

Social Accountability Standard (SAS) 1

Fundamental Documents

OBJECT

01.01 The main objective of this draft standard is to facilitate a socially accountable basis for the constitution, registration and functioning of NGOs. It should help in assessing the legal consistency and accountability aspects embedded in various documents.

EXPLANATORY STATEMENT

01.02 NGOs have a legal existence i.e. an artificial legal entity, which is bound by the principles of *Privity Cestui Que Trust*, which means the right to sue and the obligation of being sued.

01.03 Documents such as the Trust Deed, bye-laws or even project contracts are documents subject to legal rights, obligation and duties. Such documents provide the basis of the rights and duties to organisations and group of persons and can be very crucial and jeopardise the interest of various stakeholders in the short or long run. Therefore it is important to understand the implications as well as basics of legal documents which form the basis of NGO constitution and governance.

01.04 For instance, a clause in the main objectives which allows religious activities may result in rejection of registration. Or in a project agreement if there are some charges or expenses charged on percentage basis which results in a surplus may affect the '*not for profit*' nature if not drafted properly and endanger the exemptions and privileges enjoyed. Some fundamental documents and the pertaining issues are discussed in this standard.

TRUST DEED OR MEMORANDUM OF ASSOCIATION

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

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

- Name of the organisation.
- Duration of the organisation, usually perpetual
- Purpose for which the organisation is formed.
- Provision for conducting the internal affairs of the organisation.
- Names and address of the subscribers / founders.
- Address of the registered office.
- Names and address of the Secretary and initial Board Members
- Clause for distribution of the assets on dissolution.
- Declaration regarding the not for profit nature.

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

01.08 A specimen of Memorandum of Association of a society is provided in *Annexure-1*, A specimen of Memorandum of Association of a company is provided in *Annexure-2*, a specimen of Trust Deed is provided in *Annexure-3*.

ARTICLES OF ASSOCIATIONS OR THE BYE-LAWS

01.09 It is the legal document that is filed along the memorandum of association with the appropriate government authority at the time of registration of an NGO. This document comprises a set of rules and regulations which enables the organisation to govern, manage and conduct its affairs. It is necessary that the bye-laws are clearly stated, shared and understood by all the stakeholders. The issues normally addressed in bye-laws are as under :

- Interpretation of expressions used.
- Requirements pertaining to notice, frequency and quorum of board and general meetings.
- Voting criteria and procedure including use of proxy.
- The board, its size and scope of authority.
- The method of nomination, election tenure of functionaries and board members.
- Membership criteria, rights and duties.
- Termination of membership.
- Code of conduct.
- Custody of assets and funds.
- Bank account operations.
- Scope and authority of the chief functionary.
- Accounts and financial reporting.
- Audit.
- Indemnity.

A specimen of Rules and Regulations of a society is provided in *Annexure-4*, A specimen of Articles of Association of a company is provided in *Annexure-5*.

PROJECT CONTRACTS

01.10 An NGO works either on the support of its own funds and internal accruals or on external funding. When externally funded projects are undertaken they are usually based on a legal contract.

01.11 A donor and NGO partnership is a legally bound activity and such partnership should have the following characteristics :

- Clarity of purpose
 - Clarity of rules & functions
 - Clarity of working methods
 - Clarity of practice standards
 - Clarity of resources & performances targets
-

- Clarity of accountability & ownership
- Clarity of mutual trust & commitments

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

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

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

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

01.14 A specimen of model contract is provided in *Annexure-6*.
