

Mastering good governance A guide for the development sector

Board effectiveness

Introduction

Tshikululu understands the increasing pressure on South African not-for-profit organisations (NPOs) to become more professional and effective, and to act according to established codes of good governance. It is our aim to shed light on the role of NPO boards in this process. It should be noted that, in this document, the term 'board' is used either to refer to a board of directors in the context of a company, or to a board of trustees in the context of a trust.

This document will highlight some of the more general issues that relate to all boards, and some that relate specifically to the boards of NPOs. However, attributes of an individual organisation's board and its responsibilities will be outlined in the organisation's founding document. Please refer to the first part of this series, [Mastering Good Governance - NPO and PBO registration](#), for details on creating a founding document.

For more information: Click to visit the highlighted website, or see the URL in the numbered **Resources** section at the end of this guide.

Integral to good governance is a board that is able to steer the organisation effectively and provide necessary support, from legal compliance to securing resources. An effective board carries out its role and responsibilities in such a way as to help an organisation reach the goals it has set.

Although there are a number of formal functions that a board is required to perform, in the case of NPOs the effectiveness of a board is often dictated by much more nuanced factors.

It is hoped that this document will help to ensure that the basic legal requirements of a board become second nature to organisations, allowing these organisations to focus on more subtle considerations.

What is good governance?

The first question that arises naturally from a conversation about good governance is: 'what is good governance?' What does it mean for a board to provide an effective governance structure for its organisation?

Good governance entails a thorough knowledge of all factors, both internal and external, that dictate the success of an organisation. The legal implications of establishing and maintaining an organisation are the responsibility of the board. If an NPO is not complying with legal provisions, the directors of the board are accountable. It is therefore sensible for a board to draw up a legal profile detailing all of the [laws that apply to that organisation](#), and the way which they are being adhered to.

Legislation: Links to some of the legislation applicable to NPOs has been compiled in the **Resources** section at the end of this guide.

Good governance depends on strategic direction, which should be steered by the board. The board should also assume the leading role in ensuring that the organisation has sufficient resources and funds to do its work effectively, and will also make sure that the organisation does not spend more money than is available. Finally, a good board will oversee the activities of the organisation and make sure that it is fulfilling its mandate.

What follows are a number of attributes that give an indication of whether an organisation is well governed or not. Many of these attributes are controlled by the board of that organisation.

What is good governance? continued

An organisation that exercises good governance:

- Is accessible and responsive to beneficiaries, donors and staff;
- Supports transparency – freely and accurately discloses information about governance, finance and operations;
- Operates with a sense of responsibility, integrity, honesty and respect;
- Embraces diversity and inclusiveness;
- Ensures constructive conflict resolution;
- Regularly monitors adherence to applicable laws, regulations and by-laws;
- Takes action to build and protect its reputation and its interests;
- Involves stakeholders in planning and evaluation;
- Educates board members about their roles and responsibilities;
- Promotes public education on the work and value of the organisation;
- Engages in regular, objective assessments of its board, the executive director, and overall organisational performance;
- Offers quality service; and
- Contributes to a healthy work environment¹

Looking at this list, is your organisation exercising good governance?

¹ Wyngaard, R, Mellet, P, Gastrow, S, 2005. *Governing Boards in the Non-Profit Sector*. Inyathelo, The South African Institute for Advancement, Cape Town

Why is it important to have a board?

Before looking at the responsibilities of a good governing board, we must understand why it is important to have a board in the first place.

The most important reason for an organisation to have a board is to allow the management of that organisation to carry out its role effectively. If the board is able to perform all its required functions successfully, then the managing members of the organisation can focus on rolling out services to the organisation's beneficiaries in the knowledge that all the correct structures are in place, and all the necessary resources are available. In other words, management can focus on the day-to-day running of the organisation, with the board providing oversight.

The knowledge that an organisation has an effective board gives potential donors confidence in the ability of that organisation to manage their money effectively. This makes the job of attracting funding somewhat easier.

The responsibilities of a governing board

It is no use having a board if they do not carry out their roles and responsibilities effectively. Below is a short discussion of these roles and responsibilities.

Roles within the board

Although boards vary significantly in size and composition, there are four positions present in all boards:

The responsibilities of a governing board continued

- The chairman, who oversees the functioning of the board;
- The vice-chair, who supports the chairman where necessary;
- The secretary, who prepares board documents and drafts meeting minutes; and
- The treasurer, who takes care of the organisation's financial responsibilities.

What should board members know?

On being made a trustee of a trust or a director of a company, there is a certain amount of learning that needs to take place. This can be accomplished through a formal board induction process, or through a more informal process in which the new board member is taught on an ongoing basis.

The different documents to which board members should have access depend on the type of organisation in question¹:

	Not-for-profit company	Trust	Association of persons established in terms of a constitution
Founding document	Memorandum and articles / Memorandum of Incorporation	Trust deed	Constitution
Public office	Companies and Intellectual Property Commission (CIPRO)	Master of the High Court	Voluntary registration with the NPO Registrar
Governing structure	Board of directors, CEO and Executive Committee	Trustees / Board of Trustees	Management committee

Board members should be familiar with:

- The mission, goals, objectives, and vision of the organisation;
- The legal and tax status of the organisation;
- The financial practices of the organisation and the status of finances at the time of joining;
- The remuneration practices of the organisations; and
- Any contractual agreements that are in place, as well as familiarity with other stakeholders involved

Skills, attributes, experience and diversity

Aside from the different positions on a board that need to be filled, it is also important that the board is composed of people with different skills and attributes, which ensures that the appropriate expertise is available to run the board and the company effectively.

Different profiles offer different insights which are important in ensuring objective judgement when the board is making decisions of behalf of the company. It is for this reason that it is often helpful for people of different races, genders, and ages to be present on a board.

Particularly important in the case of NPOs is the representation of the community being served by that organisation. Community members bring unique insights into the particular issues being faced by that community, as well as an understanding of what strengths lie within the community, which could be an asset to the organisation in dealing with these issues.

Whether your board members are remunerated or not, being part of a board is a job! Select your board members wisely.

¹ Wyngaard, R, Mellet, P, Gastrow, S, 2005. *Governing Boards in the Non-Profit Sector*. Inyathelo, The South African Institute for Advancement, Cape Town

The responsibilities of a governing board continued

Most relevant, though, is the degree to which a community member is able to act and make decisions in the best interest of their community, as their own personal interests are integrally related to this. It is possible to conduct a skills audit of the board to measure whether more skills, or different skills, would help to govern the organisation more effectively.

Boards of non-profit organisations differ from those of other companies in a number of ways. Usually, members of non-profit boards are not paid for their services. Sometimes they are given a small stipend for their travel to and from board meeting venues, but this is not a form of regular income. Another difference is that members of non-profit boards cannot be voted out by the shareholders (as there are no shareholders of non-profits). This means that the lines of accountability do not run downwards, which can be slightly problematic. It is for this reason that a regular review of all board members and their contribution to the organisation should take place by the board itself.

Communication

Communication between board members, and between the board and the organisation, is very important. This can take many forms, some of which may work better in specific contexts than others. Monthly reports can be sent out, meetings can take place between the chairman and the manager, and sub-committees composed of board members and managers can be established.

The type of communication that takes place is also important. Keeping organisations advised as to what is going on at board level and in the organisation is important in creating a climate of mutual accountability and responsibility. Spreading positive messages about what the organisation is achieving helps those involved to feel empowered and proud of their work.

Aside from the communication between the board and the organisation, an NPO has a large group of stakeholders from various sectors of society to which it needs to report. The type of communication to beneficiaries and community members is very different to that directed towards funders or government, and a certain amount of sensitivity in this regard is necessary, as effective communication is a key contributor to the impression made by the organisation and dictates how stakeholders will respond to the organisation.

Everyday activities

The main activities in which all board members take part are board meetings, which tend to take place four times a year, though this can vary between organisations. It is at these meetings that the board is updated about the activities of the organisation, and members are given the opportunity to make decisions.

The chairman or the secretary is in charge of deciding when meetings should take place, and communicating these details to other board members. An agenda is drawn up which sets out matters to be discussed and decided upon in the meeting, and it is the responsibility of the chairman to ensure that all the points are discussed and that decisions are made fairly, taking all members' opinions into account.

Everyday activities continued

It is helpful to collaborate with other board members while drawing up the agenda, as this will ensure that no important topic is left out.

During the meeting, minutes should be taken to keep track of all the decisions and conversations that take place. These should be circulated after the meeting to ensure that everyone agrees on the way in which events have been presented. Once the minutes are signed off, these will constitute the formal record of the meeting.

Oversight

Strategy

The board's key roles include annually reviewing and endorsing the strategy of the NPO for the year ahead, monitoring management's execution of the strategy and providing guidance to management in this regard.

Financial

The board is responsible for ensuring that the organisation has sufficient resources to carry out its operations effectively. Sometimes, this entails making use of the collective network of all the board members, their individual contacts, and their individual backgrounds, which allow them to mobilise particular resources. Although many board members do not have these resources, they are useful when they do exist.

Aside from securing new resources, the board must ensure that acquired resources are used in effective and accountable ways. This includes the responsibility of establishing a financial policy and budget guidelines to which the organisation needs to adhere.

It is at this level that the salaries of the management committee are discussed and agreed upon, that financial statements are reviewed, and that annual audits are commissioned and approved. It is also the responsibility of the board to oversee what money is being spent on, and whether this conforms to the spirit and founding mission of the organisation.

Although many of the financial responsibilities of NPO boards have come about as a result of best-practice models that have been replicated in different scenarios, some of these responsibilities are legal requirements that are dictated by the Companies Act and the Income Tax Act.

Legal

As a legal structure, it is necessary for an NPO to adhere to relevant laws and legal frameworks. It is important for the organisation to know what type of entity the NPO is, and what laws relate to that entity. An organisation should always have a copy of these laws available to guide the board to ensure that the organisation remains compliant¹:

	Not-for-profit company	Trust	Association of persons established in terms of a constitution
Legislation	Companies Amendment Act 3 of 2011	Trust Property Control Act 57 of 1988	Common Law of South Africa Non-Profit Organisations Act 71 of 1997 (voluntary)

¹ Wyngaard, R. Mellet, P. Gastrow, S. 2005. *Governing Boards in the Non-Profit Sector*. Inyathelo, The South African Institute for Advancement, Cape Town

The board is responsible for formulating and reviewing policies relating to legal and ethical matters. In light of this, it is the duty of the board to set up a legal compliance framework to ensure that the organisation is not in breach of the law. In terms of tax, the organisation needs to register with the South African Revenue Service (Sars) as a taxpayer. If the organisation wishes to receive tax benefits, this, along with the various requirements, should also be explored through Sars. Registration as a public benefit organisation (PBO) benefits both the donor and the recipient, as none of the funding is earmarked for taxes and duties.

There are some laws and regulations specific to trustees that need to be observed in order to make sure that the organisation is legally compliant.

Trustees must apply for authorisation from the Master of the High Court. There are a number of documents and details that will be necessary for this process:

- Certified copies of trustees' or directors' identity documents or passports, as well as that of the donor or founder
- Acceptance of trusteeship
- Curriculum vitae for each trustee/member, which should include:
 - ID number, age, race and gender of the trustee/member
 - Residential address and address of service
 - Current profession and/or occupation of the trustee
 - Other directorships/trusteeships/memberships currently held (this would highlight potential conflicts of interest, if any exist)
 - Previous positions held, and previous directorships/trusteeships/memberships

The Master of the High Court will then issue a Letter of Authority, which will become the official list of trustees for that organisation and will give authority for the trustees of the trust to act on behalf thereof. The Master must also be informed when any of the trustees resign, upon which a new Letter of Authority will be issued. With the request for authorisation, trustees must provide the Master with an address to which all correspondence can be sent. If a trustee receives money for the organisation, it is important that this money is not transferred into the personal account of the trustee. The trustee is also not permitted to borrow any money from the organisation.

When people are employed by an NPO, there are a number of other laws that become applicable. The board and management should be familiar with these in order to ensure that no transgressions take place. Finally, if any contracts are signed during a grantmaking process, the organisation becomes legally accountable to the donor. It must be clear to all involved exactly what has been agreed upon to ensure that everyone within the organisation is carrying out their role in the way that was agreed to in the terms of that particular grant.

Programmatic

Programmatic oversight entails ensuring that the services provided by the organisation are of a sufficiently high quality, and giving direction when this is felt not to be the case. It is also the role of the board to evaluate the management of the organisation, and to make sure that the organisation leadership is performing its management function effectively. In extreme cases, it is the responsibility of the board to dismiss the manager or CEO. Sometimes, when running an organisation day to day, it is easy to lose sight of whether the activities of the organisation are true to its mission and vision; it is at times like these that board members, who have a less hands-on relationship with the organisation, are able to provide some useful perspective.

What other aspects of your organisation's business that you expect your board to oversee? Has this been communicated to new board members effectively and are they qualified for this role (and willing to fulfil it)?

Strategy and planning

Planning ahead and creating a cohesive strategy will give an NPO a clear sense of direction. This is beneficial in a number of respects. It helps the organisation to gauge what resources will be necessary, and provides time to secure these resources. When applying for funding, it is always preferable to give a clear indication of what the organisation aims to achieve, which will make any alignment with fund strategy more evident.

Effective strategic planning allows the organisation to identify strengths and weaknesses, opportunities and strengths, and ways in which to exploit or mitigate these. Involving staff and other stakeholders in the planning process gives them a sense of ownership and excitement about the future of the organisation.

Constructive conflict resolution

In any organisation, conflict is likely to occur between key stakeholders. In an NPO, this conflict could be between board members, or between members of the board and members of management. Key to the success of any NPO is a good working relationship between the board and the organisation's manager or CEO. This is more likely to occur if there is a clear understanding of their respective roles.

If conflict does occur, it is important to ensure that it is managed effectively. It is often the role of the board, and more specifically the chairman, to ensure that conflicts are resolved. This is done through open, transparent communication, an attempt at focusing on facts, rather than emotions, and ensuring that all parties are able to air their views in an environment that does not invite judgement or personal criticism.

Conclusion

The role of an NPO's board is a vital one. Although efficacy and accountability should be promoted through laws and codes, the changing nature of society means that much is left up to initiative and flexibility. Complying with all legal requirements while assisting the NPO to grow and develop is certainly difficult. It is, however, up to the board to ensure that this is achieved to the greatest extent possible.

Important addresses and contact numbers

Directorate of NPOs

HSRC Building
134 Pretorius Street
Pretoria 0001

Department of Social Development
Private Bag X901
Pretoria 0001

Tel: 012 312 7500
e-mail: npoenquiry@dsd.gov.za

Master of the High Court of South Africa

<http://www.justice.gov.za/master/contacts.htm>

Websites referenced in the guide

For more information

1. *Mastering Good Governance - NPO and PBO registration* - <http://www.tshikululu.org.za/wp-content/uploads/2011/06/Tshikululu-research-mastering-good-governance.pdf>
2. Register as a taxpayer - <http://www.sars.gov.za/home.asp?pid=216>

Legislation

(Please take care, when referring to any legislation, that it is the most recent version thereof.)

1. Nonprofit Organisations Act 71 of 1997 - http://www.dsd.gov.za/npo/index.php?option=com_content&task=view&id=66&Itemid=114
2. Income Tax Act 21 of 1994 - <http://www.info.gov.za/view/DownloadFileAction?id=71018>
3. Companies Act 71 of 2001, Act 3 as amended in 2011 - <http://www.info.gov.za/view/DownloadFileAction?id=145779>
4. Labour Relations Act No 66 OF 1965 - <http://www.info.gov.za/view/DownloadFileAction?id=70985>
5. Basic Conditions of Employment Act No 75 of 1997 - <http://www.info.gov.za/view/DownloadFileAction?id=70820>
6. Compensation for Occupational Injuries and Diseases Act No 130 of 1993 - <http://www.info.gov.za/view/DownloadFileAction?id=70807>
7. Employment Equity Act No 58 of 1998 - <http://www.info.gov.za/view/DownloadFileAction?id=70714>
8. Skills Development Levy Act No 9 of 1999 - <http://www.info.gov.za/view/DownloadFileAction?id=70632>
9. Unemployment Insurance Contributions Act No 4 of 2002 - <http://www.info.gov.za/view/DownloadFileAction?id=68165>
10. Promotion of Access to Information Act, No 2 of 2000 - <http://www.info.gov.za/view/DownloadFileAction?id=68186>
11. Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000 - <http://www.info.gov.za/view/DownloadFileAction?id=68207>
12. Financial Intelligence Centre Act, No 75 of 1997 - <http://www.info.gov.za/view/DownloadFileAction?id=68138>
13. Welfare Laws Amendment Act 106 Of 1996 - <http://www.info.gov.za/view/DownloadFileAction?id=70852>
14. Trust Property Control Act, No 57 of 1988 - <http://www.usig.org/countryinfo/laws/South%20Africa/South%20Africa%20-%20TRUST%20PROPERTY%20CONTROL%20ACT%2057%20OF%201988.pdf>
15. Lotteries Act, No 14 of 2005 - <http://www.info.gov.za/view/DownloadFileAction?id=68147>
16. National Development Agency Act, No 108 of 1998 - <http://www.info.gov.za/view/DownloadFileAction?id=68037>

Forms

1. Acceptance of Trusteeship - http://www.justice.gov.za/master/m_forms/Acceptance_trustee.pdf
2. Undertaking and Bond of Security - http://www.justice.gov.za/master/m_forms/J262.pdf
3. Memorandum - http://www.justice.gov.za/master/m_forms/JM21.pdf
4. Register as a non-profit organisation (voluntary) - http://www.dsd.gov.za/services/downloads/npo_application_form.pdf

Templates

1. Meeting agenda - <http://office.microsoft.com/en-us/templates/CT010240397.aspx?CTT=3#pg:4|ai:TC006207066|>
2. Meeting minutes - <http://office.microsoft.com/en-us/templates/results.aspx?qu=minutes#ai:TC006091048|>

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About Tshikululu Social Investments

Tshikululu Social Investments is South Africa's leading social investment manager, providing a comprehensive service for private sector entities to undertake comprehensive community grantmaking. Tshikululu is a bridge between the interests of corporate clients and the realities found at the heart of development. The development of this introductory guide to *Board Effectiveness* is part of our commitment to servicing our development partners.

This edition of the **Mastering Good Governance** series was researched and compiled by Sarah Ball. Please note that the guide is not intended to be exhaustive and does not constitute legal advice. Content may not be republished in whole or in part without due acknowledgement given to Tshikululu Social Investments and the author/s.

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