

FINAL

**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**

**REPUBLIC OF SOUTH AFRICA**

**MEMORANDUM OF INCORPORATION**

**of**

**LITTLE LIONS CHILD COACHING NPC**

(Registration Number 2021/592679/08)

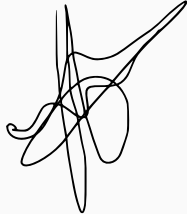


being a Non-Profit Company in accordance with

Schedule 1 of the Companies Act, 71 of 2008 (the "**Act**")

(**"the Company"**)

The Company has adopted this unique form of a memorandum of incorporation and, accordingly, the prescribed standard form of memorandum of incorporation for Non-Profit Companies, as contained in the Regulations to the Act, shall not apply to the Company.

This MOI is adopted with effect from the date on which the notice of amendment is filed with the Companies and Intellectual Property Commission. This MOI has been signed in the spaces set out below in order to confirm the adoption of this MOI.

Name and address	Identity number or Registration number	Capacity in which signatory signs	Signature	Date
<p><b>Joannes Sebastian Hendrikus de Leeuw</b></p> <p><b>19 Glynnville Terrace, Gardens, Cape Town, Western Cape, 8001</b></p>	<p><b>NTH7H5398</b></p>	<p>Director &amp; Incorporator</p>		<p>27th of May 2022</p>
<p><b>Iza Maria Paulina Bessems</b></p> <p><b>19 Glynnville Terrace, Gardens, Cape Town, Western Cape, 8001</b></p>	<p><b>NT582K5J7</b></p>	<p>Director &amp; Incorporator</p>		<p>27th of May 2022</p>
<p><b>Ian Alexander Steward Haggie</b></p> <p><b>9 Sereno Mansions, 40 Constantia Road, Gardens, Cape Town, Western Cape, 8001</b></p>	<p><b>8801265175086</b></p>	<p>Director &amp; Incorporator</p>		<p>27th of May 2022</p>



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## 1 INTERPRETATION

1.1 In this MOI, headings are for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, an expression which denotes -

1.1.1 any gender, includes the other genders;

1.1.2 a natural person, includes an artificial or juristic person and *vice versa*; and

1.1.3 the singular, includes the plural and *vice versa*.

1.2 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings –

1.2.1 "**Act**" – the Companies Act 71 of 2008, as amended or substituted from time to time and including the Regulations;

1.2.2 "**Board**" – the board of directors of the Company from time to time;

1.2.3 "**Business Days**" – any day other than a Saturday, Sunday or official public holiday in the Republic;

1.2.4 "**Commissioner**" – means the Commissioner of the South African Revenue Services (or his successor in title) from time to time;

1.2.5 "**Company**" – the company as defined on the front page of this MOI;

1.2.6 "**Director**" – a director of the Company from time to time;

1.2.7 "**Income Tax Act**" – means the Income Tax Act 58 of 1962 as amended or substituted from time to time;

1.2.8 "**MOI**" – the memorandum of incorporation of the Company, being this document as amended or substituted from time to time;



- 1.2.9            **"Regulations"** – the Companies Regulations of 2011 and any other regulations made in terms of the Act, all as amended or substituted from time to time; and
- 1.2.10           **"Republic"** – the Republic of South Africa.
- 1.3            The use of the word **"including"**, **"includes"** and **"include"**, followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s.
- 1.4            Where any term is defined within a particular provision other than this 1, that term shall bear the meaning ascribed to it in that provision wherever it is used in this MOI.
- 1.5            Any capitalised word or expression that is defined in the Act and that is not otherwise defined in this MOI shall have the meaning assigned to it in the Act. For the avoidance of doubt, it is recorded that any reference to **"Present at such meeting"** or **"Present at the meeting"** shall be construed in accordance with the definition of "Present at a meeting" in the Act; and
- 1.6            a reference to a **"section"** refers to the corresponding section of the Act.

## 2    **CONFLICTS WITH THE MOI**

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MOI and –

- 2.1            an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict, provided that such alterable or elective provision of the Act expressly allows the Company to adopt the conflicting provision; and
- 2.2            an unalterable or nonelective provision of the Act, the unalterable or nonelective provision of the Act shall prevail to the extent of the conflict, provided that if the provision of this MOI imposes a higher standard, greater restriction, longer period of time or any similarly more onerous requirement than would otherwise apply to



the Company in terms of such unalterable or nonelective provision, then the provision of this MOI shall prevail.

### **3 INCORPORATION AND POWERS OF THE COMPANY**

3.1 The Company is incorporated as a Non-Profit Company without members and accordingly -

3.1.1 the Company shall have the public benefit and other objects (as required by Item 1(1) of Schedule 1 of the Act) set out in clause 4;

3.1.2 all the income and assets of the Company, whether obtained by donation, through income generating activities or otherwise, shall be used to further its objects in clause 4 as contemplated by Item 1(2)(a) of Schedule 1 of the Act;

3.1.3 upon the winding-up or dissolution of the Company, its net value shall be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Act read with Section 30(3)(b)(iii) of the Income Tax Act, as set out in clause 27; and

3.1.4 the Company shall not distribute, pay or transfer all or any of its income and/or assets to its incorporators, Directors, officers or persons related to any of them, except to the extent permitted by Item 1(3) of Schedule 1 to the Act and section 30 of the Income Tax Act;

3.1.5 as contemplated by Item (2)(b) of Schedule 1 of the Act, the Company may –

3.1.5.1 acquire and hold securities issued by a profit company; or

3.1.5.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the objects set out in clause 4.

3.2 The Company is governed by

3.2.1 the Unalterable Provisions of the Act;



3.2.2 the Alterable Provisions of the Act, subject to the extensions, limitations, substitutions or variations set out in this MOI; and

3.2.3 the other provisions of this MOI.

3.3 The Company has, subject to section 19(1)(b)(i) of the Act, all of the legal powers and capacity of an individual and the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications save as set out in Items 1(3) and 1(4) of Schedule 1 to the Act.

3.4 There is no provision of this MOI which constitutes a restrictive condition as contemplated in section 15(2)(b) of the Act.

#### 4 OBJECTS OF THE COMPANY

4.1 The sole object of the Company shall be to carry on any one or more public benefit activities (as defined in section 30(1) of the Income Tax Act) including Welfare and Humanitarian as contemplated in paragraph 1 of Part II of the Ninth Schedule to the Income Tax Act. Without limiting the generality of the foregoing, the Company is to operate and manage projects related to mental health amongst children living within the townships of the Republic.

4.2 The Company intends to achieve the objects set out in this clause 4 (collectively referred to as the "**Objects**") in the following (non-exhaustive) manner, –

4.2.1 providing services to poor and needy children living in various townships within the Republic to improve their mental health and wellbeing, including ongoing educational training, direct service provision and partnerships with, *inter alia*, mental health coaches;

4.2.2 provide psycho-social support, mentoring and coaching to poor and needy children living in various townships within the Republic for the purposes of ensuring and promoting emotional awareness, resilience and confidence;





- 4.2.3 supporting the training of local mental health mentors, coaches or trainers to develop the skills needed by such persons to host workshops with poor and needy children living in various townships within the Republic; and
- 4.2.4 partner with various organisations with shared values and missions in order to, *inter alia*, achieve the Objects.

## 5 PUBLIC BENEFIT ORGANISATION

- 5.1 The Company is a Non-Profit Organisation, as contemplated under the Non-Profit Organisations Act, 1997.
- 5.2 All activities of the Company shall be carried out in a non-profit manner and with an altruistic intent and no activity is intended to directly or indirectly promote the economic self-interest of any Director and/or incorporator of the Company, other than by way of reasonable remuneration, reimbursement or compensation for services rendered or as reimbursement for actual costs or expenses incurred on behalf of the Company.
- 5.3 The income and property of the Company shall be used solely for the promotion of the Objects and no portion of the income or property of the Company may be directly or indirectly paid or distributed to any person except as in the ordinary course of such undertakings as are embarked on in the fulfilment of the Company's Objects.
- 5.4 The Directors and/or incorporators of the Company shall not under any circumstances have rights over property or other assets of the Company.
- 5.5 Accordingly, the Commissioner has approved or will approve the Company for exemption from certain taxes and duties in terms of sections 10(1)(cN) and 18A of the Income Tax Act. In compliance with the provisions of the Income Tax Act, the following provisions, shall bind the Company –
  - 5.5.1 the Company shall be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation,



including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation; and

5.5.2 the Company shall not knowingly be a party to or permit itself to be used as a part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.

5.6 The Company also intends to apply to the Commissioner for approval of the Company as a Public Benefit Organisation in terms of section 30(3) of the Income Tax Act ("**PBO**"). To the extent that the Commissioner approves the Company as a PBO, the Company and the Directors shall use their reasonable endeavours to maintain the status of the Company as a PBO duly approved by the Commissioner in terms of section 30(3) of the Income Tax Act.

## **6 THE INDEPENDENT CODE OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS**

The management and control of the business and affairs of the Company will be carried out in accordance with the values, principles and responsibilities as set out in the Independent Code of Governance for Non-Profit Organisations in South Africa, as amended from time to time, attached hereto as Annexure A.

## **7 AMENDMENT OF THE MOI AND RULES**

7.1 Every provision of this MOI is capable of amendment in accordance with sections 16, 17 and 152(6)(b) of the Act and the provisions of this MOI (including without limitation clause 20), and there is accordingly no provision of this MOI which may not be amended as contemplated in section 15(2)(c) of the Act.



7.2 The Board may, subject to section 15(4) of the Act, make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI, and the authority of the Board in this regard is not limited or restricted in any manner by this MOI.

7.3 The Company shall publish a copy of any Rules in terms of clause 7.2 and a notice of any alteration to such Rules in accordance with section 15(3) of the Act.

## **8 ELECTIONS IN RESPECT OF OPTIONAL PROVISIONS OF THE ACT**

The Company does not elect, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.

## **9 DISTRIBUTION OF INCOME AND PROPERTY**

The income and property of the Company, howsoever derived shall be applied solely towards the promotion of the Company's Objects, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Directors of the Company, any Incorporator of the Company and/or any person appointing a Director except in accordance with the provisions of Item 1(3) of Schedule 1 of the Act and the provisions of clause 20, read with section 30 of Income Tax Act.

## **10 LIMITATION OF LIABILITY**

No person shall, solely by reason of being an Incorporator or Director of the Company, be liable for any liabilities or obligations of the Company.

## **11 MEMBERSHIP**

The Company has no members as contemplated in Item 4(1) of Schedule 1 of the Act.

## **12 AUTHORITY OF THE BOARD OF DIRECTORS**

The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of



the functions of the Company, except to the extent that the Act and/or this MOI provides otherwise.

### 13 COMPOSITION OF THE BOARD

- 13.1 The number of Directors shall not, at any given time, be less than three. If the number of Directors is at any time less than three, the remaining Directors shall, immediately appoint additional Directors in terms of clause 13.3.1 and to ensure that the Company complies with its statutory, contractual and other legal obligations.
- 13.2 There shall be no qualification criteria for Directors to be appointed other than in terms of clause 13.6.
- 13.3 The existing Board shall be entitled by simple majority but subject to clause 13.6, to –
- 13.3.1 appoint any additional and/or future Directors to the Board and determine the terms and conditions of their appointment save for their term of office which shall be indefinite in accordance with clause 13.513.5; and
- 13.3.2 remove any Director from the Board by giving written notice thereof to the Director. Such removal shall take effect from the date set out in such notice.
- 13.4 There are no *ex officio* directors, as contemplated in section 66(4)(a)(i).
- 13.5 A Director shall hold office of Director (unless he/she is removed in accordance with clause 13.3.2 or becomes ineligible or disqualified to hold the office of a Director in terms of clause 13.613.6) indefinitely.
- 13.6 Notwithstanding anything to the contrary in this MOI, no person shall be approved or elected to serve as a Director if that person is ineligible or disqualified in terms of section 69 of the Act.



13.7 This MOI does not impose any other qualifications to be met by the Directors of the Company in addition to the ineligibility and disqualification provisions in Section 69 of the Act.

13.8 Section 70 of the Act shall apply to any vacancy on the Board which may arise from time to time.

#### **14 BOARD COMMITTEES**

14.1 The Board may

14.1.1 appoint any number of committees of Directors; and

14.1.2 delegate to any committee any of the authority of the Board (including the authority to subdelegate);

14.1.3 include any person who is not a Director of the Company in such committees, and the authority of the Board in this regard is not limited or restricted by this MOI.

14.2 The authority and power of any committee established by the Board, as contemplated in section 72(2) of the Act, is not limited or restricted by this MOI, but may be restricted by the Board when establishing such committee or by subsequent resolution.

#### **15 CHAIRPERSON**

15.1 The Board shall be entitled, from time to time, to appoint a Director to act as the chairperson of the Board and to remove that chairperson from his post, with or without nominating a replacement.

15.2 The chairperson of the Board shall preside as the chairperson of each meeting of the Board, provided that, if the chairperson is not present (or is present but not willing to act) at a meeting of the Board, the Directors present at that meeting may elect one of the Directors to be the chairperson of that meeting of the Board.



15.3 The chairperson shall, subject to the Act and this MOI and any decision of the Board, determine the procedure to be followed at all meetings of the Board.

15.4 In the case of an equality of votes, the chairperson of the Board shall not have a second or casting vote in addition to his deliberative vote (if any) except in relation to any resolution to appoint or remove a Director in terms of clause 13.

## 16 DIRECTORS MEETINGS

16.1 The Board may

16.1.1 meet, adjourn and otherwise regulate its meetings as it thinks fit, provided that –

16.1.1.1 in accordance with section 73(2) of the Act, any Director shall be entitled to convene or direct any person so authorised by the Board to convene a meeting of the Board;

16.1.1.2 at least five Business Days prior written notice of a Board meeting shall be given to all the Directors unless clause 16.2 applies or all the Directors agree in writing to a shorter period of notice;

16.1.2 determine the form of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Act, provided that –

16.1.2.1 no meeting may be convened without notice to all of the Directors; and

16.1.2.2 any such prior determination may be varied, depending on the circumstances and reasons for the Board meeting in question,

and the authority of the Board in this regard is not limited or restricted by this MOI.

16.2 If all of the Directors of the Company



16.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;

16.2.2 are present at a meeting; or

16.2.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

16.3 The Board

16.3.1 may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and

16.3.2 must always make provision for any Director to participate by Electronic Communication in every Board meeting that is held in person at any place other than the Registered Office of the Company,

and any Electronic Communication facility so employed must ordinarily enable all persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the Board in this regard is not limited or restricted by this MOI.

16.4 As set out in section 73(5)(b) of the Act, the quorum for meetings of the Board shall be a majority of Directors then in office, provided that unless the Board decides otherwise

16.4.1 if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed;



- 16.4.2 if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the Act, the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.
- 16.5 At any meeting of the Board
- 16.5.1 each Director shall have one vote on every matter to be decided by the Board; and
- 16.5.2 a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in clause 16.5.1 at a quorate meeting of the Board. This clause 16.5.2 shall not detract from the Board's ability to adopt resolutions as set out in 17.
- 16.6 The Company shall keep minutes of the meetings of the Board, and any of its committees (if applicable), and include in those minutes
- 16.6.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and
- 16.6.2 every resolution adopted by the Board.
- 16.7 Resolutions adopted by the Board
- 16.7.1 must be dated and sequentially numbered; and
- 16.7.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 16.8 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting or by the Directors present at such meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.





- 16.9 The provisions of this clause 16 shall apply *mutatis mutandis* to a meeting of a Board Committee.

## 17 WRITTEN RESOLUTIONS BY DIRECTORS

A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been submitted to all of the Directors and signed by at least that number of the Directors having a simple majority of the Voting Rights that could be exercised upon that resolution if it were considered by a meeting of the Board and -

- 17.1 any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of the Board;
- 17.2 unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by the Director who signed it last; and
- 17.3 the resolution may consist of one or more counterpart documents, each signed by one or more Directors.

## 18 EXECUTIVE DIRECTOR

The Board may appoint, from time to time, one or more of the Directors as executive Directors, who shall be employees of the Company, on such terms and conditions of employment as to remuneration and otherwise as may be determined from time to time by the Board subject to section 30 of the Income Tax Act.

## 19 INDEMNIFICATION AND INSURANCE FOR DIRECTORS

- 19.1 For the purposes of this 19, a Director includes
- 19.1.1 a former Director;
- 19.1.2 a Prescribed Officer; and
- 19.1.3 a person who is a member of a committee of the Board,



irrespective of whether or not the person is also a member of the Board.

19.2 The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act

19.2.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

19.2.2 directly or indirectly indemnify a Director for expenses contemplated in 19.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings

19.2.2.1 are abandoned or that Director is fully exonerated; or

19.2.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of 19.2.3;

19.2.3 indemnify a Director against any liability arising from the conduct of that Director, other than a liability set out in section 78(6) of the Act;

19.2.4 purchase insurance to protect

19.2.4.1 a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with 19.2.3; and/or

19.2.4.2 the Company against any contingency, including

19.2.4.2.1 any expenses

19.2.4.2.2 that the Company is permitted to advance in accordance with 19.2.1; and/or

19.2.4.2.3 for which the Company is permitted to indemnify a Director in accordance with 19.2.2; and/or



19.2.4.2.4 any liability for which the Company is permitted to indemnify a Director in accordance with 19.2.3,

and the authority of the Board in this regard is not limited or restricted by this MOI.

19.3 The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any loss, liability, damage, cost (including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense (collectively "**Loss**") which that Director may suffer as a result of any act or omission of that Director in his capacity as a Director, provided that –

19.3.1 this indemnity shall not apply –

19.3.1.1 to any loss against which the Company is not permitted to indemnify a Director by section 78(6) of the Act; or

19.3.1.2 to any Loss arising from any breach, gross negligence or recklessness on the part of that Director, or

19.3.1.3 to any loss of or damage to reputation;

19.3.1.4 in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise);

and Directors shall not be entitled to recover the Losses referred to in this 19.3.1 from the Company. All Losses other than those referred to in this 19.3.1 are referred to herein as "**Indemnified Losses**";

19.3.2 each Director's right to be indemnified by the Company in terms of this indemnity shall exist automatically upon his/her becoming a Director and shall endure even after he/she ceases to be a Director until he/she can no longer suffer or incur any Indemnified Loss;



- 19.3.3 if any claim is made against a Director in respect of any Indemnified Loss, the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim as soon as reasonably possible after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this 19.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this 19.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this 19.3.3;
- 19.3.4 the Company shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control all proceedings in regard to such claim or settlement, provided that -
- 19.3.4.1 the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the Company may reasonably require of the Director in order to contest such claim;
- 19.3.4.2 the Company shall regularly, and in any event on reasonable request by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director;
- 19.3.4.3 the Company shall consult with the Director prior to taking any major steps in relation to (or settling) such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;
- 19.3.5 to the extent that any Indemnified Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the



Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;

19.3.6 if this 19.3 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this 19.3 in respect of any period prior to the date on which the amendment took effect;

19.3.7 all provisions of this 19.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this 19.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI shall remain of full force and effect;

19.3.8 this indemnity shall not detract from any separate indemnity that the Company may sign in favour of the Director.

## 20 COMPLIANCE PROVISIONS IN TERMS OF THE INCOME TAX ACT

20.1 The provisions of this MOI may be amended in accordance with the Act, provided that such amendment shall not result in the Company losing the benefits of any rulings which may have been given in its favour by the Commissioner and the benefits of being an association contemplated in section 10(1)(cN) of the Income Tax Act. Any amendments to this MOI shall be submitted to the Commissioner within thirty days after such amendments have been made (or such other period as may be prescribed by section 30 of the Income Tax Act).

20.2 The Company shall not knowingly be a party to and shall not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act.

20.3 The Company shall not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives and shall utilise



- substantially the whole of its funds for the sole or principal object/s for which it has been established, including the Objects.
- 20.4 No person shall directly or indirectly have any personal or private interest in the Company and substantially the whole of the activities of the Company shall be directed to the furtherance of its sole or principal object/s and not for the specific benefit of an individual person or minority group.
- 20.5 The Company shall comply with such reporting requirements as may be required by the Commissioner from time to time.
- 20.6 The Company shall at all times have at least 3 (three) persons, who are not connected persons in relation to each other as defined in the Income Tax Act, to accept the fiduciary responsibility of the Company and no single person may directly or indirectly control the decision-making powers relating to the Company.
- 20.7 The Company shall not pay any remuneration (as defined in the Fourth Schedule to the Income Tax Act) to any employee, office bearer or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates and in relation to the services rendered and the Company shall not economically benefit any person in a manner which is not consistent with its objects.
- 20.8 The Company shall comply with such further conditions as may be prescribed from time to time in terms of section 30 of the Income Tax Act.
- 20.9 To the extent that the provisions of any other clause in this MOI conflict with the provisions of this clause 20, the provisions of this clause 20 shall prevail over any such conflicting clause.
- 20.10 Where any funds or assets are provided in the furtherance of the objects of the Company, reasonable steps will be taken to ensure that the funds are utilised for the purpose for which they have been provided.



- 20.11 Save to the extent contemplated in section 30(3)(b)(v) of the Income Tax Act, the Company shall not accept any donation which is revocable at the instance of the donor.
- 20.12 The Directors shall submit to the Commissioner a copy of any amendment to this MOI (within such period as may be prescribed by section 30 of the Income Tax Act), as well as required returns for income tax purposes together with supporting documentation.
- 20.13 The Company shall comply with such further conditions as may be prescribed from time to time in terms of section 30(3)(a) of the Act.
- 20.14 The Company shall not use its resources directly or indirectly to support, advance or oppose any political party.

## **21 FINANCIAL STATEMENTS**

The Company shall prepare annual Financial Statements in accordance with the Act and the Regulations and shall, only to the extent required by the Act or the Regulations, have those annual Financial Statements audited or reviewed.

## **22 FINANCIAL YEAR END**

The financial year end of the Company shall be the last day of February of each calendar year.

## **23 FUNDAMENTAL TRANSACTIONS**

The Company shall not –

- 23.1 amalgamate or merge with, or convert to, a profit company; or
- 23.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except that such a disposition of an asset occurs in the ordinary course of the activities of the Company.



## 24 FINANCIAL ASSISTANCE TO DIRECTORS

24.1 The Company shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related Company, or to a person related to any such Director unless the transaction –

24.1.1 is in the ordinary course of the Company's activities in furtherance of the objects of the Company and for fair value;

24.1.2 constitutes an accountable advance to meet (i) legal expenses in relation to a matter concerning the Company or (ii) anticipated expenses to be incurred by the person on behalf of the Company;

24.1.3 is to defray the person's expenses for removal at the Company's request; or

24.1.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

## 25 BANK ACCOUNT

The Board shall be entitled to open and operate any banking account and to draw and issue cheques and to receive cheques, promissory notes and/or bills of exchange, and to endorse any of the same collection by the bank at which the said account was opened, provided that at least two Directors, or two persons authorised by the Directors, shall be signatories to any drawings effected on the Company's bank accounts and to any endorsements of cheques, promissory notes and/or bill of exchange. The Company's financial transactions shall be conducted by means of such bank account.

## 26 NOTICES

26.1 Any notice that is required to be given to Directors may be given in any manner prescribed in the Table CR3 to the Regulations and that notice shall be deemed to have been delivered as provided for in the Regulations, as a result of the relevant method of delivery.





26.2 Each Director shall –

26.2.1 notify the Company in writing of a postal address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and, if he has not named such an address, he shall be deemed to have waived his right to be so served with notices by post; and

26.2.2 unless otherwise agreed with the Company, notify in writing to the Company an email address and facsimile number, which address shall be his address for the purposes of receiving notices by way of email or facsimile, respectively.

**27 WINDING UP OR DISSOLUTION**

27.1 Upon winding up or dissolution of the Company, no Director is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.

27.2 The entire net value of the Company will be distributed to one or more non-profit companies determined by the Board (and/or to external non-profit companies carrying on activities within the Republic and registered in terms of the Act, voluntary associations or non-profit trusts determined by the Board) with similar main objectives to the Company, provided that they shall be a similar PBO approved in terms of section 30 of the Income Tax Act or other body as contemplated in section 30(3)(b)(iii) of the Income Tax Act.



## **ANNEXURE A - INDEPENDENT CODE FOR NON-PROFIT ORGANISATIONS IN SOUTH AFRICA**



# **THE INDEPENDENT CODE**

OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS IN SOUTH AFRICA



# THE INDEPENDENT CODE

OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS IN SOUTH AFRICA

Published by the Working Group on The Independent Code of Governance for Non-profit Organisations in South Africa  
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You are welcome to copy parts of this document for non-profit educational use but the Working Group must be acknowledged in full.



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## FOREWORD

The process of developing an Independent Code of Governance for the Non-Profit Sector in South Africa began at a meeting held in Cape Town on 25 August 2010 that was attended by civil society organisations from different parts of the country.

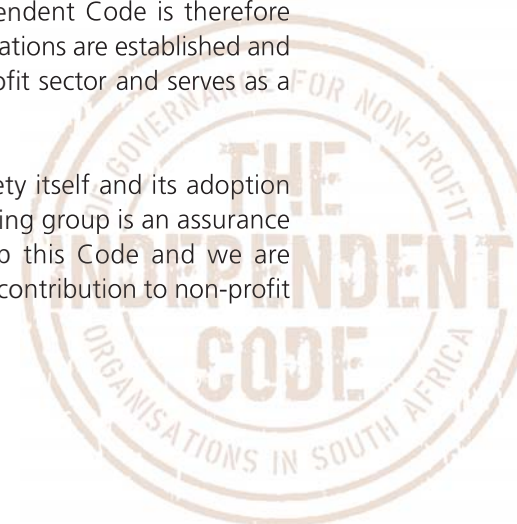
The meeting was convened to consider the implications for the non-profit sector of the King III Code (corporate code) which had come into effect six months earlier without any consultation with the non-profit sector. On the agenda was also a report back on a meeting with representatives of the King Committee and the Institute of Directors which had taken place on 19 August 2010 where the concerns of the non-profit sector had been raised.

The civil society meeting agreed that the implementation of a corporate code of governance presented a threat to the sustainability of the majority of organisations in the non-profit sector. Of further concern was the language and cadence of the corporate code which was largely inaccessible to non-profit organisation (NPO) personnel and which did not adequately reflect the values and ethos of the NPO sector.

The civil society representatives at the meeting recognised that there was a need for a widely-accepted code of governance for NPOs in South Africa and that it was preferable to self-regulate rather than be regulated, either by the state or the corporate sector. The meeting elected an ad hoc working group with a mandate to consult the sector more broadly, with the view to developing a separate code of governance. Over the ensuing months, a series of consultative meetings took place in different parts of the country. The first phase of consultations took place between May and August in 2011 and sought to inform the content, structure and applicability of the code. The second phase was held during March and April 2012 at which the draft version of the code was made publicly available for comment. Five consultative workshops were held across the country. This Independent Code is therefore reflective of the values and principles upon which non-profit organisations are established and the realities in which non-profits operate. It belongs to the non-profit sector and serves as a document that is supportive and inspirational.

The currency of this Independent Code is dependent on civil society itself and its adoption as its code of choice. The level of support experienced by the working group is an assurance that there has been great appreciation for the need to develop this Code and we are confident that the Independent Code will be recognised as a major contribution to non-profit governance in South Africa.

The Working Group  
July 2012



# ACKNOWLEDGEMENTS

This document is the product of extensive and comprehensive consultations with the civil society sector in South Africa. The contribution of the many organisational representatives, board members, donors and grantmakers, accountants, lawyers, and individuals is acknowledged with the deepest gratitude and appreciation. The participation, input and support of all these stakeholders has added greatly to the depth, relevance and applicability of this Code to the non-profit sector in South Africa.

Our sincere appreciation goes to members of the Working Group who voluntarily gave of their time over the two-year consultative process, and for their support, optimism and determination to manage and co-ordinate the process of developing the Code. They are:

- Shelagh Gastrow (Inyathelo – The South African Institute for Advancement);
- Colleen du Toit (Charities Aid Foundation Southern Africa);
- Chris Mkhize (Uthungulu Community Foundation);
- Jimmy (Nontobeko) Gotyana (SANGOCO);
- Rajesh Latchman (National Welfare Forum); and
- Richard Rosenthal (Legal Advisor).

Special mention and gratitude should be given to Richard Rosenthal, who has been largely responsible for the content and drafting of the Code. His consummate skill in producing a basic framework for the Code was matched by his capacity to synthesise the myriad comments and feedback received by the Working Group.

Our deep appreciation also goes to the funders of this initiative for their support and confidence in this process, namely the Anglo American Chairman's Fund, CDT Foundation NPC, Charities Aid Foundation Southern Africa, Hospice Palliative Care Association, Inyathelo, Iqraa Trust, and the Uthungulu Community Foundation.

Acknowledgement also goes to Janine Ogle for co-ordinating the consultative process towards finalising the Code.

Shelagh Gastrow  
Executive Director  
Inyathelo - The South African Institute for Advancement





# EXECUTIVE SUMMARY

The Independent Code represents a statement of values, principles, and recommended practices, to which all non-profit organisations (NPOs) in South Africa are invited and encouraged to subscribe.

The Code does not constitute an official document, nor is it imposed by law. However, it does make provision for a formal written commitment in terms of which an organisation may record its voluntary commitment to subscribe to the core values and core principles of good governance.

The essence of the Code is the widely-held belief that there are certain fundamental values and principles which can and should be observed and implemented by all NPOs in South Africa, despite their diversity of size, capacity, and resources.

These fundamental values and principles are discussed under the following topics:

## **Ensuring adherence to eight basic values:**

1. Fidelity to purpose;
2. Altruism and benevolence;
3. Integrity;
4. Optimising resources;
5. Conflicts of interest and self-dealing;
6. Equality and non-discrimination; and
7. Democracy and empowerment
8. Independence and impartiality.

## **Ensuring good leadership in six key areas:**

1. Vision, purpose and values;
2. Accountability and transparency;
3. Fundraising, sustainability and risk management;
4. Collaboration and synergy;
5. The Board and other governance structures; and
6. Procedural governance.

## **Ensuring good implementation in five key legal and fiscal areas:**

1. Establishment and incorporation;
2. Administrative and procedural requirements;
3. NPO Act – consequences and benefits of registration;
4. PBO status – fiscal benefits and conditions; and
5. Other legislative and regulatory compliance.





# GLOSSARY

Board	The uppermost governance structure of an NPO – whether it is known as a Board of Directors; Executive Committee; Board of Trustees, or some other term. This is the body which exercises responsibility for high-level decision-making, and reports to the members of the organisation, if any
CBO	Community-based organisation
CEO	Chief executive officer
CIPC	The Companies and Intellectual Property Commission established in terms of the Companies Act
Companies Act	The Companies Act 71 of 2008, as amended
NPO	An organisation of a voluntary nature, formed on a non-profit basis, at the initiative of individual members of civil society, to address a need or advance a purpose in the public interest
Income Tax Act	Income Tax Act 58 of 1962, as amended
King III	The Third Report on Governance compiled by the so-called King Committee, appointed by the Institute of Directors in Southern Africa (IOD)
Management	The supervisory structure within an organisation, which undertakes executive responsibility for administering the affairs of an organisation, and which implements the decisions of the Board
9th Schedule	The 9th Schedule to the Income Tax Act, in terms of which 'public benefit activities' are defined
Nonprofit Organisations Act	Nonprofit Organisations Act 71 of 1997, as amended
NPC	Non-profit company in terms of the Companies Act
NPO	Non-profit organisation
NPO Directorate	Directorate for Nonprofit Organisations established in terms of the NPO Act and located within the Department of Social Development
PBO	Public benefit organisation approved as such by SARS in terms of the Income Tax Act
Public benefit activities	The activities listed and described as such in terms of the 9th Schedule
SARS	South African Revenue Service
Trust Property Control Act	Trust Property Control Act 57 of 1988, as amended
VAT Act	Value-Added Tax Act 89 of 1991, as amended



# 1

## INTRODUCTION

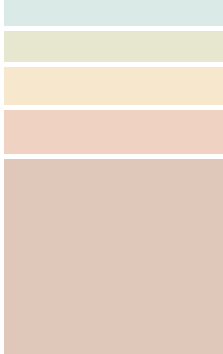
### 1.1 OBJECTIVES

**The objectives of the Independent Code include the following:**

1. To define the non-profit organisation (NPO) sector for purposes of this Code as comprising organisations of a voluntary nature, formed on a non-profit basis, at the initiative of individuals within civil society, in order to address a need or advance a purpose in the public interest.
2. To recognise that the NPO sector is an important and distinct part of civil society, for which a distinct Code of Governance is needed.
3. To recognise the wide diversity of size, capacity, and resources amongst NPOs.
4. To acknowledge that success for NPOs is measured not merely by reference to size, capacity and resources, but by commitment and effectiveness in achieving their goals.
5. To promote good governance, high standards, integrity, and best practice amongst NPOs.
6. To avoid the imposition of inappropriate, unattainable, and unaffordable standards.
7. To ensure that the Code is informed and developed through a process of sector-wide consultation and with the collaboration of all stakeholders.
8. To identify the core values and principles that should be implemented and practised by the non-profit sector as a whole, in all its diversity.
9. To recognise that the best interests of beneficiaries, and of society as a whole, must be the overriding consideration in carrying out the work of NPOs.
10. To recognise that NPOs are values-based institutions, which stand in a position of trust towards their various constituencies – including beneficiaries, donors, and society as a whole – and to which constituencies NPOs have a continuing duty of accountability.
11. To affirm the principle that the work and resources of an NPO must be dedicated exclusively to the advancement and support of a public benefit purpose.
12. To acknowledge the existence and importance of other Codes, including the Department of Social Development NPO Code, the King III Code, and the South African NGO Coalition Code, insofar as they may be relevant to particular organisations.

### 1.2 WHAT IS A CODE OF GOVERNANCE?

A Code of Governance is a set of values and principles intended to guide and inform the way organisations are managed and conduct their affairs. It is also intended to serve as a standard and measure of performance to guide members of governing boards, and those who carry responsibility for governance. Frequently, the principles, values and objectives of a code are embodied in a Board Charter, to which each serving member is required to subscribe. The Independent Code envisages similarly that there should be a written voluntary Commitment and Undertaking of Compliance signed on behalf of the Board, the members and the employees of the organisation concerned. Such a joint Commitment and Undertaking should be reviewed and renewed at regular intervals.



Some codes are embodied in laws, regulations, and rules and their application is compulsory. The message of such compulsory codes is often characterised as: ‘Comply, or else!’ where failure to comply results in negative consequences, which may involve penalties or sanctions. In a serious case, non-compliance can lead to the personal liability and culpability of board members.

There are also other kinds of codes, whose message has been characterised as: ‘Comply, or explain!’ Such codes are not enforced by law or regulation, but they can still entail negative consequences for non-compliance such as, for example, the loss of benefits (e.g. tax exemption, or the loss of funding eligibility, or preferred beneficiary status).

There is a third kind of code which is entirely voluntary, supportive, and self-imposed. Such a code is not subject to official oversight, or enforced by law, nor is it enforced by the threat of penalties or sanctions. The purpose of such a code is to encourage and empower, rather than to regulate, sanction or impose. This is the objective of the Independent Code. The Code seeks to promote a culture of ‘best governance practice’, and seeks to provide guidance, information, and resources with a view to:

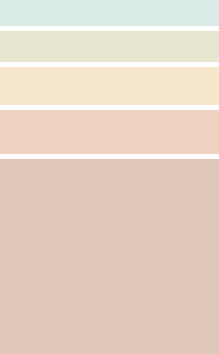
- improving governance standards and practice amongst NPOs;
- strengthening governance capacity of NPOs, and their Boards; and
- encouraging public confidence in, and support for, the non-profit sector.

### 1.3 DOES ‘ONE SIZE FIT ALL’?

There are a great many non-profit organisations in South Africa. In fact, no one really knows how many. Recent estimates suggest that there may be as many as 150 000 such organisations, depending on how ‘non-profit organisation’ is defined. Of these, roughly 85 000 have an NPO number – which indicates formal registration with the NPO Directorate in the Department of Social Development.

Only around 10 000 NPOs have a PBO number, indicating that they have been approved by the South African Revenue Service (SARS) as a ‘public benefit organisation’ (PBO). An NPO is only exempted from income tax, donations tax, estate duty and other fiscal levies if it has been approved by SARS as a PBO, or as one of a small number of other categories of exempt institutions, e.g. recreational clubs, chambers of commerce, trade unions and political parties. Even fewer organisations (in addition to being registered NPOs and approved PBOs) are also exempt from charging value-added tax (VAT) on the services they render, and entitled to reclaim VAT which they have paid on their supplies.

What is loosely described as ‘the NPO sector’ is therefore a very large and diverse sector. It includes well-established organisations with large donor grants, as well as many much smaller, informally constituted, community-based organisations (CBOs). Many CBOs don’t even have written constitutions, are not registered NPOs, and do not have PBO status. Consequently, such organisations cannot make the most of the tax benefits available to non-profit organisations.



In this context, with organisations of varying size, capacity and purpose, it is unrealistic to think of a Code of Governance that is applicable in exactly the same ways to all organisations, large or small, formal or informal, endowed, community-based, or even multinational. However, in spite of these differences, there are certain fundamental values and operating principles to which all NPOs can and should subscribe. Although the way in which these values and principles are applied in practice may differ across the non-profit sector, this Code seeks to recognise both similarities and differences. This voluntary Code of non-profit governance seeks to promote core values that apply universally, and to recognise and allow for differences in how these are practically implemented.

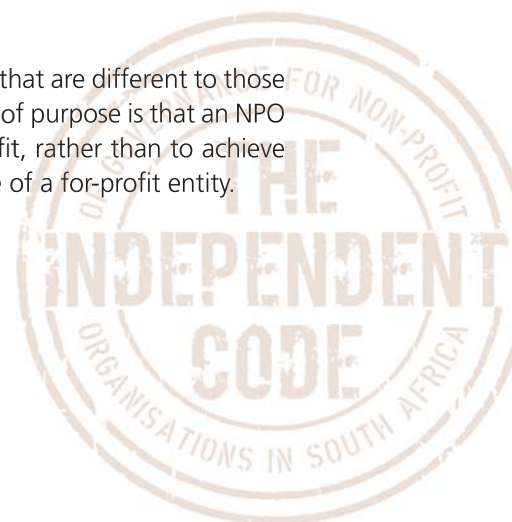
## **1.4 WHAT IS DIFFERENT AND SPECIAL ABOUT THE NON-PROFIT SECTOR?**

Despite their wide diversity, NPOs share a number of defining characteristics that make them distinct and different from corporates and other entities established for profit.

For example:

- NPOs are voluntary organisations, which means that they are established at the initiative of individuals, and not as a result of the passing of some law, or a decision of government or a parastatal corporation.
- NPOs exist to address a social need or to advance a purpose in the public interest.
- NPOs are barred from pursuing individual self-interest or private profit, and must apply all their resources to advance a purpose for public benefit.
- NPOs may be established simply by the act of agreement between three or more people as a voluntary association.
- If an NPO is dissolved, any remaining assets must be transferred to some other NPO having the same, or a similar, purpose.

NPOs are, by nature, committed to a number of values and principles that are different to those which are applicable to the commercial sector. The primary difference of purpose is that an NPO exists solely to serve the common good, and promote a public benefit, rather than to achieve individual profit or advance self-interest, which is the normal purpose of a for-profit entity.



# NON-PROFIT GOVERNANCE

# 2

## 2.1 VALUES, PRINCIPLES AND RESPONSIBILITIES

NPOs are special kinds of institutions which exist to serve the common good, or advance a purpose in the public interest. They represent a practical manifestation of the principle known in the Nguni languages as 'ubuntu'. Ubuntu can be translated as 'humanness', and is often illustrated by the idiomatic expression *umuntu ngumuntu ngabantu* (a person is a person because of people). Ubuntu implies a relationship of mutual and reciprocal responsibility between individuals and communities. The major purpose of NPOs is therefore to meet a need or advance a purpose in the public interest. They are a means for communities to share resources; demonstrate concerns; promote values; and demonstrate a shared responsibility for those within society who are in need, or have difficulty in caring adequately for themselves. They are formed on the initiative of ordinary citizens, and are constituted independently of government; and they remain accountable to the communities they represent and serve.

The NPO sector is highly diverse. There are essentially three basic types of legal structure available to NPOs – non-profit companies, trusts, and voluntary associations. Each type of structure has its own distinct governance body – described variously as a Board of Directors; a Board of Trustees; or a Management Committee (amongst other names).

A few NPOs are able to rely on their own endowment capital and income flows, but most depend completely or substantially upon donors and grantmakers. While only some NPOs have 'members', all NPOs have beneficiaries – members of the public, to whom they are also accountable. A Code of Governance for NPOs must take account of the differences of size, nature, structure, capacity and objective.

Ultimately, it is the Board, by whatever name it is known, which bears primary responsibility for ensuring that an NPO remains true to its values and principles, faithful to its mission, and effective in carrying out its public benefit activities, in the public interest. The 'buck' stops with the Board, with particular reference, but not limited, to financial transparency and accountability.

Although the Board is ultimately responsible for the governance of an NPO, this responsibility is carried into effect by management, with the support of employees, volunteers, donors and others involved with its operations. The Board must hold management accountable for the practical implementation of its responsibilities, and for ensuring the effective use of available resources; adhering to strategic objectives; prioritising needs, and maintaining budgetary discipline. The Board must also affirm core values; set attainable standards; provide strategic direction; monitor actual performance; and ensure responsible allocation of its available resources. However, a Board should never take over the responsibilities of management for the day-to-day operations, and implementation of work plans.

While affirming the critical responsibility of the Board, there are other stakeholders of an NPO who also bear a share of responsibility, and they too must play their part in ensuring that effective governance takes place. These stakeholders include an NPO's members (where applicable); employees; volunteers and donors.

## 2.2 PRINCIPLES OF GOOD GOVERNANCE

### 1. ENSURING ADHERENCE TO VALUES

The fundamental responsibility of the Board of an NPO is to endorse, practise, and ensure a commitment to the core values that are inherent in ubuntu.

Archbishop Desmond Tutu described ubuntu as ‘the essence of being human’. He said:

*Ubuntu speaks particularly about the fact that you can't exist as a human being in isolation. It speaks about our interconnectedness. You can't be human all by yourself, and when you have this quality – ubuntu – you are known for your generosity. We think of ourselves far too frequently as just individuals, separated from one another, whereas you are connected and what you do affects the whole world. When you do well, it spreads out; it is for the whole of humanity.*

The need for a commitment to these core values is both implicit and explicit. Some values are embodied in legislation, such as the Nonprofit Organisations Act; the Trust Property Control Act; and the Companies Act. Other values form part of our culture, tradition, and the common law. Values that are of particular relevance and concern to the NPO sector are outlined below.

#### VALUE 1

#### FIDELITY TO PURPOSE

For an NPO to be committed to the principle of fidelity, or loyalty, to purpose means that all its resources, energies and activities must be devoted to promoting its public benefit purpose and not to some personal or private objective.

- The purpose of an NPO must be clearly defined in its founding document, and the Board must ensure that the organisation remains true to that purpose, and does not become side-tracked into unrelated causes and activities, however worthy. Any significant change of purpose must result from a formal decision to this effect, following a process of consultation that should, if possible, include members, donors and the beneficiary community. Such decisions must then be formalised by an amendment of the NPO's founding document.
- The importance of remaining true to purpose involves not only a duty that is owed to members, and a duty of trust that is owed to beneficiaries; but also a duty that is owed to donors and volunteer supporters. Conversely, donors owe a duty to NPOs to support their adherence to their constitution's stated objects and purposes. In terms of the Income Tax Act, notice of a change of purpose must be promptly sent to the Tax Exemption Unit of SARS, which may then review its initial approval of the organisation's PBO status. A change of purpose can lead to the loss of tax exemption under Section 10(1)(cN) of the Income Tax Act. In certain instances, a change of purpose can also lead to the loss of approval for purposes of Section 18A (the right of donors to claim tax deductibility of their donations to that organisation).

## VALUE 2

## ALTRUISM AND BENEVOLENCE

An NPO is constituted for a public benefit purpose. This implies that its actions and decisions must be motivated by reasons consistent with that purpose. The underlying motivation must be one of advancing the public interest, and not some self-interest, although certain NPOs may serve the shared interests of members of communities, provided they are not 'small and exclusive groups' (Section 30 of the Income Tax Act, 1962).

- The Board has a responsibility to ensure that neither its members, nor any of the organisation's employees or donors, uses the organisation to advance personal agendas. Examples of such agendas could be private profit, political candidacy, individual reputation, promotion, advertising, or other self-benefit.
- Altruism or benevolence implies that the purpose underlying an action is a desire to benefit others, without seeking advantage for oneself. It is the foundation of philanthropy or charity, and represents an intention to benefit society as a whole.

## VALUE 3:

## INTEGRITY

It is a primary responsibility of the Board to demonstrate a commitment to the highest standards of integrity, and to require that all persons who represent or act on behalf of the organisation live up to these expectations.

- Integrity in this context has both active and passive aspects. Thus, a Board should be concerned not only with decisions and actions, but also with a failure to take necessary decisions and act appropriately. Thus, for example, integrity is concerned with acts of dishonesty such as theft, fraud, corruption, lying and deceit. It is also concerned with the failure to fulfil a mandate of trust. There can be a failure of integrity both in the doing something, as well as in not doing something – or in doing nothing.
- The Board must ensure that standards of integrity are effectively propagated and enforced throughout the organisation. It must, for example, create mechanisms to protect 'whistle-blowers', and must ensure that procedures and policies exist to deal with instances of dishonesty or malpractice. This may involve internal disciplinary proceedings but, in serious cases, it must be prepared to lay criminal charges and allow the courts to determine appropriate sanctions.

## VALUE 4:

## OPTIMISING RESOURCES

An NPO stands in a position of trust. It is given funds and resources for a specific purpose. Decisions of the Board and actions of management must be consistent with that purpose. Funds and resources must be put to use in a responsible manner, and without extravagance or undue risk. Even when funds are donated without a designated purpose, care and prudence must be the watchwords.

- This important value has particular relevance to the issue of remuneration, including reimbursement of expenses incurred by Board members. As far as non-profit companies are concerned, the guiding principles are now set out in the new Companies Act, which prescribes that remuneration may only be paid to directors if the founding document so permits, and if there is prior approval of a general meeting of members passed by special resolution within the preceding two years. Annual financial statements must disclose any such remuneration individually in respect of each director (and any other financial benefits such as a bonus or loan). Similar principles should be regarded as applicable to all NPOs, and not just those which are constituted as non-profit companies.
- The Income Tax Act (Section 30) prescribes that a tax-exempt PBO may not pay remuneration to any person, including a director or trustee, 'which is excessive, having regard to what is generally considered reasonable in the sector, and in relation to the service rendered'.
- Ensuring compliance with these principles and statutory prescriptions represents an important board responsibility. A material failure to comply represents a breach of trust, and may result in civil and even criminal consequences.

## VALUE 5: CONFLICTS OF INTEREST AND SELF-DEALING

A fundamental principle and value of NPO governance is the avoidance of 'conflicts of interest'. Such conflicts arise when a person in a position of trust makes a decision or enters into a contract from which they themselves, or friends, relatives or associates, stand to benefit.

- Occasionally, but rarely, such conflicts of interest cannot be avoided. In the NPO sector, a special problem arises in the case of community-based organisations, where community members are not only beneficiaries but often also serve on the organisation's executive committee. Such situations require particular care and management, which may include the need for special approval by members of the community, or the independent assurance of some independent, knowledgeable, and disinterested person. The appointment of relatives or friends as employees of an NPO, or as paid consultants or service providers, should also be avoided wherever possible, except in the most unusual circumstances.
- As to how these situations should best be handled, the Companies Act provides important principles and directions in respect of companies – including non-profit companies. Similar principles should be regarded as applicable generally to all NPOs, and not just those constituted as non-profit companies. Thus, the Companies Act stipulates that in the event of a 'conflict of interest' arising, the affected person:—
  - a. must disclose the interest and its general nature before the matter is considered at the meeting;
  - b. must disclose to the meeting any material information relating to the matter, and known to the director;
  - c. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;



- d. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c);
- e. must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);
- f. while absent from the meeting in terms of this subsection —
  - i. is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and
  - ii. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- g. must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the Board.

#### VALUE 6:

#### EQUALITY AND NON-DISCRIMINATION

NPOs, like all other members of society, are bound by rights, duties and obligations set out in the South African Constitution. In fact, the right to form an NPO is itself reflected in the fundamental right described as 'freedom of association'.

- In terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, it is the responsibility of a board to take proactive steps to prevent unfairness in the conduct of the affairs of an organisation. In particular, a board must be vigilant in preventing unfair discrimination based on grounds of race, gender, or one of the other prohibited grounds referred to in the Act. A board must also promote a principle of fairness in its relationships with other organisations, and in its programmes and activities – including its selection of beneficiaries, and the principle of equal access to its services and support.

#### VALUE 7:

#### DEMOCRACY AND EMPOWERMENT

In the conduct of its affairs and in its relationships with each of its stakeholders, an NPO must demonstrate a clear commitment to democratic process and decision-making. An NPO ultimately makes its own decisions, but these should be informed by knowledge, research, and a participative process, allowing for wide-ranging consultation and feedback.

- Thus, for example, a board is responsible for ensuring that employees are fairly treated, adequately represented, and appropriately consulted; and that a culture of participatory decision making is encouraged throughout the organisation.
- In its dealings with beneficiaries and communities, a similar value and principle should be encouraged by the organisation, in recognition of the need for involving consultation and empowerment. Beneficiaries should be shown respect, and given the opportunity to evaluate, and to praise or, if necessary, criticise, the quality of products and services received. The dignity, value, and empowerment of each individual person should be the hallmark of an NPO's relationships.

## VALUE 8: INDEPENDENCE AND IMPARTIALITY

A fundamental value that needs to be observed by NPOs is that of independence and impartiality. A public benefit purpose implies that all eligible beneficiaries must be treated equally and fairly, without special favour or prejudice. Where it is necessary, because of limited resources, to choose between particular individuals or communities, the basis for choice must be such as to avoid the reality – or the possible perception – of unfair discrimination. This is particularly important where members of the Board – or senior executives – are identified with one beneficiary group rather than another.

A commitment to independence extends beyond the choice of beneficiaries, and includes a duty to make choices and arrive at decisions at arm's length, and without being dictated to by any particular constituency or interest group. Similarly, although donors will generally designate their intended grant purpose, which could include identifying particular needy communities or groups, they may not control the final selection of individual beneficiaries, or attempt to advantage their own employees or persons with whom they may have some special relationship.

Similarly, although NPOs must ensure that they communicate effectively with official bodies, including local government, in order to ensure that their efforts are complementary and that there is no wasteful duplication of efforts and resources, they must always act independently and take particular care to avoid the perception of political preference or patronage.

## 2. EXERCISING EFFECTIVE LEADERSHIP

Effective leadership is the core quality of good governance. It relates not only to the external role of presenting and propagating the cause or mission of an NPO in the public domain; but also to the internal role that should be played by the Board in setting standards, giving direction, and determining strategy. Once again, it is not the function of a board to manage the organisation; but it is the function of the Board to encourage initiative, including income generation; and to hold managers to account; to provide them with the resources they need; and to ensure that the organisation has a common vision and strategy, which is carried into practical effect by management.

The Board should also be concerned to promote harmonious relationships; facilitate the resolution of conflict issues, preferably by negotiation, mediation, or ADR [alternative dispute resolution]. Whilst affirming the authority of the Executive, the Board should make it possible for employees and others with relevant information, whether inside or outside the organisation, to confidentially raise issues such as a lack of integrity or unfair discrimination.

The substance and scope of the Board's responsibility to exercise effective leadership is considered under the six headings below.

## KEY LEADERSHIP AREA 1: VISION, PURPOSE, AND VALUES

It is the responsibility of the Board to ensure that the vision, purpose, and values of an organisation are clearly defined and instilled throughout the organisation; that they are formally recorded in writing; and that they are reviewed at regular intervals, to ensure that they remain relevant, and are 'owned' and carried into effect at all levels of the organisation.

- It is recommended that basic statements of vision, purpose, and values are not only incorporated in the founding documents, but are also prominently displayed in the offices of the organisation; on its website (if applicable); and repeated in the organisation's literature, pamphlets, and other documentation, including its strategic plans, annual reports, newsletters, etc.
- To ensure that these matters are given due weight and prominence, it is a governance responsibility regularly to monitor and evaluate individual and collective performance against specific objectives; to identify strengths and weaknesses; and to provide opportunities for organisational learning and staff development. Issues such as favouritism, nepotism, self-dealing, bias, and preference should be given particular attention.

## KEY LEADERSHIP AREA 2: ACCOUNTABILITY AND TRANSPARENCY

A critical responsibility of the Board is to ensure commitment to accountability and transparency. The way in which an organisation addresses this basic responsibility is an important indicator and barometer by which it will be evaluated and judged.

- The Board must ensure that there is effective and transparent financial reporting; and it must satisfy itself as to the existence of adequate financial systems and controls. Within a reasonable time (not exceeding six months) following the end of each financial year, an organisation should prepare, publish, and present its annual financial statements, which should be either professionally audited, or at least reviewed by an independent person, in the way described in the Companies Act. Such statements should include, as a minimum, a statement of financial position; a statement of comprehensive income; a statement of changes in reserves; and a statement of cash flows (with comparative figures for the preceding financial year). For small organisations, a statement of financial position accompanied by a statement of income and expenditure (with comparative figures for the preceding year) may be adequate. However, in the absence of an audit, an independent review of financial statements is essential.
- The Board's duty of accountability and transparency is not restricted to the financial situation of an organisation, but includes its duty to give an account of its programmes and activities, including the way in which it has sourced and applied its funds; the measure of its impact, including both failures and successes; and its plans and proposals for the future. It should also be concerned with respect to the organisation's environmental impact, and its compliance with relevant laws and regulations. This duty requires open and honest communication with stakeholders, including the general public through the media.

- NPOs are accountable to a number of constituencies and stakeholders. These include, but are not limited to:—
  - a. Donors – with respect to the organisation’s integrity and effective use of funds.
  - b. Beneficiaries – with respect to the organisation’s awareness of needs, and deployment of resources.
  - c. Members – with respect to democratic governance and fidelity to purpose.
  - d. Employees – with respect to fair remuneration, employment conditions, transformation and empathetic human relations.
  - e. Volunteers – with respect to their contributions of time, energy and skills.
  - f. Government – with respect to legal and fiscal compliance, and effectiveness in allocating resources and addressing needs.
  - g. Other NPOs – with respect to possible synergies and opportunities for collaboration.
  - h. The general public – with respect to tax benefits and fiscal privileges.

### KEY LEADERSHIP AREA 3: FUNDRAISING, SUSTAINABILITY AND RISK

It is the Board’s responsibility not only to monitor expenditures and appropriation of funds, but also to ensure that the organisation remains adequately funded; and that it will be in a position to meet its anticipated costs and commitments to employees, beneficiaries and, importantly, to SARS.

- Board members should be encouraged not only to give of their time, knowledge and skills, but also, where possible, to make a personal financial contribution as tangible evidence of their commitment; and to provide support to those primarily responsible for fundraising and advancement.
- Part of the Board’s responsibility is to ensure that the organisation communicates effectively with its various stakeholders, including donors and members. Depending on the size of the organisation, the nature of its activities, and the extent of its resources, this may require periodic project and programme reports; the establishment and maintenance of a website; the publication of newsletters; and the prompt and efficient handling of correspondence and other communications, including information provided to the media.
- It may also be appropriate for an NPO to recoup at least part of its expenditures through the levy of affordable fees and charges for its services. In some instances, there may be opportunities to generate income from other activities to supplement the organisation’s donation income. However, in these circumstances, there are a number of considerations which must be carefully considered. These include the following:
  - a. Any such income-generating activity must remain secondary and not become a primary focus, to the detriment of the organisation’s public benefit purpose.
  - b. Net profits derived from ‘unrelated’ income-generating activity are likely to be subject to tax, and must be separately accounted for and recorded.
  - c. Board members and employees – and their relatives or friends – must be particularly careful to avoid conflicts of interest or draw personal profit in these situations.
  - d. Such activities should never involve undue commercial risk, which may put the organisation’s financial sustainability in jeopardy.

- Apart from the financial risks associated with the need for sustained funding, the Board must ensure that due consideration is given to identifying, managing, and where possible anticipating other systemic risks which may threaten the organisation's ability to deliver on its mandate. In a large organisation this may justify the appointment of a special committee charged with responsibility for risk; but for most NPOs, issues of risk will need to be managed in a manner that is affordable and appropriate to the resources of the organisation concerned.

#### KEY LEADERSHIP AREA 4: COLLABORATION AND SYNERGY

NPOs exist to serve a public benefit purpose, and they should not act competitively or seek exclusivity, to the detriment of other organisations involved with similar work. When opportunities arise, NPOs should act collaboratively and co-operate with similar entities – including, where appropriate, other NPOs, welfare agencies, and relevant bodies in the public and private sectors. The overriding concern should be to advance the interests of the intended beneficiaries, and of society as a whole, rather than to promote the self-benefit or self-aggrandisement of the organisation itself.

#### KEY LEADERSHIP AREA 5: THE BOARD AND OTHER GOVERNANCE STRUCTURES

The way the Board is composed is a crucial issue which impacts directly on the quality of governance of an NPO. For example, it is generally considered undesirable for the Director or Chief Executive to act as Chairperson of the Board. Board members should be recruited with due regard to a number of factors, including knowledge, skills, diversity, and available time. There should also be a policy directed at achieving, from year to year, a balance between the twin benefits of continuity and of renewal. Thus, new Board members should periodically be introduced, and long-serving members should periodically retire. In the case of self-funded, family or corporate foundations, the founders and funders are likely to require representation on the Board, but they may not exercise unilateral control over decision-making.

- Board members should be committed to attending and actively participating at Board meetings. Upon initial appointment, new Board members should be supported with background documentation, and with a process designed to familiarise them with relevant information.
- Traditionally, most Board members regard their appointment as an opportunity for service, and agree to make themselves available without remuneration. However, where the level of involvement is significant, NPOs sometimes pay a modest fee, and for the reimbursement of reasonable travel and accommodation expenses. It must be emphasised that any such remuneration or reimbursement must always be modest and proportionate to the resources of the organisation. Actual attendance or other active participation in the business of the Board should be a condition for payment of any such fee.

- Larger NPOs may require subordinate governance sub-structures to assist the Board in undertaking its responsibilities. Such sub-structures may include, for example:
  - a. An Executive Committee.
  - b. A Regional Committee.
  - c. A Project Committee.
  - d. A Fundraising Committee.
  - e. An Audit Committee.
  - f. A Remuneration Committee.
  
- The terms of reference and composition of any such committee should be carefully considered and managed to ensure that there is an appropriate balance between internal and external members; that the Committee remains fully answerable to the Board; and that it does not supersede or override the limits of its delegated authority and responsibility. Moreover, the Board should be aware that the appointment of any such committee and the delegation of specific areas of responsibility does not absolve it from responsibility for ensuring the overall good governance of the organisation.
  
- It is strongly recommended that boards and their committees should regularly review their own performance – and that of their individual members – usually on an annual basis. Boards should also conduct an annual review of the performance of the Director or Chief Executive.
  
- A further board responsibility is to give timely attention to the need for succession planning about its own composition, and also to the CEO and senior executive appointments.

## KEY LEADERSHIP AREA 6: PROCEDURAL GOVERNANCE

The founding documents of an NPO will usually prescribe a number of procedural issues related to board meetings and meetings of board sub-committees.

- Procedural formalities prescribed in founding documents must be thoroughly observed, including, for example:
  - a. Period of notice of meetings.
  - b. Prior delivery of meeting papers.
  - c. Participation by video or teleconference.
  - d. A formal agenda.
  - e. Circulation and confirmation of prior minutes.
  - f. Declaration of interests.
  - g. Quorum.
  - h. Preparation of minutes.
  - i. Voting, which can include a chairperson's casting vote.
  - j. Provision for 'round robin' resolutions.
  - k. The frequency and minimum number of meetings.



- It is important that the Director or Chief Executive of an organisation attends Board meetings – with or without formal membership of the Board, and with or without voting rights. However, there should be a part of every Board meeting (usually at the end of the meeting) when that person is asked to leave the meeting so that the Board has an opportunity to discuss any confidential matters (including the performance of the CEO). The presence of other managers or members of the executive during relevant parts of the meeting may be desirable and important – both in recognition of their roles and responsibilities and for the benefit of the Board.
- The CEO should preferably not chair Board meetings; and care must be taken to facilitate the full participation of all Board members, and to ensure that meetings are not confined to, or dominated by, statements by, and views of, the organisation's executive.

### 3. ENSURING LEGAL AND FISCAL COMPLIANCE

It is the responsibility of the Board to monitor and ensure full compliance with relevant laws, including those that relate to registration, tax status, and the submission of statutory returns. This is not merely a formal or nominal responsibility, as directors and those having fiduciary responsibility can be held personally liable in the event of non-compliance in terms of various laws. Such personal liability can arise, for example, if Board members do not pay attention to their duties or are dilatory (unintentionally cause delays); or fail to seek reasonable assurance where necessary from management or those responsible for providing information or verification.

There are many different laws which impose duties upon those responsible for the governance of NPOs. A board should, where necessary, seek professional advice and assurance about such duties and whether these obligations are being timeously and effectively addressed and monitored.

Key legal and fiscal compliance matters that should be considered by the Board are discussed below.

#### KEY LEGAL/ FISCAL AREA 1: ESTABLISHMENT AND INCORPORATION

The form of legal structure of an NPO may determine how and when governance responsibilities arise.

- A non-profit company must comply with the registration requirements of the Companies and Intellectual Property Commission (CIPC) in accordance with the Companies Act. As proof of such compliance, the original incorporators are issued with a Certificate of Incorporation, under the seal and signature of the CIPC. The initial directors then assume responsibility for the ongoing governance of the company.

- A trust must be registered at the office of one of the Masters of the High Court in accordance with the requirements of the Trust Property Control Act. Upon such registration being effected, the trustees are issued with Letters of Authority under the seal and signature of the Master; and the trustees then assume their ongoing responsibility for governance.
- A voluntary association requires no formal statutory registration, and there is no dedicated office where such associations must be registered. In fact, in terms of the common law, a voluntary association can come into being simply by an agreement by a minimum of three people. Such an agreement is usually supported by a written constitution although, technically, this is not an essential legal requirement. Their responsibility for governance arises after such an agreement has been reached, whether it is verbal or written. Responsibility then rests upon the members collectively, unless provision is made for responsibility to be carried by a management committee, or similar structure.

## KEY LEGAL/ FISCAL AREA 2: ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

Each form of alternative legal structure, with the exception of the common law structure of a voluntary association, has certain specific reporting obligations with which it must comply in terms of the applicable laws and regulations.

- It is the responsibility of a Board to seek and obtain assurance of compliance with prescribed requirements, and this duty is normally delegated to the Chief Executive, assisted by staff, auditors and/ or independent verifiers, where applicable.

## KEY LEGAL/ FISCAL AREA 3: NPO ACT - CONSEQUENCES AND BENEFITS OF REGISTRATION

Provision is made under the Nonprofit Organisations Act 71 of 1997 for the voluntary registration of NPOs, irrespective of the particular form they take. However, registration under the NPO Act is not a precondition for the legal existence of the organisation, or the commencement of responsibilities for organisational governance. The optional registration under the NPO Act is effected by the Non-profit Organisations Directorate in the Department of Social Development.

- Although registration under the NPO Act is voluntary, there are certain benefits and advantages which result from such registration. These include:
  - a. The issuance of a Certificate of Registration, which serves as proof of the legal existence of the organisation, and the fact that it is a so-called body corporate, which means that it is a duly formed legal entity with an identity of its own, which is separate from the identities of its members.
  - b. Only registered NPOs are eligible to apply to become grant recipients of Lotteries Funding; the National Development Agency (NDA); the Independent Development Trust (IDT); local and provincial authorities, and various other public and private funding agencies.



- Registration under the NPO Act gives rise to certain ongoing reporting duties, including a requirement for the submission of annual financial statements, supported by the report of an independent accounting officer within nine months of the end of each financial year; and a requirement for the submission of an annual narrative report describing the activities of the NPO during the preceding period. Both of these documents must be prepared and lodged in the prescribed form.
- The Directorate has powers of inspection and enquiry with respect to registered NPOs, and it maintains a registry and database that is open for public inspection, subject to payment of a nominal fee. In addition to annual reports, the Directorate records details of the constituting documents; the current office bearers; their addresses and contact details, and other prescribed information.
- Accordingly, NPO registration implies a commitment to transparency and public accountability. It is therefore recognised as evidence of at least the intention to demonstrate best practice values.

#### KEY LEGAL/ FISCAL AREA 4: PBO STATUS - FISCAL BENEFITS AND CONDITIONS

In terms of the Income Tax Act (Section 30), an NPO may apply to SARS for approval as a so-called public benefit organisation (PBO). The most important benefit of approval as a PBO involves exemption from income tax; but approval also leads to exemption from certain other taxes and duties, including donations tax (on donations made by or to the PBO); estate duty on bequests received from a deceased estate – and, in certain circumstances, exemption from the Skills Development Levy.

Some approved PBOs may be eligible for another important fiscal benefit (Section 18A) – which involves the right granted to taxpaying donors to deduct the amount or value of donations they have made to a PBO from their taxable income. This benefit is available only in respect of certain public benefit activities (e.g., activities in such areas as welfare; humanitarian; health care; education; development; conservation; and housing – all public benefit activities listed in Part 11 of the 9th Schedule).

The VAT Act also contains provisions that may be of concern and benefit to certain eligible PBOs. For example, if an NPO's activities fall within certain narrowly defined categories, it is deemed to be a 'welfare organisation', which allows it to register under the VAT Act without having to satisfy the usual eligibility condition of a minimum annual turnover of R1 million. Registration then enables it to reclaim VAT paid on its purchases relating to qualifying activities. The services provided by a 'welfare organisation' may also be zero-rated for VAT purposes; and there are similar exemptions from VAT applicable to the provision of educational services, and services involving caring for children by a crèche or after-school care centre. However, registration under the VAT Act also brings with it administrative and compliance duties, and therefore the potential costs and benefits of VAT registration need to be carefully considered.

- Needless to say, tax legislation is complex, and each organisation should obtain professional advice concerning its liability for tax and its eligibility for tax benefits. Such tax benefits represent a valuable privilege that should not be abused, and amount to an indirect financial subsidy for eligible NPOs, which is made available at an indirect cost to other taxpayers. This is a further reason why tax-exempt PBOs should consider themselves broadly accountable to the general public.
- It is a fundamental responsibility of the Board to ensure that fiscal privileges are not squandered or abused, and to ensure that an NPO approved as a PBO is thorough in its compliance with the prescribed conditions, including the timeous submission of its tax returns, and that it promptly and accurately discharges its reporting requirements to the Tax Exemption Unit of SARS.

#### KEY LEGAL/ FISCAL AREA 5: OTHER LEGISLATIVE AND REGULATORY COMPLIANCE

In addition to the general laws referred to above, there are naturally other laws and regulations which have specific reference to the conduct of activities of certain NPOs. The Board's responsibility for governance includes a responsibility to ensure that the organisation remains compliant with all its statutory duties and regulatory obligations.



## COMMITMENT AND UNDERTAKING TO THE INDEPENDENT CODE OF GOVERNANCE FOR NON-PROFIT ORGANISATIONS IN SOUTH AFRICA

THE NON-PROFIT ORGANISATION KNOWN AS

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HEREBY COMMITS ITSELF TO COMPLY WITH AND GIVE FULL EFFECT TO THE PRINCIPLES, VALUES AND GUIDELINES WHICH CONSTITUTE THE INDEPENDENT CODE OF GOVERNANCE FOR NPOS IN SOUTH AFRICA, IN ACCORDANCE WITH ITS INTENT AND PURPOSE, INCLUDING THE UNDERMENTIONED ISSUES:

1. An NPO exists to promote a public benefit purpose, and shall serve the public interest with fidelity, altruism, goodwill and integrity.
2. The capacity and resources of the organisation shall be applied exclusively for the advancement and implementation of its public benefit purpose.
3. The Board accepts primary responsibility to ensure adherence to the core values and principles of good governance set out in the Code, to exercise effective leadership, and to ensure the organisation's legal and fiscal compliance.
4. The organisation and its office bearers commit themselves to the operational principle of transparency and accountability to donors, beneficiaries and the general public.
5. All Board members and others involved with the organisation undertake to observe utmost good faith, specifically avoiding improper self-benefit or conflicts of interest.
6. The organisation shall at all times conduct its affairs in accordance with the principles of equality and non-discrimination, and shall treat all persons with dignity and respect.
7. The organisation shall deal fairly with its employees and volunteers, including provision for reasonable remuneration or reimbursement of out-of-pocket expenses; and it shall observe best practice principles in its staff policies, and in its overall management of human relations.
8. The organisation shall respect the fundamental rights entrenched in the South African Constitution, including those which relate to equality; non-discrimination; just administrative action; human dignity; and freedom of association.
9. The organisation shall at all times act with fairness, impartiality, and without fear, favour, or prejudice, in the best interests of its beneficiaries, specifically avoiding nepotism and self-benefit.
10. The organisation shall conform to the governance provisions of its constituting documents, and ensure due compliance with all legal, fiscal and other statutory and regulatory duties prescribed by law from time to time.

Signed at ..... on this ..... day of ..... year .....

.....  
On behalf of the Board

.....  
On behalf of the Members

.....  
On behalf of the Employees

PLEASE NOTE THAT THIS VOLUNTARY CODE IS NOT INTENDED AS LEGAL ADVICE. ORGANISATIONS SHOULD WHERE NECESSARY SEEK PROFESSIONAL LEGAL AND FINANCIAL ADVICE ON MATTERS INVOLVING LEGAL AND FISCAL COMPLIANCE.



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