Governance Code
Of the Joachim Herz Stiftung

1. Preamble

Section 5 (9) of the statutes of the Joachim Herz Stiftung (hereinafter the “Foundation”) prescribes the following:

“The actions of the Foundation’s governing bodies and the internal interactions of said bodies and other committees shall, unless stipulated otherwise by law or by these statutes or unless the specifics of a foundation in relation to a company dictate otherwise, be founded upon the recommendations of the Commission of the German Corporate Governance Code (hereinafter the ‘Corporate Governance Code’) as amended.”

The statutes offer a margin of discretion in three respects with regard to implementation of the Corporate Governance Code. Firstly, the Corporate Governance Code is deemed to be a recommendation only. Secondly, the statutes stipulate that actions should be “based” on the recommendations, this not always requiring an exact implementation thereof. Thirdly, the specifics of a foundation are to be taken into account.

The Joint Foundation Committee has resolved to implement references in the statutes to the Corporate Governance Code with this Governance Code (hereinafter the “Code”) and to further clarify such references with this Code. This Code is essentially based on the standards of the Corporate Governance Code, with use being made of the margin of discretion granted so as to bring the Code into line with the specific requirements of a nonprofit foundation. This Code comprises rules regarding actions both of a business and of a nonprofit nature.

This Code constitutes the key provisions for the management and monitoring of the Joachim Herz Stiftung (corporate governance) and is based on standards of good and responsible corporate governance which are recognized both nationally and internationally.

The Foundation has three governing bodies, namely the Executive Board, the Board of Trustees, and the Joint Foundation Committee. There is also the option of creating scientific advisory boards which the Executive Board may consult during the realization of nonprofit projects.

The Executive Board oversees the Foundation on its own responsibility. The members of the Executive Board share responsibility for management of the Foundation. The Chair of the Executive Board coordinates the activities of the Executive Board members.

The Board of Trustees appoints, supervises, and advises the Executive Board much like a supervisory board within a stock corporation. The Board of Trustees is directly involved in decisions of fundamental significance to the Foundation. The Chair of the Board of Trustees coordinates the activities of the Board of Trustees. The Joint Foundation Committee offers advice on important Foundation matters and has the power to make decisions regarding fundamental issues. As a joint
governing body, it also serves to facilitate exchange between the Executive Board and the Board of Trustees regarding key Foundation matters.

The Foundation’s governing bodies act in accordance with the statutes and the law as applicable, and work jointly toward sustainably realizing the will of the founder Joachim Herz.

The Foundation’s accounting is conducted in accordance with the principle of offering a true and fair view of the Foundation’s net assets, financial position, and results of operation.

2. Transparency and Supervision

2.1 Transparency

2.1.1 The objectives and key activities of the Foundation are presented to the public transparently and comprehensively. The Foundation’s nonprofit activities are reported on periodically.

2.1.2 Internal rules on contract drafting and on practices regarding benefits guarantee that potential project partners and benefit recipients are handled solely on the basis of factual criteria.

2.1.3 The Foundation oversees the projects it sponsors in an appropriate manner, to guarantee that the Foundation’s funds are used efficiently and in accordance with the statutes (monitoring and financial controlling).

2.2 Supervision

Insofar as is prescribed by law, the relevant regulatory authority shall be furnished with a report on achievement of the Foundation’s purpose together with audited annual accounts on an annual basis. Inquiries on the part of the regulatory authority shall be answered promptly and comprehensively.

3. Collaboration of the Executive Board and the Board of Trustees

3.1 The Executive Board and the Board of Trustees work together closely and on the basis of trust for the benefit of the Foundation and to fulfill the purpose of the Foundation as stipulated in the statutes.

3.2 Regarding business of fundamental importance, the statutes and the management guidelines passed by the Board of Trustees prescribe reservations of consent on the part of the Board of Trustees. Among other things, this relates to decisions or measures affecting the Foundation’s net assets, financial position, or results of operation and its nonprofit activities.

3.3 Adequately supplying the Board of Trustees with information is the joint responsibility of the Executive Board and the Board of Trustees.
The Executive Board informs the Board of Trustees regularly, promptly, and comprehensively regarding all the relevant matters concerning planning, the development of business, the risk situation, risk management, and compliance. It details business performance deviations from the plans and targets, stating the reasons.

The Board of Trustees is to stipulate the information and reporting duties of the Executive Board in greater detail. Documents required in order to make decisions, in particular the annual accounts, the audit report, the progress report, and the budget, are made available to the members of the Board of Trustees in good time ahead of their meetings.

3.4 Good corporate governance calls for open discussion between and respectively within the Executive Board and the Board of Trustees. Complete observance of confidentiality is crucial in this respect. All the members of the governing bodies shall see to it that their employees observe their confidentiality obligation in equal measure.

3.5 The Executive Board and the Board of Trustees shall observe the rules of proper corporate governance. In the event that they culpably violate the due care and diligence of a business manager or a member of the Board of Trustees, they shall be liable to claims for damages on the part of the Foundation. In the case of business decisions, no dereliction of duties shall be deemed to have occurred if a member of the Executive Board or of the Board of Trustees could reasonably assume that they were acting for the benefit of the Foundation on the basis of appropriate information (business judgment rule).

3.6 The Foundation shall take out D&O insurance cover for the Executive Board and the Board of Trustees.

3.7 The granting of loans by the Foundation to members of the Executive Board or the Board of Trustees or family members thereof is generally forbidden. In the event of reasons based upon which the granting of such a loan would appear to be justifiable as an exception, this can only occur subject to the unanimous approval of the Joint Foundation Committee.

4. Executive Board

4.1 Duties and Responsibilities

4.1.1 The Executive Board oversees the Foundation on its own responsibility with the aim of maintaining the real value of the Foundation’s capital, ideally generating a profit, and safeguarding the purposeful use of the Foundation’s funds in accordance with the statutes.

4.1.2 The Executive Board develops the Foundation’s strategic focus, reaches agreement thereon with the Board of Trustees, and sees to its implementation.

4.1.3 The Executive Board is responsible for compliance with the legal provisions, the provisions pursuant to the statutes, and the Foundation’s internal guidelines, and similarly works toward the compliance of its associated companies (companies in which the Foundation holds a majority stake).
4.1.4 The Executive Board sees to it that there is adequate risk management and risk control within the Foundation.

4.2 Composition and Compensation

4.2.1 The Executive Board consists of three people and includes a Chairperson. There is a code of procedure governing the work of the Executive Board, in particular the individual board members’ divisional responsibilities, the matters reserved for the full Executive Board, and the majorities required for Executive Board resolutions (unanimity or a majority vote).

4.2.2 The Joint Foundation Committee determines the total compensation of the individual members of the Executive Board and is responsible for passing and regularly reviewing the Executive Board’s compensation system.

The total compensation of the individual Executive Board members is determined by the Board of Trustees on the basis of a performance appraisal, taking into account any emoluments received from duties executed for related companies in the interest of the Foundation. The criteria for the appropriateness of the compensation include the duties of each member of the Executive Board, their personal performance, the economic situation, the Foundation’s success and its outlook for the future, as well as the extent to which the compensation amount is customary, taking into account peer company comparisons and the compensation structure in the rest of the Foundation.

Insofar as the services of an external compensation expert are required by the Joint Foundation Committee to assess the appropriateness of the compensation, the Executive Board, the Board of Trustees, and the Foundation in general must ensure that said expert is independent.

4.2.3 The Executive Board members’ total compensation comprises the monetary compensation components, any pension commitments, other commitments, in particular in the event of the termination of employment, fringe benefits of any kind, and third-party benefits pledged or awarded in the fiscal year in relation to Executive Board responsibilities.

The compensation structure is to be geared toward the sustainable development of the Foundation. The monetary compensation is to comprise both fixed and variable components.

4.2.4 A summary of the total compensation of the Executive Board and the Board of Trustees can be found in the notes to the balance sheet.

4.3 Conflicts of Interest

4.3.1 Members of the Executive Board are bound by comprehensive noncompete restrictions for the duration of their employment with the Foundation.
4.3.2 Members of the Executive Board and employees may not demand or accept benefits or any other advantages from third parties in relation to their employment within the Foundation, nor may they grant third parties unjustified advantages.

4.3.3 The members of the Executive Board are bound by the interests of the Foundation. No member of the Executive Board may pursue personal interests in their decision making or personally exploit business opportunities which present themselves to the Foundation.

4.3.4 All members of the Executive Board must disclose conflicts of interest to the Board of Trustees without undue delay and must notify the remaining members of the Executive Board hereof. Business transactions between the Foundation on the one hand and members of the Executive Board or related parties or enterprises personally related to an Executive Board member are to be avoided wherever possible. If, in individual circumstances, such business transactions are nonetheless advisable, they must be in accordance with the customary industry standards and may only be executed subject to the unanimous approval of the Joint Foundation Committee.

4.3.5 Members of the Executive Board may only take on secondary employment, in particular supervisory board positions and appointments to other committees outside of the Foundation or outside of the projects implemented by the Foundation, with the approval of the Board of Trustees. When engaging in such secondary employment, the members of the Executive Board must avoid any conflicts with the Foundation’s interests and, should such conflicts nonetheless become apparent, must notify the Executive Board and the Board of Trustees hereof without undue delay.

5. **Board of Trustees**

5.1 **Duties and Responsibilities**

5.1.1 It is the duty of the Board of Trustees to regularly advise the Executive Board on its management of the Foundation and to supervise the board much like a supervisory board within a stock corporation. It is to be involved in decisions of fundamental significance to the Foundation.

5.1.2 The Board of Trustees appoints and discharges the members of the Executive Board. When appointing the members of the Executive Board, the Board of Trustees is also to give consideration to diversity. Together with the Executive Board, it is to see to long-term succession planning.

5.1.3 The Board of Trustees is to impose a code of procedure upon itself.

5.2 **Duties and Authority of the Chair of the Board of Trustees**

The Chair of the Board of Trustees coordinates the activities of the Board of Trustees, heads the board’s meetings, and attends to the Board of Trustees’ matters externally.
The Chair of the Board of Trustees is to maintain regular contact with the Executive Board and in particular with the Chair of the Executive Board, to discuss the Foundation’s strategy, development, and risk management. The Chair of the Board of Trustees shall be notified by the Chair of the Executive Board without undue delay of important events which are significant in terms of their assessing the status quo and developments and managing the Foundation. The Chair of the Board of Trustees is then to report to the Board of Trustees and, if necessary, to convene an extraordinary meeting of the Board of Trustees.

5.3 Composition and Compensation of the Board of Trustees

5.3.1 In accordance with the statutes, when proposals for appointments to the Board of Trustees are made, consideration is to be given to ensuring that the Board of Trustees always consists of individuals with the knowledge, skills, and specialist experience needed in order to execute the duties properly.

5.3.2 The Board of Trustees is to be made up exclusively of independent members in order to ensure that the Board of Trustees offers advice to and supervises the Executive Board independently. A member of the Board of Trustees is deemed to be independent if they have no business or personal ties with a member of the Executive Board or with a company affiliated with the Foundation or a board member thereof which engender a conflict of interest. Consideration is also to be given to ensuring that there are or can be no personal conflicts of interest of any kind.

5.3.3 Each and every member of the Board of Trustees is to ensure that they have sufficient time at their disposal to execute their mandate.

5.3.4 Compensation of the members of the Board of Trustees is determined by a resolution of the Joint Foundation Committee. It reflects the responsibilities and scope of activities of the members of the Board of Trustees. The position of Chair of the Board of Trustees may be taken into account when determining the compensation.

5.4 Conflicts of Interest

Numbers 4.3.2 to 4.3.4 apply to the Board of Trustees and its members accordingly.

6. Accounting and Auditing

6.1 The annual accounts are prepared in accordance with the accounting principles applicable to large corporations.

6.2 The annual accounts are prepared by the Executive Board and are audited by the auditors and the Board of Trustees. The annual accounts for a concluded fiscal year are to be approved by September 30 of the following year.

6.3 The Board of Trustees awards an audit remit to the auditors and reaches agreement on the audit fee with the auditors.
6.4 The Board of Trustees is to reach agreement with the auditors that the auditors shall notify the Board of Trustees without undue delay of all findings and events that are significant to the Board of Trustees’ duties which come to light in the course of auditing.

6.5 If requested by the Board of Trustees, the auditors shall attend the Board of Trustees’ consultations regarding the annual accounts and shall report on the key findings of their audit. The Executive Board is to participate in these meetings.