

Date: 13.8.2018



**THE COMPANIES ACT 2006**

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

**ARTICLES OF ASSOCIATION**

**of**

**TOBERMORY HARBOUR ASSOCIATION**

**(as adopted by special resolution passed on 13th August 2018)**

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**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 “community body” means a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003 (as amended by section 37 of the Community Empowerment (Scotland) Act 2015) which is also regarded as a community body for the purposes of section 49(2)(h) of the Land Reform (Scotland) Act 2016;
  - 2.5 “community transfer body” means a community transfer body within the meaning of section 80 of the Land Reform (Scotland) Act 2015

- 2.6 “Company Accountants” means an accredited independent accountancy firm appointed by the directors to prepare the company’s annual accounts;
  - 2.7 “crofting community body” means a crofting community body within the meaning of section 71 of the Land Reform (Scotland) Act 2003 (as amended by section 62 of the Community Empowerment (Scotland) Act 2015);
  - 2.8 “electronic form” has the meaning given in section 1168 of the Act;
  - 2.9 “HEO” means the harbour empowerment order granted, or to be granted, to the company;
  - 2.10 “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;
  - 2.11 “Part 3A community body” means a Part 3A community body within the meaning of section 97D of the Land Reform (Scotland) Act 2003 (as inserted by section 74 of the Community Empowerment (Scotland) Act 2015);
  - 2.12 “Part 5 community body” means a Part 5 community body within the meaning of section 49 of the Land Reform (Scotland) Act 2016;
  - 2.13 “property” means any property, heritable or moveable, real or personal, wherever situated;
  - 2.14 “subsidiary” has the meaning given in section 1159 of the Act; and
  - 2.15 “sustainable development” means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.
- 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 community of North Mull which comprises the postcode districts PA72, PA73, PA74 and PA75 (the “Community”), 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.

But only to the extent that the above purposes are consistent with furthering the achievement of sustainable development.

- 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 48), add to, remove or alter the statement of the company's objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.
- 7 If the company is a community body or Part 3A community body (in each case, as defined in article 2), the company shall notify the Scottish Ministers of any amendments to the articles of association of the company.

## **Powers**

- 8 In pursuance of those objects (but not otherwise) the company shall have the following powers:-
  - 8.1 To exercise all such powers as are vested in the company by the HEO;
  - 8.2 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;
  - 8.3 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;
  - 8.4 To carry on any other activity which may be appropriately carried on in connection with any of the objects of the company;
  - 8.5 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;

- 8.6 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;
- 8.7 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;
- 8.8 To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the company's activities;
- 8.9 To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company;
- 8.10 To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company;
- 8.11 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;
- 8.12 To employ such staff as are considered appropriate for the proper conduct of the company's activities;
- 8.13 To engage such consultants and advisers as are considered appropriate from time to time;
- 8.14 To effect insurance of all kinds (which may include officers' liability insurance);
- 8.15 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);
- 8.16 To take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities;
- 8.17 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- 8.18 To oppose, or object to, any application or proceedings which may prejudice the company's interests;
- 8.19 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;

- 8.20 To manage community land and associated assets for the benefit of the Community and the public in general as an important part of the protection and sustainable development of Scotland's natural environment;
- 8.21 To register any interest in land and to exercise any right to buy under Part 2 of the Land Reform (Scotland) Act 2003 and/or any right to buy under Part 3A of the Land Reform (Scotland) Act 2003 and/or any right to buy under Part 5 of the Land Reform (Scotland) Act 2016;
- 8.22 To make any participation request under Part 3 of the Community Empowerment (Scotland) Act 2015 and/or any asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015, and to take any appropriate steps following upon the making of any such request;
- 8.23 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**

9 Subject to article 10:-

- 9.1 the income and property of the company shall be applied solely towards the promotion of its objects (as set out in article 4) and in particular (but without limiting the generality of that provision) any surplus funds or assets of the company must be applied for the benefit of the Community;
- 9.2 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;
- 9.3 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;
- 9.4 no director of the company shall be appointed to any office under the company in respect of which a salary or fee is payable;
- 9.5 no benefit (in money or money's worth) shall be given by the company to any director except repayment of out-of-pocket expenses.

10 The company shall, notwithstanding the provisions of article 9, be entitled:-

- 10.1 to pay a rent not exceeding the market rent for premises let to the company by any member of the company;
- 10.2 to pay reasonable remuneration, and provide reasonable pension and/or other benefits, to any Executive Director (as defined in article 72) in his/her capacity as an employee of the company;

- 10.3 to pay reasonable remuneration to the Chair or to any Member Director (as defined in article 72) serving on the Executive Committee (as defined in article 138).

### **Liability of members**

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

### **Categories of Members**

- 13 For the purposes of these articles:-
- 13.1 "Ordinary Member" means a member who fulfils the qualifications set out in article 15; "Ordinary Membership" shall be interpreted accordingly;
- 13.2 "Associate Member" means a member admitted under article 16; "Associate Membership" shall be interpreted accordingly;
- 14 Associate Members are not eligible to stand for election to the board nor are they eligible to vote at any general meeting.

### **Qualifications for membership**

- 15 Ordinary Membership shall (subject to articles 18, 20 and 22) be open to any person aged 17 years or over who:
- 15.1 is ordinarily resident in the Community (as defined in article 4); and
- 15.2 is entitled to vote at a local government election in a polling district that includes the Community or part of it.
- 16 Associate Membership shall (subject to articles 18, 20 and 23) be open to individuals who are not ordinarily resident in the Community.
- 17 An individual, once admitted to Ordinary Membership, shall automatically cease to be a member if he/she ceases to fulfil any of the qualifications for Ordinary Membership set out in article 15.

- 18 Employees of the company shall not be eligible for membership; a person who becomes an employee of the company after admission to membership shall automatically cease to be a member.
- 19 Following the adoption of these articles of association, the directors shall determine which of the members of the company as at the time when the resolution adopting these articles of association is passed should be categorised as Ordinary Members and which should be categorised as Associate Members in accordance with the qualifications set out in articles 15 and 16; and the directors' determination in this regard shall have effect accordingly.

### **Application for membership**

- 20 Any individual who wishes to become a member must sign, and lodge with the company, a written application for membership, specifying the category of membership for which he/she is applying.
- 21 The company shall supply a form for applying for membership to any individual on request.
- 22 An individual applying for Ordinary Membership shall, if the company so requests, supply such evidence as the company may reasonably request to demonstrate that he/she fulfils the qualifications set out in article 15.
- 23 The directors may, at their discretion, refuse to admit any individual to Associate Membership where they have reasonable grounds to believe that he/she might, if admitted to membership, act in a manner which would damage the reputation of the company, undermine the efficiency of its operations and/or disrupt the proper conduct of its meetings.
- 24 For the avoidance of doubt, when deciding whether to admit any individual to Associate Membership, the directors shall adhere to a transparent process which enshrines the principles of equal treatment and non-discrimination.
- 25 The directors shall consider each application for membership at the first directors' meeting which is held after receipt of the application; the directors shall, a period of 21 days after the meeting at which an application for membership is considered, notify the applicant of their decision on the application.

### **Minimum number of members**

- 26 The minimum number of members is 20; and at least three quarters of the members must, at all times, be Ordinary Members.
- 27 In the event that either or both of the requirements under article 26 cease to be met through a reduction in the number of members or a reduction in the proportion of Ordinary Members included within the membership, the



directors may not conduct any business other than to ensure the admission of sufficient members (or, as the case may be, Ordinary Members) to ensure that those requirements are met once more.

### **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 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 to the company.
- 31 If the company does not receive a duly signed re-registration form (in accordance with article 30) from any individual 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 from membership.

### **Register of members**

- 32 The directors shall maintain a register of members, setting out the full name and address of each member, the date on which he/she was admitted to membership, the category of membership into which he/she falls, and the date on which any individual ceased to be a member.

### **Withdrawal from membership**

- 33 Any individual who wishes to withdraw from membership shall lodge with the company a written notice to that effect, signed by him/her; on receipt of the notice by the company, he/she shall cease to be a member.

### **Expulsion from membership**

- 34 Any individual may be expelled from membership by special resolution (see article 48), 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.

### **Termination/transfer**

- 35 Membership shall cease on death.
- 36 A member may not transfer his/her membership to any other individual or organisation.

### **General meetings**

- 37 The directors shall convene an annual general meeting in each year.
- 38 Not more than 15 months shall elapse between one annual general meeting and the next.
- 39 The business of each annual general meeting shall include:
- 39.1 a report by the Chair on the activities of the company;
  - 39.2 consideration of the annual accounts of the company;
  - 39.3 the election/re-election of directors, as referred to in articles 78 to 88.
- 40 Subject to articles 37 and 41, the directors may convene a general meeting at any time.
- 41 The directors must convene a general meeting:
- 41.1 if there is a valid requisition by members (under section 303 of the Act); or
  - 41.2 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**

- 42 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.
- 43 The reference to "clear days" in article 42 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.
- 44 A notice calling a meeting shall specify the time, date and place of the meeting; it shall:

- 44.1 indicate the general nature of the business to be dealt with at the meeting;
  - 44.2 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
  - 44.3 contain a statement informing members of their right to appoint a proxy.
- 45 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 46 Notice of every general meeting shall be given:
- 46.1 in hard copy form; or
  - 46.2 in writing or (where the individual to whom notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form; or
  - 46.3 (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.
- 47 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 Community who are not members of the company.

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

- 48 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 other general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 42 to 47; 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.
- 49 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution,
- 49.1 to alter its name; or
  - 49.2 to alter any provision of these articles or adopt new articles of association.

50 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 other general meeting, providing proper notice of the meeting has been given in accordance with articles 42 to 47.

### **Proceedings at general meetings**

51 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall (subject to article 52) be 10 individuals entitled to vote (each being an Ordinary Member or a proxy for an Ordinary Member).

52 A quorum shall not be deemed to be present at any general meeting unless the Ordinary Members present or represented by proxy at the meeting form a majority of the members present or represented by proxy at the meeting.

53 For the avoidance of doubt, Associate Members shall not be counted in determining whether a quorum is present at any general meeting.

54 If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, 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.

55 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.

56 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.

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

58 Members of the 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.

59 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.

## Votes of members

- 60 Every Ordinary Member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.
- 61 For the avoidance of doubt, Associate Members shall have no power to vote at general meetings.
- 62 Any Ordinary Member who wishes to appoint a proxy to vote on his/her behalf at any meeting (or adjourned meeting):
- 62.1 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
- 62.2 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).
- 63 An instrument of proxy which does not conform with the provisions of article 62, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 64 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 65 Subject to article 66, a proxy shall not be entitled to cast more than one vote in his/her capacity as a proxy (in addition to his/her own vote, if he/she is an Ordinary Member of the company), notwithstanding that he/she may have been appointed as proxy by more than one Ordinary Member.
- 66 The provisions of article 65 shall not apply in relation to the casting of proxy votes by the chairperson of a general meeting on a given resolution, to the extent that those proxy votes are cast in compliance with instruments of proxy which direct him/her to vote in favour of, or against, that resolution.
- 67 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting and need not be a member of the company.
- 68 A vote given, or ballot demanded, by proxy 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.

- 69 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.
- 70 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 Ordinary Members or as proxies for Ordinary Members).
- 71 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.

### **Categories of director**

- 72 For the purposes of these articles:
- 72.1 “Member Director” means a director (drawn from the membership of the company) appointed under articles 78 to 88;
- 72.2 “Executive Director” means a director appointed or re-appointed by the directors under article 89.

### **Composition of the board**

- 73 The maximum number of directors shall be 12.
- 74 Out of the maximum number of directors specified in article 73:
- 74.1 a maximum of 9 directors shall be Member Directors;
- 74.2 a maximum of 3 directors shall be Executive Directors;
- 75 At any given time, directors who are also Ordinary Members must form a majority of the total number of directors in office.

### **Eligibility**

- 76 A person shall not be eligible for election/appointment as a Member Director unless he/she is a member of the company; a person appointed as an Executive Director need not, however, be a member of the company.
- 77 A person shall not be eligible for election/appointment as a Member Director if he/she is an employee of the company.

## **Election, retirement, re-election: Member Directors**

- 78 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 for election as Member Directors.
- 79 Any member who 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 at least 7 days before the start of the annual general meeting.
- 80 A presiding officer will be appointed at the beginning of each annual general meeting to officiate in relation to the election of the Member Directors; the presiding officer will make known to those attending the annual general meeting, prior to the votes being taken on election of Member Directors, the information on the skills, characteristics and experience of each candidate which was provided to the company in pursuance of article 79.
- 81 At an annual general meeting the Ordinary Members may (subject to articles 73 to 77) elect as a director (a “Member Director”) any individual in respect of whom a valid notice has been lodged with the company in accordance with article 79.
- 82 In exercising their voting powers in the election procedures at each annual general meeting, the Ordinary Members shall seek to ensure, so far as reasonably possible, an appropriate balance of skills and competencies across the board.
- 83 The directors may (subject to articles 73 to 77) at any time appoint any member (providing he/she is willing to act) to be a director (a “Member Director”), to fill a vacancy.
- 84 At each annual general meeting (subject to article 86):
- 84.1 any Member Director appointed by the directors under article 83 during the period since the preceding annual general meeting; and
- 84.2 any Member 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 For the avoidance of doubt, any period in office as a director prior to the adoption of these articles of association shall be included in determining for the purposes of article 84 the period for which an individual has held office as a director.
- 87 The company may (subject to article 88) at any annual general meeting re-elect any Member Director who retires from office at the meeting under article 84 (providing he/she is willing to act); if any such Member 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 Member Director has held office as a director for three three-year terms (as determined in accordance with articles 85 and 86) as at a given annual general meeting, he/she will not be eligible for re-election or re-appointment as a Member Director until the annual general meeting which next follows.

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

- 89 The directors may (subject to articles 73 to 75) 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 automatically 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 (in the case of a Member Director) he/she ceases to be a member of the company;



- 90.5 (except in the case of an Executive Director; or, where remuneration is paid to the Chair or a Member Director serving on the Executive Committee in pursuance of article 110, in the case of the Chair or a Member Director if he/she is treated as an employee of the company on that basis) he/she becomes an employee of the company;
  - 90.6 (in the case of an Executive Director) he/she ceases to hold the relevant post with the company;
  - 90.7 he/she resigns office by notice to the company;
  - 90.8 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;
  - 90.9 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 107; or
  - 90.10 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 90.9 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.

### **Register of directors**

- 92 The directors shall maintain a register of directors, setting out full details of each director, including the date on which he/she became a director, and also specifying the date on which any person ceased to hold office as a director.

### **Appointments to office**

- 93 Directors shall be appointed to hold the offices of Chair and Vice Chair and any other offices which the directors may consider appropriate.
- 94 The appointments under the preceding article shall be made at meetings of directors.
- 95 Each office shall be held (subject to article 97) 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 93 (providing he/she is willing to act).

- 96 For the avoidance of doubt, any period in office prior to the adoption of these articles of association shall be included for the purposes of article 95.
- 97 The appointment of any director to an office under article 93 shall terminate if he/she ceases to be a director or if he/she resigns from that office by notice to the company.
- 98 If the appointment of a director to any office under article 93 terminates, the directors shall appoint another director to hold the office in his/her place.

### **Directors' interests**

- 99 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)

99.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;

99.2 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;

99.3 in the case of an Executive Director or the Chair or a Member Director serving on the Executive Committee, may be employed by the company;

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

99.5 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.

- 100 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.

- 101 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.
- 102 For the purposes of article 101, 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:
- 102.1 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);
- 102.2 “conflict of interest” for this purpose includes a conflict of interest and duty, and a conflict of duties.
- 103 For the avoidance of doubt, article 101 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 99 and 100, articles 131 to 135 and the code of conduct referred to in article 107.
- 104 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.
- 105 The register of directors’ interests referred to in article 104 shall include:
- 105.1 pecuniary and non-pecuniary interests of directors, their close family and associates which relate closely to the Harbour’s activities;
- 105.2 hospitality or gifts that could not be considered insignificant, accepted by the director or close family associated with the Harbour and its operations.
- 106 The register of directors’ interests referred to in article 104 shall be available for inspection by members of the public on request.

### **Conduct of directors**

- 107 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**

- 108 With the exception of the Chair, the Executive Directors, and the Member 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 93.
- 109 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.
- 110 The company may, if the directors may so resolve, pay such reasonable remuneration to the Chair and/or to the Member Directors serving on the Executive Committee as the directors consider appropriate from time to time.
- 111 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**

- 112 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.
- 113 A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

### **Proceedings of directors**

- 114 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 115 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.

- 116 Meetings of the directors shall be held whenever the directors consider appropriate, but not less frequently than six times per year.
- 117 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.
- 118 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 (subject to article 119) have a second or casting vote.
- 119 A chairperson who is not an Ordinary Member shall not be entitled to a casting vote.
- 120 The quorum for the transaction of the business of the directors shall (subject to article 121) be five.
- 121 A quorum shall not be deemed to be constituted at any meeting of directors unless the Member Directors who are also Ordinary Members form a majority of the total number of directors present at the meeting.
- 122 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.
- 123 If the quorum required under article 120 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.
- 124 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.
- 125 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.
- 126 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.

- 127 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.
- 128 Subject to article 129, 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.
- 129 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.
- 130 An individual entitled or invited to attend a meeting of the directors under article 127 or 128 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.
- 131 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.
- 132 For the purposes of the preceding article,
- 132.1 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
- 132.2 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.
- 133 For the avoidance of doubt, the Chair, the Executive Directors, and the Member Directors serving on the Executive Committee shall not be entitled to vote on any matter relating to his/her remuneration or terms and conditions of employment.
- 134 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.
- 135 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 131 to 133.

### **Remuneration Committee**

- 136 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.

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

### **Delegation to Executive Committee**

- 138 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.

- 139 The members of the Executive Committee shall comprise:

139.1 the Executive Directors;

139.2 such Member Directors (who shall include the director with special responsibility for finance) as may (subject to article 140) be appointed to the Executive Committee by the directors;

139.3 management staff;

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

- 140 The number of Member Directors who may be appointed under paragraph 139.2 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 139.1 and 139.2 does not exceed four.

- 141 The individuals referred to in paragraphs 139.2, 139.3 and 139.4 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.

- 142 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.

- 143 Any delegation of powers under article 138 may be made subject to such further conditions as the directors may impose and may be revoked or altered.

- 144 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 Member Director responsible for finance.

- 145 Subject to article 144, to any condition imposed in pursuance of article 143, and to the terms of reference established under article 146, 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.
- 146 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.
- 147 The Executive Committee shall report to each meeting of the directors.

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

- 148 In addition to their powers of delegation under articles 136 and 138, the directors may (subject to article 149) 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.
- 149 Any committee of the nature referred to in article 148:
- 149.1 shall not have power to take decisions on matters which ought properly to be considered by the board of directors;
  - 149.2 shall comply with the policies set by the board of directors from time to time; and
  - 149.3 shall give effect to any direction issued to it from time to time by the board of directors.
- 150 Any delegation of powers under article 148 may be made subject to such conditions as the directors may impose and may be revoked or altered.
- 151 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**

- 152 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).

- 153 The composition of the Stakeholder Group shall be as determined by the directors from time to time.
- 154 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**

- 155 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**

- 156 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.
- 157 Any person may request a copy of the minutes of general meetings or meetings of the directors of the company and, provided that the request is reasonable, the company must, subject to article 158, provide a copy of the minutes to that person within 28 days of the request.
- 158 Where a request for a copy of minutes is made under article 157, the company may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

### **Accounts**

- 159 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.
- 160 The accounts shall be prepared by the Company Accountants prior to the annual general meeting and will be submitted to the annual general meeting.
- 161 The board of directors will control and regulate the finances of the company; one of the Member Directors will have particular responsibility (additional to the responsibilities of the other directors) in relation to ensuring that accurate accounts are kept.

- 162 The company will publish a set of accounts annually, prepared by the Company Accountants.
- 163 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**

- 164 Any notice to be given in pursuance of these articles shall be given either in writing or by way of electronic means.
- 165 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 registered address or by leaving it at that address; in the case of a member who 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.
- 166 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.
- 167 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.
- 168 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.
- 169 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**

- 170 If on the winding-up of the company any property (including any land, and any rights in relation to land, acquired by the company under Part 2 or Part 3A of the Land Reform (Scotland) Act 2003, Part 5 of the Community Empowerment (Scotland) Act 2015 or Part 5 of the Land Reform (Scotland) Act 2016) remains after satisfaction of all the company's debts and liabilities, such property shall not be paid to or distributed among the members of the company; instead, that property shall (subject to article 171) be transferred to such other

community body or bodies, crofting community body or bodies, Part 3A community body or bodies or community transfer body or bodies as may be determined by the members (subject to the identity of the transferee body or bodies being approved by the Scottish Ministers).

- 171 If the members do not resolve to transfer any property of the nature referred to in article 170 to a community body or bodies, crofting community body or bodies, Part 3A community body or bodies or community transfer body or bodies approved by Scottish Ministers, such property shall instead be transferred to the Scottish Ministers or to such Scottish charity as the Scottish Ministers may direct.

### **Indemnity**

- 172 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.
- 173 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).