By-laws of the Legacy Landscapes Fund (LLF) Supervisory Board (SB)

(as adopted by the SB in April 2022, amended April 2024)

Introduction

LLF's charter sets forth comparatively detailed provisions on various Supervisory Board governance matters including the number of SB members, SB responsibilities, the conduct of meetings and the like, which for ease of reference are attached hereto as Annex 1. These by-laws ("the SB-bylaws) seek not to duplicate but are intended rather to complement the relevant provisions of the charter, also taking into account relevant recommendations of the code of the Federal Association of German Foundations ("Grundsätze Guter Stiftungspraxis") and the German Public Company Governance Kodex (PCGK), so that taken together the charter and these bylaws provide an overall governance structure for the SB.

The SB has also adopted by-laws for the Management Board (the "MB-by laws"). The SB by-laws and MB by-laws are intended to complement each other and should be considered together.

1. Internal Supervisory Board Matters.

1.1 SB Membership. The SB will seek to ensure that it manages its composition so that its members, as a group, have the necessary knowledge, abilities and experience to fulfill their supervisory function. The SB shall seek a diverse membership considering especially such factors as gender and regional representation.[1] In accordance with the charter, SB members are appointed for a term of three years with the possibility of renewal. The maximum number of terms shall be three. An SB member's service may end or be terminated prior to the expiration of the relevant term:

- by the member's resignation
- by mutual agreement of the member and the SB chair
- if the SB determines by majority vote that the member has violated his/her duty of loyalty to the foundation or is not able to devote the time necessary to carry out his/her duties (which may be evidenced by failure to attend successive meetings or otherwise).

[1] PCGK Section 6.2.1 and 6.2.2. As a volunteer board of a charitable organization, the SB will be flexible about setting certain restrictions on membership (e.g. retirement age) that might otherwise apply to paid board positions or for-profit oriented organizations.

Candidates for SB membership should only be approached by the Chair and only after a vote of the sitting SB at least three quarters of the members. For the avoidance of doubt, observers to the SB have no formal legal responsibility for LLF are not SB members.

1.2 SB Role. The SB is an oversight body with strategic and support responsibility, not a managing or implementing one. The SB has no authority to represent LLF except in legal transactions with the MB (e.g. the MB employment contracts). When acting within its oversight role, it is liable only for gross negligence and willful misconduct.[2]

The SB shall cooperate with the MB in a close and trusting manner for the benefit of the Foundation. The SB may reserve for itself the right to agree in advance to actions to be taken or transactions entered into by the MB. Under the MB by-laws §3.8, consent of the SB is required for certain matters.[3]

In their support role, it is expected that SB members will use their positions and influence as appropriate to advance LLF's fundraising efforts and more generally promote LLF in public fora, lobby for political support, etc.

1.3 Capacity, Loyalty and Conflict of Interest. SB members serve in their individual capacities.[4] They owe a duty of loyalty to LLF and its purpose. Each member of the SB shall immediately disclose conflicts of interest to the other members of the SB. No SB member shall vote on or participate in the decision-making process of any matter in which such SB member has an interest.[5]

All transactions between the Foundation on the one hand and the members of the SB and related persons or organizations on the other must comply with industry standards. Insofar as they are not otherwise subject to approval under charter or these by-laws, significant transactions with the aforementioned persons or organizations require the consent of the SB.[6]

1.4 Committees. The SB may create such committees as it deems necessary to efficiently carry out its work and delegate agreed responsibilities to such committees, provided that it may not delegate its general responsibility for strategy and MB oversight. The SB should approve a terms of reference for each committee it creates. Committees may consist of one or more MB members and may be advised by such advisors as the committee member(s) believe add value to the Committee's work.[7]

1.4.1 Audit Committee. The SB shall appoint an audit committee and establish a TOR for the committee.[8]

1.4.2 Advisory Committee. The Advisory Committee to LLF is effectively anchored in the MB as an advisor to LLF, but two representatives of the Advisory Committee shall be invited to attend SB meetings as provided in Section 2.[9] See also the Advisory Committee by-laws as adopted by the SB.

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[2] Charter Section 11(1) and 5(4). Were the SB to direct action by the MB outside of its defined areas of competence, it would exceed its statutory competence and accept some legal responsibility.

[3] See Annex 2. PCGK Section 6.1.1.

[4] PCGK Section 6.2.3.

[5] PCGK Section 6.4.1.

[6] PCGK Section 5.4.3.

[7] Charter Sections 10(6)

[8] PCGK Section 6.1. Charter Section 12.3.

[9] Charter Section 10(7)

1.5 Meeting(s) of the SB. Section 12 of the charter (see Annex 1) contains detailed provisions on meetings, which are to be held at least twice per year. At least once per year, the SB shall hold a session without the presence of the MB.[10] In addition to or as part of SB meetings, executive sessions attended only by SB members without observers or the MB can be organized on ad-hoc basis as needed.

1.6. Member Conduct and Board Evaluation. Each SB member is responsible for assuring that s/he has adequate time to devote to foundation affairs. If a member misses more than half of the meetings in any given year this shall be reported in the annual governance report.[11] The SB shall at least bi-annually review the quality and efficiency of its work and that of its Committees, and follow the implementation of any recommendations for improvement.[12]

2. Supervisory Board Observers and Guests.

2.1 General. The SB may invite individuals with special expertise as Observers to such portions of its meetings as it determines to be appropriate, and shall invite the two representatives elected by the Advisory Committee in accordance with the Advisory Committee By-laws (the AC SB Observers). SB Observers are not SB Members and are not entitled to vote in any decisions by the SB. [13] Subject to that limitation, SB Observers shall participate in SB meetings as do SB members and have a right to speak. In particular, they are tasked with channeling feedback to the SB from the broader AC. All Observers shall maintain confidentiality about information and decisions unless such decisions are made public by the SB.

2.2. AC SB Observers. It is recognized it would be inappropriate for an AC SB Observer who is a representative of an implementing organization to participate in the review or discussion of (i) upcoming calls for proposal, (ii) individual project proposals presented to the SB, or (iii) the review of reporting on the details of the progress of an implementing organization in implementing the grant. Accordingly, the AC SB Observer who represents an implementing organization will not receive materials relating to such topics and will be excused from SB meetings when they address such topics. At any SB meeting where Advisory Committee membership is discussed, the AC SB Observers shall be entitled to present the views of the AC but may, at the discretion of the Chairman of the SB, be excused from the SB discussion of and decision on AC membership.

2.3. Guests. With the consent of the Chair, SB and MB members may invite guests to meetings to advise on particular agenda points or more generally follow the meeting (e.g., LLF, KfW and BMZ staff).

3. Annual Objectives and Performance Review of the MB.

[10] PCGK Section 4.2.2.
[11] PCGK Section 6.2.3
[12] PCGK Section 6.1.9.
[13] Note that under the Advisory Committee by-laws, the organizations with whom SB members are affiliated may also be represented at the Advisory Committee (AC), but the representatives of these organizations do not have voting rights in the AC. As AC SB Observers have voting rights at the AC but do not have such rights in the SB, the effect is that persons affiliated with the same organization or institution will not have simultaneously have voting rights in both the SB and the AC.

Annually prior to beginning (or at the very outset) of each year, the SB and the Executive Director shall agree the ED's annual objectives and KPIs. The goals should be sufficiently ambitious, time bound and to the extent possible measurable—and should not be adjusted or changed without a clear basis for doing so. The achievement of the goals and KPIs should be the basis for the ED's bonus award.

At one of its executive sessions, the SB shall consider the ED's performance and bonus based on a report presented by the ED. The SB Chair or Vice-Chair shall maintain a separate file documenting the evaluation and basis for the bonus decision. Compensation and bonus should be evaluated as appropriate in the context of the NGO/foundation environment and take account of the "prohibition against higher placement than comparable German government officials" (Besserstellungsverbot).

In the event an MB member takes on another paid position (for example in the supervisory board of another organization), the SB will consider the impact if any on the MB's compensation at the foundation. [14]

4. PCGK Compliance.

LLF shall apply the PCGK in a manner consistent with its status as a charitable foundation under Hessen law, and the MB and SB shall prepare annually a corporate governance addressing the requirements of the PCGK including the required "comply or explain" statement. Any conflict of interest with a member of the SB and its treatment should be disclosed in the report. [15]

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[14] Sections 5.3.3 and 5.3.2.

[15] PCGK Sections 7.1 and 6.4.1. NB—should also go into MB by-laws.

Annex

Relevant LLF Charter Provisions

1. General Provisions of the Charter Relating to SB Governance.

§ 10(5) The SB may adopt by-laws governing its conduct, for the adoption and amendment of which, in addition to the requirements of § 12, the approval of three quarters of the members is required.

§ 5(3) A member of the management board (MB) or SB may not be a member of the other body at the same time.

2. Responsibilities and Rights

§ 5(2) The members of the SB serve on an honorary (volunteer) basis… [M]embers… are entitled to compensation for costs and expenses incurred in connection with the exercise of their duties…

§5(4) Members…are only liable for intentional misconduct and gross negligence insofar as they serve on an honorary basis irrespective of other provisions of the Hessen foundation law.

§ 11(1) The SB shall take the Foundation's strategic policy decisions, which shall be implemented by the MB. In addition, it has in particular the following tasks:

- Election of the members of the MB…;
- Building up, developing and positioning the Foundation;
- Advising, supporting and supervising the MB;
- Adoption of the by-laws for the MB and the grant guidelines;
- Requests to the Supervisory Authority for Foundations for changes to the statutes, changes in purpose, dissolution and merger of the Foundation with another Foundation;
- Consent to legal transactions, grant commitments to Legacy Landscapes and projects which, according to the by-laws of the MB, require the approval of the SB;
- Approval of the budget for the following year;
- Appointment of the external auditor;
- Receipt of the audited annual financial statements;
- Discharge of the MB;
- Review of the allocation of the Foundation's funds and the realization of the Foundation's purpose.

§ 11 (3) The Chairman of the SB or, in the event of his absence, the Deputy Chairman, represents the Foundation in legal transactions with the MB and in the appointment of the auditor.

§11(2) Each individual member of the SB has a comprehensive right to information and examination. At the request of at least two members of the SB, the SB through its Chairman may require special reports from the MB on the fulfillment of the foundation's purposes and the implementation of the then applicable grant guidelines...

3. Composition, Appointment & Term

§10(1) The SB shall consist of two appointed members and up to seven additional elected members. Representatives of public and private donors to the Foundation and up to two experts in the field from civil society or a specialized international organization may be so elected, provided that the maximum of seven additional elected members may not be exceeded. They should have expertise necessary for the fulfillment of the purpose. The term of office of the members of the SB is three years. Re-appointment or re-election is permitted.

The two appointed members of the SB are determined as follows:

a. A member of the SB is appointed by BMZ, who does not need to be an employee of BMZ.
b. A member of the SB is appointed by the founder KfW, who does not need to be an employee of KfW.

The other members of the SB shall be elected for a first term by the members appointed pursuant to paragraphs (a) and (b) above, by joint declaration.

§ 10 (2) The appointed members may be recalled at any time by the appointing institution. In the event of the departure of an appointed member, a substitute member shall be appointed by the person entitled to do so under para. 1 a) and b). Upon the resignation of an elected member, the SB may elect a successor by simple majority vote, provided that the maximum of seven members may not be exceeded.

§ 10(7)….The advisory boards [cf. §5 below] may nominate up to a total of two experts and / or representatives of the non-profit organizations represented on the advisory councils who are invited as observers to the meetings of the SB and who have the right to speak.

4. Chair and Deputy Chair

§ 10 (3) The member of the SB appointed by BMZ in accordance with paragraph 1 a) above shall be Chairman of the SB; the member of the SB appointed by KfW pursuant to para. 1 b) shall be Deputy Chairman. In the event that BMZ or KfW have waived in writing the right for their appointed member of the SB to also be the SB Chair or Deputy Chair, as the case may be, the entire SB shall elect from among its members a Chairman or Deputy Chairman of the SB for a period of three years. Re-election is permitted.

§ 10 (4) Insofar as BMZ or KfW no longer wish to exercise their rights referred to in paragraph 1 (a) and (b) above, and have declared this in writing to the Foundation, all the members of the SB shall be chosen by election, i.e. by a majority vote decision of the SB. The same applies if BMZ or KfW do not exercise their right to appoint within six months after the departure of a person appointed by them. To the extent that appointed members are replaced by election, the special rights assigned to them by this charter shall no longer apply.

5. Committees and Experts

§ 10(6) The SB may establish committees and invite external experts to them as advisors.

§ 10(7) The SB should appoint one or more advisory councils. The advisory council should include representatives of the foundation's public and private donors, international nature conservation experts and scientists as well as representatives of non-profit organizations and government representatives from those countries with which the Foundation cooperates in implementing measures. An advisory council provides technical advice on the Foundation's projects, it does not decide on the allocation of Foundation funds… The SB determines the details in by-laws.

6. Conduct of Meetings and Resolutions

§ 12(1) Meetings of the SB shall be convened by the Chairman or his deputy, whenever necessary for proper management, but at least twice a year. The meeting shall be convened by giving at least two weeks' notice and stating the agenda. Meetings shall also be convened if two members of the SB or the MB of the Foundation so request it.

§ 12(2) Decisions of the SB are generally taken at meetings. The SB shall have a quorum if more than half of its members are present or represented after a proper notice has been made. A member of the SB may be represented at the meeting by another member of the SB

§ 12(3) The MB participates in the meetings as a guest. The SB may decide to exclude the MB from

discussions of individual agenda points, especially personnel questions.

§12(4) Errors in convening a meeting are considered to be cured if all members are present or represented and no member disagrees.

§12(5) The SB shall take its decisions by a simple majority of the non-abstaining members who are present or represented. In the event of a tie, the Chairman's vote, or in the event of his absence the vote of his Deputy, shall be determinative.

§12(6) Minutes of the SB meetings shall be kept and must be signed by the Chairman and the secretary. Meetings may also be held by telephone or video conferencing unless a member of the SB objects.

Resolutions shall be recorded in writing. The minutes shall be reported to all members of the SB and to the Executive Director of the MB of the Foundation.

§ 12(7) The Chairman may also request written, telegraphic or electronic voting by circulation procedure in text form, with the transmission of the decision items and indication of the voting period, which as a rule will be at least two weeks. The decision must be documented in an appropriate manner and recorded in the minutes of the next meeting. If a member of the SB disagrees with the Chairman's request, the latter shall convene a regular meeting of the SB.

§12(8) Secrecy must be maintained on the contents of the SB meetings. This does not apply to the appointed members in relation to their appointing institutions. At the request of a SB member, the SB may permit reports to the member's employer or institution

Annex 2

Supervisory Board approval is required for the following matters:

(a) Adoption or amendment of the grant guidelines and investment guidelines.
(b) Announcement of a call for proposals and setting of any regional or thematic focus of a call.
(c) Approval of grant projects (approval of the overall concept proposal and maximum Euro amount) and termination of approved projects or amendments to grant projects outside the authority of the MB.
(d) Conclusion, amendment or termination of the terms of non-grant contracts (employment contracts, consulting or other service provider contracts, etc.) which are not budgeted in the annual financial plan or which, in the individual case, commit the Foundation to an amount in excess of Euro 50,000 per year.
(e) Non-grant spending in any given year that exceeds by more than 5% the approved budget for non-grant spending for that year.
(f) Acceptance of donations or contributions to the Foundation of any kind