

NOTE ON PROPOSED ALTERATIONS TO ARTICLES OF ASSOCIATION AND BYE-LAWS OF THE SCOTTISH SUB-AQUA CLUB (THE “COMPANY”)

Introduction

The purpose of this note is to highlight the proposed changes to the current Articles of Association and Bye-laws of the Company which have been proposed in order to: (a) ensure that the Articles and Bye-laws are up to date in terms of the manner in which the Company is run in practice; (b) streamline the Articles and Bye-laws so that they are easier and more practical to use; (c) ensure that the Articles and Bye-laws are up to date in terms of current legislation (including, in particular, the Companies Act 2006 (“the 2006 Act”)); (d) allow the Company to be run in the most efficient way possible; and (e) ensure that the Articles and Bye-laws cover all necessary legal requirements.

Articles of Association

Article 1 - Preliminary

A number of the definitions have been amended in order to tie in with the alterations to the Articles and to refer to the ‘Model Articles’ which are incorporated as part of the Articles unless amended by the Articles. It is common and recommended practice for companies of this type to incorporate the Model Articles.

Article 2 - Members

The categories of membership have been clarified. It has been made clear at Article 2.1 that members must be 14 or over.

The Articles and Bye-laws now make it clear that the Voting Members of the Company are the Ordinary Members, Junior Members, Associate Members, Joint Members, Family Members, Student Members and ScotSAC Direct Members and the Non-Voting Members are the Snorkel Members, Junior Snorkel Members and Honorary Members. The specific categories of Membership are set out in detail in the Bye-laws.

Standard anti-discriminatory wording has been included at Article 2.3 in accordance with recommendations from Sportscotland.

Article 3 - Removal of Members and Adherence to Rules

Article 3 has been updated to make it clear that all Members and Persons (which will include all coaches, volunteers etc. and all people involved in the Sport) must adhere to the Rules of the Company. This was recommended in order to ensure that all such people are covered by the Rules.

Former Article 3.4 has been removed as it was not used in practice.

Article 4 - Notice of General Meeting

This is a standard clause and sets out what will be included in the Notice of the AGM.

Article 5 - General Meetings

Article 5 has been included to make it clear when the AGM must be held, how General Meetings can be requisitioned and when nominations for Directors and the National Diving Council must be made. This Article also sets out what business will be transacted at the AGM, which is a standard provision.

Article 5.6 makes it clear that the subscriptions will be fixed annually at the AGM as is currently the case.

Article 5.7 makes it clear that the Directors will be nominated and elected at the AGM (subject to any director co-opted as discussed below). This Article also makes it clear that rather than directors being nominated and appointed in respect of a specific post, the directors will determine amongst them (taking into account the requirements of the Company and the skills of the directors) which areas of responsibility each Director will have.

Article 6 - Proceedings at General Meetings

Article 6.1 is a standard clause and sets out how much notice needs to be given in relation to the AGM. Article 6.2 has been amended to make it clear that only Voting Members will count towards a quorum at general meetings.

Under the 2006 Act each member entitled to attend, speak and vote at a meeting is entitled to appoint a proxy and Article 6.3 has been included to reflect the provisions of the 2006 in relation to this.

Article 7 - Votes of Members

Article 7 now makes it clear that each Voting Member will have one vote at general meetings and that Non-Voting Members will not be entitled to attend or vote at general meetings.

Under the terms of the 2006 Act it is no longer possible to provide that the Chairman of General Meetings will have a casting vote and this has been altered at Article 7.3. It is unlikely that this situation would arise in practice.

Article 8 - Appointment of Directors

It is recommended practice that a Company has both a minimum and a maximum number of directors on the Board and Article 8.1 has been updated to include a minimum of four directors. The manner in which members can nominate people to be directors have been made clear in the Articles and in the Bye-laws.

It has been recommended that the Board should be entitled to co-opt directors to sit on the Board to fill any vacancy on the Board and this has been included in Article 8.3. In the event of a co-option, the person co-opted will hold office until the next AGM when they can be re-appointed.

Article 8.4 now sets out that directors may be appointed for a period of three years following which they may be re-appointed as it was recommended that the directors should come up for re-election at certain intervals, in accordance with principles of good corporate governance.

Article 12- Conflicts of Interest

The 2006 Act codified directors' duties (including a director's duty to avoid any actual or potential conflicts of interest) and this Article has been updated to reflect the provisions of the 2006 Act in relation to conflicts of interest.

Article 13- Notices

The notice provisions in the Articles have been updated. The 2006 Act introduced provisions whereby members and the company can communicate via electronic means (including through the use of the company's website). Article 13 has been updated to reflect these changes so that they can be used in practice if required.

Article 14 - Indemnity

This Article has been updated in accordance with the 2006 Act.

Bye-Laws

Many of the changes to the Bye-laws reflect the changes that have been made to the Articles.

The changes listed on page 1 of the Bye-laws have been removed as they have been incorporated into the Bye-laws.

Bye-law 2 - Membership

The classes of membership have been clarified and have been split into 'Voting Members' and 'Non-Voting Members' to make it clear which types of members are entitled to vote at general meetings of the Company.

Bye-law 3 - Personal Gain/ Liability

Bye-law 3.1.3 has been included to exclude the liability of the Company so far as possible in respect of any loss or liability sustained by any Member or third party.

Bye-law 4 - Branches

Bye-law 4.1.4 has been included to make it clear that if a Branch does not meet the requirements of the Company, it can be removed as a Branch of the Company and any members of the Branch will be transferred to another Branch. This protects the Company as it can remove a Branch if, for example, the Branch is not complying with the Rules of the Company.

The role descriptions of the Branch Committee have been removed in order to streamline the Bye-laws and so that they can be amended by the Board as and when required.

Bye-law 5 - Meetings

The provisions relating to the AGM of the Company have been removed from the Bye-laws and included in the Articles. It is usual and good practice for such provisions to be in the Articles of the Company.

The provisions relating to Branch Committee meetings have been updated slightly so that they are up to date and work in practice.

Bye-law 6 - Nomination and Election Procedures

The provisions relating to voting by postal ballot have been removed as proxy voting will now be offered to all Voting Members in accordance with the 2006 Act. As such, it would be impractical and unnecessary to also have postal voting.

Bye-law 4.7 has been removed as it was not used in practice and it was felt that it may restrict who can be nominated as directors.

Bye-law 7 - Duties of Directors

The 2006 Act codified directors' duties and in some cases altered the duties that directors owe to the Company. Bye-law 7.1 has been updated to provide that the directors will comply with their duties under the 2006 Act. The details of the role descriptions of the Board will be as determined by the Board as set out in Bye-law 7.1.

Bye-law 8 - Finance

Bye-law 8.4 has been updated in accordance with the timescales recommended by the Company's insurers. Bye-law 8.4.1 is now covered in the Articles.

Bye-law 9 - Training and Diving Rules

Bye-law 9.4 has been amended to provide that the Board can amend the Training and Diving Rules from time to time without the need to have the amendments approved by the members of the Company. This was required in order that the Board can make changes as and when required or as recommended by the National Diving Council.

Bye-law 10 - Discipline

This Bye-law has been updated in a number of ways in order to make it more useable in practice and to make it clear how disciplinary matters will be dealt with.

McClure Naismith LLP

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