

GOVERNANCE GOOD

E D I T I O N 1

**GOVERNANCE
CODE** FOR
ISLAMIC NPO's



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FOREWORD BY THE SPONSORS



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

NPO's generally experience one or more of the following significant challenges which are symptomatic of poor governance:

- Founder bias and dependency
- Mission creep - losing focus on key objectives
- Lack of alignment between founder, employees, and/or volunteers
- Absence of clear strategy and roadmap
- Ineffective leadership
- Mission, vision and values not clearly articulated
- Ineffective risk management and internal control systems
- Culture of performance management and accountability missing
- Succession planning not considered
- No strategic plan for the medium to long term
- Lack of an ethical culture

Islamic NPO's should be shining stars and lead by example when it comes to good governance, given their reliance on public funding and a responsibility to conduct their affairs in accordance with Shari'ah principles and practices.

However, there is a lack of publicly available and credible reference sources that Islamic NPO's can turn to for best practices and guidance on good corporate governance in an Islamic context. This has necessitated the need to develop this code of corporate governance for Islamic NPO's which we believe will contribute to improving governance in the Islamic NPO sector globally. It is hoped that all Islamic NPO's will adopt the code and aspire to achieve the governance principles that it advocates.

The intention is to publish guidance papers on an ongoing basis to assist NPO's with implementing certain of the recommended practices in the code.

We record our appreciation to the many volunteers who devoted so much time and effort for the pleasure of Allah Ta'ala in developing this code.

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GLOSSARY OF TERMS

Conflict of interest	<i>A conflict of interest, used in relation to members of the governing body and its committees, occurs when there is a direct or indirect conflict, in fact or in appearance, between the interests of such member and that of the organisation¹</i>
Governing body	The governing body is the structure that has primary accountability for the governance and performance of the organisation. It includes, among others, the directors of a company and trustees of a Trust and/or mutawallees
Islamic NPO	An Islamic NPO is one that operates in accordance with an Islamic ethos and whose objectives and activities are conducted in accordance with the Shari'ah
King IV	<i>King IV Report on Corporate Governance for South Africa, 2016</i>
Management	<i>Management includes senior management and executive management. "Senior management" is the level of management reporting to executive management. "Executive management" is, after the governing body, the highest decision-making authority in the organisation¹</i>
NPO	Non-profit Organisation regardless of its manner of incorporation which could include either a Trust, Company, or a voluntary association.
Risk	<i>Risk is the uncertainty of events; including the likelihood of such events occurring and their effect, both positive and negative, on the achievement of the organisation's objectives¹</i>
Stakeholders	<i>Those groups or individuals that can reasonably be expected to be significantly affected by an organisations business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organisation to create value over time¹</i>

1. All text in italics in this document and referenced with 1 have been extracted from The King IV Report on Corporate Governance for South Africa 2016, Copyright and trade marks are owned by the Institute of Directors in Southern Africa and the IoDSA website link is: <http://www.iodsa.co.za/?page=AboutKingIV>

INTRODUCTION

Definition of corporate governance

Corporate governance is defined in King IV as *the exercise of ethical and effective leadership by the governing body towards the achievement of the following governance outcomes:*

- Ethical culture
- Good performance
- Effective control
- Legitimacy¹

A further fundamental governance outcome that is a special attribute to Islamic NPO's is compliance with the principles of Shari'ah and thereby earn Allah's mercy and blessings.

Ethical leadership is exemplified by integrity, competence, accountability, fairness, transparency and responsibility.

Effective leadership is about achieving the desired level of performance.

A further leadership quality that is critically important in an NPO context is Servant leadership where the main goal of the members of the governing body is to serve humankind in order to earn Allah's pleasure. Servant leadership is extremely important and is exemplified by commitment, passion, dedication, selflessness, taqwa, Ihsaan and compliance with Shari'ah.

The **benefits** of corporate governance

Good Corporate Governance contributes to the success of an NPO as it enhances the functionality of its leadership structures and provides the arrangements by which the governing body should govern the NPO that it is able to meet its strategic objectives. The benefits that will be derived from the good governance of an NPO include the following:

- Allah Ta'ala will be pleased with the performance of the NPO and its leadership
- Added credibility, enhanced reputation and more trusting stakeholders, including donors
- Improved performance, service delivery and achievement of objectives
- Easier access to funding, grants and loans and on better terms
- An effective and efficient system of risk management and internal control
- The establishment of an ethical culture

The **objectives** of this code

The objectives of this code are to promote effective governance in Islamic NPO's to help ensure that these organisations are run in an exemplary and in accordance with the Shari'ah.

It is envisaged that this code will:

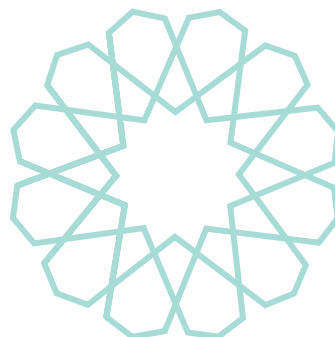
- be adopted by the Islamic NPO sector at large in South Africa and beyond; and
- provide a credible and reliable reference source which NPO's can turn to for guidance and benchmarking purposes

Structure of this code

This code sets out the fundamental principles of good governance for NPO's and also provides some recommended practices to achieve these principles.

Scope of **application** of this code

This code is applicable to all Islamic NPO's. Adoption of the code is voluntary. The practices recommended in this code may not be suitable and appropriate for all organisations. Practices need to be adapted and scaled in accordance with the size, complexity, legal environment within which the organisation operates and the organisation's impact on society and the environment. NPO's should aspire to align their constitutions with the governance principles and practices described in this code.



Islamic **governance** principles

This governance code for Islamic organisations has been developed using King IV as a reference and incorporates the following Islamic governance principles as its foundation:

a) Accountability - Narrated Abdullah Ibnu Umar, I heard Allah Apostle's (peace be upon him) saying: "Each one of you is a guardian and each guardian is accountable to everything under his care" (Bukhari and Muslim).

b) Transparency - "O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties" (Al-Baqarah (2:282))

c) Trust (Amanah) - "O ye who believe! betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you" (Al-Anfal 8: 27)

d) Consultation (Shura) - "Those who hearken to their Lord, and establish regular Prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance." (Al-Shura 42:38)

e) Ethical conduct -

- **Fulfilment of promises/ obligations:** - "O ye who believe! Fulfill (all) obligations." (Al-Māidah 5:1)

- **Truthful/ Honesty:** - "You must be truthful. Verily, truthfulness leads to righteousness and righteousness leads to Paradise. A man continues to be truthful and encourages honesty until he is recorded with Allah as truthful. And beware of falsehood. Verily, falsehood leads to wickedness and wickedness leads to the Hellfire. A man continues tell lies and encourages falsehood until he is recorded with Allah as a liar." (Sahih Muslim)

- **Prohibition of deriving income from cheating, price manipulation, dishonesty or fraud** - "O ye who believe! Eat not up your property among yourselves in vanities. But let there be amongst you traffic and trade by mutual goodwill, nor kill (or destroy) yourselves; for verily Allah hath been to you Most Merciful!" (An-Nisāa 4:29)

- **Prohibition of bribery to derive undue advantage** - "And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property." (Al-Baqarah 2:188)

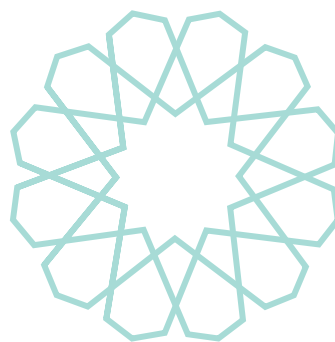
f) Justice - "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both." (An-Nisāa 4:135)

g) Truthful (Sidq) - "And those who believe in Allah and His messengers they are the Truthful and the martyrs in the eyes of their Rabb. They shall have their Reward and their Light. But those who reject Allah and deny Our Signs, they are the Companions of Hell-Fire." (Al-Hadid 57:19)

h) Social justice (al-adl wa al-ihسان) - "Allah doth command you to render back your Trusts to those to whom they are due; And when you judge between man and man, that you judge with justice: Verily how excellent is the teaching which He gives you! For Allah is He Who hears and sees all things." (An-Nisa 4:58)

i) Excellence (Ihsaan) - Whereas taqwa is the fear of Allah and the feeling of His Presence, Ihsan is the love of Allah. This love of Allah motivates the individual Muslim to work towards attaining Allah's Pleasure. The Prophet Muhammad (saw) describes Ihsan as follows: "To worship Allah as if you see Him, and if you cannot achieve this state of devotion then you must consider that He is looking at you." (Bukhari)

j) "Maqasid Shari'ah" (Higher objectives of the Shari'ah) - Protection, preservation & promotion of faith, life, intellect, posterity/dignity and wealth; benefit to public interest and avoidance of all that is evil, unjust, and against public interest.



THE GOVERNANCE CODE FOR ISLAMIC NPO'S ON A PAGE

1. LEADERSHIP, ETHICS & CORPORATE CITIZENSHIP	1.1 LEADERSHIP	Principle 1: The governing body should lead ethically & effectively ¹
	1.2 ORGANISATIONAL ETHICS	Principle 2: The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture
	1.3 RESPONSIBLE CORPORATE CITIZENSHIP	Principle 3: The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen ¹
2. STRATEGY, PERFORMANCE & REPORTING	2.1 STRATEGY & PERFORMANCE	Principle 4: The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation purpose ¹
	2.2 REPORTING	Principle 5: The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its prospects ¹
3. GOVERNANCE STRUCTURES & DELEGATION	3.1 ROLE & RESPONSIBILITIES OF THE GOVERNING BODY	Principle 6: The governing body should serve as the focal point and custodian of corporate governance in the organisation ¹
	3.2 COMPOSITION OF THE GOVERNING BODY	Principle 7: The governing body should comprise an appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its role and responsibilities objectively and effectively ¹
	3.3 COMMITTEES OF THE GOVERNING BODY	Principle 8: The governing body should ensure that its arrangement for delegation within its own structures promotes independent judgement, and assist with balance of power and the effective discharge of its duties ¹
	3.4 EVALUATIONS OF THE PERFORMANCE OF THE GOVERNING BODY	Principle 9: The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and individual members support continued improvement in its performance and effectiveness ¹
	3.5 APPOINTMENT AND DELEGATION TO MANAGEMENT	Principle 10: The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities ¹
4. GOVERNANCE FUNCTIONAL AREAS	4.1 RISK GOVERNANCE	Principle 11: The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives
	4.2 TECHNOLOGY AND INFORMATION GOVERNANCE	Principle 12: The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives ¹
	4.3 COMPLIANCE GOVERNANCE	Principle 13: The governing body should govern compliance with Shari'ah and applicable statutory laws, codes and standards that supports the organisation being ethical, a good corporate citizen and managed in accordance with Shari'ah principles
	4.4 REMUNERATION GOVERNANCE	Principle 14: The governing body should ensure that the organisation remunerates fairly, responsibly and transparently ¹
	4.5 ASSURANCE	Principle 15: The governing body should ensure that assurance services and functions enable an effective control environment and that they support the integrity of information for internal decision making and of the organisation's external reports ¹
5. STAKEHOLDER RELATIONSHIPS	STAKEHOLDERS	Principle 16: The governing body should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation and in a manner that will be pleasing to Allah Ta'ala

RECOMMENDED PRINCIPLES & PRACTICES

1. LEADERSHIP, ETHICS & CORPORATE CITIZENSHIP

1.1 LEADERSHIP

PRINCIPLE 1: *The governing body should lead ethically & effectively¹*

Some recommended practices:

Adopt Taqwa

Members of the GOVERNING BODY should:

- be conscious of Allah in all dealings with donors, beneficiaries, employees, other governing body members and generally with all other stakeholders
- Be aware of their roles as Khalifatullah fil Ard
- Act responsibly and professionally
- Practice Ihsaan in the discharging of their responsibilities

Practice Shura

Members of the GOVERNING BODY should:

- Take decisions on a consultative basis with all members of the GOVERNING BODY rather than unilaterally or by interest groups
- Ensure that there is substantial consensus on decisions taken by the governing body
- Take decisions in accordance with the NPO's constitution, policies, Shari'ah and laws of the country

Recognise the Amanah they carry

Members of the GOVERNING BODY should:

- Fulfil the obligations and trusts which they are accountable for to the best of their ability

Integrity

Members of the GOVERNING BODY should:

- Be straightforward and honest in all NPO dealings
- Deal fairly and honestly
- Proactively manage actual and potential conflicts of interest
- Set the tone for an ethical organisational culture
- Act in good faith and in the best interest of the organisation
- Deliver what is promised to donors and other stakeholders



Competence

Members of the GOVERNING BODY should:

- Ensure that they have sufficient understanding of the organisation including the laws, rules and standards applicable to the organisation and to keep abreast with changes
- Act with due care, skill and diligence
- Have the requisite skills to perform their role on the GOVERNING BODY

Responsibility

Members of the GOVERNING BODY should:

- *Attend meetings of the GOVERNING BODY and its committees and devote sufficient time and effort to prepare for the meetings¹*
- Assume collective responsibility for decisions taken by the GOVERNING BODY and for the performance of the organisation
- Act in a responsible manner both at GOVERNING BODY meetings as well as when representing the NPO externally

Accountability

Members of the GOVERNING BODY should:

- Realise that they are ultimately accountable to Allah for their actions and must also be willing to respond to questions raised by stakeholders and community members on the operations of the organisation

Fairness

Members of the GOVERNING BODY should:

- Adopt a stakeholder inclusive approach in executing their responsibilities
- Ensure that the operations of the organisation do not harm the environment, society or future generations

Transparency

- The GOVERNING BODY should be transparent in the manner in which it operates

Confidentiality & Dignity

The GOVERNING BODY should ensure that :

- The dignity of beneficiaries must be protected at all times
- The confidentiality of donors and beneficiaries and their personal information must be respected and protected at all times and in accordance with the law

1.2 ORGANISATIONAL ETHICS

PRINCIPLE 2: *The governing body should govern the ethics of the organization in a way that supports the establishment of an ethical culture ¹*

Some recommended practices:

The GOVERNING BODY should:

- Approve a code of conduct and ethics
- Ensure that employees and other stakeholders are made familiar with the code of conduct and ethics
- Establish consequence management processes for transgressions of the code of conduct and ethics
- Create a mechanism for ethics breaches/complaints to be reported in an anonymous manner

1.3 RESPONSIBLE CORPORATE CITIZENSHIP

PRINCIPLE 3: *The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen ¹*

Some recommended practices:

The GOVERNING BODY should:

- Ensure that the organisation complies with all applicable laws, regulations, standards and its own policies
- Ensure that the organisation's values and conduct are in keeping with being a responsible and trusted corporate citizen in the eyes of Allah, key stakeholders and the communities in which they operate
- Ensure that targets and measurement of the targets are in place covering the following areas:
 - People: employment equity; fair remuneration; safety, health, dignity and development of employees
 - Economy: prevention and detection of fraud and corruption
 - Society: public health and safety; community development; protection of human rights
 - Environment: including pollution, waste disposal and water management

2. STRATEGY, PERFORMANCE & REPORTING

2.1 STRATEGY & PERFORMANCE

PRINCIPLE 4: *The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation purpose¹*

Some recommended practices:

The GOVERNING BODY should:

- Delegate to management the development of the organisation's strategy. This strategy should be approved by the governing body
- Approve the policies and operational plans developed by management to give effect to the strategy
These should include key performance measures and targets
- Ensure that the organisation continually assesses and responds to consequences of its activities on the triple context – economy, society and the environment
- Monitor the viability of the organisation with regard to solvency and liquidity and its status as a going concern

2.2 REPORTING

PRINCIPLE 5: *The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance and its prospects¹*

Some recommended practices:

The GOVERNING BODY should:

- Ensure the integrity of external reports
- Oversee that reports such as annual financial statements and annual reports comply with legal requirements and meet the information needs of material stakeholders
- Consider publishing reports such as an annual report of its activities and annual financial statements on the organisation's website or make them available to material stakeholders in an alternate format

3. GOVERNANCE STRUCTURES & DELEGATION

3.1 ROLE & RESPONSIBILITIES OF THE GOVERNING BODY

PRINCIPLE 6: *The governing body should serve as the focal point and custodian of corporate governance in the organisation¹*

Some recommended practices:

The GOVERNING BODY should:

- Exercise its leadership role by:
Steering the organisation and setting its strategic direction¹
Approving policies and plans that give effect to the strategy¹
- *Overseeing and monitoring of implementation and execution by management¹*
- Ensuring management are held accountable for performance
- *Ensure that its role, responsibilities, membership requirements and procedural conduct are documented in a charter¹ which must be regularly reviewed*
- Approve the protocol to be followed when any of its members need to obtain independent, external professional advice (including from experts in Islamic law) at the cost of the organisation
- Resolve disputes through Shura which should be preferred above litigation

3.2 COMPOSITION OF THE GOVERNING BODY

PRINCIPLE 7: *The governing body should comprise an appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its role and responsibilities objectively and effectively¹*

Some recommended practices:

The GOVERNING BODY should:

- Consider the following when determining the requisite number of members:
 - An appropriate mix of knowledge, skills and experience needed to govern the organisation
 - An appropriate mix of age, race and gender
 - The need to secure a quorum at meetings
 - Requirements of the organisation's founding document
- Establish a periodic rotation plan of its members to ensure that new members with new expertise and perspectives are introduced whilst retaining knowledge and skills and experience
- Establish a succession plan for its membership which should include the identification and nurturing of potential future candidates.
The future candidates could shadow the respective positions that has been earmarked for them before taking these formally
- Ensure that the processes for nomination and appointment of members to the governing body are formal and transparent
- Ensure that incoming members of the governing body are properly inducted
- Ensure that at the beginning of each meeting, all members should be required to declare whether any of them has any conflict of interest in respect of any matter on the agenda
- Ensure that the chairperson's role and responsibilities is documented in the charter of the governing body



3.3 COMMITTEES OF THE GOVERNING BODY

PRINCIPLE 8: *The governing body should ensure that its arrangement for delegation within its own structures promotes independent judgement, and assist with balance of power and the effective discharge of its duties ¹*

Some recommended practices:

The GOVERNING BODY should:

- Establish relevant sub-committees of the governing body to assist in discharging its governance and other responsibilities such as:
 - Finance, Audit & Risk committee
 - Operations committee/s
 - Each committee should have a formal terms of reference which should be reviewed annually
 - Some of these committees may be combined after due consideration to the size and complexity of the organisation

3.4 EVALUATIONS OF THE PERFORMANCE OF THE GOVERNING BODY

PRINCIPLE 9: *The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and individual members support continued improvement in its performance and effectiveness ¹*

Some recommended practices:

The GOVERNING BODY should:

- Ensure that a formal evaluation process is followed at least every two years for evaluating the performance of the governing body, its committees, its chair and individual members

3.5 APPOINTMENT AND DELEGATION TO MANAGEMENT

PRINCIPLE 10: *The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities ¹*

Some recommended practices:

The GOVERNING BODY should:

- Appoint the CEO ¹
- The CEO should be accountable, and report to, the governing body
- Formally evaluate the performance of the CEO at least annually by doing a formal performance appraisal
- Approve a delegation of authority framework which sets out the powers which are to be reserved for itself and those that are delegated to management

- Ensure that key management functions are headed by people with the necessary competence and authority
- Ensure that there is succession planning in place for executive management
- Consider appointing a suitably qualified professional to provide professional governance services and advice to the organisation



4. GOVERNANCE FUNCTIONAL AREAS

4.1 RISK GOVERNANCE

PRINCIPLE 11: *The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives ¹*

Some recommended practices:

The GOVERNING BODY should:

- Assume responsibility for the governance of risk by setting the direction for how risk should be approached and addressed ¹
- Delegate to management the responsibility to implement and execute effective risk management ¹
- Exercise ongoing oversight of risk management

4.2 TECHNOLOGY AND INFORMATION GOVERNANCE

Principle 12: *The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives ¹*

Some recommended practices:

The GOVERNING BODY should:

- Assume responsibility for the governance of technology and information
- Delegate to management the responsibility to implement and execute effective technology and information management policies and procedures
- Exercise ongoing oversight of technology and information management

4.3 COMPLIANCE GOVERNANCE

PRINCIPLE 13: *The governing body should govern compliance with Shari'ah and applicable statutory laws, codes and standards that supports the organisation being ethical, a good corporate citizen and managed in accordance with Shari'ah principles*

Some recommended practices:

Members of the GOVERNING BODY should:

- Assume responsibility for the governance of compliance
- Delegate to management the responsibility to implement and execute effective compliance management
- Exercise ongoing oversight of compliance management

4.4 REMUNERATION GOVERNANCE

PRINCIPLE 14: *The governing body should ensure that the organisation remunerates fairly, responsibly and transparently¹*

Some recommended practices:

The GOVERNING BODY should:

- Assume responsibility for the governance of remuneration
- Approve a remuneration policy that will ensure fair, reasonable and transparent remuneration
- The remuneration policy should be designed to achieve the following:
 - To attract, motivate, reward and retain talent
 - To promote an ethical culture
 - To promote high performance

4.5 ASSURANCE

PRINCIPLE 15: *The governing body should ensure that assurance services and functions enable an effective control environment and that they support the integrity of information for internal decision making and of the organisation's external report¹*

Some recommended practices:

The GOVERNING BODY should:

- Set the direction for how assurance of external reports should be addressed
- Consider the need to establish an internal audit function

5. STAKEHOLDER RELATIONSHIPS

5.1 STAKEHOLDER

PRINCIPLE 16: *The governing body should adopt a stakeholder inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation - and in a manner that will be pleasing to Allah*

Some recommended practices:

The GOVERNING BODY should:

- Assume the responsibility of defining who the stakeholders of the organisation are
- Assume responsibility for the governance of stakeholder relationships
- Delegate to management the responsibility to implement and execute effective stakeholder relationship management
- Exercise ongoing oversight of stakeholder relationship management

Content Development Process

The drafting of this code was widely consultative.

A working group comprising governance experts and representatives from certain Islamic NPO's volunteered to participate in a series of working sessions to develop a first draft of the code.

Representatives from the sponsors of this code were then engaged and consulted before finalisation of this code.

