

Striving for better accountability (力求完善的問責機制)



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Agenda

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1. Corporate Governance: Basic Concepts
2. What is the key difference between corporate and NPO governance?
3. Why is NPO governance so important?
4. Typical Problems faced by local and global NPOs
5. Best Practices sharing
6. Case Studies

1. Basic Concepts

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1. Corporate governance

- Principles and practices adopted by the Board.
- Ensures effective management with appropriate probity.
- Provides a structure to
 - set objectives of the organisation;
 - determine the means to obtaining those objectives; and
 - determine measures to monitor performance.

1. Basic Concepts

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2. Typically, the corporate governance framework should:

- Ensure the **strategic guidance** of the NGO.
- Ensure the **effective monitoring** of the NGO's management by the Board, and
- Ensure the **Board's accountability to its stakeholders** – its clients, the government and the community.

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Key Differences between NPO and For-profit Organization

2. Key Differences

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NPOs operate in a different way from the way in which for-profit organisations do, and many of the differences have governance implications.

– South Africa Department of Social Department, 2010.

What are the differences?

Introduction

Key difference

Importance

Case Studies

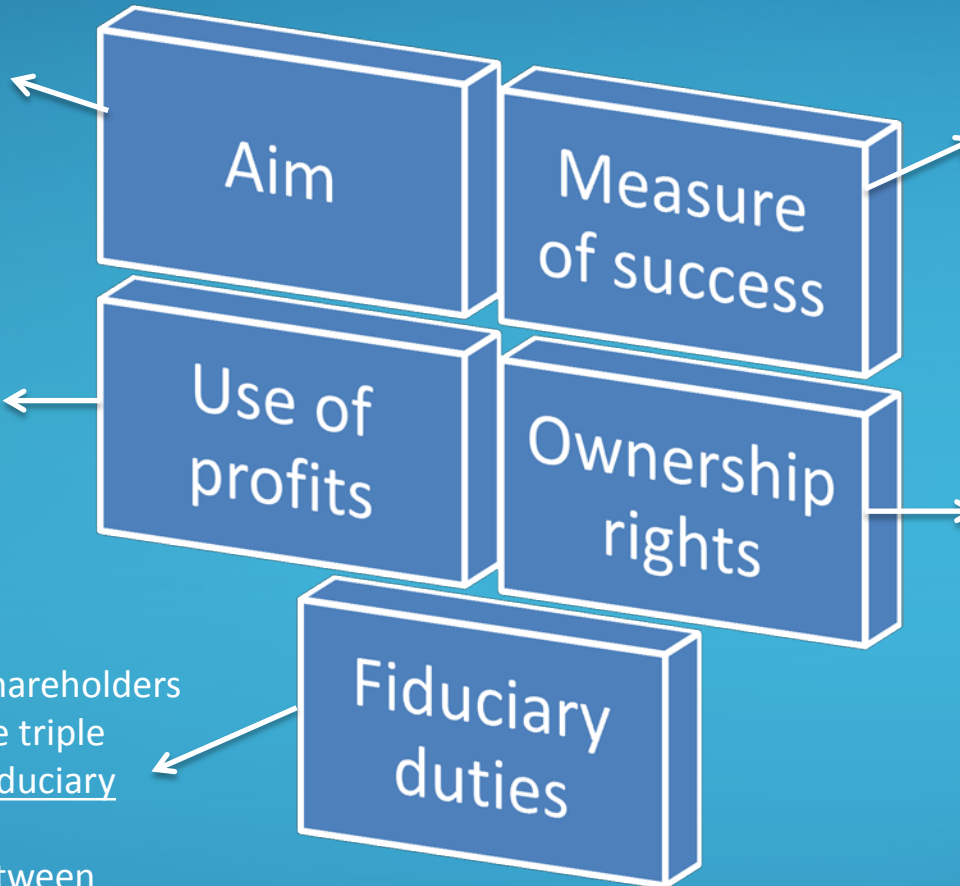
Statistics

Typical Problems

Best Practices

2. Key Differences

Generating profits vs. Protecting public benefit or promote social changes



Measure through profits vs. Measure through the impact of the organisation in terms of objectives

Distribute among members vs. Advance the organisation's objectives

Shareholders as the main stakeholder group vs. Many and varied stakeholders, each with a legitimate interest in public sector entities, but not necessarily with any 'ownership rights'

Accountable to shareholders with regard to the triple bottom line vs. Fiduciary responsibility as intermediates between donors and beneficiaries, and the general public

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Importance of NPO Governance

3. Importance of NPO Governance

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- 1. From the viewpoint of society
 - 1. Ensure success of NPOs
 - Governance is crucial to credibility, success and sustainability
 - 2. Control of funding from the public purse
 - Many NPOs receive substantial recurrent funding from the public purse
 - 3. NPOs are free from market competition
 - Many NPOs are either monopoly service providers or operate in a non-competitive or protected market.
 - Users of NPO services often have little or no option to go elsewhere to obtain such services
 - 4. To cope with the new expectations of NPOs
 - Private sector business models were now being adopted more often in the third sector
 - Because of resources and concern about value-for-money

3. Importance of NPO Governance

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- 2. From the viewpoint of NPOs
 - 1. Greater social acceptance
 - Confidence in the individual NPO and the civil society sector in general will ensure greater acceptance of their activities and roles, including soliciting funding
 - Asian Development Bank Institute, 2006
 - 2. Easier to raise money
 - Unhappy donors mean less opportunity to raise money in the future and can even mean complaints that may result in harsher regulation
 - Asian Development Bank Institute, 2006
 - 3. Stand up to public scrutiny/ regulation
 - Some entities receive grants under various funds
 - Efficiency Unit, HK government, May 2010
 - Confidence in the individual NPO and the civil society sector in general is a good way to keep government from having to get involved in regulation following scandals and mismanagement by NPOs
 - Asian Development Bank Institute, 2006

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Typical Problems Faced by NPOs

4. Typical Problems faced by NPOs

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1. Lack of CG benchmarks and generally-accepted standards in the public sector
2. Lack of motive to improve CG
3. Lack of experience and trainings
4. Lack of certification
5. Cost of overzealous application of corporate governance compliance/ monitoring/ reporting requirements is potentially high

4. Typical Problems faced by NPOs

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1. Lack of CG benchmarks and generally-accepted standards in the public sector
 - CG in the public sector has generally received less attention than that in the private sector

4. Typical Problems faced by NPOs

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2. Lack of motive to improve CG

- Absence of external pressures of shareholder and market disciplines which exist in the cases of commercial companies
- Government and the public at large assume a greater importance as stakeholder

4. Typical Problems faced by NPOs

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3. Lack of experience and trainings

- E.g. Overall quality of annual reports from the NPO and public body sectors was generally not up to standard
- Except some public bodies, namely the MTR, Airport Authority etc., whose annual reports are of a very high standard

4. Typical Problems faced by NPOs

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4. Lack of certification

- It is rather difficult for an NGO to demonstrate to the “outside world” i.e. to all its stakeholders, whether and how it complies with transparency, accountability and Good Governance principles.
- Indeed, First Party self-assessment is useful but results may lack basic objectivity while Second Party audits do not have the indispensable neutrality since they have a direct interest in the organization they audit. This is where an independent Third-Party, acting as certification agency, may provide a very meaningful contribution.

4. Typical Problems faced by NPOs

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5. Cost of overzealous application of corporate governance compliance/ monitoring/ reporting requirements is potentially high
 - The administrative workload brought about by the necessary reporting requirement has always been a major concern of the NPOs.
 - There is a need for intelligent monitoring
- (Source: Raymond Wong, Permanent Secretary for Education)

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Best Practices by Sessions

5. Best Practices by sessions

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- Importance of Best Practices
 - “Subvented organisations should aim to introduce the best practices outlined in this Guide. Where this is not appropriate, the organisation should be prepared to **explain why not** – the ‘comply or explain principle’.” (Efficiency Unit, HK government, May 2010)

5. Best Practices by sessions

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- Application of Best Practices
 - “Good corporate governance is more than just prescribing particular corporate structures and complying with a number of accepted rules. Instead, it is about a range of broad principles which should be **applied flexibly** to the varying circumstances of individual organizations in a way that facilitates appropriate accountability and performance.”
(Australian National Audit Office, 1999)

5. Best Practices by sessions

1. Board structure and composition
2. Board operation and effectiveness
3. Strategy, planning and monitoring
4. Others – legal issues

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5.1. Board Structure and Composition

5.1. Board Structure and Composition

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1. Board Charter
2. Matters Reserved For the Board
3. Optimal Board Size
4. Chairperson's relationship with CEO
5. Clear roles of Board of Directors
6. Position of Government Representatives on Boards
7. Induction and Training
8. Succession Planning

5.1. Board Structure and Composition

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1. Board charter/ terms of reference outlining roles and responsibilities of the board
 - Should be accessible by the public (Source: Efficiency Unit, HK Government, May 2010)

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The charter may include

- ❖ General description of the board's purpose
- ❖ An overview of the board's monitoring role
- ❖ Structure and membership of the board e.g. number or proportion of Non-executive Directors (NEDs)
- ❖ Matters reserved for the board, delegations to committees and executives and authority levels
- ❖ A position description of the role of the chairperson, CEO, senior executives, Executive Directors (Eds) and NEDs
- ❖ Appointment of board committees
- ❖ Board member's induction and training programme
- ❖ Agreed procedure for taking independent professional advice on matters where there may be material risk to the organisation, or where the board members may be in breach of their duties; and
- ❖ The board's policy on transparency/ disclosure

5.1. Board Structure and Composition

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2. Matters reserved for the board

1. Appointments
2. Matters concerning board and senior management
3. Relations with the members and stakeholders
4. Financial matters
5. Business strategy
6. Capital expenditure
7. Internal control and reporting systems
8. Lease or purchase of buildings
9. Major transactions not included in the budget
10. Actions or transactions involving legality or propriety
11. Use of the seal
12. Donations and sponsorships above approved limits

5.1.2 Matters reserved for the board

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1. Appointments

- ❖ Appointment of the CEO and senior management.
- ❖ Membership and terms of reference of board committees

2. Matters concerning board and senior management

- ❖ Delegations of authority to the CEO.
- ❖ Ratification of the organisation chart.
- ❖ Approval of remuneration and incentive policies.
- ❖ Management contracts.
- ❖ Overseas visit approvals.
- ❖ Approval of succession plans.
- ❖ Disclosure of conflicts of interest.
- ❖ Assessment of the organisation's and CEO's performance.
- ❖ Assessment of board performance.
- ❖ Matters concerning the governance of the organisation

5.1.2 Matters reserved for the board

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3. Relations with the members and stakeholders

- ❖ Arrangements for the Annual General Meeting (AGM) and other members' meetings [if any].
- ❖ Matters relating to reports as required by the Law.
- ❖ Suggestions for nomination of directors for election by the members.

4. Financial matters

- ❖ Approval of annual accounts and directors' reports.
- ❖ Approval of accounting policies.
- ❖ Approval of the internal audit plan

5.1.2 Matters reserved for the board

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5. Business strategy

- ❖ Approval of strategic objectives and strategic plan.
- ❖ Approval of proposals for major expansion or closures.
- ❖ Approval of budgets.
- ❖ Approval of priorities and performance indicators/measures

6. Capital expenditure

- ❖ Approval of the capital expenditure budget.
- ❖ Approval of priorities.
- ❖ Approval of individual expenditure items above \$...

5.1.2 Matters reserved for the board

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7. Internal control and reporting systems

- ❖ Risk assessment and insurance
- ❖ Risk management policies, e.g. hedging
- ❖ Approval of company policies, including legal compliance
- ❖ Approval of reporting systems

8. Lease or purchase of buildings

9. Major transactions not included in the budget

10. Actions or transactions involving legality or propriety

11. Use of the seal

12. Donations and sponsorships above approved limits

5.1. Board Structure and Composition

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3. Optimal Board Size

- General principle: Keep the number of board members to a minimum

5.1. Board Structure and Composition

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3. Optimal Board Size

– Consider

1. Size of the organisation
2. Scope and complexity of activities (e.g. diversity of stakeholders)
3. The desired ratio of EDs to NEDs
4. Independence requirements of NEDs
5. Board diversity
6. Number of board committees and their compositions
7. Other specific requirements (e.g. in funding arrangements)

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4. Chairperson's relationship with CEO

- Chairperson and CEO should:
 - Discuss and agree between themselves:
 - their respective roles
 - **how to work together**
 - to avoid friction
 - **E.g. confirm who will be the principal external spokesperson for the organisation.**

5.1. Board Structure and Composition

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4. Chairperson's relationship with CEO

- Matters both need to know
 - key things they need to achieve;
 - expectations each has of the other
- After that, they can agree on:
 - how the board will interact with and assist the organisation and the CEO
 - how the CEO will report to the board and how the CEO's performance will be reviewed
 - how board meetings will be organised/serviced:
- It is also important to:
 - clarify the role of the CEO in making the board effective, including recruitment of future board members;
 - clarify what information the chair wants/doesn't want

5.1.4 Roles of Chairman and CEO

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	Chairman	CEO
Responsible for	Leading and managing the board	Day-to-day operation of the organisation
	<ul style="list-style-type: none"> • Chairing AGMs and board meetings • Dealing with conflict or disagreement within the board • Establishing an effective working relationship with the CEO • Providing support and advice while respecting executive responsibility, and ensuring that board decisions are carried out 	<ul style="list-style-type: none"> • Provide strategic vision and business judgment and wisdom to facilitate the board's decisions • Oversee the day-to-day running of the business and executing the board's decisions/ instructions • Provide leadership to achieve the organisation's purposes and objectives • Develop rules and procedures within which the executive carries out its operations • Meet performance targets • Build necessary internal infrastructure to ensure the cost effectiveness of operations • Maintain good relationships with the organisation's stakeholders

5.1. Board Structure and Composition

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5. Clear roles of Board of Directors

– Executive Directors (EDs)

- Ensure appropriate staff and infrastructure systems are in place.
- Call NEDs' support or involvement in a specific activity.
- Balance day-to-day business operations with board's overall strategy.

5.1. Board Structure and Composition

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5. Clear roles of Board of Directors

- Non-Executive Directors (NEDs)
 - They are
 - Independent
 - Able to question and make a stand against executives
 - Custodians of the governance process
 - Monitor of executive activity
 - To ensure
 - Accurate financial information
 - Robust and defensible financial controls and systems of risk management
 - Agreed corporate goals and objectives are achieved
 - Good performance reporting, succession planning and development of strategies

5.1. Board Structure and Composition

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6. Position of Government Representatives on Boards

- May be appointed to sit on board
- Alternatives:
 - Attend board meetings as observers or advisers
 - Sit on the Advisory Board of the organisation instead.
 - Government may stipulate measures to protect the Government's interest in the MAA or funding agreement

5.1. Board Structure and Composition

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7. Induction and Training

- New board members should meet key staff, service users and beneficiaries, and other stakeholders
- **Receive the training and information they need to carry out their new role**
- Training should **enable board members to understand both the sectorial context in which the organisation operates and its specific operations and environment**

5.1.7 Information to New Board Members

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Training should explain to new members:

- ✓ The organisation's aim and objectives, control environment, organisational risks and risk management practices, key personnel, delegation arrangements, board and staff structure, and budget planning and performance management processes
- ✓ The expected standards of integrity and accountability
- ✓ Their fiduciary duties

5.1. Board Structure and Composition

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8. Succession planning

- **No mention** of the recommended **tenure of directors** in recent government publications (“Lump Sum Grant Manual”, Social Welfare Department, May 2012)
- **Determine an appropriate length of service** so as to **balance the need for a retention of corporate knowledge** with a **healthy turn-over** of board members
- Before new board members are appointed, the board should **determine what attributes and knowledge are needed, and document these in the form of a role description or profile** (Efficiency Unit, HK Government, May 2010)

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5.2. Board Operation and Effectiveness

5.2. Board Operation and Effectiveness

1. Boardroom conduct and relationship
2. After the meeting
3. Attendance
4. Board Evaluation
5. Board Remuneration
6. Handling Conflict of Interest

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5.2. Board Operation and Effectiveness

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1. Boardroom conduct and relationship
 - Board members must have a right to
 - Invite appropriate executives to make presentations and to answer questions at board meetings, and;
 - Identify the information they need and to receive it in a timely manner or in a prescribed format
 - Sufficient information in the minutes
 - Key threads of the discussion
 - Disclosures of personal interest
 - Alternatives considered
 - Agreement reached
 - Plans and responsibilities for action

5.2. Board Operation and Effectiveness

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2. After the meeting

- Urgent items should be actioned, without waiting for drafting, circulation and approval of minutes
- Issue minutes of meetings to members as soon as possible after meetings

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3. Attendance

- **Remind members with low attendance records to attend meetings**
- **Ensure a quorum (minimum number of attendants) was present throughout all board/ committee meetings which cast doubts on decisions made**

5.2. Board Operation and Effectiveness

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4. Board Evaluation

- Collective and individual (including government representatives) performance can be evaluated and monitored
- Typically involve a process of self-evaluation mixed with peer review
- Members rate themselves or each other, either verbally or through questionnaire
- Comments may be collated by a designated board member (e.g. head of the nominating committee) or some knowledgeable individual who is now out of the fray (e.g. a past chair)

5.2. Board Operation and Effectiveness

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5. Determine board remuneration
 - **No member of the board or the management should participate in setting his/ her own remuneration. Where appropriate, independent advice should be sought; and**
 - **Formal and transparent procedures for setting the remuneration of individual directors should be established.**

5.2. Board Operation and Effectiveness

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6. Handling conflict of interest

- All board members/ employees should be required to declare any conflict of interest upon joining the organisation
- The general declaration of interest should be updated on a periodic (e.g. annual) basis
- Make a declaration when there is special instance involving a probable threat of conflict of interest

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5.3. Strategy, Planning & Monitoring

5.3 Strategy, planning and monitoring

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1. **Strategic planning (already covered)**
2. Budgeting and financial management
3. Maintain effective communication between the board and its stakeholders including its staff
4. Employer-employee communication channels
5. Human resource management policies and practices
6. Reliable record-keeping system
7. Effective performance management system

5.3 Strategy, planning and monitoring

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2. Budgeting and financial management

The key financial functions undertaken by the board are to:

- a. Approve a **budget** that reflects the NGO's priorities and that is based on realistic assumptions of funding, costs, and other factors;
- b. Monitor and control expenditures on the basis of appropriate accounting procedures – expect and receive up-to-date financial statements at each board meeting and allow adequate time for their full consideration;
- c. Oversee the stewardship of the NGO's assets and liabilities; and
- d. Approve annual reports, including financial statements

5.3 Strategy, planning and monitoring

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3. Maintain effective communication between the board and its stakeholders including its staff
 - Identify the organisation's stakeholders (e.g. provider of funds, service providers and partners, the community generally)
 - Communicate through periodic reporting (minimum), publication of information on the organisation's website/ newsletters/ press releases/ press conferences/ media briefings on specific or ongoing issues
 - Effective communication has to be focused (i.e. include pre-determined standards and measures of financial and non-financial performance, e.g. KPI and other benchmarks available) (HKICPA, Corporate Governance for Public Bodies: A Basic Framework, 2004)

5.3 Strategy, planning and monitoring

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4. Employer-employee communication channels

1. Employers should

- a. Consult employees when dealing with changes in working practices, procedures or employment arrangements which affect them; and
- b. Consult staff associations, in-house unions or other consultative committees.

2. To be effective, employer-employee communication needs:

- a. Support from top-management and employees
- b. Objective, clear and concise communication of information
- c. To be regular and systematic; and
- d. A two-way flow to allow a free exchange of ideas

3. Workplace cooperation

- a. Two-way flow of information sharing between managements and employees
- b. Management seeks employees views on certain issues while retaining decision-making power
- c. Employers' and employees' joint decision-making on matters of common interest
- d. Allow room for voluntary negotiation on matters of common concern

5.3 Strategy, planning and monitoring

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5. Human resource management policies and practices

- The board should agree the HR management policies and practices to be implemented so that the management knows clearly the parameters within which it operates:
 - There are documented written personnel policies and procedures covering recruitment and termination, remuneration, performance appraisal and standard work rules **to manage staff and, if applicable, volunteers**. They are regularly reviewed and updated.
 - All staff have ready access to these policies and procedures, and carefully inducted on them when joining the organisation.
 - Individual staff are provided with up-to-date job descriptions, including required qualifications, duties, reporting relationships and performance measures.
 - Staff appraisals should be conducted and documented at least annually for each staff member. Staff appraisal may identify areas for performance improvement or training and development.
 - The organisation has an effective and timely process for succession planning, aiming at filling vacant positions at the earliest instances and minimising disruptions to the organisation's services or operations.
 - An appropriate training policy and plan exists to ensure that the staff are provided with the opportunity to acquire competencies to meet their current task requirements and take on development opportunities.
 - There is a process to review and respond to ideas, suggestions, comments and perceptions from staff.
 - Staff are consulted whenever they are affected by major changes in policies and practices.

5.3 Strategy, planning and monitoring

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6. Reliable record-keeping system

- All records that are created and received during the conduct of business, whether paper-based or electronic, should be properly captured in record keeping systems in accordance with the organization's record-keeping policies, procedures and practices

5.3 Strategy, planning and monitoring

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7. Effective performance management system
 - Selecting key aspects of performance to measure
 - Developing performance indicators and setting targets
 - Collecting performance information
 - Measuring and reporting actual performance against targets; and
 - Striving for future improvements in performance
 - Conducting periodic reviews of systems and processes to ensure that they are working effectively.

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5.4. Others

5.4 Others - Legal Issues

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1. Legal duties of the Organisation

- Ensure that the company has complied with all the applicable provisions of the Companies Ordinance.
- Duty to
 - Maintain proper books of accounts
 - Prepare annual accounts and directors' report
 - Appoint an auditor for an annual audit
 - Maintain registers at the registered office
 - File documents with the Companies Registry
 - Call an AGM



5.4 Others - Legal Issues

2. Legal duties of “Director”

- “Director” is any person occupying the position of director by whatever name called
- Is a member of the governing board of a company or organisation incorporated under the Companies Ordinance
- As a group, the Board members have collective legal responsibility for the governance of the NGO.
- A Board member should keep himself/herself fully informed of the legal responsibilities and types of liability they may face.
- It is a matter of good practice for the Boards to ensure appropriate indemnity insurance for their Board members. However, indemnity coverage is only effective if Board members act in good faith and with reasonable diligence and probity.
- Owe legal duties to the organisation
- * No legal duties to members and stakeholders of the organisation

5.4 Others - Legal Issues

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2. Legal duties of “Director”

- Duty to act in good faith in the best interests of the objects of the organisation
- Duty not to exercise powers for an improper purpose
- Duty to serve with skill, care and diligence
- Duty not to use their position or information improperly (E.g. accepting gifts or commissions)
- Duty not to accept personal benefit from third parties and to avoid any actual or potential conflicts between personal interests with those of the organisation

5.4 Others - Legal Issues

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2. Legal duties of “Director”

- Questions to ask before giving support to a decision
 1. Do I have enough information about this issue?
 2. Do I understand the pros and cons?
 3. What is the short-term/ long-term benefit to the company?
 4. Is the proposal envisaged by the objectives of the organisation?
 5. Is it in keeping with the ethos of the organisation?
 6. Will it cause a conflict of interest?
 7. Does it compromise the organisation in any way?

(The Arts Council of Ireland (2006) “A Practical Guide for Board Members of Arts Organisations”)

5.4 Others - Legal Issues

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3. Compliance with the Societies Ordinance

- Some organisations are not incorporated under CO but registered under the Societies Ordinance
- The Societies Ordinance was not drafted with corporate governance in mind and imposes very few such obligations on societies or their office bearers
- Such organisations should comply with any corporate governance requirements contained in the MAA or other funding agreement with their oversight departments (Efficiency Unit, HK Government, May 2010)

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6. Case Studies

Fu Hong Society

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- A medium-sized non-profit organization serving persons with disabilities
- Serving 4,000 service users and their families
- Number of service units: 50
- Expenditure (2011-2012): HK\$286 million

(“Fu Hong Society: Governance With Strong Operation Oversight”, Fung and Chan, 2013)

Hong Kong Blind Union

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- A small self-help non-profit organization for visually-impaired persons
- Members: 1,300 members
- Number of service units: 3
- Expenditure (2011-2012): HK\$8.9 million

(“The Self-help Hong Kong Blind Union: Why Its Governance Body Highly Involved In Operation”, Fung, Chong and Chan, 2013)

Complications: Structure

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- HKBU: Simple governance structure
 - 6 committees
 - 11 members on board
 - Project-based/ general governance committees
- FHS: Complex governance structure
 - 21 committees and sub-committees
 - 106 members and stakeholders serving in these committees
 - Functional committees to offer close operation oversight
 - Operational team reports to both council and functional committees

Complications: Board- Management Relationship

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- HKBU: Work closely as a team to achieve results
 - Frequent contacts
 - Direct communications
 - Work together
- FHS: Strong functional oversight on all operations
 - Senior managers obtain directions and professional advisements from council members of the respective functional committees and subcommittees
 - Operational teams have to
 - Report progress on each KPI passed by the council
 - Attend each governance committee's quarterly meetings

Complications: Level of Compliance

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- HKBU
 - Matters reserved for the board often left to members
 - e.g. assessment of the organisation's and CEO's performance by a 'grilling session'
 - Develop its own Services Quality Standards (SQSs) and sent to SWD for adaptation
 - No structured training for EC members (i.e. board members)
- FHS
 - Set up monitoring units to ensure compliance with legislative requirements from time to time
 - Make reference to PECC guidelines in addition to legal compliance
 - Utilise high proportion of stakeholder resources for governance purposes

Heterogeneity

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- Size and nature
- The roles of directors/ executive members
- Source of financing
- Closeness of the board-management relationship

Conclusion

- Every organization strive for the optimal governance model
- No “One-size-fit-all” governance solution
- Regulator should not blindly apply governance practices of commercial sector on NPOs
- Deserve further research and investigation

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