



Articles of Governance

v. 1.1; November 24th, 2022

ARTICLE I: GENERAL PROVISIONS

1. Name. The name of the organisation is the “Fair Cobalt Alliance” (the “FCA”).
2. Mission Statement. The FCA is a multi-stakeholder initiative that seeks (a) to transform the cobalt artisanal mining (“ASM”) industry to have a positive impact in the Democratic Republic of the Congo (the “DR Congo”) by channelling demand for and increasing availability of responsible ASM cobalt, (b) to systemically address the root causes of child labour and dangerous practices at artisanal cobalt mining sites, and (c) to foster a just transition to a diversified economy to drive the sustainable development of the region. The FCA achieves this by bringing together stakeholders along the cobalt supply chain who recognize the development potential of artisanal cobalt mining operations as a legitimate economic activity contributing to the local economy and providing direct and indirect livelihoods for thousands of people in the DR Congo.

More information about the FCA’s principles and approach can be accessed at: www.faircobaltalliance.org.

ARTICLE II: LEGAL STRUCTURE

1. Legal Structure. The FCA is coordinated by The Impact Facility for Sustainable Mining Communities (“The Impact Facility”), a UK registered charity, hereafter The FCA Secretariat. The Impact Facility manages the FCA as a stand-alone initiative and ensures that all FCA funding is allocated to projects approved and accounted for by the FCA SC. All Members of the FCA enter into a formal agreement with The Impact Facility with respect to their rights, duties, and obligations under these provisions.

ARTICLE III: GOVERNANCE

1. General. The FCA shall be governed by and subject to the oversight of a Steering Committee (SC).

2. SC Composition. Each founding member of the FCA (each, a “Founding Member”) shall be entitled to appoint one (1) Member to the SC. Active Founding Members are: Tesla, Glencore, Fairphone. The SC Members appointed by Founding Members shall serve up to two (2) terms of two (2) years each, at which point they will be subject to election as other members, provided that such Founding Members continue to remain Members of the FCA and satisfy those membership obligations set forth in the Terms of Reference (v.1.2), dated November 29th, 2022 (the “ToR”).

Additional rotating seats on the SC shall be available to be filled by individuals nominated by the Members up to a maximum of nine (9) SC Members. The FCA aims at achieving a balanced representation of private sector along the cobalt supply chain as well as non-profit actors on the SC, when nominating candidates for SC Membership. Additionally, the Members shall aim at ensuring that the Congolese private sector or civil society organisations based in the DR Congo are represented on the SC. To ensure such representation, a total of three (3) SC Member seats shall be reserved for civil society organisation - either based in the DR Congo or elsewhere - and/or a Congolese corporate company.

In the event that a Founding Member resigns from, is removed as, or otherwise ceases to be a Member, or such Founding Member provides notice to the SC that it waives its right to appoint a Member, such position on the SC shall convert to a rotating seat available to be filled by SC Members nominated by the Members that are not Founding Members.

3. Nominations to the SC. Each Member may nominate an employee to serve as a SC Member, which shall be made no earlier than ninety (90) days prior and no later than thirty (30) days before the Annual Plenary. Voting on SC Members shall occur at the Annual Plenary in a manner determined by the Secretariat. If a Member position becomes vacant before the Annual Plenary, a replacement SC Member shall be selected by the Members. r. If the Member is no longer participating in the FCA, the SC retains the discretion to call for a special election to fill the vacancy, with such elected replacement SC Member to serve the remainder of the original Members Term.
4. SC Responsibilities. The SC shall have responsibility for:
- (a) FCA Strategy: Approving the FCA's strategic objectives, including communication strategy and alignment with other initiatives.
 - (b) Organisational Oversight: Approving the annual work programme, new FCA taskforces, approving internal policies (including a contracting policy, Member admission policy, anti-trust policy, human rights policy, conflicts of interest policy, anti-corruption policy, fair competition policy, and an ASM partnership policy), approving the annual budget, and overseeing operational capability and organisational structure.
 - (c) Risk Management Oversight: Approving FCA risk management policy and approach and reviewing the design and effectiveness of risk management policies and procedures.
 - (d) Monitoring: Monitoring effectiveness of the FCA grievance mechanism, monitoring performance of the FCA against its key performance indicators (as defined in Article X), and overseeing a financial review that includes independent third-party audit and assurance and transparency to Members and externally.
5. SC Member Term. Each SC Member that is not appointed by a Founding Member shall serve a two (2) year term, serving a maximum of two (2) subsequent terms.
6. SC Member Resignation, Replacement, and Removal.
- (a) A SC Member may resign at any time upon notice given in writing or by electronic transmission to the SC or to the Secretariat.

- (b) A SC Member may be removed by the unanimous vote of the other Members for reasons that include, but are not limited to, (a) repeated absences from SC Meetings such that it may be reasonably considered an abdication of responsibilities, (b) a failure to disclose a conflict of interest, or (c) actions otherwise detrimental to the FCA.

7. SC Meetings.

- (a) Frequency of Meetings. The SC shall hold periodic meetings at such other regular intervals as the SC may from time to time by resolution designate. Special meetings of the SC may be called at any time by the SC Chair or the Secretariat.

(b) Quorum and Vote.

- (i) Except as otherwise provided herein, the presence of a majority of the SC Member then serving on the SC shall be required to constitute a quorum for the transaction of business at any meeting of the SC, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the SC Member present.
- (ii) In an effort to increase participation from civil society in the SC, and as long as civil society remains under-represented in the SC (aka one seat), any transaction of business will require an affirmative vote by the Member representative of civil society - in addition to a quorum - to be approved.
- (iii) Each Members entitled to one vote, which may be made by written proxy. The SC shall make a good faith effort to make all decisions by consensus. Any SC Member may recuse himself or herself from a vote or a meeting of the SC. Any SC Member may appoint an individual from his or her organisation to serve as a stand-in for that Member, if the SC Member is unable to participate in any SC activity.

8. Action by Consent. Any action required or permitted to be taken at any meeting of the SC may be taken without a meeting and without prior notice if all SC Member consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the SC.

9. SC Chair.

- (a) The SC Members shall elect a maximum of two (2) SC Co-Chairs to serve as the SC Chair. The SC Chairs shall serve for a term of one (1) year. The same AS Member shall not serve as the SC Chair for two (2) consecutive terms unless otherwise agreed upon by the SC.
- (b) The SC Chairs shall:
- (i) Coordinate with the FCA Secretariat in preparing the agenda for SC calls and meetings.
 - (ii) Lead all meetings and calls of the SC. If the SC Chair is unable to preside over meetings or calls of the SC, the Members present may appoint another SC Member for the purpose of chairing such meeting or call.
 - (iii) Facilitate consensus decision-making within the SC.

10. Insurance. The FCA shall obtain liability insurance coverage with respect to actions or omissions made in good faith by the SC Member.

ARTICLE IV: MANAGEMENT

1. General. The day-to-day operations of the FCA shall be managed by The FCA's Secretariat, who shall report to and advise the SC. The Impact Facility shall serve as the FCA's Secretariat permanently.

2. Responsibilities. The responsibilities of the Secretariat include, but are not limited to:

(a) preparing the agenda for, and hosting, calls and meetings of the FCA SC; (b) drafting minutes of respective calls and meetings; (c) organising the Annual Plenary and quarterly member meetings; (d) facilitating and drafting the design and development, and overseeing the budgeting and execution, of actionable programmes and annual plans for ASM mine sites and broader communities; (e) selecting and managing service providers to the FCA, including NGOs, consultants, experts, and independent third party financial auditors; (f) monitoring, aggregating, and analysing programme performance and impact data for reporting to the SC; (g) overseeing due diligence for new members; (h) conducting outreach and engagement with potential Members, Supporting-Non Members, partners, and other third parties; (i) facilitating the FCA's dispute resolution and grievance mechanism; (j) organising the SC's voting and vote-counting process with respect to SC Member nominations; (k) overseeing internal members communications and the development of a strategic communications plan to ensure transparency; (l) drafting FCA public and third-party reporting; (m) daily administrative decision making; (n) maintaining the books of account and a current registry of Members and other participants in the FCA; and (o) subject to compliance with FCA eligibility criteria, selecting additional mine sites.

Notwithstanding any provision herein to the contrary, and in accordance with the FCA's internal policies and procedures with respect to conflicts of interest, The Impact Facility as the FCA Secretariat shall recuse itself from and not participate in any discussion, deliberation, or voting of the SC or Members in which The Impact Facility has an actual or potential financial or other material interest that impairs, or might appear to impair, its independence or objectivity in the discharge of its responsibilities and duties to the FCA.

3. Task Forces. Each task force pursued by the FCA shall be coordinated by the Secretariat, and act as set forth in the Terms of Reference. Each task force may establish a committee to provide non-binding advice to the SC on relevant issues and best practices. Such a committee shall be selected by the Secretariat and approved by the SC, and include, inter alia, subject matter experts, individuals with relevant ASM expertise, and/or other relevant expertise and experiences. "Relevant ASM expertise" may include, but not be limited to (a) experience working at or with ASM operations in the DRC, meaningful involvement on FCA task force in the ASM context, or experience in advocacy of responsible mining practices at ASM sites, and/or (b) be in a position to reasonably represent the perspective of ASM stakeholders.

ARTICLE V: MEMBERSHIP

1. General. The FCA shall have multiple categories of membership and participation as set forth in the Terms of Reference. The membership of the FCA (including the Founding Members) shall not be responsible, individually or collectively, for any of the FCA's debts, liabilities, or obligations.

2. Admission.

(a) In order to be admitted as a Member of the FCA, all parties seeking to become a Member shall submit a completed application in compliance with the FCA's internal membership admission policy and be subject to due diligence with respect to compliance with the FCA's standards on human rights, corruption and such other matters that the SC and Secretariat may determine. The SC reserves the right not to admit a Member because of prior conduct or statements that could undermine reputation of FCA

(b) Admission shall in every case be subject to:

- (i) The discretion of the SC, in consultation with the Secretariat; and
- (ii) Such party entering into an agreement with or administered by The Impact Facility with respect to membership.

(c) Obligations. As set forth in the Terms of Reference, Members shall:

- (i) Make a contribution to the FCA, whether financial, in-kind or through their expertise and participation, with regard to membership contributions as defined in the Terms of Reference.
- (ii) Designate an individual to serve as a contact person and representative to the FCA for participation in the Annual Plenary, special and any other meetings of the Members, task force meetings, and the promotion of FCA objectives.
- (iii) Adhere to the Governance provisions herein.
- (iv) Agree to the FCA Call to Action.
- (v) Annually renew or affirm the contractual relationship with or administered by The Impact Facility with respect to membership in the FCA.

3. Member Meetings.

- (a) The Members shall meet at least once (1) annually (the “Annual Plenary”) for the purpose of:
- (i) Discussing major activities from the past year;
 - (ii) Discussing planned major activities for the future year;
 - (iii) Discussing achievements of any KPIs that have been set;
 - (iv) Overseeing a financial review that includes independent third-party audit and assurance;
 - (v) Nominating and electing SC Member;
 - (vi) Conducting voting on any additional issues that require a vote of Members; and
 - (vii) Transacting any other proper business as may come before such meetings.

(b) Quorum and Vote.

- (i) Except as otherwise provided herein, the presence of representatives from one-half (1/2) of the Members shall be required to constitute a quorum for the transaction of business at any Annual Plenary or other meeting of the Members, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the Members present.
- (ii) Each Member is entitled to one vote. Votes may be made by written proxy. The Members shall make a good faith effort to make all decisions by consensus.

4. Action by Consent. Any action required or permitted to be taken at any meeting of the Members thereof may be taken without a meeting and without prior notice if at least two-thirds (2/3) of all Members consent thereto in writing or by electronic transmission(s).

5. Membership Renewal; Resignation and Removal of Members.

- (a) Members shall annually enter into a new, or affirm their existing, contractual relationship with The Impact Facility with respect to their membership in the FCA.

- (b) A Member may resign at any time upon notice given in writing or by electronic transmission to the SC or to the Secretariat.
- (c) At any time, the Secretariat or a Member may notify the SC that a Member is allegedly not adhering to the requirements of Members set forth herein or is otherwise conducting its affairs in a manner prejudicial or detrimental to the FCA. Upon receipt of such notification, the SC shall direct the Secretariat to conduct a review of the Member's adherence and conduct, and provide a report. If the SC determines that the Member is non-adherent, the SC shall notify the Member in writing and request that the non-adherence be remedied within a set period of time. If, in the sole and absolute discretion of the SC, the non-adherence is not remedied within such set period of time, the Member may be removed by the vote of at least two-thirds (2/3) of the SC, excluding the vote of any SC Member nominated by such Member.
- (d) A Member's obligations of membership, including financial obligations, must be fulfilled until the effective date of the resignation or removal of such Member.
- (e) A Member that has resigned, been removed, failed to renew or affirm its membership or otherwise ceased to be a Member of the FCA may reapply for membership after six (6) months in accordance with the admission process set forth herein.

ARTICLE VI: HONORARY MEMBERS

The FCA shall accord relevant Congolese government institutions honorary membership to the alliance. These members shall be bilaterally consulted and & informed on the FCA's activities every quarter to maintain strong government relations. These members have been brought together to support FCA's ambition to contribute to the Congolese government's vision for the professionalisation of the ASM cobalt sector as part of FCA's commitment to full transparency in its activities to facilitate collaboration and enable scalable and lasting impact on the artisanal mining communities of the DR Congo.

ARTICLE VII: THIRD PARTIES

1. Beyond formal membership, third-party participation in the FCA may include other types of participants as set forth in the Terms of Reference.

ARTICLE VIII: ADVISORY BOARD

The FCA shall institute an advisory board consisting of third-party advisors selected by the Secretariat in consultation with the SC, of such size that the Secretariat in consultation with the SC may determine. The advisory board shall render non-binding advice to the Secretariat and SC, and operate according to separate written terms of reference approved by the SC. At least one of the advisory committee members shall have either (a) experience working at or with ASM operations in the DR Congo, meaningful involvement on FCA taskforces in the ASM context, or experience in advocacy of responsible mining practices at ASM sites, and/or (b) be in a position to reasonably represent the perspective of ASM stakeholders.

Meetings of the advisory board shall be minuted, approved by the Secretariat, SC and advisory board, and made available publicly.

ARTICLE IX: DISPUTE RESOLUTION & GRIEVANCE MECHANISM

The Secretariat shall establish and maintain an FCA grievance mechanism (the “Grievance Mechanism”), available to Members and external third parties. The Grievance Mechanism shall be established, published and maintained consistent with Principle 31 of the UN Guiding Principles on Business and Human Rights.

ARTICLE X: MISCELLANEOUS

1. Books of Account. At all times, the Secretariat shall maintain separate books of account for the FCA that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the FCA in accordance with GAAP consistently applied. Such books of account shall also include (a) the ratio of FCA funds allocated to management expenses compared to the FCA funds allocated to operations and project implementation, and (b) Member contributions to specific programmes and taskforces, as applicable. Such books of account shall be open to inspection and examination at reasonable times and after reasonable advance notice to the FCA by a Member. The books of account and the records of the FCA shall be examined by and reported upon as of the end of each fiscal year by a firm of independent certified public accountants.

2. External Reporting. The FCA shall publish an annual report with respect to the FCAs programmes and taskforces (the “Annual Report”), encompassing subject matters proposed by the Secretariat and confirmed by the SC.

3. Performance Standards. The Secretariat shall propose, and the SC shall confirm, certain Key Performance Indicators to regularly track and assess the performance of the FCA.
4. Confidentiality. All SC Members and FCA Members shall, upon election and admission, respectively, sign a written undertaking to uphold these Articles, including a requirement to maintain confidentiality of all information made available, provided, or entrusted to them during and after their SC membership or FCA membership terms. Information shared with SC Members and FCA Members should be assumed confidential unless specified otherwise by the Secretariat or SC.
5. Member Representations. The Secretariat shall establish guidelines for how Members may publicly represent their affiliation with the FCA. Members shall ensure that their public communications and representations with respect to the FCA and their affiliation therewith adhere to the FCA's guidelines as mentioned in the Terms of Reference.
6. Internal Policies and Procedures. The Secretariat shall develop, the SC shall approve, and the FCA shall make available to its Members upon request, copies of the FCA's internal policies and procedures with respect to conflicts of interest, anti-corruption, human rights, and such other matters that the SC may determine.
7. Language of FCA Documents, Communications, and Proceedings. All meetings of the SC, the Annual Plenary, and other meetings that fall under the umbrella of the FCA shall be noticed and conducted in English, accommodating French translation upon request. The FCA shall make available English and French translations of Advisory Board minutes and resolutions and certain other documents the Secretariat and SC consider to be significant.
8. Amendment. The Governance provisions herein shall be subject to the review and approval of the SC one (1) year after the date hereof, and thereafter shall be subject to the review and approval of the SC every two (2) years.
9. Dissolution. Notwithstanding any provision to the contrary, the FCA may be dissolved by the affirmative vote of three-quarters (3/4) of the Members. In the event of dissolution, the property and assets of the FCA shall be applied in satisfaction of all FCA debts and liabilities, after satisfaction of which the property and assets of the FCA shall be granted or transferred to another UK registered charity with a mission similar to the FCA nominated by the SC.