



GOOD GOVERNANCE MATTERS

GOVERNANCE REFERS TO THE GENERAL FRAMEWORK OF FINANCIAL, LEGAL AND ETHICAL RESPONSIBILITY IN WHICH AN ORGANISATION IS REQUIRED TO OPERATE.

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Forming an association, bringing people together, is a valuable activity in our lives. The aim may be to provide aid, pursue a philosophy, supply training, promote an industry, share knowledge - the possibilities are many and varied. Once an association has been established, the people in charge of running it have to keep in mind all the limitations due to national and international laws and regulations, and to recognise that there are constraints on associations which can be different from those which apply to businesses. However worthy the asso-

ciation's intentions, its activities must not ignore or avoid legal requirements.

A responsible and rigorously honest attitude to an organisation's funds is essential, in both commercial and associative groups. Board members have a duty to ensure that they are fully informed of the financial situation of their enterprise and that proper care is taken, since misappropriation of funds is a criminal offence. Where legal or regulatory conditions of an association or its own statutes require accounts to be

filed or an annual audit to be conducted, the board and staff must ensure that this is effectively carried out. For an association with a very small annual income, an audit may not be obligatory, but in such cases it is advisable to have the accounts inspected by an independent party.

The role of different people and the way in which they work for an organisation should be clearly defined. Appointed staff are employees, their situation is separate and distinct from that of board members who are elected: it is unsatisfactory and ambiguous to have a person elected to the board of administration and also partly salaried as a member of staff, this leads to an undesirable confusion. If the associa-

tion's structure provides for members of the board to be elected among candidates whose employment is elsewhere, the requirement should be scrupulously observed. This parallels legal requirements for commercial firms to have independent non-executive directors on their boards to ensure external scrutiny of decisions, drawing on wider experience.

It is possible for associations, being legal personalities, to be taken to court in civil actions for offences not contravening a law (an association could be accused of libel, for example) but this is not a frequent occurrence. Social or environmental campaigners, for instance, tend to rely on making their views known and extending their influence in 'the court of public opinion' rather than in a court of law, trying to persuade the public towards their point of view.

When people or companies have formed a group specifically to try and influence institutional authorities - a national government or the European Union, for instance - this is known as lobbying. The name originates from the UK Houses of Parliament where constituents could approach their Members of Parliament in the lobby outside the debating chamber as the MPs headed inside to deliberate, in the hope of influencing their vote.

The EU has decided that it wants to know which bodies, either associations or public affairs firms which can be engaged by a group for payment, are going to lobby the Commission and it requires the 'lobby groups' to declare themselves under the 'Transparency Initiative', by means of registration which requires them to submit extensive information. Public affairs signifies representing the point of view of a specific interest group to authorities, whereas the term public relations is used for the way in which an enterprise presents its views and image to the rest of the world, including the media and the general public.

Industry groupings or trade associations must be very careful not to contravene laws

intended to prevent restriction of competition, as the operation of a free market and genuine competition is esteemed as good practice. Article 101 of the EU Treaty (formerly Article 81) sets out the practices which could be obstacles to free trade in the internal market. In other parts of the world, similar ground is covered by such laws as the antitrust legislation of the United States, Trade Practices Act in Australia and Anti-monopoly Law effective in China from 2008.

When representatives of several companies meet in the context of an association activity they should be constantly aware

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of the risk that they could be suspected or accused of causing bias to free trade or limiting competition. They must not make agreements among themselves on buying or selling prices, on fixing market shares or restricting conditions of trade. Also, associations must not limit membership in a way that keeps new entrants out of an industry. Huge fines can be inflicted if companies are found to have formed illegal cartels - groups which agree to restrict trade or to collude to charge the same prices. Not all cartels are illegal, however: for instance, the oil producers' organisation OPEC is a legal cartel as its regulation of price levels is understood to be an advantage in the public interest.

It may be necessary to have a lawyer present at association meetings to ensure

that discussions do not venture into a forbidden area. If the association's senior officers, such as the Secretary General or Executive Director, are uncomfortable with the direction a discourse is taking they should halt it immediately. For presentations to assembled participants, it is prudent to guide speakers away from a reference to current price levels or a call for stable prices, which could be understood as an attempt to upset the freedom of the market. Speakers' texts should be reviewed beforehand and if necessary talks should be cut short. When companies within an association share technical information for applications such as

REACH, the fine line dividing technical detail from commercially sensitive information is very difficult to draw.

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So much for associations to think about, in maintaining good governance.

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