

Swiss Confederation

Federal Department of Home Affairs (EDI)
General Secretariat (GS-EDI)
Federal Supervisory Board for Foundations (ESA)

Bern, 2 June 2014

Ref: 984 – Ro

Order

In the following proceedings:

Robert Doetsch, Venloer Strasse 5-7, 50672 Cologne, Germany
Represented by attorney Dr. iur. et Dipl. Chem. Hans Maurer, Fraumünsterstrasse 17, Postfach 2018, 8022 Zurich

- Complainant -

versus

1. **Osho International Foundation**, Bahnhofstrasse 52, 8001 Zurich
Represented by attorney Dr. Walter H. Meier, Bienenstrasse 1, 8004 Zurich
2. **Michael O'Byrne** (since 2013: Michael Byrne), President of the Foundation Board, Suite 1201, Convention Plaza Apartments, 1 Harbour Road, Wanchai, Hong Kong, People's Republic of China
3. **John Andrews**, Vice President of the Foundation Board, London, Great Britain
4. **D'Arcy O'Byrne**, Board Member, Flat 1, Palmeira Ave, Hove, East Sussex, BN3 3GA, Great Britain
5. **Kaus Steeg**, Board Member, Lütticher Strasse 33-35, Cologne, Germany
6. **Rudolf Kocher**, Board Member, Steinägerten, 4458 Eptingen

- Respondents 1-6 -

Regarding

Recall of the Foundation Board – enactment of *superprovisorische Maßnahmen* [immediately enforceable ex parte measures]; initiation of exchange of documents; supervisory measures (Complaint filed 20 May, 2014)

The Federal Department of Home Affairs (EDI), noting that,

whereas:

- On 20 May, 2014, former member of the Foundation Board, Mr. Robert Doetsch, filed a complaint through the agency of his legal counsel with the Federal Supervisory Board for Foundations (ESA), petitioning that Respondents 2 through 6 should be dismissed from their positions as president, vice-president and members of the Foundation Board of Osho International Foundation (OIF). The complaint furthermore petitions that that suitable new board members should be sought and instated for Respondent 1, OIF.
- It is further petitioned that Respondents 2 through 6 should be dismissed from their positions as president, vice-president and members of the OIF Foundation Board without prior hearing, i.e. as a *superprovisorische Maßnahme* [immediately enforceable ex parte measure], and that a trustee should be appointed to serve until the instatement of the new Board.
- Then, also as an immediately enforceable ex parte measure, i.e. without prior hearing of the Respondents, the creditors of Respondent 1, in particular the banks Post Finance and Credit Suisse, should be instructed not to pay out or transfer any funds to the Respondents or to other persons until otherwise instructed by the ESA.
- The right of complaint under foundation legislation is a federal matter, governed directly by *Art. 84 Abs. 2 ZGB (Riemer, Berner Kommentar, Die Stiftungen, 1975, N 120 zu Art. 84)*. The submission of 20 May, 2014 is thus to be treated as a Supervisory Board for Foundations complaint. The Complainant was himself previously a member of the Foundation Board of Osho International Foundation and, having many years of experience and profound knowledge of the material, has a special interest in the preservation and protection of the archives of Osho in keeping with the goals of the Foundation. In particular in the context of his own many years of study and related activities in connection with the teachings of Osho, Robert Doetsch must depend on being able to use the archives of Osho and to continue to have access to the material, both now and in the future. As a beneficiary of the Foundation Robert Doetsch thus has a particularly close relationship with the Foundation and is thus entitled to file such a complaint (*BGE 107 II 385 E. 3*). The ESA is thus obliged in its official function to make the necessary assessments in the matter (*Riemer, Berner Kommentar, Die Stiftungen, 1975, N 121 zu Art. 84 ZGB*). Foundation regulation legislation constitutes material public law pursuant to *Art. 5 Bundesgesetz [Federal Code] of 20 December, 1968, regarding administrative proceedings (VwVG; SR 172 021)* and filing a complaint with the Supervisory Board for Foundations is a legal remedy of administrative justice sui generis, and thus such proceedings are correspondingly regulated by the VwVG (*BGE 107 II 385 E. 4*).

- The first matter to be adjudged is the ordering of immediately enforceable ex parte measures. The objective of ordering a preventative measure is the creation or maintenance of a state of affairs that will guarantee the efficacy of the later injunction (*BGE 130 II 149 E.2.2*). The prerequisite for the ordering of a preventative measure is that there should be convincing grounds for it and that detriment to private or public interests that could not easily be corrected would occur without the ordering of the preventative measure. In addition to this, there must be urgency. Furthermore, the ordered measure must be appropriate. Among other things, a preventative measure serves to protect threatened interests (analogously to *Art. 56 VwVG*). Such a measure is ordered on the basis of a summary examination of the legal situation and the facts of the matter, for which a credible presentation of facts is sufficient (*A. Kölz, I. Häner, M. Bertschi, Verwaltungsverfahren und Verwaltungsrechtspflege des Bundes, 3.A. S. 198 ff. mit Hinweisen*).
- The Complainant has made a credible case that Respondents 2 through 6 are guilty of serious breaches of the aims of the Foundation, including and in particular continued misappropriation of Foundation assets, the full extent of which cannot yet be fully estimated.
- Even following extensive research by both the Complainant and the ESA, only a part of an extensive international web of companies and organizations within the purview of OIF has come to light, this web apparently serving the exploitation of the intellectual property rights of OIF and the direction of the resulting proceeds to third parties.
- In addition to the investigations conducted by the Complainant, investigations by at least three other persons known to the ESA have led to the same conclusions.
- Against this background, the revised annual financial statements of OIF for 2012/2013 may prove to represent only a fraction of the estimated worldwide income accruing from the intellectual rights to the works of Osho. In its accounts, OIF has been portrayed for years as over-indebted, and despite requests by the ESA, the incumbent Foundation Board has failed to implement any sustainable measures for correction of this state of affairs (the letters of subordination submitted regularly by the main creditor, who had a close relationship with the Foundation, cannot be considered to be serious corrective measures in this context).
- In the course of copyright proceedings in Alicante, Spain, the Respondents submitted a last will and testament of Osho that three independent experts have since assessed to be not authentic. This demonstrates that the Respondents are at least willing to contemplate illegal methods in the pursuit of their aims.
- If a hearing of the Respondents were to be permitted in advance, too much time would pass and the danger would be greater that actions could be taken that would be to the detriment of the Foundation. Following assessment of the facts of the matter it is realistic to assume

that there is a danger that remaining liquid assets could be siphoned off. The risk of asset transfers would also appear to be even greater in view of the fact that in the 2013 financial year, there was an outflow of virtually half of the liquid assets.

- Thus, the creditors of OIF, specifically the banks PostFinance and Credit Suisse, are to be ordered not to pay out or transfer any funds to the Respondents or other persons until further notice from the ESA. This order applies to a total of three accounts with PostFinance, in Swiss francs, euros and US dollars. At the Credit Suisse it applies to five accounts in Swiss francs, euros, US dollars and Australian dollars, and one account with the designation “STL” (Short Term Loan).
- It is not currently possible to protect the remaining liquid assets in the bank accounts of the Foundation with less extensive measures.
- In contrast to this, the protection of the material assets of the Foundation, i.e. in particular the archive of original video and audio recordings and the intellectual property rights to the same, can be sufficiently secured by means of a general restraining order issued by the ESA, accompanied by information on the criminal liability consequences pursuant to *Art. 292 StGB* in the event of non-compliance.
- In view of the infringements of the Foundation objectives in question, in particular the misappropriation of financial assets, it is clear that the current Foundation Board must be removed from office until full and complete investigation and clarification of the relevant financial transactions, assets and contracts has been completed. This is particularly important in view of the fact that it is quite possible that the investigations could reveal grounds for criminal proceedings. Against this background, the potential conflicts of interests of the members of the Foundation Board are manifestly clear. The fact that Respondents 2 and 4 are presumably financial beneficiaries of companies that profit directly from the marketing of the intellectual rights to Osho’s works provides ample grounds for a conflict of interests on its own. In addition to this, however, the Respondents also hold executive positions in virtually all known organizations involved in this marketing business. It is thus obvious that if the Respondents were to remain in their positions and offices in the Foundation Board this would at least impede the investigation of these allegations, if not make them completely impossible. It is also absolutely clear that Respondents 2 through 6 must definitely be recalled as Foundation Board members if the apparent infringements of the aims of the Foundation should be proven to be true.
- The suspension of Respondents 2 through 6 from their positions and functions as members of the Foundation Board of OIF pursuant to *Art. 84 Abs. 2 ZGB* is the only way to achieve expeditious and complete clarification of the facts of the matter and the legal situation.

- The appointment of a trustee pursuant to Art. 83d ZGB has the immediate purpose of restoring the Foundation's ability to act. The duties of the trustee include conducting the investigations needed to clarify the financial and contractual relationships in connection with the marketing of the intellectual property rights, conducting such daily business of the Foundation as cannot be postponed, and, if necessary, also the preparation for the election of new Board members. As is usual in such cases, the details will be regulated by contract.
- Consequentially, the ESA has sought suitable candidates for this trusteeship and found that Mr. lic. Iur. Andreas G. Keller, attorney, is a suitable choice for the position and fulfills the requirements, and Mr. Keller has immediately declared his willingness to take on the task. The rights and duties of the parties involved were set out in a contract dated 28 May, 2014, based on the general terms and conditions of business (AGB) of the *Bund für Dienstleistungsaufträge* [Federation for Service Contracts]. The formal appointment of the trustee with authority to sign as a single signatory and his registration in Commercial Register are to be formally ordered by the Supervisory Board for Foundations.
- Over and above this, no other business operations leading to increasing damage are known and there are no other immediate dangers.
- The proper exchange of documents is to be initiated simultaneously and the complaint of 20 May, 2014 is to be served to the Respondents by 3 July, 2014, for their response in the main proceedings. The service of the complaint to Respondents 2 through 5 who live abroad is to be effected at the current correspondence address of the Foundation at the offices of their legal representative Dr. Walter H. Meier. Publication of this order in the *Schweizerisches Handelsamtsblatt* [SHAB - Swiss Official Gazette of Commerce] pursuant to Art. 36 VwVG is out of the question in this case. Firstly, this would undermine the purpose of the preventative measures, and secondly it would contravene the legal privacy rights of both the involved persons and OIF.
- It must be prevented that an appeal lodged against the ordered supervisory measures could cause irreparable damage to the Foundation assets (property) and delay the urgently necessary clarification of the financial situation and future prospects of the Foundation. The suspensory effect of any possible appeal against this order must thus be revoked (*Art. 55 Abs. 2 des Bundesgesetzes vom 20. Dezember 1968 über das Verwaltungsverfahren; VwVG; SR 172.021*).
- The ESA expressly reserves the right to issue further orders impacting the proceedings and supervisory measures pursuant to *Art. 84a or Art. 83d ZGB*.
- The costs of the proceedings for this intermediate order are set at CHF 4,000.00 and are to be aggregated to the main proceedings, pursuant to *Art. 3 Abs. 1 Bst. F Gebührenverordnung Stiftungsaufsicht (SR 172.041.18) and Art. 63 VwVG*.

Therefore,

it is hereby ordered:

1. The entire Foundation Board of Osho International Foundation is to be provisionally suspended and their signatory rights are to be revoked. The following persons shall be removed from their positions and functions:
 - **Michael O’Byrne** (since 2013: Michael Byrne), President of the Foundation Board, Suite 1201, Convention Plaza Apartments, 1 Harbour Road, Wanchai, Hong Kong, People’s Republic of China
 - **John Andrews**, Vice President of the Foundation Board, London, Great Britain
 - **D’Arcy O’Byrne**, Board Member, Flat 1, Palmeira Ave, Hove, East Sussex, BN3 3GA, Great Britain
 - **Kaus Steeg**, Board Member, Lütticher Strasse 33-35, Cologne, Germany
 - **Rudolf Kocher**, Board Member, Steinägerten, 4458 Eptingen
2. Mr. lic. iur. Andreas G. Keller, attorney, Zurich, is to be appointed as trustee for Osho International Foundation with entitlement to sign as sole signatory.
3. The *Handelsregisteramt* [Commercial Registry Office] of Zurich is be requested to effect the necessary entries in the Commercial Registry without delay.
4. The creditors of Osho International Foundation, in particular the banks **PostFinance AG**, 3030 Bern, and **Credit Suisse**, 8070 Zurich, are to be instructed to not pay out or transfer any funds to the Respondents or third parties until instruction to the contrary.
5. The Complaint of 20 May, 2014, is to be served to Respondents 2 through 5 via the agency of the legal representative of Osho International Foundation and to Respondent 6 directly for response in the main proceedings, by **3 July, 2014**.
6. The Foundation Board of Osho International Foundation is to be instructed, with reference to the possible consequences under criminal law pursuant to *Art. 292 StGB* in the event of infringement, to effect no disposition of the assets of the Foundation without the consent of the Supervisory Board for Foundations until further notice, this to apply in particular to the entire Osho archive and the entire intellectual property rights to text, audio and images.
7. The costs for the enactment of this order of CHF 4,000.00 are to be aggregated to the main proceedings.

8. The suspensory effect of any appeal against this order is to be revoked.
9. Disclosure to (by registered mail):
 - Osho International Foundation, Bahnhofstrasse 52, 8001 Zurich
 - The Foundation Board of Osho International Foundation, through agency of attorney Dr. Walter H. Meier, Bienenstrasse 1, 8004 Zurich (with a copy of the Complaint)
 - Rudolf Kocher, Board Member, Steinägerten, 4458 Eptingen (with a copy of the Complaint)
 - Mr. lic. iur. Andreas Keller, attorney, Gehrenholzpark 2g, 8055 Zurich
 - Attorney Dr. Hans Maurer, Advokaturbüro Maurer & Stäger, Postfach 2018, 8022 Zurich

Right of appeal:

An appeal may be lodged against this order, within 30 days of disclosure, with the *Bundesverwaltungsgericht* [Federal Administrative Court], Postfach, 9023 St. Gallen.

The appeal must include the claim, the grounds for the claim including the evidence for the same and the signature of the claimant or his or her representative; the disputed order (or the disputed decision) and the documents referenced as evidence must be included (*Art. 50 und 52 des Bundesgesetzes vom 20 Dezember 1968 über das Verwaltungsverfahren; VwVG; SR 172.021*).

10. Notification to:

- Handelsregisteramt [Commercial Register Office] of the Canton of Zurich (for registration)
- PostFinance AG, Mingerstrasse 20, 3030 Bern (in advance by fax 058 667 6228)
- Credit Suisse, Paradeplatz 8, 8070 Zurich (in advance by fax 044 333 2532)
- Fiduconsult Acta SA, Rue Fritz Courvoisier 40, 2300 La Chaux-de-Fonds.

[signed]

Helena Antonio
Director of the Federal Supervisory Board for Foundations