundation need to have conducted in a year?



Section 8 (Nonprofit) Companies are exempted from certain provisions of the Indian Companies Act, 2013 as per section 462 of Companies (Amendment) Act 2015. Minimum Number of Board Meetings [Section 173(1)]: Section 8 companies are required to hold at least one Board Meeting (BM) within every 6 calendar months i.e. two BM in one year instead of minimum four meetings of its Board of Directors every year. Additionally, there are no restrictions of time gap (i.e. 120 days) between two consecutive meetings of the Board.



HUMAN RESOURCES

One of our team members will be moving to UK as the family is relocating. She will continue to work with us on a professional consultant basis - Is this possible? If it is, can we pay her salary in her Indian bank account?



Yes, she can continue to work as your consultant. However, what would be the nature of the work? She could be designing say the education curriculum that you would be using in India or designing your website for India or providing content that you would use in India. As long as her services are for work carried out in India you may credit her remuneration in her Indian account.



STRATEGY

Our board wants to introduce the Balanced Score Card. What is a BSC?



It is management system that several large NPOs across the world, including in India use. The system, in more ways than one, connects the dots between big picture strategy elements such as mission (or your purpose / road map), vision (what you aspire for, the final destination), core values (what you believe in), strategic focus areas (themes, results and goals) and the more operational elements such as objectives (continuously improving activities), measures (or key performance indicators, or KPIs, which track strategic performance), targets (your desired level of performance), and initiatives (projects that help you reach your targets).



COMMUNICATION /REPORTING

Do all NGOs have to bring out an Annual report?



If your NGO is registered as a Public Charitable Trust, bringing out an Annual Report is not required under law. If registered as a Society, you are required to share report of progress and activities with your members.

However, if your NGO is registered as a company under Section 8 (earlier section 25) of the Indian Companies Act an Annual Report must be prepared, sent not just to all your members but also to be filed with Registrar of Companies in the prescribed ROC format.



FUNDRAISING

Our NGO is co-presenting a dance performance by renowned dance performer to raise funds. Should the sponsors pay directly to the artist and related agencies and we incur incidental and brochure costs what would be the implications for us.



It is better this way as your NGO will be playing only a facilitating role and the sponsor will pay for the venue, food, artists directly.



VOLUNTEER MANAGEMENT

We are likely to get a volunteer from Europe for about 8 weeks sometime between July and September 2018. She plans to apply for her visa and would need an email from our NGO. We had advised her that she needs a special visa but we weren't sure which one.

What exactly will she need us to cover in our email to facilitate the visa application?

She will be taking care of all her own expenses while here.



She should apply for an employment visa marked volunteer. Your NGO should give a clear letter stating this is a volunteer post, state the tenure/duration, where person will stay insurance cover etc.



CORPORATE SUPPORT

A company situated in Delhi has shown interest in giving us funds as part of their CSR activities. However, they insist that in order to receive funds we need to be registered under GST as a provider of service. There is also a clause under their draft vendor agreement which states that they will deduct TDS. Is this correct or required?



To begin with it should be a 'Grant Agreement' and not a 'Vendor Agreement'. Your NGO is not some vendor of commercial services. Further, grants are in the nature of a gift, albeit restricted and with various terms and conditions. Neither GST nor TDS should be deducted on grants or donations.

However, GST would apply to sponsorship and advertisements where benefit is accrued by the sponsor or advertiser. ■■■

Disclaimer: Compliance is organisation specific, and subject to change. Therefore, it is best to read what the Centre for Advancement of Philanthropy (CAP) has elaborated here as a broad and generalised note. Consultation with the experts at CAP is recommended for your organisation specific legal or fiscal issues.

Where legal issues are concerned, there is no standard response or solution that serves all.

compliance

This was the COMPLIANCE section of our newsmagazine.

connect

From this issue, we have dedicated a few pages each issue for NGOs to CONNECT their causes with our reader audience.

We thank our affiliates V Care, GREAT Foundation and Conservation Action Trust for promptly and enthusiastically sharing their stories.

The heart of organisation's work

ONKAR ON THE STAIRWAY TO IIT

Since childhood, 17-year-old Onkar Shinde, had dreamt of becoming an engineer. Due to his poor financial background, he could not afford to enrol for coaching to prepare for the IIT entrance examination. His family includes him, his parents, a younger brother and one sister. His father works as an electrician and earns Rs.72,000/- per year which is not enough for a family to buy food and a good education. However, Onkar's father wanted to make his children's dreams come true and enrolled him in a no fee government school. When the GREAT Foundation team went to Onkar's school, it met some bright, highly motivated students from low income communities who wanted to become engineers. GREAT Foundation offered its "Project Udaan: A Stairway to IIT" to them. This was in 2016.

After being coached rigorously in Physics, Chemistry, Math, Logical Thinking and English by Project Udaan Faculty, and with his own hard work Onkar was able to take the first step toward his dream. Onkar wrote the SSC board exam in 2018 with the aim of getting 90% marks. When the SSC board results were declared, Onkar Shinde had scored 96.2%. He had topped all the city's municipal schools. Along with him, four other Udaan students scored 95%, four got 90% while another four scored above 86%. All the students have won a scholarship of Rs.51,000/- each. Onkar got Rs. One Lakh. This game changing transformation of 13 students in the batch was inspired by Project Udaan and remains an achievement of sorts to which our donors and well-wishers have contributed to in abundance.

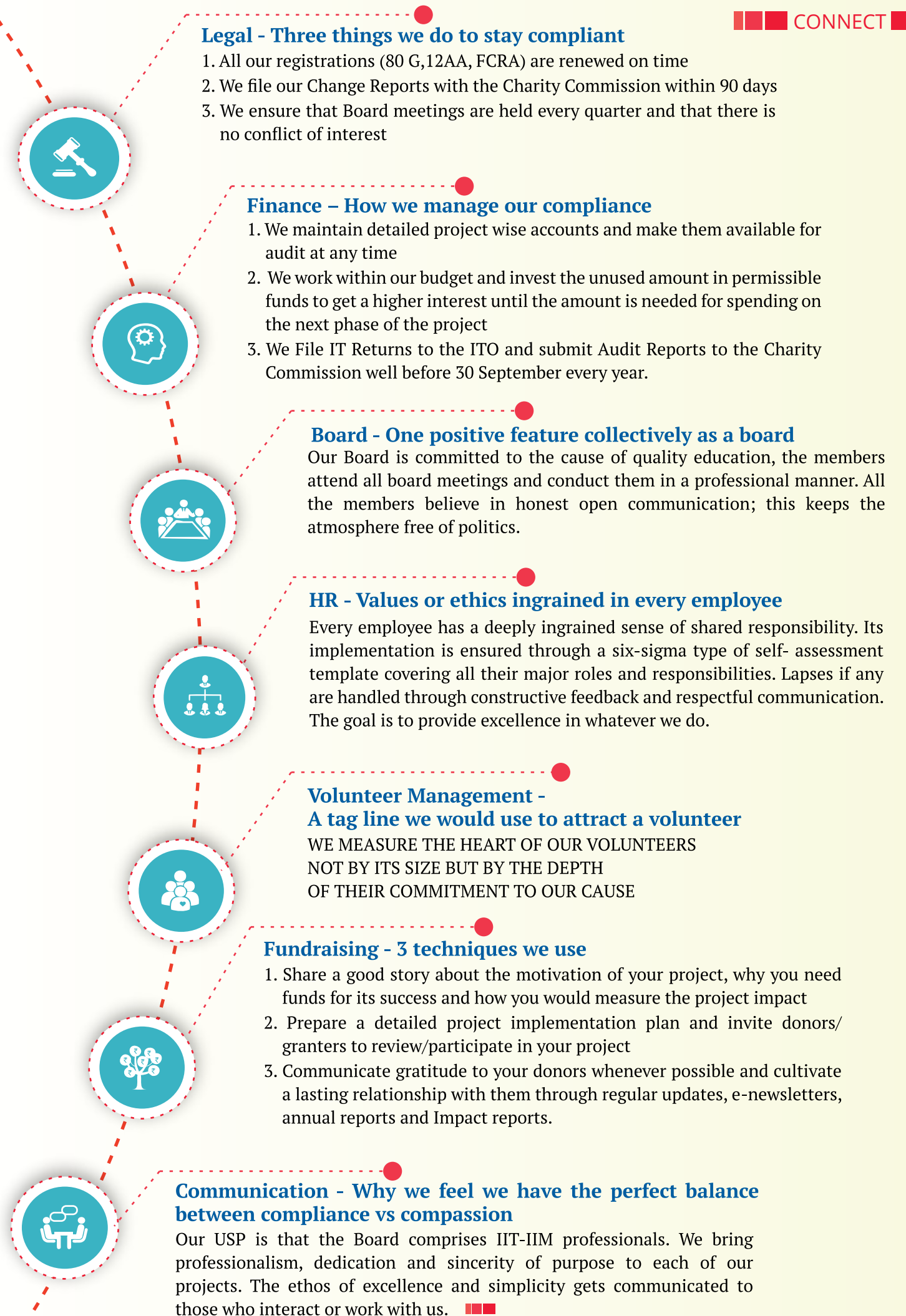
The thoughts behind creating GREAT Foundation

CREATING AN INCLUSIVE SOCIETY THROUGH QUALITY EDUCATION

GREAT Foundation started with the idea of providing an equal opportunity for socio-economic mobility to less privileged students through quality education. Having seen conceptually under-prepared students enter the IITs through affirmative action and leave the institute without a degree, I decided to experiment with the idea of training school students before they would get selected to the IITs.

Quality education was to be achieved through direct classroom teaching with the help of volunteers and extensive teacher training to raise the general level of pedagogic engagement in government schools. What was meant to be offered as an intervention in partnership with the schools proved unsustainable in the light of the mismatch between the expectations/approach to education and the lack of focus on learning outcomes. Hence, for the last two years this project is being offered independently by GREAT Foundation Faculty to a small class of highly motivated, bright less privileged students at a specially-run centre. Having coached the students for two years and seen their results in the SSC Board exam, it appears that the gamble may pull off. We have two more years to go and are hopeful that if the project works for the first batch, it could be scaled up to the advantage of many others.

It is our firm belief that provided rigorous training to build their conceptual foundation, less privileged entrants to the IITs can enter/graduate with laurels from national level institutions as any other socio-economic group.



The heart of organisation's work

I cannot really remember when my love affair with mangroves started. I remember reading about mangroves in my childhood – a secret mysterious world waiting to be explored, full of exotic creatures – a world inhabited by snakes, crocodiles and tigers; a world from which shipwrecked sailors found refuge from pirates, or where pirates found refuge from the navies – these were my childhood dreams. Reality was quite different.

I still remember with horror one of my first site trips to Raigad District in 1983. We had been invited by the State Government to accompany a group of Government officers and industrialists who were being taken around by the Collector to identify sites for the location of coastal industries. One of the first sites shown to us was the beautiful beach at Mandwa. I still cannot decide whether the Collector was serious or joking when he said this pristine beach was suitable for ship breaking! But worse was in store – we were taken to the Rewas jetty, (which is surrounded by a vast expanse of mangroves), and the Collector proudly informed the group that about 100 hectares of land could be made available for industrialisation within 3 months by reclaiming this “wasteland”. I couldn't believe my ears – this time I was sure he was not joking – and I launched off into an impromptu lecture on the importance of mangroves and wetlands, much to his embarrassment. Looking back in time, I think this was a crucial day, and the battle to protect the mangroves and coastal areas was joined.

The thoughts behind creating Conservation Action Trust

Since my college days, I was associated with WWF and BNHS. I continued to work for environment by joining Bombay Environmental Action Group and being associated with various other NGOs such as SOCLEEN, INTACH, Indian Heritage Society, etc. and various Committees appointed by the Bombay High Court, the MoEF, and the Maharashtra Government.

Conservation Action Trust [CAT] was formed in 2005 with an objective to ensure that the environment is conserved and protected. CAT has completed 13 years of making a difference and continues to work for protection and conservation of coastal areas, forests, tiger habitats and corridors. CAT has been working on clean energy initiatives and have supported locals with clean energy solutions. CAT through litigation, policy level interventions and advocacy has opposed the industrial and infrastructural projects on the coasts, empowered the local communities and opposed any dilution in the rules and regulations that govern the coastal areas.

We are happy to share that due to our work more than 15,087 hectares of mangroves have been notified till date in the State of Maharashtra. Moreover, we have prevented denotification of forest areas, we have been responsible to ensure that public transport vehicles get converted to CNG and that our Sanjay Gandhi National Park stays protected – by stopping the illegal quarries and removing encroachments, amongst other successes.



Legal - Three things we do to stay compliant

1. We maintain a 'calendar' with deadlines for the various compliances.
2. We submit all the necessary documents regarding donations/returns/changes/reports etc. to the relevant regulatory authority.
3. Moreover, reminders and updates from CAP team are a great way to stay compliant.



Finance – How we manage our compliance

1. We have a great team of Accountants who ensure that all the financial compliances are met.
2. We regularly maintain books of accounts.
3. All the FCRA related updates are uploaded on the MHA website, as required.



Board - One positive feature collectively as a board

Our Board of Trustees comprises of eminent workers from various fields related to environmental and social work. They are fully supportive and 100% committed.



HR - Values or ethics ingrained in every employee

Each team member of CAT is self-driven.



Volunteer Management - A tag line we would use to attract a volunteer

- Do you see our environment degrading? Do you find any wrongdoings in your neighbourhood? Do you see trees/mangroves being destroyed? Do you want to fight pollution? Take action and play an important part in saving our environment.'
- 'Do you want to do your bit for the environment? Want to participate in a good cause but don't know where to start? Volunteer with us and get actively involved in our various projects.'




Fundraising - 3 techniques we use

1. Transparency
2. Ensuring that we follow our Vision and Mission
3. Implementing the project as per the guidelines discussed and agreed with Donors for continuing partnerships



Communication - Our USP

Our communications are short and sweet. 



The heart of organisation's work

Ms. Anamika Soni, a childhood cancer survivor, has been associated with V Care since her diagnosis at the age of 4. She really knew nothing about the seriousness of the disease. All she wanted was to participate in the fun activities being organized by V Care. She was always the first to join us. Being a chirpy naughty girl, she won our hearts and was the leader of all the fellow patients.

She overcame the fight and also completed her Masters in Kathak. She decided to shift to Mumbai so that she could earn and make a living. Last year, she came with stars in her eyes. There were people who had promised to help her. Soon she realized that some wanted to exploit her. Once again V Care supported her with stay, some assignment and by giving her opportunities to showcase her talent by reaching out to the volunteers who wanted to learn dance, and by getting her introduced to various dance schools so she could learn from the best. She started teaching patients for various events and teaching children at the same Dharamshala where she herself stayed as a patient. This all has helped her in grooming herself, become wiser and also got her recognition. All this has made her happy and content. Today Anamika looks back on her cancer as a thing of the past. A poem by Mr Hariyansh Rai is her philosophy. Koshish karne waalon ki kabhi haar nahi hoti. (Those who keep trying can never loose) Anamika is the V Care Victor Award recipient, for 2017.



The great mind behind our work

Mrs. Vandana Gupta, Founder was affected by Hodgkins Lymphoma 25 years back. As a survivor, she was very adamant and made a promise to herself that she would use her Cancer Journey to give back. That promise became her mission and determination. Setting up of V Care was instrumental in her emotional recovery. Cancer gave her patience, perspective and gratitude. Through her survivorship she is able to provide hope to others. From V Care perspective, she cared most about the patients. Wanted to make sure that she and the team were there for every patient when they are diagnosed, through treatment and beyond. She cared because she believed that that life with cancer is still life and all of us together should be able to help live it.

V Care follows Vandana's CAN-DO attitude. This is the inherent approach of the organisation's culture and the result of our exceptional committed volunteers and project staff. Her vision is to continue to provide accessible range of personalised support for anyone affected by cancer and to continue to improve the reach of cancer services within the community.



Legal - Three things we do to stay compliant

1. An anti-bribery and anti-corruption policy in place.
2. Ensuring the validity of all necessary certificates.
3. Quarterly uploading of FCRA receipts on MHA.

Finance - How we manage our compliance

1. All cheques must have two eligible signatures. These are appointed by the board.
2. Financial statements are audited by an independent licensed public accountant.
3. The internal auditor reviews the budget every quarter to ensure that the finances are in balance.

Board - One positive feature collectively as a board

The Board members serve without remuneration, meet regularly and are updated on the working of the organization.

HR - Values or ethics ingrained in every employee

1. The volunteers are committed, dedicated and have the desire to Serve.
2. V Care Foundation has an employee's guideline. A copy of this is given to all volunteers.

Volunteer Management - A tag line we would use to attract a volunteer

Volunteers are an important part of the organization and our respected for the work they are doing in achieving this gigantic work at V Care.

Fundraising - 2 Success Mantras

1. Fundraising applies to all employees, volunteers, members, board and affiliates of V Care foundation.
2. All communication, written, verbal or otherwise related to fundraising activity is truthful and without exaggeration.

Communication - Our USP

V Care Foundation is an organization of action, a community of engaged professionals who create, pursue, perform, and achieve in support of the Foundation's mission and vision. During the past years V Care has collectively embarked on a journey to advance our vision and ensure that patients feel cared for, get the information and financial support they are seeking. At every layer of our organization, each individual plays a valued part in moving V Care Foundation forward.

Dear Readers & CAP Affiliates,

In the data form that we asked organisations to fill at the start of the year, we realise that many of you have left the Niti Aayog/NGO Darpan Id space blank or written NA.



Please note

- The Unique ID is mandatory for NGOs wanting to apply for grants under various schemes of Ministries/ Departments/ Governments Bodies
- It is also mandatory for NGOs registered or wanting to register or seeking renewal under FCRA 2010.

We are specifically inserting this because many of you have mentioned that you have FCRA in your data form to CAP but the Niti Aayog field was blank.

FYI

NGO-Darpan platform is an upgraded version of a similar initiative started by the former Planning Commission in 2006. However, back then, registering on the Planning Commission's platform was not mandatory.

Niti Aayog is now appointed as the nodal agency for the purpose of registration and accreditation of NGOs/ voluntary organizations seeking funds from the government and registration or prior permission under FCRA 2010.



MYTH

FACT

All contributions including commercial receipts are treated as Foreign Contributions?



All commercial receipts such as fees are outside the purview of FCRA.

A donation given by Non-Resident Indians (NRIs) is treated as foreign contributions'?

Contributions made by a citizen of India in another country (i.e. Non Resident Indian), from his/her personal savings, through the normal banking channels is not treated as foreign contribution.

Donation by a person of Indian origin having foreign nationality but holding a PIO card can not be considered as foreign contribution.

Donation from an Indian who has acquired foreign citizenship must be treated as foreign contribution.

CAP's Compliance-Complete Certification for NGOs is a capacity building programme best suited for non profits who would like to set/review their compliance systems and develop policies for the organization.

They will work with CAP towards being compliant in the following core areas – **LEGAL, BOARD GOVERNANCE, FUNDRAISING, HUMAN RESOURCES, VOLUNTEER MANAGEMENT, STRATEGY & COMMUNICATION/REPORTING**

A series of workshops held through the year will successively broaden the scope of training in each of the aforementioned areas. This will be done in a structured manner, with each workshop following a defined syllabus. Each workshop will be followed by a one-on-one consultancy with the NGO.

NGOs that are part of this program will depute different personnel working in these core areas to attend the workshops and consultancy sessions. Each such representative will work towards fixing the compliance required within that area. For example, an accounts employee will attend legal workshops to build his/her organisation's resources and ensure that it remains compliant in this area.

At the end of the year, if they successfully fulfil their requirements on **CAP's proprietary Compliance Checklist** and have **instituted policies** and systems to ensure that they remain compliant, they will be awarded a **Compliance-Complete Certificate** by CAP.

This program is open to only ten non profit organizations a year at a nominal fee (subsidised by a donor) who are chosen through an interview process.

For more details write to – meher@capindia.in

If your organization would like to avail of this certification in FY 2018-19 , write to us.

Certificate Of Compliance

awarded to

*For meeting or exceeding the compliance
requirements for non-profit organizations*

presented by



CENTRE FOR ADVANCEMENT OF PHILANTHROPY

Verified by:

Date: