

Explanatory notes for changes to HVAs governing document

At our AGM on 16th November 2018, HVA will be asking its members to adopt an updated governing document. Whilst the majority of the changes are have been made either for clarification or to update the wording, there are some new regulations which have come into force since our governing document was drawn up in 1989.

We are doing this both to bring our governing document up to date to reflect changes to the law (and good practice). But we are also taking into account changes which have occurred in the voluntary and community sector which could not have been covered in our original document. This includes clarifying the involvement of Social Enterprise or Community Interest Companies as members of HVA. These types of legal structures were far less common when our governing document was created and we wanted to recognise them as part of the local and national scene.

This paper is to explain the main changes that have been made – both to Company and Charity Law – that need to be reflected in our Articles of Association.

Electronic communications (article 54). Formal correspondence between the organisation and its members can be conducted by email or other forms of –e-communication, subject to certain conditions.

Directors duties (article 27-49). New duties for directors, including to act in the way s/he considers, in good faith, would be most likely to achieve the purposes of the company.

Casting vote. In all new articles adopted after 1 October 2007, a chairperson cannot have a casting vote at a general meeting. A casting vote can be had at a directors meeting if it is permitted by the articles. After discussion, the HVA management board agreed not to allow the chair of a directors meeting a casting vote.

Extraordinary general meetings (article 15). The category of “extraordinary” general meetings has been discontinued. Meetings are now simply “general meetings”. Although only 14 days’ notice is required for a general meeting, the articles can make provision for longer notice. HVA has made provision for 28 days’ notice to be given for an Annual General Meeting or any general meeting where a special resolution is to be passed. All other general meetings can be called by giving 14 days notices.

Short notice meetings (article 15.2). Members can call a short notice meeting, so long as it is supported by members who represent 90% or more of the total voting rights. This is a new clause in the template document.

Members’ right to appoint proxies (article 22). Members of charitable companies have the right to appoint proxies and notices of general meetings must refer to this right. This is a new right for members of charitable companies.

Accounting (article 52). The requirements for the preparation and scrutiny of the accounts of charitable companies have been brought into line with those for non-company charities. Further information on these requirements can be found in the Charity Commissions guidance – Charity reporting and Accounting: The essentials (April 2009).

Conflicts of interest (article 9). Directors have a statutory duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or may conflict, with the interests of the company. More information can be found in the Charity Commission publication CC29: Conflicts of interest; a guide for charity trustees.

Minimum age for directors (article 27). The minimum age for directors is 16 years.

At least one person to be a natural person (article 27). It is a requirement that a company must have at least one director who is a natural person (ie a human being as opposed to a corporate body).

Single document. Companies have a single main document – the articles of association – to set out their powers and to regulate their administration. Companies set up before October 2009 will have a memorandum and articles of association. This new governing document for HVA amalgamates our memorandum and articles of association into a single document.

Changes to consent requirements – alteration of objects (article 4). Before 2011 Charity Commission consent was required to alter any part of the objects clause, (irrespective of whether or not the actual objects were being altered). From 2011 prior consent of the Charity Commission in respect of alteration of a company's objects clause is only needed where the alteration will specifically add, remove or alter the statement of the objects themselves (or where the alterations will authorise a benefit to the directors, or direct an application of property on dissolution). Therefore the alteration of any provision within the objects clause will not require the Charity Commissions consent.

Effective date for alteration of objects. Any change to the objects will not take effect until registered by Companies House. It is the directors' responsibility to tell the Charity Commission the date on which Companies House registered their amended objects.

Objects (article 4). The Objects have been re-worded to make them more understandable. The purpose of HVA has not changed nor will our core services.

Company Secretary (article 62). It is no longer necessary to have a company secretary. However, after discussion the HVA management board decided that they wished to retain this post.

Types of membership (article 11 and appendix 1). For clarity, we have outlined our membership criteria.

Retirement of directors by rotation (article 32). Under the terms of our current governing document, directors are appointed at each AGM, for a one year term, and all retire at the following AGM (although they may be eligible for re-election). Under the new document, directors are appointed for a term of three years and retire by rotation. Retirement by rotation is a process whereby at each Annual General Meeting one-third of the directors must retire, but a retiring director would be eligible to stand for re-election.

Liability of members (article 3). The liability of members is limited to £10 (an increase of 1000% (£9)) on our existing governing document. Sorry!

If you have any questions about HVA's proposed new governing document, please contact Pat Weaver at pat@hvauk.org or call 01424 444010. Due to the technical and legal nature of the change to our governing document, it would be helpful if any questions that you would like raised at the AGM could be submitted in writing in advance of HVA's AGM before noon on Thursday 15 November 2018 to Pat Weaver at pat@hvauk.org. This will enable questions to be answered clearly and fully and to ensure the legality of the response.