ENGLISH TRANSLATION
2019 CULTURAL GOVERNANCE CODE

This English translation of the Cultural Governance Code has been provided for your convenience. In this translation, effort was made to adhere to the meaning of the original Code as closely as possible. This inevitably creates a few dilemmas, because the Dutch governance system differs significantly from the situation in English-speaking countries. Therefore, we have attempted to provide as much clarity as possible about this in the list of definitions. Nevertheless, should the text raise any questions, please contact Cultuur+Ondernemen. In case of any discrepancies between the Dutch and English text, the Dutch version prevails.

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Preface

Governance is about managing organisations and about their continuity. In addition, governance plays an important role in the trust and legitimacy accorded to the organisations by the outside world. Dealing with governance consciously is essential for strengthening cultural organisations and for a healthy sector. The Cultural Governance Code provides a normative framework for proper governance and insight into cultural organisations.

By using the Code, the managers and supervisors responsible for the cultural sector show the outside world that they are following the common standards for proper governance and supervision. The Code does not take the place of the managers' and supervisors' own responsibility. On the contrary, the Code is intended to stimulate awareness and critical reflection on the part of managers and supervisors. For this reason, the Code provides guidance in dealing with complicated situations, such as in the case of a conflict of interest. The Code is 'principle based': it contains generally applicable principles, which are to be 'applied and explained'. Recommendations have been elaborated for each principle, which are to be 'applied or explained'. This way, we do justice to the variety of the organisations that are active in the cultural sector.

The Code is also an instrument for financiers in the cultural sector (governments, funds, and private financiers). They use the Code as a frame of reference when judging a request for financial means and when the cultural organisations account for the spending of these means.

The 2019 Cultural Governance Code carries on along the lines of the development of governance in the past years. Since the introduction of the previous Code in 2014, we have seen that cultural organisations use the Code much more intensively as a practical instrument. This means meaningful steps toward better governance and supervision have been taken in the cultural sector. However, we are not there yet: we see new questions arise, as well as existing dilemmas manifesting themselves more urgently. Based on practical experience, research into the application of the Code, and a broad dialogue with stakeholders in the sector, we see four developments that have led to new themes in the revised Code:

1. Cultural organisations have growing ambitions, which makes the field of interested parties more diverse and more complex. This asks of cultural organisations that they expand upon these ambitions and turn them into results, in dialogue with relevant interested parties.

2. The change mentioned under 1 also means organisations often deal with multiple different types of financiers (for example, both public and private parties). This increases the complexity of managing and supervising. It calls for an adjustment in the rules of the game, in order to safeguard cultural organisations' social objectives and artistic integrity, as well as keep risks acceptable.

3. Sometimes there is confusion regarding the division of tasks between managers and supervisors. A clearer delineation of the various roles is desired in order to prevent role confusion or even role mixing.

4. Errors are occasionally made in the area of integrity and overlapping interests. This makes it necessary to agree on rules in order to prevent unwanted overlapping interests and, should any arise, contain them and solve them as quickly as possible.

The 2019 Cultural Governance Code was made by and for the cultural sector. This Code is the outcome of round-table discussions and about 80 individual consultations. We are indebted to many for actively helping us think about this vision.

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The Code is supported by managers, supervisors, branch organisations, the national government, municipal councils, the VNG, (public and private) funds, scientists, and by a Recommendations Committee. All of these parties contributed to the creation of this Code. We want to express our special thanks to them for that. A list of all conversation partners has been included in the annex to the Code.

Cultuur+Ondernemen, as the holder of the Code, has set up a commission for actualisation of the Code. The Cultural Governance Code Commission, consisting of Louis Houwen, Ben Kokx, Patrick Broekema, and Jo Houben, created the 2019 Cultural Governance Code in close consultation with the sector. Cultuur+Ondernemen is the point of contact for the sector when it comes to applying the code. As a knowledge centre in the area of management and supervision, Cultuur+Ondernemen also wants to be an active and stimulating conversation partner in the period to come. Therefore, any reactions, practical experiences, and questions are most welcome.

We hope the 2019 Cultural Governance Code will contribute to a cultural sector with thorough management, good supervision, and transparent accountability.

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* In this framework, the definition of artistic integrity also includes professional integrity, such as when it comes to managing collections or presenting culture.

The eight principles

CREATING VALUE FOR AND IN SOCIETY

1. The organisation realises its social objective by creating, transmitting, and/or safeguarding cultural value.

2. The organisation applies the principles of the Cultural Governance Code and explains how it does so (apply and explain). The organisation follows the recommendations and only deviates from them when there is a motivation to do so (apply or explain).

ACTING WITH INTEGRITY AND ROLE AWARENESS

3. Managers and supervisors are independent and act with integrity. They are alert to overlapping interests, avoid unwanted overlapping interests, and deal with conflicts of interest in a transparent way.

4. Managers and supervisors are aware of their own role and the division of tasks, responsibilities and authority between them, and act accordingly.

CAREFUL MANAGEMENT

5. Management is responsible for the organisation's general and daily leadership, its functioning and its results.

6. Management treats the organisation's people and means in a careful and responsible manner.

EXERCISING GOOD SUPERVISION

7. The supervisory board exercises its role as a supervisor, advisor, and employer in a professional and independent manner.

8. The supervisory board is responsible for its own composition and safeguards expertise, diversity, and independence when it comes to this.

Explanatory notes

The Code is intended for all cultural organisations that choose to use this Code, regardless of their legal form, governance model, financier, funding, or size. The Code is in line with financial, legal, and fiscal frameworks from the applicable laws and regulations and, insofar applicable, with conditions for subsidy. It does not supersede any of these.

Supervisory board model is the starting point
In this Code, the governance model with a supervisory board is the starting point for all principles and recommendations. The supervisory board model is not the only possible governance model. However, it is a commonly used model with a clear assignment of tasks, responsibilities, and authority for management and its supervision. This model provides the possibility of treating management and supervision separately, which is why it was chosen as the starting point for the Code.

In addition to the supervisory board model, the management board model is frequently seen in the cultural sector. In the management board model, all tasks, responsibilities, and authority lies with management. If a management board is set up in this model, the responsibility for the organisation's state of affairs and its results remains with management. The Code is equally suitable for organisations that only have a management board.
The toolkit at www.governancecodecultuur.nl contains a guide in which you can read how the recommendations and principles should be interpreted in an organisation with a management board model.

Consciously using the Code
The Cultural Governance Code is an instrument for good management and supervision. The Code pertains to an organisation's entire management process: policy, decision-making, executive, supervision, and accountability. The Code helps managers and supervisors consciously reflect using questions such as: 'How do we actually do things?', 'Why do we do them that way?', and 'When are we doing it right?'. It is not about ticking all the boxes next to a list of rules, but about whether we are acting in a conscious manner. The Code consists of eight principles. Each principle comes with recommendations that give concrete pointers for action.

Principles
'Apply and explain' applies to the principles. The principles have been formulated in a broad sense, but they are binding. They must be followed, and since they have been formulated in a broad sense, this calls for an explanation on how the organisation has applied them. This is accounted for in the yearly report and on the organisation's website.

Recommendations
'Apply or explain' applies to the recommendations. This principle entails that the recommendations from this Code should be applied, unless the situation is such that deviating from them would be better for the organisation. This could be related to the organisation's nature, size, or specific circumstances. The recommendations can only be deviated from when this is supported by argumentation. Any deviations must be accounted for. The principle of 'apply or explain' does justice to the large variety of organisations in the cultural sector.

Social objective
The cultural values the organisation wants to create, transmit, and/or safeguard for and in society come together in the social objective. This social objective provides the organisation with a framework for its strategy, policy, and execution. This objective also creates space for a dialogue with interested parties. This way, the organisation shows how it relates to society.

Overlapping interests
The Code explicitly deals with the different aspects of overlapping interests. Overlapping interests occur when a manager or supervisor has multiple overlapping interests or functions.

Unwanted overlapping interests
Overlapping interests may be useful and even necessary for cultural organisations, for example in relation to fundraising by managers or the network function of supervisors. Certain overlapping interests, however, may be unwanted, for example when the interests affect each other to such a degree that the independence of a manager or supervisor is threatened. This could damage the organisation and cause it to lose trust and/or legitimacy.

Conflict of interest
A conflict of interest is the direct or indirect personal interest of a manager or supervisor in such a way that he or she is no longer able to represent the interests of the cultural organisation with integrity and in an objective and unbiased way.

Tool kit: practice and aids
In addition to the principles and recommendations, a tool kit provides practical support when it comes to applying the Code. It can be found on www.governancecodecultuur.nl. Please note that these tools are only available in Dutch.

CREATING VALUE FOR AND IN SOCIETY

Principle 1
THE ORGANISATION REALISES ITS SOCIAL OBJECTIVE BY CREATING, TRANSMITTING, AND/OR SAFEGUARDING CULTURAL VALUE.

Recommendations

1. The organisation has professional management and supervision, and offers space for interested parties to be involved.

2. The organisation pursues its social objective in a sustainable and commercially justifiable way, and safeguards artistic integrity.*

3. The organisation has a sincere, open culture. Managers and supervisors convey this, thereby setting an example.

4. An organisation's social environment is diverse, as is its circle of external interested parties. Managers and supervisors are aware of this and treat the various interests in a careful and balanced way while realising the social objective.

5. In case of (partial) funding from private parties, the organisation's social objective should remain central. Any operating surplus should flow back to the organisation's own wealth. Financiers are expected to respect this.

* In this framework, the definition of artistic integrity also includes professional integrity, such as when it comes to managing collections or presenting culture.

CREATING VALUE FOR AND IN SOCIETY

Principle 2
THE ORGANISATION APPLIES THE PRINCIPLES OF THE CULTURAL GOVERNANCE CODE AND EXPLAINS HOW IT DOES SO (APPLY AND EXPLAIN).
THE ORGANISATION FOLLOWS THE RECOMMENDATIONS AND ONLY DEVIATES FROM THEM WHEN THERE IS A MOTIVATION TO DO SO (APPLY OR EXPLAIN).

Recommendations

1. The exact way in which the organisation implements the recommendations from the Code depends on the specific situation and the nature of the organisation and is in keeping with the organisation's size, legal form, and governance model.

2. Within the organisation, management and the supervisory board both have their own responsibility to abide by the Code. Management takes the initiative for anchoring the Code in the organisation, and sees to it that the organisation abides by the Code. The supervisory board should supervise compliance with the Code and evaluate it once a year.

3. The annual report mentions the organisation's legal form and governance model.

4. The explanation in the annual report—which should also be placed on the organisation's website—should at least concern:
    ◦ the way in which the organisation has applied the principles and recommendations from the Code;
    ◦ the way in which the organisation has involved internal and external interested parties;
    ◦ the functioning of management and the supervisory board, as well as the way in which any dilemmas and situations involving overlapping interests or a conflict of interest have been treated;
    ◦ the application of policy regarding risk containment and internal checks;
    ◦ the rewards policy, the rewarding, contract duration and (additional) functions of managers;
    ◦ the remuneration and/or remuneration rules and (additional) functions of members of the supervisory board.

ACTING WITH INTEGRITY AND ROLE AWARENESS

Principle 3
MANAGERS AND SUPERVISORS ARE INDEPENDENT AND ACT WITH INTEGRITY. THEY ARE ALERT TO OVERLAPPING INTERESTS, AVOID UNWANTED OVERLAPPING INTERESTS, AND DEAL WITH CONFLICTS OF INTEREST IN A TRANSPARENT AND CAREFUL WAY.

Recommendations

1. Managers and supervisors take care to ensure there is a culture of openness and approachability within the organisation.

2. The management and the supervisory board see to it that their members are independent. Managers and supervisors should have no commercial or artistic interests or relations with the organisation other than as a manager or a supervisor. They should not accept, without the prior permission of the supervisory board, any (additional) functions that may affect their functioning, given their nature or the amount of time spent in them.

3. A former member of management should not be one of the organisation's supervisors for a period of four years.

4. Managers and supervisors let the interest of the organisation prevail over their own interests and refrain from personal favouritism towards themselves or their peers.

5. The organisation uses rules to note overlapping interests at the earliest possible stage, in order to avoid unwanted overlapping interests and to ensure the managers and supervisors deal with any conflict of interest in a transparent and careful manner.

6. Managers and supervisors report (possible) overlapping interests and (potential) conflicts of interest to the chair of the supervisory board and provide him or her with all relevant information. The supervisory board then decides, without the supervisor(s) and/ or manager(s) involved present, whether there is an unwanted overlapping interest or conflict of interest, and takes measures accordingly. The supervisory board should be open about this both within the organisation and to external stakeholders.

7. If a report leads to the detection of unwanted overlapping interests, the manager or supervisor involved will see to it that this overlapping interest does not occur or is resolved as soon as possible. The supervisory board supervises this and takes measures if the manager or supervisor involved fails to take the appropriate action.

8. If there is a conflict of interest, the manager or supervisor involved does not take part in preparation, discussion, decision-making or execution regarding these matters.

9. Decisions in favour of engaging into transactions or relations in which there are or may be conflicts of interest on the part of managers or supervisors require prior approval from the supervisory board. The supervisory board records these decisions in writing, accompanied by a motivation, and includes these in the annual report.

ACTING WITH INTEGRITY AND ROLE AWARENESS

Principle 4
MANAGERS AND SUPERVISORS ARE AWARE OF THEIR OWN ROLE AND OF THE DIVISION OF TASKS, RESPONSIBILITIES, AND AUTHORITY BETWEEN THEM, AND ACT ACCORDINGLY.

Recommendations

1. Management determines the organisation's legal form and governance model after consultation with, and with the consent of, the supervisory board. The organisational and financial structure should be clear and allow for an unambiguous assignment of managerial and supervisory tasks, responsibilities, and authority.

2. Supervisors do not take upon themselves any tasks, authority or responsibilities that are the responsibility of management.

3. Management ensures that the supervisory board is able to carry out its supervisory role fully and properly, and should not involve itself in the supervisors' tasks, responsibilities, or authority.

4. Management is accountable to the supervisory board and provides it with all information necessary for its proper functioning as a supervisory board. Management should do this both asked and unasked, and in a timely manner. Written agreements should be made regarding the provision of information.

5. The members of the supervisory board have their own responsibility, both together and individually, to ask for any information they need in order to properly carry out their role. The supervisory board may ask management, the organisation's other officers, and the external accountant for information.

6. Management reports to the supervisory board about contact with external stakeholders. This concerns the nature, content, and results of this contact. It allows for the supervisory board to take these into account and anticipate based on them in a timely and effective manner during their supervision. Wherever needed, and in consultation with management, the supervisory board may contact these associates itself.

7. Management and the supervisory board, in the interest of the organisation, see to it that they actively contain any conflicts within management, within the supervisory board, or between management and the supervisory board, and solve them as quickly as possible. Any labour disputes involving managers should be solved by the supervisory board.

8. Management and the supervisory board, each acting under their own responsibility, encourage engagement with the organisation's policy on the part of employees. They should make agreements about the treatment of the representative body.

CAREFUL MANAGEMENT

Principle 5
MANAGEMENT IS RESPONSIBLE FOR THE ORGANISATION'S GENERAL AND DAILY LEADERSHIP, ITS FUNCTIONING, AND ITS RESULTS.

Recommendations

1. When carrying out its task, management acts from the perspective of the organisation's social objective. In this regard, management weighs the organisation's artistic and business interests and those of the internal and external stakeholders in a careful and balanced manner.

2. Management sees to it that the artistic integrity and independence that are fundamental to a cultural organisation are safeguarded. Management does this both internally and in relation to subsidisers, sponsors, and private and other financiers.

3. Management stimulates good mutual relations with the internal and external stakeholders. Management determines who the important external stakeholders are and periodically consults with them, aimed at gaining trust, support, and legitimacy.

4. Management may divide tasks, areas of interest, and responsibility internally. In that case, management records its internal division of tasks, responsibilities, and authority in the management regulations, which require the approval of the supervisory board.

5. Managers see to it that they are properly equipped to adequately fulfil their function and, to this end, work continuously on their own development.

CAREFUL MANAGEMENT

Principle 6
MANAGEMENT TREATS THE ORGANISATION'S PEOPLE AND MEANS IN A CAREFUL AND RESPONSIBLE MANNER.

Recommendations

1. Management is responsible for compliance with laws and regulations, the artistic and business policy, and for containing the risks related to the activities of the organisation and its employees. In this regard, management carries out a policy tailored to the organisation, especially in the areas of risk containment and checks.

2. Management acts as a good employer: it creates the prerequisites for a good and safe workspace, involves internal stakeholders in this, and formulates an internal code of conduct or integrity. The Diversity & Inclusion Code and the Fair Practice Code may be of help in this regard.

3. Management enables employees to report suspicions of malpractice and irregularities to a confidant or to the chair of the supervisory board without any risk to the employee's position, even when these irregularities concern management or the supervisory board itself.

4. The rewards policy for the organisation's employees is appropriate to organisation's nature, size, and social objective, as well as comply with legal requirements and (wherever applicable) conditions for subsidy.

EXERCISING GOOD SUPERVISION

Principle 7
THE SUPERVISORY BOARD EXERCISES ITS ROLE AS A SUPERVISOR, ADVISOR, AND EMPLOYER IN A PROFESSIONAL AND INDEPENDENT MANNER.

Recommendations

1. The supervisory board carries out its role from the perspective of the organisation's social objective. The supervisory board checks whether, in carrying out its tasks, management has weighed the organisation's artistic and business interests and the interests of internal and external stakeholders in a careful and balanced way.

2. The members of the supervisory board supervise in an active, critical, and stimulating way. They safeguard the organisation's social objective and its continuity. The supervisory board gives management space for entrepreneurship; taking into account that management involves making decisions that carry both opportunities and risks.

3. The supervisory task concerns at minimum:
    ◦ realising the organisation's social objective;
    ◦ the organisation's strategy, identity, and continuity;
    ◦ relationships with public and private financiers;
    ◦ the dialogue with the internal and external stakeholders;
    ◦ compliance with laws and regulations;
    ◦ business operations, risk containment, and the business policy.

4. The supervisory board appoints, partially on the recommendation of management, the external accountant for a maximum period of four years at a time. The external accountant will report his or her findings to the supervisory board meeting at least once a year. The external accountant will not be given any orders from the organisation that could threaten his or her independent auditing activities. Management reports to the supervisory board once a year about its relationship with the external accountant and any developments therein.

5. The supervisory board, in consultation with management, should contact the organisation's important public and private financiers.

6. The supervisory board advises management, both anticipating and reflecting upon management's decisions. It does this both asked and unasked.

7. In its role as an employer, the supervisory board decides on the profile, appointment, labour conditions, rewards, evaluation, suspension, and termination of the members of management. Upon appointment of a manager, the supervisory board judges his or her integrity, quality, and suitability for the management function.

8. Supervisors will act as ambassadors and represent the organisation on external occasions, in consultation with management.

9. The supervisory board is responsible for its own functioning. The board records its internal division of tasks and its working method in a set of regulations. Each supervisor should be able to invest enough time to properly carry out his or her tasks.

10. The supervisory board discusses its functioning at least once a year without the presence of management. It does so under external guidance once every three years. Discussion points include: the supervisory board's functioning, the cooperation between the supervisory board and management, and the cooperation between members of the supervisory board. The supervisory board will include this in the annual report.

11. The supervisory board discusses management's functioning and the mutual cooperation with management at least once a year.

12. The chair has special tasks: he or she prepares the agenda, chairs the meetings, and ensures careful decision-making within the supervisory board. The chair safeguards the proper functioning of the supervisory board, both collectively and individually. The chair has primary responsibility for evaluating the supervisory board. The organisation ensures that the chair is properly supported.

13. In situations of (possible) overlapping interests, conflict of interest, internal conflict, or calamities, the chair encourages careful treatment and decision-making on the part of the supervisory board. In such situations, he or she will be the first point of contact for management, the supervisory board, and external stakeholders.

EXERCISING GOOD SUPERVISION

Principle 8
THE SUPERVISORY BOARD IS RESPONSIBLE FOR ITS OWN COMPOSITION AND SAFEGUARDS EXPERTISE, DIVERSITY, AND INDEPENDENCE WHEN IT COMES TO THIS.

Recommendations

1. The supervisory board consists of at least three members. Its composition is such that the board is able to properly perform its role as a supervisor, advisor, and employer. The supervisory board safeguards independence, expertise, and diversity in its composition. Attention should be focused, among other things, on knowledge of the cultural field, the organisation's business aspects, and entrepreneurship.

2. The organisation publicises job openings in the supervisory board and attracts new supervisors based on profiles and according to a transparent procedure. The supervisory board periodically recalibrates the profiles based on external circumstances and in keeping with the organisation's current strategic course.

3. Each supervisor should be able to roughly evaluate the organisation's general, artistic, and business policy. In addition, each supervisor should contribute to the knowledge and expertise of the supervisory board with his or her own specific expertise, in keeping with his or her profile.

4. The maximum period for supervisors is two terms of at most four years. The organisation records this in its statutes. Re-appointment of a supervisor takes place according to a careful procedure. A balanced composition of the supervisory board, the current profile, and an evaluation of the functioning of the supervisor in question form the basis for this.

5. The schedule for stepping down is such that not too many members step down at the same time without being eligible for re-appointment. The schedule for stepping down is public and placed on the organisation's website.

6. Upon their appointment, new supervisors are offered an introductory programme. The programme deals with various aspects that are relevant to their functioning as a supervisor. Annually, the supervisory board discusses in what ways the supervisors are in need of deepening or broadening of their knowledge, either individually or collectively.

7. The supervisory board will agree on a possible compensation for its members, befitting the organisation's nature, size, and social objective. This compensation should be in accordance with legal requirements and (wherever applicable) conditions for subsidy.

Definitions

Artistic integrity
Purity and autonomy in the conduct of the parties involved from the point of view of their own artistic orientation. Although artistic freedom may be compromised by business considerations, they should never come at the cost of artistic integrity. In this Code, the definition of artistic integrity also includes professional integrity, such as in case of collection management or the presentation of culture.

External stakeholders
Entities, institutions, businesses, independent contractors, and others with an interest in the organisation.

Governance model
The way in which the organisation has arranged management and supervision, the division and determination of tasks, responsibilities, and powers, as well as the safeguarding of checks and balances.

Interests
Overlapping interests
A situation in which a manager or supervisor has multiple overlapping interests or functions. Overlapping interests may be useful and even necessary for cultural organisations, for example in relation to fundraising by managers or the network function of supervisors.
Unwanted overlapping interests
Certain overlapping interests are unwanted. For example, when the interests influence each other to such a degree that the independence of a manager or supervisor is threatened. This could damage the organisation and cause it to lose trust and/or legitimacy.
Conflict of interest
The direct or indirect personal interest of a manager or supervisor is such that he or she is no longer able to represent the interests of the cultural organisation with integrity and in an objective and unbiased way.

Internal stakeholders
Employees and the representative body.

Management board
The legal body that fulfils the managerial function and is responsible for the leadership of the organisation in organisations with a management board model.

Manager / Management
In this Code, the supervisory board model was chosen as starting point. Therefore, when 'manager' or 'management' is mentioned in the principles and recommendations, this refers to those in charge of running an organisation, like managing directors, not to members of a management board.

Managing director
Person in charge of running a (cultural) organisation.

Management board model
The governance model in which there is only a management board.

Profile
The profile for a position in the management or supervisory board that lists which competencies are required, taking into account several aspects such as strategy, diversity, and composition.

Representative body
The body that represents the organisation's employees in the interest of participation and consultation with the managing director.

Social objective
The cultural value the organisation wishes to create, transmit, or safeguard for and in society.

Supervisor
Member of the supervisory board.

Supervisory board
The body that fulfils the supervisory function, as stated in the statutes of the organisation, and which is therefore responsible for the supervision of the management and the state of affairs within the organisation.

Supervisory board model
The governance model with management and a supervisory board.