

# AccountAble™

Administrative Provisions in By-laws

Issue # 85; November '02; Released: May '03

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A Trust Deed or Memorandum of Association defines the personality of an organisation. It is, therefore, a very important document. However, this realization sometimes comes very late in the life of an organisation.

At the time of forming the organisation, some people take the deed or constitution lightly. They just copy it from another organization's deed or memorandum. This can be a big problem later if there is a dispute<sup>1</sup> or a faction-fight. Even in normal running of the trust or society, it can cause serious inconvenience.

In the following paragraphs, we present some administrative provisions that may be useful additions to your Trust Deed or Memorandum and Bylaws. If you are planning to form a new organisation, these could be incorporated in the deed or bylaws. If you have already formed your organisation, you could insert these whenever you next modify the deed or bylaws.

### Trustee or office-bearer?

We have used the terms 'trustee' and 'office-bearer' interchangeably. If your organisation is a trust, then you should use the word 'Trustee' while drafting the Trust Deed. If it is a society, then use the words 'office-bearer' or 'Governing Body member', or a similar word.

<sup>1</sup> See the story 'Power flows from the barrel of a Receipt...', page 3, AccountAble 45: Receipts.

### Moving the office

**"The registered office shall be located in the state of \_\_\_\_\_ / (anywhere within India). It can be moved anywhere in the state of \_\_\_\_\_ / (anywhere within India), if the Governing Body so decides. However, any such change in the address shall be notified within a month to the concerned authorities. The organisation may open and maintain additional offices in any state in India or abroad."**

The above clause (in Memorandum or Trust Deed) allows you to move the office anywhere within the state or anywhere within



India<sup>2</sup>. It also provides for opening additional offices in other states or abroad.

### Area of Work

**"The organisation can carry out its activities anywhere in India or in other countries, within the limits permitted by law;**

**Provided however, that in case the organisation undertakes activities outside India, it shall ensure that expenditure on these is kept within limits / parameters permitted under Income Tax Act, 1961."**



Many people think that a Society can work only in the state where it is registered. This

<sup>2</sup> Some state registrars may not allow you to move the registered office outside their jurisdictional state. In such a case, choose the first part of the clause: '...located in the state of \_\_\_\_\_'.

is not correct. A registered society is somewhat like a citizen of the country. And just like a citizen, it can choose to expand its work in other states.

This clause<sup>3</sup> will allow your society to do just that. However, in the absence of this clause, it may not be able to start work even in a district in the neighboring state.

In this era of globalization, many Indian NGOs have started looking beyond the borders of India. The above clause takes care of this also.

The proviso given in the second paragraph is important because of the Income Tax Act, 1961. Income Tax Act mainly allows a deduction for money spent on charitable object within India<sup>4</sup>. If you go beyond India's borders, then some restrictions come into play<sup>5</sup>. Including this proviso in your bylaws will make the income tax people feel happier.

### Books of Account

**“The books of account of the organisation shall be kept at its registered office or at any other suitable place approved in advance by the Governing Board through a resolution.”**

Normally the bylaws provide for keeping the books at the registered office. This may be different from the main office, where the books will actually be kept. The above clause in the bylaws will allow you to keep the books at an alternative location also.

### Removal of Trustee / office-bearer

**“In the following event, a vacancy in the office of trustee shall be created: ...**

- **When a trustee is convicted for a criminal offence involving moral turpitude or convicted for an offence involving any financial irregularities.”**

This is a fairly standard clause<sup>6</sup>, except for the last phrase. This will enable you to remove a person who has diverted the society funds or has been involved in any other serious financial irregularities.

### Quorum<sup>7</sup>

**“There shall be normal quorum when at least 1/2 of the total strength of trustees or 5 members, whichever is more, are present at any meeting of the trustees.**



**If a quorum shall not have assembled within half an hour after the time appointed for the**

**meeting, the meeting shall be adjourned to the same time and same day next week and shall be convened after 30 minutes at the same place as originally declared.**

**In such an adjourned meeting, a lower quorum of 1/3 of the Trustees or three trustees, whichever is higher, will be sufficient and all the business transacted in such meeting shall be considered legal and valid.**

**Provided, however, that in the absence of the normal quorum (i.e. 1/2 of the total strength of trustees or 5 members, whichever is more) at the adjourned meeting, no business requiring a majority higher than 1/2 of the members present and voting, will be transacted.**

**Provided further that at an adjourned meeting, the chair shall not permit discussion or decision on any matter, which**

<sup>3</sup> Some state registrars may object to this clause initially. You can then say that the clause specifically restricts the work area to what is permitted by law.

<sup>4</sup> Clauses (a) and (b) of Section 11(1)

<sup>5</sup> Section 11(1)(c)(i) of the Income Tax Act, 1961: “...for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India...”

<sup>6</sup> Only relevant portion of the clause is given here. There are normally other sub-clauses in this.

<sup>7</sup> The minimum number of members (usually a majority) who must be present for a body to transact business or take a vote. Black's Law Dictionary, 7<sup>th</sup> Edition, 1999, West Group, Minnesota.

**has not been specifically listed in the notice for the original meeting.”**

In most bylaws, some rules regarding the quorum are laid down. Mostly these indicate the minimum number of members required at a meeting. If sufficient members do not turn up, then no decisions can be taken at the meeting.

### Takeovers and faction-fights

A Trust called Lok Jagran Manch (लोक जागरण मञ्च) has seven trustees named A, B, C, D, E, F and G.

A meeting of the Board is called by B on Saturday, 1<sup>st</sup> March 2003 at 10:30 a.m.. The Agenda includes ordinary matters. It also includes a statement, 'Any other item by permission of the chair'.

The date of the meeting falls on Maha-shivratri (महाशिवरात्रि). Most of the trustees are celebrating the festival. Only two trustees B and E turn up for the meeting. As the quorum is not complete, the meeting is adjourned to same day next week i.e. Saturday, 8<sup>th</sup> March 2003 at 10:30 a.m. This is according to the bylaws.

However, 8<sup>th</sup> March happens to be International Women's Day. Most of the trustees are busy with the celebrations in their organisations. B and E reach the venue by 10:30 a.m. No one else shows up till 11:00 a.m. when the meeting is convened. They decide to go ahead with the meeting. This is permitted under the bylaws, as the quorum is waived in a reconvened meeting.

B is in chair. After discussing various matters, E requests permission to remove some of the trustees. B permits the item to be discussed.

After discussion, it is resolved that Trustees A, C, D, F and G are removed from their office due to various reasons. In their place, L, M, N, O, and P are elected.

Thus, Lok Jagran Manch has now been effectively taken over by a faction. The other trustees have a long legal battle ahead of them, if they decide to fight the take-over.

Sometimes, enough people do not turn up at a meeting. Therefore, most bylaws have a provision of adjourned<sup>8</sup> meetings. What happens if sufficient people do not turn at the adjourned meeting also? This can create a deadlock. To avoid this, most bylaws say that quorum is not necessary at an adjourned meeting.

Unfortunately, this also creates a loophole, which can be misused (see story box 'Takeovers and faction-fights').

The draft provision given here tries to overcome this problem. It allows organisations to conduct routine business at an adjourned meeting. However, it takes away the power of the chairperson to permit discussion on additional matters, which may not have been listed in the agenda. This helps prevent discussion of important matters, without due notice.

### Resolution by Majority

**“Every resolution submitted to a meeting, except those enumerated in the following paragraph, shall be decided by a simple majority of the trustees present at such meeting and voting on the same. Each trustee shall have right to give one vote but in the event of equality of votes, the Chairperson of such meeting shall have a second or casting vote whether or not he/she has previously voted on the question.**

**In the question of appointment of new trustees, removing the name of any trustee, increasing the number of trustees of the trust, and amendment of the objectives of the trust or dissolution of the trust, the resolution shall be required to be passed by 3/4th of all the trustees present in the meeting. It is also provided that such resolutions can be passed only at a meeting where a minimum quorum of 1/2 of Trustees or 5 trustees, whichever is higher, is present.”**[SA1]

<sup>8</sup> Suspended or postponed. The meeting is then held on the same day in next week, at the same time and the same place.

Ordinary matters can be decided by simple majority of the trustees. However, there should be safeguards to this provision. Why? Majority is calculated on the basis of number of persons *present* in a meeting. So if only 2 out of 7 trustees are present, a resolution could even be decided by just one vote<sup>9</sup>.

The second paragraph contains the required safeguards. It gives a list of matters which are sensitive. These matters can only be decided by 3/4th majority. Also a larger quorum is required at such meetings.

You may wonder why these safeguards can not be applied to all the decisions of the trust. If we do that, then it will become very difficult to pass even simple resolutions in trust meetings. All trustees have other responsibilities also. It is difficult to make sure that all of them can be present at meetings on a regular basis. Therefore, we have to divide trust decisions into two categories: routine and important. This is similar to the way the Indian Parliament works – important decisions require a larger majority.

### Resolution by Circulation

“Any matter or business of a routine or formal nature, which calls for an urgent decision, except those enumerated in the following paragraph, may be determined by a circular without meeting of the trustees provided that the matter is circulated to all the trustees in writing and the resolution is supported by majority of the trustees through their written consent. The circular resolutions shall be treated as any other resolution and they will have the same validity as other resolutions.



The following matters can not be decided through a resolution by circulation:

- i. appointment of new trustees;
- ii. removing the name of any trustee;
- iii. increasing the number of trustees of the trust;
- iv. amendment of the objectives of the trust; or
- v. dissolution of the trust.”

This clause will save you from the trouble and expense of calling a meeting of the Trustees every now and then. It will also allow you to get decisions on urgent matters without waiting for the next meeting.

Normally only straightforward resolutions are passed in this manner. Resolutions that require discussion are passed in meetings only.

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<sup>9</sup> The chairperson of the meeting has a casting vote in case of a tie.