Published by:

THE NON-PROFIT
CONSORTIUM

15 Pepper Street
1st Floor
Horizon House
Cape Town
8000
info@npc.org.za

This publication was made possible through the generous support of British American Tobacco South Africa, the National Lottery, the Charles Stewart Mott Foundation and the Ford Foundation.

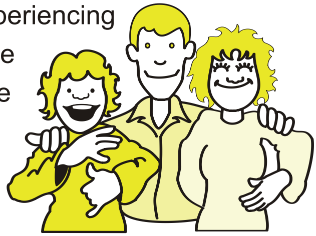
Written by Ricardo Wyngaard and edited by Tessa Brewis

Essential Non Profit Law 1

THE NON-PROFIT CONSORTIUM

1. Introduction

The process of starting up and running a non-profit organisation (NPO) is not an easy one. Many people start NPOs with good intentions. After experiencing huge frustrations with unpredicted problems people become disillusioned The result is that they then decide to let go of the whole project a few months later. This happens when not enough time and effort is spent on finding out what the process of starting a NPO involves.



Operating a NPO takes up a lot of time and effort and will present you with many challenges along the way. Being part of a successful organisation can however be a very rewarding experience as you will be making a difference in the lives of others. This booklet is aimed at preparing you for the journey of starting and running a NPO.

2. Why Do I Want To Start A NPO?

This is one of the most important questions that you will have to answer. Before starting a NPO you need to know "What do we hope to achieve by starting this organisation?" You need to think carefully about why you want to start a NPO and what you will need to ensure its effective and successful functioning. It is a good idea to put this in writing to help you express your thoughts.

The reason for starting a non-profit organisation must be clear in the minds of the founders.

There are many different reasons for starting a NPO. Mostly people identify a need in their community and want to deal with that need. If you are clear about what you want to achieve by starting up a NPO, it will assist you in answering some of the other related questions.

If for example the vision for your NPO is to reduce the number of unemployed people in your community by training unemployed people to produce garden furniture which can be sold, you may find that:

- Starting a small business instead of a NPO can accomplish this,
- Another organisation is already doing the same thing in the area, or
- A new shopping centre will open soon in the vicinity and most of the unemployed people in the community will be employed at such centre.

3. The Benefits Of Starting A NPO

It is important to know you want to start a NPO and not a business, because there are important differences between the two. One of the reasons for starting a NPO instead of a business is the important benefits that a NPO can get.

These ***benefits*** include:

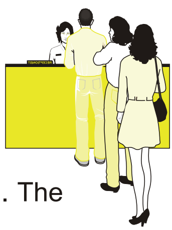
FUNDING NPOs can apply for funding from donors who support their objectives. Donors will normally only provide donations to NPOs and not to businesses.

> ***Is it necessary to start an NPO?***
>
> ***Will the project be sustainable?***

TAX BENEFITS NPOs can get special exemption from paying income tax and certain other taxes and levies. Sometimes donors also get tax benefits and are allowed to make deductions from their taxable income, when they make donations to some NPOs.

VOLUNTEERS NPOs will be able to obtain the voluntary support of people who share the same vision of the NPO. These people can volunteer their time and skills to support the activities of the NPO.

4. Collecting Information?

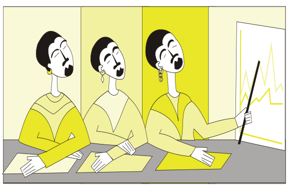


The reason for starting a NPO is often to address a certain need that would affect a community. The NPO will therefore have people who will either directly or indirectly benefit from the activities of the organisation. The more information you have about the community or beneficiaries and their actual needs, the more accurately you will be able to plan the NPO's strategies and activities. Do not assume that you already know everything about a particular community or beneficiary group.

You need to decide what information you need and where and how to obtain such information. The kind of information that your NPO may require, can include; the average age, income, occupations, rate of unemployment and education levels. It should also extend to the main social problems facing the beneficiaries and what structures have already been put in place to deal with such problems. There are a number of different ways to collect such information and the best method will depend on the circumstances of each environment. These methods may include a survey, meetings with members of the community, approaching other organisations operating in the area or collecting information and statistics from government departments.

You can also use this opportunity to get buy-in and input from the community. The community may also have solutions on how to deal with the particular problem that your NPO will be addressing. It is also important to communicate with other organisations and bodies operating in the area to get their cooperation.

5. The Vision, Mission and Objectives



It is essential to clearly define the vision, mission and objectives of the NPO so that everyone involved has a common understanding. This will also enable you to tell to people outside the organisation what the NPO is about.

You should see the vision, mission and objectives as the foundation of the NPO. Sufficient time should be dedicated to laying a solid foundation for the NPO. In the same way that the foundation of a house requires significant preparation and input, the process of laying the foundation of the NPO will require significant preparation and input.

Sufficient time should be dedicated to laying a solid foundation for the NPO.

You may decide to conduct a workshop with everyone involved to work out these important aspects. An external person with suitable experience can also be invited to facilitate such a workshop. The activities of the organisation will flow from and be guided by its objectives. Working out these details will later help you to see whether or not the NPO is successful in pursuing its goals.

6. Setting Up The NPO As A Legal Entity

Our law says that people may associate freely. Civil society groups and projects are allowed to operate informally, without any formal legal structure. However when these groups want to start raising funds from donors or open a bank account, it becomes necessary to establish a suitable legal entity.

When you are starting a NPO, it is important to decide what kind of legal entity will be the most suitable for your needs. There are three basic types of legal entities to choose from for establishing a NPO. These are voluntary associations, non-profit trusts and section 21 companies. It is important to be familiar with the principal differences between the three legal entities.

6.1 The Different Kinds Of Legal Entities

The Voluntary Association

The legal basis for a voluntary association is an agreement between three or more persons to promote a public purpose, other than making a profit. The agreement can be verbal or in writing. It is however much better from a governance point of view to have the agreement in writing. This agreement is also called the constitution of the voluntary association.

Our courts have confirmed that a voluntary association is founded on a contractual basis. **The constitution is a contract between its members and it determines the nature and scope of the organisation's activities.**

The voluntary association comes into existence once the constitution has been adopted by its first members. This normally takes place at the first meeting of the organisation. The voluntary association is not required to register at any public office in order to exist as a legal entity.

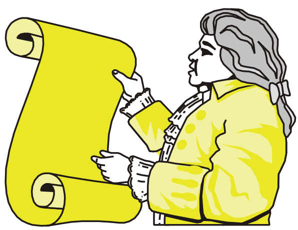
It is a good idea to include a schedule at the end of constitution where members can sign a serve as proof of the adoption of the constitution. Once the members have adopted the constitution, it becomes a binding legal agreement. It is the same as for example signing a lease agreement.

The time it takes to establish a voluntary association depends largely on how long the members to reach agreement on what should be included in the constitution. It is very important for the members to fully understand the contents of the constitution. If you have a good example of a constitution and the necessary expertise amongst your members, the organisation may be able to form a voluntary association without the assistance of a lawyer or other professional person.

The Non-Profit Trust

The establishment of a non-profit trust is slightly more formal. The Trust Property Control Act (*the Trust Act*) prescribes certain requirements to be complied with in order to establish a trust.

A non-profit trust is in essence where a person (called the donor or the founder) donates property to other persons (called trustees) with the understanding that the trustees will administer the property for a specific purpose or for the benefit of a class of people (the beneficiaries). This specific form of agreement between the donor and trustees is the trust deed. Sufficient time should be spent with the preparation of the trust deed. It is advisable to have a lawyer or skilled person who will assist with the registration of a trust. The trustees must comply with the provisions of the trust deed and the Trust Act. A person can establish a trust when transferring property in terms of his or her will to trustees for the same purpose as above.



The Trust Act requires at least two parties to the trust deed, being the donor or founder and the trustees. With non-profit trusts it normally means that one of the first trustees will act as a donor and will donate property, which can be a small sum of money for example R100-00 to the trust for the trustees to manage for the purpose of the trust.

To a large extent the donor and the trustees can decide on what to include in the trust deed. The basic information contained in the trust deed will be much the same as that of a constitution for a voluntary association. The trust deed must be signed by the donor and the trustees.

The trust deed must be registered with the Master of the High Court. The Master's office requires the following forms and documents to be submitted together with the trust deed:

1. Every trustee must sign a form called *Acceptance of Trust as Trusteeship* in which they agree to accept their responsibility as trustees;
2. A letter must be signed by auditors as accounting officers in which they confirm that they will be acting as such, depending what the trust deed stiputlates;
3. Revenue stamps in the amount of R100-00 must be attached to the trust deed;
4. A completed form, called the JM21 which contains certain information that is required so that the Master's office can decide whether or not the trustees will have to pay security; and
5. A separate form containing the details of the first trustees.

It is only once the Master's office has received all the above information that it would register a trust. The Master's office will issue Letters of Authority which would list the names of all the first trustees and the number of the trust.

It is only **upon receipt of letters of authority that those nominated trustees are in the position to act as trustees.**

The Master's office may however require trustees to pay security before they are appointed. Payment of security means that a trustee must provide proof to the Master's office that he or she has a certain amount of money available in bank for the duration that he or she is acting as trustee. It normally takes about three weeks for the trust to be registered after all the documents have been submitted to the Master's office.

Section 21

A section 21 company is established in terms of the Companies Act. The main object of a section 21 company must be the promotion of religion, arts, sciences, education, charity, recreation, or any other cultural or social activity or communal or group interests. This company does not have shares like a commercial company. A Section 21 Company is only recognised as a company after the Registrar of Companies has issued a certificate of incorporation.

Establishing a section 21 company is much more complicated than a non-profit trust or a voluntary association. You should consult an attorney when considering the establishment of a section 21 company.

The first step in establishing a section 21 company is the reservation of a name for the company. A fee of R50-00 must be paid to Companies and Intellectual Property Registration Office (CIPRO) when reserving a name.

The company must have both a memorandum and articles of association signed by all the members. Both these documents serve as the founding document of the section 21 company and must always be kept together. In addition to this, further documents containing the details of the company, the official address, the directors and the auditors must also be submitted with the memorandum and articles of association. Copies must be made of the memorandum and articles and an attorney (who is a notary) must notarise the copies. A further fee of R350-00 must be paid to CIPRO when submitting the application. A law firm must be appointed in Pretoria which will submit the application to the registrar's office. The process certainly is not easy and there are very specific requirements that must be complied with which we cannot cover here.

6.2. How Do I Choose The Right Legal Entity ?

This table provides you with a summary of the issues that we have discussed above:

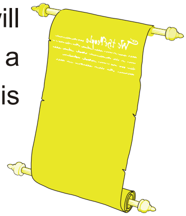
Legal Entity	**Voluntary Association**	**Trust**	**Section 21 Company**
Founding Document	Constitution	Trust Deed	Memo & Articles
Applicable Law	Common Law	Trust Property Control Act	Companies Act
Public Office		Master of the High Court	Registrar of Companies
Governing Structure	Members and/or Management Committee	Board of Trustees	Members and Directors

It is important to keep in mind that since 2005 our legal system also provides for the establishment of a non-profit social cooperative in terms of the Cooperatives Act of 2005. The Income Tax Act does not yet allow for this form of entity to get the same tax benefits at the above kinds of non-profit entities. The cooperative is also not allowed to become registered under the NPO Act.

When deciding on an appropriate legal entity you will have to consider a number of factors. Choosing a legal entity is almost like choosing a vehicle to go to a certain destination.

If, for example, you are part of a group of five people and want to go for a weekend trip to a camping site about 200 hundred kilometers from your home town. No one has a vehicle and so you decide to rent one for the trip. It would not be a good idea to rent a bus to do so. A bus would be more than what is needed and you will spend more money on renting the bus and paying for the petrol. A smaller vehicle like a car will be more appropriate for your needs and will work out much cheaper.

In the same way you can see the legal entity as your vehicle that you will get those involved to the destination of the NPO. You basically have a choice between three vehicles and you need to consider which one is more suitable for the needs of the organisation.



The factors to consider in making this choice of the organization are both internal and external to your project. You should consider all the factors before making a choice.

Internal factors:

Complexity The NPO should have certain internal structures in place to ensure its effective operation. If you plan on setting up a small NPO that will operate with small amounts of money and to which people will mostly contribute towards on a volunteer basis, it would be better to first consider less formal legal entity like the voluntary association. If you plan on getting substantial income and even employing a few people to do the work for the NPO, it would be more suitable to consider one of the more formal legal entities. Although this is an important factor, it is not necessarily a determining factor. Some bigger NPOs are operating quite effectively as voluntary associations.

Capacity The NPO must be able to comply with the formal requirements of the relevant law that will govern the legal entity. This means that the members of the governing board should be familiar with their responsibilities in terms of law. For example if you choose a section 21 company, the members or directors of the company must be able to understand their duties in terms of the Companies Act. This can be solved by training the directors or members about their roles and responsibilities, but it takes dedication and time. It may not always be in the best interest of the NPO to only rely on lawyers to advise on legal issues. Your NPO should have someone who understands the legal requirements in order for the NPO to comply with most of the regulatory requirements.

Governance

The issue of governance is very important for every NPO. The choice of legal entity may have different governance requirements. The Companies Act is more specific in terms of the requirements that directors must comply with, but at the same time it is also complex. It could have a negative effect on a company if the directors don't comply with these requirements, since the Companies Act would in most cases deem it to be an offence.

Legal Protection

The more formal the law is, the more legal protection is provided for the NPO and those involved with its affairs. The Companies Act, for example, provides more requirements in terms of reporting and also clearly sets out the circumstances in which directors can become personally liable. So the directors know to what extent they are protected by the Companies Act, and third parties can also look at the Companies Act for their protection. The rights of members are set out in the Companies Act. In the same way the Trust Act also sets out certain requirements for trustees to comply with. The position for voluntary associations is mostly dependant upon an effective constitution.

Dissolution

It is important to keep in mind that the procedures for dissolving NPOs are also different in terms of costs. The dissolution procedure would be the same if a NPO is unable to pay its debts. NPOs that are able to pay their debts have different dissolution procedures. The Companies Act sets out specific requirements for a company. This involves the appointment of a person who is going to wind up the affairs of a company which is much more expensive compared to how a voluntary association or a trust may be dissolved.

External factors

Funders

Funders may at times require a specific legal entity as a funding requirement. Although this is a consideration, it should not override the other factors when deciding on a legal entity.

Tax

All three types of legal entities can access the tax benefits (tax exemption and S18A status) in terms of the Income Tax Act. Tax benefits should therefore not be a factor when choosing the appropriate legal entity.

Administrative Supervision

Both the non-profit trust and the section 21 company must register with a public office. The trust must register with the Master of the High Court and the section 21 must register with the Registrar of Companies. The voluntary association is not required to register with any public office. This means that in certain circumstances the relevant public office may be approached to deal with specific issues. For example, the Master of the High Court may remove trustees from office in certain instances. The Master also has certain powers to investigate the affairs of the trust. The registrar of companies may also appoint investigators, in certain circumstances to investigate the affairs of the Company.

Other laws

Your NPO will inevitably have to comply with a number of other laws. You should therefore keep in mind that there will be a number of other requirements that will have to be complied with. Your NPO must for example be registered as a taxpayer with the South African Revenue Services (SARS) and may decide to apply for the tax benefits which would result in further applications to SARS. In addition to complying with the Income Tax Act and the NPO Act, your NPO will also have to comply with a number of labour laws when people are employed.

6.3. Clauses To Be Included In The Founding Document

Setting up a non-profit organisation, regardless of what type will require a proper founding document. The founders and members must actively participate in the process of preparing the founding document, even if an expert is preparing it on your behalf.

Some clauses in the founding document are required by law which does not leave much scope for change, whilst other clauses depend on the nature of the organisation.

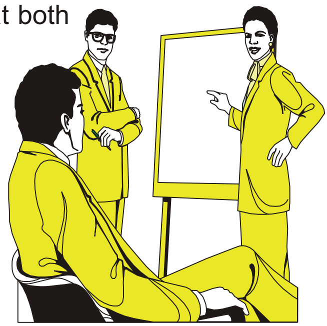
There are a number of essential clauses that must be included in the founding document:

Objectives of Organisation

The founding document must set out what the NPO hopes to achieve. These objectives must be set out clearly, since you should be able to relate everything you do in your NPO back to your objectives. Setting out the objectives will also help everyone else understand what the organisation is about.

Structure of Organisation

The founders of a NPO are free to choose the Organisational structure which will best help them achieve the main object of the organisation. Some NPOs are structured as membership-based organisations, which means that the organisation will consist of both a governing board and general membership. This is also referred to as a two-tier governing structure. It means that both the board and its general members govern the organisation. The general membership will elect the governing board. Other NPOs do not have a broader membership, and only have a governing board. This type of structure is also referred to as a unitary board. With a section 21 company you have both directors and members. You must be clear on the implications of the various options and be clear on the structure in the founding document.



Powers of Structures

If your NPO has a governing board as well as general members, then it must be made clear which the highest decision-making structure in the NPO is. Uncertainty around this can at times lead to confusion or conflict.

6.4. Common Problems

We have listed some of the common problems experienced by NPOs in practice during the setting up stage:

• Founding documents

A founding document that is poorly drafted or not understood by the stakeholders in the NPO can cause serious governance problems. For example the memorandum and articles of association of a Section 21 have to include special clauses in legal language that is not always easy to understand. However the memorandum and articles of association should always be accessible and consulted when considering important issues. If necessary your NPO should ask someone to help you with the interpretation of the memorandum and articles of association.

• Appointment of office-bearers

The Trust Act requires that trustees should be authorised by the Master's office before they act in their capacity. No one can act as a trustee unless authorised by the Master. Often new trustees are nominated in terms of the trust deed, but the necessary forms are not filled in and the new letters of authority are not issued by the Master's office. In the same way resigning trustees do not inform the Master's office of their resignation. This can cause problems when these “new trustees” are required to act as signatories for cheques as the banks ask for the letters of authority before allowing such persons to sign cheques. This has caused delays in paying expenditures.

The same problem exists with the directors of Companies. The registrar's office is not informed when new directors are appointed. So directors are appointed, without being lawful in that position. The official details kept at the registrar's office are not updated.

- **Amendments to founding documents**

When amending your founding document as a Trust you must submit the amendments to the Master of the High Court, or as a Section 21 Company you must submit the amendments to the Registrar of Companies. If you are registered as a NPO you must submit the amendments to the NPO Directorate. If it this is not done, the amendments will have no legal effect. Some section 21 companies have over the years made several changes to the founding document, only to find out that none of those changes are recognised in the legal system. The process of amending the founding document of a section 21 company is also more complicated compared to a trust or a voluntary association.

- **Availability of legislation**

No matter if your NPO will be making use of experts, you must have the legislation in terms of which the NPO has been established accessible for the members. This is seldom the case, in our experience. You cannot play the game if you don't know the rules.

- **Experts**

At times NPOs start out with having one or two experts on the governing board. This is no doubt beneficial to the NPO to have for example a lawyer or an accountant on the board. It is however important for a transfer of skills to take place from the experts to other board members. The NPO should not too much rely on experts, because they may be too busy to give proper attention to the affairs of the NPO. They may also resign which would mean that the NPO may have to pay for that kind of service if no one else can to that work.

- **Recruitment**

Sometimes board members have no clue of the legal rules governing the NPO. Their involvement is limited to participating in meetings and extending their CVs. This is often due to an ineffective recruitment and orientation process. Make sure that governing board members in future will understand the reasons that motivated the choice for a legal entity.

• Changing from one entity to another

The one question that often comes up at this stage is whether one can change from one legal entity to another. So, if you establish a voluntary association now, can it be changed to a section 21 company at a later stage?The answer is **yes**. In legal terms this means dissolving one entity and setting up another. It is however more complicated than it sounds. If you dissolve one entity, all the responsibilities must be taken over by the newly established entity. It becomes more difficult the longer the entity has been in existence. There may be costs involved in the process. In our experience this process is not always completed effectively.

• More than one legal entity

When considering the setting up of a legal entity it must be kept in mind that you are not limited in the setting up of one legal entity only. A number of organisations have decided that two legal entities will more suitably meet their objectives. Although in the legal technical sense we have two NPOs with different legal, financial & administrative systems, the general idea is have one organisation having different components.

This may happen for different reasons, like setting up an entity to hold immovable property. The aim is to keep the immovable property safe from creditors of the legal entity that will do the day-to-day affairs. Another reason may be for one legal entity to do the fundraising for the operating entity (e.g. a Trust doing fundraising operations for the voluntary association).

This may be an effective option that will suit the objectives of the NPO. It is however important to realise that two legal entities will require two separate legal, financial and administrative systems. In our experience many NPOs struggle to maintain these two systems.

It may be useful to start with one entity and consider the need and usefulness for another entity after a year or so of governing one entity. Various practical, legal and administrative issues must be considered and having the benefit of experience with one legal entity can be beneficial. Other NPOs with two entities can also be approached for guidance.

6.5 Where Can You Register Your NPO ?

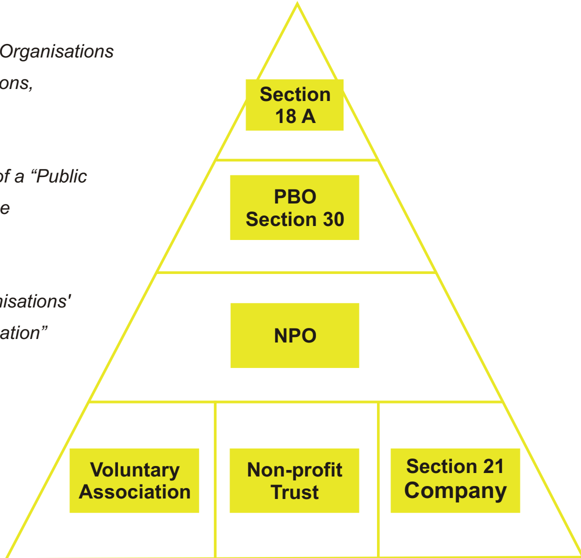
This pyramid sets out the basic layers of regulation for NPOs in South Africa.

*The **fourth layer** of regulation allows Public Benefit Organisations to apply for the right to receive tax-deductible donations, therefore benefiting the donor.*

***Third level,** organisations may apply for the status of a "Public Benefit Organisation" under Section 30 of the Income Tax Act. This gives them tax exemption.*

*The **second layer** indicates that 'the first level organisations' may now voluntarily register as a "Nonprofit Organisation" under the Nonprofit Organisations Act*

*The **first layer** indicates that non-profits can be formed as "voluntary associations," "trusts," and "Section 21 Companies." Once an organisation has been legally formed, it is able to apply for NPO and PBO status.*



Once your NPO has been established either as a voluntary association, non profit trust or section 21 company your governing board will have to consider if it must or would choose to register with certain government departments or bodies. Registration facilities include, but are not limited to:

a. **Registration as taxpayer** Your NPO must register with the South African Revenue Services (SARS) as a taxpayer. This in order to submit annual returns to SARS. Your NPO will need this income tax reference number should you want to apply for tax benefits at a later stage. Difficulties may be encountered at the regional offices in doing this, but we strongly advise that you insist that the NPO be registered with the regional SARS office as a taxpayer.

b. **Registration as Non-Profit Organisation** Registration as a non-profit organisation with the Directorate for Nonprofit Organisations in terms of the Nonprofit Organisations Act is optional. It is no longer necessary to register as a

Non-profit Organisation in order to register as a PBO. Many donors however require an NPO number before they will consider making a grant.

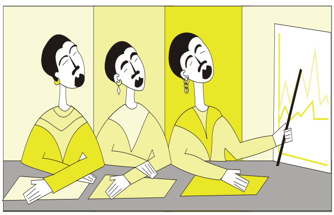
c. **Registration with an overseeing body** Depending on the kind of work your NPO will be involved in, it may be required in terms of law to register with a specific body or department. For example, if you want to operate a shelter for abused children your NPO will have to apply for approval in terms of the Child Care Act to the Department of Social Development before your NPO can operate as a children's shelter.

d. **Tax benefits** Your NPO can also apply for the tax benefits in terms of the Income Tax Act. Careful consideration must be given to this aspect, as a number of requirements must be complied with in order to obtain and keep the benefits. SARS has a helpful guide that explains the procedure for getting the tax benefits.

e. **Value Added Tax** If your NPO renders goods and services on a regular basis for compensation, it may become liable for registration under the VAT Act. The requirements of this Act must carefully be reviewed once you become involved in the supply of goods and services.

7. The Governing Board

A NPO differs from a business because it doesn't belong to any one person. Although you may be the founder that started the NPO, the NPO doesn't belong to you. Because the NPO may receive funding from the public or from funders to use for a charitable or public benefit purpose, the NPO must appoint a governing board who will take responsibility to see that those funds are used for their proper purpose.



The governing body is responsible for governing or steering the NPO. You would find it very difficult to attract donations without having a governing board in place.

The board normally consists of between five to ten members. They are the people who stand in a fiduciary relationship towards the NPO. That means that the board members are legally responsible for the affairs of the organisation.

Governing Body of a Voluntary Association

The way in which the NPO is governed will be set out in the constitution. The governing board of a voluntary association can have different names, including; the executive committee, the management committee, the management board, etc. The governing board should however not be called the board of directors or the board of trustees, as it would create confusion with the other legal entities.

Governing Body of a Non-profit Trust

The trustees are the people who are responsible for governing the trust. They are normally referred to as the board of trustees. The Trust Act does not require a minimum number of trustees. We advise that a non-profit trust should have at least five trustees, but a higher number is perfect for the purposes of good governance.

Governing Body of a Section 21 Company

The company must have at least seven members and at least two directors. The directors are commonly referred to as the board of directors and often the seven members as the same people who serve as the directors.

It is important to have board members who identify with the vision of the NPO. They should have the required skills and knowledge to govern the organisation. Alternatively when people without skills are recruited, the NPO should make a conscious effort to develop the skills of such board members.

The board members are legally responsible for the affairs of the organisation.

You should not underestimate the effort that it will take in getting willing and skilled people to serve on the board of your organisation. The board will in most cases take responsibility for the strategic direction of the organisation. The important decision-making powers will for that reason rest with the Board.

Recruitment	It is important to develop a recruitment strategy and to always look for committed individuals to serve on the board.
Size & Skills	You should know how many people should serve on the board and what skills they should have.
Orientation	Board members should be told about the NPO, and they should also be made aware of their responsibilities towards the NPO. It is advisable to have an effective induction or orientation process for new board members.
Portfolios	The governing board may comprise of various portfolios, including; the chairperson, secretary and treasurer.

Board members should not see their term on the board as merely an opportunity to expand their curriculum vitae, but should be genuinely committed to the NPO.

It is important for you to be familiar with best practices and to develop suitable policies relating to good governance. Some additional governance aspects would include:

a. **Risk Assessment**

The NPO is continuously exposed to different risk factors that may seriously harm the activities of the NPO if it not being attended to. A flood may for example destroy the infrastructure of a NPO and force it to close down.

The board must constantly consider what may harm the NPO and look at ways to avoid or minimise the effects of such risk factors.

b. **Conflicting Interests**

Conflict of interest may be inevitable for any NPO and can negatively impact on the image of the NPO if there is not an effective way of dealing with it. The board is responsible to have systems in place that will deal with conflicting interests.

c. Apppointing an executive director

If the NPO has finances available, the appointment of an executive director will be one of the most important tasks for the board to fulfill.

8. Developing Plans For Your NPO

It is said that if we fail to plan, we plan to fail. It is therefore important to plan your work and work your plan. The objectives of the NPO inform the kind of activities that it will do.

Plan your work and work your plan

It is important to have detailed workplans. The benefits of a solid work plan include:

a. Everyone involved in the NPO will know what to do and where they fit into the bigger picture,

b. Better financial planning because you will know what is required to implement the plans of the NPO, and

c. Better assessment of the human resources that will be required to implement the plans of the NPO.

Some funders may require a copy of your workplans in a specific format to be submitted with your funding proposal. Preparing your organisational plan can involve quite a lot of input and time. You will need to explain to funders when and how each activity will be accomplished and how you measure the success of these activities.

9. Mobilising Resources

When planning the activities of your NPO, you must also try and predict what it will cost to carry them out. In the very early stages the NPO usually just operates with small donations from the founders and volunteers who are willing to give up their time. However, as the NPO grows you will have to raise money to carry out the activities.

There are different ways to mobilise resources for a NPO:

- **Income generating activities** - which means you have to charge a fee for services rendered or products being sold,
- **Fundraising activities** which would include fundraising events or approaching funders to request funding for specific projects, and
- **Membership fees** which would involve the NPO charging a fee for members.

The process of raising money for a NPO is not easy. It is the stage where many people actually give up. There is a lot of competition between NPOs involved in development work who are all looking for means to finance the activities of their organisations.

If you plan on approaching funders to support the work of the NPO, you must have a good funding plan that will guide those involved with the NPO on how funds will be raised. This must also result in a funding proposal that will tell funders exactly about the work that the NPO is doing. Some funders require funding proposals in specific formats and you may be required to change the funding proposal according to their specific requirements. Remember that the funding proposal in itself can either improve or ruin your chances of getting support from funders. It is important to invest sufficient time and effort in preparing a good funding proposal.

You will also have to do some research on funders, to find out what their focus is for funding projects. Identify a few funding organisations that fund projects in line with the activities of your organisation.

You will also need a budget that will correspond with what you are requesting in your funding proposal.

10. Setting Up Administrative Systems

It is important to have good administrative systems in place that will ensure the smooth day-to-day operation of the NPO. Good administrative systems will promote cooperation amongst those involved in the NPO and it will save a lot of valuable time.

You should therefore have systems that will ensure that:

- Information and correspondence received by the NPO is referred to the appropriate all members and filed in an organised manner,
- Copies are made of all outgoing documents and are stored in the correct place,
- Telephonic and other messages are recorded and conveyed to the relevant persons, and
- The equipment and resources of the organisation are correctly used and not being wasted or abused.

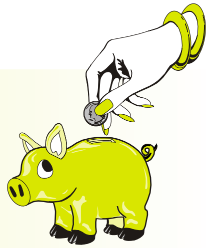
11. Setting Up Accounting Systems

The governing board is responsible for safeguarding the financial and other resources of the NPO. The assets of the NPO must be used for the purpose for which the NPO was established and may not be distributed between the members of the organisation. The affairs of the NPO can accordingly **not** be conducted in secret. Funders often require organisations to be registered with a public body so that others may also have access to the affairs of the NPO.

Your NPO must therefore have an effective accounting system. This will also ensure that your board will be in a position to provide financial reports to funders at the end of a funding period.

The board is collectively responsible for the affairs of the NPO and the task of seeing to the financial aspects of the NPO which cannot be left to the treasurer alone. All members must actively supervise and monitor the financial affairs of the organisation.

Your NPO must:



- Open a bank account,
- Keep accurate records of all financial transactions,
- Produce regular financial reports for the board to read, and
- Implement appropriate checks and balances.

If board members are not familiar with accounting procedures, it is recommended that training courses be identified for them to attend. It is important when recruiting new board members to specifically look for someone with financial skills.

12. Monitoring and Evaluation

It is important for any NPO to have a system that allows for the monitoring and evaluation of its board and activities. Monitoring is a constant process of checking the progress made with the planned activities. So, if you planned five workshops for the year you need to check at specific times during the year whether you are on track with conducting those workshops.

Evaluation looks at the strategic objectives to see whether the organisation is still on the right track. If for example the aim of the organisation was to eradicate unemployment in your community over a three-year period, but all people were already employed in the first year because a factory opened in the area. This would mean that you will have close the NPO because the objective has been reached or change the objective for the next few years.

This will also enable you to report to funders in a way that shows you have analysed whether the organisation is on track with its activities and whether it is still relevant and sustainable.

13. Conclusion

We hope that this section has provided you with an overview of the different aspects that are important in setting up a NPO. There are many resources available that will assist in the smooth running of your NPO. It is worthwhile to collect some of these resources to use within your NPO.

Bibliography

1. Starting a Nonprofit Organization; BoardSource E-Book Series, 1999, www.boardsource.org.

2. How to build a good small NGO; F. Alin, S. de Boer, G. Freer, L. Ginneken, W. Klaasen, J. Mbane, K. Mokoetle, M. Moynihan, P. Odera, Prof. S. Swain, M. Tajuddin & A. Tewodros, www.networklearning.org.

3. Honorè's South African Law of Trusts, Tony Honorè & Edwin Cameron, Fift Edition, Published by Juta & Co. Ltd.

4. Bamford on the Law of Partnership and Voluntary Association in South Africa, Brian Bamford, Third Edition, Published by Juta & Co. Ltd.

5. Tax Exemption Guide for Public Benefit Organisations in South Africa, published by Law Administration, South African Revenue Services.

6. Legal Structures Commonly used by Non-profit Organisations, Legal Resources Centre, Mary Honey.

7. Reference Guide for Non-Profit Organisations, Legal Resources Centre, Thamsanqa Mbatha.

8. Practical Steps to Tax Exemption and Donor Deductibility Status, A Non-Profit Organisation's Guide, The Non-Profit Consortium.

Notes

Notes