

**Summary and
recommendations of the
investigative report**

Governance and the WNT

at the SMA

AMSTERDAM

Commission¹

Following the departure of Beatrix Ruf at the end of October 2017, the Supervisory Board initiated two investigations. After joint consultation, the Supervisory Board of the SMA and the municipality of Amsterdam agreed that the municipality should oversee the investigations and, on December 13 2017, Mr. Eisma and Mr. Peeters were instructed to conduct an inquiry into, in short, aspects of the governance of the SMA. At the same time, a law firm was commissioned to conduct an investigation into the Museum's compliance with the Dutch Executives' Pay Standards Act (WNT). The two investigations merged on 16 February 2018, and Mr. Eisma and Mr. Peeters were instructed to carry out both investigations, on the understanding that they used the services of Mr. H. ten Have of the law firm NautaDutilh for the portion of the commission relating to the WNT investigation.

In accordance with the commission, the investigation covers the period from 1 January 2013 to 31 October 2017 and focuses on the board of directors and the Supervisory Board of the Museum. The research did not include a review of governance at lower levels of the Museum organisation.

Researchers held a sounding board discussion with Ms. Pauline Kruseman and Ms. Truze Lodder. On June 4, 2018, Mr. Peeters and Mr. Eisma submitted a report outlining their findings and recommendations to the Municipality. On 12 June, the municipality shared the reports and recommendations with the municipal council, with which the reports and recommendations also became public and are available to individuals other than those directly involved.

¹ This concerns a summary made by the SMA of chapter 1 of the report "Governance and the WNT at the SMA"

Approach²

As part of this research, the researchers interviewed 17 people, some of them several times, namely: all persons who, since 1 November 2013 are (or have been) members of the Board of Directors and the Supervisory Board of the Museum and the Secretary of the Supervisory Board. Former aldermen Gehrels and Ollongren were also interviewed, and the researchers spoke with a delegation from the Works Council of the Museum.

The researchers asked the Museum and the individuals involved to provide written documentation such as minutes, reports of meetings, correspondence, e-mails, and other documents. This also included the statutes of the Museum, the management regulations and the applicable codes including the Cultural Governance Code. On the basis of the written information received and the approved reports of interviews with the 17 individuals, and after consulting a number of public sources, the researchers drafted concepts of the paragraphs of the actual account.

² This concerns a summary made by the SMA of chapter 2 of the report "Governance and the WNT at the SMA"

Summary³

The board of directors and the Supervisory Board of the Museum have devoted a great deal of time and attention to the introduction of the Principles and Rules of the Cultural Governance Code and to ensuring the Museum's compliance with them. On paper, the Museum's governance looks almost exemplary. The Museum has not published any deviations from the Code on its website. In reality, the Museum deviates from the Code on quite a few points, does not act pursuant to the Code, and was not transparent in this regard.

The Supervisory Board fails to act in accordance with the Cultural Governance Code on four points.

1. First of all, the Supervisory Board is not transparent in its annual reporting concerning decisions relating to matters that occurred between the Museum and members of the Supervisory Board that could give rise to conflicts of interest; nor was the Museum transparent about works loaned by members of the Supervisory Board and complicated combinations of acquisitions and donations which, according to the Museum's governance documents, are not acceptable in principle.
2. Secondly, the Supervisory Board does not comply with the rule that decisions concerning actions with a member of the Supervisory Board which may give rise to conflicts of interest are deliberated in meetings which are not attended by the Supervisory Board member in question.
3. Thirdly, the Supervisory Board leaves too many tasks relating to the appointment and evaluation of the external auditor to the audit committee, and the appointment terms of the external auditor are not monitored by the Supervisory Board.
4. Fourthly, the Supervisory Board repeatedly decided to adopt the annual accounts without having an opportunity to question the external auditor about them, because he/she did not attend the meeting.

All four points are deviations from the Cultural Governance Code. The Museum website makes no mention of these deviations and states that the Supervisory Board does act in accordance with the Code on these points. That notification is incorrect.

Ms. Ruf failed to recognise that, in accordance with the social codes prevalent in Dutch society, she should not have simply told the then chairman of the Supervisory Board - verbally, and on one occasion - that she had accepted a bonus from her former client,

³ Working of the report "Governance and the WNT at the SMA" (chapter VII, from page 125 onwards)

Ringier, while employed at the Stedelijk Museum. In light of the unusual circumstances of this case, she should have consulted with the chairman, followed by the entire Supervisory Board, to discuss the consequences of accepting such a bonus for the Stedelijk Museum, for the functioning of the Museum, and to anticipate the foreseeable need to account publicly for the bonus.

The circumstances of importance here - particularly in relation to each other - are:

- That the Museum is a public institution that is almost permanently in the public eye
- That she also holds a public position as director
- That the amount of the bonus is exceptionally high in terms of the Dutch cultural sector
- That the bonus originates from an organisation with which her relationship inside and outside the Museum was subject to criticism, and
- That Ms. Ruf received the bonus indirectly, via her BV, the annual reports of which - albeit in an abbreviated version - are public so that the growth in capital resulting from the payment of the bonus would be made public sooner or later and would probably give rise to questions.

This does not alter the fact that there was no unlawful intent behind the award of the bonus, it was not a gift in the sense specified in her employment contract, was entirely unrelated to her work at the Museum and in fact did not lead to unacceptable conflicts of interest. By refraining from these consultations, Ms. Ruf violated the Cultural Governance Code (that requires a flow of information from the director to the Supervisory Board to avoid the latter being faced with surprises) and the corresponding rules of the Museum statutes, and breached the management regulations but also, and in particular, the unwritten rules of good governance. On this point she was at fault, despite the fact that she had only recently come to the Netherlands and taken up her post at the Museum.

In addition to the above-mentioned points, the Museum, the Supervisory Board, Mr. Ribbink (the chairman at the time) and Ms. Ruf did not act entirely in accordance with the Code with regard to other aspects, but these points are of such minor importance that they do not merit inclusion in this summary.

The researchers are of the opinion that the violations of the Code are blameworthy but not sufficiently serious to cast doubt on the integrity of the individuals in question.

The municipality verifies the completeness, but not the accuracy, of the information the municipality receives periodically from the Museum, including information concerning compliance with the Cultural Governance Code. On the basis of written information

received, the municipality is unable to ascertain whether the Museum is fully complying with the Code. After the Museum became independent, an assessment for completeness, not accuracy, reflects the relationship between the municipality and the Museum. The researchers are making no recommendations to amend the assessment process of the municipality.

A museum managed by an interim director, that saw two artistic directors come and go in a short space of time, and currently has a Supervisory Board without a permanent chairman, cannot be said to have its governance in order.

The researchers commend the procedure followed by the Supervisory Board in selecting Ms. Ruf. On the other hand, the way in which the Supervisory Board subsequently supervised the functioning of the director is hardly praiseworthy. The researchers have established that Ms. Ruf's art consultancy business did not perform activities relating to art consultancy. The income generated, directly and indirectly, by her BV originated exclusively from organisations where Ms. Ruf held an approved ancillary position. The other income generated by the BV derived solely from asset management, in which regard the role performed by Ms. Ruf did not, strictly speaking, need to be mentioned in the Museum's annual report. As an extension of the private capital of those involved, positions of this kind do not require disclosure provided that they do not involve activities or roles that remained unreported. Ms. Ruf made no secret of the existence of her BV but, in the view of the researchers, she would have been well-advised to have given the chairman of the Supervisory Board a more detailed account of her business activities than she actually did.

Both the fact that Ms. Ruf resigned on 16 October 2017 before the meeting of the Supervisory Board held that evening, and the fact that the Supervisory Board had accepted her resignation that evening without waiting for the results of an external investigation is, in the opinion of the researchers, extremely unfortunate.

Ms. Ruf's salary was within the maximum threshold specified by the WNT (after correction), the WNT does not cover additional income such as that earned by Ms. Ruf, and the information the Museum published on its website concerning the salary of the directors was not in accordance with the WNT.

Ten recommendations⁴Recommendation 1

The first recommendation is addressed to the Supervisory Board of the Museum and the municipality and concerns the permanent chairmanship of the Supervisory Board. Recruiting and appointing a chairman of the board must be given the highest priority. The vacancy arose suddenly on 24 October 2017 due to the resignation of Mr. Grapperhaus in connection with his appointment as Minister of Justice and Security and the chair has since been temporarily held by Ms. De Cock Buning. The researchers understand that, in agreement with the municipality, the Supervisory Board has decided to postpone the appointment of a chairman until the publication of the present report. The sooner this vacancy is permanently filled, the better.

Under the current statutes, the members of the Supervisory Board are appointed by the Supervisory Board itself. The Board is in discussion with the municipality about the municipality's wish to assume responsibility for the appointment of all members of the Supervisory Board. That discussion has been going on for some time. The appointment of the chairman should not be delayed because the discussion has not yet been concluded. For this reason, this recommendation is addressed to both the Supervisory Board and the municipality and is intended to allow for the process of appointing the chairman in close consultation between the municipality and the Supervisory Board.

The first step in that process is to determine the desired profile of the chairman. The researchers suggest that it is preferable to appoint a chairman who can begin with a clean slate, someone experienced in managing complex organizations, with sufficient time to bring order to the Museum at executive level and who visibly has no other interest than to promote the success of the Museum. The board and the municipality should look into this first and, in consultation, draw up a profile that will be workable at least for the first few years. The current circumstances of the Museum call for a special profile that meets the needs arising from these circumstances.

The selection process can take place under the direction of the board, but the researchers recommend keeping the municipality informed throughout every stage of that process, and heeding any input and comments the municipality may have. Although under the current statutes, the official appointment is the responsibility of the board and the municipality only needs to be "heard", in the current circumstances it is clear that the board will not go ahead with the appointment until the municipality has given its

⁴ Wording of the report "Governance and the WNT at the SMA" (chapter VI, pages 119 - 125)

consent. The researchers also anticipate that a new chairman will not accept the appointment until he or she is sure they can count on the support of the municipality.

Recommendation 2

The second recommendation concerns the power to appoint members of the Supervisory Board. As already stated, in the current statutes, this power is vested in the Supervisory Board itself and the municipality has expressed the wish to amend the statutes in such a way that the municipality is assigned authority to appoint Supervisory Board members. For the time being, the Supervisory Board has not conceded that wish. This point has been the subject of years-long discussion. The arguments offered by either side have not proved convincing. This surprises the researchers, given that - on closer inspection - the Museum provides museum services with regard to the collection, the majority of which is owned by the municipality, for a fee that has the legal status of a subsidy. Not that the municipality wishes to have greater influence in the appointment of supervisors whose primary task is to supervise the administrative integrity of that museum service. This is not uncommon in the museum branch. Hence, the researchers propose to amend the statutes in such a way that the authority to appoint all members of the Supervisory Board will be vested in the Executive Board of the municipality on the recommendation of the Supervisory Board and on the basis of a profile that has been drawn up in mutual consultation between the municipality and the Supervisory Board. This system should be effective in connection with the initial appointment of a Supervisory Board member. However, it may lead to less desirable consequences when members are due to be reappointed. It is not inconceivable that a possible reappointment may serve to worsen the dynamics within the board in the run-up to a reappointment, and it could also mean that members may only wish to sit for a single term, which could adversely affect the board's continuity. When members are up for reappointment, the board will also be in a better position to evaluate the benefits of reappointment. In view of which, the researchers propose that the authority to reappoint a Supervisory Board member should remain with the board - naturally, after due consultation with the municipality about a reappointment. Regardless of who is officially responsible for the appointment, Supervisory Board members are governed by the following rule: to perform their duties independently in the interest of the Foundation and the Museum.

Recommendation 3

The composition and functioning of the Museum directorate, and its supervision, are of crucial importance. On which count, the Museum has recently fallen short. As soon as a new chairman of the Supervisory Board has been appointed, the Board will need to address one of its key tasks: the appointment of a board of

directors. This raises the question of whether the board of directors should consist of one, or several, directors, and whether one is of a higher rank. Partly in view of recent experiences, the researchers recommend that the Supervisory Board assigns less weight to this question than to others.

Assuming that the Museum requires both an artistic director and a business director, the question of official position and authority is not unimportant, but secondary to the matter of selecting individuals whose ambitions and professional skills are complementary, who work well together, are team players, respect each other's competencies, maximise each other's strengths and minimise weaknesses and, in unison, are able to manage a team of, in most cases, highly educated professionals. When selecting and monitoring the board of directors, the Board is expected to devote a great deal of time and attention to these and similar matters; at all events, more than it seems to have done in the past. From the perspective of the Supervisory Board and from the perspective of the desired checks and balances, a two-person directorate will generally be preferable. In the case of a one-person directorate and a strong second-in-command, additional measures will have to be taken to formalise the balance outlined above. Adding to this third recommendation, the researchers advise eliminating the concept of the directorate's "casting" vote. This concept may be counterproductive. In view of which, it is better not to have a procedure in place if the directors cannot reach an agreement; a more workable method is to make it mandatory for the directors to inform the Supervisory Board if consensus or an alternative solution cannot be reached. Hopefully, this would be sufficient incentive for finding a solution at directorate level.

Recommendation 4

The fourth recommendation concerns the subject of conflict of interest. The Museum has drawn attention for the wrong reasons, and for the wrong thing. The sooner the Museum is able to shake off the negative image, that it is unable to deal adequately with conflicts of interest, the better.

To this end, the Museum must take a number of measures: the first is that the Museum clearly conveys - even better than it may have done in the past - that its mission, certainly as a cultural entrepreneur, is guided by the primacy of museum values. As stipulated in section 1.10 of the Ethics Code for Museums, the directors must define a policy concerning private income, and income from external sources. But museums must also retain control of the integrity of their programmes, exhibitions and activities. And, finally, according to this Code, activities aimed at generating income may on no account jeopardize the Museum's quality standards. It would be advantageous if the Museum explicitly reiterates and publishes this policy, and also adheres to what it publishes.

The second measure advises the Museum to tighten up its internal rules on decision-making regarding potential conflicts of interest and adhere to those rules. The most important element in this respect is that potential conflicts of interest are signalled early and the decision-making process - regarding the question of whether there is a conflict of interest and if an action, despite a conflict of interest, is nevertheless in the interests of the Museum after being tested against museum values - does not include the participation of those involved. The crux is that decisions must be based purely on the primacy of museum values. The third measure is transparency both internally and externally; in other words, internally to those who will take the decisions, and externally by publishing details in or supplementary to the annual report in such a way that the reader and the public understand that individuals in an administrative or supervisory role are involved in a transaction that may be in conflict with the Museum's interest, and that they are excluded from taking part in the internal decision-making process in this regard.

The fourth measure is not to accept donations and loans from members of the Board of Directors and members of the Supervisory Board in the coming period (other than modest donations in cash) and communicate that clearly to the outside world. Not because such action might be unlawful or might not be intended to best serve the Museum's interests but because, in the short term, the priority is to restore trust, and the Museum's interest would not benefit from questions - justified or not - concerning the integrity of its decision-making bodies and the independence of the members of those bodies.

Recommendation 5

The researchers also make a recommendation regarding ancillary positions, particularly in connection with the board of directors. The starting point for the assessment of so-called ancillary positions is that a large network maintained by the directors can be of vital importance to the strategy and mission of the Museum. In many instances, relationships will remain under the radar and, in exceptional cases, come to light as a so-called ancillary position. Here, the researchers speak of so-called ancillary positions because they question whether jury memberships and similar activities should actually be included among a director's normal duties. The role would only be classed as an ancillary position if the position did not fall within a director's standard duties. The Museum may also benefit from directors who hold such positions. Naturally, should there be a lasting or structural issue of a conflict of interests between the Museum and the organisation where the ancillary position is held, the ancillary position cannot be accepted and approved. Should a (possible) conflict of interests incidentally arise, particular care must be taken. This particular care involves a principled decision-making process and assessing whether the

association / activities uphold the primacy of museum values. That said, the researchers do not wish to discourage the Museum's directors from performing ancillary functions in future if such additional roles - and more generally, the cultivation of a relevant network of contacts - complement the strategy and mission of the Museum and, when accepting and fulfilling the relevant ancillary function, the particular care described above is observed.

Recommendation 6

If there is confidence that the Museum always prioritises the primacy of museum values in connection with fundraising and accepting loans and is consistent in pursuing a principled decision-making process, the researchers recommend that all parties give less attention to whether the donor benefits by providing the donation or loan. Once it has been established, with sufficient clarity, that the interests of the Museum - bearing in mind all relevant circumstances - are served by the donation or loan, the question of whether the donor also benefits is no longer relevant and is also often speculative. Win-win situations are permissible. Conflicts of interest are not blameworthy by definition; they can also be fruitful. The trick is to avoid the negative aspects and stimulate the positive. This is an art the Museum also needs to appreciate.

Recommendation 7

The researchers also advise the Museum to take a fresh look at the governance of the Museum. It looked good on paper. In reality, however, questions arise regarding both compliance with the Cultural Governance Code and the fact that despite considerable attention devoted to the subject of "governance" the Museum finds itself in a situation where it cannot be said to have its management and supervision in order

First of all, the Supervisory Board should consider the question of which tasks and responsibilities it must prioritise at all times to bring added value to the Museum. While there can be no doubt of the importance of appointing a good team of directors, proper supervision to ensure the integrity of the board's functioning is of even greater importance. Even more time and attention will be demanded of the Supervisory Board for the timely calibration of relationships within the board of directors if the Supervisory Board discerns indications that these relationships are unsatisfactory. Compared to which, the duty of the Supervisory Board (assisted by its audit committee) to supervise the adequate external accountability of the course of events at the Museum, is relatively simple. The researchers also advise considering the size of the Supervisory Board, and identifying the core competencies required of board members, in view of the Museum's current situation. In the long term, the skills required may change. The Code serves only as a guide. The

Museum is also free to adopt unusual standpoints in its governance practice if it concludes that good governance and good supervision are served by these standpoints. The Cultural Governance Code simply requires a clear public explanation of these standpoints. Neither the Code nor the conditions on which the grant is awarded demand slavish compliance with the principles and practical guidelines of the Code. In recent years, at the start of each year, the Supervisory Board drew up an annual calendar of its activities. Which is very sensible. Every year, that opportunity could be used to reflect on matters requiring the board's extra attention given the current circumstances, and list the resulting conclusions in the annual calendar, in addition to matters that crop up on a regular basis.

This seems more meaningful than an annual self-evaluation, which subsequently reveals that some people felt uncomfortable voicing their opinions. The chairman's task is permanently to monitor the functioning of the board and take action as and when required. If action is needed, the remedy is not to wait for a courteous self-evaluation. This topic also ties in with the fact that all governance documents should be reviewed to assess whether they meet the desired governance and the Cultural Governance Code, in that order. Lastly, it is advisable to make the governance documents public by publishing them on the website of the Museum.

Recommendation 8

Normal governance assumes that the directors map out the strategy of the Museum, which is subsequently approved or rejected by the Supervisory Board. This takes place within the framework of the conditions of the subsidy. In the circumstances currently facing the Museum, it is prudent to continue to respect the authority of the directors to define the strategy and to postpone decision-making regarding a possible new or modified strategy until a new directorate is permanently in office.

Recommendation 9

For the functioning of the Supervisory Board, it is vital to maintain a good relationship - formal and informal - with the Works Council, without undermining the directorate's authority. The researchers recommend that the members of the Supervisory Board should take note of the minutes of consultations between the Works Council and the board of directors in addition to the measures that have already been taken, particularly concerning appointing a Supervisory Board member to maintain more frequent contact with the Works Council.

Recommendation 10

The statutes of the Museum stipulate that the members of the Supervisory Board receive no remuneration. That is a noble stipulation. However, this provision may unnecessarily restrict the pool of competent supervisors. In light of this question, we

recommend considering an amendment to the Museum statutes specifying the payment of a salary more in line with that of the non-commercial sector.

Annex 1 accompanying the letter dated 4 June 2018 to the Municipal Executive of Amsterdam

Brief curricula vitae of the researchers and the members of the sounding board group.

Mr. S.E. Eisma. Amsterdam, 1949

Former main position: Lawyer, affiliated with De Brauw from 1972 to 2010.

Current part-time positions: Board member, Stichting Fonds 1818, tot nut van het algemeen; Board member, Stichting Hal Pensioenfonds; Chair of the Supervisory Board, FD Mediagroep BV; incidental advisor to civil organisations and researcher; arbitrator.

Former part-time positions: Chair of the Supervisory Board, Hogeschool der Kunsten, The Hague; chair of the Supervisory Board Kröller-Müller Museum; chair of the Supervisory Board, Hal Holding NV; member of the Supervisory Board, SOU Uitgevers NV; member of the Supervisory Board, Rabobank Nederland; member (and acting chair) of the Supervisory Board, Robeco Groep NV; professor by special appointment in stocks, markets and regulation in Leiden (banking and stocks) and in Amsterdam (UvA financial markets); deputy judge, The Hague District Court.

Mr. J.A.J. Peeters. Venlo, 1943

Former main position: Judge and (Coordinating) vice president of the Amsterdam District Court (1981-2013)

Current positions: Chair of the Complaints Committee of De Nederlandsche Bank;
Chair of the Codecommissie Geneesmiddelenreclame; chair of the Sanquin Donor Complaints Committee; arbitrator, incidental researcher.

Selected former ancillary positions: President-in-office, Kamer van Toezicht voor het Notariaat Amsterdam; chair of the management board, The Felix Meritis Foundation; Chair of the Reclame Codecommissie; deputy Chair of the Medisch Tuchtcollege Amsterdam.

Ms. Pauline W. Kruseman, Bronxville, NY. United States of America, 1942

Main positions: Director, Amsterdams Historisch Museum (now Amsterdam Museum) (1991-2009); Business director /deputy director, Tropenmuseum/KIT (1971-1991)

Selected relevant former ancillary positions: Member of the Supervisory Boards: Nationaal Museum van Wereldculturen (Tropenmuseum, Museum Volkenkunde, Afrikamuseum, Wereldmuseum); Naturalis (Leiden); Openlucht Museum (Arnhem); Zuiderzeemuseum (Enkhuizen);

Anne Frank House (Amsterdam),
Member, Ethical Code Committee (Netherlands
Museum Association)

Ms. Truze Lodder, Oud-Beijerland, 1948

Relevant main positions:

1987 - 2012

Business director of De Nederlandse Opera
and CEO of Het Muziektheater Amsterdam
(which merged on 1.1.2013 to form Dutch
National Opera and Ballet)

Relevant ancillary positions:

1994 - 2004

Member of the Supervisory Board, Van Gogh
Museum

2004 - 2016

Member of the Supervisory Board, Nederlandse
Spoorwegen

2005 - 2013

Member of the Supervisory Board, Van
Lanschoot Bankiers

2007 - 2017

Member of the Supervisory Board, *Maastricht
University*

2012 - present

Member of the Supervisory Board, Nationaal
Jeugdorkest

2017 - present

Member of the Board, Stichting Hal
Pensioenfonds