Joachim Herz Stiftung

Charter

Hamburg, March 3rd, 2016
PREAMBLE

It is the desire of the Foundation’s benefactor that assets and property donated to the Foundation be indelibly used for the advancement of education, science and research. In pursuance of this goal the Foundation promotes outstanding people and institutions that have demonstrated their capability or potential.

The Foundation is completely independent and conducts its endeavors in a way to best achieve the Foundation’s purpose and intent. The Foundation’s governing bodies shall act commensurate with this objective.

I. Formation, Purpose and Corpus

§ 1 Name, Legal Form, Domicile

(1) The Foundation shall bear the name:

Joachim Herz Stiftung
(Translated: Joachim Herz Foundation)

(2) The Foundation is a legal entity vested with all rights, privileges and powers conferred by German civil law.

(3) The Foundation is domiciled in the Free and Hanseatic City of Hamburg, Germany.

§ 2 Purpose of the Foundation

(1) The Foundation’s purpose is the advancement of education, science and research in the fields of business administration, economics, law, medicine, chemistry, physics and biology. Furthermore, the Foundation seeks to foster and promote educational institutions and students within the context of general primary and secondary school education. The Foundation’s purpose is also the procurement and transfer of funds for the benefit of other nonprofit organizations and public entities with preferential tax status in order to achieve nonprofit goals. The purpose of the Foundation also extends to those disciplines, which can objectively be regarded as belonging to the enumerated areas supra.

(2) In particular, the following shall be used in order to advance the Foundation’s intended purpose:

a) the awarding of research grants, scholarships or other donations to qualified (prospective) students and pupils;

b) creative and financial participation in research and teaching programs as well as scholarship programs that are awarded by qualified academic institutions (universities or similarly situated institutions);

c) creative and financial support for qualified educational, scientific and research
institutions;

d) establishment of scholarship programs as well as their organization and for qualified students and pupils, especially in the promotion of international exchanges,

e) conducting competitions and awarding prizes.

Awards of scholarships, prizes and other donations within the meaning of § 2(2)(a), (d) and (e) hereof shall be governed by guidelines for which each applicable version thereof shall require the consent of the competent regulatory authority.

(3) If the Foundation creates and uses its own institutions to pursue its goals, then such activities shall require an affirmative resolution passed by the Joint Committee.

(4) The Foundation exclusively pursues direct charitable objectives, as that term is understood in the Chapter of the German Tax Code regulating “Preferential Tax Treatment.”

(5) The Foundation acts independently of any political, governmental and religious ideals, objectives or influence. The Foundation’s governing bodies shall conduct their activities based solely on the Foundation’s intended purpose. Any conflicts of interest are to be disclosed by the governing body concerned immediately. Institutions and persons who are related to or employed by members of the governing bodies may not receive grants or aid.

§ 3 Foundation Assets

(1) The Foundation has assets and property (Estate Corpus), the amount of which has been qualified through devise and bequest and subject to the grant of the petition recognizing the legality of the testamentary disposition and creation of the Foundation.

(2) The value of the Estate Corpus shall be maintained and preserved. It may only be sold or otherwise encumbered, if equivalent property is acquired from the proceeds. Sensible economic redeployment of the Estate Corpus is permissible. The Estate Corpus may be used for financial and commercial investments (participations, real estate etc.). The long-term goal is to invest most of the Estate Corpus in commercial investments, provided that this is economically reasonable. Inasmuch as it is legally feasible, the Foundation’s Executive Board shall attempt to reinvest profits that accrue to businesses in which the Foundation has an interest to the extent that this is essential for the continued development of the commercial investment.

(3) Dividends, business profits, interest and other income from the assets and property alone as well as other donations shall be used to advance the Foundation’s intended purpose, provided that an exception that they are not employed to increase the Estate Corpus.

(4) The Estate Corpus may be increased by additional endowments (money, rights and other assets) from the founder’s wife. External endowment contributions by third parties affecting the Estate Corpus are not permissible.

(5) If donations are not specifically dedicated to the Estate Corpus, then they shall be proximately and exclusively used for the purposes specified in § 2.
Depending upon the respective needs, the Foundation may transfer all or a portion of its income to a reserve (charitable purpose reserve) pursuant to the German Tax Code and German tax and revenue regulations in order to better achieve its long-term nonprofit goals. Within the scope of the tax and revenue regulations income surpluses in excess of asset and wealth management expenses may also be used to create a general reserve and transferred to the Estate Corpus for the conservation of value. The Foundation shall at a minimum set aside capital reserves designed to compensate the Estate Corpus’ inflationary depreciation.

This Charter does not give any third party a legal basis for a claim or cause of action for a grant of aid or support from the Foundation. Such aid or support is revocable at the Foundation’s absolute discretion.

The Foundation acts altruistically and pursues nonprofit objectives. Foundation resources may only be employed as provided for in the Charter. The Foundation may not benefit a person with disbursements or emoluments that do not meet the conditions and intent of the Foundation or that are disproportionately large.

§ 4 Accounting, Annual Financial Statements

The business and financial year shall be the calendar year.

The Foundation shall conduct its accounting and audit of the annual financial statements according to the commensurate and applicable provisions applying to corporate enterprises of comparable size. If, according to which, the annual financial statements must be audited by an independent auditor (certified public accountant) the Board of Trustees shall be responsible for the assignment of the audit engagement. The auditor shall report the results of the audit to both the Executive Board and Board of Trustees. The scope of the audit must also include a determination about whether the Foundation’s assets have been appropriately preserved and maintained as well as about the specific use of Foundation resources pursuant to the Charter.

II. Management and Scope

§ 5 Governing Bodies and Committees

The governing bodies of the Foundation are the Executive Board (§ 8), the Board of Trustees (§ 10) and the Joint Committee (§12).

In furtherance of the Foundation’s goals the Executive Board may create scientific advisory committees (§ 13) and appoint members thereto, if this is helpful in specifically identifying and selecting eligible people or projects for the receipt of Foundation aid and support. The scientific advisory committees shall not have executive powers, but rather shall be created to assist the Executive Board according to its directives and instructions in furtherance of the Foundation’s goals.
(3) No one may simultaneously be a member of the Executive Board and the Board of Trustees.

(4) Each governing body shall elect a chairman and vice-chairman from its members. If the chairman is prevented from carrying out his/her duties, the vice-chairman shall have the same rights and obligations the chairman would otherwise have. In isolated cases the chairman may vest the vice-chairman with the exercise of particular rights and powers. The Joint Committee shall be chaired the Chairman of the Executive Board and the Vice-Chairman shall be the Chairman of the Board of Trustees.

(5) Every member of a governing body may resign from his/her position prior to the expiration of the term of service without stating the reasons therefor. The timing of the resignation should, however, take into reasonable consideration the legitimate interests of the Foundation.

(6) The Foundation may provide for reasonable compensation of the members of its Executive Board and Board of Trustees. Such compensation shall be determined with reference to the provisions contained in § 87 AktG (German Corporation Act) for the Executive Board and the provisions contained in § 113 AktG (German Corporation Act) for the Board of Trustees. The decision affirming the payment of compensation shall be made by a ¾-majority vote of the members of the Joint Committee.

(7) The members of the governing bodies are entitled to reimbursement for costs and out-of-pocket expenses, provided that these are reasonable and necessary. The Executive Board may establish directives for the Foundation’s governing bodies and scientific advisory committees pertaining to the reimbursement of costs and out-of-pocket expenses. The Board of Trustees must approve the directives for the Executive Board.

(8) Each body shall adopt its own bylaws and rules of procedure.

(9) The recommendations of the “German Government Commission’s German Corporate Governance Code” in its most current version, respectively, shall serve as a guideline for actions and conduct by the Foundation’s governing bodies and for the internal cooperation between the bodies and other committees, unless otherwise provided for by law or this Charter or the features of a foundation compared to that of a company would demand otherwise.

(10) The Foundation shall execute a policy of insurance for the governing bodies at its expense, which shall insure the reasonable risks of liability arising from the activities conducted by them.

§ 6 Decision-Making Process

(1) Decisions made by the Foundation’s governing bodies shall be made by resolution, unless otherwise expressly provided for.

(2) Resolutions shall be adopted at the respective meetings of the governing bodies.

(3) If all members of a governing body are in agreement herewith, resolutions may be made
in writing in lieu of a meeting either per letter, facsimile, or other document containing the signature of the person or by e-mail (with an electronic signature). The call for such a vote shall be made by the chairman of the governing body concerned prescribing the specifically formulated request and details about the last possible time that votes may be cast. Only votes that have been received by the chairman within the designated time frame may be considered. Failure to reply to the request for a vote in an action to be taken without a meeting shall be considered a rejection of the written procedure. The chairman shall document the contents of the resolution and immediately inform the members thereof after the time for casting votes has expired.

(4) Unless otherwise provided for by law or this Charter, resolutions may be passed by a simple majority of members or their duly appointed representatives present at the meeting of the respective governing body. In the event of a tie, the vote of the Chairman of the Executive Board or Board of Trustees shall be determinative.

(5) The members of each governing body are generally obligated to personally attend meetings. However if a member is prevented from attending a meeting, he/she may duly authorize another member of the governing body concerned to represent him/her. A representative is only duly authorized upon the presentation of a written proxy from the member to be represented. The proxy shall remain with the chairman of the body.

(6) The provisions of § 34 BGB (German Civil Code) shall apply to resolutions of a governing body. The personal voting ban shall extend to the adoption of resolutions concerning an association of individuals and legal entities in which the member has a participatory interest or with which the member is in an employment relationship or in which the member has been appointed to an authoritative position.

§ 7 Meetings

(1) Meetings shall be convened by the respective chairman of the governing bodies. Meetings shall be convened in writing by either letter, facsimile or other document containing the signature of the author or if all members of a governing body are in agreement herewith per e-mail (with an electronic signature). Notice of meetings must be given at least two-weeks in advance of the meeting measured from the time of receipt of notice. In urgent cases notice may be reduced to 3 days.

(2) The notice must contain the time, place and business to be transacted at the meeting. Meetings shall be held at the Foundation’s offices, provided that the members of the governing body have not mutually decided on another location for the meeting.

(3) At least half of the members of the governing body must be personally present in order to have a quorum to transact business. If there is no quorum, then the chairman can upon 3 days notice reconvene the meeting and the members then in attendance shall in any event constitute a quorum to transact business.

(4) A qualified minority of at least two members of a governing body shall be entitled to request that a meeting be convened, if the request is provided in writing indicating the reason for the meeting and notice of the particular business to be transacted. If the legitimate request for a meeting is not promptly attended to, then the members concerned
may themselves convene the meeting upon notice of the circumstances thereof and the business to be transacted.

(5) If a meeting is not duly and properly convened, then resolutions may only be adopted if the members affected by the deficiency are either present or represented by proxy and do not object to the adoption of the resolutions.

(6) The chairman of the respective governing bodies shall conduct the meetings. The chairman shall determine the order of business and voting procedure in his/her equitable discretion.

(7) Each governing body shall conduct its meetings as it sees fit. The Executive Board and Board of Trustees shall meet at least once semi-annually.

(8) Minutes of the meetings are to be taken, which must be signed by the chairman. The minutes must contain the location and date of the meeting, those in attendance, the agenda, all proposals, and the resolutions adopted as well as any deviations to the rules of form and time. Each member shall promptly be supplied with a copy of the minutes. The Chairman of the Executive Board shall deliver copies of the Executive Board’s minutes to the Chairman of the Board of Trustees, and the Chairman of the Board of Trustees shall deliver copies of the Board of Trustees’ minutes to the Chairman of the Executive Board.

§ 8 Executive Board

(1) The Executive Board shall consist of 3 persons. The term of office shall be five years. The first Executive Board is appointed for a seven-year term by the founder.

(2) Prospective or substituted members of the Executive Board are to be appointed or removed by the Board of Trustees. Re-election is permissible.

(3) Any member of the Executive Board attaining the age of seventy shall automatically retire from the Executive Board.

(4) If a member of the Executive Board prematurely resigns or retires, the Board of Trustees shall without undue delay elect a replacement. The initial tenure of service of the new member of the Executive Board shall be determined by the Board of Trustees and may be fixed up to five years. Until the successor assumes his/her office, the remaining members of the Executive Board shall continue to conduct the ongoing affairs of the Foundation that cannot be postponed. At the request of the Chairman of the Board of Trustees the departing member shall remain in office until his/her successor can be elected.

(5) The Board of Trustees shall immediately report any changes regarding the Executive Board to the competent state regulatory agency.

§ 9 Duties and Authority of the Executive Board

(1) The Executive Board shall manage, administer and represent the Foundation. It shall make decisions and act on behalf of the Foundation, unless otherwise provided by the terms of this Charter. The Executive Board shall economically utilize the Foundation’s resources.
(2) The members of the Executive Board form the Foundation’s Executive Board within the meaning of §§ 86, 26 of the German Civil Code. Any two members of the Executive Board shall have the authority to jointly represent the Foundation. A full-time active member of the Executive Board is authorized to represent the Foundation in his/her sole capacity.

(3) The Executive Board is authorized to transfer the execution of certain business or transactions to individual members of the Executive Board.

(4) If the obligations and size of the Foundation require full-time executive management, then one or more persons can be employed, provided that the Foundation’s financial situation allows for this, whereby the persons employed may also belong to the Executive Board. If a member of the Executive Board is concurrently active as a full-time manager, this shall not require added remuneration.

(5) Seasonably before each financial year the Executive Board shall create a budget and forecast containing expected income and expenses. Within the specified statutory period the Executive Board shall create an annual statement containing a schedule of assets and liabilities and a report about the achievement of the Foundation’s goals. The Executive Board must provide the Board of Trustees with the budget and forecast, the annual statement and the schedule of assets and liabilities early enough so that it has sufficient time to review them and pass resolutions.

§ 10 Board of Trustees

(1) The Board of Trustees shall be comprised of 3 members. The term of service shall be 5 years.

(2) The members of the Board of Trustees shall duly elect the subsequent Board of Trustees before the end of their tenure. Re-election is permissible. If a member of the Board of Trustees will not or cannot be re-appointed, then the Board of Trustees shall consult the Executive Board for its recommendations before an election.

(3) One member appointed to the Board of Trustees must have a business background, the second must have a background in one of the enumerated fields of science specified in the Purpose of the Foundation and the third must be a business lawyer or certified public accountant. The members selected from these fields must be generally recognized personalities.

(4) The provisions contained in § 8 (3), (4) and (5) hereof shall apply to the Board of Trustees correspondingly.

§ 11 Duties and Authority of the Board of Trustees

(1) The Board of Trustees shall advise, support and supervise the Executive Board in the execution of its obligations and shall have the primary tasks of ensuring that the Foundation’s objectives are realized and that the Foundation’s assets are preserved and maintained.

(2) The following, among others, are the Board of Trustees’ duties:
(a) the appointment of members to the Executive Board and the removal of members from the Executive Board, provided that a material reason exists for the removal of a member,

(b) establishing directives for executive management and its control,

(c) approval of the economic budget and forecast, the annual financial statements and the Executive Board’s activity report,

(d) formal approval of the Executive Board’s actions,

(e) adoption of the annual financial statements,

(f) appointment of the public accountant for the audit of the financial statements.

(3) The Executive Board shall report on the Foundation’s business and about material developments and planning at a meeting of the Board of Trustees. At the Board of Trustees’ request a member of the Executive Board shall attend Board of Trustees meetings in order to answer Board members’ questions. Incidentally, the Board of Trustees shall have the same authority over the Executive Board as the supervisory board of a German corporation has over the board of directors (§§ 90, 111 AktG (German Corporation Act)), whereby the Executive Board may delegate the performance of these obligations to a member of the Executive Board.

§ 12 Joint Committee

(1) The members of the Foundation’s Joint Committee shall be comprised of the members of the Executive Board and Board of Trustees.

(2) The Joint Committee shall convene, if the Chairman or Vice-Chairman of the Committee or a qualified minority as defined per § 7 (4) calls for a meeting.

(3) The Joint Committee shall officially decide on matters, which are assigned to it by this Charter. The Joint Committee may, however, have discussions about other matters in an advisory capacity and using resolutions document opinions about matters concerning the Foundation’s work.

§ 13 Scientific Advisory Committees

(1) The Executive Board may create scientific advisory committees in order to advance the Foundation’s goals.

(2) The scientific advisory committee shall have an advisory and consultative function. It shall support the Executive Board in the accomplishment of the Foundation’s objectives. The Executive Board shall issue directives for scientific committees setting forth its obligations and authority and how it will work together with the Executive Board.

(3) The members of a scientific committee should have a high-level of professional knowledge
and expertise corresponding to the respective spectrum of duties. The Executive Board may fix reasonable compensation for the work performed by the committee.

III. Charter Amendment and Dissolution

§ 14 Charter Amendment

(1) Amendments to the Charter, in particular those concerning the Foundation’s purpose, shall, within the scope of statutory provisions, only then be made, if this appears necessary, taking into consideration all material aspects, in order to provide the Foundation a suitable basis for the accomplishment of its duties and to achieve its goals.

(2) The Board of Trustees shall be vested with the power to amend the Charter. All members of the Board of Trustees must unanimously agree to a resolution amending the Charter.

(3) Decisions and resolutions pertaining to amendments to the Charter must be approved by the competent state regulatory agency.

§ 15 Dissolution

(1) The Joint Committee can decide to merge the Foundation with another charitable foundation, if the purpose of the Foundation is no longer possible or circumstances have changed so much that the continued and sustained achievement of the Foundation’s intent no longer appears possible. The resolutions must be so constructed so as to not adversely impact the Foundation’s preferential tax status.

(2) Resolutions pursuant to paragraph 1 above require a ¾ majority vote of the members of the Joint Committee and the approval of the competent state regulatory agency.

(3) If the Foundation cannot be continued because of legal or factual circumstances (not even through a new foundation or another corporate entity that is suitable to continue to pursue the Foundation’s purpose) or its functions giving rise to preferential tax treatment are discontinued, then in the case of dissolution or the discontinuation of the functions giving rise to preferential tax treatment the remaining residue of property shall be transferred to the ‘Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V., Göttingen’ (German incorporated association), which shall exclusively and proximately use it for the nonprofit charitable objectives specified in § 2 hereof.

(4) If the institution named in paragraph 3 should no longer exist or no longer conduct charitable nonprofit activities or for other reasons no longer be in a position to assume the appropriated residual property, then the Joint Committee shall determine before the dissolution of the Foundation or discontinuance of the nonprofit charitable activities giving rise to preferential tax treatment, which other nonprofit foundation shall receive the residual property in order to continue the nonprofit charitable objectives specified in § 2 hereof. A resolution to this effect must be agreed to by a ¾ majority of the members of the Joint Committee.

(5) Decisions and resolutions about the use of assets and property upon the dissolution of the
Foundation or the discontinuation of its earlier activities giving rise to preferential tax treatment may only first be carried out after the competent tax and revenue authorities have issued their approval therefor.

§ 16  Regulatory Authority and Legal Validity

(1) The Foundation is subject to regulation and control in accordance with the provisions of the legally applicable law in the Free and Hanseatic City of Hamburg, Germany.

(2) This Charter shall become legally valid and effective on the day that it is recognized by the competent state regulatory agency.