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GOVERNING ORGANISATIONS ON EQUAL BASIS: NON-PROFIT ORGANISATIONS (NPOs)

There's a proverb that says, "what's sauce for the goose is sauce for the gander" - this expression can also generally be interpreted to mean "what's good for the male is also good for the female." Whilst this proverb refers largely to gender-equity based issues, it could also apply to the manner in which corporate governance principles should be equally applied in the context of business, no matter its type, size or value.

Rather interestingly, since the launch of the King Report on Governance for South Africa 2009 (King III) which became effective on 01 March 2010, a Cape Town based non-profit group has claimed growing support on behalf of a Civil Society Working Group -- called the Working Group -- to disregard King III for non-profit organisations (NPOs).

The Working Group suggests the King III provisions are impractical for NPOs and by their own admission "recognised the need for South African civil society to formulate and adopt its own distinct code, rather than (to) be regulated by government or corporate sector codes". To this end, they have now introduced their own draft code, which notably is devoid of many of the King III provisions and is known as the Independent Code.

Whilst the intentions of the Working Group may have been good; and even with their claim that they have "consulted hundreds of NPOs across the country", one wonders why yet another code for governance is necessary when a far more thorough set of governance guidelines have been assembled by the local and international subject matter experts originally convened for the King III Commission and the writing of King III.

Expectedly, a lot of confusion has set in with the introduction of the Working Group's new draft Code. One needs to seriously consider the implications such a Code will have upon corporate businesses, including other major donors of NPO funding when a new set of governance codes is introduced, which according to the Working Group is completely different to the recommendations of King III, and very much reduced of its criteria as compared to King III.

Besides the fact that some of the larger NPOs asset base is as large as those of private and even listed companies, corporate funders and donors of NPOs need assurance that their donated funds are being used responsibly, and that strict measures of governance are in place for accountability purposes. By suggesting a 'lesser' governance code as introduced by the Working Group is better suited for *all* NGOs -- who are estimated to tally around 150 000 organisations -- is surely a fast way to discourage future funding and is frankly speaking, irresponsible and unfair to NGOs in the long run.

Once reading the Independent Code which consists of 18 pages, one quickly realizes that this rather 'relaxed' Code -- unlike King III which provides more structured detail and numerous Practice Notes as recommendations for implementation -- can become open for abuse by unscrupulous NPO officers who "self regulate" and then *claim* to be practicing good governance. Of course a person could argue the same about King III; however King III's audit, risk, combined assurance and external evaluation recommendations (as examples of additional measures not detailed in the Independent Code) certainly do make it a lot more difficult to circumvent King III as compared to the Independent Code.

Besides the confusion this Code may still cause amongst many of the larger NPOs, its authors have clearly 'watered down' many of the provisions found in King III, and they have also failed to address many critical issues of governance. This in turn could prove disastrous, particularly where larger NPOs control vast sums of money and / or have large or complex organisations. To illustrate this point further, the Independent Code lacks any form of practical guidance particularly where the NPO has no members, and the Board has -- in reality -- no up-line accountability for its poor, or non-performance besides reporting to itself. The Independent Code also misses the point of Board accountability, stating that the "Board must hold management accountable for the practical implementation of (its) their responsibilities". The Independent Code further states, "while affirming the critical responsibility of the Board, there are other stakeholders of an NPO who also bear a share of the responsibility, and they too must play their part in ensuring that effective governance takes place."

Following this thinking, two critical questions arise;

i. to whom is the NPO Board ultimately accountable, particularly when there are no members, and

ii. surely all accountability rests with the Board, and *the Board only* (as is stated in King III but remiss in the Independent Code).

As for good governance, in general terms the Board is fully accountable for the organisation's risk and risk management including the financial affairs of the organisation, whilst management are responsible to implement programmes that mitigate these risks. Whilst management are held responsible for not mitigating risk, the ultimate accountability must always rest with the Board and the Board remains answerable to the company or other entity constituting the NPO. When these risks are not fully factored by the Board, the Board members must be held to account by their shareholders derivatively and / or the members in the case of the NPO. Where a NPO does not have members, it would be advisable for the NPO to approach its major donors and request of them to become members so that accountability exists between the Board and the selected members of the NPO. The liabilities attached to poor governance must be the same for both private organisations as well as for NPOs.

Whilst the Independent Code was conceived by what appears to be a very small group of people, it may have been more useful to rather apply King III -- based on its 'flexible apply or explain' basis -- than to write a new code for NPOs. In so doing, not only would this approach provide a common and more complete view of good governance principles across all organisations, it would also be far simpler if all organisations, including NPOs, were singing from the same hymn sheet. Of course, whilst not wishing to detract from the importance of a singular standard of good governance principles as found in King III, it is important to note that King III is an aspirational code, and if NPOs were finding themselves constrained by a lack of resources to adopt its recommendations, they could phase in the basic principles which are applicable to them, over a period of time.

To suggest that the King III Code, hailed as an international benchmark for corporate governance across all organisations, does not adequately reflect the values and ethos of the NPO sector, and that the King III principles are completely impractical and unaffordable for many non-profits, makes no sense at all.

The intention of King III was to allow any organisation to adopt its governance principles as they deem necessary, and where deviations occur, organisations need to explain the reasons thereof. To create a new code of governance for NPOs is certainly not necessary and if this were in any circumstance to be commended, then surely a whole new set of governance codes should also be considered for state owned entities, sole proprietorships, close corporations and other forms of informal business entities. There needs to be one set of governance standards to which all entities must abide. Of course, with King III being flexible, they can be scalable to meet the specific requirements of smaller or less structured businesses. At the end of the day we are dealing with a value system, and this value system must have equal benefit as well as equal penalties when those in control of organisations flout the accepted parameters, especially where people and money are concerned.

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