

By-laws Supervisory Board of OAPEN

9 June 2023

Article 1. Status and content of the by-laws

1. These by-laws have been drawn up pursuant to the Articles of Association of the OAPEN Foundation (“**Articles of Association**”) and serve to supplement the rules and regulations governing the Supervisory Board (“**Board**”) based on applicable laws and regulations or the Articles of Association.
2. The Board has adopted these by-laws in the meeting of 9 June 2023. The Board has the power to amend, supplement, or dissolve these by-laws.
3. In case of any conflicts between these by-laws and applicable laws and regulations or the Articles of Association, the applicable laws and regulations or the Articles of Association will take precedence. If any provision of these by-laws is in accordance with the Articles of Association but in violation of laws and regulations, the latter will take precedence.
4. If any of the provisions of these by-laws are not or no longer valid, this will not affect the validity of the remaining provisions of these by-laws. The Board will replace the invalid provisions with valid provisions which effect is as similar as possible to that of the invalid provisions in terms of content and scope.
5. The by-laws of the Supervisory Board and the by-laws of the Managing Director are complementary documents and form a cohesive whole.

Article 2. Terms and definitions

The following definitions are used in these by-laws:

- Foundation: the OAPEN Foundation, founded on 8 July 2011
- Board: The Supervisory Board of the OAPEN Foundation
- Managing Director: the managing director of the Foundation or his/her substitute appointed as such
- Employee: the person employed at the Foundation based on an employment relationship.

Article 3. Duties and composition of the Board

1. The Board is vested with all duties and powers assigned to it based on legal provisions and the articles of association of the Foundation.
2. The Board is responsible for supervising the policy of the Managing Director and the general state of affairs at the Foundation. Where necessary, the Board will intervene and assist the Managing Director with advice without prejudice to his or her powers. When performing its duties, the Board will focus on the interests of the Foundation and consider the interests of the persons involved in the Foundation.
3. The Board appoints one of the members Chair of the Board and one of the members Vice-Chair.

4. The Chair of the Board serves as the communication partner of the Managing Director. The Chair can decide to be accompanied by the Vice-Chair or another member of the Board.
5. The Board appoints an audit committee consisting of at least one member of the Board not being the Chair. The task of the audit committee is advising the Board on the selection of an independent auditor and on financial matters by overseeing the financial reporting process and the internal control system.
6. Members of the Board will resign in the interim if required, for example, in case of an inadequate performance, structural conflicting insights, incompatibility of interests, or otherwise.
7. The Board will arrange a (self-)assessment of its own performance at least every two years, both among the members and vis-à-vis the Managing Director. The outcomes of the assessment and any resulting consequences will be set out in writing.

Article 4. Powers and responsibilities

Without prejudice to the contents of the articles of association of the Foundation and in addition to these articles, the Board will have the following powers and responsibilities:

- a. the appointment, dismissal, and suspension of the Managing Director. The recruitment and selection of the Managing Director will take place based on a profile description drawn up in advance, taking into account the developments that are decisive for the Foundation, its activities, and the desired expertise of the Managing Director;
- b. conducting an annual performance interview with the Managing Director (not his/her substitute). This interview will be conducted by representatives of the Board, after which the outcomes will be discussed by the Board. The Board will draw up a report of the performance interview and the subsequent meeting which will be archived by or on behalf of the Board;
- c. monitoring the performance of the position of Managing Director and the general state of affairs at the Foundation;
- d. assisting the Managing Director with reflection and/or advice;
- e. representing the Foundation when the Managing Director has a conflicts of interest, is absent or not able to do so;
- f. approving the annual accounts and conducting the preceding meeting with the auditor on his or her findings as referred to in Article 13.3 of the articles of association of the Foundation.

Article 5. Decisions by the Managing Director requiring approval of the Board

In addition to Article 10.12 of the articles of association of the Foundation the following decisions of the Managing Director require the prior permission of the Board:

- a. changes to the identity of the character of the Foundation or the activities of the Foundation;
- b. termination or transfer of all or virtually all activities of the Foundation;
- c. accepting financial obligations which impact exceeds an amount adopted by the Board and communicated to the Managing Director in writing;
- d. (dis)investments with a significant impact on the Foundation;
- e. arranging pension plans and granting pension rights exceeding those arising from existing plans;
- f. concluding settlement agreements;

- g. participating in legal proceedings, including conducting arbitration proceedings;
- h. participating in and managing other legal entities and companies, or the termination thereof;
- i. appointment of the substitute director as mentioned in article 4 and 5 of the by-laws of the Managing Director.

Article 6. Meetings and decisions

1. Meetings of the Board will be attended by the members of the Board. Each member of the Board can be represented by another member of the Board based on a written mandate issued by him/her. Each member of the Board can represent up to one fellow member of the Board at the meeting.
2. The meeting is attended by the Managing Director, unless the Board decides otherwise. The Managing Director can be assisted by one or more employee(s) at the meeting with the permission of the Chair. The meeting can also be attended by any person permitted by the members of the Board present at the meeting.
3. The Board will discuss the performance of the Managing Director, without the Managing Director being present, at least once per year.
4. All votes will be cast verbally. However, the Chair of the meeting can decide that votes will be cast in writing. If the voting concerns an election of persons, any person with voting rights present at the meeting can require the votes to be cast in writing. Written votes will be cast using signed ballot papers at physical meetings and chat- or email-messages sent to the Chair (without being visible for other voters) at online meetings.

Article 7. Financial reporting

1. Before May 1, unless this period is extended by the Board based on special circumstances, the Managing Director will submit annual accounts – consisting of a balance sheet, a profit and loss account, a cashflow overview, notes, an annual financial report, and an auditor's report on the reliability of the annual accounts – to the Board.
2. Every quarter, the Managing Director will submit a financial report of the preceding quarter to the Board, which report will at least consist of the following elements concerning the period covered by the report: actual results versus budgeted results, liquidity overview, evaluation, balance sheet, and profit and loss account.

Article 8. Transparency and accountability

1. The Board will periodically discuss the state of affairs at the Foundation with the Managing Director. The Board will discuss the strategy, the general policy, and the financial state of affairs with the Managing Director at least once per year. This will include the budget, the annual accounts, and the administrative organisation and internal control systems.
2. The Board and the Managing Director will periodically discuss the desired level of liability insurance of the Foundation and itself.
3. Insofar as the state of affairs will be discussed with external stakeholders, this will primarily be done by the Managing Director. If desired, the Chair or a member of the Board can attend this meeting.

4. The ancillary positions of the members of the Board and the Managing Director will be listed on the website of the Foundation.