

# Understanding Organisation Due Diligence for Donor Funding

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## Session layout

1. Donor landscape in India
2. Overview, rationale, importance, process, being ready
3. Institutional areas covered during due diligence viz.,
  - Constitutional
  - statutory and regulatory
  - Mission, Vision and core values
  - Governance
  - Policies and procedures
  - Audit and assurance
  - state of health-financial statements
  - Visibility & Reputational

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## Social sector investment in India

- Total social sector investment (expenditure) in FY 2023: Rs. 23 lakh cr (8.3% of GDP) showing annual growth rate of 13% versus need of Rs.35 lakh cr as per Niti Aayog social funding target at 15% of GDP.
  - Govt sector: 95%
  - Private Sector:5%
- Total private funding: Rs.1,21,000 cr in 2023E with category breakup as follows:
  - CSR-23%-Rs. 28k cr
  - \*HNI/UHNI-28%-Rs.34k cr
  - Retail-30%-Rs.36k cr
  - Foreign-19%-Rs.23k cr

*(Source: India Philanthropy Report 2024-BAIN & Co)*

\*HNI/UHNI includes Family Foundations

-HNI-net worth of Rs. 5 cr, -VHNWI-net worth between Rs. 5 cr and Rs.25 cr, -UHNI-net worth above Rs. 25 cr

## So which are the donor categories in India

- Government
- Family foundations
- CSR
- Retail
- Foreign contribution

Donor due diligence is imperative for all above funding entities also considering specific regulations maybe except retail.

## What donors look for before funding NPOs

- **Cause**-where do you find them-s.2(15) Income Tax, Schedule VII to Section 135 for CSR, Purpose under FCRA-CREES, charitable activity defined in GST Notification, permitted activities for SSE regn

- **Transparency**-see through
- **Safety**-desired results through funds-fiduciary
- **Communication**-interface, understanding
- **Measurable results**-tangible and evidence based
- **Sustainability**-desired behaviour firmly seeded among beneficiaries/TG

## Due diligence

1. Literal meaning of due diligence is **'required carefulness'** to **avoid harm or loss**
2. Due diligence is universal whether it is for profit or not for profit
3. In donor funding parlance, due diligence **is scrutiny/evaluation** of an organization and its work by a donor for **selection to partner** on an **engagement**.
4. The key areas evaluated during donor due diligence
  - Organizational due diligence
  - Programmatic due diligence
5. Common scenarios for donor-donée engagement
  - Donor reach out to organization directly
  - Organization reach out to donor directly
  - External agency hired by donors reach out to organization
  - Organizations apply for grants against EOI/RFP placed in public domain

## Rationale for org due diligence

Objective for org due diligence

- Understand the organisation to determine **suitability** for making grant award
- Mitigate **risk**
- Ensure funds are used **effectively** for the intended **purpose**
- **Remove bias** in decision making
- Opportunity to build mutual **trust** and lay out **expectations**
- From the point of grantee, it is an opportunity to **showcase, understand** and **overcome shortcomings**

# Data collection for due diligence

Methodologies for data collection for due diligence

1. Desk review through secondary data
2. Data obtained from organisation
3. Self-assessment checklist obtained from NGO
4. Scrutiny of audit/assurance reports of past/current donors
5. Onsite visit/meeting org leadership for org due diligence
6. Field visit for programmatic due diligence for a pending grant proposal

The exercise maybe conducted by donor staff or third-party professionals

## Process of org due diligence

1. Begins once a proposal is submitted against EOI or standalone as pre-award activity of the grant management life cycle
2. Conducted by grantor before formal engagement with a grantee
3. Involves detailed scrutiny for various aspects of compliance, finance etc
4. Hard and soft due diligence-quantitative data vs qualitative factor

# Areas covered during Org due diligence

1. Constitutional
2. Statutory and Regulatory
  - Registration/approval
  - Compliance
    - Registration related
    - Constitution related
3. Mission, Vision and core values
4. Governance
5. Policies and Procedures
6. Audit and Assurance

7. State of financial health-financial statements

8. Visibility

## Constitutional

**1.** Type of charitable organisation permitted in India as per applicable law:

- society
- trust
- section 8 company

Each type of entity has its unique features. We are talking of public charitable or religious cum charitable institution but not private or religious institution. Mere constitution does not entitle the entity to benefits like tax exemption, FC receipts etc unless compliance of such specific laws is ensured.

**2.** Registration/incorporation documents-MOA C RCR for society, Trust deed for trust and MOA and AOA for section 8 company

These documents is charter and rules and procedures for running the entity

**3.** Mandatory provisions-name, state, geography, objects, General body, Governing body, Powers and Duties, Accounts, Banking, Audit, Dissolution, irrevocability for trust.

Very important that constitution documents are complete

**4.** Registration of constitution documents with appropriate authorities as per statute and state procedures-sub registrar or charity commissioner for trust deed, deed and not trust is registered, Registrar of society or as prescribed for society and ROC for section 8 company both for section 8 License and COI

**5.** Knowing your registration no and date is crucial-like for a trust

- Modification of incorporation documents and compliance for such modification under various laws-constitution related authority, Income Tax, FCRA etc
- Renewal of registration as maybe required by state law-applicable mainly for society form of organisation
- Vintage of organisation matters

## 2a. Statutory Registration/Approval

- Registration/approval for Income exempt from tax-new regime wef 1.4.2021:
  - 12AB registration and period of validity-10A objects mentioned is important
  - 80G approval and period of validity
  - 10(23C) approval cases merged with section 11-13 wef 1.10.24, 10(46), 35 for scientific, social, statistical research, still some donors are asking about 35AC registration (revoked in 2016 and no benefit post 31.3.2018)
  - Form 10A as filing application and Form 10AC as approval for re/registration/approval of existing
  - charitable entities for tax exemption under Income Tax Act
  - Understanding provisional and regular registration and related provisions very important since validity itself comes into question.
  - Form 10AB as filing application and Form 10AD as approval for renewal-3 years for provisional registration/approval and 5 years for regular registration/approval, modification of objects clause.
  - Institutional areas covered during due diligence-2- Compliance
  - Each registration/approval will be unique to a particular section
  - Very important to understand and adhere to terms and conditions of issue of registration/approval since any adverse decision could pose exertional risk to the organisation .
- FCRA registration
  - Nature of activity-ensure congruity between charter, 10A and FC-3A/C regarding objects/purpose
  - Period of validity of registration
  - Organisation of Political nature, public servant on Board
- EPF, ESIC, PT, SCE Act
  - EPF and ESI registration based on threshold although there is greyness about applicability of ESI Act to charitable establishments, PT registration in concerned state and SCE license and display for SCE Act. PT and SCE are state acts
- NGO Darpan Registration
  - Obtain UIN by registering on Niti Aayog's Darpan portal. Mandatory for NGOs- seeking govt grants, FCRA registration and reporting, opening and operating bank

accounts which is responsibility of the Bank/FI under PMLA and for 80G approval

- PAN, TAN
  - For deduction and payment of income tax
  - See date of incorporation in PAN matches with constitution document. For section 8 company, CIN, PAN and TAN all mentioned in COI
- GSTIN
  - Registration for making incidental business-taxable supply (threshold) unless exempt by Notification
  - Notification No 12/2017 provides for exemption when (a) org is registered under section 12 A of income tax act and is undertaking charitable activity defined as per GST
  - Understanding what constitutes commercial activity is important else it can jeopardise the charitable status itself
  - Donors specially CSR need not setup service contracts and insist on GST and TDS since grants are not within the definition of taxable supply under GST Act
- URN for CSR-local area preference
  - Form CSR-1 with MCA to receive CSR funds wef 1.4.2021.
  - Eligibility for CSR funding as implementing agency
- Registration of contract under Apprenticeship Act 1961 if employee strength is above 30
- Registration with SSE-to register and list securities on social stock exchange. Valid for 1 year and renewed thereafter

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