

STEERING COMMITTEE
OF THE
OPEN GOVERNMENT PARTNERSHIP

MEMORANDUM of POLICIES

Regarding the relationship between the OGP Steering Committee and the Board of Directors of the Open Government Partnership Secretariat.

Introduction

The Open Government Partnership (“OGP”) is an unincorporated association that is a voluntary, multi-stakeholder international initiative that aims to secure concrete commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. As set forth in its Articles of Governance, OGP is governed by a Steering Committee (“SC”) comprised of duly elected government and civil society representatives. It is supported by staff of its Support Unit. In the early years of operation of OGP, the activities of its Support Unit were operated as a project of the Tides Center, which employed its staff and received, managed, and spent all funds on behalf of OGP.

A new, independent nonprofit corporation, the Open Government Partnership Secretariat (“Secretariat”) was created to house the Support Unit and the administration of the OGP Independent Reporting Mechanism. The OGP Secretariat began functioning on April 1, 2018. The governing documents of the Secretariat give the OGP Steering Committee certain rights and powers, and also indicate instances where its Board of Directors (“BOD”) is expected to coordinate closely with the Steering Committee. This memorandum is intended to set out the Steering Committee’s policies for how it will exercise those powers, and its expectations for its working relationship with the Board of the Secretariat.

The SC recognizes that the BOD has fiduciary and legal oversight of the Secretariat. The Board’s responsibilities include fidelity to the mission of the Secretariat, which is to support the operations of OGP. The SC continues to make strategic and policy decisions for OGP, and exercises the authority specified in the bylaws of the Secretariat as outlined below.

Appointment of Directors

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Bylaws state:

The initial Directors shall be appointed by the incorporator, as required by applicable law in the District of Columbia. Directors shall thereafter be appointed by the OGP Steering Committee for a term of three years. The Directors shall be divided into three (3) groups, with the number of Directors in each group as near as possible to one third of the entire Board. The terms of office of all Directors in one group shall expire in the same year. In order to commence this staggering of Board terms, the initial Directors appointed by the incorporator shall be divided into three groups of approximately equal size, with each group to serve terms of two, three, and four years as designated by the incorporator upon their appointment. In exercising its authority to appoint directors, the OGP Steering Committee may appoint an individual, or may designate that the director's position is to be filled by the person holding a specified position with an NGO or government body.

Since the OGP Secretariat is a US non-profit entity, US laws require it to be overseen by a Board of Directors that is comprised of individuals. The Secretariat BOD consists of three to six Directors. The SC will appoint to the BOD members of the SC, with roughly one half being working level government representatives and one half civil society representatives.

Only individuals may serve on the BOD, because a director's fiduciary duties attached to that person. Hence, individuals who work for government members of the SC may serve, but that seat may not be exchanged between different individuals within the same government. However, it is possible for the SC to appoint a director by identifying the office or job they hold, so if there is turnover in that position the next person in the office or job will automatically assume the position on the BOD. In addition, where a position on the Board is filled by a representative of a government member of the SC, even if appointed as an individual, it is the intention of the SC that the seat should be filled by a representative of that same government for the duration of the term, regardless of staff turnover.

The SC will direct the incorporator to select the initial board as follows:

The Governance and Leadership subcommittee will take suggestions from any interested members of the SC. GL will review the proposed nominees and recommend a slate of directors to the full SC, which will then vote to approve or disapprove the slate. This initial

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appointment will also include dividing the initial directors into three groups, one to serve a two-year term, one to serve a three-year term, and one to serve a four-year term.

The SC will select directors to fill vacancies created by the end of a current director's term as follows:

After the second year of operation, two BOD positions will become vacant each year due to the staggered three-year terms. Those positions will be filled by a process similar to the initial selection: review of proposed nominees by the GL subcommittee, and approval by the SC.

Bylaws state:

Vacancies existing by reason of resignation, death, incapacity, or removal before the expiration of a term may be filled by the OGP Steering Committee, or any other body or committee designated by the OGP Steering Committee.

The SC will select directors to fill vacancies occurring during an existing director's term as follows:

Vacancies occurring during a term shall be filled by the GL subcommittee. Where a position on the Board has been filled by a representative of a government, the GL subcommittee should appoint as a replacement to a vacancy in that seat a representative of that same government for the remainder of that term.

Removal of Directors

Bylaws state:

One or more Directors may be removed by the OGP Steering Committee or any other body or committee designated by the OGP Steering Committee if the Steering Committee or other designated body deems it to be in the best interests of the Corporation.

If the SC finds it necessary or advisable to remove a Director, it will exercise this authority as follows:

The GL subcommittee will make a recommendation for removal of directors, and the full

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SC will vote to approve or reject the removal of the director.

Board Operations

The BOD will ordinarily share with the SC agendas for BOD meetings in advance of the meetings, and minutes after the meetings once they are approved. The SC recognizes that there may be exceptional matters where it would not be appropriate to share information outside the BOD, but anticipates that such matters will occur seldom if ever. Examples might include but not limited to discussions of personnel matters, or discussion of legal matters where sharing information would violate confidentiality and could jeopardize a legal privilege. These situations will be considered in accordance with OGP's Disclosure Policy, which the Secretariat is also expected to observe.

Audit

Bylaws state:

Audit Committee: *The Corporation shall have an audit committee composed only of members of the Board. If the Board has created a Finance Committee for the Corporation, members of that committee may not constitute a majority of the Audit Committee, and the Audit Committee may not be chaired by a member of the Finance Committee. The Audit Committee works under the supervision of the Board of Directors and is responsible for making recommendations on engaging and compensating an independent Certified Public Accountant (CPA) to perform a financial audit of the Corporation. The Audit Committee may negotiate the CPA's compensation on behalf of the Board. The Audit Committee shall have responsibilities as determined by the Board, and in any event must, (i) confer with the CPA to satisfy the Audit Committee that the financial affairs of the Corporation are in order, and (ii) review the audit and decide whether to accept it. Further, the Audit Committee must approve any non-audit services to be provided by the CPA and ensure that such services conform to the standards in the*
Yellow Book issued by the U.S. Comptroller General.

This provision of the bylaws has been drafted to comply with requirements imposed on nonprofit corporations that operate in California and have budgets in excess of \$2,000,000. It shall be the BOD's obligation to comply with these requirements and to appoint and empower an Audit Committee as described. The final audit report shall be shared with the full BOD and, once completed, with the SC.

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Senior Staff Person

Bylaws state:

In making decisions regarding the hiring, supervision, or termination of the senior staff person, the Board shall consult closely with the OGP Steering Committee.

The SC recognizes that it is a key responsibility of the BOD of a nonprofit corporation to hire, supervise, and, if necessary, to terminate the senior staff person. However, the senior staff person will naturally interact extensively with the SC, and it is important to OGP that the SC and senior staff person have a good working relationship. Further, working well with the SC is critical to carrying out the Secretariat's mission of supporting OGP. Hence, the Board should solicit comments from the SC and give its input serious consideration in conducting an annual performance review of the senior staff person. If a new senior staff person is to be hired, the SC (or a designated subcommittee of the SC) will have the opportunity to meet with candidates and provide input into the process. Finally, the GL subcommittee of the SC will receive advance notice if the BOD determines that it is necessary to terminate the senior staff person's employment.

Financial Policies; Budget

Bylaws state:

Except as otherwise provided in the articles of incorporation or these bylaws, all corporate powers shall be exercised by or under the authority of the board of directors of the Corporation (hereinafter referred to as the "Board"), and the activities and affairs of the Corporation shall be managed by or under the direction, and subject to the oversight, of the Board. The Board shall oversee the Corporation's policies and procedures and shall provide legal and fiscal oversight over the operations of the Corporation.

The Board of Directors shall approve an annual operating budget for the Corporation, which shall be developed in close consultation with the OGP Steering Committee.

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While the SC recognizes that the BOD has the legal and fiduciary obligation to oversee the Secretariat's financial operations, it also recognizes that the Secretariat's finances fund the operations of OGP and the SC. Accordingly, the SC expects that the BOD will provide it with notice of any significant financial policies adopted or modified, or of any change to the fiscal year. The SC will receive copies of the year-end financial statements of the Secretariat as soon as they are prepared, as well as the auditor's report once the audit is completed.

With respect to the development of the Secretariat's annual budget, the SC is to have substantial input. A draft budget should be presented to the BOD and SC by the staff no later than December 22 of each preceding year. The SC members should be provided at least ten business days to provide comments. After further edits taking those comments into account a revised budget should be presented to the BOD for its approval no later than January 15.

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Criteria and Process for Board of Directors Appointment

The primary responsibility of the Board of Directors for the OGP Secretariat will be to provide legal and fiduciary oversight of the Secretariat as outlined in the bylaws. The initial board will be small. The Board of Directors will serve as individuals as required by laws in Washington, DC where the Secretariat was incorporated. However, directors may be appointed “ex officio” – that is, the person holding a particular position with an NGO or a government will fill the board position. The directors will not be paid except reimbursement for expenses related to meetings and in service of OGP Secretariat. The Steering Committee (SC) of the Open Government Partnership will appoint the Board of Directors. The Steering Committee shall ensure that the skills, qualifications and competence be varied to ensure that the expertise of the Board is diverse.

The **criteria** for individuals who may serve as Directors are:

- Current members of the OGP Steering Committee:
 - Civil society SC member nominees should be the principal or appointed “second”.
 - Government SC member nominees should be current serving members of that Government appointed by the principal.
- Familiarity with OGP’s work and programs - governments and civil society – and have direct engagement with OGP, preferably international SC experience. The expectation is that the individual is able to serve as board member for 3 years in order to limit turnover (this goal is distinct from term in office for board members).
- Ability to set aside time to allocate approximately 2 hours per month or 8 hours per quarter in addition to one face to face meeting per year, likely requiring international travel
- Previous experience serving on not-for-profit boards is a plus
- Familiarity with executive performance review and human resource issues and familiarity with financials, budgeting and fiscal oversight are desirable

Regional and gender diversity as well as their affiliation and familiarity with government and civil society will be considered as well.

The **process and steps** for appointing board members for the OGP Secretariat, an independent nonprofit, will follow the steps outlined below:

Lead	Action	Duration
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GL/SU	GL opens application period for Board candidates	4 weeks
GL	GL review candidacies and develop a slate of directors to recommend to the full SC	2 weeks
SC	SC reviews and endorses or rejects the slate of directors proposed by GL	1 week

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Terms of Reference for the Board of Directors

The duties of the Board of Directors will be to provide legal and financial oversight of the independent nonprofit. This will include conducting the annual audit, carrying out the annual performance review of the Senior Staff (Executive Director) in consultation with the SC and ensuring that the Secretariat is in compliance with US tax and employment laws.

Legal Obligations of Directors of a Nonprofit Corporation

-Drafted by Harmon, Curran- Endorsed by the OGP Steering Committee on March 9, 2016

The Board of Directors of a nonprofit corporation is responsible for governance and oversight of its operations. The responsibilities of the Board include approval of an annual budget, hiring (or firing) and supervising the Senior Staff (Executive Director [or CEO]), and setting his/her compensation. Other Board responsibilities include setting and advancing the organizational mission, as well as general oversight to ensure that the activities of the organization further that mission.

Members of the Board owe specific fiduciary duties to the nonprofit corporation, including:

- The duty of loyalty requires that a director act in the best interest of the organization and, when acting as a director, not act to further one's own personal interests or the interests of any third party. This duty also requires that the director not use any information received in her/his capacity as a director for personal gain.
- The duty of care requires that a director exercise reasonable care when he or she makes a decision as a steward of the organization. To meet the duty of care directors should review reports provided to them, and participate actively in meetings.
- The duty of obedience is the obligation to honor the corporate purpose, be faithful to its mission, and support properly made decisions of the Board.

Only individuals may serve on the BOD, because a director's fiduciary duties attach to that person. However, those individuals may be representatives of another organization or governmental agency. In addition, directors may be appointed "ex officio" – that is, the person holding a particular position with an NGO or a government will fill the board position.

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Time Commitment: 2 hours per month except when attending the annual face-to-face meeting (which may require international travel)

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