

Set up a community-based organisation



Level 2

Facilitator Guide

Set up a community-based organisation

Level 2

- Facilitator Guide -

The development practice project

These learning materials were generated by the Development Practice project, hosted by the [Sustainability Institute](#) and in partnership with the [Community Connections](#), [AIDS Consortium](#) and [Keystone](#). This project generated a set of competence standards with development practitioners in Cape Town, Johannesburg and Durban, between 2005 and 2009. This manual is part of a set of materials consisting of a competence standard, learner's manual, facilitator's guide and an assessment tool. More information on this project is available on the [Development Practice](#) website.

ACKNOWLEDGEMENTS

The Development Practice Project wishes to acknowledge and thank the following contributors:

- [Investec](#) for providing principle funding
- [C.S. Mott Foundation](#) for providing seed and continued funding
- Karin Webber for researching and compiling this set of learning materials
- The partner organisations who contributed their materials
- The many other thinkers, writers, and published works that contributed indirectly to this product

The project team for logistics, coordination and editing

Questions and queries on the project and materials can be forwarded to info@developmentpractice.org.za.



LICENSING

These works are licensed under a Creative [Commons Attribution Non-commercial-Share Alike 3.0 Unported License](https://creativecommons.org/licenses/by-nc-sa/3.0/).

ATTRIBUTION NON-COMMERCIAL SHARE ALIKE (BY-NC-SA)



- ① **Attribution.** Others can copy, distribute, display, and perform the copyrighted work — and derivative works based upon it — but only if they give credit the way it is requested.
- ② **Non-commercial.** Others can copy, distribute, display, and perform this work — and derivative works based upon it — but for non-commercial purposes only.
- ③ **Share Alike.** Others are allowed to distribute derivative works only under a license identical to the license that governs this work.

CONTENTS

SOME NOTES ON FACILITATION SKILLS	9
What is facilitation?	9
Your role as the facilitator is to:	9
Key principles of facilitation	10
Do's and don'ts of facilitation	11
Critical skills of a facilitator.....	12
Qualities of a facilitator	13
The difference between facilitation and presentation	13
Tips for being a good facilitator	14
OVERVIEW	15
SPECIFIC OUTCOMES AND ASSESSMENT CRITERIA.....	17
SET-UP A COMMUNITY-BASED ORGANISATION – LEVEL 2: COURSE PLAN	19
Workshop – Day 1	19
Workshop – Day 2	25
ADDITIONAL INFORMATION.....	31
Extra reading for the facilitator	33
Legal Structures commonly used by Non-Profit Organisations	34
Legal Obligations of Members of Non-profit Organisation (NPO) Governing Bodies	66
Course evaluation form.....	85



SOME NOTES ON FACILITATION SKILLS

What is facilitation?

Facilitation is the process of making learning easy. This is done through the use of various approaches such as small group discussions, debates, question and answer sessions, personal reflection and sharing, experiential activities and practical exercises. You allow participants to discover solutions for themselves and encourage them to internalise lessons learnt, rather than lecture on topics.

Your role as the facilitator is to:

- Give direction to the group
- Create a comfortable and friendly environment for the group
- Observe what goes on in a group
- Identify the main needs of the group
- Learn ways to address these needs
- Adjust to the level of the group – in language, content, presentation, and pace.
- Apply and practice these skills in many different situations



Key principles of facilitation

Confidentiality: What is shared in the group remains in the group. Personal and sensitive information will not be told to others. However as evaluations of the course need to be done, and lessons learnt from each course, obviously you will need to discuss some of the content with your colleagues.

Respect: We should respect each other's opinions and experiences, even if they are different from our own or we do not agree with them –this includes the facilitator, who needs to model respect for every learner's opinion and contribution, and to make sure that s/he provides opportunity for all to participate.

Non-Judgmental: It is fine to disagree with another person's point of view but not to judge or put down another person because they do not feel the same as you do. This is particularly important because as a facilitator you have a lot of power in the group (people look up to you) and so you need to make sure that you do not appear to judge or dislike someone.

Use I-statements: Using I-statements ensures that the view you are expressing comes from you. It also shows confidence and assertiveness. It clarifies that you are speaking for yourself and not for the group.



Integrity: Walk your talk! Be a role model for the group. For example, the ground rules apply to the facilitator the same as for the participants – if it says cell phone silent, do not answer calls in the workshop!

Do's and don'ts of facilitation

Do's	Don'ts
Plan and prepare for sessions in advance	Create a long dialogue with one participant
Show interest when listening	Criticise on a personal basis
Use simple language	Dominate the group
Act responsibly	Be biased
Be patient	Be insensitive
Allow participants to discover	Allow Domination
Encourage active interaction	Go beyond time allocated
Ask for suggestions from the group in answering questions	Exaggerate enthusiasm about delivering session – be false.



Critical skills of a facilitator

Listening: You pay attention to what is being said, show interest by nodding your head and maintaining eye contact. Allow the speaker to finish without interrupting (unless they are dominating the group and haven't allowed others to speak).

Paraphrasing: You repeat what the person said using your own words (i.e. interpret or reword). This is to ensure you understand and are not making assumptions.

Summarising: You sum up by going over the main points. You help participants to gain a better understanding of the subject.

Creativity: You must always have a plan B. Be imaginative and stimulated. Make your sessions fun yet educational by ensuring that the group does not miss the learning points. You know when and how to use humour (without being offensive), ice-breakers and energisers. Identify different ways of achieving the objectives without compromising the quality of the session.

Awareness: You pay attention to what is not being said in the group, people's unspoken needs and watch out for group dynamics that need attention. You are able to "read" the energy and level of the group and adjust your programme accordingly.



Qualities of a facilitator

Good	Bad
Punctual and organised	Disorganised
Presentable	Messy, no care taken in presentation
Confident	Low self-esteem
Assertive	Passive
Friendly	Rude/impolite
Knowledgeable	Uninformed
Approachable	Intimidating
Creative and flexible	Rigid and unaccommodating

The difference between facilitation and presentation

Facilitation	Presentation
Interactive process	One way process
Use of different methods of approach	More formal
Participants discover for themselves	Audience receive the message
Facilitator works with participants as a team	Presenter delivers the message
Use different ways of facilitating (e.g. Role plays, debate, small groups etc)	Use one way of presenting – normal “lecture” style



Tips for being a good facilitator

- Remember that you are a role model. Do your best to practise the behaviour you are talking about
- Keep studying and researching, learn about the issues, develop leadership skills
- Share information, be open to new experiences – there is always something to learn
- Ensure you give accurate and updated information
- Understand your target audience
- Use target/ age appropriate activities
- Always strive to keep to time
- Use Ice-breakers and energisers that add value to sessions (and where possible, link to the content presented)
- Keep your mind open and flexible
- Have fun, love and enjoy what you are doing



OVERVIEW

These notes are to support the training and facilitation of the competency standard: **Set up a community-based organisation.**

Many community organisations start out to try to meet the needs of the community. Often they function for a long time in an informal way. For some, the time comes when they want to formalise themselves as an organisation and establish the legal and management structures to support the work that they do.

However sometimes under pressure from the growing need in the community or for funding purposes, community organisations choose to organise themselves in a more formal way. They decide what kind of organisations they want to become (legal structure), develop the rules and procedures for how the organisation will be run (founding document/constitution), select a group of people who will oversee and guide the organisation (governing body), and then ensure that there are people to do the work (staff with a management structure).

This course is for those who are either in an informal community organisation that would like to formalise, or for those who are in the process of establishing a new organisation. The learner guide, accompanies the facilitated programme of activities, and should be followed up by practical ‘on-the-job’ experience and practice (supported by a mentor if possible).



Below follows the Specific Outcomes and Assessment Criteria that the course is based on. This means that at the end of the learning period, participants should be able to practice all the points listed below. Remember to remind participants to keep and file proof of their work. At the end of each section in the workbook, there is a symbol for checking understanding – you can use these questions to check the understanding of the participants.

Please read the competency standard below carefully.



SPECIFIC OUTCOMES AND ASSESSMENT CRITERIA

Specific outcomes	Assessment criteria
<p><i>Competence in this standard means that the learner has clearly shown that s/he is able to...</i></p>	<p><i>Tasks and activities completed by the learner contain the following evidence of competence...</i></p>
<p>SO1: Develop a mission statement for a CBO</p>	<ul style="list-style-type: none"> • Issues of concern in the community are identified • The purpose of the organisation is clearly expressed in a mission statement • The broad approach and activities to address the issues are described
<p>SO2: Choose appropriate structures for leading and managing the organisation</p>	<ul style="list-style-type: none"> • Various types of organisational forms are identified • The advantages and disadvantages of each are discussed for their context. • A simple leadership structure is proposed • Appropriate leadership roles and responsibilities are described and agreed
<p>SO3 : Set up appropriate governance systems</p>	<ul style="list-style-type: none"> • Transparency, accountability and oversight are explained • Rules for working together in a transparent and accountable way are agreed and recorded (constitution, code of conduct, values of organisation, procedures etc) • Actions to ensure accountability and independent oversight are identified



SET UP A COMMUNITY-BASED ORGANISATION – LEVEL 2: COURSE PLAN

Workshop – Day 1

Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
9h00	Introduction and welcome	Name games as ice-breaker In pairs, share a bit about yourself and your organisation/ or what you do in your community. Feedback from the pair into the group.	Name tags Koki's		
9h45	Setting up a CBO	Divide the bigger group into smaller groups. Ask the groups to brainstorm steps or actions that you need to take to set up a CBO. Share in large group and discuss course content.		All	
10h30		Tea			
10h45	Identifying a concern or need in the community	Most community based organisations and development work, begin when someone or a group		SO1	Issues of concern in the community are identified



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		<p>sees a need in the community and wants to do something about it. It often happens in a very informal way.</p> <p>Brainstorm some ways that you can find out more about the needs in your community? Use one of the organisations in the group as an example and think about the programmes of the organisation. What information would you like to get from the people you work with that would help you understand the needs better? Write down these questions. Give feedback to the rest of the group and discuss the questions.</p>			
12h00	Vision and mission	Briefly do a guided visualisation with the group, getting each person to visualise what success would look like in their community or sector. (5mins)		SO1	Purpose of the organisation is clearly expressed in a mission statement



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		<p>Then get them to draw this (either in organisational groups or alone). This then gets shared in pairs or groups and common elements noted. Explain to the group what a vision is and link this to the exercise.</p> <p>What is a mission? Read some examples of mission statements in small groups – brainstorm about what to include and how to write it. Set homework for them to write a mission statement for themselves or their organisation. If their organisation already has a mission statement they need to bring it to the next session</p>			
13h00		Lunch			
14h00		The vision and mission do not describe the specific activities that you will do. Before you	Newsprint Koki's	SO1	The broad approach and activities to address the issues are described



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		<p>choose your activities you need to have some aims and objectives. This describes in more detail what you will do as an organisation.</p> <p>Use the example in Learner manual to explain to group how to plan activities.</p> <p>Let them complete the individual activity in the Learner manual</p>			
15h00		Tea			
15h15	Appropriate structures for leading and managing organisation	<p>Once we are clear on what our organisation is going to do we need to agree on how we want to work together and how we want our organisation to function. Use this session to introduce the different legal structures of organisations.</p> <p>As learners they should know what the legal structure of their organisation is. If they do</p>	<p>Learner manual</p> <p>Flipchart or Power Point slide with summary of Legal structures</p>	SO2	<p>Various types of organisational forms are identified</p> <p>The advantages and disadvantages of each are discussed in their context</p>



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		<p>not know, they need to go back to their organisation and find out.</p> <p>As a group discuss what you think the advantages and disadvantages of each of these structures are.</p>			
16h30	Closure for the day	<p>Final thoughts: Share any final thoughts with the group.</p> <p>Brief evaluation: Ask the group for feedback about what they experienced and learnt during the day – what did they like, not like; or would like to change for tomorrow.</p>	<p>Post-its</p> <p>Koki's Newsprint</p>		





Attribution Non-commercial Share Alike

Workshop – Day 2

Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
9h00	Recapping of Day 1	Individuals to share mission statements of organisations as check in (homework)			
9h30	Appropriate structures for leading and managing organisation	<p>Explain the different leadership structures to the group. Let them look at the individual activity in learner manual.</p> <p>Now ask them in their group to think of the roles and responsibilities of a good leader.</p> <p>Let each group give feedback and allow for discussion.</p>		SO 2	A simple leadership structure is proposed
10h30		Tea			
11h00	Roles and responsibilities of leadership	In many CBOs the governing body forms the main leadership structure of the organisation. The governing body therefore also has some roles and responsibilities as	Newsprint Koki's A4 paper for participants	SO2	Appropriate leadership roles and responsibilities are described and agreed



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		<p>the leaders of the organisation. Different office bearers are appointed in the governing body.</p> <p>Brainstorm what the basic office bearers are of a board.</p> <p>Divide the group into 3 – treasurer, chairperson and secretary. Get each group to write what they think that person should do and then pass on their list to the next group to add to or change info.</p> <p>Discuss in plenary.</p>			
12h30	Appropriate governance systems	<p>Now that we have looked at the leadership structure of the organisation, let's look at governance of the organisation.</p> <p>Ask the group what they think good governance is.</p> <p>Explain the definitions.</p>	<p>Flipchart or PowerPoint slide</p> <p>Definition of governance, transparency and accountability</p>	SO3	Transparency, accountability and oversight are explained
13h00		Lunch			



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
14h00	Appropriate governance systems	When the organisation is functioning well it will also be accountable and transparent. Ask the group to brainstorm what they think accountability and transparency means and what organisations can do to ensure that they meet the criteria.	Learner manual	SO3	Rules for working together in a transparent and accountable way are agreed and recorded
14h45	Appropriate governance systems	There are different documents that can be used to form the 'rules' of working together in a transparent and accountable way. One of these is the constitution of the organisation In small groups, get them to list what needs to be included in a constitution. Share in plenary and then add more if necessary. In the groups let them think of other rules or procedures that an organisation needs to ensure that it functions well		SO3	Transparency, accountability and oversight are explained Rules for working together in a transparent and accountable way are agreed and recorded



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		and is accountable for what it does. Make a list on newsprint and present to the bigger group. Include code of conduct.			
16h15	Appropriate governance systems	<p>Give them a homework assignment to do on their own organisation. Which of the following do you have:</p> <ul style="list-style-type: none"> • A constitution • A code of conduct • Policies and procedures • Minutes and agendas for meetings <p>If not sure, ask your organisation. Make sure that you know what your organisation's constitution and code of conduct is. If the organisation does not yet have these tools, then they can develop them. This activity</p>	Newsprint Koki's	SO 3	Rules for working together in a transparent and accountable way are agreed and recorded



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		will form part of their portfolio of evidence.			
16h30	Closure	<p>Final thoughts and closure: Bring the session to a close with a reminder of how much knowledge and experience we already have to share among ourselves. This is also the last session of the workshop and so this is a time for each participant to say how they felt about the workshop and what they learnt during the course.</p> <p>Ask each participant to identify one thing that they will share with someone else. Finish off by thanking everyone once more for coming to this session. As this is the last session the facilitator may ask the participants to complete the evaluation forms and to hand</p>			



Time	Topic	Activity/Method	Materials	SO	Assessment Criteria
		them into you at the end of the session. Explain the importance of feedback - that it will help to improve the way you facilitate as well as the content of future workshops			



ADDITIONAL INFORMATION



Case study: Impilo AIDS project

Two women from the same street whose children had died of AIDS related illnesses decided to do something to help other mothers. They felt that if only they as parents can be involved they can save many lives amongst the youth. They thought the cultural barriers that hinder parents from speaking openly to their children about safer sexual practices are contributing negatively to the spread of HIV/AIDS. They decided as parents they will concentrate on awareness programs that will teach youth safer sexual practices. The one woman had a big house and one of the rooms was used for training. They started with the children from their street and soon their information sessions attracted a number of youth from the different streets and ultimately, the whole community.

A number of people within the community who were affected by the impact of HIV/AIDS felt they needed to be involved with this project and soon the two women had eight volunteers. One day the project volunteers and leaders sat down and discussed the way forward for their project. They realized that the community is demanding more from them and that they have to make some decisions. The costs attached to their training had been money from donations from the local business people. The donations were no longer enough. They had heard that if they wanted to get funding they will have to be registered with the government. They decided to do it. They decided to try and become a formal structure. They decided



to call themselves Impilo AIDS Project. The two women became part of the board and some volunteers were also recruited to be part of the board. This meant that they were no longer workers in their project and had to allow others to take over their jobs. The services of the project were very popular and they were invited to many other communities, churches and schools to conduct their talks.

Creating more structure in the organization also meant that they needed to have a manager to take over the running of the organisation while the board remained volunteers and less active in the daily activities of the organisation. This was a very difficult time for the organization as the two women were very passionate about their work, having started the organization. The organization was nearly divided as the manager came in with her own ideas. The board was not always happy as they felt their project was changing unnecessarily. Although this phase was so difficult, at the end of the 1 year the organization became so organised and professional that it received more funding and grew from strength to strength.



Extra reading for the facilitator

There are many good resources available on the internet. See the Legal Resources Centre Website (www.lrc.org.za) the Non-profit consortium's website (www.npc.org.za/resources) and the department of Social development's non-profit directorate website.

Below are a couple of good articles produced by the **Legal Resources Centre** – please acknowledge them if you use them or copy them for any purpose.

Also see the Addendum at the end of the Learner Manual for more information.



Legal Structures commonly used by Non-Profit Organisations

What is in this guide?

- The similarities and differences between non-profit and for-profit organisations
- Choosing a legal structure
- The Non-profit Organisations Act 71 of 1997
- Legal structures commonly used by NPOs
 - Voluntary Associations
 - Trusts
 - Section 21 companies
- What about for-profit organisations?
- More information

Overview

Civil society is essential for democracy and development

An organised, vibrant civil society is essential for participatory democracy and development. There are many different kinds of civil society organisations: some are set up to make a profit for their members, others are not for profit but to provide some form of service or benefit to their members or the public. What all civil society organisations have in common is that they are not part of government.

The new South African constitution (Constitution of the Republic of South Africa Act 108 of 1996) guarantees everyone the right to freedom of association. This means that you have the right to associate with other people and form



organisations. This right to freedom of association is essential for the formation of civil society organisations.

South Africa, like other countries, has a legal framework for civil society organisations. The legal framework serves two purposes:

- It enables civil society organisations to establish themselves as legal structures.
- It regulates the way in which such legal structures operate.

Focus on NPOs

We hope that the booklet will help everyone involved in building and strengthening NPOs to:

- understand the legal framework and principles that apply to NPOs
- recognise the differences between NPOs and for-profit organisations
- choose the appropriate legal structure for a particular NPO

It is aimed at community leaders, service providers, paralegals, advice offices and NPOs themselves, and is part of a series of booklets which focus on the laws that affect NPOs, including 'Guide to the NPO Act' and 'New Tax Law for South African NPOs'.



The similarities and differences between non-profit and for-profit organisations

Similarities

Both NPOs and for-profit organisations are:

- Private, non-government organisations with self governing boards accountable to their owners or members (although NPOs also need to account to their donors and, arguably, to the general public since they claim to operate in the public interest).

And both NPOs and for-profit organisations must:

- Operate for lawful purposes
- Be efficient and effective to survive.

Differences

Non-profit organisations	For-profit organisations
Provide some public service or have some public purpose that goes beyond serving the personal interests of the members of the NPO (such as the promotion of social welfare, economic development, religion, charity, education or research).	Operate for the purpose of making profits.
May make a profit, but may not distribute their property or profits to their members. They use any profits	Distribute profits to their owners or members.

they make to further their public interest objectives.	
Frequently do not generate enough income to cover all their expenses, so they fundraise from the public or donors.	Frequently borrow money, at a specified interest rate, if they cannot self-finance all their capital and operating costs. They calculate that they will be able to pay back the loan plus interest from the profits they intend to make.
On dissolution, any surplus assets, after payment of all debts, are given to an NPO with similar objectives. Assets are not distributed to the members.	On dissolution, after payment of all debts, distribute any surplus assets to the owners or members.

Choosing a legal structure

What are the legal structures that civil society organisations can choose from?

The table below shows some of the structures that civil society organisations can choose from. You will notice that some structures can be used by both NPOs and for-profit organisations. Some structures require that you register with a government registry.

NPO	Law	For-profit organisations
voluntary association	common law	partnership
trust	common law and Trust and Property Control Act 57/1988	trust
	Close Corporations Act	close corporation

	69/1984	
Section 21 company	Companies Act 61/1973	private company (pty) ltd or public company (ltd)
	Co-operatives Act 91/1981	co-operatives
communal property association	Communal Property Associations Act 28/1996	communal property association

Which structure should an organisation choose?

First it depends on whether your organisation is for profit or not. If it is not for profit, then you must select the non-profit structure best suited to your work. This depends on many factors.

The size, capacity and complexity of your organisation

The formal establishment and ongoing regulatory requirements are most complex for a Section 21 company, less complex for a trust and least complex for a voluntary association (VA). So the most common structure for small, newly established NPOs is the VA, while trusts and Section 21 companies are appropriate for larger, well established NPOs with big budgets, complex programmes and lots of staff. (While a VA is the simplest NPO to establish and manage in terms of ongoing regulatory requirements, it may nevertheless exercise all the powers and do the same things as a trust or Section 21 company.)

Funders' and others' requirements

Sometimes people or organisations that your organisation will interact with, such as funders or government departments, may prefer a particular structure. This may influence your decision. For example, the business world tends to be familiar and comfortable with the legal framework which governs Section 21 companies. Your organisation will have to stick to the requirements of the law that governs the structure that you choose.

What about tax?

Your choice of structure does not influence your organisation's eligibility for tax exempt status and donor deductible status; the purpose, objectives and activities of your organisation do. (Tax exempt status means exemption from paying income and other taxes. Donor deductible status means that people who make donations to your organisation receive a tax deduction.) The tax law requires that the constitutions of all NPOs which apply for tax exemption include a list of clauses which bolster and reinforce their essential non-profit distributing clauses. Our booklet, 'New tax law for South African NPOs', deals with these issues in detail.

The advantages of forming a legal structure which is registered with a government registry

Not all legal structures have to register with a government registry, for example VAs and partnerships don't, while trusts and Section 21 companies do. If you comply with the necessary requirements for registration and then register your



founding documents with a government registry they are available for public scrutiny. After that you will need to comply with the ongoing regulatory requirements for your particular legal structure, such as filing an annual report. There are certain advantages in choosing to register.

Clarity and formality

As organisations grow, they need to formalise their ways of operating. Working with an established set of legally binding rules helps to make things clear, to those within the organisation and to people outside the organisation who interact with it, work with it and do business with it.

Public accountability

Often organisations want to publicly disclose and account to stakeholders, that is, donors, beneficiaries, the general public and the government. If an organisation is publicly accountable, stakeholders may trust the organisation more and be more willing to work with it, for example grant loans or donate money to it.

Independent legal identity

Some structures, for example Section 21 or for-profit private or public companies, clarify the legal status of an organisation by making it a separate legal 'person', meaning that the organisation has an independent legal identity which is distinct from its members' legal identities. This usually means that:



- The liability of the organisation's members and office-bearers is limited. The organisation, as a legal person, not its members or office-bearers as individuals, is responsible for debts, contracts and obligations (except in certain circumstances such as when there is fraud or gross negligence).
- The assets of the organisation belong to and are registered in the name of the organisation, not its members and office-bearers.
- The organisation has perpetual succession: it continues to exist even if its members and office-bearers change.
- The organisation can sue, be sued and enter into contracts in its own name.

For some types of organisations (like VAs or for-profit organisations with less than twenty members) registering is a choice, based on the advantages described above. But other types of organisations are obliged to register to protect the public and people they interact with. For example, a commercial organisation with over twenty members, set up for the purpose of making a profit, must register as a company or a co-operative (with the exception of the organised professions, such as attorneys and accountants).



The Non-profit Organisations Act 71 of 1997

Background

The Non-profit Organisations Act 71 of 1997 repeals the Fund-Raising Act 107 of 1978 (with the exception of its chapter 2 which deals with disaster and relief funds). The Fund-Raising Act was able to be misused by the apartheid government to control the fundraising activities of civil society organisations and often to close them down. The NPO Act is the result of a lengthy policy and legal reform process in which civil society organisations and the state negotiated and made compromises. It came into operation on 1 September 1998.

Definition of an NPO

The Act defines an NPO as:

a trust, company or other association of persons -

- established for a public purpose; and
- the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered (Section 1(x))

Objectives of the Act

Primarily its objectives are to:

- create an enabling environment for NPOs
- set and maintain adequate standards of governance, accountability and transparency



It aims to meet these objectives by creating a voluntary registration facility for NPOs.

Voluntary registration

The Act encourages NPOs to be accountable to the public, rather than penalising those which aren't, by allowing existing South African legal structures for NPOs (VAs, trusts, Section 21 companies and other non-profit associations) to register with the NPO Directorate of the Department of Welfare - if they want to and if the organisation meets certain minimum establishment and other ongoing reporting requirements, such as filing annual narrative and financial reports. Registration and the ongoing reporting requirements which go with it are intended to improve standards of governance and increase accountability and transparency, which will increase public and donor confidence in NPOs (and, in turn, encourage organisations to register).

The Act's mandatory requirements for the registration of an NPO are similar to the common law's requirements for the establishment of a VA, including clauses in the constitution that:

- record the non-profit purpose and character of NPOs (whether they be set up as a VA, trust or Section 21 company), and distinguish them from for-profit organisations
- clarify the legal status of NPOs by recording that the NPO is a body corporate that has an independent legal personality



- always appear in the founding documents of all NPOs anyway, because they are essential to the basic functioning of an organisation

Benefits of registration

Registration as an NPO has different implications for different legal structures. We will deal with these in detail below. The benefits for all NPOs that register include:

Government benefits and allowances

Section 11 of the Act allows the Minister of Welfare to prescribe benefits or allowances for registered NPOs. These will not apply to NPOs that do not register with the department. In fact, it is likely that NPOs who receive any money or other benefits from government, such as a tax benefit, will be required to register.

It is too soon to tell whether voluntary registration is the best way to meet the Act's objectives.



Legal structures commonly used by NPOs

The most common legal structures for NPOs are voluntary associations (VAs), trusts and Section 21 companies. Each of these is governed by certain laws. If an organisation chooses to register as an NPO then it will, of course, also be governed by the NPO Act.

In this section we look in some detail at each of these structures:

- their characteristics
- the laws that govern them
- what goes into setting them up
- their founding documents
- ongoing regulatory requirements
- advantages and disadvantages
- the implications of the NPO Act

Voluntary associations

What is a voluntary association?

You create a VA by entering into an agreement with three or more people to form an organisation so that you can work together to achieve a common non-profit objective. The agreement can be verbal; it does not have to be in writing. But putting it in writing can help to avoid disputes.



Examples

Voluntary associations are suitable for small community-based organisations that do not need to own or manage substantial amounts of money or valuable property and equipment in order to carry out their activities. The Midrand Soccer Club or Ulunthu School Parent Association are examples of VAs.

Governance structure

Usually the constitution provides for the appointment of a group of people with executive powers, such as an executive committee, to manage the affairs of the VA subject to the terms of the constitution.

Which laws govern VAs?

VAs are governed by the common law, which requires that the VA's objectives must be lawful and not primarily for gain or profit for its members.

Independent legal personality

If you want to create a VA that is an incorporated association (universitas) with an independent legal personality, the common law requires that you have provisions in your constitution that specify that:

- the organisation will continue to exist despite changes in its membership (perpetual succession)



- the assets and liabilities of the organisation will be held separately from those of its members

We have discussed the advantages of having an independent legal personality above.

How to form a VA

An agreement (written or verbal) is all that that the law requires to recognise your organisation. There is no government registry with which you must register. If you choose to register a VA in terms of the NPO Act, it will have to comply with the Act's registration requirements. These are similar to the common law requirements for establishing a VA.

The founding document of a VA

The written agreement or founding document is called the constitution. The constitution sets out the agreed rules which will govern the VA, such as its main purpose and objectives, its membership and governance structures and procedures, and the rights and duties of the organisation and its members and office-bearers. A constitution provides clarity about these issues for everyone, both inside and outside the organisation.

The constitutions of VAs vary enormously depending on the organisation. The basic clauses that must be included for your constitution to comply with the requirements of both the common law and the NPO Act, as well as those that



should be included in the constitution of any VA to enable it to function properly, are described below.

Background

Background clauses describe the context, circumstances and motivations which gave rise to the creation of the VA.

Name

Your constitution must state the full name, and any abbreviation of the name, of your VA. Usually, the name tells people what kind of VA it is.

Objectives

The objectives describe the purpose of the VA and what it intends to do. These clauses should show that the VA exists to promote a public interest objective and not primarily for the self-interest, gain or profit of its members and office-bearers. You must list your main objectives in general terms.

Legal status

Your constitution must define your VA as an incorporated association with its own legal identity.



Will not distribute profits to members

Your constitution must state that the income and property of the VA will be used to promote its objectives and will not be distributed to its members or office-bearers, except as reasonable payment for their work. You must make it clear that the members and office-bearers of your VA have no personal right to the property of the VA. This principle applies not only during the lifetime of the organisation but also when it closes down ('dissolution' in legal language). Your constitution must state that on dissolution of the VA its property will be given to an organisation with similar objectives.

Powers

A VA may need the power to purchase, mortgage and sell movable or immovable property, for example, or invest the funds of the VA in any way to employ and pay employees. Your constitution must set out your VA's powers and they must be consistent with its non-profit objectives.

Members

Membership clauses define who may become a member of the VA, the procedures for admitting and removing members and the duties and privileges of members. You may include a list of your initial members in your constitution.



Structure

This is an important part of the constitution because structures and procedures build in accountability by the office-bearers to the members of the VA. There should be a clause which identifies the highest governing body of the VA, usually a general meeting of members or a managing body. There is usually a clause which entrusts all the powers of the VA to a managing body to enable it to manage and control the affairs of the VA. But if the managing body is not the highest governing authority, then such powers should be subject to the instructions of the highest governing authority, such as members in a general meeting.

Your constitution must specify the structure of your VA and the mechanisms and procedures for governing and managing it. You must include clauses that specify how your VA will conduct meetings and make and record decisions. There may also be clauses on the appointment of office-bearers.

Financial matters

This section of the constitution states how the money of the VA will be managed and accounted for. There should be clauses that describe how the organisation will prepare annual financial statements. You must have clauses which set a date for the end of the VA's financial year and state that the VA will use a banking account.



Amendments to the constitution and dissolution of the VA

You must have clauses which explain how the constitution can be changed and how the VA can be closed down by its members.

Indemnity

The constitution should provide that the members and office-bearers of the VA are not personally liable for any of its obligations and debts. These clauses reinforce the principle of limited liability captured in the legal status clauses.

Disputes

The constitution may set out a procedure for resolving serious disputes between members about how to interpret the constitution.

Ongoing regulatory requirements

Because a VA does not have to register with a government registry, there may be no public authority which regulates its conduct or affairs. If a VA chooses to register as an NPO it will have to comply with the ongoing regulatory requirements of the NPO Act.

Advantages and disadvantages

Being easy to establish can be both an advantage and a disadvantage for VAs.



Quick, easy, cheap

Not having to register with a government registry means a VA can be established quickly, easily and cheaply.

Funders prefer more formal arrangements

VAs may not be particularly attractive to funders because of the lack of government regulation and statutory control. Even the general public who interact with the VA generally prefer greater formal accountability and transparency.

The constitution may not protect members of the VA

Members of the VA may not be protected if key clauses in the constitution are missing or not properly drafted, for example if the clauses relating to the legal status of the VA are not clear.

Implications of the NPO Act

In the past, VAs could not register with a government registry. This caused problems, because donors and others often require that organisations have a degree of legal formality and public accountability which registration provides. Now, the NPO Act provides a registration and regulatory authority for VAs. This is one of the ways in which the NPO Act is considered to be helpful to the non-profit sector.



We have seen that registering as an NPO can remedy the disadvantages of the VA structure through providing the opportunity to register and thus comply with the ongoing regulatory requirements of the registering authority.

Trusts

What is a trust?

A trust is an arrangement, set out in a written document (called the trust deed) in which an owner or founder hands over property and/or funds to a group of people (called trustees) who administer the assets for the benefit of other people (called beneficiaries) for a stated objective.

Example

The Legal Resources Trust (LRT), which was set up to establish and support the Legal Resources Centre to give legal assistance to the vulnerable and marginalised, is an example of a civil society organisation which is suited to being a trust.

Governance Structure

A trust is governed by its Board of Trustees. Trustees' powers are normally as wide as possible to enable them to achieve the objectives of the trust, and usually similar to the powers of a company. Trustees are expected to exercise their duties with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another. Trustees should not make self-



serving decisions and should avoid taking decisions in situations where there is a conflict between what is best for the trust and what is best for a trustee personally (conflict of interests). They may receive reasonable payment for their work for the trust unless the trust deed forbids this.

Which laws govern trusts?

Trusts are regulated by the common law and the Trust Property Control Act 57 of 1988.

Trusts do not have an independent legal personality

If there is a legal dispute (litigation), the trustees acting in that capacity sue or get sued, not the trust, although trust property is protected and the Trust Property Control Act requires trust property to be kept separate from trustees' personal property. Also, trusts are required to have their own bank accounts.

How to form a trust

You need a notary public to write and attest your trust deed. (A notary public is an attorney with an additional qualification which authorises him or her to certify that documents to be filed in a government registry are authentic.) Then you must register the trust deed with the Master of the High Court. The trust deed names your intended trustees, but it is the Master who actually formally appoints them.



Security

The Master of the High Court may ask the trustees to provide security for the proper performance of their duties. This is usually arranged through an insurance company. If you want to do away with the need for this security, the Master usually requires that you appoint auditors and give a full set of reasons why the trustees should be exempted.

The founding document of a trust

The trust deed is the founding document of a trust. Trusts vary enormously, but all trust deeds should contain clauses which deal with the following. Remember that the tax law requires certain clauses if you want tax exemption and the NPO Act will require certain other clauses if you want to register as an NPO.

- Preamble
 - Record of why the trust came into being
- Name
- Purpose
- Donations
- Founding donations and future donations
- Powers of the trustees
- Use of trust funds
 - Clauses controlling how the trustees use the trust's funds and partial indemnity for losses sustained through reasonable error



- Appointment of trustees and alternatives
- Exemption for trustees from paying security
- Procedures
 - Meetings and notices
- Financial control and annual filing of accounts
- Amendments to the trust deed and dissolution of the Trust
- Clauses recording the non-profit purpose and character of the trust
 - These clauses must state that:
 - All income and property must be applied solely towards the promotion of the trust's main objective and no amount or asset may be given or distributed to the trustees, except as reasonable payment for their services.
 - On dissolution of the trust, all surplus assets must be transferred to another organisation with similar purposes.

Ongoing regulatory requirements

The Master of the High Court registers the trust and oversees and controls the appointment of trustees. You must notify the Master if you change any of your trustees. The Master exercises a high degree of supervision over the appointment of trustees, but not over their activities. Even though the Master may call trustees to account about the administration of trust property, in practice this supervision is limited.



If a trust registers as an NPO it must comply with the ongoing regulatory requirements of the NPO Act.

Advantages and disadvantages of trusts

A trust is very flexible and can suit many NPOs, their objectives and situations.

Professional assistance

You need professional assistance to establish a trust. This can be expensive and take some time.

Limited public disclosure

The requirements for public disclosure for trusts are very limited. For example, there need be no auditor or audited financial statements unless these are required by the trust deed.

No independent legal personality

Except in certain specified circumstances, a trust does not have a legal personality. However, trust property is protected and a trustee acting in that capacity is not personally liable for trust debts (except if he or she has been grossly negligent or committed fraud).

Implications of the NPO Act

Before the NPO Act was passed, trusts could not have an independent legal personality, other than for certain specific purposes such as tax and insolvency. Now, a trust that also registers as an NPO (in addition to registering with the Master of the High Court) is recognised by the law as a body corporate with an independent legal personality. Indeed, trusts acquire independent legal personality through such registration.



Section 21 companies

What is a Section 21 company?

Section 21 of the Companies Act 61 of 1973 allows for a 'not-for-profit company' or 'association incorporated not for gain'. Section 21 companies resemble business oriented (for profit) companies in their legal structure, but do not have a share capital and cannot distribute shares or pay dividends to their members. Instead they are 'limited by guarantee', meaning that if the company fails its members undertake to pay a stated amount to its creditors.

Example

You may choose to be a Section 21 company if you are a large organisation like a development foundation, because a company has a well developed legal structure and its methods of operation are familiar to the business world.

Governance structure

A company has a two-tiered governance structure consisting of the members and directors. The members exercise their powers in general meetings. For example, they have the power to appoint and remove directors, amend the founding documents of the company, and dispose of the NPO's assets. The directors have broad executive responsibility. However, they must appoint independent auditors and convene an annual general meeting at which various matters, including the presentation of the audited financial statements, are attended to.



Which laws govern Section 21 companies?

Section 21 companies (like for-profit companies) are governed by the Companies Act and have independent legal personality.

How to form a Section 21 company

All companies, including Section 21 companies, are registered with the Registrar of Companies in terms of the Companies Act. Before you are registered, the Registrar must approve the name you have chosen. A company may not begin its work until it is registered, which takes about two to four months.

To register as a Section 21 Company:

- Your organisation must be established for a lawful objective
- Your main objective must be the promotion of religion, the arts, science, education, charity, social activity or a communal or group interest
- All income and property must only be used for the promotion of the main objective and no amount or asset may be given or distributed to the organisation's members or office-bearers, except as reasonable compensation for their work for the organisation
- On dissolution of the company, all surplus assets must be transferred to another organisation with similar purposes
- Along with other public companies, your organisation must have at least seven founding members and two directors



The founding documents of a Section 21 company

The founding documents for a Section 21 company are the memorandum and the articles of association. The memorandum sets out the purpose of the NPO; the articles of association regulate how it operates. A typical memorandum and articles of association will contain clauses dealing with the following:

- Name
 - The phrase 'association incorporated not for gain' must follow the name
- Statement of purpose
 - Describing the main object and the main business of the company
 - Powers of the company
- Governance structure
- Procedural clauses
- Meetings, quorums, notice periods and so on
- Financial control and reporting
- Standard of conduct required of office bearers
- Indemnity for officers acting in good faith

Ongoing regulatory requirements

In order to be registered and then remain registered, a company is obliged to comply with the extensive formalities and ongoing reporting requirements of the Companies Act, including the following:



- The company must appoint auditors and inform the Registrar of Companies of any change of auditors.
- The company must appoint a registered address and inform the Registrar of any change of address.
- The company must keep up-to-date registers of members and directors in the prescribed form.
- The directors' names must appear on all letters, catalogues and circulars distributed or published.
- Directors must ensure that proper minutes and attendance registers are kept of all meetings.
- The company must hold an annual general meeting in accordance with the prescribed procedures.
- The company must keep financial and accounting records in the prescribed form present these to the AGM of members and file them with the Registrar.
- The directors' report must be presented to the AGM.

Advantages and disadvantages of a Section 21 company

Substantial public disclosure and internal independence

Because the provisions of the Companies Act are complex and detailed, companies are subject to substantial public disclosure obligations and statutory control. But they have considerable freedom in their internal management and the day to day running of their affairs.



Independent legal personality

The independent legal personality of a company is a clear and well understood concept.

Professional assistance

You will need professional assistance to set up a company.

Complex reporting requirements

The annual reporting requirements for companies are complex and extensive and not always suitable for small community-based organisations.

Implications of the NPO Act

The requirements of the Companies Act make Section 21 companies accountable to the public. So, unlike VAs, which need the Act to register, and trusts, which need the Act to acquire independent legal personality, there is no particular reason for Section 21 companies to register in terms of the NPO Act. However, in the future, if they wish to be eligible for government benefits (such as tax benefits) they may need to register.



What about for-profit organisations?

Partnerships, close corporations, private and public companies and co-operatives are the commonly used legal structures for for-profit enterprises. They differ in certain ways and are appropriate for different sizes and kinds of businesses. The founding documents always set out how profits are to be made, declared and distributed. All of them usually require professional assistance to set up and establish.

More information

These resources will provide you with more information on the laws that govern non-profit organisations.

Bamford, B. *The law of partnership and voluntary association in South Africa*. 1982. Juta
Commonwealth Foundation. *Non-Government Organisations: Good Policy and Practice Training Kit*. 1997
Department of Welfare, Directorate: NPOs. *Legislation Affecting the Nonprofit Sector*. Information Series No. 1. 1999.
Rosenthal, R. and Walton, M. *Guidelines to Section 21 Companies, Trusts and Voluntary Associations*. Memorandum prepared for the Legal Resources Centre 1998.
Honore, T. & Cameron, C. *Honore's South African Law of Trusts*. Juta. 1992.
Honey, M. *A Guide to the NPO Act 71 of 1997*. Information Series No. 2. Legal Resources Centre.
Honey, M. *New Tax Laws for South African NPOs*. Information Series No. 3.



Legal Resources Centre. 2000.
Schoeman, T. & Geach, WD. *Guide to the Companies Act and Regulations*.
Juta.1992.

This information was prepared by the NPO Legal Support Project of the Legal Resources Centre (LRC) in Cape Town. The LRC is an independent non-profit law centre which uses the law to pursue justice, democracy and the realisation of socio-economic rights. The NPO Legal Support Project provides legal support for the establishment and good governance of non-profit organisations (NPOs).



Legal Obligations of Members of Non-profit Organisation (NPO) Governing Bodies

Introduction

Members of governing boards of non-profit organisations (NPOs) must adhere to the legal obligations imposed on them by the founding documents of the NPO, the common law and the legislation governing the NPO. For each kind of NPO (*Voluntary Association/ Trust/ Section 21 Company*) these legal obligations may differ. It is important that NPO governing board members are aware of and comply with these legal obligations in order for the NPO to govern effectively.

Purpose

The purpose of this information is to set out some of the important legal obligations that members of NPO governing bodies must adhere to. Some of these obligations are similar and applicable to all NPOs whereas others are different and applicable only to a particular kind of NPO.

When considering the legal obligations of NPO governing board members, it is important to bear in mind the principle of limited liability. Therefore, when the NPO is liquidated, the creditors are not allowed to hold the members personally liable for any outstanding debts of the NPO. There are however exceptions to this principle and we shall set out the circumstances when members can become personally liable for the debts of the NPO.



Legal obligations applicable to all NPO governing board members

All board members must exercise the following legal obligations when acting for the NPO they serve:

- Act in good faith and in the best interests of the NPO,
- Not allow personal interests to conflict with the interests of the NPO,
- Not act beyond the powers of the NPO/Board or the limitations placed on such powers in terms of the founding documents,
- Exercise the degree of skill that may be reasonably expected from such a person of his/her knowledge. It is however important to note that members are not required to have exceptional intelligence and will not be liable for mere errors of judgement,
- Apply her/his mind to decisions & exercise an independent discretion, and
- Give intermittent, not continuous attention to the affairs of the NPO.

Legal Obligations of Members of Voluntary Associations

There is no particular Act setting out the legal obligations of members of governing bodies of voluntary associations. The legal obligations of these members are to a large extent contained within the constitution of the voluntary association. The Common Law provides us with further principles applicable to voluntary associations.



Legal Obligations

In addition to the general principles mentioned in point 3 above, the following legal obligations apply to members of governing boards of Voluntary Associations:

- The members must familiarised themselves with the contents of the Constitution and give effect to the provisions thereof insofar as they are lawful and effective
- Members are not allowed to act beyond the powers laid down in the constitution
- Standard Legal Obligations contained in the constitution of a voluntary association **may** be the following:
 - Preparing annual financial statements for the annual general meeting of the association,
 - Preparing a Chairperson’s report for the annual general meeting of the association,
 - Convening Annual General Meetings within specified time periods,
 - Opening a bank account in the name of the NPO, and
 - Depositing money within account of NPO within specified time period.
- The members have a duty to act in good faith towards one another¹,
- The members have a duty of care to the association and other members as they accept the responsibility of managing the affairs of the association², and
- In matters where there is a conflict of interest between the association and one of its members, the interests of the association must be protected³.

¹ Rowles v Jockey Club of SA & Others 1954 (1) SA 363 (AD) at 365

² Mkhando & Others v Mangwende NO 1977 (1) SA 851 (RAD) at 854



Personal Liability

- As in the case of contractual law, members can become personally liable in the event that they have acted beyond the scope and limits of the constitution, and
- Members will also become personally liable when they conduct the affairs of the association in a reckless or fraudulent manner.

Legal Obligations of Trustees

The **Trust Property Control Act, No. 57 of 1988**⁴ together with the Common Law regulate the operation of trusts and sets out the most of the legal obligations of trustees.

Legal Obligations in relation to the Trust Deed

- The first trustees must lodge the Trust Deed with the High of the High Court (*section 4*),
- Trustees must become familiarised with the contents of the Trust Deed and give effect to the provisions thereof insofar as it is lawful and effective, and
- Trustees must lodge amendments to the Trust Deed with the Master of the High Court (*section 4*).

³ ECA (SA) & another v BIFSA (1) 1980 (2) SA 506 (W) at 509

⁴ All reference to sections in this paragraph are sections from the Trust Property Control Act.



Legal Obligations in relation to the Trustees

- Trustees can only act in their capacity as trustees once authorized thereto in writing by the Master of the High Court (*section 6*),
- Trustees shall furnish the Master of the High Court with security if they are not exempted from the payment thereof (*section 6*),
- Trustees must act with **care, diligence and skill** which can be reasonably expected of a person who manages the affairs of another (*section 9*),
- Trustees must exercise an independent discretion⁵,
- Trustees must provide the Master with a physical address for the service of any notice or court process and must advise the Master by registered post within fourteen (14) days of any change in that address (*section 5*),
- Trustees must, at the written request of the Master do the following:
 - Account to the Master for their administration and disposal of trust property,
 - Deliver to the Master any book, record, account or document relating to their administration or disposal of the trust property, and
 - Answer honestly and truthfully (to the best of their ability) any question put to them by the Master in connection with the administration and disposal of the trust property (*section 16*).
- Resigning Trustees must notify the Master of the High Court and the ascertained beneficiaries (or their tutors or curators) of such resignation (*section 21*).

⁵ Estate Gouws & Registrar of Deed 1947 (4) SA 403 (T).



Legal Obligations in relation to the Trust Property

- Trustees must:
 - In terms of common law, immediately upon taking of office, ascertain the nature of the trust property,
 - Register and identify of each of trust assets and indicate that the property is held in their capacity as trustee (*section 11*),
 - Where applicable, register trust property or keep it registered in such a manner as to make it clear from the registration that it is trust property (*section 11*),
 - Take control of the property of the Trust, and if lost, recover such lost assets,
 - Diligently collect the debts owed to them in respect of the trust property⁶, and
 - Not without the written consent of the Master destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of five years from the termination of a trust (*section 17*).

Legal Obligations in relation the Finances of the Trust

- The trustee deposit money received in his/her capacity as trustees in a separate trust account at a banking institution or building society (section 10),

⁶ Boyce NO v Bloem 1960 (3) SA 855 (T) at 860 A-B, 864-5, 868-9



- Trustees should invest money that accrues to the Trust Fund, which is not required for immediate payment, without delay. It is improper for a trustee to borrow trust money⁷,
- Duty of trustee to ensure that reasonable return is obtained on the Trust Capital⁸,
- Indicate clearly in the bookkeeping which property is hold in his/her capacity as trustee (section 11), and
- Make any account rf investment at a financial institution identifiable as a trust account or trust investment (section 11),

Failure to perform Legal Obligations

- If any trustee fails to comply with a written request by the Master of the High Court as provided for in terms of law or to perform any duty imposed upon him by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such request or to perform such duty (*section 19*).
- Beneficiaries who have suffered a loss as a result of breach of trust are entitled to bring a damages claim against the trustees for breach of trust.

⁷ Est Loock v Graaff-Reinet Board of Executors 1935 CPD 117.

⁸ Boyce NO v Bloem 1960 (3) SA 855 (T) at 876.



Legal Obligations of Directors and Members of Section 21 Companies

Section 21 Companies are governed by the provisions of the **Companies Act No. of 1973**⁹. A Section 21 Company is deemed to be a public company in terms of the Companies and must accordingly comply with the requirements for a public company, unless otherwise provided for by the Act. Both members and directors of a Section 21 company stand in a fiduciary relationship towards it. The Companies Act sets out various obligations that must be complied with and it is submitted that these obligations, unless specifically provided otherwise, are the obligations of both the members and the directors.

Legal Obligations in relation to the Displaying the Name of the Company

- The phrase “*Association incorporated under section 21*” must be included in and be subjoined to the name of the Company (*section 49*),
- The Company’ s name must be displayed on the outside of its registered office and everywhere else where it is doing business (*section 50*),
- The name of the Company must be engraved in legible characters on its seal (if any) (*section 50*),
- The Company must also display its name and registration number on all official documents of the Company as referred to in the Act (*section 58*), and
- The business letters, trade catalogues and trade circulars of the Company must bear the company’s name and in respect of every director his/her present forenames, or the initials thereof, and present surname (*section 171*).

⁹ All reference to sections in this paragraph are sections from the Companies Act.



Legal Obligations in relation to the Memorandum and Articles

- The company must send to every member at his/her request and on payment of the prescribed fee, a copy of its memorandum and of its articles, or shall, if so requested, afford to a member or his duly authorized agent adequate facilities for making a copy of such memorandum and articles (these copies must include all the amendments made thereto) (*section 68*), and
- The Company must, on written request from the Registrar, submit a copy of its amended memorandum after it has made a special resolution altering its memorandum (*section 67*).

Legal Obligations in relation to the Register of Members

- Every company must keep in one of the official languages of the Republic a register of its members, and shall enter therein:
 - The names and addresses of the members,
 - The date on which his/her name was entered in the register as a member, and
 - The date on which he/she ceased to be a member (*section 105*),
- The register of members may be kept either by making entries in bound books or by recording the particulars required in any other manner allowed by the Act (*section 105*), and
- The register of members of a company shall be open to inspection by any member or any other person (*section 113*).



Legal Obligations in relation to the Register of Directors

- Every company shall keep in one of the official languages of the Republic a register of directors of the company and cause to be entered therein in respect of every director:
 - His/her full forenames and surname and any former forenames and surname,
 - His/her identity number or, if he/she has no such number, his/her date of birth,
 - His/her nationality if not South African,
 - His/her occupation, his/her residential, business and postal addresses,
 - The date of his/her appointment, and
 - The name and registration number of every other company of which such director is a director and particulars of change (section 215).
- The name and date of the appointment of the auditor of the company and the date and particulars of any change of such name and date of appointment must also be included in the register (*section 215*),
- Directors shall furnish the particulars to be entered into the register in writing to the company within the required time limits (*section 216*), and
- A return, in the prescribed form reflecting the contents of such register, must be submitted to the Registrar within the required time limits (*section 216*).



Legal Obligations in relation to the General Meetings of the Company

- Every company shall hold annual general meetings as prescribed in terms of the Companies Act and the Memorandum and Articles of Association (*section 179*),
- The directors must convene a general meeting in accordance with the Act after the lodgment of a requisition by the members (*section 181*),
- Members must also be provided, if requisitioned by them, with copies of resolutions that are to be moved at next general meetings (*section 186*), and
- The annual general meeting or a general meeting called for the purpose of passing a special resolution must be called on not less than twenty-one clear days' notice in writing and any other general meeting must be called by not less than fourteen clear days' notice in writing (*section 186*).

Legal Obligations in relation to the Special Resolutions

- Any special resolutions to be adopted by a company must comply with the requirements as provided for in section 199 of the Act, and
- The Company must within one month from the passing of a special resolution lodge a copy of the resolution and a copy of the notice convening the meeting concerned with the Registrar, who shall, subject to the provisions of the Act, and upon payment of the prescribed fee, register such resolution (*section 200*).
- A copy of every special resolution must be embodied in or annexed to every copy of the articles issued after the registration of the resolution (*section 200*).



Legal Obligations in relation to the Keeping of Minutes of Meetings

- Every company shall cause minutes of the proceedings at any meeting of the company to be entered, in one of the official languages of the Republic, in one or more minute books kept for the purpose, within one month after the date on which the meeting was held (*section 204*), and
- Any such minute book shall be kept at the registered office of the company or at the office where such minute book is made up and shall be open for inspection to members in accordance with the provisions of the Act (*section 204*).

Legal Obligations in relation to the Declaration of Interests

- A director of a company who is in any way, whether directly or indirectly, materially interested in a contract or proposed contract as provided for in the Act, which has been or is to be entered into by the company or who so becomes interested in any such contract after it has been entered into, shall declare his interest and full particulars thereof as *provided in this Act (section 234)*,
- The Company must record in the minutes every declaration of interest made by any director in terms of the Act (*section 239*),
- Every company must keep at its registered office or at the office where it is made up a register of interests in contracts in one of the official languages of the Republic, and shall enter therein the particulars of any declarations of interest made by directors as provided for in the Act (*section 239*),
- The directors of a company must, in one of the official languages, keep minutes of all meetings of directors or managers which must be entered into



a book kept for that purpose at the registered office of the company (section 242), and

- Every director of a company present at any meeting of directors, and every manager thereof present at any meeting of managers, shall at the meeting sign his/her name under the date of the meeting in a book complying with the provisions of section 242 (3) to be kept for that purpose (*section 245*).

Legal Obligations in relation to the Finances of the Company

- Every company must keep in one of the official languages of the Republic such accounting records as are necessary to fairly present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including:
 - Records showing the assets and liabilities of the company,
 - A register of fixed assets setting out the detail as required by the Act,
 - Records containing entries from day to day in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place,
 - Where the trade or business of the company has involved dealings in goods, records of all goods sold and purchased and other detail as required by the Act, and
 - Statements of the annual stocktaking, where applicable (*section 284*).
- The accounting records must be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors (*section 284*),



- The directors of a company shall lay the annual financial statements in one of the official languages before the annual general meeting of the company.
The statements shall consist of:
 - A balance sheet, including any notes thereon or document annexed thereto providing information required by this Act,
 - An income statement as required in terms of the Act,
 - A cash flow statement,
 - A directors’ report complying with the requirements of this Act, and
 - An auditor’s report as required in terms of the Act (*section 286*).
- The annual financial statements of a company shall contain particulars showing:
 - The amount of the emoluments received by directors,
 - The amount of the pensions paid or receivable by directors and past directors,
 - The amount of any compensation paid to directors and past directors in respect of loss of office, and
 - Details of directors’ service contracts (*section 297*).
- The annual financial statements of a company other than the auditor’s report, must be approved by its directors and signed on their behalf by two of the directors (*section 298*), and
- A copy of the annual financial statements of a company must be sent to members of the company as required in terms of the Act (*section 302*).



Legal Obligations in relation to the Auditors for the Company

- A written consent by the auditor of the company to be formed must be lodged in the prescribed form with the lodgment of the memorandum and articles of association at the Registrar (**section 269**),
- A company must at every annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the company (*section 270*), and
- Directors must provide the auditor of the company with the information and explanations as necessary for the performance of his/her duties as auditor (*section 281*).

Legal Obligations in relation to the Winding up of the Company

- In any winding-up of a company unable to pay its debts, every director and officer of the company shall attend the meetings of creditors as provided for in the Act (*section 414*),
- Where it is intended to pass a resolution for a creditors' voluntary winding-up of a company, the directors of that company shall make out or cause to be made out, in the prescribed form, a statement as to the affairs of the company and lay it before the meeting convened for the purpose of passing such a resolution (*section 363*), and
- Directors whose address's change during the winding up process, must notify the liquidator of the company by registered post (*section 363A*).



Personal Liability Of Directors

- When the business of the company is carried on recklessly or with intent to defraud creditors the Court may declare that any person who was knowingly a party to such behaviour, be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct (*section 424*), and
- Directors or members who have misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any breach of faith or trust in relation to the company may be ordered by the Court to repay or restore the money or property or any part thereof, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retention, breach of faith or trust as the Court thinks just (*section 423*).

Legal Obligations of Governing Board Members when registered in terms of the NPO Act

Registration in terms of the **Nonprofit Organisations Act, No. of 1997**¹⁰ is voluntary and organisations may choose whether they want to register. If NPOs do register in terms of the Act, then they must comply with certain requirements as stipulated in the Act. The main requirements are set out below.

¹⁰ All reference to sections in this paragraph are from the Nonprofit Organisations Act, No. of 1997.



Legal Obligations in relation to the Documentation of the NPO

- The registered status and registration number of the nonprofit organisation must be reflected on all of its documents (*section 16*).
- The organisation must comply with the provisions of its founding document which relates to financial matters (*section 17*).

Legal Obligations in relation to the Finances of the NPO

- The NPO must keep, accounting records of its income, expenditure, assets and liabilities to the standards of generally accepted accounting practice (*section 17*).
- Draw up financial statements, within six months after the end of its financial year, which must include at least:
 - A statement of income and expenditure for that financial year, and
 - A balance sheet showing its assets, liabilities and financial position as at the end of that financial year (*section 17*).
- Arrange for a written report, within two months after drawing up its financial statements, to be compiled by an accounting officer and submitted to the organisation stating whether or not:
 - The financial statements of the organisation are consistent with its accounting records,
 - The accounting policies of the organisation are appropriate and have been appropriately applied in the preparation of the financial statements, and
 - The organisation has complied with the provisions of this Act and of its constitution which relate to financial matters (*section 17*).



- The books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets and accounting officer’s reports, in an original or reproduced form, must be preserved for the prescribed period (*the time period is not defined in terms of the Act*) (*section 17*).

Legal Obligations in relation to the Information to be submitted to the Director of NPOs

- The Director of Nonprofit Organisations must be provided, in writing, with the following:
 - A narrative report of its activities in the prescribed form together with its financial statements and the accounting officer’s report as required in terms of the Act, within nine months after the end of its financial year,
 - The names and physical, business and residential addresses of its office-bearers within one month after any appointment or election of its office-bearers even if their appointment or election did not result in any changes to its office-bearers,
 - A physical address in the Republic for the service of documents to be received from the Directorate of Nonprofit Organisations,
 - Notice of any change of address within one month before a new address for service of documents will take effect, and
 - Such other information that may be required by the Director in terms of the Act (*section 18*).



Legal Obligations in relation to the Changes to the Founding Document

- When the organisation changes its constitution or name, it must send to the director:
 - A copy of the resolution and a certificate signed by a duly authorised office-bearer confirming that the resolution complies with its constitution and all relevant laws, and
 - Where the organisation has resolved to change its name, the original of its current certificate of registration (*section 19*).

Legal Obligations in relation to the Winding-up or Dissolution of the Organisation

- When the organisation resolves to wind-up or dissolve it must, within one month after completion of the winding up or dissolution process or the relevant order of court, send to the Director of Nonprofit Organisations a written notice:
 - Stating that the organisations resolved to wind-up,
 - Containing certified copies of all relevant documents confirming the winding up or dissolution, and
 - A copy of the narrative report, financial statements and the accounting officer’s report for the period from its previous financial year up to the date of the written notice (*section 23*).

Compiled by:

Ricardo Wyngaard

NPO Legal Support Project, Legal Resources Centre, October 2001



Course evaluation form

Date: _____

Facilitator/s: _____

What did you like about the course?

What part of the content was most useful to you?

What was not useful to you?



What did you not like or would change about the course?

Please rate the following (circle or underline your choice):

Facilitation	Excellent	Good	Not Good
Pace	Perfect	Too fast	Too slow
Content	Appropriate	Not appropriate	

Do you have any other comments or feedback for the facilitator/s?

What support would you like in implementing the learnings from this course?





The learning materials for Development Practice and Management were specifically designed to complement and give substance to the competence standards drafted with the assistance of community based development practitioners in South Africa. It is envisaged that practitioners, capacity builders, grant-makers and others will use these standards and learning materials, improve them and in turn share their learning with others via www.developmentpractice.org.za.

AIDS Consortium Tel: +27 (0) 11 403 0265

info@aidsconsortium.org.za www.aidsconsortium.org.za

Community Connections Tel: +27 (0) 21 371 2909

info@connectionsafrika.org.za www.connectionsafrika.org.za

Keystone Tel: +27(0) 21 788 5685

andre@keystoneaccountability.org www.keystoneaccountability.org

Sustainability Institute Tel: +27 (0) 21 881 3196

manda@sustainabilityinstitute.net www.sustainabilityinstitute.net

C. S. Mott Foundation Tel: +27 (0) 11 726-1552

info@mott.org www.mott.org

Investec Bank Tel: +27 (0) 11 286 3141

Social.Investment@investec.co.za www.investec.com

