

ASSOCIATION OF INDEPENDENT MUSEUMS

PROPOSED NEW ARTICLES EXPLANATORY NOTE

The purpose of this Explanatory Note is to give members an indication of the changes that are contained in the New Articles but it is not a substitute to reading the New Articles and if there is a difference between the New Articles and what is contained in this Explanatory Note, the New Articles must take precedence.

The objects for which a company is formed and the administration of a company have historically been determined by two documents, the Memorandum of Association and the Article of Association, often together called the “Memo and Arts”. The objects for which the company is formed are detailed in the Memorandum and the ways in which the company operates, in particular at member or board level, are detailed in the Articles. Indeed until relatively recently it was settled law that unless the Memorandum specifically stated that a particular act could be carried out by the company it was precluded from doing the particular thing. As a result the Memorandum was usually a reasonably long document and in the case of the Association of Independent Museums (“**AIM**”) it currently runs to five (5) pages including the specific right to draw cheques, to award a grant and to pay costs all things that might be considered to be incidental to our specific aims. Similarly, the Articles are often a long document detailing what specifically can be done and how. The Memorandum and Articles of Association of AIM reflect this position. They were primarily drafted more than 40 years ago. In recent time, it has become clear to the Board of AIM that the existing Memorandum and Articles are not necessarily the most appropriate. In particular and by way of example, they do not specifically permit meetings by electronic means and although recent legislation has allowed the Board to hold meetings and indeed an Annual Conference, including Annual General Meeting, by electronic means the Board have concluded that it would be better to make specific provision in our company documentation rather than rely on what might turn out to be short term legislation. In addition, rather than simply seek to resolve certain immediate needs as has occurred on earlier occasions when the Memorandum and Articles of Association were altered, the Board determined to have a full review of both documents.

In relation to this review, it should also be noted that since AIM was formed company legislation in the United Kingdom has been rationalised such that many acts of a company are now implied without requiring to be set out at length and in detail. In addition, it is now possible for a company to forego the need for a separate Memorandum of Association with the objects being contained within the Articles. The Board proposes that AIM take the benefit of these statutory changes and what is proposed at the Extraordinary General Meeting is that, in terms of the first Extraordinary Resolution, our existing Memorandum of Association and Articles of Association are to be treated as forming a single document and then, in terms of the second Extraordinary Resolution, the New Articles are substituted for the single document. On the basis that the two Extraordinary Resolutions are passed then the New Articles would detail why AIM was formed and on what basis it is administered.

We would now like to go through the New Articles detailing what they say and in particular how they differ from the existing Memorandum of Association and Articles of Association.

Article 1 - this sets out various defined terms and simply mirrors the relevant terms within the new document.

Article 2 – this confirms that the liability of members is limited to £1 only and reiterates what had been contained in Article 6 of the existing Memorandum of Association.

Articles 3 and 4 – these Articles set out the objects for which the company has been formed but as indicated earlier whereas in the existing Memorandum of Association this required the best part of four pages of drafting, in the New Articles the same intent has been reduced to two short clauses. The new drafting has been specifically considered by the Charity Commission and they have confirmed that they consider that these two clauses ensure that the charitable status of AIM is retained and in particular that the charitable aims of education and culture have been reflected. Members should be aware that it had been considered that these objects be extended to specifically cover the advocacy work that AIM are involved in but the Charity Commission commented that this advocacy work is not a charitable aim in itself but more a way in which the charitable aims are manifested and achieved such that the advocacy on behalf of both the members and sector need not and indeed should not be specifically referenced in the objects clause but this would not preclude AIM from acting in that advocacy manner. The detail contained in Article 4 of the existing Memorandum of Association does not require to be repeated at length and is implied in terms of the Companies Acts.

Articles 5 to 9 – these Articles deal with the Application of Income and Property and are based on the philosophy that as a charity the company does not make a profit but rather makes a surplus which is then used to further achieve the charitable aims of the company. In addition as a company limited by guarantee and not having a share capital there are no shareholders to withdraw the profit or surplus. To this end the Board members are not to be appointed to any salaried role by the company but they are entitled to receive reimbursement of out of pocket expenses. These clauses mirror the pre-existing situation in terms of Article 5 of the Memorandum of Association.

Articles 10 to 14 - these Articles deal with the membership of the company. Under the existing Articles there were two categories of membership, A and B with A members being museums or art galleries not centrally controlled and B members being cultural or heritage organisations, museums or galleries not falling within category A. The Board have after active discussion concluded that the differentiation is no longer material and is in particular no longer necessary. While the differentiation exists there are rules stating the extent to which any particular category needs to be represented. Without the differentiation such rules are unnecessary. Under the New Articles, the Board will have absolute discretion to admit new members. The position of Honorary Members is retained.

Article 15 – this Article deals with subscriptions and materially reflects the existing arrangement in Article 12 of the existing Articles.

Articles 16 to 18 – these Articles deal with the issue of termination of membership and reflect what had been in the existing Article 7.

Articles 19 to 27 – these Articles deal with General Meetings be they Annual or Extraordinary and deal with matters presently dealt with in Articles 13 to 17 of the existing Articles. Of particular note is the fact that electronic notices will be permissible in terms of the new Article 23 and in terms of Article 24 a member who does not register an email address will not be bound to receive notice of a General Meeting, Annual or Extraordinary. In addition, the use of electronic mail is promoted which the Board believe is the modern way used by the vast majority of our members, if indeed not all of them.

Articles 28 to 36 – these Articles deal with the proceedings at all General Meetings and cover the issues dealt with in the existing Articles 18 to 27. At present the quorum for all General Meetings is ten (10) members of whom five (5) must be category A members. With the end of the categorisation of members the Board propose that the new quorum at General Meetings shall be thirty (30) members. Although this may seem a significant increase it is the Board’s view that this is reasonable when taking account of the numbers of attendees at recent Annual General Meetings, including the most recent which was by Zoom. The physical presence of a person, which used to be central to meetings, has been changed such that attendees can be present physically or virtually as in Zoom or similar meetings.

Article 37 – this Article deals with resolutions in writing and materially reflect the terms of the existing Article 28.

Articles 38 to 41 – these Articles deal with votes and have been simplified in the New Articles. In particular the significant drafting about proxy votes in the existing Articles 34 to 37 has been deleted in its entirety with there being no reference to the possibility of proxy votes. Having said that it is the Board’s view that the Board could not disallow a valid proxy vote and that they will duly consider any request for a proxy but what has been deleted is perhaps the outdated drafting which required a proxy to follow a particular style. In the new Article 41 the pre-existing drafting in Article 29 has been repeated confirming that the President and Vice-Presidents can receive notice of, attend and speak at General meetings but they are not entitled to vote at such meetings.

Articles 42 to 44 – these Articles deal with the positions of President and Vice-President and materially reflect the existing Articles 41 to 43.

Articles 45 to 46 – these Articles deal with the Board. In terms of the exiting Articles the body is described as the Council but the current body consider that it would be better to term it as a Board going forward. The number of Board members is to be within five (5) and fifteen (15) as opposed to between three (3) and twenty (20) of whom the majority are category A members at present, existing Article 44 (A).

The officers of the Company are proposed to be Chair, Vice-Chairs, Secretary and the Director who is the person responsible for recommending the strategy to deliver the Company’s objects, new Article 46. There will no longer be a designated Treasurer with all Board members having responsibility for financial matters. The corresponding terms to

these proposed New Articles are found in a number of locations in the existing Articles, Articles 44, and 71 to 74.

Article 47 – this Article deals with the Company’s borrowing powers and mirrors the existing Article 45.

Articles 48 to 51 - these Articles deal with the Powers and Duties of the Board and clarify those powers and duties which had been contained in Articles 46 to 48 in the existing Articles.

Articles 52 to 56 – these Articles deal with the Election of members to the Board which had been dealt with in Articles 50 to 58 of the existing Articles. The term of Board members, three (3) years and renewable twice thereafter, nine (9) years in total remains unaltered.

Articles 57 to 65 – these Articles deal with the proceedings of the Board which is dealt with in Articles 59 to 67 of the existing Articles. The Board will normally meet five times a year. The quorum is increased from three (3) Board members, two (2) of whom are category A members, existing Article 60 to five (5) board members, New Article 58.

Article 66 – this new Article requires that Minutes are taken and kept of Board and Committee meetings and is similar to the existing Article 74 which was a duty on the Secretary.

Articles 67 to 68 – these Articles deal with the disqualification and removal of Officers and Board Members which had been dealt with in the existing Article 49. These are materially the same as in the existing Articles although references are now to current legislation but two new grounds have been added, firstly in Article 67.6 that the person has failed to attend meetings, without permission, for six (6) months and secondly in Article 67.7 that the Board consider that it is in the best interests of the Company that the person be removed from the Office and/or Board all subject to the person having been given notice of what is intended and the opportunity to make representations.

Article 69 – this Article deals with the declaration of interests of Board members and reflects what had been contained in Article 49 (vi) of the existing Articles but in clearer language.

Articles 70 to 76 – these Articles deal with the issues of Accounts and Audit, matters that had been dealt with in Articles 76 to 81 of the existing Articles. The New Articles materially reflect the existing position.

Articles 77 to 80 – these Articles deal with communications, matters that are dealt with by Articles 82 and 83 of the existing Articles. The principle aspect of the new drafting is that electronic communication is the primary means going forward.

Article 81 – this Article deals with the Company Seal and contrary to the terms of the existing Article 75, in the future it is proposed that the company will no longer have a Company Seal. It is considered by the Board that given that it is some considerable time

since the Company Seal was last used it would be better to state specifically that the company does not have a Company Seal.

Article 82 to 84 – these Articles deal with winding up and materially reflect and repeat the position presently set out in Article 8 of the Memorandum of Association. These New Articles were specifically looked at, in their terms, by the Charity Commission who wanted to be certain that the standard charity rules that on winding up the charity assets should find charitable homes were contained in the New Articles and they formally approved the new drafting.

Article 85 – this new Article permits the Board to adopt and issue standing orders for premises that they may occupy and was seen as a useful tool for the future work of the company.

Article 86 – this Article, in relation to the indemnity of the Officers, Board members and employees of the company materially reflects the terms of the existing Article 85.

Generally the New Articles have been drafted so that they are gender neutral and it is submitted that the document is now more easily read and flows in a better order. Where changes have been made they have been made to improve the administration of the company and they are fully supported by your current Board.

AIM Council
5 November 2020