



The voice of corporate governance
in Luxembourg

GUIDE TO GOOD PRACTICE FOR THE GOVERNANCE OF NON-PROFIT ORGANIZATIONS





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FOREWORD

“As President of the ILA, I would like to thank the members of the ILA NPO Committee for their contributions and for the work accomplished under the chairmanship of Diane Wolter, who has harnessed their motivation. I would also like to express my thanks to Banque de Luxembourg for sponsoring this initiative by providing the committee with “food and lodging” and most of all for covering the costs of producing and translating this Guide.”



Raymond Schadeck

President of the ILA

“Good governance is not just the preserve of the private sector – in Luxembourg or elsewhere. It is also vital in the non-profit sector where the commitment to the common good and high ethical values make it a natural concern.

Rather than simply wanting to “do good” and rushing headlong into being a director of a non-profit organization, it is wise to garner in as much information as possible and ask yourself some searching questions before accepting to be a director or choosing one.

I would like to thank all the members of the ILA-NPO committee very warmly for their valuable contributions, and I join them in hoping that this Guide to Good Practice for the Governance of Non-Profit Organizations will prove useful for your work.

I would also like to thank Philippe Depoorter, Member of the Management Committee of Banque de Luxembourg, for his indefatigable commitment to the development of a philanthropy ecosystem in Luxembourg, and Banque de Luxembourg for its contribution to producing this Guide.”



Diane Wolter

Chair of the ILA-NPO committee

INTRODUCTION

The work of the Non-Profit Organizations (NPO) Committee of the *Institut Luxembourgeois des Administrateurs* (ILA) falls within the ILA's general mission to promote both the professionalism of directors and best practice in governance. More specifically, this document, the "Guide to Best Practice for the Governance of Non-Profit Organizations" (the "Guide") is intended for directors and members of governing bodies (the "directors") of non-profit associations and foundations, public utility establishments and social impact enterprises (SIS), constituted under Luxembourg law ("non-profit organizations" or "organizations" or "NPOs") and irrespective of their field of activity.

The authors of this Guide assume that the directors of the NPOs know, apply and comply with the laws in force, in particular the *Amended Law of 21 April 1928 on non-profit associations and foundations*¹, the individual laws governing certain public utility establishments, and the *Law of 12 December 2016 providing for the creation of social impact enterprises*². This document does not therefore specifically reference the obligations arising from these laws.

Non-profit associations and foundations are also governed by their supervisory body, the Ministry of Justice³, being responsible for granting or withdrawing their authorisation. The supervisory body for *Sociétés à Impact Sociétal* (SIS) is the *Ministère du Travail, de l'Emploi et de l'Économie sociale et solidaire*⁴.

Like companies, NPOs are also subject to good governance practices that regulate relations between their supervisory and management bodies, particularly the board, executive officers and all the stakeholders (beneficiaries, donors, suppliers, the public sector etc.). They differ in that the NPO sector is often positioned in the non-profit and/or volunteer sector and that it has a general or social interest perspective.

This Guide is intended to complement the guidelines already in existence in this respect in Luxembourg, particularly the six commitments made by accredited members of *Don en confiance Luxembourg*⁵.

The aim of the Guide is to outline a set of recommendations for the directors of these organizations in order to promote good governance within the non-profit sector. These principles are deliberately worded in a general way as they are intended to cover a very broad scope. Each organization will be expected to adapt the general principles to its own size, scope and specific features, and to review them at regular intervals.

The eight principles described and developed by the ILA's NPO committee are those it considered to be the most critical, without claiming to be exhaustive. They cover the responsibilities (Principles 1, 6, 7 and 8), composition (Principles 3 and 4) and positioning (Principles 2 and 5) of the decision-making body (usually the board of trustees or board of directors). The main goal is to set out the starting points for reflection that the directors of NPOs should be guided by, individually and collectively.

The necessity for this Guide and the needs in terms of training within NPOs have been highlighted by a lack of knowledge concerning the responsibilities involved, and the statistics of insurance companies concerning cases where the liability of directors of NPOs has been invoked.

¹ Law of 21 April 1928 on non-profit associations and foundations: www.mj.public.lu/legislation/asbl_fondations/index.html

² Law of 12 December 2016 providing for the creation of social impact enterprises (SIS): <http://legilux.public.lu/eli/etat/leg/loi/2016/12/12/n1/jo>

³ Legal criteria of the Ministry of Justice for asbl/NPOs and foundations: http://www.mj.public.lu/services_citoyens/asbl_fondations/index.html

⁴ Granting and withdrawing authorisation for an SIS: <http://www.guichet.public.lu/entreprises/de/formulaires/rcs/demande-agrement-ministeriel-sis/demande-agrement-ministeriel-sis.pdf>

⁵ Don en confiance Luxembourg a.s.b.l. ["Donate with confidence"]: <http://www.donenconfiance.lu/index.html>



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PRINCIPLES

Principle 1. Define a clear mission

The organization must define a clear mission, reflecting its values.

The organization's directors must formulate a clear mission, unequivocally and concisely, incorporating the social purpose and, where applicable, the means of action defined in the organization's deed of constitution.

The definition of the mission, which must be approved by the board, reflects the organization's core values for all its stakeholders. These values must be set out clearly and concisely, and ideally be limited in number.

When defining the mission, it is advisable to:

1. *Incorporate the social purpose and means of action defined in the deed of constitution and the organization's core values.*
2. *Formulate the mission in writing.*
3. *Ensure that the directors and staff understand it and are "signed up" to it.*
4. *Make it accessible to all stakeholders.*
5. *Review it regularly.*

Principle 2. Create an appropriate formal organizational structure

The organization must create a formal organizational structure appropriate for its activities, and define and distribute the roles clearly between its various governing bodies (usually a general meeting, board of trustees or directors, management committee) to ensure effective functioning.

The aim is to have a formal organizational structure with demarcated powers and competencies between the governing body on the one hand, and the executive team on the other. The directors must ensure that the respective competencies and responsibilities of each party and function are accurately described, as well as the distribution of responsibilities, with particular care taken to separate executive functions from control functions.

In practice, it is suggested that the directors create and keep updated an organizational chart, a description of the key functions, delegated signing authorities and internal rules (if any).

If the organization has employees, it is also recommended that the director/a member of the management team attends board meetings so that the decisions taken at them are conveyed directly.

It is also recommended that details of the organizational structure and the breakdown of roles within it are communicated transparently, both internally and outside the organization.

In practice, it is suggested that the directors use all available means of communication (internet, intranet, social networks, and personal communication) as the use of one method should not preclude others.

Committees and sub-committees chaired by a qualified person, or mandates to qualified persons, may be set up for larger organizations or *ad hoc* when needed to help governing bodies make decisions in clearly-defined specific areas. Committees or mandated representatives must act professionally, communicate effectively, and report regularly on their activities.

In practice, it is suggested that the organization:

- assesses the value of setting up committees and/or mandated representatives in specific areas of expertise like audit, ethics, finance, or scientific research
- decides whether these committees have a consultative or executive role, and
- ensures that these committees act in step with the organization's mission and values (e.g. when the Finance Committee defines the investment policy).

Principle 3. Create a competent and efficient governing body – “fit”⁶

The organization must have a competent and efficient collegiate governing body, appropriate to its size and its characteristics.

When a non-profit organization is created, the founders must set up a governing body (e.g. a “board of trustees/directors” or “committee”) in keeping with its legal form, size and characteristics.

The selection of members of the governing body depends on the competencies, availability, experience and integrity of people put forward for inclusion on it, with care being taken to ensure diversity among the profiles of members of the governing body.

The aim is to ensure that the governing body, taken as a whole, has the necessary competencies to fully discharge all the responsibilities incumbent on it. The governing body as a whole must have competencies that are appropriate to the nature, scale and complexity of the organization's activities.

At an individual level, it is recommended that the directors have an in-depth understanding of the organization's activities and the associated risks.

When setting up the governing body, it is advisable to:

1. *Take into account the legal form, size and characteristics of the organization.*
2. *Select the directors individually, ensuring:*
 - *they have integrity and a sound reputation*
 - *they are available and prepared to devote the necessary time to the organization, and*
 - *some have competencies and experience related to the organization's sphere of action.*

***In practice**, it is wise, especially when the time comes to renew a term of office, to take into account the director's attendance record at the governing body's meetings, and his or her participation in, commitment to and availability for the organization's activities.*

3. *Select a cohort of directors who collectively combine the necessary technical competencies (sphere of action, legal, financial, human resources, etc.) for the smooth running of the governing body, and allowing for a degree of diversity (age, gender, experience etc.).*
4. *Ensure that the directors understand the extent of their commitment on the governing body and their responsibility to safeguard the organization's interests in the management of its affairs, with due respect to the regulations in force.*
5. *Consider limiting the number of successive terms of office and/or set an age limit for the directors. Even in the absence of such constraints, it is good practice to renew the composition of the governing body from time to time (new personalities contribute fresh ideas and open up new avenues for the organization to pursue). It is also good practice to prepare for the succession of the chairman of the governing body (transmission of knowledge).*
6. *Ensure the organization has appropriate D&O (Directors & Officers) Liability insurance.*

⁶ The concept of fit and proper requires directors to be honest and competent.

Principle 4. Ensure the directors are of good character – “proper”

The organization must ensure that the function of director is exercised with a high degree of integrity and altruism.

The principle of altruism requires that the functions of director do not give rise to any remuneration. However, it is generally accepted that directors' expenses incurred in the execution of their mission may be covered, under predefined conditions.

***In practice**, it is advisable to set out guidelines for the reimbursement of costs incurred by directors and volunteers.*

It can be helpful for the organization to draw up an ethical charter to serve as a guide for directors in the exercise of their office and activities.

This ethical charter may include details of the expenses policy, a section on conflicts of interest (avoidance of conflicts of interest or managing situations if they arise), and a reiteration of the fact that employees and volunteers must not gain a material benefit from the exercise of their work. It may also highlight any particular features of the sector of activity, its non-profit purpose and its role of “long-term safekeeping” of any surplus income accruing to the organization.

***In practice**, it is advisable to put in place guidelines for tender procedures from suppliers who have a link to the organization's directors, managers, employees or volunteers. It is also advisable to regularly remind managers, employees and volunteers of the organization's non-profit purpose.*

Principle 5. Establish a clear decision-making process

The organization must establish an explicit decision-making process.

The decision-making process includes the definition and unambiguous demarcation of the degrees of authority and flow of information between the different bodies, especially the drafting of procedures (the level of detail will vary considerably depending on the organization's size and characteristics). For transparency, decisions taken must be formalised in writing and filed with any supporting documents. These documents would then be readily available for internal and external audits.

When defining the decision-making process, it may be useful to draw on the following techniques:

1. *Draw up an organizational chart showing all the various bodies.*
2. *Adopt the “four-eyes” principle as standard (i.e. two people required to approve a decision).*
3. *Show all reporting obligations and information flows between the various bodies (particularly for organizations depending on public donations, including small organizations).*
4. *State how often management meetings are held, based on the organization’s activities and needs.*
5. *Collegiate decision-making is preferable but if a consensus decision cannot be reached, set out a precise delegation framework with clear rules (e.g. referral to the board or the general meeting of members).*
6. *Allow for the possibility of making a decision by email correspondence, on an exceptional basis, provided the decision is ratified at the next meeting of the governing body and recorded in the minutes.*

Principle 6. Act in accordance with the law, defined values, and the procedures adopted

The directors must act in accordance with the law, prevailing regulations and the organization's deed of constitution, and comply with its defined values and procedures.

For organizations which receive dedicated/restricted donations, the directors must ensure that the donor's wishes are respected and, consequently, satisfy their financial and operational traceability.

In practice, and for the purposes of transparency, it is advisable to differentiate in the organization's accounts between unrestricted donations and those ring-fenced for a specific project or activity.

If the organization collects data about beneficiaries and donors, the directors must ensure they comply with the legal obligations on data protection, particularly for sensitive data⁷ and data relating to inter vivos gifts and testamentary bequests⁸.

The organization must be particularly careful to ensure it is irreproachable in this area in order to guard against the potential risk to its reputation (and even that of the entire non-profit sector).

In practice, it is advisable to request express authorisation from beneficiaries and donors before publishing their names and/or photos in the organization's external communications.

The directors must also ensure that the organisation's activities and procedures are regularly adapted to legal and regulatory constraints and to the needs of the beneficiaries.

In practice, it is recommended that a specific item is regularly on the agenda at board meetings to appraise this, as recommended by Don en confiance Luxembourg.

⁷ For further information, go to: www.cnpd.lu

⁸ Law of 21 April 1928 on non-profit associations and foundations: Article 16 for non-profit associations and Article 36 for foundations. For further information, go to: www.mj.public.lu/legislation/asbl_fondations/index.html

Principle 7. Ensure that the activities achieve results commensurate with the mission

To ensure the organization adheres to its mission, the directors must set up a procedure for selecting, monitoring and evaluating the organization's activities so that they can regularly assess that these activities comply with the objectives.

For each activity and/or project, quantitative and, if possible, qualitative objectives should be set, as well as a time to completion and a budget.

These quantitative and qualitative results need to be assessed in conjunction with the resources used. This kind of assessment will help achieve better results, especially if it is done regularly.

In practice, it is advisable to conduct regular monitoring of activities (including by regular visits in the field) as well as occasional audits which will contribute to evaluating the results and impact of the projects.

Principle 8. Provide accurate and transparent reporting of activities

The directors must comply with legal obligations in drawing up and publishing annual accounts and a provisional budget.

The directors must present the organization's annual accounts and a provisional budget for the approval of the general meeting (or for foundations, the board of trustees/directors) within a specific period of time.

In practice, it is suggested that, once it reaches a certain size, the organization should employ an auditor to audit the annual accounts and publish this audit with the annual accounts, on its website.

The directors must also make an annual activity report available to the public.

The directors must ensure they draft a report on the activities and achievement of their mission and that they communicate it regularly to the board (and/or general meeting). They must also make this activity report available to the public. The form and frequency of the publication can be adapted to the organization's features.

In practice, it is suggested that the organisation publishes its activity report on its website to make it easily accessible to all the stakeholders and the public.



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ILA MISSION STATEMENT

The mission of ILA is to promote the profession of Directors by developing its members into highly qualified, effective and respected Directors.

In parallel, it will promote best practices in Luxembourg in the field of Corporate Governance of companies and institutions by actively engaging with those institutions charged with the introduction, application and oversight of those Corporate Governance rules and practices. It will achieve this through high quality training, forum discussions, research, publications and conferences.

ILA aims to be the premier interlocutor in Luxembourg on issues affecting Directors.

