



IPASA

INDEPENDENT PHILANTHROPY
ASSOCIATION SOUTH AFRICA

GOOD GOVERNANCE AND FOUNDATIONS

A PRACTICAL GUIDE BY ANNA VAYANOS FOR IPASA



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GOOD GOVERNANCE AND FOUNDATIONS¹: A PRACTICAL GUIDE

FOREWORD

There are countless reasons why it makes sense for a foundation to pursue good governance, and these are likely to convince any board of its importance.

Good governance is not only about doing the right thing, which makes much sense particularly in a sector that seeks to effect positive change in the world. It is also about doing the right thing for the foundation itself – making it stronger, more resilient and better positioned to effectively deliver the change it has been set up to pursue.

Implementing good governance practices can seem overwhelming, particularly to the board of a smaller foundation, but there is no set formula that applies to all foundations, and rather it is about proactively considering and deciding on what will comprise meaningful implementation for your foundation.

All the policies and processes in the world can be put into place but that alone does not guarantee good governance. Pursuing good governance is a constant practice, that to be truly effective, should filter down into every action and decision taken by your board, and the foundation as whole, in a manner that is appropriate for your foundation.

HOW TO USE THIS TOOLKIT

This toolkit is intended to provide you with the means to assess your board's current state of good governance, to demystify the various codes and to suggest practical, easily implementable solutions to areas and issues that you consider could be improved.

It is not intended to be a comprehensive summary of the codes, principles and practices of good governance in South Africa but is intended to make foundation governance and its implementation less daunting.

¹ Please note that the term “foundation’ has no legal meaning in South African law and is used in this toolkit to refer to a separate legal entity with a board that funds activities for the greater good or funds other organisations carrying on these activities. These could be corporate foundations, grant-seeking foundations or family foundations to name a few.

1. GOOD GOVERNANCE AND FOUNDATIONS

1.1 WHICH GOVERNANCE CODES TO APPLY?

In South Africa, we have the [King IV Report on Corporate Governance™ \(King IV Report or King IV Code™\)](#)², the [Independent Code of Governance for Non Profit Organisations in South Africa](#) (the Independent Code), and the [Department of Social Development's Codes of Good Practice for South African Non-Profit Organisations](#).

None of the various codes of good governance are mandatory. They have much overlap on commonly accepted principles of good governance and recommended practices, as do many of the international codes.

The information and the tools and tips contained in this toolkit are drawn from the various codes, good governance literature, as well as legislation and experience.

1.2 PROPORTIONATE GOVERNANCE

The extent to which these or any other code would be implemented would differ from foundation to foundation. There is no one size fits all and the focus should be on meaningful implementation of good governance principles and practices rather than on approving long-winded policies as an exercise in compliance.

For example, some of the practices suggested in the King IV Code on the establishment of an audit committee would be more appropriate for a significantly sized corporate foundation but there could be a more appropriate and proportionate way for a small family foundation without a staff contingent to still put measures in place to provide the assurances and oversight that an audit committee is intended to provide.

1.3 POSITIVE OUTCOMES OF GOOD GOVERNANCE

The positive outcomes of good governance include ethical culture, good performance, effective control, and legitimacy.

- *King IV Report*

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The following are some of the many positive outcomes of good governance that make it compelling for any foundation to pursue:

1.3.1 ETHICAL CULTURE: INTEGRITY AND ETHICAL LEADERSHIP

Good governance involves living the good ethics and values we insist upon from our partners and in doing so a foundation promotes an ethical culture, not only within the board, but amongst staff, partners, and our country as a whole.

1.3.2 GOOD PERFORMANCE: STRENGTH AND RESILIENCE

A foundation with a strong commitment to meaningful good governance will be strong and resilient and better equipped to face the changes and challenges that will inevitably arise. It will also be well placed to achieve its objectives impactfully and effectively.

1.3.3 LEGITIMACY: CREDIBILITY, TRUST, AND REPUTATION

A funder (whether corporate or private) would have spent many years building up a good reputation and it would naturally follow that the foundation they have established would want to continue this. Foundations function within a broader society that values transparency and accountability and by implementing good governance and having a level of transparency about, for example, who sits on the board, what the foundation funds and where the foundation's funding comes from, your board can help maintain society's trust in foundations³.

1.3.4. EFFECTIVE CONTROL: ACCOUNTABILITY

A foundation committed to good governance has clear systems and policies in place and is thus willing to be answerable for how the foundation's affairs are being run and to demonstrate that the foundation's funds are being used efficiently and impactfully. This is especially considering that foundations enjoy generous tax exemptions, and this contributes to the need for public accountability.

1.4 TYPE OF ENTITY AND FOUNDING DOCUMENTS

South African foundations are generally set up as one of three types of entities:

- a trust;
- a non-profit company (NPC); and
- a voluntary association (less likely).

Each type of entity will have its own founding documents setting out many important aspects but very importantly, the objectives of the foundation.

³ www.acf.org.uk

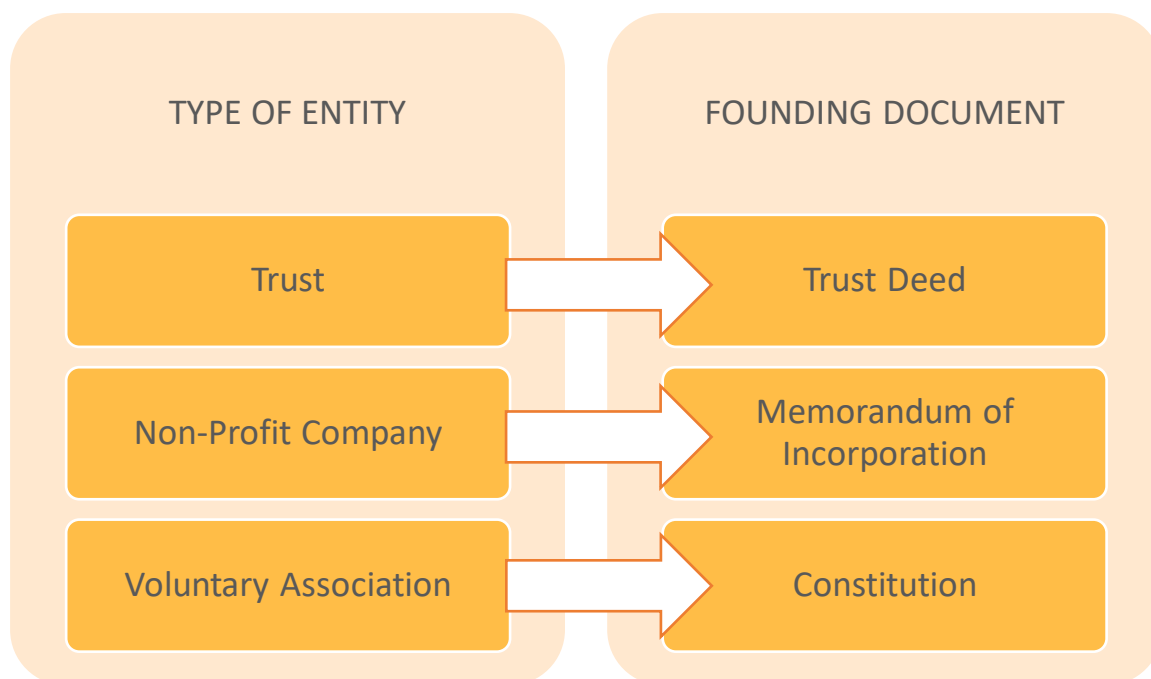


Figure 1: Type of Entity and Founding Documents

It is sometimes the case that board members have never had sight of the founding documents and it is essential that they do and are familiar with its terms. This is mentioned at the outset as these documents will contain important provisions on the objectives of the foundation and matters such as the procedural governance requirements and conflict of interest policies. These documents are important for determining the foundation's unique governance and compliance requirements and should be considered together with the relevant laws governing the particular type of entity, for example, the Trust Property Control Act⁴ which governs trusts.

2. ASSESSMENT

Good governance practices include regular review by a board of its own performance as well as continuous development and this guide provides an opportunity for both. It is hoped that this will help your board to identify its strengths and areas in which it could improve and that you find some useful suggestions that will help with this.

- First complete the assessment or a section of the assessment that is relevant to your board.
- This should help you identify areas in which your board could improve or areas on which you would like more information. Relevant information, tools and tips follow each assessment category.

“Effective leadership is the core quality of good governance”

- Independent Code

⁴ 57 of 1988

Just a reminder - the appropriateness and extent to which the tips and tools should be implemented will vary from foundation to foundation depending on its stage of development, its size and level of complexity.

2.1 EFFECTIVE BOARDS

SELF-ASSESSMENT

Table 1: Effective Boards

Effective Boards	Yes	No	Could be improved
We understand the board's role and responsibilities.			
We understand our own individual fiduciary duties.			
Our board members understand what is involved in good governance.			
Our board members have sufficient knowledge of the work of the foundation and the context in which it operates.			
We are involved in operational matters to an appropriate degree.			
We are clear on how to manage conflicts of interest.			
We delegate to committees where necessary.			
Our board members are committed and dedicate the necessary amount of time to the role.			
We have well-considered and approved policies in place on various important matters, for example, a financial policy, a conflict of interest policy and an investment policy.			
Our board continually seeks to learn through training and keeps up to date on relevant sector information.			
We regularly evaluate our performance as a board.			

2.1.1 ROLE OF AN EFFECTIVE BOARD

It is a privilege to serve on the board of a foundation – an opportunity to make a difference. While the role is often a voluntary one, the fiduciary duties of a board member of a foundation are the same as for a for-profit entity or a private trust. Those under a fiduciary duty are in a position of trust. They look after the affairs of another and as such are usually expected to pay more attention to this than to the management of their own affairs.

The board bears ultimate responsibility for the foundation legally, programmatically, strategically and financially (including fiscally).

Each foundation is established to achieve particular objectives. It is up to the board to ensure that they seek to lead and run the foundation in such a way as to have the best chance of achieving these objectives. Not only does this mean ensuring that there is a well thought out strategy that should ensure impactful programmes or grant-making but also means ensuring that there is good governance to create a strong and resilient foundation to give the strategy the best chance of success.

- **Every board member should go through an induction**

A board member needs the appropriate and necessary information to be able to make good decisions and to properly exercise their judgement.

An invaluable practice is to ensure that every board member goes through an induction process through which this information is provided. Ideally, this should happen when a board member first joins the board, but it can be done at any stage if one has not yet been done.

A new board member should be provided with:

- necessary documents and information including the founding documents, recent annual financial statements, recent annual report (if any) and confirmation of the various approvals and registrations the foundation enjoys; and
- background information on the programmes funded, grant-making strategy and, if possible, site visits to funded projects.

For a smaller foundation, this could, for example, involve a one-hour meeting with the Chair of the board and the Executive Director of the foundation (if there is one) where the relevant information and documentation is provided, background given and questions answered.

- **Training or mentoring of new board members**

Board members with little or no board experience should also ideally undergo some form of training and/or mentoring by an experienced board member so that they understand the board's role and responsibilities and their fiduciary duties⁵.

2.1.2 ROLE OF THE BOARD IN OPERATIONAL MATTERS

Foundations differ significantly in how they operate. Some have a large staff contingent, and the board plays only a strategic and oversight role. The board is the custodian of the strategy and the Executive Director or head of the foundation and the staff are then tasked with its implementation.

A smaller foundation may have zero staff and may see to all aspects of the foundation's activities and operations themselves, outsourcing perhaps in certain instances.

⁵ King IV Code: Recommended practice 23 under Governing Structures and Delegation

The life stage of the foundation is also a factor that will determine the level of involvement of the board in operational matters. When a foundation is first established, the board is often involved operationally but their level of involvement usually decreases as staff capacity increases.

The important consideration is for the board not to involve itself in operational matters where there are staff members employed for this purpose. Overlap can cause confusion in roles, conflict and second-guessing. The relationship between the Executive Director and Chair of the board is particularly important and unwarranted meddling is often a cause for conflict.

Tools and tips:

- For the sake of clarity, the roles and responsibilities of the board could be laid out in a separate document often known as a charter. It would acknowledge the board's responsibility for matters such as:
 - Strategy
 - Financial and fiscal matters
 - Legal compliance and governance
 - Ethics
- It could also then list the operational matters related to these that the staff (if any) rather than the board is tasked with, to ensure that there is clarity on the separation between these.

2.1.3 CONFLICTS OF INTEREST

The personal interests of a board member should not conflict with those of the foundation. Conflicts of interest stand in the way of unbiased and good decision-making. Ideally, all conflicts of interest should be avoided. If one should arise, they should be proactively managed with, as a minimum for example, the conflicted board member making full disclosure and recusing themselves from decisions on matters in which they have an interest⁶. The policy, processes and procedures for dealing with any such conflicts should be spelled out in the founding documents or a separate document.

Tools and tips:

- As a starting point, the founding document should be checked to see whether, and to what extent, it covers conflicts of interest. If the founding document is silent or not comprehensive enough, then a separate conflict of interest policy should be agreed and adopted.
- A conflict of interest policy need not be a long complex document but can comprise just a few paragraphs or can even be included in the foundation's financial policy.

2.1.4 COMMITTEES

The board may delegate some of its functions to committees. This would usually apply more to bigger foundations but can also be proportionately applied in that the board of a smaller foundation could delegate a particular function to one or two board members to prevent the entire board having to spend additional time on a particular subject matter. The board will always retain ultimate responsibility though despite delegation.

For example, to prevent the entire board having to monitor and oversee compliance for the foundation this could be delegated as mentioned. The rest of the board do need to be confident though that sufficient

⁶ King IV Code: Recommended practice 26 under Governing Structures and Delegation

Independent Code: Value 5: Conflicts of interest and self-dealing

mechanisms are in place to ensure proper compliance. They also need to remain informed and will remain the ultimate decision-makers.

Another example is an investment committee, which could include investment professionals who are not board members. They could assist in assessing investment proposals or performance but would report back to the board, who would make the necessary decisions.

Tools and tips:

- The need to establish committees will depend on the size, complexity and needs of the foundation. A smaller foundation might have no committees at all. It should be a tool that assists the board in effective use of time and expertise or strengths.
- In setting up committees, it is a good idea to clearly define:
 - the role of the committee;
 - how to determine who should be a member and for how long;
 - the scope of their duties;
 - how often they will meet; and
 - how they will report back to the board.
- Committees can have more than one function, for example, audit and risk or risk and compliance.

2.1.5 POLICIES

Many smaller foundations do not have any policies in place. There is much value in considering certain important issues in advance and including the board's stance and protocol on these in a policy.

Examples include:

- An investment policy which would deal with the board's stance on the investment of any surplus funds including aspects like ethical investing, the process to fairly and transparently determine which investment manager to appoint and whether an investment committee should be established.
- A financial policy – this is discussed in detail under Financial Responsibilities.
- An ethics policy – setting the ethical tone for governance and for the foundation as a whole (considering, as the King IV Code states: “what is good and right for the self and others”⁷).

Tools and tips:

- These need not be long and complex documents.
- They should be reviewed and updated regularly and should provide clarity on the board's stance on and processes for dealing with situations and issues that will inevitably arise.
- They should be provided to all board members.

2.1.6 BOARD EVALUATION

In order to be accountable, a board should regularly review its own performance and that of its individual board members. Depending on the size and complexity of your foundation, this need not be a daunting, overly time-consuming exercise and should be in a format appropriate to the particular foundation.

⁷ King IV Code p 12 – definition of ethics

The King IV Code suggests this be done every two years with consideration, reflection and discussion taking place every year in between⁸ and the Independent Code mentions a regular review, usually annually⁹.

Tools and tips:

- The annual review can be diarised to form part of the final board meeting for the year and can take a form appropriate to the foundation.
- The evaluation should precede any dates for re-election when terms expire so that a board member's performance can be considered as part of that decision.
- Targets and measures should be set to evaluate, for example:
 - Impact and the extent to which the foundation's objectives are being met;
 - Legal, financial, and fiscal compliance;
 - Governance; and
 - Each board member's commitment, attendance, and engagement.

2.1.7 BOARD DEVELOPMENT

Board evaluations are an important part of board development as they identify areas in which the board may need to improve.

The board should seek to continually learn and find ways to improve the way things are done, whether this is from a governance perspective or by ensuring that they have up-to-date relevant contextual information so that they are well-placed to come up with or review and adjust the foundation's strategy to ensure that it will have the necessary impact.

The King IV Code recommends that a board has access to professional and independent advice on corporate governance and its legal duties¹⁰. Again, depending on the size and complexity of the foundation, this might include an in-house governance professional, outsourcing this or having board members undergo governance training.

Tools and tips:

- Board development can be included as a recurring agenda item.
- Regular training or information sessions can be included as part of board meetings to inform the board on new research relevant to its activities, for example, best practice in conservation if this is relevant to the foundation's objectives or on governance practices or new legal developments.

⁸ King IV Code: Recommended practices 73 and 74 under Governing Structures and Delegation

⁹ Independent Code: Key Leadership Area 5: The Board and other governance structures.

¹⁰ King IV Code: Recommended practice numbers 90, 91 and 92 under Governing Structures and Delegation

2.2 BOARD COMPOSITION

SELF-ASSESSMENT

Table 2: Board Composition

Board Composition	Yes	No	Could be improved
The composition of our board works well and reflects the skills and attributes we need.			
There are clear portfolios such as Chair, Vice-Chair, Treasurer (where appropriate).			
Our board members have set terms.			
We have a clear succession plan to replace board members when necessary.			
We have considered whether the Executive Director (if there is one) should be on the board or not.			

As with everything, one needs the right people to do any job properly. The right mix of board members will differ for each foundation.

Factors to consider in determining the ideal board composition of any board as suggested by the various codes include:

- Knowledge;
- Skills;
- Experience;
- Diversity in age, culture, race, gender;
- Independence;
- Available time;
- Sector experience; and
- Executive/non-executive.

Family foundations often seek to include family members for good reason, including family unification and ensuring the continuation of a legacy. As a family foundation matures, one usually finds that the mix between family and non-family members is more balanced, and the appointment of new board members is based increasingly on skills and attributes needed rather than on personal connection.

Corporate foundations would seek to include representatives from the corporate funder on their boards to ensure alignment between the funder and the foundation's activities.

One of the requirements for the tax exemption of a foundation is that no single person (this also includes a legal person like a company) directly or indirectly controls the decision-making¹¹. Care must be taken particularly for family and corporate foundations that this is not the case.

King IV suggests that the Executive Director (if there is one) should be a board member and both the King IV Code and the Independent Code suggest that he or she should not be Chair¹². Either way the Executive Director should be included in meetings, whether or not they are capable of voting, to be able to provide necessary information and context and can be excused where necessary.

Tools and tips:

Skills audit

- The best way to identify any gaps in your board composition is firstly, to do an exercise to ascertain exactly what skills and attributes the board needs in order to be most effective.
- Next, the board should do what is known as a skills audit, which need not be an overwhelming exercise but can be a fairly simple assessment to ascertain the skills and attributes existing board members have and to identify and flag any gaps so that the board can plan to fill those.

Every foundation will have different skills or experience requirements for its board. Some common examples are included below. Also, this need not be limited to skills and experience and can include personal attributes. The board should also proactively take into account which board members are soon to leave the board so that, if necessary, someone with similar skills or experience can be sought in advance to replace them. The skills audit can also list the years served to ensure the right balance between experienced and new trustees.

Table 3: Skills Audit

Skills and/or experience required on board:	Skills and/or experience represented, and years served	Skills and/or experience needed but not yet represented
Legal and governance		
Financial		
Marketing and communications		
Fundraising and networks		
Leadership		
Sector expertise		

¹¹ S30(3)(b)(i) of the Income Tax Act 58 of 1962

¹² King IV Code: Recommended practice number 9 and 34 under Governing Structures and Delegation

Independent Code: Key Leadership Area 6: Procedural Governance

2.2.1 PATRONS AND ADVISORS

The board should consider whether certain skills or attributes should be represented by way of the appointment of patrons or advisors rather than the appointment of board members.

Patrons are usually appointed to create a reputational association with the foundation and would include, for example, a high-profile person, a previous Executive Director or founder. They would not usually have voting rights. However, it is important to remember that if an individual has been appointed to “lend their name” to the foundation, the foundation would be relying on the association remaining a positive one and this does pose a risk.

The board could appoint someone with useful expertise as an advisor who could be consulted on specialist matters rather than being included on the board itself, for example, for advice on investment or best practice in early childhood development.

2.2.2 TERMS

Both King IV and the Independent Code suggest that new members be periodically introduced, and long-serving members periodically resign¹³. This creates a good balance of innovation, background knowledge and continuity.

Tools and tips:

- If the founding document does not specify terms for the board members, then the board can usually amend the founding document to provide for this.
- Re-election at the end of a term should be based on attendance and performance.
- Keep a close watch on dates to ensure that a term has not expired without the board member being re-elected or replaced in time.
- Some smaller foundations prefer not to have terms but should still seek out ways to introduce fresh thinking and, where possible, should effect changes in board members in the event of poor attendance or performance.

2.2.3 ALLOCATING PORTFOLIOS

All boards should have a Chair and Treasurer and depending on the size of the board could include a Vice-Chair and Secretary too.

- The Chair leads the board, leads meetings and is the main liaison with the Executive Director of the foundation (if there is one).
- The Vice-Chair is available to step in when the Chair is unavailable and is an alternative source of contact for the Executive Director.
- The Treasurer provides close oversight of the foundation’s financial matters.
- The Secretary oversees the procedural administration ensuring that, for example, minutes are taken, resolutions recorded, and records maintained.

¹³ King IV Code: Recommended practice 12 under Governing Structures and Delegation

Independent Code: Key Leadership area 5: The board and other governance structures

Tools and tips:

- Portfolios should be allocated for set time periods or terms with re-election being based on performance. If the same person stays too long in any role, this can inhibit new ideas.

2.2.4 SUCCESSION

A board should constantly be recruiting. It is not always quick and easy to find good board members and it can be very disruptive when a board member resigns, and the minimum number of board members is no longer met.

By being proactive, a board will have identified potential successors based on the skills and other attributes needed on the board (as informed by the skills audit). They would also have had the opportunity to do a due diligence on that person to ensure their good standing and qualification.

A succession plan should also ideally be in place specifying who will succeed the Chair, Treasurer and any other portfolios as well as for the Executive Director of the foundation, if there is one. This should cover emergency succession as well as longer term succession.

Tools and tips:

- Board recruitment should be a recurring item on the agenda.
- Where there are set terms for board members, it is easier to identify when replacements will be needed.

2.3 STRATEGY AND IMPLEMENTATION**SELF-ASSESSMENT**

Table 4: Strategy and Implementation

Strategy and Implementation	Yes	No	Could be improved
We have a clear understanding of what the foundation’s objectives are as laid out in its founding document.			
We have a clear strategy on how to work towards the achievement of those objectives.			
We review and measure the success of the strategy and its impact.			
We ensure there are sufficient resources and capacity to effectively implement the strategy.			
We review the Executive Director’s performance (if there is one) on a regular basis.			

Strategy and Implementation	Yes	No	Could be improved
We assess the relevance of the foundation’s objectives and the relevance of the strategy on a regular basis.			
Our board members have sufficient knowledge of the work of the foundation and the context in which it operates.			
Our strategy takes into account our impact on the environment and the broader context in which the foundation operates.			
We seek collaboration with other foundations in order to achieve maximum impact.			

The only objectives the foundation is entitled to pursue are those set out in its founding documents. This is another reason why it is important for all board members to be familiar with the terms of the founding documents.

The board needs to:

- Consider the continued relevance of the objectives and have the founding documents formally changed, if possible, if they need adapting in this way;
- Approve a strategy that they believe (based on research and evidence) will work towards the achievement of the objectives and takes into account the broader context in which the foundation operates including its environmental impact;
- Oversee the implementation of the strategy (the degree to which they will implement the strategy themselves will depend on the life stage of the foundation and its own particular circumstances);
- Ensure there are enough resources (financial and otherwise) available to meet the objectives or that the strategy is realistic within any such constraints;
- Measure the success of the strategy and its impact and revise or adapt the strategy as a result, where necessary; and
- If there is an Executive Director, assess their performance on a number of factors including implementation of the strategy.

If the foundation is staffed, it is usually the management team that comes up with the strategy and the board that considers and ultimately approves it. Smaller foundations are often not staffed and so the board will devise as well as implement the strategy or outsource aspects of the implementation.

Tools and tips:

- A board should perform regular reviews of the foundation’s strategy and its implementation, for example, at least once a year. The format that this takes will differ from foundation to foundation.
- It is through setting targets for desired outcomes upfront that will enable a board to assess the impact and success of a strategy and to review or adapt it along the way. Some founding documents are very specific as to who the beneficiaries of the foundation are and so in these instances, there will not be much freedom for the board to set strategy.

- It is often worthwhile to set up an advisory panel of experts in the areas on which the board might need additional input to help inform the strategy.

2.4 COMPLIANCE AND RISK

SELF-ASSESSMENT

Table 5: Compliance and Risk

Compliance and Risk	Yes	No	Could be improved
We know and understand the provisions of our founding documents.			
All requirements for minutes, resolutions and quorums are met.			
We are aware of the various registrations and approvals the foundation has and are confident that there are mechanisms in place to ensure ongoing compliance.			
We have systems in place to ensure we keep up with new legislation and how to comply.			
We consider the risks posed to the foundation and have plans in place on how to deal with these.			
We consciously manage the information of the foundation and our technology and proactively consider its use in how we do things.			

Compliance is one aspect of governance but governance as you will have seen in this guide encompasses much more than this.

The board is ultimately responsible for ensuring that the foundation is in full compliance with its various legal obligations. Although it is often more interesting to focus on programmes or grant-making, by ensuring that the necessary mechanisms for compliance are in place, the board is reducing the risk that the work of the foundation will be disrupted through non-compliance which could have legal and reputational consequences.

This also ties in with risk and the need for the board to consider and plan for how to avoid or manage risks posed to the foundation and its work.

Both compliance and risk can be delegated to a committee (depending on the size of the board) or to one or two of the board members, but it is important to again note that the board will remain responsible despite this delegation.

2.4.1 KNOWLEDGE OF THE TERMS OF THE FOUNDING DOCUMENT

Many board members of foundations do not personally have a copy of the founding documents or, if they do, few are very familiar with its terms. The terms of the founding document are the starting point to determine what the foundation has been set up to do and set out the procedures to be followed for meetings, voting,

quorums to name a few. The board members need this knowledge in order to be able to properly perform their role and to ensure that there is compliance and good governance.

Non-compliance with the procedural governance requirements of the foundation can have serious consequences. A very constructive meeting held without the correct quorum could, for example, render the decisions taken invalid.

In the same way if the foundation has financial and other policies, these need to be strictly complied with as well.

Tools and tips:

- An induction should ensure that the board members are provided with the necessary documents, knowledge and information.
- Long-standing board members should be provided with the necessary documentation if they have never received this.
- One of the board members or the Secretary (if one) could be tasked with overseeing procedural compliance although the entire board would still remain responsible.
- Each board member should have sight of all policies of the foundation.

2.4.2 REGISTRATIONS AND APPROVALS

The board members should be aware of the various approvals and registrations that the foundation enjoys and need to be confident that the correct mechanisms are in place to ensure compliance with these. For example, approval as a Public Benefit Organisation (PBO approval) and in terms of S18A¹⁴ are very beneficial to the foundation in that they provide a level of tax exemption and tax deductibility in respect of certain qualifying donations, respectively. There are certain ongoing requirements that need to be met to ensure that the foundation continues to enjoy these approvals though.

Other relevant registrations include:

- Registration as a Non-Profit Organisation¹⁵;
- Registration as a trust¹⁶ or company¹⁷.

Tools and tips:

- Usually with larger foundations that have staff, it is the management team that sees to the ongoing compliance with these requirements and a committee could oversee this. A smaller foundation might want to outsource some of these functions. In both instances though, the board will retain responsibility.

2.4.3 LEGAL OBLIGATIONS

The board also needs to ensure they remain informed of how general legislation impacts the foundation and what is needed to comply. The foundation would be subject to all applicable laws including labour laws,

¹⁴ S30 and S18A of the Income Tax Act 58 of 1962

¹⁵ Non-Profit Organisations Act 71 of 1997

¹⁶ Trust Property Control Act 57 of 1988

¹⁷ Companies Act 71 of 2008

privacy laws, tax laws, health and safety laws, employment equity and Black Economic Empowerment (BEE) legislation to name a few.

Tools and tips:

- The board should consider including someone with legal expertise or experience as a board member, or to form part of a compliance committee or act as an advisor.
- If the foundation has staff, often this is managed by them, but the board would need to be assured that the correct mechanisms are in place to ensure that this is being done and again remain ultimately responsible.

2.4.4 RISK ASSESSMENT

It is so worthwhile for a foundation to conduct a risk assessment and to consider and plan for how any risks that arise could be dealt with. In this way, the foundation will be prepared to face the challenges that inevitably arise. This is one of the many ways in which a foundation can be strengthened and made more resilient through practising good governance. There are financial risks, reputational risks, legal risks and technological risks to name a few.

Tools and tips:

- This need not be a daunting exercise but requires the board to set aside time to give this proper attention or, alternatively, if it is a larger foundation, to delegate this to a committee.

2.4.5 INFORMATION AND TECHNOLOGY

These days, information and technology are a crucial part of running any organisation. The board should take the time to apply their minds to this; to aspects like protection of intellectual property, protection of information and cybercrime. On the positive side, the board should also always be open to considering how technology can be harnessed in a way that can benefit the way the foundation operates.

Tools and tips:

- This can be delegated to an existing committee or to one or two board members.
- It could also be included as part of the risk assessment.
- A foundation could prepare a policy that covers information and technology and its use by the foundation.

2.5 FINANCIAL RESPONSIBILITIES

SELF-ASSESSMENT

Table 6: Financial Responsibilities

Financial Responsibilities	Yes	No	Could be improved
The board receives regular updates on the finances of the foundation.			
There are internal controls in place to control and authorise expenditure and payments.			
We have a treasurer on the board with strong financial skills and understanding.			
We consider and approve an annual budget and monitor adherence to this.			
We ensure that our financial reporting requirements are met including the submission of tax returns.			
We have a remuneration policy in place regarding the remuneration of the board (if applicable).			

2.5.1 BOARD FINANCIAL RESPONSIBILITIES

The board has the ultimate responsibility for the financial affairs of the trust.

The board should:

- Be updated regularly on the finances of the foundation.
- Ensure that there are strong internal controls in place specifying the necessary levels of authorisation required to enter into financial obligations on behalf of the foundation and for the making of payments.
- Consider and approve an annual budget for the foundation and should monitor that it is being adhered to.
- Be satisfied that the budget allows for sufficient resources, financial and otherwise to implement the strategy or objectives of the foundation.
- Ensure that the required financial reporting is taking place to the appropriate authorities, that tax returns are being lodged and that the foundation's annual financial statements are audited (if this is required in terms of the founding document and/or legislation).

Tools and tips:

- There should always be a treasurer with strong financial skills on the board.
- Financial reports should be prepared and submitted in sufficient time before board meetings to allow the board members to look through these properly before the meeting.

- It is helpful to have a financial policy covering all these requirements and processes (which could also include the foundation’s investment and conflict of interest policy) and there should also be mechanisms in place to ensure compliance with the financial policy.

2.5.2 BOARD REMUNERATION

Not all board members of foundations are remunerated but, if they are, there should be a remuneration policy setting out the basis on which remuneration will be determined.

Many factors are taken into account to determine what constitutes appropriate remuneration, including the requirements of Public Benefit Organisation (PBO) approval which specifies that any remuneration paid should not be “excessive having regard to what is generally considered to be reasonable in the sector and in relation to the service rendered”¹⁸.

Any remuneration should also be linked to the performance and attendance of the board members. In many instances, foundation board members are effectively determining their own remuneration and so should ideally seek outside independent input on this. It is important to note though that, even with such input, the decision on what is appropriate will remain their responsibility.

Tools and tips:

- The founding document will determine whether remuneration is allowable at all and may impose restrictions as will certain other factors, like PBO approval.
- A remuneration policy will set guidelines for determining appropriate remuneration.

EFFECTIVE BOARD MEETINGS

Effective board meetings meet the following criteria:

- Called with sufficient notice
- Have a clear agenda in place including recurring items such as:
 - risk;
 - compliance;
 - recruitment of board members; and
 - board development and training.
- Include a board pack with relevant information circulated before the meeting
- Led effectively by the Chair
- Everyone has a voice
- There is room for the dissenting voice
- Meetings are well attended by board members who are prepared, committed, and interested
- Minutes are circulated soon after the meeting to remind attendees about action items and while fresh in everyone’s mind

¹⁸ S30(3)(d) of the Income Tax Act 58 of 1962

3. CONCLUSION

The characteristics and values behind good governance such as integrity, responsibility, competence, accountability, fairness, and transparency¹⁹ are those that all foundations would no doubt be seeking to instill in all that they do. It is important for board members to apply their minds to what meaningful good governance will look like for the foundation that they help govern and to commit to pursuing that, in recognition that it not only benefits society as a whole but is likely to also contribute to creating a strong, resilient and effective foundation.

4. REFERENCES

[The King IV Report on Corporate Governance™](#)

[The Independent Code on Governance for Non-Profit Organisations in South Africa](#)

[Trust Property Control Act 57 of 1988](#)

[Companies Act 71 of 2008](#)

[Income Tax Act 58 of 1962](#)

[Non-Profit Organisations Act 71 of 1997](#)

[Council on Foundations](#)

[Association of Charitable Foundations - Stronger Foundations](#)

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¹⁹ King IV Code: Supplement for non-profit organisations under Principle 1