



Dear Member

English Volleyball Association Ltd - Articles of Association

The purpose of this briefing note is to explain some of the provisions of the proposed Articles of Association and "Framework" that have been produced by the English Volleyball Association Limited ('**Association**'). You will find enclosed with this note the recommended Memorandum and Articles of Association of the Association ("**Articles**") for approval at the Annual General Meeting, 24th July 2010.

The proposed Articles are the product of a number of months of work by the Board and Senior Management Team of the Association, with assistance from Haysmacintyre and the sports unit of law firm Bates Wells & Braithwaite London. The rigorous review process has also included consultation with Commission Presidents. The enclosed proposal reflects the product of that consultation and is the form of new Articles that the Executive Board recommends for adoption by the members at the next Annual General Meeting, 24th July 2010. **The recommendation is to accept the Articles in totality and sections of the Articles cannot be amended independently.**

1. Background

The main drivers for the production of a completely new set of Articles are as follows:

- (a) the requirement to update the Articles to reflect the provisions of the new Companies Act 2006 ("**Act**"), which came into full force in October 2009;
- (b) the requirement to update the Articles to reflect the corporate governance recommendations of HaysMacintyre;
- (c) to comply with and action the recommendations of the Management Audit Report of the Association conducted by Sport England at the end of 2009; and
- (d) to rationalise the constitution of the Association (which is currently comprised of four documents, totalling some 55 pages), clarify and address a number of inconsistencies in the current constitutional documents, several of which have significant legal significance.

At the moment, the Association's constitutional documents are formed of a number of documents, with a 1986 version of the Memorandum and Articles forming part of Companies House records. Further, the legal status of the document currently described as the 'Constitution' is ambiguous. It contains provisions relating to governance, proceedings of directors, conduct of meetings and member's rights that would generally be found in the Articles.

The current constitutional documents also contained a number of inconsistencies. However, the directors and management of the Association have implemented ways of operating and governing the business of the Association over the years to address these issues, or which meant that such inconsistencies never became problematic. These practices have been endorsed by Sport England as they describe the Association as a well-managed organisation. Accordingly, where any inconsistencies were identified, the new Articles reflect those ways of working together with the recommendations of Haysmacintyre that were accepted by the Executive Board.

Accordingly, the decision was made to produce an entirely new set of Articles, rather than amend the current Articles. This was the quickest and most effective way of effecting all the changes described above.

Note that, pursuant to the new Act, the Memorandum of Association is now merely a copy of the original subscribers' signatures consenting to the formation of the Association. All other relevant provisions, particularly the objects and powers of the Association, are now contained in the new draft Articles. In particular, see Article 4 for an updated version of the Association's objects.

2. **Framework**

In addition to the Articles, there will also be a separate document, referred to as the "Framework", which will include details of:

- Administrative and organisational issues relating to the operation and meetings of the committees, commissions and board that are not already in the Articles;
- Administrative matters relating to subscriptions and membership rules;
- Terms of reference for committees, commissions and directors
- Rules and procedures relating to appeals, disciplinary and judicial matters; and
- Organisational codes and policies (equity, child protection, etc).

These matters will be maintained separately from the Articles to enable them to be adapted and updated in line with development of the management of the Association and the sport.

3. **Constitution of the Executive Board**

The proposed Articles have been drafted to reflect the current structure of the board. So, Article 11 sets out the composition of the Executive Board as follows (in summary): an Honorary President (non-voting), the President, the Vice-President, five portfolio directors and the possibility of appointing up to two co-opted, voting directors.

The Chief Executive may attend and speak at Executive Board level but has no vote (see Article 25).

4. **Appointment of Directors**

Best practice in governance requires a rigorous and transparent recruitment process that is skills- and competence- based. Indeed, Sport England has commented positively that the Executive Board has recently been keen to appoint on the basis of skills and experience first and volleyball interest second.

The proposed Articles reflect those principles (see Article 12). So, whilst candidates for appointment to the Executive Board can be nominated for any person, the Executive Board must undertake a skills-based recruitment process and then propose successful candidates to the members for ratification of their appointment at a general meeting.

As well as the Executive Board, the members therefore also have a major input in the process of appointment of directors: a director's appointment will not become valid unless and until it is ratified by a vote of the members at the general meeting.

The current practice of retirement of directors by rotation remains (see Article 14).

5. **Committees and Commissions**

One of the key recommendations of the Haysmacintyre governance review was the establishment of a "Joint Strategy Implementation Committee" to replace the current Management Committee. The Joint Strategy Implementation Committee would be comprised of the Commission presidents, the Executive Board (other than the Honorary President), the Chief Executive and other senior members of staff.

Details of the composition of the Joint Strategy Implementation Committee are set out in Article 30. Some of the more operational matters relating to the Joint Strategy Implementation Committee (such as terms of reference, frequency of meetings, voting, etc) are set out in the Framework.

Similarly, Article 31 provides brief details of the Commissions, although it is also intended that operational details relating to the Commissions (such as terms of reference, frequency of meetings, voting, etc) will be included within the Framework. The terms of reference within the Framework are draft.

It was thought prudent to provide that there must always be a Joint Strategy Implementation Committee, a Finance Committee and Strategy Committee (see Article 29.6). Other committees and commissions/Groups may be established or disbanded as the Executive Board sees fit in the interests of the Association.

6. **Classes of Membership**

It is vital to be able to identify who are the members of the Association for the purposes of the Companies Act. There is scope at law for other stakeholders to be regarded as “members” of the Association, although these members would not have all the rights and liabilities of the voting members, and would be regarded as “associate members” for the purposes of the Act. Under the current arrangements, the provisions defining membership of the Association relating to which members are voting members varies between the old articles and the Constitution.

The new draft Articles provide for the Clubs to be the only voting members, with each Club having one vote.

The new Articles provide for three classes of associate membership: Affiliated Individuals, Affiliated Associations (which includes Regional and Area Associations) and Honorary Life Members. These classes of membership are detailed in Articles 32 to 38.

(a) *Clubs* (see Article 33)

Clubs are the voting members of the Association. They are therefore the members for the purposes of the Act. They have rights to receive notice of, attend, speak and vote at general meetings. They also have rights to call general meetings and are required to approve the appointment of most of the directors.

Clubs become members by being approved for membership by the Executive Board and paying a club subscription. The exact mechanism for the acceptance of a club as a member will be set out in the Framework. Clubs have duties to their own members, including to maintain records and inform them of matters relating to the individual subscription. Club constitutions must be provided to the Executive Board on request.

It is important for the Association to have details of the member of each Club on a regular basis, to ensure that those individuals receive the benefits of affiliation with the Association. It is also important for the Association to keep records of Club members – even though they are not voting members or “members” for the purposes of the Companies Act – for administrative, insurance and commercial reasons, for example to attract sponsorship. Therefore, Article 33.3.3 provides for each Club to provide details of its membership once every 6 months, but the Executive Board may request up to date details at other times.

(b) *Regional Associations* (see Article 35)

The Regional Associations are defined by reference to the nine English regions established by Sport England and are responsible for administering the Association’s activities in those regions. Under the new Articles, Regional Associations have a right to receive notice of, attend and speak at general meetings, but do not have a vote.

Article 33 sets out how a Club or affiliated individual is classified into a particular Regional Association. The Chief Executive of the Association may attend general meetings of each Regional Association.

The Regional Associations must also provide the Association with an up-to-date copy of their constitution and do everything necessary to make changes to that constitution if required by the Executive Board.

(c) *Area Associations* (see Article 36)

The Regional Associations may delegate activities to the Area Associations, which may be delineated by county, district or otherwise. Area Associations have a right to receive notice of, attend and speak at general meetings, but they do not have a vote. Area Associations must also provide details of the constitutions to the Association.

(d) *Other Affiliated Associations* (see Article 34)

Certain other groups or organisations may be accepted into associate membership of the Association together with the Regional and Area Associations. This could enable university organisations, Armed Forces associations, etc to be accepted to membership on a case-by-case basis by the Executive Board. They have a right to receive notice of, attend and speak at general meetings, but they do not have a vote.

(e) *Affiliated Individuals* (see Article 37)

This class of membership includes Club members, players, coaches, referees and other individuals accepted to membership by the Executive Board.

Affiliated Individuals must pay a subscription and be accepted for membership in accordance with rules laid down by the Executive Board from time to time. Club members already pay a subscription to their Club and so are not required to pay an additional subscription to the Association.

Affiliated Individuals can attend and speak at general meetings, although they will not be individually notified of, or have any right to vote at, general meetings.

(f) *Honorary Life Members* (see Article 38)

This class of membership is awarded to individuals in recognition of their services to the sport. Candidates are recommended by the Executive Board and become Honorary Life Members on ratification at the general meeting by the voting members. Honorary Life Members have the right to receive notice of, attend and speak at general meetings, but they do not have a vote.

7. **Voting at General Meetings**

The Act now requires that every member of a company has the right to appoint another person as his proxy to exercise the member's right to attend, speak and vote at a general meeting. Any member who has a right to attend or speak at a general meeting has a right to appoint a proxy to exercise those rights, not just those members who have a vote.

In addition to requiring proxy voting, the Act also includes provisions allowing member organisations to appoint representatives to attend meetings on their behalf. Most sports governing bodies have members who are themselves organisations, whether they are clubs, regional or national associations or other companies.

The Executive Board's view is that, as the Association operates on a one member, one vote basis, then using the proxy route is simplest and provides for most certainty. However, the Articles still need

to make it clear to members that there are two ways that member organisations can be represented at general meetings.

Articles 48 and 49 set out mechanisms for these appointments. Note that the mechanics for the appointment of a proxy are simpler – a member need only complete and return a proxy form giving details of their proxy, whereas to appoint a representative will require evidence of the appointment/mandate by the member organisation.

Traditionally the method of voting at general meetings has been for individuals representing more than one club to hold up cards to make sure the chairman is clear how many votes they are exercising on behalf of clubs. So, for example, if I am appointed as proxy to three clubs, two of which vote in favour of a resolution and one of which votes against, I could make that clear to the chairman of the meeting by holding up the appropriate cards at the appropriate time.

This form of voting is, in effect, a poll or ballot, rather than a show of hands, as it enables each person present to exercise votes on behalf of a number of clubs, and for those votes to be counted individually.

There is no reason why this practice should not continue provided that the Association complies with the requirements relating to notification of the right to a proxy and members inform the Association of any proxy before the relevant meeting. The new draft Articles allow both voting on a show of hands or by a poll, using whatever mechanism the chairman thinks fit. So, it may be that, before voting commences, the chairman could announce to the meeting that votes will be conducted by a poll, with the polling mechanism being the use of the voting cards. See Article 50 for more details.

8. Chairman's casting vote in General Meetings

The existing Articles give the Chairman a casting vote in general meetings. Current best practice would regard this as unusual because it means that the Chairman, regardless of his or her membership status, can influence a vote reserved to the voting members.

The Chairman commonly has a casting vote at Board meetings, rather than general meetings. Accordingly, the draft new Articles do not provide the Chairman with a casting vote in general meetings (see Article 47.4).

I hope that this note provides some background to the rationale behind proposing the new Articles of Association and I look forward to seeing you at the AGM.



Lisa Wainwright
Chief Executive
Volleyball England