

## Code of Good Practice for the National Council of FEDSAS

### Glossary

In this Code:

**'asset'** means an item of property owned by FEDSAS regarded as having value and available to meet debts, commitments or legacies;

**'DSD's Code'** means the Department of Social Development's Code of Good Practice for South African Non-Profit Organisations (2001);

**'FEDSAS'** means the Federation of Governing Bodies of South African Schools;

**'fiduciary duties'** means the duties that members of the governing body of a non-profit organisation have as a result of their having the assets belonging to another under their control, and which require such members to act in good faith, for a proper purpose and in the best interest of the organisation;

**'governing body'** means the National Council of FEDSAS and all its committees;

**'National Council'** means the National Council of FEDSAS, established as the governing body of FEDSAS in terms of its constitution;

**'National Council Charter'** means a document approved and adopted by the National Council, as the governing body of FEDSAS, for the purpose of setting out Council's role and responsibilities as well as the requirements for its composition and meetings;

**'non-profit organisation (NPO)'** means an organisation established not for profit, whether it is incorporated as a company under the Companies Act 71 of 2008 (an NPC), a statutory body, trust or voluntary association, and irrespective of whether it is registered as a non-profit organisation under the Non-Profit Organisations Act 71 of 1997 or as a public benefit organisation under the Income Tax Act 58 of 1962;

**'SANGOCO's Code'** means the South African National NGO Coalition's Code of Ethics for Non-Profit Organisations (1997);

**'sustainability'** means conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs, as well as the ability of an organisation to consistently, continually and efficiently raise, manage

and deploy funds with which to implement programmes and achieve set goals, which ultimately benefit the community in which it operates;

**'terms of reference'** means a document approved by the National Council that sets out the role and responsibilities of Council committees to whom Council has delegated certain functions, as well as the requirements for their composition and meetings; and

**'the Independent Code'** means the Independent Code of Governance and Values for Non-Profit Organisations in South Africa (2012).

## **1. Introduction**

FEDSAS accepts the King Report on Governance for South Africa, 2009, and the King Code of Governance for South Africa ('King III', 'King III Report' or 'King III Code', as applicable) as the source documents on what constitutes sound governance. However, there are also other guiding documents on, and requirements for, good governance applicable to non-profit organisations. These include SANGOCO's Code of Ethics for Non-Profit Organisations (1997), the Department of Social Development's Code of Good Practice for South African Non-Profit Organisations (2001) and the Independent Code of Governance and Values for Non-Profit Organisations in South Africa (2012). This Code of Good Practice is primarily based on King III, but also includes references to the abovementioned guidelines and requirements.

### **1.1 What is 'King III'?**

An internationally recognised code that:

- details best-practice standards for good governance;
- may be used by all entities; and
- is voluntary.

## ***1.2 How is King III relevant to FEDSAS?***

Although the scope of the King III Code is wide enough to deal with the most complex of corporates, it may also be used by NPOs as a tool to:

- assess their governance processes against best-practice standards;
- assess potential risk;
- develop strategies to build organisational resilience; and
- assure members and funders that governance principles have been considered and implemented, where appropriate.

## ***1.3 Purpose and target audience***

The purpose of this Code of Good Practice is to provide guidance to members of the National Council on how to apply and interpret King III. For the purposes of this Code, FEDSAS interprets ‘non-profit organisation’ as defined in the glossary included in the Code.

This Code guides National Council members and decision makers of FEDSAS on the correct interpretation and application of King III principles in FEDSAS.

## ***1.4 Implementation of King III in non-profit organisations***

### **Key points to consider**

- King III allows for flexibility in application according to the nature, size and complexity of the organisation.
- King III is aspirational, and perfect implementation is therefore expected to be an ongoing journey.
- Implementation of a King III recommendation may be left in abeyance when it is not in the best interest of the organisation.

The King III principles have largely been drafted in general terms, so that all entities, including non-profit organisations, could apply these in order to measure and achieve good governance. Certain aspects need to be considered when implementing King III in non-profit organisations, however.

King III allows for flexibility in implementation due to its ‘apply or explain’ regime. This is different to ‘comply or explain’, which was the approach followed in King I and King II. Although subtle, this change represents a fundamental shift in understanding the nature of corporate governance. ‘Comply or explain’ potentially denotes a rules-based compliance where an organisation either complies or does not. The ‘apply or explain’ approach, on the other hand, is much more nuanced. ‘Applying’ (as opposed to ‘complying’) allows the non-profit organisation to consider various approaches to achieving the objective of the principle in question. The King III Report was drafted by stating the governance principle as a heading, followed by recommendations on how the objective of that principle may be achieved.

Furthermore, application always takes place within a context, namely the best interest of the particular organisation. The ‘apply or explain’ regime provides each organisation with the opportunity to apply King III as is appropriate for the size, nature and complexity of their operations. The size, nature and complexity of an entity can be defined based on a variety of measures, such as the number of employees, total income, number of members, geographic reach, etc. King III’s practice recommendations apply to these different entities in varying degrees, depending on the variables in terms of size, nature and complexity, as explained above. If, therefore, a non-profit organisation has considered all the information and alternative measures to achieve the objective of the principle, and has decided not to apply the practice recommendation, as it would not be in the best interest of the organisation, compliance has been achieved.

Ideally, the rationale for the decision needs to be explained in sufficient detail to donors, members and other stakeholders.

To implement King III judiciously in the interest of the organisation, the governing body, including senior management, needs to have a sound understanding of governance in general and King III in particular. As such, the governing body needs to understand what purpose each principle sets out to achieve. Only when there is sound understanding, it will be possible to interpret how the principles and best-practice recommendations may be applied in the best interest of the organisation.

The other factor to note when considering implementation is that King III has been drafted to be aspirational. NPOs should strive for a gradual improvement in the application of the Code. Good governance is not only about structures, processes and policies, but also about fostering the right culture and behaviour based on the overarching principles of responsibility, accountability, fairness and transparency. Ultimately, a non-profit organisation needs to take into account the structures, processes and policies that will best serve these principles. As such, it will therefore be an ongoing journey.

The fact that King III is non-mandatory and aspirational, and has been drafted in order to allow for flexibility, is to be kept in mind when the points listed below under the headings “Key points to consider” in relation to the various aspects of good governance are weighed up. It should therefore not be seen as a compulsory list (which denotes compliance), but rather as aspirational recommendations for consideration within the context of FEDSAS.

### ***1.5 Benefits of implementing King III in FEDSAS***

#### **Key points to consider**

Sound corporate governance builds reputation and trust, so that an organisation is able to source funding and obtain suitable persons to serve on its governing body. We strongly believe that governance should be harnessed to the benefit of the organisation and its stakeholders. Good governance is not an end in itself, nor does it take place in a vacuum. Application of good governance as envisaged by King III will benefit FEDSAS by, amongst others, enhancing relations with donors and ensuring greater accountability to beneficiaries and other stakeholders. Being able to demonstrate good governance will also strengthen the organisation’s ability to find suitable members to serve on its governing body. Sound governance is a prerequisite for donors when reviewing funding applications. Therefore, ensuring good governance will support the organisation’s fundraising strategy, which will in turn ensure the necessary resources, thus creating a virtuous cycle enabling the organisation to grow.

FEDSAS obtains its funds from membership fees, donations and grants, while profit entities obtain their equity from shareholders. However, in both instances, there is a need for the entity to account for the use of the funds advanced by the donor/member or shareholder. Governance is one of the key measures of an organisation's health and accountability in this regard, and is imperative for the achievement of an organisation's long-term objectives.

Set out below is FEDSAS and its National Council's commitment to the specific principles in King III.

## **2. The National Council's role**

### ***2.1 The National Council as ethical leader***

***King III, Principle 1.1 and 2.3: The National Council should provide effective leadership based on an ethical foundation.***

***King III, Principle 1.3 and 2.5: The National Council should ensure that FEDSAS ethics are managed effectively.***

'Ethical leadership' involves both ethical governance and the governance of ethics. It means that the National Council is required to govern FEDSAS in an ethical manner by displaying the ethical values of responsibility, accountability, fairness and transparency. It should also oversee that management actively cultivates a culture of ethical conduct, and sets the values to which the organisation will adhere.

#### **Reference to other industry codes**

The Independent Code highlights the following areas in relation to exercising effective leadership:

- Vision, purpose and value
- Accountability and transparency
- Fundraising, sustainability and risk
- Collaboration and synergy
- The board and other governance structures
- Procedural governance

## **Key points to consider in relation to ethical leadership**

- Does the National Council set the values to which FEDSAS adheres, and are these values documented in a code of conduct?
- Are the deliberations, decisions and actions of the National Council based on the governance principles of fairness, accountability, responsibility and transparency?
- Do the members of the National Council, in performing their fiduciary role, execute the five moral duties, namely conscience, care, competence, commitment and courage?
- Does FEDSAS understand where it is at risk of ethical failure, such as fraud?

## **2.2 The National Council as focal point of governance**

***King III, Principle 2.1: The National Council should act as the focal point for, and custodian of, corporate governance.***

***King III, Principle 2.14: The National Council and its members should act in the best interest of FEDSAS.***

This principle means that the National Council carries ultimate responsibility for the organisation and its operations. The National Council is the structure that will be held accountable for the prosperity of FEDSAS.

### **Reference to other industry codes**

SANGOCO's Code requires organisations to "specify the frequency of governance structures' meetings, quorums and the role and powers of the governance structures" and to "ensure the governance structure understands and is responsible for overall policy-making and accepts ultimate responsibility for governance of all aspects of the organisation".

The DSD's Code states that:

"For an NPO to perform well, its governing body and staff leaders need commitment, enthusiasm and initiative. The governing body and staff leaders have both distinctive and overlapping roles and responsibilities to achieve this.

The governing body of an NPO tends to emerge from the circumstances that gave birth to the organisation they serve. As the nature and structure of the organisation changes and grows, so the

governing body finds itself faced with changing roles. At any stage of its life, it is important for a governing body to clarify its responsibilities. A governing body that meets the legal standards of its constitution and registration, in the performance of its duties, also positions the organisation for success through good management and ethical practices.

Service on a governing body is very important for the organisation, and the performance of duties must be taken seriously. Each individual governing body member, and the body as a whole, is held accountable for actions with respect to the organisation. They may delegate some of the work to outsiders, but they cannot delegate their final responsibility.”

### **Key points to consider in relation to the governing body being the focal point of governance**

- Does the National Council have a charter or a set of operating rules that clearly sets out its role and duties?
- Does the National Council meet at least four times a year?
- Does the National Council have reasonable access to the management, information, records, documents and property of FEDSAS?

## **3. Legal duties of National Council members**

### ***3.1 Overview of duties of members of the National Council***

The National Council is entrusted with the governance of FEDSAS, which entails managing the funds and other assets belonging to the organisation. As the National Council controls assets belonging to others, the organisation as well as all individual members of the National Council stand in a relationship of trust (a fiduciary relationship) towards FEDSAS. In accordance with its fiduciary duties, the National Council is expected to act in the best interest of the organisation.

In addition to their fiduciary duties, members of the National Council also have the duty to exercise due care, skill and diligence. They also have statutory duties imposed by various laws (such as the common law), the incorporation documentation of the organisation (the constitution of FEDSAS) and any agreements entered into by

the organisation (such as the appointment letter or employment contract of a member of the National Council).

National Council members should understand their duties in order to avoid personal liability that may follow from the breach thereof.

Members of the National Council receive no remuneration in return for their service. Regardless, a breach of their duties could still result in accountability and personal liability.

### **Reference to other industry codes**

DSD's Code defines the governing body's duty of care as follows:

"[T]o act as an ordinary, wise person would – in the same circumstances; applying careful, attentive and informed participation. There is no measure of just how much time, skill and attentiveness an individual must bring to her or his actions as a governing body member. This standard requires that governing body members base their decisions on adequate information.

Governing body members don't have to be experts at everything that comes before them. However, any member with special expertise is expected to contribute that specialised knowledge in his or her activities as a governing body member. Each member need not be fully involved in every action and decision of the governing body. The duty of care permits delegation to other members, committees, staff or even outsiders, within reason."

The DSD Code also refers to the governing body's duty of loyalty, defined as "to act in good faith, in the best interests of the organisation".

### **Key points to consider in relation to legal duties**

- Are all members of the National Council familiar with their duties in terms of their appointment letters/contracts, the FEDSAS constitution and all legislation and regulations applicable to FEDSAS?
- Do all members of the National Council ensure that they dedicate sufficient attention and time to the execution of their duties, so that informed decisions are made?
- Are members of the National Council permitted to obtain independent advice related to their duties, and will FEDSAS pay for such advice?

### **3.2 Conflicts of interest**

Conflicts of interest are defined in many ways. However, the basic tenet of any of these definitions is the tension between multiple competing interests, whether personal or financial. This usually manifests in the entanglement of an individual's private and professional interests. An example of such a conflict is when a member of the National Council votes in favour of purchasing products and services from a company that such member owns.

Not only real conflicts should be managed, but perceptions of conflicts as well. The perception of a conflict is influenced by whether an independent observer might question whether National Council members' professional actions were motivated or influenced by potential personal financial gain.

King III determines that certain conflicts of interest are fundamental and should be avoided, and that other conflicts (whether real or perceived) should be disclosed in good time and in full detail to the governing body, and then appropriately managed.

#### **Reference to other industry codes**

DSD's Code states that the "duty of loyalty imposes safeguards and standards of fairness in situations where there are conflicts of interest". The legal standards address this concern by requiring activity such as full disclosure, approval by the majority of governing body members, and securing good deals for the organisation.

SANGOCO's Code requires organisations to:

- develop a policy that prohibits direct and indirect conflict of interest by members of governance structures, members, employees and volunteers;
- ensure that members of governance structures and staff excuse themselves from decisions in which they have, or are perceived to have, a vested interest;
- in the case of an independent board or trust, adopt a policy that discourages members from submitting tenders to the organisation or applying for staff positions within the organisation – this policy must stipulate that if they desire to do either, they must resign from the governance structure; and
- ensure that the governance structure approves the annual budget, appoints independent auditors and receives audited statements.

The Independent Code refers to a number of areas where conflict may arise, such as in a case where community members are not only the beneficiaries, but also serve on the non-profit organisation's executive committee. It also mentions the appointment of relatives and friends as employees, paid consultants or service providers as examples of conflict. It proceeds to recommend that the

Companies Act should be followed as best practice for dealing with conflict, even where the organisation is not a company. The process prescribed by the Companies Act involves the following:

- Disclosure of interest and its general nature
- Disclosure of any known, material information relating to the matter
- Disclosure of any observations or pertinent insights relating to the matter
- Recusal from decision making in the matter by the conflicted party

### **Key points to consider in relation to conflicts of interest**

Do members of the National Council disclose real and perceived conflicts of interest to Council, and do they manage such conflicts appropriately?

## **4. National Council – composition and appointment**

### **4.1 Balance of power**

*King III, Principle 2.18: The National Council should comprise a balance of power, with a majority of non-executive members. The majority of non-executive members should be independent.*

Balance of power is important in the interest of objectivity and having a balance of views at governing-body level. Good corporate governance practice requires the National Council to act in the interest of FEDSAS and not only in the interest of some of its stakeholders. Independent and diverse views are imperative for the effective functioning of the National Council.

#### **Reference to other industry codes**

SANGOCO's Code requires organisations to, "within financial constraints, ensure the governance structures reflect the race and gender composition of South African society and various target constituencies that the organisation works with, with regard to both their composition and their geographic spread".

DSD's Code states that "the mark of an effective and maturing non-profit organisation is one whose governing body members do not get involved in the day-to-day running of the operation, and do not become involved in the interpersonal relationships of staff, or the controls of the CEO".

### **Key points to consider in relation to balance of power**

- Is there a balance of power and authority within the National Council to the extent that no one individual or grouping has unfettered decision-making powers?
- Does the National Council comprise a majority of non-executive members?
- Are the majority of the non-executive members on the National Council independent?

#### **4.2 Appointment of National Council members**

***King III, Principle 2.19: Members of the National Council should be appointed through a formal process.***

It is important to have a formal process in place for appointments to the National Council, as this will ensure that the persons who are appointed will contribute relevant skills, experience and knowledge to Council.

The lack of a formal appointment process may lead to appointments being ill-considered and unsuitable for the needs of FEDSAS.

#### **Key points to consider in relation to the appointment of National Council members**

- Does the National Council make recommendations for the election of members based on Council's knowledge, skills and experience gaps and/or the integrity as well as the knowledge, skills and experience of the candidate?
- Do at least a third of non-executive National Council members rotate every year?
- Does the National Council recommend whether retiring non-executive National Council members should be eligible for re-election based on past performance, contribution and the objectivity of business decisions?

#### **4.3 Induction and ongoing training**

***King III, Principle 2.20: The induction as well as ongoing training and development of National Council members should be conducted through formal processes.***

Formal induction programmes should familiarise new National Council members with the FEDSAS operations, environment and relevant sustainability issues. New National Council members who lack sufficient governance experience should be trained and/or mentored regarding their duties, responsibilities and potential liabilities.

### **Key points to consider in relation to induction and ongoing training**

Does the content of the induction programme for new National Council members aim to familiarise such members with the FEDSAS operations, business environment and relevant sustainability issues, as well as introduce them to members of senior management and their individual duties and responsibilities?

### **4.4 Chairperson**

*King III, Principle 2.16: The National Council should elect a chairperson who is an independent non-executive member.*

*King III, Principle 2.16: The Chief Executive of FEDSAS should not fulfil the role of National Council chairperson as well.*

The chairperson should be an independent non-executive National Council member who is able to provide the required direction for Council to be effective. One of the main responsibilities of the National Council is to oversee management. The Chief Executive, as an executive, is not sufficiently independent to lead the National Council. As the chairperson should provide direction, electing a chairperson with strong leadership skills could make the difference between an effective and dysfunctional National Council. An independent non-executive chairperson is best able to fulfil this role. The chairperson's key functions are:

- presiding over National Council meetings and ensuring that time in meetings is used productively, encouraging collegiality among National Council members without inhibiting candid debate and creative tension;

- acting as the link between the National Council and management, and particularly between the National Council and the Chief Executive;
- ensuring that National Council members play a full and constructive role in the affairs of FEDSAS, and playing a leading role in the process of removing non-performing or unsuitable National Council members from Council;
- ensuring that complete, timely, relevant, accurate, honest and accessible information is tabled before the National Council to enable members to make informed decisions; and
- ensuring that good relations are maintained with major FEDSAS stakeholders, and presiding over member meetings.

#### **Key points to consider in relation to the chairperson**

- Is the chairperson of the National Council independent and non-executive?
- Does the chairperson fulfil the functions as set out above?

#### **4.5 Chief Executive**

***King III, Principle 2.17: The National Council should appoint the Chief Executive and establish a framework for the delegation of authority.***

#### **Reference to other industry codes**

DSA's Code encourages the governing body to select and appoint the Chief Executive, support such Chief Executive and review his/her performance.

#### **Key points to consider in relation to the Chief Executive**

- Does the National Council appoint the Chief Executive, and clearly define the duties and performance measures of the Chief Executive in writing?
- Does the National Council define its own level of materiality, and approve a framework for the delegation of authority?
- Is there a formal succession plan in place for the Chief Executive and other senior executives?

## **4.6 Performance evaluation**

***King III, Principle 2.22: Performance evaluation of the National Council, its committees and the individual members should be conducted every year.***

### **Reference to other industry codes**

DSD's Code requires the governing body to measure its own performance, and more specifically, that "every two or three years, the governing body should give itself an opportunity to examine its own progress and performance. This is most effective if each governing body member joins the organisation with an agreed standard of performance or job description in place. Progress can be measured at an evaluation workshop, or by interviews with each member conducted by the chairperson and/or the CEO. Minimum criteria against which performance can be measured could include: knowledge of the organisation; commitment to the organisation; influence in the client or donor community; ability to give; willingness to work".

### **Key points to consider in relation to the performance evaluation of National Council members**

- Are annual performance evaluations conducted in respect of the National Council as a whole as well as its individual members?
- Are the results of performance evaluations constructively used to identify training and development needs for members of the National Council?
- Is there an appropriate benchmark, i.e. agreed performance measures, in place to evaluate the performance of the Chief Executive?
- Does the assessment of the performance of the Chief Executive and other executive National Council members as employees take place annually, and do the results of this assessment affect remuneration?

## **5. National Council structures**

### **5.1 National Council committees**

***Principle 2.23: The National Council should delegate certain functions to well-structured committees, but without abdicating its responsibilities.***

The purpose of establishing committees of the National Council is to alleviate Council's workload and to create structures that can function more effectively, being smaller groupings that are able to focus on key areas. The National Council should determine which committees are required by assessing the key risk areas for FEDSAS. Examples of committees that could be established include committees for audit, finance, social issues and ethics, fundraising, human resources and risk, or a combination of some of these.

## **5.2 Audit committee**

***King III, Principle 2.6: The National Council should ensure that the organisation has an effective and independent audit committee.***

The best-practice recommendations regarding audit committees in King III may be difficult to achieve for most non-profit organisations. However, it is important for the governing body to consider the functions suggested for the audit committee below, and to be satisfied that, in the absence of an audit committee, those functions are addressed by the governing body.

### **Key points to consider in relation to an audit committee or the audit function**

- Is the chairperson of the audit committee independent and non-executive?
- Does the membership of the audit committee comprise individuals who are literate in financial reporting and related internal controls?
- Is the audit committee informed when management and the external auditor/independent reviewer disagree on auditing or accounting matters?
- Does the audit committee review a written assessment (documented by management) of the going-concern premise of FEDSAS?
- Does the audit committee review the disclosure of sustainability issues in the annual report to ensure that it is both reliable and not in conflict with the financial information?

- Does the audit committee recommend to members the appointment, reappointment and removal of the external auditor or independent reviewer?
- Does the audit committee approve both the external auditors and independent reviewer's terms of engagement and remuneration?
- Does the audit committee or the National Council monitor and report on the external auditor or independent reviewer's independence?
- Does the audit committee or the National Council review the quality and effectiveness of the external audit or independent review process?

## **6. Governance duties of the National Council**

### **6.1 Remuneration**

*Principle 2.25: FEDSAS should remunerate executives fairly and responsibly.*

*Principle 2.26: FEDSAS should disclose the remuneration of certain senior executives.*

*Principle 2.27: The National Council should approve the FEDSAS remuneration policy.*

Generally, non-executive FEDSAS National Council members serve on the National Council *pro bono*. However, where members are remunerated for serving as such, remuneration should be appropriate.

Executives should be remunerated fairly and responsibly, in line with benchmarks for the non-profit sector.

#### **Key points to consider in relation to remuneration**

- Are there remuneration policies and practices in place that address base pay and bonuses, termination of employment contracts, and severance and retirement benefits?
- Do remuneration levels reflect senior executives' contribution to the performance of FEDSAS?
- Do members pass a non-binding advisory vote on the FEDSAS remuneration policy each year?

- Is information on the total amount spent on staff salaries readily accessible to FEDSAS stakeholders?

## **6.2 Strategy, risk, performance and sustainability**

***King III, Principle 2.2: The National Council should appreciate that strategy, risk, performance and sustainability are inseparable.***

Sustainability (as defined in the glossary included in this Code) does not necessarily imply that FEDSAS needs to strive to become independent of donor funding. To the contrary, it is imperative that the organisation demonstrates that it is operated in a sustainable manner to ensure that funding is sourced.

FEDSAS has always measured its performance not only in terms of achievement of its financial objectives, but also the advancement of social objectives. FEDSAS differs from for-profit entities in that its main aim is not the payment of dividends and growth in share value. FEDSAS creates 'value' for its stakeholders (who include, but are not limited to, members, donors, communities and other beneficiaries), even if not measured in direct monetary terms. Donors seek assurance that their funding has been employed to promote the objectives of the non-profit organisation, and often want to be reassured that the organisation's funding has been used for the intended purpose.

The sustainability principles in King III require entities to contextualise financial performance by explaining how they have 'performed' with regard to society and the environment. The so-called non-financial matters are now understood to have financial implications, and *vice versa*. Non-profit organisations, which exist for societal or environmental ends and are accustomed to reporting on and reconciling non-financial matters and financial constraints, will find it easier to satisfy these requirements than most profit-driven entities.

### **Reference to other industry codes**

SANGOCO's Code requires organisations to have "a clear vision, mission, objectives and policies, and to adhere to them".

The DSD's Code recommends that governing bodies determine the organisation's mission and purpose, and states the following: "The governing body must produce documents that set out the reasons for the organisation's being – its mission statement, goals, objectives and policies. This includes a conflict of interest policy to guard against any possibility of personal gain, by governing body members or staff, being obtained from any of the organisation's transactions. It should describe the needs or problems being met, the constituencies that it serves and the constituencies that support the work. Above all it should be able to explain the organisation's uniqueness, and the compelling arguments that will attract funding. The governing body should take the lead in adhering to its constitution, policies and strategic plans." It further requires the governing body to ensure effective organisational planning, ensure that the organisation has adequate resources, manage the organisation's resources effectively, and determine and monitor the organisation's programmes and services.

### **Key points to consider in relation to strategy**

- Does the National Council contribute to the development and approval of FEDSAS strategy?
- Does the National Council ensure that the strategy is aligned with the purpose of FEDSAS, the value drivers of its business, and the legitimate interests and expectations of its stakeholders?
- Is strategy translated into key performance and risk areas, including finance, ethics, compliance and sustainability?
- Are the associated performance and risk measures adequately identified and clear?

### **6.3 Risk**

***King III, Principle 2.7: The National Council should be responsible for the governance of risk.***

The FEDSAS National Council is responsible for overseeing risk management. Non-profit organisations should specifically keep the following key risks in mind: the impact of technology, changes in the regulatory environment, tax compliance, donor

confidence and reputational risks, financial sustainability, crisis readiness, and disaster recovery and human resources (people management) risks.

### **Key points to consider in relation to risk**

- Has the National Council developed and approved a policy and plan that provides for an effective system and process of risk identification and management?
- Does management demonstrate to the National Council that the risk responses enable the identification and exploitation of opportunities to improve FEDSAS performance?

### **6.4 Information technology (IT)**

*King III, Principle 2.8: The National Council should be responsible for IT governance.*

In most non-profit organisations, IT has become an integral part of the business, and is fundamental to support, sustain and grow the business. Not only is IT an operational enabler for an organisation, it is also an important strategic asset to create opportunities and gain competitive advantage. Non-profit organisations have made, and continue to make, significant investments in IT. Virtually all components, aspects and processes of organisations include some form of automation. As a result, organisations rely heavily on IT systems. Furthermore, the emergence and evolution of the internet, e-commerce, electronic payments and electronic communication has enabled companies to conduct business electronically and perform instant transactions. These developments bring about significant risks, which should be well governed and controlled. Therefore, IT governance is of great importance.

The complexity of IT systems does create operational risks, and when IT services are outsourced, for instance, this has the potential to increase risk, as confidential information is then placed beyond the organisation's direct control. Consideration has to be given to the operational integrity and availability of the system, the ownership of

the system, authenticity of system information, and assurance that the system is usable and useful. Concerns include unauthorised use, access, disclosure, disruption or changes to the information system.

The FEDSAS National Council is responsible for overseeing its IT by establishing a framework (including structures, processes and mechanisms) for IT to add value to the organisation and to mitigate IT risk.

### **Key points to consider in relation to IT**

- Are effective IT policies established and implemented, including a disaster recovery plan, safeguarding of IT equipment, and password protocols?
- Does the National Council ensure that there are effective processes in place to identify and exploit opportunities to improve FEDSAS performance and sustainability through the use of IT?
- Does FEDSAS have a senior employee (or access to a contractor) who is responsible for IT, is suitably experienced in IT matters, and has access to and interacts with the National Council?
- Does the National Council ensure that FEDSAS complies with IT laws and that IT-related rules, codes and standards are considered?
- Does the National Council ensure that an information security management system is developed, recorded and implemented, and does such system ensure security, confidentiality, integrity and availability of information?

### **6.5 Compliance**

***King III, Principle 2.9: The National Council should ensure that the organisation complies with applicable laws, and considers adherence to non-binding rules, codes and standards.***

Compliance with all laws and regulations applicable to FEDSAS is important for various reasons, the most important of which is that non-compliance could result in fines, criminal liability or even personal liability for members of the National Council.

(For example, the Chief Executive is personally liable for transgressions of the Occupational Health and Safety Act 85 of 1993.)

### **Reference to other industry codes**

DSA's Code states that the governing body's duty of obedience requires the governing body "to act to ensure that the organisation operates within the laws, and rules governing its formation and status, and in accordance with its own constitution and mission. Actions taken that contradict the organisation's own rules or that do not fit with the organisation's purposes as described in its constitution, may be withdrawn if challenged".

Also see pages 14–17 of the Independent Code for useful pointers on legal requirements on incorporation of the organisation, consequences and benefits of registration under the Non-Profit Organisations Act 71 of 1997, and the provision for approval as a public benefit organisation under the Income Tax Act.

### **Key points to consider in relation to compliance**

- Does FEDSAS know which laws, rules and regulations apply to it?
- Does the National Council assume responsibility for and monitor the organisation's compliance with applicable laws as well as those non-binding rules, codes and standards with which FEDSAS has voluntarily elected to comply?
- Is the risk of non-compliance identified, assessed and responded to through the risk management processes?
- Has management established the appropriate structures to educate, train, communicate on and measure compliance?
- Does a senior employee, who is suitably experienced in compliance matters, have access to, and regularly interacts on strategic matters with, the National Council or appropriate Council committee?
- Does the National Council receive assurance on the effectiveness of the internal controls intended to ensure compliance with laws, rules, codes and standards?

## **6.6 Internal control environment**

While it is understood that very few non-profit organisations have a formal internal audit function, the underlying principles of internal audit remain important.

***King III, Principle 2.10: The National Council should ensure an effective, risk-based internal audit.***

**Reference to other industry codes:**

DSD's Code in dealing with financial management states:

“Unlike businesses that earn their income by selling goods or services, and unlike the government whose resources are provided by taxation, a non-profit organisation does not own the resources it raises. Non-profit organisations are expected to be careful and effective managers of the resources entrusted to them by donors, sponsors and the state. Financial management systems, no matter how simple and basic, need to be developed and maintained by an organisation's office bearers to ensure the appropriate use of resources.”

Once the risks in an organisation are identified, certain measures (also known as internal controls) should be put in place to measure these risks effectively. These risks include financial risk, such as fraud, but also other risks, such as reputational risk, which are also likely to have financial implications.

**Key points to consider in relation to the internal control environment**

- Is a senior employee or service provider responsible for establishing and maintaining an effective internal control environment? Is this senior employee or service provider independent and objective?
- Is the approach to the internal control environment informed by the strategy and risks of FEDSAS?

**6.7 Stakeholder relations**

***King III, Principle 2.11: The National Council should appreciate that stakeholders' perceptions affect FEDSAS reputation.***

Stakeholder management in the context of the non-profit sector is very important. In fact, non-profit organisations' survival depends on it. Stakeholders of a non-profit organisation may include all or some of the following: donors, members, employees,

regulators, the media, suppliers, clients, communities, partners, creditors, beneficiaries.

#### **Reference to other industry codes**

The Independent Code refers to the following as typical stakeholders of a non-profit organisation:

- Donors
- Beneficiaries
- Members
- Employees
- Volunteers
- Government
- Other NPOs
- The general public

#### **Key points to consider in relation to stakeholder relations**

- Are stakeholders who could materially affect FEDSAS operations identified, and are their legitimate interests and expectations understood and evaluated?
- Does management have a strategy and policies for the management of relations with each key stakeholder grouping?

#### **6.8 Integrated annual report**

***King III, Principle 2.12: The National Council should ensure the integrity of the FEDSAS integrated report.***

Non-profit organisations should consider the benefits that flow from auditing their financial statements, such as increased donor confidence. Local and international donors generally require project audits.

Note that King III refers to the annual report as an “integrated report” to denote the importance of integrating financial and sustainability performance. Many non-profit organisations still issue annual reports as opposed to integrated reports.

Irrespective of what it is called, we believe that non-profit organisations should aspire to have integrated information in their formal reporting to stakeholders, i.e. the

financial and sustainability aspects of reporting should be linked and integrated. This offers the benefit that it provides stakeholders with a holistic picture of both the organisation's finances and the output or impact of its operations. It should also be forward-looking.

Non-profit organisations, which are used to taking into account a wide group of stakeholders, will also find it easier to apply King III principles relating to integrated reporting, corporate citizenship and governing stakeholder relations than will most profit-driven entities – if not in practical execution, at least in concept.

### **Key points to consider in relation to the annual report or integrated report**

- Does the National Council ensure that FEDSAS has implemented a system of review and authorisation, designed to ensure the true and factual presentation of its financial position?
- Does the National Council include commentary on the FEDSAS financial results in the annual integrated report? Does the National Council disclose in the FEDSAS annual integrated report whether it is a going concern and will continue to be a going concern in the year ahead and, if there are concerns about the going-concern status, provide the reasons as well as the steps that FEDSAS is taking to remedy the situation?
- Is a remuneration report included in the annual integrated report?
- Does FEDSAS disclose whether the chairperson is an independent non-executive National Council member, and if not, the reason for this?
- Does the report disclose the nature of the organisation's dealings with stakeholders as well as the outcomes of these dealings?
- Does the report disclose an overview of the appraisal process of the National Council, Council committees and individual National Council members, along with the results of this appraisal process and action plans emanating from such results?
- Does the National Council disclose the number of Council and Council committee meetings held each year, and which meetings each National Council member attended (as applicable)?

- Does the report disclose whether the National Council committees have satisfied their responsibilities for the year in accordance with their formal terms of reference?
- Does the report disclose the names and qualifications of all members of the National Council committees during the period under review, and the period that each member has served on the respective committees?
- Does the report include a statement on whether the National Council is satisfied that the auditor or independent reviewer is independent of FEDSAS?
- Does the report include commentary on the financial statements, the accounting practices and the internal financial controls of FEDSAS?

### **6.9. Business rescue or other turnaround mechanisms**

***King III, Principle 2.15: The National Council should consider business rescue proceedings or other turnaround mechanisms as soon as FEDSAS becomes financially distressed, as defined in the Companies Act.***

The business rescue mechanism is only available to organisations incorporated as NPCs in terms of the Companies Act. Other types of non-profit organisations should consider other turnaround mechanisms when financially distressed. It forms part of the fiduciary duties of members of the National Council to ensure that the organisation has sufficient funds to pay its debts as they fall due; to develop, implement and monitor its fundraising strategy annually, and to recognise financial distress that may lead to financial crisis, as well as manage this in the best interest of the organisation.

A useful guideline to monitor whether the organisation is financially distressed, even for those non-profit organisations that are not companies, is to assess whether it appears reasonably unlikely that the organisation will be able to pay its debts when due within the next six months, or whether it is likely that the organisation will become insolvent within the next six months.

*Approved by the National Council on 16 March 2013.*

*This Code has been adapted for FEDSAS from the practice notes of the Institute of Directors of Southern Africa on King III, “A guide to the application for non-profit organisations”.*