Blue Action Fund (the “Foundation”)
By-laws (Geschäftsordnung) for the Management Board
As updated by the Supervisory Board 24 November 2022

Introduction

§7.4 of Blue Action’s charter requiring the Supervisory Board (SB) to approve by-laws for the Management Board (MB) is best implemented in the context of the charter itself, which sets forth comparatively detailed provisions on various MB governance matters including the number of MB members, MB responsibilities and the like, which for ease of reference are attached hereto as Annex 1. These by-laws (“the MB-bylaws) therefore 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 itself (the “SB-by laws”). The MB by-laws and SB by-laws are also intended to complement each other and should be considered together.

§1 Fundamental Operating Principles

(1) The members of the MB shall conscientiously observe the law, the Foundation charter and these by-laws in managing the foundation.

(2) In addition, the MB shall take into account the governance code of the Federal Association of German Foundations and the PCGK
§ 2 Principles of management board work

(1) All members of the MB shall contribute to the success of the Foundation and undertake to carry out their duties with integrity and in an informed and responsible manner. Even if they have other obligations, they will devote the time and care necessary to carry out the Foundation's work.

(2) The MB shall maintain confidentiality with regard to the content of the meetings and resolutions of the MB and SB. All members of the MB shall ensure that third parties who are engaged by them act in the same way as regards the confidentiality obligation.

§ 3 MB Conduct of Business

(1) Chair of the MB
   a) The Chair shall convene and chair the meetings of the MB. If necessary, s/he shall ask for written, electronic or electronic voting by circulation.
   b) The Chair represents the MB vis-a-vis the SB.

(2) Responsibility of MB members
   a) The MB may decide on a division of responsibilities whereby its individual members or committees of members are assigned certain ongoing tasks to be dealt with independently. The members of the MB shall nevertheless bear responsibility jointly.
   b) Important matters that fall within its decision-making authority require a resolution of the MB. In particular, all measures and transactions which are of special importance to the Foundation or involve a material economic risk require the prior approval of the entire MB.
   c) Each MB member is obliged to call for a resolution of the entire MB if s/he is concerned about the actions of the other members of the MB and the concerns cannot be solved by a discussion with the other MB members.

§ 4 Executive Director

In accordance with §7.3 of the charter, the SB can entrust a member of the MB with the Foundation's current business (as so-called "managing" Management Board member/ Executive Director).

(1) Tasks of the Executive Director.
   a) The Executive Director shall deal with the ongoing business of the Foundation.
   b) In particular s/he shall be responsible for the selection and management of the employees and service providers, public relations and communication, general representation, administration of the Foundation and implementation its grant program.

(2) Special rights and obligations
   a) The SB may confer sole powers of representation on the Executive Director and/or waive the application of the restrictions on the multiple representation pursuant to Art. § 181 of the German Civil Code (BGB).
b) If the SB names an Executive Director, s/he shall act as Chair of the MB.

(3) Cooperation with the MB. The Executive Director shall keep the other members of the MB informed of important measures and events on an ongoing basis.

§ 5 Experts and Advisory Councils

(1) As provided in the charter §7.5, the MB may mandate experts to support its day to day work (cf §10 below).

(2) The MB may set up advisory councils in order to prepare its decisions or support its work or, upon instruction from the SB, the work of the SB. At least one member of the MB shall be a member of any advisory council. Membership on any advisory council shall be honorary and unremunerated unless otherwise approved by the SB.

(3) The MB shall document the terms of reference for experts and advisory councils in writing.

§ 6 Cooperation of the MB with the SB

(1) Basic Principles.

a) The MB and the SB cooperate in a close and trusting manner for the benefit of the Foundation.

b) The minutes of the MB meetings shall be reported to the Chairman of the SB upon request.

c) The SB is responsible for setting the Foundation's strategy including establishing the thematic and regional focus of the Foundation's work. The MB supports the SB in preparing the strategy.

(2) Reporting Obligations

a) Annual accounts

No later than nine months after the end of each financial year, the MB shall submit to the SB annual financial statements audited by an independent auditor as well as an annual report which, following approval by the SB, shall within nine months after the end of the financial year be submitted to the foundation authority.

b) Budget

The MB shall submit to the SB, at least 30 days before the end of a given financial year, a budget for the following year that sets forth the planned expenditures and income. Until the approval of the new budget, the Foundation can continue to cover both running costs on the basis of the previous year's budget and existing planned grant commitments, but cannot make new grant commitments.

c) Regular reports

The MB shall inform the SB on a regular basis regarding the state of business and the situation of the Foundation. To this end, the MB shall present, either in written form or at SB meetings, semi-annual reports to the SB outlining the Foundation's activities (grants, partnering and networking, communication, fundraising, etc) as well as the economic situation (investment performance, contributions received and budget performance). As a rule such reports shall be made within two months after the end of each semi-annual
period (by August 31 for the period ending June 30 and by February 28 for the period ending December 31) unless a scheduled SB meeting date makes another reporting period and schedule more sensible.

d) Reporting of Important Events
The MB shall report to the SB without delay if there are important reasons for doing so or if there are business issues that may have a material impact on the situation of the Foundation.

§ 7 Transactions subject to Prior Authorization
(1) The MB requires the consent of the SB for the following transactions:

a) Adoption and amendment of Foundation policies such as the Investment Policy and Grant Procedures Manual and the fundamental operating principles of the Operations Manual (see § 9 below).

b) Pursuit of any grant project (approval of the overall concept proposal and maximum Euro amount) and termination of approved projects

c) Conclusion, amendment or termination of any non-grant contract (e.g. employment contract, consulting or other service provider contracts, etc. which either (i) is outside the ordinary course of business, or (ii) was not budgeted in the Foundation’s annual budget and commits the Foundation to an amount in excess of Euro 75,000 per year.

d) Setting up expert panels or advisory councils and selecting their members

e) Non-grant spending in any given year in excess of 105% of the approved budget for that year.

f) Acceptance of additional contributions to the endowment.

(2) The SB may also grant the MB revocable consent for individually specified matters in advance.

§ 8 Grant Making
(1) The MB is responsible for the implementation of the Foundation's grant program, in particular for the award of the Foundation's funds.

(2) With support from the SB, the MB will develop a set of guidelines setting forth information on procedures relating to the grant-making activity of the Foundation ("Grant Procedure Manual"). Such guidelines will include requirements and/or information on eligibility of grantees, grant application procedures, co-financing, grant reporting and audits, evaluation and monitoring procedures, and the like.

(3) The issuance and any amendment of the Grant Procedures Manual requires the approval of the SB. The current version of the Grant Procedures Manual will be maintained on the Foundation’s website.

(4) The overall concept proposal and maximum Euro amount for all project grants shall be submitted to the SB and require SB approval. Following SB approval, the MB shall negotiate and sign the respective grant agreements for approved concepts. Substantial
deviations from the approved concepts shall be resubmitted to SB, it being understood that a reduction in the grant amount shall not as a rule be considered a substantial deviation. In addition, the MB shall have the authority to amend previously approved grants, provided that the additional expenditures are for substantially the same purposes approved in the initial concept proposal for the grant and do not exceed an amount equal to 15% of the grant amount or Euro 250,000, whichever is less.

§ 9 Financial and Operating Principles

(1) The MB shall be responsible for the proper administration of the Foundation.

(2) The MB shall develop an Operations Manual regulating the detailed administrative procedures of the Foundation, including such matters as sources of the foundation’s budget, financial management (including budgeting and administrative expenses) accounting, banking and bank accounts, financial statements and reporting, auditing, human resources, procurement policies, information technology, social and environmental safeguards and the like.

(3) Fundamental operational principles to be recorded in the Operations Manual (regarding procurement, financial statements and the like) require approval of the SB. Subject to compliance with the directives of the SB on such principles and any other operational matters deemed important by the SB, the issuance and amendment of the “Operations Manual” shall be within the authority of the MB. The binding version of the Operations Manual shall be reported to the SB and maintained on the Foundation’s website.

§ 10 Investment Objectives and Investment Policy

(1) The MB is responsible for the management of the Foundation's financial assets in line with the principles of this § 10.

(2) The MB shall (with the consent of the SB § 7(d) above) name an expert panel as its investment committee whose role shall be defined in the Investment Policy referred to below.

(3) With the support of the investment committee, the MB shall develop an “Investment Policy” that will provide for reasonable measures to control risk. The Investment Policy will use an investment strategy based on diversification of investments and include limitations on the percentage of the Foundation's assets that can be invested in particular asset classes (such as stocks, bonds, real estate, etc.), countries or geographical regions, currencies or industries or companies. The investment policy also contains information on the organization of the investment activity and on investment controlling.

(4) The adoption and amendment of the "Investment Policy" requires the consent of the SB. The binding version of the Investment Policy shall be maintained on the Foundation’s website.
(5) The MB will evaluate the investment strategy regularly with the investment committee to ensure that the risks assumed are prudent and are designed to maximize consistent long-term returns on investment.

(6) The MB shall, with the approval of the SB, engage an experienced investment manager or an advisor who will assist with appointing a custodian, mandating further asset managers or investments in investment funds or similar vehicles.

(7) In connection with their appointment, the MB may agree customary indemnity arrangements with investment committee panel members and the investment advisor.

§ 11 Conflicts of Interest

(1) Each member of the MB shall immediately disclose conflicts of interest to the SB and inform the other members of the MB accordingly.

(2) No MB member shall vote on, or participate in the decision-making process of any matter in which such MB member has an interest.

(3) All transactions between the Foundation on the one hand and the members of the MB 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.

§ 5 Foundation Bodies

2. … If the income situation of the Foundation permits it, the supervisory board may decide that individual or all members of the management board receive an appropriate remuneration, set by the supervisory board. Apart from that, the members of the management board also serve on an honorary basis. All members of the two bodies are entitled to compensation for costs and expenses incurred in connection with the exercise of their duties as members of the bodies.

3. A member of one body may not be a member of the other body at the same time.

4. Members of the bodies are only liable for intentional misconduct and gross negligence.

§ 6 Management Board

1. The management board shall consist of at least two and a maximum of three persons. It shall be elected by the supervisory board for a period of three years or by a different term of office to be determined by the supervisory board. Re-election is permitted. After the end of his term of office, the acting management board member continues his business until the election of the new management board member. The members of the first management board are appointed by the founder for a period to be determined by them. All members of the management board must have special expertise and experience with regard to the tasks of the Foundation and particularly support its objectives.

2. If a member of the management board wishes to resign his office before the expiry of his term of office, he has to announce this to the management board and the supervisory board six months before his departure. The notice period applies unless there is an important reason. Insofar as members of the management board are employees of the donor KfW, their office ends with the termination of the employment relationship.

3. The members of the management board may be dismissed before the expiry of their term of office for an important reason, in particular in the case of incapacity for proper management or conduct contrary to law or the provisions of the charter. Such a resolution requires the approval of three quarters of the supervisory board members, by way of derogation from § 12 para. 4.

4. The management board shall elect an Executive Director and a Deputy Executive Director from among its members for the duration of the term of office.

§ 7 Responsibilities of the Management Board

1. The management board shall ensure the permanent and sustained fulfillment of the Foundation’s purpose. It shall manage the business of the Foundation in accordance with the law, this charter as well as the management board by-laws to be issued in accordance with para. 4 below, with the reasonable care appropriate to a management board. The management board shall use the Foundation's resources frugally and economically. The management board is in particular responsible for

a. managing, under on its own responsibility, the Foundation's assets according to the Foundation's purpose, this charter and the management board by-laws,

b. deciding on the creation and dissolution of reserves,
c. implementing the measures to achieve the purpose of the Foundation, in particular the allocation of the available funds,
d. establishing a budget for the coming financial year,
e. appropriate measures to ensure compliance, prevention of corruption and risk management,
f. producing an annual report on the fulfillment of the purpose of the Foundation, and
g. preparing a financial statement compliant with regulatory requirements within six months of the end of the financial year in question. The annual financial statement must be audited by an independent auditor and must contain the following contents:
- Balance sheet showing the assets and reserves as of 1 January and the balance as of 31 December
- Presentation of the spendable assets, including any contributions as well as actual spending
- Earnings from the Foundation assets
- Any additional contributions to the endowment capital or the spendable capital
- Any donations of third parties in furtherance of the Foundation’s purpose

2. The audited financial statements, including the balance sheet and the report on the fulfillment of the purpose of the Foundation, shall be submitted to the supervisory board and the Supervisory Authority for Foundations within nine months after the end of the financial year.

3. The management board shall represent the Foundation in and out of court by at least two of its members. One of these members must be the Executive Director or, in the event of his being unavailable, the Deputy Executive Director.
   The supervisory board may also entrust a member of the management board with the day-to-day business of the management of the Foundation (the so-called Managing Executive Director). The supervisory board may confer sole power of attorney on the Managing Executive Director and/or waive the restrictions on multiple representation pursuant to § 181 of the German Civil Code (BGB).

4. The supervisory board shall adopt by-laws for the management board which may make certain transactions and projects subject to its approval.

5. Experts may be mandated for the day-to-day business and a managing officer and/or support staff may be hired if the Foundation’s financial situation allows it and the ongoing business of the Foundation requires it. The managing officers can be appointed as special representatives in the sense of § 30 of the German Civil Code (BGB).

§ 8 Unauthorized Business

1. The making of loans or granting of credits by the Foundation are impermissible.

2. The issuance of bonds and the assumption of unconditional or conditional guarantees and similar liabilities is impermissible.

3. The granting of credits and loans to members of the management or supervisory board and to employees of the Foundation, as well as their dependents or closely connected persons, is impermissible.