

THE COMPANIES ACT 2006

**A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL**

ARTICLES OF ASSOCIATION

OF

BRITISH UNIVERSITIES AND COLLEGES SPORT LIMITED

(COMPANY NO: 06483060)

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BRITISH UNIVERSITIES AND COLLEGES SPORT LIMITED

(COMPANY NO: 06483060)

INCORPORATED ON 24th JANUARY 2008

ARTICLES OF ASSOCIATION

(adopted by special resolution on 31 January 2023)

PART 1

INTERPRETATION, LIMITATION OF LIABILITY AND OBJECTS

1. Defined Terms

1.1. In these Articles, unless the context requires otherwise:

"AGM" means annual general meeting;

"Articles" means these articles of association, as may be amended from time to time;

"bankruptcy" includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

"Chair" means the chair of the Board as appointed by the Board in accordance with Articles

20 and 21;

"chair of the meeting" has the meaning given in Article 15 (in respect of a Board meeting) or Article 36 (in respect of a general meeting);

"clear days" means a period of days exclusive of the day on which the notice is served and of the day for which it is given;

"Code for Sports Governance" means the Code for Sports Governance published by the English Sports Council ("Sport England") and the United Kingdom Sports Council ("UK Sport") in October 2016 and any subsequent modified or successor code;

"Companies Acts" means the Companies Acts (as defined in section 2 of the 2006 Act), in so far as they apply to the Company;

"Company" means British Universities and Colleges Sport Limited;

"company secretary" means the person appointed from time to time under Article 26 and who shall be the company secretary of the Company for the purposes of the Act;

"Co-opted Director" means a director appointed in accordance with Articles 20.3 and 21.2;

"director" means a director of the Company, and Trustee of the Charity, and includes any person occupying the position of a director, by whatever name called;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"elected student(s)" means a student(s) currently studying with, or sabbatical officer(s) of, a member institution's students' union, at time of appointment, and elected through the national selection process approved by the Company;

"electronic form" has the meaning given in Section 1168 of the 2006 Act;

"general meeting" means an AGM or other general meeting of the Company;

"hard copy form" has the meaning given in Section 1168 of the 2006 Act;

"Independent Director" means a non-executive director appointed in accordance with Article 20.3 and 21.2 and who is free from any close connection to the Company and who, from the perspective of an objective outsider would be viewed as independent. A person may still be deemed to be "independent" if they are a member of the Company or a participant in university or college sport;

"members" has the meaning given in section 112 of the 2006 Act;

"Member Representatives" shall mean the two individuals identified, in writing to the Company, by a member as their member representatives. With a view to ensuring proper representation of sport within institutions one of the member representatives is to be a student of the member institution or a sabbatical officer of the member institution's students'

union and the other a staff member of the member institution or member institution's students' union;

"national executive groups" means the member groups for Scotland, Northern Ireland and Wales;

"Nominations Committee" means the nominations committee for the Company established by the Board and which a majority of its committee members shall be Independent Directors. It shall be chaired by the Chair (except when it is dealing with the appointment of a successor to the Chair, when it shall be chaired by an Independent Director);

"Nominated Director" means a non-executive director elected in accordance with Articles 20.3 and 21.2;

"ordinary resolution" has the meaning given in Section 282 of the 2006 Act;

"participate" in relation to a directors' meeting, has the meaning given in Article 13;

"providers of Higher Education" means a legal entity which is officially recognised (recognised bodies are higher learning institutions that can award degrees in the United Kingdom) or listed (listed bodies are higher learning institutions that offer courses in the United Kingdom that can lead to a degree from a recognised body) on United Kingdom government lists. In the event that an entity does not appear on these government lists then other demonstrable evidence must be submitted to the Company to consider;

"proxy notice" has the meaning given in Article 43;

"regional executive group" means the member groups from the geographical regions of North West (England), Yorkshire, North East (England), West Midlands, East Midlands, East (England), South East (England), London, and South West (England);

"Senior Independent Director" means an Independent Director who is appointed by the Board with responsibilities including (but not limited to): leading on the appraisal of the Chair's performance; and acting as an alternative point of contact for stakeholders when the normal channel through the Chair is inappropriate (for example, when the Chair has a conflict of interest);

"Senior Managers Network" means the forum representing the interests of university or college senior managers engaged in sport at the Company's member institutions;

"special resolution" has the meaning given in Section 283 of the 2006 Act;

"student director" means a student of a member institution, or sabbatical officer of a member institution's students' union, at the time of appointment to the Board following an election process approved and adopted by the Board;

"subsidiary" has the meaning given in Section 1159 of the 2006 Act;

"the 2006 Act" means the Companies Act 2006 as modified by statute or re-enacted from time to time;

"the Board" means the board of directors of the Company established from time to time in accordance with Articles 20 and 21, the members of which are the directors of the Company for the purposes of the Companies Acts;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method, whether sent or supplied in electronic form or otherwise.

1.2. Unless the context otherwise requires, other words or expression contained in these Articles bear the same meaning as in the 2006 Act as in force on the date when these Articles became binding on the Company.

1.3. Words importing the singular number shall include the plural number and vice versa. Words importing the masculine gender only shall include the feminine gender. Words importing persons shall include corporations and unincorporated associations.

2. Name and Registered Office

2.1. The name of the Company is British Universities and Colleges Sport Limited.

2.2. The registered office of the Company is to be in England and Wales.

3. Objects

3.1. The objects for which the Company is established ("Objects") are the advancement for the public benefit of physical education and sports development among students and in universities and colleges by promoting standards in sports administration and coaching and by the provision of events, activities and facilities.

4. Powers

4.1. The Company shall have the powers to do all such lawful things as are consistent with the furtherance of its Objects.

4.2. The income and property of the Company shall be applied solely towards the promotion of its Objects and no portion thereof shall be paid or transferred directly or indirectly, overtly or covertly, by way of distribution, bonus or otherwise by way of profit to the members of the Company.

4.3. Nothing in Article 4.2 shall prevent the payment in good faith by the Company of:

4.3.1. reasonable and proper remuneration to any officer or servant of the Company, or to any member, in return for any services actually rendered to the Company;

4.3.2. reasonable and proper out-of-pocket expenses to any officer or servant of the Company, or to any member expended in the course of providing services to the Company and in accordance with Article 23;

4.3.3. reasonable and proper rent for premises demised or let by any member;

4.3.4. interest on money lent by a member at a rate per annum not exceeding two per cent less than the base lending rate of a clearing bank to be selected by the Board or three percent whichever is the greater;

- 4.3.5. any premium in respect of the purchase and maintenance of indemnity insurance in respect of liability for any act or default of the directors (or any of them) in relation to the Company;
- 4.3.6. fees, remuneration or other benefit in money or money's worth directly or indirectly to a member for goods or services provided that such member was prior to their election or appointment already supplying goods or services to the Company and further that such goods or services are supplied at a price not exceeding the fair market price on normal trade terms, and further that such member shall absent themselves from any meeting during the discussion of such supply and shall refrain from voting on the matter; and
- 4.3.7. of such other payments as are permitted by these Articles.

4.4 The Company has the power:

- 4.4.1 to raise funds. In doing so, the Company must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;
- 4.4.2 to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- 4.4.3 to sell, lease or otherwise dispose of all or any part of the property belonging to the Company. In exercising this power, the Company must comply as appropriate with sections 117 and 122 of the Charities Act 2011;
- 4.4.4 to borrow money and to charge the whole or any part of the property belonging to the Company as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation. The Company must comply as appropriate with sections 124 - 126 of the Charities Act 2011 if it wishes to mortgage land;
- 4.4.5 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- 4.4.6 to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
- 4.4.7 to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity;
- 4.4.8 to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves

5. Liability of Members

- 5.1. The liability of each member is limited to £10.00 being the amount that each member undertakes to contribute to the assets of the Company in the event of its being wound up while they are a member or within one year after they cease to be a member, for any of the items set out in Article 5.2
- 5.2. The items for which the members undertake to contribute are:

- 5.2.1. payment of the Company's debts and liabilities contracted before it ceases to be a member;
- 5.2.2. payment of the costs, charges and expenses of winding up; and
- 5.2.3. adjustment of the rights of the contributories among themselves.

**PART 2
DIRECTORS
DIRECTORS' POWERS AND RESPONSIBILITIES**

6. Directors' general authority

- 6.1. Subject to these Articles, the Board is responsible for setting the strategy of the Company and for the management of the Company's business, for which purpose it may exercise all the powers of the Company.
- 6.2. No resolution passed by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if such resolution had not been passed.
- 6.3. All directors must act in the best interests of the Company, and in a matter consistent with their legal and regulatory duties. In particular, the directors must exercise independent judgment.

7. Directors may delegate

- 7.1. Subject to the 2006 Act and any subsequent legislation and to these Articles, the Board may delegate any of the powers which are conferred on it under these Articles:
 - 7.1.1. to such committee;
 - 7.1.2. to such person;
 - 7.1.3. by such means (including by power of attorney);
 - 7.1.4. to such an extent (except that a single director may not bind the Company);
 - 7.1.5. in relation to such matters or territories; and
 - 7.1.6. on such terms and conditions;as it thinks fit.
- 7.2. All acts and proceedings delegated under Article 7.1 shall be reported to the Board in due course.
- 7.3. The Board may revoke any delegation, in whole or in part, or alter its terms and conditions.

7.4. The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purpose and on such conditions as they may determine.

8. Committees

8.1. The Board shall establish a Nominations Committee and may establish such other committees of the Board or committees of the Company as the Board thinks fit.

8.2. Committees to which the Board delegates any of its powers must follow procedures which are based as far as they are applicable on those provisions of these Articles which govern the taking of decisions by the Board.

8.3. The Board may make rules of procedure for all or any committees of the Board or committees of the Company which prevail over rules derived from these Articles if they are not consistent with them.

8.4. The quorum for meetings of any committee formed pursuant to the provisions of these Articles shall be at least three.

8.5. Each committee shall have at least three committee members who are not related or cohabiting.

9. Commission Groups

9.1. The Board shall be assisted in their operations by an Advisory Group which shall comprise the Chief Executive Officer of the Company, four elected students, four elected non-students and the student and non-student chairs from each regional executive group and the three national executive groups. The elected student members shall be elected during the annual conference of the Company and shall serve for a term of one year. The non-student members shall also be elected during the annual conference of the Company but shall serve for a term of two years. In addition to those elected the Board may co-opt three people acting in a non-executive capacity to the Advisory Group, where there are identified skills gaps in the Advisory Group.

9.2. The Board shall constitute any such other interest groups as they consider appropriate and shall provide them with appropriate terms of reference within which to operate.

DECISION-MAKING BY DIRECTORS

10. Directors to take decisions collectively

10.1. Directors are to take decisions collectively as the Board.

10.2. Any decision of the Board must be either a majority decision or a unanimous decision taken in accordance with Article 10.

11. Unanimous decisions

11.1. A decision of the Board is taken in accordance with this Article when all eligible directors indicate to each other by any means that they share a common view on a matter.

- 11.2. Such decision may take the form of a resolution in writing, of which each eligible director has signed one or more copies or to which each eligible director has otherwise indicated agreement in writing.
- 11.3. References in this Article to eligible directors are to directors who would have been entitled to vote on the matter if it had been proposed at a meeting of the Board.
- 11.4. A decision may not be taken in accordance with this Article if the eligible directors would not have formed a quorum at such a meeting.

12. Calling a meeting of the Board

- 12.1. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as the Board thinks fit, provided that at least four such meetings shall be held in each year.
- 12.2. The Board shall report on its activities to the members at the AGM.
- 12.3. The Chair or any director may call a meeting of the Board by giving not less than twenty-one clear days notice of the meeting to the directors or by directing the company secretary to give such notice.
- 12.4. Notice of any meeting of the Board must indicate:
 - 12.4.1. its proposed time and date;
 - 12.4.2. where it is to take place; and
 - 12.4.3. if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 12.5. Notice of a meeting of the Board must be given to each director, but need not be in writing. A director who is absent from the United Kingdom shall be entitled to notice of a meeting if they have provided a valid email address.

13. Participation in meetings of the Board

- 13.1. Subject to these Articles, directors participate in a meeting of the Board, or part of a meeting of the Board, when:
 - 13.1.1. the meeting has been called and takes place in accordance with these Articles; and
 - 13.1.2. they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 13.2. In determining whether directors are participating in a meeting of the Board, it is irrelevant where any director is or how they communicate with each other.

- 13.3. If all the directors participating in a meeting of the Board are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 13.4. The Board may invite or allow any person to attend and speak, but not to vote, at any meeting or meetings of the Board or of any committee of the Board.

14. Quorum for meetings of the Board

- 14.1. At a meeting of the Board, unless a quorum is participating, no proposal is to be decided or voted on, except a proposal to call another meeting.
- 14.2. The quorum for meetings of the Board may be fixed from time to time by a decision of the Board, but it must include at least one Independent Director and unless otherwise fixed shall be four.
- 14.3. Subject to Article 14.4, the Board may act notwithstanding any vacancy in its body.
- 14.4. If the total number of directors for the time being is less than the quorum required, the director(s) must not take any decision other than a decision:
 - 14.4.1. either to fill a casual vacancy arising among the directors in accordance with Article 25;
 - 14.4.2. or to call a general meeting so as to enable the members to fill a casual vacancy arising among the directors in accordance with Article 25; or
 - 14.4.3. to admit members to the Company.

15. Chairing of meetings of the Board

- 15.1. The Chair shall chair meetings of the Board. The chair shall preside as chair at all meetings of the Board at which they are present and willing to do so.
- 15.2. If, at any meeting of the Board, the Chair is not present within fifteen minutes after the time appointed for holding the meeting, or if they are not willing to preside, the directors present shall choose one of their number to be the chair of the meeting. The person so appointed for the time being is known as "the chair of the meeting" and this term shall include the Chair where appropriate.

16. Casting vote

- 16.1. If the numbers of votes for and against a proposal are equal, the chair of the meeting shall have a second or casting vote. This does not apply if, in accordance with these Articles, the Chair or the chair of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

17. Conflicts of Interest

- 17.1. The Board shall cause a register to be maintained of all material interests of the directors.

- 17.2. No director may participate in the discussion of, or vote in respect of, a matter in which they have a material conflict of interest.
- 17.3. Subject to Article 17.4, if a proposed decision of the Board is concerned with an actual or proposed transaction or arrangement with the Company in which a director is interested, that director is prohibited from being counted as participating in the decision-making process for quorum or voting purposes.
- 17.4. The prohibition under Article 17.3 shall not apply when, in relation to Article 17.3, the director does not have a material conflict of interest in the matter to be discussed or vote on and:
- 17.4.1. the Board authorises the director, counting towards the quorum and voting on the transaction or arrangement, in accordance with Section 175 of the 2006 Act, notwithstanding such interest;
 - 17.4.2. the director need not declare an interest pursuant to Section 177 or 182 of the 2006 Act; and
 - 17.4.3. arises from a permitted cause.
- 17.5. For the purposes of Article 17.4, the following are "permitted causes":
- 17.5.1. a guarantee, security or indemnity given, or to be given, by or to a director in respect of any money lent, or any obligation incurred, by the director for the benefit of, or on behalf of the Company;
 - 17.5.2. a guarantee, security or indemnity in respect of an obligation of the Company given to a third party for which the director has assumed responsibility in whole or part (and whether alone or jointly with others) under a guarantee or indemnity or by the giving of security;
 - 17.5.3. subscription, or an agreement to subscribe, for securities of the Company, or to underwrite, sub-underwrite, or guarantee subscription for any such securities; and
 - 17.5.4. arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the Company.
- 17.6. For the purpose of this Article 17, references to proposed decisions and decision-making processes include any meeting of the Board or part of a meeting of the Board.
- 17.7. Subject to Article 17.8, if a question arises at a meeting of the Board or of a committee of the Board as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chair of the meeting whose ruling in relation to any director other than himself or herself is to be final and conclusive.
- 17.8. If any question as the right to participate in the meeting (or part of the meeting) arises in respect of the chair of the meeting, the question is to be decided by a decision of the

directors participating at that meeting, for which purpose the chair of the meeting is not counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

- 17.9. Where proposals are under consideration concerning the appointment of two or more directors to employment with the Company, the proposals may be divided and considered in relation to each director separately and (provided they are not for another reason prohibited from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning their own appointment.

18. Records of decisions to be kept

- 18.1. The Board must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every appointment by the Board and of every unanimous or majority decision taken by the Board (and all committees) and by the Company at general meetings.
- 18.2. The Board must also ensure that minutes are made (in suitable electronic format) of all proceedings at general meetings, meetings of the Board, meetings of committees of the Board and meetings of general committees; a minute of a meeting of the Board or of a committee of the Board shall include the names of the directors present.
- 18.3. Any such records, if purporting to be signed by the chair of the meeting, or by the chair of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated.

19. Policies and Procedures

- 19.1. The Board shall adopt appropriate and proportionate financial policies and procedures. The Company shall take all reasonable steps to ensure that these policies and procedures, where appropriate, are communicated to, and understood and followed by, its directors, staff and volunteers (where relevant). The Board must review and update these policies and procedures at least once every two years.
- 19.2. The Board (or any committee to which it delegates such powers) shall have the power to make, vary and revoke any policies and procedures for the better management of the Company including (without limitation):
- 19.2.1. safeguarding policies;
 - 19.2.2. equity and equality policies; and
 - 19.2.3. such other policies and procedures as the Board thinks fit.
- 19.3. Policies and procedures made under Articles 19.2:
- 19.3.1. shall take due account of any applicable requirements of the Code for Sports Governance; and

19.3.2. must be compliant with the Companies Acts and these Articles in order to be valid.

APPOINTMENT OF DIRECTORS

20. Composition of the Board

- 20.1. The Board shall be of an appropriate size to have the appropriate balance of skills, experience, independence and knowledge.
- 20.2. The number of directors on the Board shall not be less than four and shall be subject to a maximum of eleven.
- 20.3. The Board shall comprise the following positions:
- 20.3.1. a non-executive Chair;
 - 20.3.2. up to two student directors;
 - 20.3.3. the chair of the Senior Managers Executive;
 - 20.3.4. up to five Nominated Directors;
 - 20.3.5. at least two Independent Directors and rising to three if the size of the Board exceeds eight directors; and
 - 20.3.6. in exceptional circumstances a director may be co-opted onto the Board if this is necessary to ensure that the Board has the skills and/ or experience necessary to fulfil its role.
- 20.4. If a member of the executive management of the Company is appointed to the Board, then they may only be appointed in an Ex Officio capacity.
- 20.5. The Board shall appoint one out of the Independent Directors to the position of Senior Independent Director and shall determine the period for which that person shall serve in that office.
- 20.6. The Board shall make all reasonable endeavours to ensure that at all times:
- 20.6.1. at least 25% of the Board's membership is made of Independent Directors; and
 - 20.6.2. at least 50% of the Board is made up of women or men, as the case may be.

21. Method of appointing directors

- 21.1. Any person who wishes to be considered for appointment as a director shall lodge with the company secretary a written notice of their willingness to be appointed (in such form as the Board may require), signed by such person. The company secretary shall refer the matter for consideration by the Nominations Committee.

- 21.2. All director positions shall have a skills-based role description and a person specification set out by the Nominations Committee. The Nominations Committee shall maintain a matrix of the Board's actual and required skills and shall:
- 21.2.1. review all candidates for the positions of the Nominated Directors, against the relevant skills-based role descriptions and person specifications, and then provide advice regarding the candidates' suitability to the Board in advance of the relevant Board meeting or general meeting at which a decision on the appointment or ratification of the appointment of any Nominated Director is to be made;
 - 21.2.2. review any candidates for any position as a Co-opted Director, against the relevant skills-based role descriptions and person specifications, and then provide advice regarding the candidates' suitability to the Board in advance of the relevant Board meeting or general meeting at which a decision on the appointment or ratification of the appointment of any Co-opted Director is to be made; and
 - 21.2.3. invite applications through a process of open, public advertising and review all applicants for the positions of the Chair and Independent Directors, against the relevant skills-based role descriptions and person specifications, and then provide advice regarding the applicants' suitability to the Board in advance of the relevant Board meeting or general meeting at which a decision on the appointment or ratification of the appointment of any Chair or Independent Director is to be made.
- 21.3. Subject to Article 21.8, at a general meeting the Company may, by ordinary resolution, appoint or ratify as a director any person in respect of whom a written notice of willingness to accept such an appointment has been received in accordance with Article 21 and who has been recommended for appointment by the Nominations Committee.
- 21.4. Subject to Article 21.8, the Board may at any time appoint any person (providing they are willing to act) to be a director, either to fill a vacancy or as an additional director provided always that such person has been recommended for appointment by the Nominations Committee.
- 21.5. Subject to Article 21.7, the Board shall procure that no director (whether already holding office at the date of adoption of these Articles or whether appointed, elected or co-opted subsequently) shall hold office for more than two terms of three years, unless:
- 21.5.1. a director is elected to the position of Chair, in which case they may hold office for three terms of three years; or
 - 21.5.2. in exceptional circumstances, where there is a requirement for continuity of particular skills and experience on the Board, the Board may, at its sole discretion, extend the term of office of a director by one year.
- 21.6. The term of the student director shall be two years. The role of the student director is subject to annual election with one student director being elected each year for a two-year term.

- 21.7. Any director appointed in an Ex Officio capacity may serve on the Board for the duration of their holding the relevant office.
- 21.8. No director, who has held office for the maximum number of terms allowed under these Articles, shall stand for election, appointment or co-option to the Board until at least four years have elapsed since the completion of their last term.
- 21.9. All acts carried out in good faith at any meeting of the Board or of any committee of the Board, or by any person acting as a director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such person, be valid as if every such person had been duly appointed or had duly continued in office.

22. Termination of director's appointment

- 22.1. Without prejudice to the provision of Section 168 of the 2006 Act, a person shall cease to be a director of the Company as soon as:
- 22.1.1. that person ceases to be a director by virtue of any provision of the Companies Act or is otherwise prohibited from being a director by law;
 - 22.1.2. that person becomes an employee of the Company (except in the case of the Chair or a director is appointed in an Ex Officio capacity);
 - 22.1.3. a bankruptcy order is made against that person;
 - 22.1.4. a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 22.1.5. a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than six months;
 - 22.1.6. by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
 - 22.1.7. unless the Board resolves otherwise, that person shall without sufficient reason for more than four consecutive Board meetings have been absent without permission of the Board;
 - 22.1.8. that person is requested in writing to resign by a majority of the other directors acting together, and having due regard to the requirements of any code of conduct of the Board;
 - 22.1.9. that person fails a "fit and proper persons" declaration;

22.1.10. a director has completed the maximum consecutive terms of office permitted under these Articles;

22.1.11. that person, being a member, ceases to be a member; or

22.1.12. notification is received by the Board from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

22.2. A person serving as Chair or Senior Independent Director, who ceases to be a director for whatever reason, shall be deemed to have resigned from his or her position as Chair or Senior Independent Director (as appropriate) and the vacancy shall be filled in accordance with these Articles.

22.3. The vacancy created by any other director ceasing to be a director for whatever reason shall be filled in accordance with these Articles.

23. Directors' and Chair's Remuneration and Expenses

23.1. The Chair is entitled to receive remuneration and if a director is in employment then the employer of such director may receive a payment by the way of an honorarium to recognise the time spent by such director on the Company's business. The Nominations Committee will be responsible for setting the level of remuneration and honoraria annually; and

23.2. The directors may be paid travelling and other expenses properly incurred by them in connection with their attendance at Board meetings, interest groups, and meetings of committees of the Board or otherwise in connection with the discharge of their duties.

24. Chair

24.1. The responsibilities of the Chair shall include (but not be limited to):

24.1.1. chairing meetings of the Board;

24.1.2. the leadership of the Board;

24.1.3. chairing general meetings; and

24.1.4. proactively addressing and managing any conflicts of interest.

25. Casual Vacancies

25.1. A casual vacancy arising among the offices of Chair, Nominated Directors or Independent Directors shall be filled by the Board, after due consultation with the Nominations Committee, provided always that the person appointed to fill the vacancy shall hold office only until such time as the person they replaced was due to retire, but they shall be eligible for re-election or re-appointment (as the case may be) in accordance with these Articles.

26. Company Secretary

- 26.1. Subject to the provisions of the Companies Acts, a company secretary may be appointed by the Board for such term, at such remuneration (if any) and upon such conditions as the Board may think fit, and any company secretary so appointed may be removed by the Board.

PART 3

MEMBERS

BECOMING AND CEASING TO BE A MEMBER

27. Applications for Membership

- 27.1. The subscribers to the Memorandum of Association of the Company as at the date of its incorporation, and such other persons as are admitted to membership from time to time by the Board in accordance with these Articles shall be the members of the Company.
- 27.2. No person shall become a member of the Company unless:
- 27.2.1. that person has completed an application for membership in such form as required by the Board; and
 - 27.2.2. the Board, or any person or committee to which the Board has delegated such power, has approved the application.
- 27.3. Any organisation which wishes to become a member must be a provider of Higher Education courses in the United Kingdom and shall lodge with the company secretary a written application for membership (in such form as the Board may require), signed on behalf of the organisation and stating the name of its Member Representatives.
- 27.4. An organisation applying for admission as a member shall lodge such evidence in support of their application for membership as the Board may require.
- 27.5. The Board shall determine each year the closing date for applications for membership and subscription renewals.
- 27.6. Every application for membership shall be considered by the members at the first general meeting held after receipt by the Company of the application (or, if appropriate, the first general meeting after receipt of any requested supporting evidence). At least one representative from the applicant organisation must attend the general meeting at which their application is considered. For an applicant to become a member its application for membership must be approved by at least two-thirds of the members at the general meeting.
- 27.7. The company secretary shall notify each applicant in writing of the decision as to whether or not to admit them as a member within seven clear days following the general meeting at which their application was considered. Upon payment by the applicant of the annual subscription, the name of the organisation shall be entered in the register of members of the Company and upon such entry the applicant shall become a member.

27.8. In the period between an application being received and a decision being made by the members at the next general meeting as to whether or not the application should be accepted, the Board may decide, on payment of the appropriate subscription, to admit the applicant as an Associate, in accordance with the provisions of Article 29. If the applicant is subsequently admitted as a member, any subscription previously paid shall be taken into account when determining the membership subscription due.

28. Member Representatives

28.1. The Member Representatives shall exercise the right of membership on behalf of the member who appointed them. The member retains full power to replace their Member Representatives with different Member Representatives and to allow alternative Member Representatives to represent them when their current Member Representatives are not available. Any such appointment whether of the current or the alternate Member Representatives shall be notified in writing to the Company and is subject to the eligibility criteria for Member Representatives set out in these Articles.

28.2. Each member shall name their Member Representatives each year in conjunction with payment of their subscription. Each Member Representative for a member shall have one vote at general meetings unless their member's subscription is two or more months overdue following its due date, whereupon the Member Representatives shall not be entitled to vote until their member's arrears have been settled in full.

28.3. Any proxy appointed by an organisation under Article 43 may only be made in favour of the Member Representatives of the member appointing.

29. Associates

29.1. Organisations which are not eligible to become members or do not wish to become members, but wish to be kept informed of the Company's activities can apply in writing to the company secretary to become an associate ("Associate"). Each applicant will thereafter be considered by the members at the next held general meeting. If two-thirds of the members approve the application, the applicant shall be notified in writing by the company secretary within twenty-one clear days of the general meeting and, on payment of the appropriate subscription, shall become an Associate.

29.2. Associates shall be entitled to such privileges as the Company shall determine from time to time, but shall not be entitled to vote at general meetings.

30. Subscriptions

30.1. Each member or Associate shall pay an annual subscription as determined by a majority of the members at each AGM. Such determination may provide for differential rates of annual subscription.

31. Termination of membership and participation as Associates

31.1. A member or Associate shall cease to be a member or Associate if:

- 31.1.1. they give at least six months' written and signed notice of their resignation to the company secretary, in the case of a member, or notice to withdraw in the case of an Associate;
 - 31.1.2. they fail to pay the annual subscription, or any part of it, within two months from the date upon which such fee is due unless the Board decides otherwise. Such member or Associate may, on payment of the arrears of their annual subscription in full be reinstated at the discretion of a majority of the members at the next general meeting;
 - 31.1.3. they become insolvent or if a receiver or liquidator is appointed to all or part of the member's or Associate's assets, or if any notice of any resolution is presented to have the member or Associate wound up;
 - 31.1.4. they fail to comply or to continue to comply with any condition of membership or participation set out in the Articles;
 - 31.1.5. two-thirds of the members at a general meeting resolve to terminate the membership of any organisation or the participation of any Associate on the basis that their continued membership or participation is not in the best interests of the Company, subject to the right of a member (only), whose membership is to be terminated, to appear before the general meeting to appeal against such a decision; and
 - 31.1.6. a special resolution to expel them is passed by the members in accordance with Article 31.2.
- 31.2. Any member who wishes to propose at any general meeting a resolution for the expulsion of any other member or Associate shall lodge with the Company written notice of their intention to do so (identifying the member or Associate concerned (the "Expulsee") and specifying the grounds for the proposed expulsion) not less than twenty-one clear days before the date of the general meeting. The Company shall, on receipt of the notice, send a copy of the notice to the Expulsee within three clear days and the Expulsee shall be entitled to make written representations ("Representations") to the Company with regard to the notice.
- 31.3. If Representations are made by the Expulsee to the Company under Article 31.2, the Company shall (unless the Representations are received by the Company too late for it to do so):
- 31.3.1. state in the notice convening the meeting at which the resolution is to be proposed that the Representations have been made; and
 - 31.3.2. send a copy of the Representations to every member to whom notice of the meeting is to be given.
- 31.4. In the event that a copy of the Representations have not been given to each of the members entitled to receive notice of the meeting, the Expulsee shall be entitled to be heard on the resolution at the meeting.

- 31.5. Failure to comply with any of the provisions of Articles 31.2 to 31.4 shall render any resolution for the expulsion of the Expulsee invalid.
- 31.6. A member or Associate expelled under Articles 31.2 to 31.4 shall cease to be a member or where relevant, an Associate, with effect from the time at which the relevant resolution is passed.
- 31.7. No right or privilege of any member shall be in any way transferable, but all such rights and privileges shall cease upon the member ceasing to be such, whether by resignation or by expulsion.
- 31.8. Any person ceasing to be a member forfeits all rights in relation to and claims upon the Company, its property and its funds and has no right to the return of any part of its annual subscription.

ORGANISATION OF GENERAL MEETINGS

32. Notice of and Calling General Meetings

- 32.1. A general meeting may be called at any time by the Board, or by the company secretary acting on behalf of the Board, or may be called on written request to the Board from at least 5% of the members or on requisition by a resigning auditor (under section 518 of the 2006 Act).
- 32.2. An AGM, and a general meeting convened for the passing of a special resolution or a resolution requiring special notice, shall be called by at least twenty-one clear days' notice in writing; all other general meetings shall be called by at least fourteen clear days' notice.
- 32.3. On receipt of a written request from the members or a resigning auditor made pursuant to Article 32.1, the company secretary must call a general meeting within twenty-one days, and the general meeting must be held not more than twenty-eight clear days after the date of the notice calling the general meeting.
- 32.4. A notice convening a general meeting shall specify the time and place of the general meeting and the terms of any resolution which is to be proposed as a special resolution or ordinary resolution or which constitutes a resolution requiring special notice and shall indicate the general nature of any other business to be transacted at the meeting.
- 32.5. The notice for every general meeting shall be given to all the members, Associates, directors and to the Company's auditors.
- 32.6. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

33. Purposes of General Meetings

- 33.1. The Company shall hold a general meeting in every calendar year as its AGM at such time and place as may be determined by the Board and shall specify the meeting as such in notices calling it, provided that no more than fifteen months shall elapse between AGMs.

33.2. The AGM shall be held for the following purposes:

- 33.2.1. to receive from the Board the Company's annual accounts and financial statements;
- 33.2.2. to receive from the Board a report of the activities of the Company since the previous AGM;
- 33.2.3. to appoint the Company's auditors;
- 33.2.4. to appoint or ratify any candidates to the positions of director for the ensuing terms of office; and
- 33.2.5. to transact such other business as the Board may determine or (in the case that the AGM has been called pursuant to a request from at least 5% of the members as specified in Article 32.1) has been set out in the request for the meeting, providing that such requested business is, in the opinion of the Board, consistent with the provisions of these Articles and does not contravene any relevant legislation.

33.3. All meetings, other than AGMs, shall be called general meetings.

- 33.3.1. The business of such extraordinary general meetings shall be decided by the Board or (in the case that the extraordinary general meeting has been called pursuant to a request from at least 5% of the members as specified in Article 32.1) as has been set out in the request for the meeting, providing that such requested business is, in the opinion of the Board, consistent with the provisions of these Articles and does not contravene any relevant legislation.

33.4. The Articles may only be altered or repealed by a special resolution at any general meeting with the approval of 75% of the votes cast by the members entitled to vote.

34. Attendance and speaking at general meetings

34.1. A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meetings.

34.2. Only members shall be entitled to vote at a general meeting. A person is able to exercise the right to vote at a general meeting when:

- 34.2.1. that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 34.2.2. that person's vote can be taken into account, in determining whether or not such resolutions are passed, at the same time as the votes of all the other persons attending the meeting.

- 34.3. The Board may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 34.4. In determining attendance at a general meeting, it is immaterial whether any two or more members attending are in the same place as each other.
- 34.5. Two or more persons, who are not in the same place as each other, attend a general meeting if their circumstances are such that, if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

35. Quorum for general meetings

- 35.1. No business other than the appointment of the chair of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.
- 35.2. Subject to Article 38.6, one third of the members, present in person or by proxy, entitled to vote at the general meeting shall be the quorum for a general meeting.

36. Chairing general meetings

- 36.1. The Chair shall chair general meetings if present and willing to do so. If the Chair shall be absent, or if at any meeting they are not present within thirty minutes after the time appointed for holding the meeting, the directors present, or (if no directors are present) the members, must appoint a director or member to chair the meeting, and the appointment of the chair of the meeting must be the first business of the meeting.
- 36.2. The person chairing a meeting in accordance with this Article is referred to as "the chair of the meeting".

37. Attendance and speaking by directors and non-members

- 37.1. Directors may attend and speak at general meetings, whether or not they are members.
- 37.2. The chair of the meeting may permit other persons, who are not members, to attend and speak at a general meeting.

38. Adjournment of general meetings

- 38.1. If the persons attending a general meeting within thirty minutes of the time at which the meeting was due to start do not constitute a quorum or, if during a meeting a quorum ceases to be present, the chair of the meeting must adjourn it.
- 38.2. The chair of the meeting may adjourn a general meeting at which a quorum is present if:
- 38.2.1. the meeting consents to the adjournment; or
 - 38.2.2. it appears to the chair of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or to ensure that the business of the meeting is conducted in an orderly manner.

- 38.3. The chair of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 38.4. When adjourning a general meeting, the chair of the meeting must:
- 38.4.1. either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Board; and
 - 38.4.2. have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 38.5. If the continuation of an adjourned meeting is to take place more than thirty days after it was adjourned, the Company must give at least seven clear days' notice of it:
- 38.5.1. to the same persons to whom notice of the general meetings is required to be given; and
 - 38.5.2. containing the same information which such notice is required to contain.
- 38.6. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place, provided that, if at such adjourned meeting a quorum is not present within fifteen minutes from the time appointed for holding the meeting, twenty five members shall be a quorum.

VOTING AT GENERAL MEETINGS

39. Voting: general

- 39.1. Every member shall be entitled to receive notice of, and have their Member Representatives attend and cast one vote each at general meetings.
- 39.2. A resolution put to the vote of a general meeting must be decided on a show of hands in person, or online via a live online vote, unless a poll is duly demanded in accordance with these Articles. Except where otherwise provided by the Companies Acts, every resolution is decided by a majority of votes cast.
- 39.3. In the event of an equality of votes, either on a show of hands or a poll, the chair of the meeting is entitled to a casting vote in addition to any other vote they may have.

40. Errors and disputes

- 40.1. No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 40.2. Any such objection must be referred to the chair of the meeting, whose decision is final.
- 40.3. The Company reserves the right to request and inspect evidence prior to a general meeting that all persons attending are duly authorised Member Representatives or proxies.

41. Poll votes

41.1. A poll on a resolution may be demanded:

41.1.1. in advance of the general meeting where it is to be put to the vote; or

41.1.2. at a general meeting, either before a show of hands in person, or online via a live online vote, on that resolution or immediately after the result of a show of hands on that resolution is declared.

41.2. A poll may be demanded by:

41.2.1. the chair of the meeting;

41.2.2. the Board; or

41.2.3. a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

41.3. A demand for a poll may be withdrawn if:

41.3.1. the poll has not yet been taken; and

41.3.2. the chair of the meeting consents to the withdrawal of the demand.

41.4. A poll shall be taken as the chair of the meeting directs and they may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the result of the resolution of the meeting at which the poll was demanded.

41.5. A poll demanded on the election of a chair of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chair of the meeting directs, not being more than thirty days after the poll was demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

41.6. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

42. Postal or online ballot

42.1. The Board may decide, in advance of a general meeting, to call a postal or online ballot in respect of an election which would otherwise be put to a vote at the general meeting. If there is to be a postal or online ballot, the details of the resolution and voting papers shall be sent at such time as the Board shall prescribe to the members. Details can be sent by

electronic means to the recognised email address for the voting members. Voting papers must be returned to the company secretary either by post in a sealed envelope, or by email from the recognised email address, by such time as the Board shall prescribe and shall be opened and counted by such person or persons as the Board shall decide.

42.2. The result of the postal or online ballot will be declared by the Board.

43. Content of proxy notices

43.1. Proxies may only validly be given by a notice in writing (a "proxy notice") which:

43.1.1. states the name and address of the member appointing the proxy;

43.1.2. confirms that the person appointed is eligible to be a Member Representative for that member;

43.1.3. identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

43.1.4. is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Board may determine; and

43.1.5. is delivered to the Company's registered office, or delivered via email to the Company Secretary's email address, or in person as long as it is prior to the start of the meeting, in accordance with these Articles and any instructions contained in the notice of the general meeting to which they relate.

43.2. The Board may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

43.3. Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

43.4. Unless a proxy notice indicates otherwise, it must be treated as:

43.4.1. allowing the person, appointed under it as a proxy, discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and

43.4.2. appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

44. Delivery of proxy notices

44.1. A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company's registered office by or on behalf of that person.

44.1.1. When a person, who has appointed a valid proxy, attends a general meeting themselves, only they may exercise their vote on any show of hands or poll.

- 44.2. An appointment under a proxy notice may be revoked by delivering to the Company's registered office, or delivered via email to the Company Secretary's email address, or in person as long as it is prior to the start of the meeting, a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 44.3. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the general meeting or adjourned meeting to which it relates.
- 44.4. If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

45. Amendments to resolutions

- 45.1. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
 - 45.1.1. notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than forty-eight hours before the meeting is to take place (or such later time as the chair of the meeting may determine); and
 - 45.1.2. the proposed amendment does not, in the reasonable opinion of the chair of the meeting, materially alter the scope of the resolution.
- 45.2. A special resolution to be proposed at a general meeting may be amended by ordinary resolution if:
 - 45.2.1. the chair of the meeting proposes the amendment at the general meeting at which the special resolution is to be proposed; and
 - 45.2.2. the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the special resolution.
- 45.3. With the consent of the chair of the meeting, an amendment may be withdrawn by its proposer at any time before the resolution is voted upon.
- 45.4. If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair of the meeting's error does not invalidate the vote on that resolution.

46. Written resolutions

- 46.1. Subject to Article 46.4, a resolution in writing agreed by the Appropriate Majority of members who would have been entitled to vote upon it, if it had been proposed at a general meeting, shall be effective, provided that:
 - 46.1.1. a copy of the proposed resolution has been sent to every eligible member; and

- 46.1.2. the Appropriate Majority of members has signified its agreement to the resolution in an authenticated document which has been received at the Company's registered office within the period of twenty-eight days beginning with the circulation date.
- 46.2. A resolution in writing may comprise several copies to which one or more members have signified their agreement.
- 46.3. In Article 46.1, the Appropriate Majority is:
- 46.3.1. in the case of an ordinary resolution, a simple majority of the eligible members;
and
- 46.3.2. in the case of a special resolution, seventy-five percent or more of the eligible members.
- 46.4. The following may not be passed as a written resolution:
- 46.4.1. a resolution to remove a director before his or her period of office expires; and
- 46.4.2. a resolution to remove an auditor before his or her period of office expires.

PART 4

ADMINISTRATIVE ARRANGEMENTS

47. Means of communication to be used

- 47.1. Any notice to be given in pursuance of these Articles shall be in writing; the Company may give any such notice to a member or Member Representative or Associate by electronic communication, personally or by sending it by first class (or equivalent) post addressed to the member or Member Representative or Associate at the address previously notified by them in writing to the Company or by leaving it at that address. Only those members or Member Representatives or Associates who have provided the Company with an address within the United Kingdom shall be entitled to receive notices from the Company.
- 47.2. Any notice, if served by first class (or equivalent) post, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post as a prepaid letter. Any notice, if served by electronic communications, shall be deemed to have been given at the expiration of forty-eight hours after the time it was sent.
- 47.3. A Member Representative present at a general meeting shall be deemed, on behalf of their member, to have received notice of that meeting and, where requisite, of the purposes for which it was called.
- 47.4. Subject to these Articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by the Board may also be sent or supplied by the

means by which that director has asked to be sent or supplied with such notices or documents for the time being.

47.5. A director may agree with the Company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty-eight hours.

48. Limitation on right to inspect accounts and other records

48.1. Except as provide by law or authorised by the Board or by an ordinary resolution of the Company, no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a member, Member Representative or Associate.

49. Auditors

49.1. Auditors of the Company shall be appointed and their duties regulated in accordance with the 2006 Act.

DIRECTORS' INDEMNITY AND INSURANCE

50. Indemnity

50.1. Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer of the Company shall be indemnified out of the assets of the Company against any loss or liability which they may sustain or incur in connection with the execution of their duties of office including, without prejudice to that generality, any liability incurred in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in which relief is granted by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

50.2. This Article 50 does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

51. Insurance

51.1. The Board may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant director in respect of any relevant loss.

51.2. In this Article 51:

51.2.1. a "relevant director" means any director or former director of the Company; and

51.2.2. a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the Company, or any pension fund or employees' share scheme of the Company.

DISSOLUTION

52. Winding-Up or Dissolution

- 52.1. If on the winding-up or dissolution of the Company any property remains after satisfaction of all the Company's debts and liabilities, such property shall not be paid to or distributed among the members but shall be transferred to some other charitable body or bodies (whether incorporated or unincorporated) whose objects are altogether or in part similar to the Objects and whose constitution restricts the distribution of income and assets among its members.
- 52.2. The body or bodies to which property is transferred under this Article 52 shall be determined by the members at or before the time of winding-up or dissolution or, failing such determination by such court as may have or may acquire jurisdiction.