

Several issues were discussed at the meeting - this note is aimed at summarising the issues involved and, where relevant, the arguments for/against.

1. The Sale of the Land/Buildings.

A concern was voiced that the Directors could sell the land and/or buildings if they chose to, thereby effectively ending the existence of the Club.

The new AofA specify that the Directors **CANNOT** sell any part of the land/buildings without it being authorised by a Special Resolution by the Members. Under the new AofA therefore, it will be impossible for the Directors to sell any or all of the land/buildings without it being first approved by over 75% of the Members.

2. Blocking Membership.

There is a concern that the Directors can decide against allowing a specific individual to become a Member.

Anyone over 18 commencing or renewing their membership of the Club will, as in the past, automatically become a Member of the Company. However, because the Company and Club are 2 separate legal entities, and given that the legal status of the Company is a Limited Company, membership of the Company CANNOT, by Law, be controlled by another party.

Early on in the discussions with the solicitors, the Directors made it clear that they have no wish to be involved in determining who is or is not a Member in all aspects - new applications, renewals and terminating membership terminations, but this is legally not possible:-

email from G.Francis to TWM 31/1/16 (full copy in Club folder) : "Clauses 20,21,& 22

Application/Transfer/Expulsion of Member - we want the membership to be controlled by the club i.e. the licensee, and not the company."

reply email from TWM (full copy in Club folder) : " 20-22 No, I don't think this is conceptually possible although, in practice, the effect is the same in your case. "Membership" in this context means membership of the Company. The "members" in a company limited by guarantee (like yours) are the equivalent of shareholders in a company limited by shares. The Articles represent the contract between the Company and its members, and it is not possible to have this controlled by a third party (such as the Club)."

The new AofA stipulate that the Directors only have the power to deny membership to individuals under special circumstances - when, acting properly and reasonably according to the Law, they consider it to be in the best interests of the Company to do so. According to Company Law, the Directors have legal responsibilities, and cannot act in a discriminatory way. If therefore, the Directors voted against a certain person becoming a Member, they would leave themselves open to legal charges of unfair discrimination and potentially face large financial penalties.

Similar strict restrictions apply to the Directors' ability to expel an existing member from membership, where again the Directors have serious legal responsibilities to act in a non-discriminatory manner.

3. Company Winding-Up & Distribution Of Funds

There is concern that the proposed distribution of funds if the Membership of the Company ever voted for the Company to be wound-up is unfair, as it favours longer-standing Members.

The whole issue of the possible distribution of funds has been included in the new AofA because of the proposed change in policy - from the existing Articles which dictate that if the land/building were to be sold then the proceeds would pass to a similar body (local sports club) in the area; to the proposed AofA which dictate that any such sale should benefit the Members.

For the details of the distribution of monies resulting from a winding-up, there have been a number of alternatives proposed, e.g. :-

1. every existing Member receives an equal share
2. every existing Member of more than 12 months membership receives an equal share
3. every existing Member of more than 3 years membership receives an equal share
4. every existing Member of more than 5 years membership receives an equal share
5. every existing Member receives a share determined by his/her length of membership measured in terms of points (1 point for being a Member, 1 extra point for every 10 years' membership, up to a maximum total of 4 points) - with the value of 1 point being calculated by the total monies to be distributed divided by the total number of points held
6. Various combinations of the above.

The Directors have received feedback from a number of Members on this issue, with different Members favouring any one of the cited examples. The one included in the AofA is #5 above, as that is considered to be likely to be acceptable to the majority of Members - as it discourages people from joining simply to gain from a winding-up, whilst acknowledging the long-term support of the Club by long-standing Members.

There appears to be strong opposition from some members to that proposed in the AofA however, so it is proposed that this issue be put to a vote by the general Membership to determine which of the options is considered preferable.

4. Process of Directors' Election/Re-Election

There is some confusion over the issue of how Directors are elected/re-elected. There is no change proposed on this issue from that which currently applies (and has been in place since company commencement in 1966) in that 2 Directors retire at each AGM (see below) and are eligible for re-election. Any Member can be nominated for election as a Director at an AGM, subject to appropriate written notice being provided within 14-35 days before the AGM. This is changed from the existing Articles (Companies Act) only in the stipulated period of notice (3-21 days) [this period of notice was in the template provided by TWM].

5. Retirement & Number of Directors

The proposed AofA includes a stipulation that 2 Directors retire at each AGM. There is no change proposed on this issue from that which currently applies (and has been in place since company commencement in 1966).

The proposed AofA stipulates that there should be a minimum of 2 and a maximum of 6 Directors. This has changed from the existing/old Articles only in that a maximum number has now been included. This was included to limit the potential problems of arranging mutually convenient dates for Board meetings, and the maximum number set at 6, partly on the advice of the Club Committee Chairman.

6. Quorum for Directors' Meetings

This is set at 2 in the proposed AofA. The existing/old Articles (via the Companies Act) stipulate that a quorum is set at 2. This is therefore unchanged in the new AofA. Opposition to this Quorum level has been voiced by some Members however, so it is proposed that this issue be put to a vote by the general Membership to determine which Quorum level (2 or 3 or 4) is considered preferable.

7. Clause 20.4 - criteria for Membership of the company

It has been suggested that this Clause is unnecessary in the proposed AofA. Further investigation reveals that this was in an early draft supplied by the Solicitors, but the later inclusion of Clause 20.2 (introduced to safeguard against possible abuse by future Directors) suggests that Clause 20.4 may well now be redundant. Legal advice has been sought on this, and it appears that Clause 20.4 should be retained, as Clause 20.2 merely qualifies it, rather than replaces it:-

email from G.Francis to TWM 1/10/17 (full copy in Club folder) : "Clause 20.2 (as below) was a late inclusion and some have questioned whether we can now remove 20.4. Appreciating, the company needs some control over its membership, we thought we had better ask the question before agreeing to remove it in total.

20.2 The directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the company to refuse the application.

20.3 A letter or electronic communication shall be sent to each successful applicant confirming his Membership of the Company and the details of each successful applicant shall be entered into the Register of Members.

20.4 The directors may prescribe criteria for Membership of the Company but shall not be obliged to accept persons fulfilling those criteria as Members."

reply email from TWM to G.Francis (full copy in Club folder) : "Articles 20.2 and 20.4 are saying two different things. Article 20.4 gives the directors power to specify the membership criteria, and I think you need to keep this. Article 20.4 then adds that fulfilling the criteria does not guarantee admission as a member, because the directors still retain discretion under Articles 20.1 and 20.2 to refuse an application if, acting reasonably and properly, they consider it in the best interests of the company to do so. Article 20.2 may give some reassurance to your members, but it is intended to qualify rather than replace Article 20.4."

8. Automatic continuing Membership after adoption of the new Articles

Concern has been raised over whether existing Members need to re-apply for Membership of the Company if the new AofA are adopted. This is NOT the case as we are not starting a new Company, we are merely shaping the rules over the governance of the existing Company. If, for example, the new AofA are formally adopted on December 31st therefore, all individuals who are Members on that day will automatically be Members on the 1st January. The concern stems from a misinterpretation of the relevance to existing Members of Clauses 20.1-20.4, which refer to new applications for Membership, NOT to existing Members. This has been re-affirmed by the Solicitors:-

email from G.Francis to TWM 1/10/17 (full copy in Club folder) : "We are being questioned about the procedure for current members remaining members, if the new AoA are adopted. We are under the impression that no process is required, as they automatically retain their membership of the company. Some are suggesting that current members will be required to re-apply under the new AoA. Clarification, please."

reply email from TWM to G.Francis (full copy in Club folder) : "I confirm that it is the Articles, not the Company, which are changing, and existing members of the Company will remain members after the change."

We hope the above provides some further light on the issues raised, but if there remains any uncertainty, please do not hesitate to contact any of the Directors.