

national federation of artists' studio providers (NFASP)

MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A COMPANY LIMITED BY GUARANTEE (non-charitable)

EXPLANATORY NOTES

INTRODUCTION

These Notes, together with the accompanying model constitution, are intended to help NFASP members and their trustees to prepare a suitable constitution which will meet current legal requirements. Please note they contain general guidance only and are not intended to be a substitute for professional advice.

The following Notes relate to the accompanying model constitution for a **non-charitable company limited by guarantee**.

Before using this constitution, you will need to be clear what is the appropriate structure for your group. We recommend that you read the introduction to the Guidance material on NFASP's website: http://www.nfasp.org.uk/resources_single.php?id=55

NFASP members may download, adapt and use the model constitutions, but are advised to have your documentation checked by a solicitor or other professional adviser before formally applying to register the Company at Companies House.

GENERAL

Where a word or phrase needs to be inserted, a brief description appears *[in italics in square brackets]*.

Where there is a suggestion or choice between alternatives, a suggestion appears [in normal type in square brackets].

'Director' means one of the members of the company's Board of Directors; it does not refer to an employee who is an 'executive director' (or similar) but who is not on the company's Board.

PRELIMINARY

Name

Private companies are required by law to include the word 'Limited' in their name. Companies Limited by Guarantee (CLGs) can (and most do) elect not to use the word in their name by completing an additional Companies House form in the pre-incorporation process.

MEMORANDUM

The Memorandum of Association is compulsory, and must follow the prescribed form required by the Companies Act 2006. It no longer contains the Objects of the Company which may appear in the Articles, see Note below.

SPECIFIC ARTICLES

1. OBJECTS

Companies (other than charities) are no longer required by law to have Objects at all, and all new companies formed are deemed to have unrestricted objects unless the Articles specifically restrict them. However many CLGs will decide to state their Objects in the Articles of Association to satisfy funders and other stakeholders and to give the Directors guidance as to the scope of the company's proposed activities.

While professional advice will be needed, the following wording may be useful as generic wording to be adapted in each case, depending on the proposed activities of each organisation:

Objects

1. *To encourage and support the provision of:*
 - (a) *studio accommodation, services and facilities for visual artists*
 - (b) *exhibitions, workshops, talks and lectures, teaching, residencies, community projects, and other activities involving the public or sections of the public who have particular needs*
 - (c) *studio visits, open studios and other means for members of the public to meet artists, and learn about their practices*
2. *To encourage and support other artistic outputs in the public domain such as curatorial projects, performances and the creation of works of art for public places*
3. *To provide facilities and amenities including studio accommodation for those involved in the production of visual art*

2. POWERS

This Article spells out the principal means by which the Company will seek to promote its Objects.

The model includes the powers used by most CLGs, but also includes specific paragraphs - which can be adapted to the company's proposed activities, all of which must be conducted in furtherance of the Company's Objects (if any).

3. THE DIRECTORS

This Article sets out the composition of the company's governing body, i.e. the people who are the directors of the company (as recorded at Companies House).

In the model Articles the directors are called the 'Directors' or the Board, but they could equally well be called the 'the 'Council of Management' or some other term.

3.2 Appointment of Directors

This provision automatically appoints as the Company's first Directors the individuals who sign the Memorandum and Articles of Association as 'subscribers'. Subsequent Directors are elected by the Members or co-opted.

3.3 Number and qualifications

The minimum number of Directors should normally be at least three.

3.5 Term of office

Retirement of Directors by rotation (with the first to retire being chosen by lot) is one way of attempting to ensure that the Board is refreshed by the appointment of new Directors.

Alternatively, and more consistently with current best practice, the Company can decide on a 'term of office'; the period chosen for elected Directors is often three years but could be five years or some other period. The Articles usually provide for a maximum number of terms of office.

3.6 Reappointment

To ensure that new Directors can be introduced, a limit can be placed on the number of consecutive terms which a Director may serve. This is probably best done through regulations under Article 5.6, which can more easily be implemented than provisions in the Articles themselves.

3.7 Termination of directorship

Various events can terminate directorship.

3.7(a) Disqualification

Statutory disqualification from acting as a company director occurs if a company director is involuntarily removed from his or her directorship by the Court, in the event of bankruptcy, where the company director is disqualified under the Company Directors Disqualification Act or the Insolvency Act, and where he or she has been convicted of an offence involving dishonesty.

3.7(c) Absence from meetings

The length of absence which is chosen to set in motion the termination of a director's term of office will depend on the normal frequency of meetings (see Article 4.1).

3.7(d) Resignation

The law does not allow company directors to walk away from their responsibilities leaving no-one in charge of the Company.

3.7(e) Removal

There is a statutory power for the members in general meeting to remove a director, provided a fixed procedure is followed.

3.8 Co-opted Directors

Co-opted Directors have exactly the same status, voting powers and responsibilities as other Directors. The difference is in the term of office, in that co-opted Directors are usually only appointed until the next following AGM or (if the Company has opted not to have an AGM) for (say) one year, during which time a general meeting should be held to confirm the appointment.

4. **DIRECTORS' PROCEEDINGS**

This Article deals with meetings and other proceedings of the Directors.

4.1 Number of meetings

The minimum number of meetings per year will depend on (i) the nature of the Company's activities and (ii) the extent to which work is delegated to committees and/or staff. It is suggested that the minimum number of meetings should not be less than two.

4.3 Quorum

Bearing in mind that decisions may be taken on a majority vote (see Article 4.6), the quorum is often fixed at one third of the Directors, or a minimum number (say 3), whichever shall be the greater.

4.4 Video or telephone conferences

A meeting in person is generally preferable to a meeting conducted remotely, but where Directors are separated geographically or are short of time a remote meeting may be needed. It should be borne in mind that (i) a telephone conference call is not the same as a series of separate telephone calls, which do *not* amount to a meeting; and (ii) the same rules about notice of meetings, the quorum, chairing, voting, minutes etc apply to a video or telephone conference as to a meeting in person.

4.6 Written resolution

An alternative to a decision taken at a meeting is a written resolution, but this will not be valid unless signed by *all* the Directors. Contrast the position with a written resolution of the Members, which will be valid if passed by the requisite majority of the Directors.

4.7 Voting

The model provides for the chair to have a second or casting vote at Director meetings in order to avoid deadlock, but the same provision cannot apply to meetings of Members, where the statutory provisions do not allow this.

5 DIRECTORS' POWERS

5.1 Secretary

Although company law does not require it, it is generally best for a CLG to have a company secretary, who can be one of the Directors. If there is a Secretary, a form must be filed at Companies House.

5.3 Committees

A specific provision is essential if the Directors are to be able to delegate to committees. The Company will be legally bound by the committee's acts, and for this reason it is often best for at least two Directors to be members of each committee. The Directors should define the terms of reference with care. It is essential in all cases to insist that committees report back to the Board.

5.4-6 Rules and Regs

These provisions allow the Directors to make rules of various kinds to govern different aspects of the running of the Company. There is no need to call them 'standing orders', 'bye-laws', 'rules' and 'regulations': they can all be called 'rules' if preferred.

5.7 Dispute resolution

Considerable financial and other damage can result to a Company from internal disputes, especially when they become public. This provision places on the Directors the responsibility for ensuring that such disputes are resolved. ACAS provides assistance in employment cases. ACEVO (Association of Chief Executives of Voluntary Organisations) also provides guidance in this area. The NCVO and CEDR (the Centre for Effective Dispute Resolution) jointly provide a subsidised mediation service for charities and other voluntary organisations.

6. CONFLICTS OF INTEREST

6.2 Managing conflicts

This important provision adds safeguards to protect the Company from actual risk (and the appearance of risk) arising from conflicts of interest and duty among the Directors, which inevitably occur from time to time.

7. RECORDS AND ACCOUNTS

The keeping of adequate records is essential if a Company is to be properly run. This Article sets out the requirement to observe the statutory provisions and good practice.

8. MEMBERSHIP

All companies must have 'Members' to comply with company law. However, it is common practice in arts organisations for the same people to be both the Members and the Directors

(sometimes known as the 'oligarchy' model). The model Articles contain alternative language where the Members are a wider group of people who elect the Directors.

8.1 Members' register

A 'register' (or list, which can be in manual or electronic form) of Members is required to be maintained by every company under Company law.

8.6 Types of membership

This provision enables the Directors to lay down different rights and obligations for, say, 'individual' and 'corporate' members. Members of a company have certain rights under company law (e.g. to vote at general meetings and to receive copies of the company's accounts). It can be expensive and time-consuming for a company to comply with the company law requirements for a large membership. Where some of the members do not wish to participate in the management of the Company (e.g. where they just wish to support the Company and to be kept informed of its activities) it may be appropriate for the Company to establish one or more categories of 'informal' or 'supporter' membership, e.g. associate membership. Informal members are not recognised in company law and do not have the legal rights of company members. Legal advice may be required in this area.

9. GENERAL MEETINGS

A general meeting is a formal meeting of the Members. Company law contains detailed provisions related to the convening of general meetings and the nature and conduct of business at such meetings. These rules apply to all companies.

9.1 Attendance

This provision states who is entitled to attend general meetings. The Company may invite others (e.g. informal members - see Article 8.6 and the Note above - or representatives of funders) to observe or participate, but they do not have a right of attendance and cannot vote.

9.2 Notice and proxies

Notice is dealt with in Article 12 and 'written' is defined in Article 14. Company law requires provision to be made for attendance and voting by proxy (voting by proxy is no longer optional).

9.3 Quorum

The quorum chosen should be realistic for the organization. .

9.5-6 Voting

An ordinary resolution (which is defined in Article 14) is a resolution passed by a simple majority of the votes cast at the meeting. Note that there can be no provision for a casting vote at a general meeting (see note to Article 4.6 above). Where the resolution is in writing (see Article 9.7) it is necessary for the votes in favour to constitute a majority of the votes

capable of being passed at the meeting. A written Special resolution (e.g. to change the Articles) requires a 75% majority.

9.7 Written resolutions

See note to Article 9.5 above.

9.8 AGM

It is not necessary by law to hold an Annual General Meeting but many arts organisations still choose to do so. An AGM is a regular occasion for the Members to meet.

9.9 Annual tasks for Members

This provision sets out the tasks which the Members are expected to perform either at an AGM or (if an AGM is not held) at least once a year.

9.10 Calling general meetings

This provision reflects the statutory requirements.

10/11. LIMITED LIABILITY and GUARANTEE

These provisions are required by Company law. The amount of the guarantee can be decided by each company but £1 or £5 is common.

12. COMMUNICATIONS

Reference is made to the giving of notice in various places in the Articles, which can now be made electronically.

13. DISSOLUTION

This paragraph is optional and should only be included if the company's objects are stated in the Articles of Association; the inclusion of Objects is no longer a legal requirement for non-charitable companies limited by guarantee (see Note 1 above).

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