

CHARITY LAW ASSOCIATION

MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION FOR A CHARITABLE COMPANY (2nd Edition)

Companies Acts 1985 and 1989

Company limited by guarantee

MEMORANDUM OF ASSOCIATION OF SOUTH WESTERN FEDERATION OF MUSEUMS AND ART GALLERIES

1. Name

The name of the **Charity** is 'South Western Federation of Museums and Art Galleries'.

2. Registered Office

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

3. Objects

The **Objects** are to advance the education of the public and to further any other purpose which may be charitable according to the law of England and Wales which relates to the establishment, maintenance, operation and development of museums and art galleries (which are either public or from which the public benefit) and related services and activities in the area of benefit

4. Powers

The Charity has the following powers, which may be exercised only in promoting the Objects:

- 4.1 To promote or carry out research.
- 4.2 To provide advice and training.
- 4.3 To publish or distribute information.
- 4.4 To co-operate with other bodies.
- 4.5 To support, administer or set up other charities.
- 4.6 To raise funds (but not by means of **taxable trading**).
- 4.7 To borrow money and give security for loans (but only in accordance with the restrictions imposed by the **Charities Act**).

- 4.8 To acquire or hire property of any kind.
- 4.9 To let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act).
- 4.10 To make grants or loans of money and to give guarantees.
- 4.11 To set aside funds for special purposes or as reserves against future expenditure.
- 4.12 To deposit or invest in funds in any manner (but to invest only after obtaining such advice from a **financial expert** as the **Trustees** consider necessary and having regard to the suitability of investments and the need for diversification).
- 4.13 To delegate the management of investments to a financial expert, but only on terms that:
- (1) the investment policy is set down **in writing** for the financial expert by the Trustees;
 - (2) every transaction is reported promptly to the Trustees;
 - (3) the performance of the investments is reviewed regularly with the Trustees;
 - (4) the Trustees are entitled to cancel the delegation arrangement at any time;
 - (5) the investment policy and the delegation arrangement are reviewed at least once a **year**;
 - (6) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
 - (7) the financial expert must not do anything outside the powers of the Trustees.
- 4.14 To arrange for investments or other property of the Charity to be held in the name of a **nominee company** acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required.
- 4.15 To deposit documents and physical assets with any museum, gallery or company registered or having a place of business in England and Wales as **custodian**, and to pay any reasonable fee required.
- 4.16 To insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required.

- 4.17 To pay for **indemnity insurance** for the Trustees.
- 4.18 Subject to clause 5, to employ paid or unpaid agents, staff or advisers.
- 4.19 To enter into contracts to provide services to or on behalf of other bodies.
- 4.20 To establish or acquire subsidiary companies to assist or act as agents for the Charity.
- 4.21 To pay the costs of forming the Charity.
- 4.22 To do anything else within the law which promotes or helps to promote the Objects.

5. Benefits to Members and Trustees

- 5.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the **members** but:
 - (1) members who are not Trustees may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied;
 - (2) members (including Trustees) may be paid interest at a reasonable rate on money lent to the Charity;
 - (3) members (including Trustees) may be paid a reasonable rent or hiring fee for property or equipment let or hired to the Charity; and
 - (4) individual members (including Trustees) who are also **beneficiaries** may receive charitable benefits in that capacity.
- 5.2 A Trustee must not receive any payment of money or other **material benefit** (whether directly or indirectly) from the Charity except:
 - (1) as mentioned in clauses 4.17 (indemnity insurance), 5.1(2) (interest), 5.1(3) (rent), 5.1(4) (charitable benefits) or 5.3 (contractual payments);
 - (2) reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Charity;
 - (3) an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);

- (4) payment to any company in which a Trustee has no more than a 1 per cent shareholding; and
- (5) in exceptional cases, other payments or benefits (but only with the **written** approval of the **Commission** in advance).

5.3 A Trustee may not be an employee of the Charity, but a Trustee or a **connected person** may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit if:

- (1) the goods or services are actually required by the Charity;
- (2) the nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Trustees in accordance with the procedure in clause 5.4; and
- (3) no more than one half of the Trustees are interested in such a contract in any **financial year**.

5.4 Whenever a Trustee has a personal interest in a matter to be discussed at a meeting of the Trustees or a committee, he or she must:

- (1) declare an interest before the meeting or at the meeting before discussion begins on the matter;
- (2) be absent from the meeting for that item unless expressly invited to remain in order to provide information;
- (3) not be counted in the quorum for that part of the meeting; and
- (4) be absent during the vote and have no vote on the matter.

5.5 This clause may not be amended without the written consent of the Commission in advance.

6. Limited Liability

The liability of members is limited.

7. Guarantee

Every member promises, if the Charity is dissolved while he, she or it remains a member or within 12 months afterwards, to pay up to £1 towards the costs of dissolution and the liabilities incurred by the Charity while he or she was a member.

8. Dissolution

8.1 If the Charity is dissolved, the assets (if any) remaining after provision has been made for all its liabilities must be applied in one or more of the following ways:

- (1) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;
- (2) directly for the Objects or for charitable purposes which are within or similar to the Objects;
- (3) in such other manner consistent with charitable status as the Commission approve in writing in advance.

8.2 A final report and statement of account must be sent to the Commission.

9. Interpretation

9.1 Words and expressions defined in the **Articles** have the same meanings in the **Memorandum**.

9.2 References to an Act of Parliament are references to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

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**ARTICLES OF ASSOCIATION OF SOUTH WESTERN FEDERATION OF
MUSEUMS AND ART GALLERIES**

1. Membership

- 1.1 The Charity must maintain a register of **members**.
- 1.2 **Membership** of the Charity is open to any individual or organization interested in promoting the **Objects** who:
- (1) applies to the Charity in the form required by the **Trustees**;
 - (2) is approved by the Trustees; and
 - (3) signs the register of members or consents **in writing** to become a member either personally or (in the case of an organisation) through an **authorised representative**.
- 1.3 The Trustees may establish different classes of membership (including **informal membership**), prescribe their respective privileges and duties and set the amounts of any subscriptions.
- 1.4 Membership is terminated if the member concerned:
- (1) gives **written** notice of resignation to the Charity;
 - (2) dies or (in the case of an organisation) ceases to exist;
 - (3) is more than six **months** in arrear in paying the relevant subscription, if any (but in such a case the member may be reinstated on payment of the amount due); or
 - (4) is removed from membership by resolution of the Trustees on the ground that in their reasonable opinion the member's continued membership is harmful to the Charity. The Trustees may only pass such a resolution after notifying the member in writing and considering the matter in the light of any written representations which the member concerned puts forward within 14 **clear days** after receiving notice.
- 1.5 Membership of the Charity is not transferable.

2. General Meetings

- 2.1 Members are entitled to attend general meetings either personally or (in the case of a member organisation) by an authorised representative or by proxy. Proxy forms must be delivered to the **Secretary** at least

24 hours before the meeting. General meetings are called on at least 21 clear days' written notice specifying the business to be discussed.

- 2.2 There is a quorum at a general meeting if the number of members or authorised representatives present in person or by proxy is at least ten in number or ten per cent of the members if greater.
- 2.3 The **Chair** or (if the Chair is unable or unwilling to do so) some other member elected by those present presides at a general meeting.
- 2.4 Except where otherwise provided by the **Articles** or the **Companies Act**, every issue is decided by a majority of the votes cast.
- 2.5 Except for the Chair of the meeting, who has a second or casting vote, every member present in person or through an authorised representative or by proxy has one vote on each issue.
- 2.6 A written resolution signed by all those entitled to vote at a general meeting is as valid as a resolution actually passed at a general meeting. For this purpose the written resolution may be set out in more than one document and will be treated as passed on the date of the last signature.
- 2.7 Except at first, the Charity must hold an **AGM** in every year. The first AGM must be held within 18 months after the Charity's incorporation.
- 2.8 At an AGM the members:
 - (1) receive the accounts of the Charity for the previous **financial year**;
 - (2) receive the Trustees' report on the Charity's activities since the previous AGM;
 - (3) accept the retirement of those Trustees who wish to retire or who are retiring by rotation;
 - (4) elect Trustees as follows:
 - (i) a Chair, Vice Chair, Minutes Secretary and Treasurer and other honorary officers;
 - (ii) up to eight regional representatives;
 - (iii) other Trustees to fill any vacancies arising;
 - (5) appoint auditors or independent examiners for the Charity;
 - (6) may confer on any individual (with his or her consent) the honorary Title of Patron, President or Vice-President of the charity; and
 - (7) may discuss and determine any issues of policy or deal with any other business put before them by the Trustees.
- 2.9 Any general meeting which is not an AGM is an **EGM**.

2.10 An EGM may be called at any time by the Trustees and must be called within 28 clear days on a written request from at least ten members.

3. The Trustees

3.1 The Trustees as **charity trustees** have control of the Charity and its property and funds.

3.2 The Trustees when complete consist of at least three and not more than twenty individuals, all of whom must be members.

3.3 The subscribers to the **Memorandum** are the first Trustees.

3.4 A retiring Trustee who remains qualified may be reappointed for a maximum of three consecutive terms of office.

3.6 A Trustee's term of office automatically terminates if he or she:

- (1) is disqualified under the Charities Act from acting as a charity trustee;
- (2) is incapable, whether mentally or physically, of managing his or her own affairs;
- (3) is absent without notice from three consecutive meetings of the Trustees and is asked by a majority of the other Trustees to resign;
- (4) ceases to be a member (but such a person may be reinstated by resolution passed by all the other Trustees on resuming membership of the Charity before the next AGM);
- (5) resigns by written notice to the Trustees (but only if at least two Trustees will remain in office);
- (6) is removed by resolution of the members present and voting at a general meeting after the meeting has invited the views of the Trustee concerned and considered the matter in the light of any such views.

3.8 The Trustees may at any time co-opt any individual who is qualified to be appointed as a Trustee to fill a vacancy in their number or as an additional Trustee, but a co-opted Trustee holds office only until the next AGM.

3.9 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

4. Trustees' proceedings

- 4.1 The Trustees must hold at least three meetings each year.
- 4.2 A quorum at a meeting of the Trustees is three Trustees of whom one must be an Officer.
- 4.3 A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants.
- 4.4 The Chair or (if the Chair is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 4.5 Every issue may be determined by a simple majority of the votes cast at a meeting, but a written resolution signed by all the Trustees is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 4.6 Except for the Chair of the meeting, who has a second or casting vote, every Trustee has one vote on each issue.
- 4.7 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

5. Trustees' powers

The Trustees have the following powers in the administration of the Charity:

- 5.1 To appoint (and remove) any member (who may be a Trustee) to act as Secretary in accordance with the Companies Act.
- 5.2 To delegate any of their functions to committees consisting of two or more individuals appointed by them. At least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees.
- 5.3 To make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings and to prescribe a form of proxy.
- 5.4 To make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees.
- 5.5 To make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any).

- 5.6 To establish procedures to assist the resolution of disputes or differences within the Charity.
- 5.7 To exercise any powers of the Charity which are not reserved to a general meeting.

6. Records and Accounts

- 6.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the **Commission** of:
- (1) annual returns;
 - (2) annual reports; and
 - (3) annual statements of account.
- 6.2 The Trustees must keep proper records of:
- (1) all proceedings at general meetings;
 - (2) all proceedings at meetings of the Trustees;
 - (3) all reports of committees; and
 - (4) all professional advice obtained.
- 6.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours and may be made available for inspection by members who are not Trustees if the Trustees so decide.
- 6.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or member. A copy must also be supplied, within two months, to any other person who makes a written request and pays the Charity's reasonable costs.

7. Notices

- 7.1 Notices under the Articles may be sent by hand, by post or by suitable electronic means or (where applicable to members generally) may be published in any suitable journal or local newspaper circulating in area of benefit or any journal distributed by the Charity.
- 7.2 The only address at which a member is entitled to receive notices sent by post is an address in the U.K. shown in the register of members.

7.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

- (1) 24 hours after being sent by electronic means or delivered by hand to the relevant address;
- (2) two clear days after being sent by first class post to that address;
- (3) three clear days after being sent by second class or overseas post to that address;
- (4) on the date of publication of a newspaper containing the notice;
- (5) on being handed to the member (or, in the case of a member organization, its authorized representative) personally; or, if earlier,
- (6) as soon as the member acknowledges actual receipt.

7.4 A technical defect in the giving of notice of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

8. Dissolution

The provisions of the Memorandum relating to dissolution of the Charity take effect as though repeated here.

9. Interpretation

In the Memorandum and in the Articles, unless the context indicates another meaning:

‘AGM’ means an annual general meeting of the Charity;

‘area of benefit’ means the South West of England as defined by the Government Office of the South West for the time being;

‘the Articles’ means the Charity’s Articles of Association;

‘authorised representative’ means an individual who is authorised by a member organisation to act on its behalf at meetings of the Charity and whose name is given to the Secretary;

‘beneficiaries’ means museums and art galleries in the area of benefit as defined by the Museums Association;

‘Chair’ means the Chair of the Trustees;

‘the Charity’ means the company governed by the Articles;

‘the Charities Act’ means the Charities Act 1993;

‘charity trustee’ has the meaning prescribed by section 97(1) of the Charities Act;

‘clear day’ means 24 hours from midnight following the relevant event;

‘the Commission’ means the Charity Commissioners for England and Wales;

‘the Companies Act’ means the Companies Act 1985;

‘connected person’ means any spouse, partner, parent, child, brother, sister, grandparent or grandchild of a Trustee, any **firm** of which a Trustee is a member or employee, and any company of which a Trustee is a director, employee or shareholder having a beneficial interest in more than 1 per cent of the share capital;

‘custodian’ means a person or body who undertakes safe custody of assets or of documents or records relating to them;

‘EGM’ means an extraordinary general meeting of the Charity;

‘financial expert’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

‘financial year’ means the Charity’s financial year;

‘firm’ includes a limited liability partnership;

‘indemnity insurance’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty;

‘informal membership’ refers to a supporter who may be called a ‘member’ but is not a company member of the Charity.

‘material benefit’ means a benefit which may not be financial but has a monetary value;

‘member’ and ‘membership’ refer to company membership of the Charity;

‘Memorandum’ means the Charity’s Memorandum of Association;

‘month’ means calendar month;

‘nominee company’ means a corporate body registered or having an established place of business in England and Wales;

‘the Objects’ means the Objects of the Charity as defined in clause 3 of the Memorandum;

‘Secretary’ means the company secretary of the Charity;

‘taxable trading’ means carrying on a trade or business for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects, the profits of which are subject to corporation tax;

‘Trustee’ means a director of the Charity and ‘Trustees’ means the directors.

‘written’ or ‘in writing’ refers to a legible document on paper including a fax message;

‘year’ means calendar year.

- 9.2 Expressions defined in the Companies Act have the same meaning.
- 9.3 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.