

Engineers Without Borders UK ("**EWB – UK**" or the "**Charity**")

Key Information Guide

***Please note that this Key Information Guide refers to the provisions of the Articles to be adopted by the Charity at its AGM in November 2020. This is based on the Articles drafted as at 20 October 2020.***

**1. GOVERNANCE STRUCTURE**

- 1.1 EWB-UK is a private company limited by guarantee, and therefore has a two-tier governance structure:
- (a) the "**Directors**" – responsible for the every-day management and administration of the Charity, and are the Charity Trustees as defined by the Charities Act 2011.
  - (b) the "**Members**" – are not responsible for the day-to-day management of the Charity, and only have limited powers of decision-making. The Members of EWB-UK have a liability limited to a sum not exceeding £1, which is the amount that each Member can be asked to contribute in the event that the Charity is wound up.
- 1.2 Unlike a private company limited by shares, which has a share capital, there are no shares in EWB-UK.
- 1.3 Decision-making is split between the Directors and the Members; however, as mentioned above, the decision-making powers of the Members are limited, with the Directors able to take the vast majority of decisions acting as a board of Directors. Members do have some supervisory powers, and have the ultimate decision-making power in some instances. For example, the Members have the power to:
- (a) amend the Articles of Association (the "**Articles**");
  - (b) change the name of EWB-UK;
  - (c) appoint two of the Directors;
  - (d) remove Directors from office;
  - (e) inspect the Register of Members and Register of Directors; and
  - (f) decide on the distribution of assets on the dissolution of EWB-UK.
- 1.4 The Members take decisions at either General Meetings ("**GM**") or Annual General Meetings ("**AGM**"), or by written resolutions of the Members. The threshold for approving a decision is dictated by whether it is an ordinary or special resolution (see the Glossary).
- 1.5 Whereas members of a non-charitable company do not have an obligation to vote in the interests of the company (meaning that they can vote in their own interest), members of a charitable company must make their decisions in good faith in a way that would most likely further the objects of the charity.
- 1.6 The Directors take the day-to-day decisions regarding the running of EWB-UK, including decisions regarding the financial management of the Charity. The Directors can only make decisions to do things which are within their powers and which further the objects of the Charity, both of which are set out in the Articles.
- 1.7 Furthermore, the Directors are required to ensure that minutes are kept of all decisions taken and meetings held (and keep them for ten years from the date of the meeting/decision,

as appropriate), and to prepare financial accounts and other records required by the Companies Act 2006 and the Charities Act 2011.

- 1.8 Directors make their decisions either at board meetings or by written resolution. At board meetings, the Directors decide by majority voting; whereas, written resolutions require unanimous agreement of all eligible Directors.

## 2. **THE LIABILITY OF MEMBERS**

- 2.1 Article 10 of the Articles states the following:

"The liability of the Members is limited to a sum not exceeding £1, being the amount that each Member undertakes to contribute to the assets of the Charity in the event of its being wound up while he or she is a Member or within one year after he or she ceases to be a Member, for:

- (a) payment of the Charity's debts and liabilities incurred before he or she ceases to be a Member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves."

- 2.2 In practice, this means that if EWB-UK were to be wound-up, each Member might be called upon to contribute no more than £1 each to the assets of the Charity. This duty lasts for one-year after a person ceases to be a Member. Members can only be asked to make this contribution **if** EWB-UK is wound-up, and not before, and then **only if** the Charity cannot pay its debts from its remaining funds.

- 2.3 The three limbs (10(a), 10(b) and 10(c)) explain what that nominal £1 contribution can be used for:

- (a) 10(a) explains that the contribution can be used to settle any debts that the Charity has incurred and in the case of a former Member, only in relation to debts incurred before he/she ceased to be a Member;
- (b) 10(b) explains that the contribution can be used to pay for any costs associated with the winding-up of EWB-UK, such as paying for legal advice or paying a liquidator to dissolve the Charity; and
- (c) 10(c) explains that the contribution can be used to settle any overpayments as between the Members themselves. For example, if Member A has contributed £2 rather than the maximum £1, but Member B has contributed nothing, Member A can recover the £1 owed back to him (due to his overpayment) from the Charity.

- 2.4 Although the guarantee may be amended to increase the nominal contribution, this change can only take effect prospectively. For example, if Member C joined as a Member in 2010 when the guaranteed contribution was £1, and the guarantee was amended in 2015 to £5, Member C will not be bound by that change. The Articles cannot be amended to increase the liability of existing Members, at least not without the Member's consent. Members who joined after the amendment in 2015 will be bound by the amendment.

## 3. **DUTIES OF CHARITY TRUSTEES AS DIRECTORS**

- 3.1 As EWB-UK is a charitable company, the main duties of its Directors are codified in the Companies Act 2006. As Directors of the Charity, the Directors are also subject to additional duties imposed upon them by the Charity Commission and the Charities Act 2011. Under the Companies Act, the Directors of EWB-UK are under a duty to:

- (a) **Act within the powers of the company:** the Directors must act in accordance with the Articles, and only exercise their powers to further the objects of the Charity. In practice, this means that the decisions should be made following the proper decision-making procedure set out in the Articles, and all decisions should seek to carry out its purposes for the public benefit.
- (b) **Promote the success of the company:** the Directors must make decisions with a view to promoting the success of the Charity. In practice, this means that the decisions should promote the successful furtherance of the objects of the Charity, for the public benefit. The Companies Act 2006 lists a number of factors which the Directors **must** have regard to when making a decision:
  - (i) likely consequences of any decision in the long-term;
  - (ii) interests of the employees;
  - (iii) need to foster the company's business relationships with suppliers, customers and others;
  - (iv) impact of the company's operations on the community and the environment;
  - (v) desirability of the company maintaining a reputation for high standards of business conduct; and
  - (vi) the need to act fairly as between Members of the company.

This duty is modified in the event that a company is in financial difficulty. If the Directors are of the opinion that the Charity is insolvent or of doubtful solvency, the Directors owe a duty to the Charity to act in the best interests of the Charity's creditors, rather than to promote the success of its charitable objects.

- (c) **Exercise independent judgment:** although the Directors make decisions collectively (i.e. at board meetings), an individual Director must not surrender his responsibility to make a decision to another Director. In practice, this means that a Director is under a duty to think for themselves, and not subordinate themselves to the will of another. However, a Director is entitled on view of an expert when exercising independent judgment.
- (d) **Exercise reasonable care, skill and diligence:** where making decisions, the Directors must use reasonable care and skill, making use of their own skills and experience, but taking advice when necessary. The Directors are expected to use the minimum level of care and skill which could reasonably be expected of a person in their position. Further, if the Directors have special skills (for example, by virtue of their profession), and in the event that they use these skills, they will be judged according to a higher standard.
- (e) **Avoid conflicts of interest:** the Directors must avoid a situation in which they have, or could have, a direct or indirect interest that conflicts, or may conflict, with the interests of the Charity. In the Articles, this is referred to specifically in Article 9 as a duty of loyalty.

The Articles set a stricter standard than that set out in the Companies Act 2006, such that under Article 9, if a conflict of interests arises, the unconflicted Directors can only authorise that conflict, provided that:

- (i) the conflicted Director is absent from the part of a meeting where such conflict is under discussion;

- (ii) the conflicted Director does not vote nor count in the quorum when making a decision related to the conflict;
  - (iii) the unconflicted Directors consider it in the interests of EWB-UK to authorise such a conflict; and
  - (iv) the conflict does not involve a direct or indirect benefit of any nature to a Director of a person connected to them.
- (f) **Declare an interest in a proposed transaction or arrangement:** the Directors must declare an interest in any transaction between the Charity and a third party in which he or she has a direct or indirect interest. EWB-UK's Articles make specific provision for this in Article 8.
- (g) **Not to accept benefits from third parties:** the Directors must not accept benefits from a third party where that benefit is given to them or comes about by virtue of them being a Director of the Charity. However, where the receipt of a benefit is not likely to give rise to a conflict of interests, the Director can accept such benefit.
- 3.2 The Directors are also subject to a range of administrative duties under the Companies Act with respect to keeping minutes of meetings and decisions made (which must be kept for at least ten years from the date of the meeting), and ensuring that certain documents are filed at Companies House, e.g. Annual Reports, Accounts and any resolutions passed by the Members. Filings at Companies House must be made within certain time frames dependent on which filing is being made.
- 3.3 The Charity Commission and Charities Act 2011 also impose additional duties on the Directors. For example, the Directors must ensure that the Charities Register is kept up-to-date with respect to EWB-UK's name. The Directors must also file an annual return and annual report with the Commission, and also report any serious incidents, such as loss of assets or damage to property.

#### 4. **APPOINTMENT, REMOVAL, AND RETIREMENT OF DIRECTORS**

##### **Appointment**

- 4.1 The Articles specify that EWB-UK must have a minimum of three, but no more than eight, Directors. Up to six of the eight may be appointed by existing Directors at any time. Two Directors will be appointed by the Members following a GM, provided that the proper procedure is followed. In short, the Members must, a minimum of fourteen (but less than thirty-five) clear days before the date of the GM, send a notice to the Charity that:
- (a) is signed by a Member who wishes to stand for election or re-election as a Director and states their intention and willingness to be appointed as a Director;
  - (b) is signed by a further two Members entitled to vote at the meeting; and
  - (c) contains the details that, if the person were to be appointed or re-appointed, the Charity would have to file at Companies House.

Although the majority required to vote in favour of the appointment is not specified, the default rule from the Companies Act 2006 will apply in its absence. Therefore, the appointment will require a simple majority to be approved.

##### **Removal**

- 4.2 The Members have a statutory right to remove Directors from office by virtue of the Companies Act 2006. To do so, the Members must pass an ordinary resolution of which special notice has been given at a general meeting. Once notice of this proposed resolution

has been given to the Charity, the Charity will send this to the Director in question. The Director in question can make representations in writing to the Charity with respect to his position, and can require that these be sent to all Members.

4.3 Article 28 of the Articles also makes provision for Directors to be removed in the following circumstances:

- (a) a Director is disqualified from acting as such by a provision of the Companies Act, Charities Act, or by the law;
- (b) a Director ceases to be a Member of EWB-UK;
- (c) a Director, in the written opinion of a medical practitioner, is deemed unfit to act and may remain so for more than three months; or
- (d) a Director is absent without permission from all Directors' meetings held within a consecutive six-month period, and the Directors resolve to remove the absent Director from office.

### **Retirement**

4.4 The Articles allow for a Director to voluntarily retire from his position by giving notice to the Charity.

4.5 The Articles also provide that Directors shall retire by rotation when they have completed their term of office. The rules on this are contained in Article 26. In summary, Directors each serve a three-year term, and are able to serve two consecutive terms. At the AGM, any Member-elected Director who has completed their term must retire, unless they are elected for a second term or there are insufficient Directors to form a quorate meeting of the Directors. A Director-appointed Director who has completed their term of office, unless re-elected for a second consecutive term by the Directors, must retire at the first meeting of the Directors after completion of their term in office, unless there is an insufficient number of Directors to hold a quorate meeting of the Directors.

## **5. GENERAL MEETINGS**

### **Calling a General Meeting**

5.1 Article 15 of the Articles specifies that EWB-UK must hold an AGM every year, and not more than 15 months can elapse between successive AGMs. It also specifies that the Directors can call a GM at any time.

5.2 Members representing at least 5% of the voting rights have a statutory right under the Companies Act to request that the Directors call a GM. The Directors must do so within 21 days from the date on which they were asked to hold the meeting.

### **Notice of General Meetings**

5.3 Article 16 of the Articles specifies the notice requirements for a notice of GM, which reflects the statutory rules set out in the Companies Act 2006, as explained below.

5.4 AGMs require a minimum notice period of 21 clear days. GMs require a minimum notice period of 14 clear days, other than GMs in which special resolutions are proposed, where the minimum notice is 21 clear days.

5.5 A GM may be called on short notice, but only if a majority in numbers of the Members, who together hold at least 90% of the voting rights, agree to it.

- 5.6 The notice itself must specify the date, time and place of the meeting, and the general nature of the business to be discussed. If a special resolution is to be proposed, the notice will need to set out the full text of that special resolution. Although not required, it is also best practice to include the full text of any ordinary resolution. Lastly, the notice must state that Members have the right to appoint a proxy.
- 5.7 The notice must be sent to all the Members, Directors, and the auditors for the time being, of the Charity.

#### **Proceedings at a General Meeting**

- 5.8 Article 18 describe the procedures for running and adjourning a GM. In summary:
- (a) a quorum, formed of a number equal to the number of Directors plus three additional Members present in person or by proxy, is required, and must be present within half an hour of the time the meeting is stated to start. If this is not the case, or a quorum ceases to exist during a meeting, the meeting shall be adjourned;
  - (b) an adjourned meeting can be reconvened by the Directors on at least seven clear days' notice. If a quorum is not present within fifteen minutes of the time the reconvened meeting is stated to start, the persons present at that meeting shall constitute the quorum;
  - (c) the Members present at a meeting in person or by proxy may resolve by ordinary resolution to adjourn the meeting. If so, the Chair of the meeting shall decide when the meeting is to be reconvened. If the meeting has been adjourned for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting; and
  - (d) GMs shall be chaired by the person appointed to chair the meetings of Directors.
- 5.9 Articles 18.15 to 18.27 describe the voting procedures at a GM. In summary:
- (a) in the first instance, a vote is to be conducted by "show of hands" (which in practice, means a "yes" or "no" vote and does not need to be a literal show of hands), unless a poll vote is demanded before the vote occurs or before the result is declared. Only the Chair of the meeting, or at least two Members acting together, can demand a poll vote.
  - (b) the Chair's declaration of the result of a vote is to be final, unless a poll vote is demanded (as above). The results of a poll vote can be declared at a time and place fixed by the Chair.
- 5.10 In accordance with Article 18.26 of the Articles, every Member has one vote.

#### **Virtual Meetings**

- 5.11 The Articles provide two methods (which can be used in conjunction) by which EWB-UK can hold a virtual meeting:
- (a) Article 19.1 – principal meeting plus satellite meeting; and/or
  - (b) Article 19.5 – simultaneous virtual attendance.
- 5.12 The former option (Article 19.1) permits EWB-UK to hold a main physical GM, and any number of additional simultaneous physical meetings in other locations, all of which are virtually joined together

- 5.13 The latter option (Article 19.5) permits EWB-UK to hold a GM in which Members participate through wholly virtual means.
- 5.14 In both cases, it is key that the Members are able to:
- (a) hear all persons who speak at the meeting;
  - (b) be heard by all other persons present at the meeting; and
  - (c) (if they have the right to vote at the meeting) vote, during the meeting, on a poll on resolutions put to the meeting on which they have the right to vote and such Members' votes can be taken into account in determining whether or not such resolutions are passed.
- 5.15 A GM which utilises either of the virtual methods set out above will be properly constituted and valid if the Chair of the meeting believes that conditions (a), (b) and (c) above are met throughout the meeting.
- 5.16 Both methods have the same effect of enabling EWB-UK to hold an AGM or GM by conference or video-conference call.

## 6. **WRITTEN RESOLUTIONS**

- 6.1 Outside of meetings, Members may make decisions by Members' Written Resolutions. Written Resolutions can be used to take decisions by ordinary resolution or special resolution.
- 6.2 All Members, who would have been entitled to vote on the resolution had it been proposed at a GM, are entitled to receive a copy of the written resolution, and to vote on it.
- 6.3 For ordinary resolutions, the written resolution will pass when a simple majority (i.e. more than 50% of the **total** membership) have signified their agreement to it. For special resolutions, the written resolution will pass when at least 75% of the **total** membership have signified their agreement to it. This is in contrast to a meeting in person/virtually, where EWB-UK needs only a majority/75% (as applicable) of those persons actually present and voting.
- 6.4 Members can signify their agreement to the written resolution by signing the written resolution and returning it to EWB-UK either by post or electronically (e.g. by email).
- 6.5 Members' written resolutions also have a 'lapse date', which is 28 days after the date of circulation. This is the date by which the Members must signify their agreement to the resolution(s) in the written resolution, otherwise such resolution(s) will 'lapse' and will not be passed.

## 7. **AMENDING THE ARTICLES OF ASSOCIATION<sup>1</sup>**

- 7.1 As for all companies, the members of a charity may alter or amend the Articles by passing a special resolution.
- 7.2 Some provisions in the Articles may require Charity Commission consent – these are known as "regulated alterations". A regulated alteration is ineffective if consent has not been obtained. Importantly, the Charity Commission cannot give authorisation retrospectively, and it is therefore important to gain their consent before making a regulated alteration. The following are regulated alterations:

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<sup>1</sup> **Note to EWB-UK:** the information in this paragraph 7 in relation to Charity Law requirements has been obtained from publicly available resources and any specific advice about any requirements under Charity law should be sought from charity specialist lawyers.

- (a) changing the objects clause;
- (b) altering any provisions that direct the application of charity property on dissolution; or
- (c) altering any provisions that would authorise a benefit to be obtained by the Directors or Members of a charity, or persons connected with them.

In short, the above are regulated alterations because amendments to them could enable a charity's assets to be applied for non-charitable purposes, or even undermine its charitable status.

7.3 To apply for Charity Commission consent, the Directors (as Charity Trustees) must explain to the Commission why the changes are considered to be in a charity's best interests. The greater the potential effect that the proposed amendments might have on the work of the charity, the more convincing the case for change will need to be. The application is made using the Commission's online form.

7.4 When deciding whether or not to accept a proposed change, the Commission will consider whether:

- (a) proposed new object or provision for distribution of assets on dissolution are exclusively charitable;
- (b) the Directors' decision (as Charity Trustees) to make the proposed change is one that a reasonable body of Charity Trustees would make; and
- (c) the proposed new objects undermine or work against the previous objects of the Charity.

7.5 There is detailed guidance provided by the Commission on this area: <http://ogs.charitycommission.gov.uk/g518a001.aspx>

7.6 After the Articles have been amended, EWB-UK must meet a number of filing deadlines.

#### **Companies House**

7.7 A copy of each of the following must be sent to the Registrar of Companies within **15 days of the amendment being made**:

- (a) the Articles, as amended;
- (b) the special resolution adopting the Articles, as amended;
- (c) the Commission's consent to a regulated alteration, where relevant; and<sup>2</sup>
- (d) where the alteration includes an addition to, removal from, or alteration of the company's objects, Form CC04. Such an alteration only takes effect when the changes appear on the register at Companies House, rather than the date of the resolution.

#### **Charity Commission**

7.8 EWB-UK's Directors (as Charity Trustees) also have a duty to file a copy of any amendments to the charitable company's Articles with the Commission so that the register of charities is kept up to date.

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<sup>2</sup> **Note to EWB-UK:** this is a charity law specific point which we cannot provide advice on.