GUIDELINES ON HOW TO DEVELOP A **CORPORATE GOVERNANCE** MANUAL FOR HONG KONG **NGOs**

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FOREWORD

In 2018, the NGO Governance Platform Project of The Hong Kong Council of Social Service ("HKCSS") and PILnet launched an initiative to enhance governance capacity of social service organizations in Hong Kong. As part of this initiative, PILnet facilitated the collaboration between HKCSS and Mayer Brown to develop this Guide. The contents of this publication are intended to provide a general guide to the subject matter only and is not intended to provide legal advice or be a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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INTRODUCTION

This Guide is designed to help non-governmental organisations ("NGOs") develop their own corporate governance framework and prepare a corporate governance manual. However, it is important to note that there is no one corporate governance model. While this Guide sets out general principles that should be considered, each corporate governance framework and manual needs to be tailored to fit the NGO's circumstances and needs.

Corporate governance refers to the system by which organisations such as NGOs are directed and controlled. An NGO's governing body bears the responsibility for the governance of the organisation. As such, the implementation of a set of corporate governance practices by that governing body helps ensure that oversight of the NGO is effective. This assures key stakeholders – clients, beneficiaries, donors, sponsors, employees, volunteers and the community at large – that the NGO is being managed effectively and with integrity.

A corporate governance manual can help an NGO make clear to its Board of Directors ("Board"), employees and volunteers the structures, processes and principles that it will use to achieve the NGO's objectives and to monitor the NGO's performance, and it is an important tool for any NGO.

NGOs in Hong Kong may be formed under different statutes. Each NGO is unique, and although some NGOs may be in a position to adopt each of the suggested best practices in this Guide when developing their corporate governance framework, others may not be able to do so. Nevertheless, there are several best practices that should be adopted regardless of an organisation's size, resources or level of sophistication. In addition, an NGO's corporate governance framework must also take into account certain minimum legal requirements applicable to all NGOs in Hong Kong. The minimal legal requirements we discuss in this Guide relate to a company limited by guarantee registered under the Companies Ordinance (Cap. 622) ("CO"), as that is the most common legal form of NGOs in Hong Kong.

BASIC LEGAL REQUIREMENTS

Effective corporate governance involves employing a number of best practices that enable directors of an organisation to meet their fiduciary duties. In Hong Kong, for an NGO established as a company limited by guarantee, the basic legal setup requirements include:

- appointing at least two directors (Section 453 of the CO);
- the directors must be individuals (Section 456 of the CO), who are at least 18 years old (Section 459 of the CO); and
- directors must adhere to their fiduciary duties (as discussed below in the section "Fiduciary Duties of Board Members"), which involves implementing a number of the best practices set out in this Guide, as appropriate for the particular NGO, to oversee and direct the NGO effectively.

DEVELOPING A GOVERNANCE MANUAL

A governance manual should be comprised of a few key component parts to address the basic NGO framework and mission and describe the governance structure and how it works from day-to-day.

Governance Structure

The corporate governance structure of an NGO will largely depend on the nature of the organisation, its objectives, operations and activities. However, there are a few standards that should be adopted by all NGOs as best practices. Generally speaking, an NGO should have a clearly defined corporate governance structure, decision making processes, membership rules, and a description of the responsibilities, powers and duties of its governing body, such as the Board. Members of the Board are referred to as "directors". Some examples of best practices are:

- directors should be selected through a transparent process in accordance with the NGO's governing document (e.g., Articles of Incorporation/Association, Constitution, etc.);
- directors of NGOs with tax exemption status under Section 88 of the Inland Revenue Ordinance (Cap. 112) should not receive remuneration beyond reimbursement of expenses and should not profit from the NGO's assets;[1]
- Board functions should ideally be separated from the management team;
- the list of current directors should be readily accessible to stakeholders; and
- Board meeting minutes should be recorded on file, and decisions should normally be communicated to the directors and the management team in a comprehensive and timely manner.

COMPOSITION OF THE BOARD, TERMS OF OFFICE

NGOs should be mindful of the relevant laws and regulations applicable to Board composition. For example, a company limited by guarantee registered under the CO is required to appoint at least two directors. A company limited by shares registered under the CO is required to appoint at least one director. A society registered under the Societies Ordinance (Cap. 151) is required to appoint a person-in-charge and two other office-bearers.[2]

The Board should elect a Chairperson of the Board in accordance with the procedures specified in the NGO's governing document.

1 For further information, please refer to "A Tax Guide for Charitable Institutions and Trusts of a Public Character" issued by the Inland Revenue Department, which is available at https://www.ird.gov.hk/eng/pdf/tax_guide_for_charities.pdf.

2 For further information, please refer to "Guidance Notes - Application for Society Registration/Exemption from Society Registration under Societies Ordinance, Cap. 151" issued by the Hong Kong Police, which is available at https://www.police.gov.hk/info/doc/licensing/societies/en/so_form-reg.pdf.

ROLES AND RESPONSIBILITIES OF THE BOARD

An NGO is led by its Board. The Board is collectively responsible for ensuring that the NGO delivers its objectives, complies with its governing documents and all relevant laws and regulations. Primary responsibilities of the Board include:

- *Strategic Guidance*: The Board sets, approves and monitors the NGO's core strategies, developed by the management team, and ensures that the necessary financial and human resources are in place to meet the NGO's objectives.
- *Agency Head and Management Supervision*: The Board recruits, supports, evaluates, rewards, and if necessary, terminates the NGO's Agency Head (or equivalent position within the NGO). The Board also establishes a framework within which the management team operates under the Board's direction, including the expected results.
- *Risk Oversight and Management*: The Board is responsible for ensuring the integrity of the NGO's financials, and it is also responsible for ensuring that the NGO's risk management systems/controls (which may include internal approval and decision-making processes, depending on the nature of the NGO's operations) are suitable and that they are being followed in practice.
- *Accountability*: The Board is accountable and responsible to the NGO's stakeholders. Therefore, the Board should act in a transparent manner, and should communicate and make information available to its members, other stakeholders and the public upon request.

The Chairperson is responsible for running the Board and approving Board meeting agendas, which should take into account directors' concerns and issues. The Chairperson should manage all meetings and lead the Board's actions to ensure that the NGO is operating in compliance with its corporate governance framework.

The responsibilities and functions of the Board should be clearly defined in the corporate governance manual so that the Board is equipped to discharge its duties and responsibilities effectively.

It is important to note that, under Section 465 of the CO, a director of a company (including an NGO) is legally required to conduct himself or herself in a manner comparable to that of a reasonably diligent person with (i) the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions carried out by the director in relation to the NGO; and (ii) the general knowledge, skill and experience the director has. For instance, a "reasonably diligent" director would be expected to complete filings to the Companies Registry in a timely manner, and provide accurate material in all statements and reports.

In other words, a director's conduct will be evaluated in the context of both (i) the knowledge, skill and experience that the director should have had for the position and (ii) the knowledge, skill and experience that the director actually has. The standard that a director must satisfy cannot be adjusted downwards – not being remunerated or lack of management experience does not excuse a director from his or her duties. In addition, if the director has special knowledge, skill or experience, he or she is held to a higher standard of conduct. As such, directors should receive the necessary induction, training and ongoing support needed to help them in the discharge of their duties.

FIDUCIARY DUTIES OF DIRECTORS

The fiduciary duties of a director are as follows:

- *Duty of Care*: Directors must attend meetings, read the information provided and request additional information if needed, make informed decisions and carry out their duties in a reasonable and responsible manner.
- *Duty of Loyalty*: Directors must place the interests of the organisation ahead of their own interests at all times. This means they must disclose any conflicts of interest (further explained in the Code of Ethics section below) and they must not use Board service as a means for personal or commercial gain.
- *Duty of Obedience*: Directors must act consistently with, and be faithful to the NGO's mission.

The Board should be fully informed of the types of liability it may face. It should also be fully informed of its legal responsibilities including, but not limited to, those arising from the ordinance under which the NGO is established. For instance, under the CO, any director or officer of the company, who authorises or permits, participates in, or fails to take all reasonable steps to prevent a contravention of the CO will be made liable, and could face fines of up to HK$1,000,000 and potentially imprisonment.[3] Companies are also prohibited from indemnifying[4] directors for their breach of duty of care, skill and diligence owing to the organisation. At a minimum, an NGO's corporate governance manual should include an overview of the principles of conduct (set out above), as well as a description of the Board's responsibilities and legal obligations (as described in this Guide and taking into account the circumstances and activities of the NGO).

For further guidance in relation to a Director's duties, please refer to A Guide on Director's Duties issued by the Companies Registry in March 2014, available at: https://www.cr.gov.hk/en/companies_ordinance/docs/Guide_DirDuties-e.pdf.

BOARD MEETINGS: PROTOCOLS, PROCEDURES AND RULES FOR EFFECTIVE BOARD MEETINGS

An effective Board should meet regularly. All the business of the Board should be conducted through formal and appropriately constituted meetings. The corporate governance manual should document the procedures and rules for the Board's decision-making activities. These would include procedures/rules relating to attendance requirements, quorum and voting and the managing of conflicts of interest.

3 For example, under Section 373 of the CO, a director of a company who fails to take all reasonable steps to ensure the company keeps accounting records in accordance with the CO commits an offence and is liable to a fine of HK$300,000. In more extreme cases, for instance, if a director (or other employees of the company), with intent to defraud, causes or allows the company to fail to comply with certain requirements made by an inspector (such as to produce documents for inspection or to attend before the inspector and answer any question relating to any matter under investigation), such director commits an offence under Section 863(10) of the CO and is liable to a fine of up to HK$1,000,000 and to imprisonment for seven years.

4 In general, to indemnify another party is to compensate that party for losses that party has incurred as related to a specified incident.

For example, these rules may:

- set a minimum frequency for Board meetings;
- set out the procedures for a director to call additional meetings;
- clarify whether a director may attend a meeting by telephone or video conference; and
- set out the procedures for adjourning meetings if a quorum is not satisfied.

When establishing a committee, the Board should clearly define rules of procedure for the committee as well. All Board meetings should be documented. Sections 481 and 619 of the CO require the NGO to record the minutes of all proceedings at Board meetings and all resolutions passed by its directors without a meeting. As for all other companies, NGOs that are companies limited by guarantee must keep these records at their registered office (or other places prescribed by the Financial Secretary) for at least 10 years from the date of the board meeting or the passing of the resolution. Any contravention may result in a level 5 fine (up to HK$50,000) to be imposed on the NGO or its responsible persons. The Companies Registry must be notified of any change of location for record-keeping within 15 days of the change.

In addition, it is good practice for Board meetings to include the following:

- meeting agenda;
- Board meeting pack and any other materials circulated to the Board in connection with the Board meeting; and
- minutes of the previous meeting for review and approval at the subsequent Board meeting.

DELEGATIONS TO COMMITTEES AND STAFF

The Board of an NGO has the responsibility to govern the NGO and has to do it effectively, efficiently and within the bounds of the law. Where the Board has the power to engage in an activity, it can choose to delegate that responsibility to another person or body if doing so will help it lead the NGO more effectively or efficiently.

Accordingly, the Board may set up committees, advisory groups, panels or other bodies to assist its work, the details of which may be included in the corporate governance manual. The decision to establish committees will depend on the needs of the Board as well as the operations and size of the NGO. Examples of committees that may be established include the following: Executive Committee, Audit Committee, Board Nomination Committee, Planning and Evaluation Committee and/or Staff Remuneration Committee. In addition, the Board may wish to establish committees to steer specific initiatives or programs.

Effective Delegation

Before the Board can delegate any of its powers or authority it should first set out in a clear manner all the functions and responsibilities of committees, individual directors, officers, other staff, consultants or agents. *Delegation does not absolve the Board of its responsibility to be accountable for the actions of its delegates.*

Delegation should be organized in a practical manner and must comply with the terms of the NGO's governing documents and any relevant legislation. Practical recommendations for effective delegation include the following:

- the structure, roles and responsibilities of delegated authorities should be clearly defined in writing;
- delegation must comply with the terms of the NGO's policies, procedures, governing documents and any relevant legislation;
- delegates should be given sufficient authority to discharge their duties;
- all delegated authorities must have clear limits relating to expenditure, authority, budgetary and other matters;
- all delegated authorities must be subject to regular monitoring by the Board and should report regularly to the Board; and
- delegation should be recorded in Board meeting minutes, and where relevant, in committee terms of reference, staff members' job descriptions or in a separate list.

The NGO should establish and maintain an up-to-date framework of delegated or reserved powers, including a formal schedule of those matters specifically reserved for the collective decision of the Board. The framework for delegating certain powers to the management team should be in an explicit written form. All of this should be made clear in the corporate governance manual.

BOARD REVIEW AND RENEWAL

Board Review/Appraisals

It is recommended that NGO Boards undertake regular appraisals and reviews to assess their strengths and weaknesses and develop strategies to address any limitations. Appraisals may involve confidential peer and self-evaluations as well as review meetings or interviews. Giving members the opportunity to provide anonymous reviews of other members of the Board helps facilitate frank examinations. Even minor improvements to a Board's performance can have a significant impact on an NGO's effectiveness.

In addition to evaluating the Board's collective performance in managing the NGO (as discussed below), the performance of individual members should also be evaluated. Areas that should be considered include: (i) whether the member allocates sufficient time and effort to prepare for and attend meetings; (ii) whether the member's behaviour is disruptive or undermines Board decisions; and (iii) whether the member properly discloses his or her business interests and acts in the interest of the NGO.

Board reviews/appraisals should include evaluating:

- communication and understanding of responsibilities and expectations for directors and the management team (e.g., Agency Head, CFO, COO, etc.);
- adequacy of training and induction provided for directors;
- functioning and effectiveness of the Board and directors;
- working methods and procedures of the Board, including the sufficiency of (i) Board materials provided before meetings; (ii) time provided at Board meetings to discuss critical matters; and (iii) processes for handling issues between meetings;

- mechanisms for internal control and performance reporting;
- mechanisms for planning and budgeting;
- effectiveness and supervision of committees, working groups and advisory bodies;
- proper documentation of any delegated authorities; and
- the Board's compliance with law, governing documents, contractual obligations and internal controls.

If a Board chooses to conduct such a review/appraisal, it should ideally use the results to:

- make necessary changes and improvements to its Board activities;
- generate a creative and innovative approach to the Board's development;
- improve teamwork among directors;
- clarify goals and expectations for directors, the management team, employees and volunteers;
- provide appropriate training programme and guidance to its directors; and
- provide guidance in connection with Board renewal and the recruitment of directors.

Where an NGO Board elects to engage in reviews/appraisals, it should ideally outline in the NGO's corporate governance manual the process to be followed (including any evaluation guidelines and timing requirements).

Board Renewal

NGO Boards – regardless of size – should have a clear strategy for their own renewal, recruitment of new directors and director reappointments. The processes should be open, transparent and focused on creating a diverse and effective Board. The implementation of the strategy can be delegated to a committee or a panel.

In the case of an NGO where the directors are nominated by an external body, or elected by a wider membership, the Board should work closely with the organisations or people involved in this process to ensure that they are aware of the specific skills and experience required from new members.

Key points that the Board should consider in connection with the recruitment process:

- the Board should agree on and set out specifications of the role;
- directors must be appointed in accordance with the NGO's governing documents and the CO;[5]
- new directors, prior to their appointment, should be scrutinised to assess whether they have attributes, knowledge and the right set of skills to succeed in their roles - interviews should be formal and appointments on merit;

5 Examples of such legislation include: Section 459 of the CO requires that a director be of 18 years of age at the time of appointment and Section 480 of the CO states that an undischarged bankrupt person must not act as director, unless the Court has given leave (permission).

- a maximum fixed term of office is recommended to ensure a steady renewal of directors; these may be provided for in the internal policies or in an NGO's governing document; and
- the Board should ensure that the procedures for joining and leaving the Board are understood by all directors and other relevant stakeholders.

Much of the above may be included in the corporate governance manual.

Documenting and communicating performance standards to potential and existing directors during the recruitment and evaluation processes can be useful in ensuring an effective Board. This can include defining roles and responsibilities through formal role/duty statements and clearly setting out expectations (such as minimum time commitments). This helps directors understand their obligations and also facilitates difficult discussions when evaluating non-performing members by providing an objective standard.

When a Board member is not performing his or her responsibilities, it may make sense for the Chairperson to first approach the Board member privately. If this initial step does not solve the issue, the whole Board should be involved in discussions to address the problem. Depending on the NGO's governing documents and the requirements of any external organisations or people involved in the director election/appointment process, the Board may seek the removal or replacement of the non-performing Board member.

DIVISION OF BOARD AND MANAGEMENT TASKS

Role of Management Team

NGO Boards should not involve themselves in the micro-management of the NGO's day-to-day operational decisions and matters. Rather, an NGO Board should focus on the high-level strategic direction of the NGO. However, in the case of small NGOs, directors may at times need to become involved in operational matters. In those instances, directors should draw a distinction between those strategic and operational roles. Please refer to Appendix I for a summary of the proposed division of roles between an NGO's Board and the management team.

Responsibilities of the Agency Head

The Board appoints the Agency Head, who manages the NGO on behalf of the Board through the authority delegated to him or her by the Board. The Agency Head leads the NGO's management team and reports to the Board. The Agency Head is responsible for managing the day-to-day operations of the NGO (including setting up an internal structure that ensures operations run efficiently), executing the strategic policies adopted by the Board and achieving the performance targets set by the Board. In addition, the Agency Head can also provide valuable operational input to the Board to facilitate decision-making.

CONTROLS AND RISK MANAGEMENT

Boards of NGOs, regardless of size, must ensure that funds are used properly. This can be done by implementing appropriate internal and external controls and risk management systems. Controls are processes implemented to provide reasonable assurance that:

- operations are conducted efficiently and effectively;
- fraudulent transactions or reporting are blocked or detected early; and
- the NGO is in compliance with applicable laws.

These controls could include:

- internal authorisations required for payments exceeding pre-set thresholds;
- designated signatories required for bank transactions;
- internal review and approval of reports; and
- internal and external audits.

It is good practice for the Board to also regularly check that any such controls and systems are applied properly, and they should consider taking a more active role as and when necessary. NGO Boards should also regularly monitor an NGO's financials including the income statement and balance sheet. The accuracy of the NGO's financial statements should be externally audited by a certified public accountant and the Board is responsible for the performance of the independent auditors it hires. Under Section 379 of the CO, a company's directors must prepare, for each financial year, statements that comply with the requirements in the CO. The company's auditors must then prepare a report on these statements under Section 405 of the CO.

Larger NGOs, and particularly those NGOs with substantial assets, should strongly consider creating an Audit Committee. Where an NGO has decided to use an Audit Committee to help it in its oversight responsibilities, the following is suggested:

- the Audit Committee should be made up of directors or external advisors who are not part of the management team; and
- the Board should clearly set out the role and responsibilities of the Audit Committee, and the authority delegated to it. Any such authority should, at a minimum, include the following:
  - to monitor the integrity of the NGO's financial statements and formal financial announcements, and review the material financial reporting judgements contained in them;
  - to review and monitor the effectiveness of the NGO's internal financial controls, internal control and risk management systems, and its external auditor (including its independence and objectivity);
  - to recommend to the Board the appointment, re-appointment and removal of any external auditor, including the remuneration and terms of engagement of the external auditor; and
  - to ensure arrangements are in place for staff to raise, in confidence, concerns about possible improprieties in financial reporting or other matters, for the proportionate and independent investigations of such matters and for appropriate follow-up action.

Internal Reporting

Below are good practices designed to foster effective internal-reporting:

- the Board should share with its management team the matters it has discussed;
- the Board should work closely with any committees it establishes;
- regular and informative reporting to the Board provides for an effective decision making process and assists in the overall performance of the NGO;
- reports and minutes of Board meetings should be formally circulated having regard to confidentiality requirements (e.g., commercially confidential information). The deliberations and resolutions should be reported within the NGO; and
- lines of reporting within the NGO should be formalised and observed.

The Board is a steward of the NGO's resources and must protect its assets and ensure compliance with all relevant fiscal requirements. It must conduct the financial affairs of the NGO in a responsible and sound manner, and comply with all applicable laws, such as the Prevention of Bribery Ordinance,[6] the Theft Ordinance[7] and other statutory and case laws regarding theft and fraud offences.

This means that the Board must be briefed about and have full understanding of, the organisation's current and projected financial position and its financial health. Financial statements are the primary source of information about an NGO's financial position and operational results. The Board can delegate the task to prepare financial information, but the *Board is ultimately responsible for reviewing financial reports and ensuring their accuracy and credibility.*

The basic financial functions of the Board are to:

- approve a budget that reflects the NGO's priorities and is based on realistic assumptions of funding, costs, and other factors: the Board must agree on a budget regardless of how modest the resources of the organisation are;
- set out the planned expenditures and predicted income in its budget and monitor on a regular basis the actual performance against the budget;
- monitor and control expenditures and cash-flow on the basis of appropriate accounting procedures;
- review up-to-date financial statements at each Board meeting and take action to remedy financial difficulties, if any;
- oversee the stewardship of the NGO's assets and liabilities; and
- approve annual reports, including financial statements.

The basic requirements for managing the financial responsibilities of the Board are to:

- ensure that the management team operates in accordance with an annual budget that has been approved by the Board;
- ensure that the management team prepares accurate financial reports on a timely basis, allowing the Board to monitor financial performance of the NGO;
- ensure that the management team prepares internal financial statements no less frequently than quarterly and provides them to the Board (these statements

6 Cap. 201, laws of Hong Kong. The Hong Kong Independent Commission Against Corruption has also issued a set of materials specifically for NGOs, which can be downloaded from: https://www.icac.org.hk/en/resource/publications-and-videos/nse/index.html

7 Cap.210, laws of Hong Kong; Section 16A of which criminalizes fraud.

should identify and explain any variation between actual and budgeted revenues and expenses);

- have proper internal controls in place to ensure money can be accounted for and is not misused;
- provide staff with confidential means to report suspected financial impropriety or misuse of the NGO's resources; and
- have written policies governing investment of the assets of the NGO, internal control procedures, procurement, etc.

These basic functions and requirements should be detailed in the corporate governance manual.

Procurement is typically an activity that can be highly vulnerable to abuse. Therefore, it is essential that the Board sets out minimum standards to mitigate the risk of corruption. This could include ensuring the management team implements the following:

- open competitive procedures for purchases above a certain threshold;
- proof of submission of several offers where the proposed procurement will exceed a certain threshold;
- the requirement for the justification of the decision to select a particular vendor, product or service provider over a competitor; and
- anti-bribery policies adopted by the Board and the pro-active communication of the same to all agents, intermediaries and suppliers.

NGOs are encouraged to develop robust financial management processes through:

- the use of basic accounting tools (books of accounts, general ledger, general journal, cash receipt book, cash disbursement book, bank account records);
- the separation of key functions (approving officer, book keeper, cash custodian) and requirement for two signatures by relevant staff; and
- the preparation of annual financial statements of income and expenditure, as discussed above.

External Reporting

NGOs with a broad public stakeholder base should strive for regular external reporting of its activities and operations via the publication of annual reports online or by issuing printed reports. Smaller NGOs may not have the capacity or resources to externally report in this manner; however, some of the objectives and content of annual reports as set out below may serve as a helpful benchmarking tool to asses an NGO's internal corporate governance standards. In general, the Board will determine the method and form of external reporting that is most appropriate for the NGO, if any, and should review and approve for publication the reports prepared by the management team.

All NGOs established as companies limited by guarantee are required to file annual returns (together with audited accounts) and to report any change of registered office, director or company secretary. Registered societies are required to report any change of office-bearer(s), principle place of business, society name and object. In addition, if an NGO receives public funds or support, it may be required to provide enhanced disclosures regarding its finances.

Risk Management

The Board must prudently protect the NGO's service users, beneficiaries, volunteers, staff, reputation, assets and property and avoid undertaking activities that might place an undue risk on them. This includes avoiding actions that are likely to cause reputational harm to the NGO (such as partnering with another organisation without conducting proper due diligence on the potential partner), which may also expose the NGO and its stakeholders to litigation risk down the road. As another example, the Board will want to avoid approving speculative investments or other transactions that place an undue risk on the NGO's assets and property. The Board should also consider other risks that may be specific to the NGO's operations.

The Board must ensure that any proposed investing of the NGO's funds or borrowing of funds for the NGO's use complies with any requirements that may be set forth in the NGO's governing documents and any applicable legal requirements. For example, the NGO's governing documents may include guidelines on acceptable categories or risk-return profiles of investments for cash management purposes. In addition, the Board should ensure the terms, such as the applicable interest rate, of loans provided to the NGO by related parties (such as a member of the Board or a company owned by a member of a Board) are on reasonable commercial terms that are consistent with the market (or more favourable to the NGO). Also, in the case of restricted funds NGO Boards have a duty to ensure that the funds are used for the purpose/project they were given.

CODE OF ETHICS

Conflicts of Interest

A conflict of interest arises when the "private interests" of a Board member conflict with the interest of the NGO or the Board member's official duties. "Private interests" include any financial or other personal interests of directors, their family members or other relations, their personal friends, the clubs and associations to which they belong, any other groups of people with whom they have personal or social ties, or any person to whom they owe a favour or are obligated in any way. Conflicts of interest can arise when there are insufficient checks and balances established within an organisation. No Board member should be able to approve, on his/her own, decisions that will benefit them. NGOs should put in place and enforce policies, procedures and practices that ensure that such decisions are taken, reviewed and endorsed by appropriate third parties.

The directors, staff and volunteer workers of the NGO should not use their position in the organisation as a means to further their private business or other interests outside the organisation.

The directors should always act and make decisions based on the interest of the NGO and not in order to gain any benefits for themselves, their family, friends, etc.

The Board must manage conflicts of interest properly. Section 536 of the CO requires directors to disclose the nature of their interests in any contracts, transactions and arrangements of the organisation in which the director has material interests. Section 540 of the CO extends this requirement to shadow or alternate directors. Apart from legal consequences, failure to properly manage conflicts of interest may also have a serious impact on an NGO's reputation, giving rise to criticism of favouritism, abuse of authority or allegations of corruption. All decision-making should be guided by principles of integrity, honesty, transparency and good faith. To manage conflicts of interest, an NGO (through the direction of the Board) should adopt the following measures:

- design a standard form for declaration of conflict of interest and specify the line of reporting and the follow up action required;
- establish a system to manage declared conflict of interest and to record the declarations and actions taken to mitigate declared conflicts (e.g., for the director with the conflict to abstain from the discussion, participation or decision-making process in relation to that matter);
- implement clear policies specifying under which conditions gifts and entertainment may/may not be accepted (and reported) or family members may/may not be recruited;
- implement a written conflicts of interest policy governing directors and staff who have decision making authority over the resources of the NGO. The organisation should brief new directors and provide regular sessions for all members that keep them up-to-date with important issues that affect their governance roles;
- ensure that the NGO has a good complaint handling mechanism in place. Policies and procedures should be established to state clearly the roles and functions of each member in each complaint handling level and to keep fairness and to avoid conflict of interest;
- directors, staff and volunteers of the NGO must declare any actual or perceived conflicts of interest as and when they arise, particularly when they are engaged in any actions that might potentially interfere with the performance of their NGO-related duties or obligations; and
- directors should disclose their general interest on appointment to the Board. The declaration should be made on a registration form, which should be made available for inspection, and a register of directors' declaration of interests should be maintained and made available for inspection.

Transparency and Accountability

The Board needs to be open, transparent, responsive and accountable to those who have an interest in its work. The Board must decide who the stakeholders are and establish procedures that foster effective communication with them and provide guidance with respect to their engagement in the decision making process. However, accountability and transparency must be balanced with the Board's confidentiality requirements, such as those relating to data privacy and any confidentiality undertakings under agreements entered into by the NGO.

Non-Discrimination and Equal Opportunities

NGO Boards should set policy strategies with clear targets (where practicable) and receive regular reports to ensure that the NGO promotes and applies equal opportunities and diversity in all areas of its activities.

APPENDIX I

Proposed Division of Roles Between the Board and Management Team

TASKS	RESPONSIBLE PARTY	
	BOARD	MANAGEMENT TEAM
A. PLANNING		
- Direct the planning process	●	●
- Provide input to long term strategy and goals	●	●
- Approve long term strategy and goals	●	
- Formulate annual plans or objectives		●
- Approve annual plans or objectives	●	
- Prepare performance reports to track achievement of strategy and goals		●
- Track achievement of strategy and goals	●	●
B. FINANCIAL MANAGEMENT		
- Prepare preliminary budget		●
- Finalise and approve budget	●	
- Monitor that expenditure is within authorised budget		●
- Approve expenditures (if outside authorised budget)	●	
- Prepare financial statements		●
- Approve financial statements	●	
- Draft financial management procedures and policies		●
- Approve financial management procedures and policies	●	
- Finalise and approve funding arrangements with the government		●
- Ensure annual audit of accounts	●	

APPENDIX I

Proposed Division of Roles Between the Board and Management Team *(continued)*

TASKS	RESPONSIBLE PARTY	
	BOARD	MANAGEMENT TEAM
C. OPERATIONAL PROGRAMMING		
- Assess the needs of stakeholders		●
- Oversee evaluation of products, services and programmes	●	
- Prepare and maintain programme reports		●
- Manage the delivery of programmes or services		●
- Organise fund raising campaigns		●
- Solicit donations in fundraising campaigns	●	●
D. STAFFING		
- Hire the Agency Head	●	
- Hire and discharge staff; manage the work of staff		●
- Approve decision to add staff (if outside approved budget)	●	
- Manage conflicts among staff and between staff and management		●
E. BOARD MANAGEMENT		
- Appoint directors	●	
- Promote attendance at Board or committee meetings	●	
- Plan agenda for Board meetings	●	●
- Take minutes at Board meetings		●
- Determine committee structure	●	●
- Sign legal documents or contracts	●	●
- Ensure implementation of Board and committee meetings		●
- Appoint committee members	●	
- Settle discord between members	●	
F. COMMUNITY RELATIONS		
- Interpret NGO to the community	●	●
- Prepare marketing and media materials		●
- Provide connection with other organisations	●	●

APPENDIX II

Proposed Contents of a Corporate Governance Manual for NGOs

Below is a proposed table of contents for a corporate governance manual, to be tailored according to each NGO's unique qualities:

1. ABOUT THE ORGANISATION	- Background, Legal Status, History and Service Overview - Vision, Mission and Value - Strategic Framework
2. GOVERNANCE STRUCTURE	- Board of Directors - Composition of the Board, Terms of Office
3. ROLES AND RESPONSIBILITIES OF THE BOARD	- Fiduciary Duties of Board Members - Delegation to Committees and Staff - Board Review and Renewal
4. DIVISION OF BOARD AND MANAGEMENT TASKS	- Role of Management Team - Responsibilities of Agency Head
5. BOARD MEETINGS	- Protocols, Procedures and Rules for Effective Board Meetings
6. CONTROLS AND RISK MANAGEMENT	- Internal Reporting - External Reporting - Risk Management
7. CODE OF ETHICS	- Conflicts of Interest - Transparency and Accountability - Non-Discrimination and Equal Opportunities