

# Articles of association of Koda



## § 1

Koda is a non-profit organisation whose primary objectives are to manage rights in musical works on behalf of composers, lyricists and music publishers. Koda can also manage other rights which may be assigned to Koda by rightsholders or collective rights management organisations.

**(2)** Koda may leave the management of the rights mentioned in article 1 to other organisations in Denmark and abroad.

**(3)** Koda manages and protects under specific agreements to that effect also the rights held by foreign rightsholders or collective rights management organisations.

## § 2

Koda's registered office is in Greater Copenhagen.

## § 3

Koda's members include voting members and non-voting members.

**(2)** Any composer, lyricist and music publisher can be enrolled as non-voting members as well as beneficiaries or representatives of beneficiaries who own or represent the rights of composers or lyricists. If intellectual property rights are owned jointly by more beneficiaries, these can only be represented by one member. Members being composers and/or lyricists and their beneficiaries are termed "author members", whereas members being music publishers are termed "publisher members".

**(3)** Members obtain voting membership as follows:

a) Any member, who was a voting member under Koda's articles in force at the time when this provision entered into force, is still a voting member.

b) Any author member, including beneficiaries, see the second sentence of subsection (2), who has had earnings from Koda of at least DKK 4,000 on average per year as a member in the three immediately preceding calendar years, or who has had earnings from Koda of at least DKK 30,000 within the past calendar year, becomes a voting member. Such income can include income from works created by the author member in question, but which was received by a music publisher owned or controlled by the author member.

c) Any publisher member, who has had earnings from Koda of at least DKK 10,000 on average per year in the three immediately preceding calendar years, or who has had earnings from Koda of at least DKK 100,000 within the past calendar year, becomes a voting member.

**(4)** Members, who have obtained voting right, keep this right irrespective of the size of future earnings.

**(5)** The amount limits specified in (3) are adjusted every year on 1 January based on the development in the net price index and according to specific guidelines determined by Koda's board. The amounts thus adjusted are published on Koda's website.

**(6)** When admitting new members, Koda's board can determine that a registration fee is paid. The size of the fee is determined by the board.

## **§ 4**

a) Each member must assign to Koda the exclusive right to manage the rights to public performance, sound reproduction, duplication and dissemination of its own works. Koda can only refuse such management based on objective reasons, or if the management type in question does not fall under Koda's activities. The member may limit the assignment of the right to manage to cover certain categories of rights or types of works, at its own discretion, in territories at its own choice. Koda's board determines, taking into account the possibilities of administratively appropriate management, specific guidelines on what is understood by categories of rights and types of works. These guidelines are published on Koda's website.

b) The assignment to Koda includes both existing and future works to the extent that the member owns or controls these works, and to the extent that the management of the works has been assigned, see article 4(1)(a). The member must send to Koda – or whomever Koda may appoint – a list of all works composed, arranged, written or published, respectively. The member is obliged to supplement this list with any works subsequently created.

c) A member can terminate Koda's right and duty to manage categories of rights or types of works and other creations, including for territories at its own choice, at written notice of at least six months to the end of Koda's financial year.

d) Irrespective of whether a member has assigned to Koda the exclusive right to manage the rights as stated, the member is entitled to issue licences for non-commercial use of any right, category of rights or type of works or other creations at its own choice. Koda's board determines, taking into account the possibilities of administratively appropriate management, specific guidelines on, in this context, non-commercial use and categories of rights and types of works. These guidelines are published on Koda's website.

e) If a member has chosen only to assign to Koda the exclusive right to manage a limited part of the member's works, in accordance with subsection (1)(a) and (1)(b), Koda may charge an annual fee for the administrative extra work caused by such division of the management rights. The fee, which must be reasonable, is determined by Koda's board.

**(2)** Each member must provide a declaration in which the member undertakes to observe Koda's articles of association applicable from time to time, and in which the member declares to assign its right in compliance with article 4(1), and which further states the options for the members to limit the assignment of rights. The detailed contents of this declaration (the membership declaration) is determined by Koda's board. However, changes to existing declarations can only be adopted by the general meeting, see article 4(4).

**(3)** The membership comes into force when the declaration mentioned in subsection (2) and the fixed fee under article 3(6) have been received by Koda. If a fee is charged under subsection (1)(e), the membership is also subject to the payment of this fee.

**(4)** Changes to the contents of the declaration mentioned in subsection (2) may, in addition to implementation by the members' acceptance of new declarations, also be adopted by the general meeting. Adopted changes come into force at one year's notice to the end of a calendar year.

## **§ 5**

Complaints about distributions from Koda must be made in writing within 36 months after distribution has taken place. After this time, any claim for subsequent distribution becomes void.

## **§ 6**

Resignation from Koda must be made with at least six months' written notice to the end of Koda's financial year.

**(2)** The board may in specific cases grant exemption from the term of resignation specified in subsection (1).

## **§ 6a**

Koda's board is entitled to decide upon the cessation of membership for members who:

- a. do not observe Koda's articles of association; or
- b. by incongruous or disloyal behaviour work against Koda's business and interests.

**(2)** Members may demand a decision made under subsection (1) presented at the next general meeting.

**(3)** Koda continues to manage the excluded member's rights for at least six months after the exclusion, however, in such a way that the management does not cease until at the end of a financial year.

## **§ 7**

Koda is managed by a board comprising nine members.

**(2)** With regard to such members of the board, one is appointed by the board of Dansk Komponistforening (the Danish Composers' Society), one is appointed by the board of Danske Populærautorer (Danish Auteurs of Popular Music), one is appointed by the board of DJBFA (The Danish Society for Jazz, Rock and Folk Composers) (the "author associations") and one is appointed by the board of Musikforlæggerne i Danmark (Music publishers in Denmark). The four members thus appointed must be chairmen of the boards of each of the associations in question (the "Organisations"). Five members of the board are among Koda's voting members elected by and at Koda's general meeting. Two of these members must be publisher members, whereas three must be author members.

**(3)** Members appointed as well as members elected, including the candidates nominated, must issue a declaration to the general meeting concerning all their interests in Koda and all amounts received from Koda in the preceding financial year, see the Danish Act on Collective Management of Copyright, section 8(3) and section 9(3).

**(4)** Only voting publisher members of Koda may vote for the election of publisher members to the board, and for the election of the three other board members, only voting author members of Koda may vote.

**(5)** All board members elected by the general meeting are elected for a two-year period to the effect that the two publisher members of the board resign at one annual general meeting, and the three author members of the board resign at the next general meeting. As a transitional arrangement, the two publisher members of the board resign at the third annual general meeting after the adoption of these articles of association, whereas the three author members resign at the fourth annual general meeting after the adoption of these articles of association. Re-election may take place.

**(6)** For the board members elected by the general meeting, a total of three alternates are also elected together with the elections for the board, namely an alternate for the publisher members and a first and second alternate for the author members.

**(7)** The board members appointed by the Organisations remain board members as long as they

are chairmen of their respective associations and on resignation as chairmen, they are replaced by the respective association's new chairman.

## **§ 8**

The board appoints a panel of chairs consisting of one chairman and two vice chairmen for periods of two years at a time. Two members of the panel of chairs must be author members, and one member must be a publisher member. The same person cannot be chairman for any consecutive period of more than six years. Two years after the expiry of a chairman period, the person in question may be re-elected as chairman.

## **§ 9**

If a board member is absent for a longer period, an alternate will join until the absence has ceased, however, not longer than until the expiry of the term of office of the member in question. As regards appointed members of the board, the person is replaced for the relevant period by a temporary member appointed by the organisation that made the initial appointment.

**(2)** If a board member elected by the general meeting resigns during a year, the procedure is as in subsection (1), however, a new election is conducted for the remaining part of the election term of the person in question at the next annual general meeting.

## **§ 10**

The board determines its own rules of procedure, which as a minimum must contain provisions about the following:

- a. Constitution of the board
- b. Guidelines for the board's work and conduct
- c. Duties of the board
- d. Recommendation to the general meeting regarding remuneration of the board
- e. Transparency
- f. Disqualification
- g. The board's relation to Koda's management
- h. The board's self-evaluation

i. Approval of the rules of procedure and amendments thereto.

## **§ 11**

The board constitutes Koda's top management in all matters where a decision to that effect does not fall under the general meeting, according to legislation or the articles of association. Within the framework determined by the general meeting, the board determines:

1. Deductions in rights revenue and any income from investment of rights revenue, including deductions for cultural funds, see article 18(2)(b).
2. The investment policy for rights revenue and any income from investments of rights revenue.
3. The decision to distribute funds payable to the rightsholders, see article 11(2) and 11(3).
4. The policy for the use of funds that cannot be distributed.
5. The use of funds that cannot be distributed.

Further, the board decides on risk management policies, approval of acquisition, sale or mortgaging of real property, approval of mergers and alliances, formation of subsidiaries and acquisition of other entities or shares or rights in other entities, taking out loans, advancing of loans or offering collateral for loans.

Finally, the board determines the dismissal and hiring of Koda's chief executive officer and the terms thereof.

**(2)** The board adopts a distribution plan for the net proceeds for the remuneration received by Koda originating from the exploitation of works, see article 18(2), within the framework of the general distribution policy as determined by the general meeting.

**(3)** The distribution plan is devised in such a way that, to the widest extent possible, Koda's revenue is distributed among the rightsholders based on objective criteria such as the number of times the work was performed, playing time, technological performance methods, place of performance and similar criteria. The distribution plan can also divide works into categories based on the duration of the work, the work performance behind the creation of the work etc.

**(4)** It is the board's duty to prepare and publish an annual transparency report, see the Danish Act on Collective Management of Copyright.

## **§ 12**

Towards third parties, Koda is represented by the chairman of the board and four members of Koda's board, or by one of the vice chairmen of the board and four members of Koda's board, or by the entire board, or by a person so authorised by the board.

## **§ 13**

The board convenes, by giving 14 days' notice, the annual general meeting on Koda's website and in at least two national daily newspapers. If the board finds it necessary, or if at least one fifth of the members demand so, the board also convenes, on Koda's website and in at least two national daily newspapers, an extraordinary general meeting giving at least 14 days' notice.

**(2)** The board may choose to announce an annual general meeting and an extraordinary general meeting at the same time, however, in such a way that the extraordinary general meeting can take place no earlier than 14 days after the annual general meeting..

## **§ 14**

The board meets regularly and as often as requested by the chairman or two of the members. Minutes of the board meetings are taken.

**(2)** Unless otherwise specified in the articles of association, all matters considered by the board, are determined by simple majority of votes.

**(3)** The board forms a quorum when, in addition to the chairman or one of the vice chairmen, at least five board members are present.

## **§ 15**

All of Koda's members are entitled to attend Koda's general meetings, either in person or online. Only the voting members can vote at general meetings, either in person or online. In order to obtain the right to vote at a general meeting, members must pre-register their attendance at the general meeting in a manner prescribed by Koda no later than at 12 noon three weekdays prior to the general meeting.

**(2)** Publisher members with the right to cast more than one vote on matters on which only publisher members can vote, see article 16(1), must pre-register their attendance at the general meeting in a manner prescribed by Koda no later than at 12 noon one week prior to the general meeting in order to obtain the right to such additional votes.

**(3)** The right to attend and vote can also be exercised by a written power of attorney to a proxy who attends Koda's general meeting in person. The power of attorney must be submitted to

Koda no later than at 12 noon three weekdays before the general meeting in order to be valid and presented by the proxy as entry requirement to the general meeting, and which can be issued for only one general meeting. No proxy may attend on behalf of more than two principals. Koda provides a power of attorney form to the members on its website. Only powers of attorney issued on this form are valid.

**(4)** A proxy who is a member of Koda may only exercise its power of attorney on behalf of a principal in the same membership category as the proxy, i.e. an author member or a publisher member, respectively.

## § 16

The voting members have each one vote at Koda's general meeting. However, in the ballots where only publisher members can vote, publisher members have voting rights determined according to the following scale:

Income from Koda, DKK 0-100,000:	1 vote
Income from Koda, DKK 100,001-250,000:	2 vote
Income from Koda, DKK 250,001-500,000:	3 vote
Income from Koda, DKK 500,001-1,000,000:	4 vote
Income from Koda, more than DKK 1,000,000:	5 vote

Publisher members must pre-register their attendance at the general meeting in due time, see article 15(2), in order to obtain the additional votes.

The amounts stated are determined on the basis of Koda's most recent finalised and closed financial year and are subject to indexation, see article 3(5).

A publisher member owned or controlled by an author member only has voting right as a publisher member if at least 75% of the works managed by the music publisher are created by others than the author member in question. Similarly, a publisher member owned or controlled by an author member's beneficiaries may only vote as a publisher member if at least 75% of the works managed by the publisher were created by others than the author member in question.

Publisher members, which under Danish company law constitute a group, can have no more than 5 votes jointly.

**(2)** The general meeting appoints the chairman of the meeting.

**(3)** All matters except amendments to the articles of association are determined by a simple majority of votes. However, for the election of board members, critical auditors and their alternates, see article 7(3) and (5) and article 20(2), the voting is made to the effect that only publisher members may vote for election of members/auditors who are publisher members, whereas only



author members may vote for the members/auditors who are author members.

**(4)** Minutes of the transactions of the general meeting are taken.

**(5)** Adoption of proposals for amendments to the articles of association and changes of the membership declaration, see article 4(2) and (4), requires that at least half of Koda's voting members attend the general meeting, and that two thirds thereof vote in favour of the proposed amendments, however, see also (6).

**(6)** If less than half of Koda's voting members attend the general meeting, and if a proposal for amendments to the articles of association or changes of the membership declaration is adopted by at least two thirds of the votes represented at the general meeting, a final adoption of the changes specified in (5) is subject to the holding of a new extraordinary general meeting. The new extraordinary general meeting forms a quorum irrespective of the number of participants. Final adoption of the proposed amendments at the extraordinary general meeting requires the acceptance by two thirds of the votes represented.

## **§ 17**

Annual general meetings are held every year before the end of April. At least the following items must be on the agenda.

1. Election of chairman of the meeting.
2. Report of the activities of the year.
3. Presentation of the financial statements for adoption.
4. Presentation of the annual transparency report for adoption.
5. Election of members and alternates of Koda's board, to the extent that they are eligible for election.
6. Appointment of an external, state-authorised public accountant.
7. Election of three critical auditors and two alternates.
8. Decision on the general policy on deductions from rights revenue (including "cultural funds", see article 18(2)(b-f) and from any income arising from investments of rights revenue, based on a recommendation made by the board.
9. Decision on the general investment policy with regard to rights revenue and any income arising from investments of rights revenue, based on a recommendation made by the

board.

10. Decision on the general distribution policy regarding funds due to rightsholders, based on a recommendation made by the board.
11. Decision on the general policy on the use of non-distributable amounts, based on a recommendation made by the board.
12. Decision on use of non-distributable amounts, for the closed financial year, based on a recommendation made by the board.
13. Determination of remuneration of Koda's board, based on a recommendation made by the board.
14. Any other business.

**(2)** The agenda and proposals from the board must be announced to the members together with the invitation to the general meeting. The board's recommendations for agenda items 5-10 must be published on Koda's website no later than 1 March.

**(3)** Proposals from the members to the annual general meeting, including also all proposals concerning article 1, item 5-13 and including proposals for candidates for board members and auditors, must be received by the board no later than 15 March in the year in which the general meeting is to be held. Proposals are sent to the members before the general meeting or made available on Koda's website no later than 14 days before the general meeting.

## § 18

The financial year is the calendar year.

(2) Koda's revenue from the exploitation of rights in works is allocated in the following order:

a) All operating costs are covered by the gross income.

b) Of the remaining amount (the net income), 10% is set aside for cultural purposes every year, including for cultural-political work, projects and development, all within the musical area, in the following referred to as "cultural funds", see article 17(1)(8). Koda's board may in specific cases decide to set aside another percentage in relation to foreign affiliated societies or within special areas of exploitation, if necessary for competitive reasons.

c) The use of the cultural funds, see item b above, is managed partly by Koda, and partly by the Organisations, or by an association established jointly by the Organisations.

d) At the annual general meeting, see article 17(1)(5), Koda's general meeting will determine the general policy for the application of the cultural funds in the following financial year. The general policy includes (1) a decision of how large shares of the cultural funds are to be managed by Koda and the Organisations, respectively, (2) a decision of how large percentage shares of the cultural funds are to be used for grants or project support, and how large shares are to be used for cultural purposes, and (3) a decision of how large shares of the cultural funds may be used by the Organisations for administration. The decisions of the general meeting on the general policy are made based on a recommendation made by the board. On this basis, Koda's board determines how large shares of the cultural funds for the given year are to be managed by the Organisations individually for the purpose of ensuring cultural diversity and establishing a fair balance between the interests of author members and publisher members, and otherwise makes all decisions about the use of the cultural funds.

e) In addition to being used under article 18(2)(b), the cultural funds may be applied for by any member of Koda, however to the effect that the funds managed by the author associations can only be applied for by author members, whereas the funds managed by Musikforlæggerne i Danmark (Music publishers in Denmark), can only be applied for by publisher members.

f) Koda's board adopts a set of rules for both Koda's and the Organisations' use of the cultural funds and publishes these rules on Koda's website. The use of the cultural funds must be fully transparent, and both Koda and the Organisations must state the use of the funds on Koda's website, including a specification of all recipients of grants and/or project support.

**(3)** The remaining proceeds from Koda's revenue are distributed as performance remuneration according to the distribution plan applicable from time to time, see article 11(2).

**(4)** Remuneration for exploitation of mechanical works are distributed after deduction of administration costs.

## **§ 19**

To attend to Koda's financial and operational management, the board employs a chief executive officer who is responsible to the board for the operations and financial statements which the chief executive officer co-signs.

**(2)** After being adopted by the board, the financial statements are presented to the general meeting for adoption.

**(3)** Koda's audited financial statements and the annual transparency report are open for inspection for the members for at least 14 days before the general meeting, and are also made available on Koda's website.

## § 20

Koda's financial statements are audited by a state-authorized public accountant who is appointed by Koda's general meeting. The auditor must audit the financial statements in accordance with generally accepted auditing standards, and must make a critical review of Koda's accounting records and its other circumstances.

**(2)** At the general meeting, three critical auditors are elected among the voting members, of which two must be author members and one must be a publisher member. Further, two alternates are elected, one for the publisher member and one for the two author members. For the election of critical auditors, only voting publisher members may vote in elections of the auditor and alternate auditor who must be publisher members, whereas only voting author members may vote in elections of the auditors/alternates who must be author members. The election of the critical auditors and their alternates is valid for one year. Re-election may take place.

**(3)** The auditors may at any time demand the board convened for a meeting if they consider it necessary.

## § 21

Koda will set up an independent complaints board, the Koda complaints board, consisting of the three critical auditors and a chairman, who must be a judge and be appointed in consultation with Dommerforeningen (the Association of Danish Judges). The complaints board's secretariat will be provided by Koda, however, it will be outside the scope of Koda's instructions.

**(2)** The object of the complaints board is to assess the justification of any complaints lodged by Koda's members against Koda's decisions within the following three areas:

- a. Settlement or payment
- b. Registration of musical compositions/songs
- c. Rejection of a concert reported to Koda.

**(3)** Complaints to the complaints board must be submitted to Koda by the member concerned by the case. Koda will only submit the complaint to the complaints board for consideration when Koda's ordinary complaint system has been exhausted, and Koda's decision therefore is final. Complaints to the complaints board must be submitted no later than three months after Koda's final decision. Complaints against Koda's decisions that have been rejected by Koda because Koda's time limits have been exceeded cannot be considered by the complaints board.

**(4)** The complaints board cannot change Koda's decisions but must assess whether Koda has acted in accordance with the rules established within the relevant area. The complaints board can express criticism, make recommendations and present its views on the case.

**(5)** If the complaints board finds that the complaint gives sufficient cause for investigation, the board will request that Koda submits a written statement of the matter with which the complaint is concerned. The complainant must be allowed to comment in writing on Koda's statement before the complaints board makes its decision. The complaints board convenes whenever deemed necessary by the chairman and passes its decisions following oral discussions, however, see subsection (6). In the event of disagreement, the board's decisions are passed by a majority of votes. In the event of equality of votes, the chairman holds the casting vote. The provisions concerning disqualification and confidentiality applicable to Koda's board also apply to the complaints board. The complaints board determines its own rules of procedure.

**(6)** The complaints board can without convening decide whether a complaint gives sufficient cause for investigation. If a complaint cannot be expected to give the complaints board reason for criticism, recommendation, etc., the complaints board may close the case without requesting that Koda prepares a written statement concerning the case, see subsection (5).

**(7)** Koda charges a fee of DKK 1,000 for each complaint lodged with the complaints board. Koda's board may decide to adjust the amount according to the procedure described in article 4(5). The fee will be repaid if the complaint gives the complaints board reason for criticism or recommendation. Remuneration to the complaints board's members is paid by Koda.

**(8)** The complaints board's decisions are posted at koda.dk. Decisions in cases can be represented in summary and without indication of the complainant's name in instances where the case has not given rise to a written statement from Koda, see subsection (7), or if the complaints board has not found reason to express criticism, issue recommendations or otherwise present its views on the case. In instances where the complaints board's chairman holds a minority view, this must appear from the decision.

## § 22

Koda cannot be dissolved for as long as it carries out the activities described in article 1 in accordance with existing legislation.

**(2)** If Koda ceases to carry on business, it can only be dissolved if adopted in accordance with the provisions in the articles of association concerning amendments to the articles of association, see article 16(5) and (6). Koda's assets, if any, must then be transferred to a cultural foundation managed by the Organisations, so that each of the Organisations appoints two members to the board of the foundation.

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Danish language version prevails