

# GOVERNANCE IN ACTION

## Knowing the Essentials: Board Roles and Responsibilities

Being a board member of an NGO is a meaningful and impactful way of giving back to society. However, the effort it takes to fulfill its responsibilities is no less than the one of a board member from a listed company. Moreover, the job is completely voluntary and unpaid! The board of directors of an NGO is the ultimate decision maker of the organization. Needless to say, the board takes on the role of leading and governing the NGO. Hence, it is crucial that board members understand what these roles and responsibilities entail in order to properly discharge their duties.

### What are the functional roles of a board member?

Various local and foreign sources of guidelines and reference materials have generalized the roles of a board as follows:

- **Strategic leadership:** The board is responsible for guiding the strategic direction of the organization. This includes developing a strategic framework for its growth, and periodically reviewing the vision, mission and values.<sup>1</sup> More specifically, the board should endorse a strategic plan in both long term and short term (i.e. an annual plan) for the operation of the NGO.<sup>2</sup>
- **Ensuring resources and executive leadership:** Whether it is fundraising or spending program funds, board members need to ensure funds are solicited through proper channels and that there is efficient usage of the resources.<sup>3</sup> This is not restricted to a monetary level. Succession of the board, hiring and guiding the Chief Executive are also part of the board's job.<sup>4</sup>
- **Oversight and monitoring:** Besides financial monitoring, the board has the responsibilities to oversee and assess the performance of the NGO and its operations. They need to develop clear policies for internal control and review risk management plans for monitoring the development of the organization in long term and ensure compliance to any legal requirements.<sup>1,5</sup>
- **Accountability and transparency assurance:** Board members should hold the organization accountable to its stakeholders and general public. Ensuring transparent and timely disclosure of organizational information through channels like annual reports, audit reports, websites, etc. can foster a positive public image of the NGO.<sup>2,5</sup>

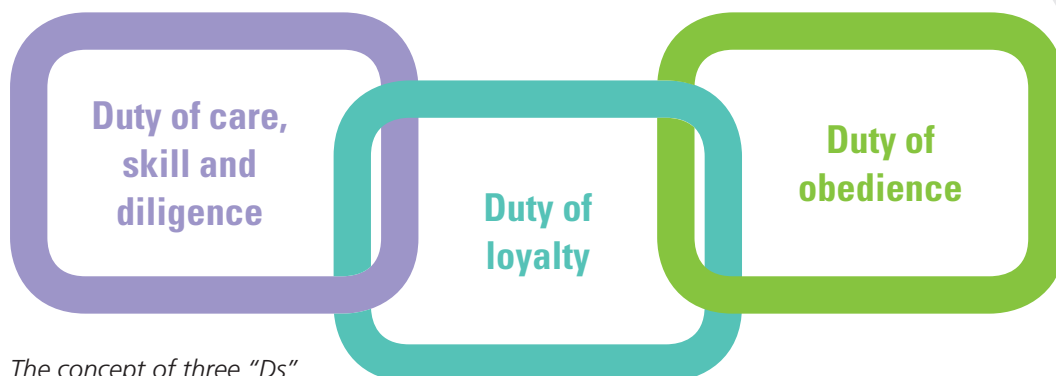
The few points above are obviously non-exhaustive roles of a board member. The exact tasks and responsibilities of each board member may differ, based on the NGO's background, size, culture, as well as the board members' role on the board (e.g. Chairperson vs. Treasurer).

### What are the legal responsibilities of a board member?

Board members owe the organization fiduciary duties as its official representatives. At the Seminar on "Fiduciary Duties and Legal Liabilities of NGO Directors" held on 20 April, 2018, Ms Michelle Chow, member of the Pro Bono Committee of The Law Society of Hong Kong, talked about the concept of three "Ds" in Common Law that all board members should abide by:

- **Duty of care, skill and diligence:** board members have the duty to attend meetings, be prepared to make informed decisions, request additional information if required, and to carry out duties in a reasonable and responsible manner.
- **Duty of loyalty:** board members must make decisions in the best interests of the NGO solely but not for any group or other NGO he/she represents, and never for personal gain.
- **Duty of obedience:** board members must be faithful to the NGO's mission, are not permitted to act in ways that are inconsistent with the mission and objectives of the NGO, and must examine all documents about NGO's mission and operation.<sup>6</sup>

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Generally speaking, all board members should comply with the 3Ds regardless of the legal form of the organization and whether it is for profit or not. Failing to fulfill these requirements may lead to civil liabilities. To ensure compliance to these principles, board members can develop policies (e.g. protocols on declaration of interests) and create governance manual that they may make reference to in cases of ambiguity or potential risks.

On top of the fiduciary duties, board members have the responsibilities to ensure compliance to any regulatory requirements related to the charity. For example, the Inland Revenue Ordinance prohibits any NGO with section 88 tax exemption status from "distribution of its incomes and properties amongst its members" and prohibits "members of its governing body (e.g. directors, trustees, etc) from receiving remuneration".<sup>7</sup> An organization may lose its tax exemption status if it fails to comply to these obligations.

In Hong Kong, tax-exempted charities can be established under various ordinances of different legal forms, with most registered under the Companies Ordinance (CO). There are different obligations under each ordinance that board members need to comply with. For example, a guarantee company is required to deliver an annual return to the Registrar for registration at a prescribed time each year. Late delivery of such materials is subject to a higher registration fee and other penalties.<sup>8</sup> The assurance and oversight of compliance to these legislative requirements is a basic but important part of a board member's duties.

It is especially important for board members to understand these responsibilities for the best interest of the NGO, and to protect themselves from liabilities. Prospective board members may conduct due diligence with the NGO to better understand the organization's governance practice and in what roles that he/she could play so as to maximize his/her contributions and fulfill the basic responsibilities. Proper induction for new board members on their roles and responsibilities can also set clear expectations and help a new member settle into the role more efficiently and smoothly.

<sup>1</sup> Lakey, B. (2010). *Board fundamentals*. 2nd ed. Washington, DC: BoardSource, pp.14, 34-37.

<sup>2</sup> Social Welfare Department (2002). *Leading Your NGO - Corporate Governance (A Reference Guide for NGO Boards)*. pp.13, 22.

<sup>3</sup> Charity Commission for England and Wales (2018). *The essential trustee: what you need to know, what you need to do*. pp.20-24.

<sup>4</sup> Ingram, R. (2015). *Ten Basic Responsibilities Of Nonprofit Boards*. 3rd ed. Washington, DC: BoardSource, pp.23-33.

<sup>5</sup> Efficiency Unit (2015). *Guide to Corporate Governance for Subvented Organization*. pp.63, 68.

<sup>6</sup> Chow, M. (2018). *Fiduciary Duties and Legal Liabilities of NGO Directors*

<sup>7</sup> Inland Revenue Department (2018). *A Tax Guide for Charitable Institutions and Trusts of a Public Character*. Available at: [https://www.ird.gov.hk/eng/tax/ach\\_tgc.htm](https://www.ird.gov.hk/eng/tax/ach_tgc.htm)

<sup>8</sup> Companies Registry (2018). *Basic Filing Obligations of a Guarantee Company under the Companies Ordinance (Cap.622)(CO)*. p.1.