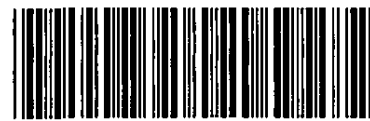


**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY GUARANTEE**  
**AND NOT HAVING A SHARE CAPITAL**  
**ARTICLES OF ASSOCIATION**  
**of**  
**TOBERMORY HARBOUR ASSOCIATION**

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**THE COMPANIES ACT 2006**

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

**ARTICLES OF ASSOCIATION**

**of**

**TOBERMORY HARBOUR ASSOCIATION**

**(as amended by special resolution passed on 4<sup>th</sup> November 2016)**

**Constitution of company**

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

**Defined terms**

- 2 In these articles of association, unless the context requires otherwise:
  - 2.1 “Act” means the Companies Act 2006;
  - 2.2 “conflict of interest” includes a conflict of interest and duty, and a conflict of duty;
  - 2.3 “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
  - 2.4 “Company Accountants” means an accredited independent accountancy firm appointed by the directors to prepare the company’s annual accounts;
  - 2.5 “electronic form” has the meaning given in section 1168 of the Act;
  - 2.6 “HEO” means the harbour empowerment order granted, or to be granted, to the company;

- 2.7 “Harbour” means the port within the limits of which (as determined by the HEO, as amended from time to time) the company is entitled to exercise jurisdiction as the harbour authority;
- 2.8 “property” means any property, heritable or moveable, real or personal, wherever situated; and
- 2.9 “subsidiary” has the meaning given in section 1159 of the Act.
- 3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

### **Objects**

- 4 The company’s objects are to promote, maintain, manage, improve and develop the Harbour and its environs for the benefit of the company, all of the Harbour’s stakeholders (including the local community) and the general public, which shall include (without limitation):
- 4.1 the conservancy of the Harbour;
- 4.2 the safe and efficient management, operation and regulation of the Harbour;
- 4.3 the installation, construction, maintenance, operation and management of buildings, works, and infrastructure in, or in the vicinity of, the Harbour;
- 4.4 the provision, maintenance, operation, improvement, promotion, support and/or co-ordination of harbour services, accommodation, and facilities (including car parking) in, or in the vicinity of, the Harbour;
- 4.5 the support (whether financial or otherwise) of any organisation or project (whether charitable or otherwise) which operates for the benefit of the Harbour or otherwise for the benefit of the Harbour’s stakeholders.
- 5 The company’s objects are restricted to those set out in article 4 (but subject to article 6).
- 6 The company may, by way of a special resolution (passed by the members of the company – see article 46), add to, remove or alter the statement of the company’s objects in article 4 or the provisions restricting use of the company’s assets in article 8; on any occasion when it does so, it must give notice to the registrar of companies and (in the case of an amendment to the company’s objects) the amendment will not be effective until that notice is registered on the register of companies.

## Powers

- 7 In pursuance of those objects (but not otherwise) the company shall have the following powers:-
- 7.1 To exercise all such powers as are vested in the company by the HEO;
  - 7.2 To enter into all such contractual and other arrangements as the directors may consider appropriate from time to time in furtherance of the objects of the company;
  - 7.3 To initiate, promote, conduct, participate in, co-ordinate, monitor and/or assist (whether financially or otherwise), projects, initiatives and schemes of all kinds which further any of the objects of the company;
  - 7.4 To carry on any other activity which may be appropriately carried on in connection with any of the objects of the company;
  - 7.5 To liaise with European, UK, Scottish and local government authorities and agencies, third sector bodies and others, all with a view to maximising the effectiveness of the company in pursuing its objectives;
  - 7.6 To promote companies and/or other bodies whose activities may further one or more of the above objects or may generate income to support the activities of the company, acquire and hold shares, stocks, debentures and other interests in such companies, and carry out in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company;
  - 7.7 To acquire and take over the whole or any part of the undertaking and liabilities of any body entitled to any property or rights suitable for any of the objects of the company;
  - 7.8 To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the company's activities;
  - 7.9 To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company;
  - 7.10 To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company;
  - 7.11 To borrow money, and to give security in support of any such borrowings by the company, in support of any obligations undertaken by the company or in support of any guarantee issued by the company;

- 7.12 To employ such staff as are considered appropriate for the proper conduct of the company's activities;
- 7.13 To engage such consultants and advisers as are considered appropriate from time to time;
- 7.14 To effect insurance of all kinds (which may include officers' liability insurance);
- 7.15 To invest any funds which are not immediately required for the company's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments);
- 7.16 To take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities;
- 7.17 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- 7.18 To oppose, or object to, any application or proceedings which may prejudice the company's interests;
- 7.19 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the company, and to enter into any arrangement for co-operation or mutual assistance with any other body;
- 7.20 To do anything which may be incidental or conducive to the furtherance of any of the company's objects.

**Restriction on use of the company's assets**

8 Subject to article 9:-

- 8.1 the income and property of the company shall be applied solely towards the promotion of its objects (as set out in article 4);
- 8.2 the net income derived from Harbour assets that are provided for use in the provision of public ferry services shall be applied solely for the purpose of maintaining and/or improving the Harbour facilities;
- 8.3 no part of the income or property of the company shall be paid or transferred (directly or indirectly) to any member of the company by way of dividend, bonus or otherwise;
- 8.4 no director of the company shall be appointed to any office under the company in respect of which a salary or fee is payable;
- 8.5 no benefit (in money or money's worth) shall be given by the company to any director except repayment of out-of-pocket expenses.

- 9 The company shall, notwithstanding the provisions of article 8, be entitled:-
- 9.1 to pay a rent not exceeding the market rent for premises let to the company by any member of the company;
  - 9.2 to make any transfer or payment to a member where such transfer or payment is made in direct furtherance of the charitable purposes of the company;
  - 9.3 to pay reasonable remuneration, and provide reasonable pension and/or other benefits, to any Executive Director (as defined in article 66) in his/her capacity as an employee of the company;
  - 9.4 to pay reasonable remuneration to the Chair or to any Stakeholder Director (as defined in article 66) serving on the Executive Committee (as defined in article 133).

#### **Liability of members**

- 10 The liability of the members is limited.
- 11 Each of the members undertakes that if the company is wound up while he/she/it is a member (or within one year after he/she/it ceases to be a member), he/she/it will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards:
- 11.1 payment of the company's debts and liabilities contracted before he/she/it ceases to be a member;
  - 11.2 payment of the costs, charges and expenses of winding up; and adjustment of the rights of the contributories among themselves.

#### **Membership**

- 12 The subscribers to the memorandum of association and such other individuals and bodies as are admitted to membership under articles 15 to 27 shall be the members of the company; for the avoidance of doubt, all those in membership of the company at the time when the resolution adopting these articles of association is passed shall (subject to the other provisions of these articles) remain as members of the company.
- 13 Membership shall cease on death; or, in the case of an incorporated body, on the winding-up, dissolution, receivership or striking-off of that body.
- 14 A member may not transfer his/her/its membership to any other individual or body.

#### **Qualifications for membership**

- 15 Subject to article 12 and articles 16 to 19, membership shall be open to:

- 15.1 any individual over the age of 17 whose main home is on the Isle of Mull and has an interest in the use of Tobermory Harbour.
  - 15.2 any incorporated body (whether public sector, third sector or private sector) operating on the Isle of Mull;
  - 15.3 any individual nominated for membership by an unincorporated body (operating under a written constitution) with a membership wholly or mainly drawn from Isle of Mull residents.
- 16 No more than one individual nominated by each unincorporated body may be a member at any given time.
  - 17 No employee of the company may become a member; an individual admitted to membership shall automatically cease to be a member if he/she becomes an employee of the company.
  - 18 No member of the company shall be less than 17 years of age.
  - 19 The directors shall be entitled at their discretion to refuse to admit any individual or body to membership even if he/she/it is qualified for membership under article 15 and is not debarred from membership by articles 16 to 18; the directors shall not, however, unreasonably decline to admit any individual or body to membership if the applicant undertakes to comply with all instructions and rules (as set out in the company handbook, as issued with the authority of the directors from time to time) relating to the facilities operated or managed by the company.
  - 20 An individual/body, once admitted to membership, may remain a member even if he/she/it ceases to fulfil any of the qualifications under article 15.
  - 21 All members shall be entitled (subject to complying with the rules referred to in article 19, as supplemented or amended from time to time) to make use of all facilities operated or managed by the company from time to time.
  - 22 Each new member or prospective member will be given an opportunity to read a copy of the rules issued by the company in relation to the facilities operated or managed by the company and the articles of association of the company; all individuals and bodies admitted to membership shall be deemed to have accepted the terms of such rules, as supplemented or amended by the company from time to time.

#### **Application for membership**

- 23 Any individual who wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require), signed by him/her and (in the case of an application under paragraph 15.3) signed by an authorised officer of the unincorporated body nominating him/her for membership.

- 24 Any incorporated body which wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require) signed on its behalf by an appropriate officer of that body.
- 25 An individual or body applying for membership shall lodge with the company such information and evidence (if any) in support of his/her/its application as the directors may require.
- 26 Each application for membership shall be considered by the directors at the first meeting of the directors which is held after receipt by the company of the written application (and, if required by the directors, supporting information and evidence) required under articles 23 to 25.
- 27 The directors shall, within a period of 21 days after the meeting at which an application for membership is considered, notify the applicant in writing of the directors' decision as to whether or not to admit him/her/it to membership.

#### **Membership subscription**

- 28 No membership subscription shall be payable, either at the time of admission to membership or on any periodic basis.

#### **Re-registration**

- 29 The directors may at any time (at their discretion) issue notices to the members requiring them to re-register as members if they wish to remain in membership of the company; each notice shall be accompanied by a re-registration form (in such form as the board may consider appropriate), and shall make reference to the consequences (under article 31) if a member fails to return his/her its re-registration form (duly signed) to the company by the due date.
- 30 Each notice issued in pursuance of article 29 shall specify a date (which shall not be earlier than 14 days after the date on which the notice is issued) by which a member must return the re-registration form, duly signed by him/her or (in the case of a member which is an incorporated body) duly signed on its behalf by an appropriate officer, to the company.
- 31 If the company does not receive a duly signed re-registration form (in accordance with article 30) from any individual or body prior to the date specified in the written notification issued to the members, the directors may, by resolution to that effect passed by majority vote at a meeting of the directors, expel him/her/it from membership.

#### **Withdrawal from membership**

- 32 Any individual or body who/which wishes to withdraw from membership shall lodge with the company a written notice of retiral (in such form as the directors require), signed by him/her or, in the case of an incorporated body,



signed on its behalf by an appropriate officer; on receipt of the notice by the company, he/she/it shall cease to be a member.

- 33 Any unincorporated body which wishes to withdraw its nomination for membership shall lodge with the company a written notice to that effect (in such form as the directors require), signed on its behalf by an appropriate officer; on receipt of the notice by the company, the individual named in the notice shall cease to be a member.

#### **Expulsion from membership**

- 34 Any individual or body may be expelled from membership by special resolution (see article 46), providing the following procedures have been observed:

- 34.1 at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
- 34.2 the member concerned shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

#### **General meetings**

- 35 The directors shall convene an annual general meeting in each year.
- 36 Not more than 15 months shall elapse between one annual general meeting and the next.
- 37 The business of each annual general meeting shall include:
- 37.1 a report by the Chair on the activities of the company;
- 37.2 consideration of the annual accounts of the company;
- 37.3 the election/re-election of Stakeholder Directors, as referred to in articles 73 to 88.
- 38 Subject to articles 35, 36 and 39 the directors may convene a general meeting at any time.
- 39 The directors must convene a general meeting:
- 39.1 if there is a valid requisition by members (under section 303 of the Act); or
- 39.2 if an accountancy firm, on ceasing to be engaged as the Company Accountants, notify the directors that there are matters which they consider should be brought to the attention of the members.

### **Notice of general meetings**

- 40 At least 14 clear days' notice, or in the case of the annual general meeting at least 21 days' notice, of each general meeting must be given to the members, to the directors, and to the Company Accountants.
- 41 The reference to "clear days" in article 40 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted (or, in the case of notice sent by electronic means, the day after it was sent), and also the day of the meeting, should be excluded.
- 42 A notice calling a meeting shall specify the time, date and place of the meeting; it shall:
- 42.1 indicate the general nature of the business to be dealt with at the meeting;
  - 42.2 if a special resolution or a resolution requiring special notice under the Act is to be proposed, state that fact, giving the exact terms of the resolution; and
  - 42.3 contain a statement informing members of their right to appoint a proxy.
- 43 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 44 Notice of every general meeting shall be given:
- 44.1 in hard copy form; or
  - 44.2 (where the individual or body to whom/which notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form.
- 45 In the case of the annual general meeting, the directors must - in addition to giving notice to the members and directors and the Company Accountants - take such steps as they consider appropriate to publicise the annual general meeting among those within the local community who are not members of the company.

### **Special resolutions and ordinary resolutions**

- 46 For the purposes of these articles, a "special resolution" means a resolution passed by 75% or more of the votes cast on the resolution at an annual general meeting or special general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 40 to 45; for the avoidance of doubt, the reference to

a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the total number of votes cast in relation to the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.

47 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution,

47.1 to alter its name; or

47.2 to alter any provision of these articles or adopt new articles of association.

48 For the purposes of these articles, an "ordinary resolution" means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at an annual general meeting or special general meeting, providing proper notice of the meeting has been given in accordance with articles 40 to 45.

#### **Proceedings at general meetings**

49 No business shall be transacted at any meeting unless a quorum is present; ten members present in person (or, in the case of a corporate body, represented by its authorised representative) or represented by proxy, shall be a quorum.

50 If the quorum required under article 49 is not present within half an hour after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.

51 The Chair of the board of directors shall (if present and willing to act as chairperson) preside as chairperson of the meeting; if the Chair of the board of directors is not present and willing to act as chairperson within half an hour of the time appointed for holding the meeting, the Vice Chair shall preside as chairperson of the meeting.

52 If neither the Chair of the board of directors nor the Vice Chair is present and willing to preside as chairperson of the meeting within half an hour of the time appointed for holding the meeting, the directors shall elect one of their number to act as chairperson; or, if there is only one director present and willing to act, he/she shall be chairperson.

53 A director shall, even if he/she is not a member, be entitled to attend and speak at any general meeting.

54 Members of the local community shall be entitled to attend the annual general meeting even if they are not members of the company, but (if they are not members of the company) shall have no voting rights at the annual general meeting.

- 55 The chairperson may, with the consent of the meeting at which a quorum is present (and must, if the meeting requests him/her to do so), adjourn the meeting but not for a period in excess of thirty days; no notice need be given of an adjourned meeting.
- 56 A resolution put to the vote of a meeting shall be decided on a show of hands unless before the show of hands, or immediately after the result of the show of hands is declared, a secret ballot is demanded by the chairperson, or by at least two individuals present at the meeting and entitled to vote (whether as a member, as the proxy for a member, or as the authorised representative of a member which is a corporate body).
- 57 If a secret ballot is demanded in accordance with the preceding article, it shall be taken at once and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

#### **Votes of members**

- 58 Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally (in the case of a corporate body, via its authorised representative present at the meeting) or by proxy.
- 59 In the case of an equality of votes, whether on a show of hands or on a ballot, the chairperson of the meeting shall not be entitled to a casting vote in addition to any other vote he/she may have.
- 60 Any member who/which wishes to appoint a proxy to vote on his/her/its behalf at any meeting (or adjourned meeting):
- 60.1 shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by him/her or (in the case of a corporate body) signed on its behalf by an appropriate officer; or
- 60.2 shall send by electronic means to the company, at such electronic address as may have been notified to the members by the company for that purpose, an instrument of proxy (in such form as the directors require);
- providing (in either case), the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).
- 61 An instrument of proxy which does not conform with the provisions of article 60, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 62 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

- 63 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who/which appointed him/her to speak at the meeting and need not be a member of the company.
- 64 A member which is a corporate body may authorise an individual to act as its representative at any general meeting of the company, providing particulars of the individual so authorised are received by the company prior to the commencement of the relevant general meeting; the individual so authorised shall be entitled to exercise the same powers on behalf of the corporate body as the corporate body could exercise if it were an individual member.
- 65 A vote given, or ballot demanded, by proxy or by the representative of a member which is a corporate body shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the company at the company's registered office (or, where sent by electronic means, was received by the company at the address notified by the company to the members for the purpose of electronic communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.

#### **Categories of director**

- 66 For the purposes of these articles:

“Stakeholder Director” means a director (drawn from stakeholders, including the local community) elected/re-elected or appointed under articles 73 to 88;

“Executive Director” means a director appointed or re-appointed by the directors under articles 89 and **Error! Reference source not found.**

#### **Composition of the board**

- 67 The maximum number of directors shall be 12.
- 68 Out of the maximum number of directors specified in article 67:
- 68.1 a maximum of 10 directors (but subject to article 69) shall be Stakeholder Directors;
- 68.2 a maximum of 2 directors shall be Executive Directors.
- 69 If at any time either or both of the places on the board reserved for Executive Directors is/are not filled, the maximum number of Stakeholder Directors shall be increased accordingly; but on the basis that if and when each vacant place for an Executive Director is filled, the number of Stakeholder Directors in office shall be reduced so far as required to ensure that the total number of directors in office does not exceed 12. The question of which Stakeholder Director should vacate office in those circumstances shall be determined (in the absence of agreement among the Stakeholder Directors) by a resolution

passed by majority vote at a meeting of the directors, and on the basis that he/she shall automatically vacate office with effect from the time when the resolution is passed.

70 Except in the case of the Executive Directors, an individual shall not be eligible for election/appointment as a director if he/she is an employee of the company.

71 The company seeks to promote stakeholder participation; accordingly, the members and directors of the company will, in exercising their powers in relation to election/appointment of Stakeholder Directors, seek to ensure that so far as reasonably possible, the directors include, at any given time, one director drawn from each of the following stakeholder groups:

71.1 Adjacent Businesses & Landowners;

71.2 Commercial Users of the Harbour;

71.3 Transport Operators;

71.4 Harbour lease holders;

71.5 Moorings Holders;

71.6 Leisure Users of the Harbour;

and also seek to include one director nominated by each of the following organisations:

71.7 Fishermen's Association;

71.8 Community Council;

71.9 Caledonian Maritime Assets Limited (incorporated under the Companies Acts with registered number SC001854).

72 Without displacing the intent to promote stakeholder participation as referred to in article 71, the members and directors of the company will, in exercising their powers in relation to election/appointment of Stakeholder Directors, seek to ensure, so far as reasonably possible, an appropriate balance of skills and competencies across the board.

#### **Election, retiral, re-election: Stakeholder Directors**

73 At the time when notice of the annual general meeting is given to the members, the board of directors shall bring to the attention of the members a statement of the core skills, characteristics and experience that are required of directors (as determined by the board of directors) and advertise the opportunity for members to put themselves forward (or, where the member is a corporate body, to nominate an individual) for election as Stakeholder Directors.

- 74 Any member who is an individual and wishes to be considered for election as a director at an annual general meeting must lodge with the company a written notice (in such form as the directors require), confirming that he/she is willing to be appointed and setting out brief information on the skills, characteristics and experience which he/she could bring to the board, if elected; the notice must be signed by him/her and must be lodged with the company 7 days before the start of the annual general meeting.
- 75 Any member which is a corporate body and wishes to nominate an individual for election as a director at an annual general meeting must lodge with the company a written notice (in such form as the directors require), confirming that the individual named in the notice is willing to be appointed and setting out brief information on the skills, characteristics and experience which he/she could bring to the board, if elected; the notice must be signed by him/her and by an appropriate officer of the body, and must be lodged with the company 7 days before the start of the annual general meeting.
- 76 No more than one individual may be nominated by a given corporate body in pursuance of article 75.
- 77 A presiding officer will be appointed at the beginning of each annual general meeting to officiate in relation to the election of the Stakeholder Directors; the presiding officer will make known to those attending the annual general meeting, prior to the votes being taken on election of Stakeholder Directors, the information on the skills, characteristics and experience of each candidate which was provided to the company in pursuance of articles 74 and 75.
- 78 At an annual general meeting the company may elect as a director (a "Stakeholder Director") any individual in respect of whom a valid notice has been lodged with the company in accordance with article 74 or 75.
- 79 In exercising their voting powers in the election procedures at each annual general meeting, the members shall have regard to the general principle that the Stakeholder Directors should, so far as reasonably possible, include representatives from the stakeholder groups referred to in paragraphs 71.1 to 71.6 as well as the representatives referred to in paragraphs 71.7 to 71.9; as well as seeking to ensure, so far as reasonably possible, an appropriate balance of skills and competencies across the board.
- 80 In the event that at any annual general meeting no individual drawn from any one or more of the stakeholder groups referred to in paragraphs 71.1 to 71.6 has been put forward for election (or if the meeting declines to elect any individual drawn from any one or more of the stakeholder groups), the vacancy may then be filled at the annual general meeting out of the general membership, and without reference to any specific stakeholder group.
- 81 The directors may at any time appoint any member (providing he/she is willing to act) to be a director (a "Stakeholder Director"), to fill a vacancy; the principles set out in articles 71 and 72 shall apply in relation to the exercise of the directors' powers in this regard.

- 82 Any individual nominated for appointment as a director by a member which is a corporate body shall (subject to article 83) be deemed to be a member for the purposes of article 81.
- 83 No more than one individual nominated by a given corporate body may serve as a director at any given time.
- 84 At each annual general meeting (subject to article 86),
- 84.1 any Stakeholder Director appointed by the directors under article 81 during the period since the preceding annual general meeting; and
- 84.2 any Stakeholder Director who has served for a period of three years; shall retire from office; but shall then (subject to article 88) be eligible for re-election.
- 85 For the purposes of article 84:
- 85.1 the period between the date on which an individual is appointed as a director and the annual general meeting which next follows shall be taken to be a period of a year, unless it is of less than six months duration (in which case it will be disregarded);
- 85.2 if a director ceases to hold office as a director and is reappointed as a director within six months, he/she shall be deemed to have held office as a director continuously;
- 85.3 the period between one annual general meeting and the next shall be deemed to be a period of one year.
- 86 Any Stakeholder Director in office at the time when the resolution adopting these articles is passed who is re-elected at the first annual general meeting which follows the adoption of these articles shall vacate office at the next following annual general meeting (but shall then be eligible for re-election); for the avoidance of doubt, the provisions of this article 86 shall prevail over the provisions of paragraph 84.2.
- 87 The company may (subject to article 88) at any annual general meeting re-elect any Stakeholder Director who retires from office at the meeting under article 84 or 86 (providing he/she is willing to act); if any such Stakeholder Director is not re-appointed, he/she shall retain office until the meeting appoints someone in his/her place or, if it does not do so, until the end of the meeting.
- 88 If any Stakeholder Director has held office as a director for three three-year terms (as determined in accordance with article 85) as at a given annual general meeting, he/she will not be eligible for re-election or re-appointment as a Stakeholder Director until the annual general meeting which next follows.



### **Appointment, vacating of office: Executive Directors**

- 89 The directors may (subject to article 68) appoint any individual holding a senior management post with the company as a director (an "Executive Director"); he/she shall (subject to article 90) continue to be a director of the company unless and until he/she ceases (for whatever reason) to hold that post.

### **Disqualification and removal of directors**

- 90 A director shall vacate office if
- 90.1 he/she ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director;
  - 90.2 he/she is sequestered;
  - 90.3 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months;
  - 90.4 (except in the case of an Executive Director; or, where remuneration is paid to the Chair or a Stakeholder Director serving on the Executive Committee in pursuance of article 108, in the case of the Chair or a Stakeholder Director if he/she is treated as an employee of the company on that basis) he/she becomes an employee of the company;
  - 90.5 (in the case of an Executive Director) he/she ceases to hold the relevant post with the company;
  - 90.6 he/she resigns office by notice to the company;
  - 90.7 he/she is not present at three consecutive meetings of directors (without permission of the directors) and the directors resolve to remove him/her from office; or
  - 90.8 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of the code of conduct referred to in article 105;
  - 90.9 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 303 of the Act.
- 91 A resolution under paragraph 90.8 shall be valid only if:

- 91.1 the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for his/her removal is to be proposed;
- 91.2 the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and
- 91.3 at least two-thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

#### **Appointments to office**

- 92 Directors shall be appointed to hold the offices of Chair and Vice Chair and any other offices which the directors may consider appropriate.
- 93 The appointments under the preceding article shall be made at meetings of directors.
- 94 Each office shall be held (subject to article 95) until the conclusion of the third annual general meeting which next follows appointment; a director whose period of office expires under this article may be re-appointed to that office under article 92 (providing he/she is willing to act).
- 95 The appointment of any director to an office under article 92 shall terminate if he/she ceases to be a director or if he/she resigns from that office by notice to the company.
- 96 If the appointment of a director to any office under article 92 terminates, the directors shall appoint another director to hold the office in his/her place.

#### **Directors' interests**

- 97 Subject to the provisions of the Act and the other provisions of these articles, and provided that he/she has disclosed to the directors the nature and extent of any personal interest which he/she has (unless immaterial), a director (notwithstanding his/her office)
  - 97.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;
  - 97.2 may be a party to, or have some other personal interest in, any transaction in which the company or any associated company has an interest;
  - 97.3 in the case of an Executive Director or the Chair or a Stakeholder Director serving on the Executive Committee, may be employed by the company;

97.4 may be a director or secretary of, or employed by, or have some other personal interest in, any associated company; and

97.5 shall not, because of his/her office, be accountable to the company for any benefit which he/she derives from any such office or employment or from any such company;

and no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit.

98 For the purposes of the preceding article, an interest of which a director has no knowledge and of which it is unreasonable to expect him/her to have knowledge shall not be treated as an interest of his/hers; the references to "associated company" shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.

99 The directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.

100 For the purposes of article 99, a "Conflict Situation" means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company; and such that:

100.1 the situations and matters which fall within this definition may include (without limitation) (a) a situation where a director of the company becomes an employee, director, member of the management committee, officer or elected representative of a body which is a party to a significant contract with the company (or which is competing with the company in the context of any grant application) and (b) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);

100.2 "conflict of interest" for this purpose includes a conflict of interest and duty, and a conflict of duties.

101 For the avoidance of doubt, article 99 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 97 and 98, articles 126 to 129 and the code of conduct referred to in article 105.

- 102 The directors shall ensure that the secretary maintains a register of directors' interests; and each director shall be under a duty to advise the secretary promptly of any changes in the details set out in that register against his/her name.
- 103 The register of directors' interests referred to in article 102 shall include:
- 103.1 pecuniary and non-pecuniary interests of directors, their close family and associates which relate closely to the Harbour's activities;
  - 103.2 hospitality or gifts that could not be considered insignificant, accepted by the director or close family associated with the Harbour and its operations.
- 104 The register of directors' interests referred to in article 102 shall be available for inspection by members of the public on request.

### **Conduct of directors**

- 105 Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

### **Directors' remuneration and expenses**

- 106 With the exception of the Chair, the Executive Directors, and the Stakeholder Directors serving on the Executive Committee, no director shall be entitled to any remuneration, whether in respect of his/her office as director or as holder of any office under article 92.
- 107 The Executive Directors shall be entitled to retain all such remuneration, and all such pension and/or other benefits, as may be paid or provided to them by the company in their capacity as employees of the company.
- 108 The company may, if the directors may so resolve, pay such reasonable remuneration to the Chair and/or to the Stakeholder Directors serving on the Executive Committee as the directors consider appropriate from time to time.
- 109 The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of directors, general meetings or meetings of committees of directors or otherwise in connection with the carrying-out of their duties.

### **Powers of directors**

- 110 Subject to the provisions of the Act, and these articles and to any directions given by special resolution, the business of the company shall be managed by the directors, who may exercise all the powers of the company.
- 111 A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

#### **Proceedings of directors**

- 112 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 113 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 114 Meetings of the directors shall be held whenever the directors consider appropriate, but not less frequently than six times per year.
- 115 At least seven days' notice shall be given of each meeting of the directors, unless the Chair or the secretary is of the opinion that significant prejudice would be likely to be caused to the interests of the company if the meeting of directors were not called on shorter notice on that occasion.
- 116 Questions arising at a meeting of directors shall be decided by a majority of votes; in the case of an equality of votes, the chairperson shall have a second or casting vote.
- 117 The quorum for the transaction of the business of the directors shall be five.
- 118 A director may participate in a meeting of the directors or a meeting of a committee of directors by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other; a director participating in a meeting in this manner shall be deemed, for the purposes of calculating the quorum, to be present in person at the meeting
- 119 The continuing directors or sole continuing director may act notwithstanding vacancies; but if the number of remaining directors is less than the number fixed as the quorum, they or he/she may act only for the purpose of filling vacancies or of calling a general meeting.
- 120 Unless he/she is unwilling to do so, the Chair of the board of directors shall preside as chairperson at every meeting of directors at which he/she is present; if the Chair of the board of directors is unwilling to act as chairperson or is not present within fifteen minutes after the time appointed for the meeting, the Vice Chair shall preside as chairperson of the meeting.
- 121 If neither the Chair nor the Vice Chair is present and willing to preside as chairperson of the meeting within fifteen minutes after the time appointed for

- the meeting, the directors present may appoint one of their number to be chairperson of the meeting.
- 122 The directors may (at their discretion) appoint up to two individuals on an annual basis to attend meetings of directors (without voting rights) in the capacity of special advisor.
- 123 Subject to article 124, meetings of the directors will be open to members of the company as observers; observers may be invited to speak by the chairperson of the meeting.
- 124 The chairperson of a meeting of directors shall have the power to deem certain items to be discussed at a meeting of directors as confidential, and accordingly to exclude observers from those parts of the meeting at which such items are discussed.
- 125 An individual entitled or invited to attend a meeting of the directors under article 122 or 123 shall not be entitled to exercise any of the powers of a director, and shall not be deemed to be a director for the purposes of the Act or any provision of these articles.
- 126 A director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.
- 127 For the purposes of the preceding article,
- 127.1 an interest of a person who is taken to be connected with a director for any purpose of the Act, shall be treated as a personal interest of the director; and
- 127.2 a director shall be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected member has an interest in that matter.
- 128 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 129 The company may by ordinary resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of articles 126 to 128.

#### **Remuneration Committee**

- 130 The directors shall appoint a remuneration committee to whom the directors shall delegate responsibility for setting the remuneration levels of the Chair

and of the Executive Directors; as part of its duties, the remuneration committee shall consider the compensation commitments that would be entailed in the event of early termination of appointments.

- 131 The members of the remuneration committee (which shall comprise no more than three individuals) shall be appointed by the directors.

#### **Delegation to Executive Committee**

- 132 The directors may delegate such powers in relation to the day-to-day operations of the company as they may consider appropriate from time to time to a committee (referred to in these articles as "the Executive Committee") formed for that purpose.

- 133 The members of the Executive Committee shall comprise:

133.1 the Executive Directors;

133.2 such Stakeholder Directors (who shall include the director with special responsibility for finance) as may (subject to article 134) be appointed to the Executive Committee by the directors;

133.3 management staff;

133.4 any other individual (not being a director of the company) who the directors consider to have the requisite skills, characteristics and expertise.

- 134 The number of Stakeholder Directors who may be appointed under paragraph 134.2 shall be such that, when added to the number of Executive Directors (if any) in office, the total number of individuals serving on the Executive Committee under paragraphs 134.1 and 134.2 does not exceed four.

- 135 The individuals referred to in paragraphs 134.2, 134.3 and 134.4 shall be appointed as members of the Executive Committee by way of a resolution passed by majority vote at a meeting of the directors; and any of them may be removed from membership of the Executive Committee by a similar resolution.

- 136 The Executive Committee shall comply with the policies set by the board of directors from time to time, and shall give effect to any direction issued to them from time to time by the board of directors.

- 137 Any delegation of powers under article 132 may be made subject to such further conditions as the directors may impose and may be revoked or altered.

- 138 The quorum for meetings of the Executive Committee shall be 3, and must include the Harbour Master (if in post), the General Manager (if in post), and the Stakeholder Director responsible for finance.

139 Subject to article 139, to any condition imposed in pursuance of article 138, and to the terms of reference established under article 140, the proceedings of the Executive Committee shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.

140 The directors will establish the terms of reference for delegation to the Executive Committee, which will be set down in writing (in standing orders, schemes of delegated authority and/or other appropriate documentation) and communicated to the members of the Executive Committee; the members of the Executive Committee shall be under an obligation to comply with those terms of reference, as amended from time to time by the directors.

141 The Executive Committee shall report to each meeting of the directors.

#### **Delegation to committees of directors and holders of office**

142 In addition to their powers of delegation under articles 130 and 132, the directors may (subject to article 143) delegate any of their powers to any other committee consisting of two or more directors and such other individuals (if any) as the directors may consider appropriate; they may also delegate to the Chair of the board of directors or a director holding any other office such of their powers as they consider appropriate.

143 Any committee of the nature referred to in article 142:

143.1 shall not have power to take decisions on matters which ought properly to be considered by the board of directors;

143.2 shall comply with the policies set by the board of directors from time to time; and

143.3 shall give effect to any direction issued to it from time to time by the board of directors.

144 Any delegation of powers under article 142 may be made subject to such conditions as the directors may impose and may be revoked or altered.

145 Subject to any condition imposed in pursuance of the preceding article, the proceedings of a committee consisting of two or more directors shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.

#### **Stakeholder Group**

146 The directors may, if they consider appropriate, establish a group (referred to in these articles as "the Stakeholder Group"), to consider and report to the directors in relation to such issues as the directors may put to them for consideration from time to time (which may include the impact on stakeholders of any aspect of the company's operations and/or any proposal which is under consideration by the directors).



- 147 The composition of the Stakeholder Group shall be as determined by the directors from time to time.
- 148 For the avoidance of doubt, the directors must exercise their own discretion in determining whether or not to give effect to any recommendations issued from time to time by the Stakeholder Group; the Stakeholder Group shall not be entitled to issue directions or instructions to the board of directors.

#### **Secretary**

- 149 Notwithstanding the provisions of the Act, the directors shall appoint a secretary, and on the basis that the term of office, remuneration, and other terms and conditions attaching to the office of secretary shall be determined by the directors; and any secretary so appointed may be removed by them.

#### **Minutes**

- 150 The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of directors and meetings of committees of directors; a minute of a meeting of directors or of a committee of directors shall include the names of the directors present, and the minutes of each meeting shall be signed by the chairperson of that meeting.
- 151 All of the minutes referred to in article 150 will be freely available to those members who request them, subject to the qualification that the Chair (or, in his/her absence, the Vice Chair) may direct that certain items of business shall be excluded from the copies of minutes of meetings of directors which are to be open to inspection by non-directors, on the grounds of confidentiality.

#### **Accounts**

- 152 No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.
- 153 The accounts shall be prepared by the Company Accountants prior to the annual general meeting and will be submitted to the annual general meeting.
- 154 The board of directors will control and regulate the finances of the company; one of the Stakeholder Directors will have particular responsibility (additional to the responsibilities of the other directors) in relation to ensuring that accurate accounts are kept.
- 155 The company will publish a set of accounts annually, prepared by the Company Accountants.

- 156 The company will maintain a financial procedure that regulates the setting up of bank accounts, the transfer of money to and from accounts, the payments and receipts procedures, and the book-keeping procedures.

#### **Notices**

- 157 Any notice to be given in pursuance of these articles shall be given either in writing or by way of electronic means.
- 158 The company may give any notice to a member either personally or by sending it by post in a pre-paid envelope addressed to the member at his/her/its registered address or by leaving it at that address; in the case of a member who/which has notified the company of an electronic address to be used for this purpose, the company may give any notice to that member by way of electronic means.
- 159 A member may give any notice to the company either by sending it by post in a pre-paid envelope addressed to the company at its registered office or by leaving it, addressed to the company secretary, at the company's registered office or (where the company has notified the member of an electronic address to be used for this purpose) by way of electronic means.
- 160 Any notice, if sent by post, shall be deemed to have been given at the expiry of 48 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 161 Any notice sent by electronic means shall be deemed to have been given at the expiry of 48 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.
- 162 A member present or represented at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

#### **Winding-up**

- 163 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall be paid or transferred to some body or bodies approved in writing (prior to the winding up) by the Scottish Ministers.
- 164 To the extent that effect cannot be given to article 163, the relevant property shall be applied to some charitable purpose or purposes.

#### **Indemnity**

- 165 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office including, without prejudice to that generality (but only to the extent permitted by those sections of the Act), any liability incurred by him/her in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in which relief is granted to him/her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.
- 166 For the avoidance of doubt, the company shall be entitled to purchase and maintain insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office; and such insurance may extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).

