



**Office of the Commissioner**  
for Voluntary Organisations

**Code of Good Governance, Practice and Ethics**  
**for**  
**Administrators of Voluntary Organisations**

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**Code of Good Governance, Practice and Ethics**  
**for**  
**Administrators of Voluntary Organisations**

**1. Preamble**

The Code of Good Governance, Practice and Ethics for Administrators of Voluntary Organisations (hereinafter referred to as the “**Code**”) is issued by the Commissioner for Voluntary Organisations (hereinafter referred to as the “**Commissioner**”) in the performance of his/her duties and the exercise of his/her functions which include monitoring the behaviour of administrators of voluntary organisations (hereinafter referred to collectively as “**VOs**” and singly as “**VO**”).

The Code is being issued under articles 7(1)(h) and 8(2) of the Voluntary Organisations Act, Chapter 492 of the Laws of Malta (hereinafter referred to as the “**VOA**”).

This is the first Code of its kind for the voluntary sector in Malta. It aims to establish standards, principles and rules regarding good governance and good practice which administrators of VOs should follow when performing their work and providing their services. Administrators are expected to have regard to and seek guidance from the Code, as amended from time to time.

This Code was prepared by the Commissioner with the assistance of the Commissioner’s legal consultants’ and after consultation with the Malta Council for the Voluntary Sector (hereinafter referred to as the “**Council**”). Council members made valuable and significant contributions to this Code.

## Part 1

### Definitions and Generalities

#### 2. Why a Code?

- 2.1 This Code is intended, together with other instruments prepared by the Commissioner, to help VOs and their administrators to improve and raise their standards of good governance, good practice and accountability for the purpose of their own efficiency, credibility and the advancement of their VO, as well as in the general public interest.
- 2.2 Good governance and good practice are essential for the running of any successful operation large or small. This principle applies to a VO as much as to any other organisation. Good governance shall be understood not simply as effective and efficient management but also as management that is democratic and ethically correct. The standards and principles of good governance are outlined hereunder.
- 2.3 Codes of good governance, practice and ethics enable organisations to create rules of conduct and systems of accountability for their administrators that ensure the highest ethical and democratic standards in the execution of their duties and the transparency and accountability of their actions. These qualities should be ingrained in the ethos and the administrative culture of all VOs; from the largest to the smallest.
- 2.4 Although compliance with this Code is not mandatory, VOs should revise their governing documents, their statutes, codes of conduct, and any other similar documents using this Code as guidance, and should amend them as necessary to bring them in line with the recommendations laid down in this Code.

- 2.5 VOs that subscribe to the Code's principles should make a statement to this effect in their annual report and other relevant published material.
- 2.6 While all VOs are strongly encouraged to implement the Code, it is recognised that applying its standards will be progressive in nature and likely to be phased in gradually as the VO grows and more formal governance practices are employed.
- 2.7 The administrators of VOs are invited to seek the advice of the Commissioner in writing in the event that their governing document or statute does not allow them to adopt any one or more of the Code's recommendations and/or where there is some clause in the governing document or statute which prohibits administrators from amending the same and/or which entrusts such power to other persons.

### **3. Defining 'Voluntary Organisations'**

- 3.1 'Voluntary organisation' is the term used in the VOA, which is the law governing the voluntary sector, and which came into force on the 11<sup>th</sup> December 2007. Equivalent terms popularly used in other places are 'NGO' (Non-governmental Organisation) locally; 'Charities' in the United Kingdom; and, especially in the United States, 'non-profit organisation' or 'not-for-profit organisation'.
- 3.2 Article 3 of the VOA states that a VO is an organisation which is created or established (i) for any lawful purpose including a social purpose; (ii) as non-profit making; and (iii) is voluntary. VOs are independent and autonomous of the State and cannot be established as limited liability companies or commercial partnerships. The VO may take the form of a foundation, a charitable trust, an association of persons or a temporary organisation.
- 3.3 The term VO applies to a wide range of organisations including those set up for:

- (a) charitable or philanthropic purposes;
- (b) the advancement of education, physical education and sports;
- (c) the advancement of religion, the advancement of health, social and community advancement;
- (d) the advancement of culture, arts and national heritage;
- (e) the advancement of environmental protection and improvement, including the protection of animals;
- (f) the promotion of human rights, conflict resolution, democracy, reconciliation; and
- (g) the promotion or protection of the interests of other social purpose organisations and any of their federations.

3.4 VOs differ widely in size, revenue, and complexity, and the style and the demands of good governance will vary accordingly. Hence, there are certain clauses in this Code of Practice which will not necessarily be applicable to certain VOs, and the Code should be interpreted accordingly. By way of example, in the case of small VOs, good governance could simply mean keeping proper records, being clear about the assignment of roles and responsibilities, and establishing good team-work practices.

#### **4. Defining ‘Administrator’**

4.1 ‘Administrator’ is defined in Article 2(1) of the VOA as any person who is appointed to control, supervise or administer an organisation, and includes a governor, director, trustee or committee member or any other person who carries out such functions even if under another name but shall not include a manager or an executive while carrying out functions under a contract against remuneration except insofar as s/he is an administrator and only relating to his function as an administrator.

- 4.2 The administrator of a VO controls, supervises or administers a VO which has been entrusted to him/her but over which s/he has no rights of ownership. Hence his/her governance is purely custodial. The administrator should be required to provide his/her services in accordance with the provisions of this Code and shall be accountable for his/her actions to the other administrators, the members of the VO and to the general public.
- 4.3 Administrators shall have a duty to show high standards of personal integrity and accountability in the performance of their duties at all times.
- 4.4 Administrators in the voluntary sector shall, in accordance with the general ethic that should inspire the sector, regard their service as a selfless service, that is, a service performed without the expectation of material reward.
- 4.5 The voluntary sector necessarily requires administrators to have the highest ethical standards. Under Article 2(1) paragraph (c) of the definition of “non-profit making”, and paragraph (a) of the definition of “voluntary” of the VOA, administrators of a VO are not entitled to receive remuneration for their services.<sup>1</sup> For an organisation to qualify as “voluntary” it must satisfy this requirement and/or one or more of the other requirements listed in the definition of “voluntary”.
- 4.6 The fact that administrators cannot receive remuneration should not, however, detract in any way from the professional attitude and the high professional quality they bring to their administration of the VO. In this sense, it is desirable that ethical correctness is combined with professional commitment to further the scope and purposes of the VO.

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<sup>1</sup> However, paragraph (i) of the proviso to the definition of “voluntary” states that: “unless the statute provides otherwise, administrators may receive a reasonable honorarium for services rendered insofar as the payment of such honorarium does not materially prejudice the achievement of the purposes of the voluntary organisation.”



4.7 For the purpose of ensuring compliance with paragraphs (d) to (f) above, and in accordance with the definition of “non-profit making” and the proviso to the definition of “voluntary” in Article 2(1) of the VOA, no administrator of a VO shall receive any remuneration for performing the services of an administrator, except in the following cases:

- (a) unless the statute provides otherwise, administrators may receive a reasonable honorarium for services rendered provided that the payment of such honorarium does not materially prejudice the achievement of the purposes of the VO;
- (b) where such reasonable honorarium is received the administrator shall make a declaration in writing that the sum received does not represent more than ten percent (10%) of his or her annual taxable income provided that such honorarium must not exceed €1,000 (one thousand Euro) per year. The said threshold may be revised from time to time to reflect the rate of inflation.
- (c) Where the honorarium exceeds the threshold of €1,000 (one thousand Euro), the said sum shall not be considered to be a reasonable honorarium. Consequently the VO would be acting in breach of the VOA. In this case the advice of the Commissioner should be sought by the Board of Administrators of the VO concerned beforehand; whereby the Commissioner will make an assessment based on the circumstances of the case and shall decide whether to accept or refuse the honorarium exceeding €1,000 (one thousand Euro) and shall give reasons for such decision;
- (d) the VO may reimburse any reasonable expenses sustained by an administrator on behalf of the VO provided that such reimbursement is authorised in writing by the Board of Administrators beforehand, unless the governing document or statute and/or any relevant law and/or regulation states otherwise with regards to such authorisation.

- (e) Where a person is both an administrator and an employee of the same VO, he or she may be remunerated for the services rendered in his/her capacity as employee. The VO must however ensure that the remuneration of its employees does not materially prejudice the achievement of its purposes. Moreover, the VO must ensure that employees do not receive remuneration for the services they may provide in their capacity as administrators of the VO.

4.8 A clear distinction must be drawn between the services a person provides as an administrator and the services the same person provides as an employee of the VO. Subject to the provisions of the Data Protection Act, Chapter 440 of the Laws of Malta and any other relevant laws and/or regulations the person receiving remuneration as an employee shall:

- (a) declare the amount received in his capacity as employee;
- (b) give a copy of the Contract of Employment duly authenticated by a lawyer or notary to the Commissioner and the same will be used by the Commissioner for internal purposes only; and
- (c) give his or her authorisation in writing for the publication of the services such person provides as an employee in the annual report.

## Part 2

### Duties and Code of Ethics

#### 5. Duties

- 5.1 Every administrator is a fiduciary and is expected to act accordingly. Administrators shall fulfil the fiduciary obligations laid down in Article 1124A of the Civil Code, Chapter 16 of the Laws of Malta (hereinafter referred to as the “**Civil Code**”).
- 5.2 As a fiduciary the administrator has a special position of trust, confidence and responsibility within the VO that he/she administers and has to act altruistically for the benefit of such VO.
- 5.3 A fiduciary has a duty, amongst other things, to carry out his/her obligations with utmost good faith and to act honestly in all cases.
- 5.4 Administrators of a VO shall do all that is necessary to ensure the credibility, accountability, transparency and good reputation of the VO and to generate public awareness regarding its work and mission. They shall be accountable for their personal actions and required to be transparent in their dealings.
- 5.5 In order to observe and maintain high standards of credibility, accountability, transparency, good reputation and public awareness, administrators shall be required to:
- (a) Prepare the annual accounts of the VO in accordance with any relevant laws and/or regulations and in accordance with:

- (i) Article 10 of the Second Schedule to the Civil Code (hereinafter referred to as the “**Second Schedule**”) where applicable;
  - (ii) Article 21(4) of the Trusts and Trustees Act, Chapter 331 of the Laws of Malta (hereinafter referred to as the “**TTA**”) where applicable;
  - (iii) Article 12(1)(g) and (i) of the VOA; and
  - (iv) any other relevant law and/or regulations.
- (b) Prepare the annual reports of the VO, which should include a detailed account of the activities organised by the VO in the preceding year and any other relevant details that may be laid down in any relevant laws and/or regulations;
- (c) Keep and ensure compliance with an up-to-date statute;
- (d) Keep up to date records with particulars and details (that is, the name, address and other relevant contact details, and identity card or passport numbers, or registration numbers) of the promoters, members, administrators, founders, volunteers, donors, beneficiaries and other persons connected with or making some contribution to the VO;
- (e) Keep and compile the relevant information (name, identity card number, period of appointment, post or areas of responsibility) regarding the administrators currently on the Board of Administrators and also regarding former administrators;
- (f) Keep up to date records regarding the state, amount and actions taken with regard to any existing property of the VO and any addition made to such property.

- 5.6 Every administrator of a VO shall comply with any applicable laws and/or regulations relevant to the administration of the organisation and shall ensure that the VO and all persons connected with or making some contribution to it shall do likewise.
- 5.7 Every administrator shall have the right of access to any information regarding the VO which the administrator may require for the performance of his/her duties under any applicable laws and/or regulations, under this Code and under the provisions of the statute regulating the VO.
- 5.8 Administrators shall generally avoid situations which may give rise to conflicts of interest<sup>2</sup> as between different VOs administered by them (when they are on more than one board or committee) or as a result of situations where they may have a personal or material interest or otherwise.
- 5.9 Should such a conflict of interest arise, the administrator shall make a declaration of such conflict in writing to the Board of Administrators of the VOs concerned for their judgment. Where a declaration is not made the administrator may be removed in terms of Article 9 of the Second Schedule, whenever this is applicable and/or in accordance with any other relevant laws and/or regulations.
- 5.10 Administrators shall be responsible to guide and monitor the actions of any employees that the VO may employ.

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<sup>2</sup> Conflict of interest: Administrators must have regards at all times to their legal obligations with regard to conflict of interest. Generally they should avoid situations in which conflict of interest arises between the organisations administered by the administrators, including conflicts between the purposes of the organisation and any personal business carried out by the administrator. Similarly, administrators should not enter into transactions in which they have a material interest without first disclosing it to the relevant parties. Where conflicts of interest do arise they must ensure that the circumstances are properly disclosed those affected.

- 5.11 Administrators shall, in the recruitment of staff and the appointment of sub-committees, selection, training and conditions of service, and the buying of goods and services, uphold and apply the principles of “equality of opportunity” and “diversity”.
- 5.12 The administrators of a VO cannot exonerate themselves from liability arising from a breach of trust which is the result of fraud, wilful misconduct or gross negligence on their part in terms of Article 30(5) of the Trust and Trustees Act, where applicable and cannot exonerate themselves from liability for wilful misconduct, gross negligence or breach of duty in terms of Article 16(7) of the Second Schedule, where applicable.
- 5.13 Unless otherwise specified by the statute of the VO and/or in any relevant law and/or regulation, the administrators shall be appointed by the members of the VO.

## **6. Code of Ethics**

- 6.1 Administrators shall always act in the best interest of the VO, not in representation of the interest of some group or faction within it, irrespective of how they have been nominated, elected, or selected to the post.
- 6.2 Administrators shall maintain their independence at all times and avoid coming under the control of any individual or external organisation or third party that may be injurious to the VO.
- 6.3 Administrators shall act with integrity at all times in exercising their powers, duties and responsibilities, and shall declare any conflict of interest when this arises (see paragraphs (5.8) and (5.9) in previous section).

- 6.4 In order to adequately perform their duties, powers and responsibilities they shall ensure that they have a complete understanding of the activities and purposes of the VO and of the statute regulating it, and shall seek legal and professional advice when it becomes necessary for such purpose.
- 6.5 They shall cooperate, coordinate and collaborate with one another at all times as a team, and they shall act prudently to protect the VO's assets and property and ensure they are used to carry out the VO's mission.
- 6.6 They shall refrain from any abuse of their power, any misconduct, fraudulent behaviour or any other unlawful act which would be to the detriment of the VO and its objects and which would go against the principles of good governance and good practice set out in this Code.

### **Part 3**

#### **The Board of Administrators**

##### **7. General Conduct**

- 7.1 A Board of Administrators shall have clear functions and responsibilities and shall organise itself in a manner which would enable it to discharge such functions and responsibilities effectively.
- 7.2 For this purpose, it shall regularly review its own practices and strategies for its own effectiveness and efficiency, and to take any steps necessary to improve the VO's performance.

- 7.3 It shall set out the functions, targets, and responsibilities of any sub-committees, officers (including the chief executive officer where applicable), and other staff and agents to which it may delegate its authority, and shall monitor their results and performance.
- 7.4 It shall be so constituted as to represent a mixture of experience, expertise, knowledge, and other qualities that are relevant to its work and for the progress of the VO and its goals and targets, and to respond to the challenges it faces and the opportunities open to it.
- 7.5 It shall be collectively open and accountable to the members of the VO and to all those others who have an interest in its work. It should also be responsive to the needs and requests of the VO's clients, namely those who benefit from its services, accommodating them when they are feasible and reasonable.
- 7.6 It shall have a strategy for recruiting and replacing administrators who resign or reach the end of their term of office. It shall ensure that the strategy is in conformity with the VOs governing document which shall also set out in appropriate detail the method by which the Board of Administrators is appointed, the period of appointment, and the conditions by which administrators may be removed from office.
- 7.7 Where a VO employs a chief executive officer, the distinction of his/her functions and responsibilities from those of the Board of Administrators shall be clear and written. The Board of Administrators shall focus on the overall strategic mission and direction of the VO and avoid becoming involved in its day-to-day operational matters. It shall hold the staff accountable through the chief executive officer.



## **8. Meetings of the Board of Administrators**

- 8.1 The Board of Administrators shall meet sufficiently regularly in order to enable it to discharge its duties effectively.
- 8.2 The Board of Administrators shall keep sufficiently detailed and accurate records of its meetings, including the agenda, minutes recording matters raised and discussed and decisions taken, correspondence, and any other relevant documents related to the minutes.
- 8.3 Documents of the Board of Administrators shall, as a general rule, be circulated well in advance of the board meetings and shall be clear and well presented.
- 8.4 The Board of Administrators shall ensure that it does its work efficiently and effectively, and it shall seek the advice of any expert, professional, or other person it may require for this purpose and to make well-informed decisions.
- 8.5 The chairperson of the Board of Administrators shall ensure the smooth and proper conduct of the board meetings and shall ensure that the administrators can contribute freely and fairly at the meetings.

## **9. Responsibilities of the Board of Administrators**

- 9.1 The Board of Administrators shall act in the best interests of the VO at all times, particularly by seeking to achieve or further the purposes of the VO as mandated by its statute or, if applicable, by resolutions taken by its administrators or members or founders.
- 9.2 The Board of Administrators is collectively responsible for applying high standards of governance and good practice in the management and administration of the VO.

- 9.3 For this purpose, the Board of Administrators shall ensure that the administrators have clear functions and responsibilities which reflect the different offices they may hold, and that the functions and responsibilities are carried out effectively with team spirit and in accordance with best practice.
- 9.4 The same principle laid down paragraph (9.3) above shall apply to any sub-committees, officers, and any other staff (voluntary and employed), and any agents that the Board of Administrators may employ and/or appoint for any purpose, and shall include a clear definition of any authority delegated to them and the conditions under which they may be dismissed from office.
- 9.5 The Board of Administrators shall ensure that it shall abide by any relevant provisions that are laid down in the VOA and the Second Schedule, and any other relevant laws and/or regulations.
- 9.6 Administrators shall, singly and collectively as the Board of Administrators, provide the VO with high standards of leadership and shall ensure that the objectives of the VO are fulfilled.
- 9.7 The Board of Administrators shall set or approve its policies, budgets, and plans; set its strategic direction; and uphold its values.
- 9.8 The Board of Administrators shall be collectively responsible for ensuring that the organisation is performing to suitable standards, is solvent and fulfilling its objects and it shall set up appropriate monitoring and review mechanisms for this purpose.
- 9.9 The Board of Administrators shall be responsible for ensuring that the VO complies with its vision, mission, and values as set out in its statute, with this Code, and with any relevant laws and/or regulations.

- 9.10 The Board of Administrators shall be responsible for the property of the VO or the property held by them as fiduciaries where the VO is not registered with the Registrar for Legal Persons and shall perform the duties laid down in Article 7(1) of the Second Schedule, where applicable, in relation to such property and similarly the board of trustees of any charitable trust which is a VO shall be responsible for the property which they hold, as owner or which has been vested in them under an obligation to deal with that property for a charitable purpose and shall perform any duties laid down in the Trusts and Trustees Act, Chapter 331 of the Laws of Malta, where applicable.
- 9.11 The Board of Administrators shall set out the VO's standards of conduct for its administrators and shall ensure that its obligations towards its stakeholders and the general public or the relevant sector of the public which the VO targets (present and future) are understood and met.
- 9.12 The Board of Administrators shall ensure that it sets time aside periodically to evaluate and consider its own performance and functioning as a team.

**Note:**

*All terms used in this Code shall have the meaning assigned to them by the VOA, Chapter 492 of the Laws of Malta and any other applicable law and/or regulations.*

*Whenever there is conflict between any clauses of this Code and the provisions of the VOA, the Second Schedule and the Trust and Trustees Act (where applicable) and/or any other relevant laws or regulations, the provisions of such laws or regulations shall override any clauses in this Code which are in conflict with the said provisions.*

**Professor Kenneth Wain**  
**Commissioner for Voluntary Organisations**  
**November 2011**

## Summary of the Main Principles and Content

### Part 1

#### 10. Definitions and Generalities

- 10.1 This is the first Code of its kind for the voluntary sector in Malta. It aims to establish standards, principles and rules regarding good governance and good practice which administrators of VOs should follow when performing their work and providing their services.
- 10.2 Good governance shall be understood not simply as effective and efficient management but also as management that is democratic and ethically correct.
- 10.3 Although compliance with this Code is not mandatory, VOs should revise their governing documents, their statutes, codes of conduct, and any other similar documents using this Code as guidance. VOs that subscribe to the Code's principles should make a statement to this effect in their annual report and other relevant published material.
- 10.4 VOs differ widely in size, revenue, and complexity, and the style and the demands of good governance will vary accordingly. Hence, there are certain clauses in this Code of Practice which will not necessarily be applicable to certain VOs, and the Code should be interpreted accordingly.
- 10.5 The fact that administrators cannot receive remuneration (except in circumstances and under conditions laid down in the VOA) should not detract in any way from the professional attitude and the high professional quality they bring to their administration of the VO. In this sense, it is desirable that ethical correctness is combined with professional commitment to further the scope and purposes of the VO.

- 10.6 Where a person is both an administrator and an employee of the same VO, he or she may be remunerated for the services rendered in his/her capacity as employee. A clear distinction must be drawn, however, between the services a person provides as an administrator and that the services the same person provides as an employee of the VO.

## **Part 2**

### **11. Duties and Code of Ethics**

- 11.1 Administrators of a VO shall do all that is necessary to ensure the credibility, accountability, transparency and good reputation of the VO and to generate public awareness regarding its work and mission. They shall be accountable for their personal actions and required to be transparent in their dealings.
- 11.2 Administrators shall prepare the annual accounts of the VO in accordance with any relevant laws and/or regulations. The administrators shall also prepare the annual reports of the VO, which should include a detailed account of the activities organised by the VO in the preceding year and any other relevant details that may be laid down in any relevant laws and/or regulations.
- 11.3 Every administrator of a VO shall comply with any applicable laws and/or regulations relevant to the administration of the VO and shall ensure that the VO and all persons connected with or making some contribution to it shall do likewise.
- 11.4 Administrators shall cooperate, coordinate and collaborate with one another at all times as a team, and they shall act prudently to protect the VO's assets and property and ensure they are used to carry out the VO's mission.

## Part 3

### 12. The Board of Administrators

- 12.1 A Board of Administrators shall have clear functions and responsibilities and shall organise itself in a manner which would enable it to discharge such functions and responsibilities effectively.
- 12.2 Where a VO employs a chief executive officer, the distinction of his/her functions and responsibilities from those of the Board of Administrators shall be clear and written. The Board of Administrators shall focus on the overall strategic mission and direction of the VO and avoid becoming involved in its day-to-day operational matters. The Board of Administrators shall hold the staff accountable through the chief executive officer.
- 12.3 The Board of Administrators shall keep sufficiently detailed and accurate records of its meetings, including the agenda, minutes recording matters raised and discussed and decisions taken, correspondence, and any other relevant documents related to the minutes.
- 12.4 The Board of Administrators is collectively responsible for applying high standards of governance and good practice in the management and administration of the VO. For this purpose, it shall ensure that the administrators have clear functions and responsibilities which reflect the different offices they may hold, and that the functions and responsibilities are carried out effectively with team spirit and in accordance with best practice.

