



ICGN

International Corporate Governance Network

Inspiring good governance & stewardship

ICGN Annual General Meeting

2nd September 2021, 1400 – 1700 hrs (BST)

Held at

https://us02web.zoom.us/webinar/register/WN_xao1XNkwQ3qDYeh7lg_e-g

From: Dan Konigsburg, Chair, ICGN Governance Committee

Re: Item 5: Amendments to ICGN Articles of Association

Status: SPECIAL RESOLUTIONS for approval by ICGN Members requiring 75% + 1 vote in favour

Main Considerations

- The Articles of Association are ICGN's constitution. They define our purpose, the rights of members, the responsibilities of the Board and the procedures by which we operate.
- At last year's AGM, members approved changes to ICGN's membership categories and subscription levels. As a consequence, some amendments to the Articles are required. The Board decided to take this opportunity to undertake a comprehensive review of the Articles, something which last done in 2008 when ICGN was formally incorporated as a legal entity.
- An Articles Review Group was established to undertake the review. The review included an assessment of ICGN's Articles against peer organisations, ICGN's own Global Governance Principles and UK company law (as ICGN is incorporated in the UK).
- Following the review, the Board identified a number of additional issues for which it considered revisions to the Articles might be appropriate. Members were consulted on these issues in January 2021, with a subsequent consultation on draft amendments to the Articles in June 2021.
- Copies of the consultation papers and responses and a summary of the feedback received can be found at: <https://www.icgn.org/about/articles-association/icgns-articles-association-consultation>
- The current Articles with the proposed amendments marked and a separate document showing the text of the revised Articles if all the proposed amendments are approved by members can be found at [here](#). Both documents have been colour-coded to help members identify which proposed amendment relates to which resolution.

ICGN Member Action

ICGN Members are invited to review and approve six separate special resolutions. For special resolutions, at least 75% of votes cast must be in favour for the resolution to be approved.

The resolutions are:

Resolution 5.1: SPECIAL RESOLUTION to approve amendments to the Articles regarding the extension of ICGN's defined purpose to include investor stewardship as well as corporate governance.

Resolution 5.2: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability to extend the length of tenure of the Chair and Vice-Chair as members of the Board of Governors subject to certain conditions

Resolution 5.3: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability to hold physical, hybrid or remote General Meetings and members' rights of participation in such meetings

Resolution 5.4: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability of the Board of Governors to approve decisions outside Board meetings in certain circumstances

Resolution 5.5: SPECIAL RESOLUTION to approve amendments to the Articles required to implement the changes to ICGN's membership structure approved by members at the 2020 AGM

Resolution 5.6: SPECIAL RESOLUTION to approve a number of technical amendments to the Articles including amendments to reflect changes to UK law relating to the requisitioning of General Meetings and to make use of gender-neutral terminology throughout the Articles

The first four resolutions cover proposed amendments to the Articles that have been identified by the Board following the review conducted by the Articles Review Group.

Members were also asked for their views on whether to make changes to the composition and status of the Nomination Committee. Having considered the feedback from members, the Board has decided not to propose any such amendments. at this AGM.

The fifth resolution covers the amendments required to reflect the changes to ICGN's membership categories that were approved by members at the 2020 AGM.

The final resolution covers a number of detailed amendments identified by the Articles Review Group during the course of its review.

Attachment 1 addresses each resolution in turn, explaining the intended purpose of the amendments and summarising the changes and additions to the current Articles that are being proposed.

Attachment 1: Explanation of the proposed amendments to ICGN's Articles of Association

Resolution 5.1: SPECIAL RESOLUTION to approve amendments to the Articles regarding the extension of ICGN's defined purpose to include investor stewardship as well as corporate governance.

The 'Objects' clause in the Articles describes ICGN's formal purpose and, together with the 'Powers' clause, prescribes the activities that it can undertake.

At present, the Objects make no explicit reference to investor stewardship. While the current wording is broad enough to encompass ICGN's activities relating to stewardship as they are part of its efforts to promote good corporate governance, the Board considers that it would be appropriate to incorporate a direct reference to reflect the importance of investor stewardship to ICGN's mission.

The **draft revised Article 3** has been amended to extend all references to corporate governance to also refer to investor stewardship. If approved, the full text would read:

"The objects of ICGN are the advancement of education worldwide for the public benefit through the study, the development and the promotion of corporate governance and investor stewardship standards and guidelines, the promotion of good corporate governance and investor stewardship and the exchange of information and education in all matters regarding corporate governance and investor stewardship. For the purposes of section 172 of the Companies Act 2006 (duty to promote the success of the Company), the purposes and objects of ICGN consist of purposes and objects for the benefit of the members of ICGN and the public good, in the usual sense of creating monetary value within the Company, and not for individual financial gain".

In addition, consequential amendments are proposed in two Articles that cross-refer to ICGN's purpose. These concern the activities that ICGN is authorised to undertake (Article 4a) and the criteria for membership (Article 8.1).

Resolution 5.2: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability to extend the length of tenure of the Chair and Vice-Chair as members of the Board of Governors subject to certain conditions

Under the current Articles, Board members can serve no more than six consecutive one-year terms. The Board sees no reason to propose an increase in the maximum length of tenure for all Board members. However, the Board considers that it may be appropriate to have the flexibility to extend the tenure of the Chair and Vice-Chair in certain circumstances in order to provide necessary continuity; for example, if it were felt necessary to manage situations that could have a significant adverse impact on the delivery of ICGN's long-term strategic objectives.

The **draft new Article 11.4** would permit the tenure of the Chair or Vice-Chair to be extended for a maximum of two further years (that is, a maximum of eight years in total as a Board member). It states that:

"A Governor who has been appointed as the Chair or Vice-Chair of ICGN by the Board in accordance with Article 11.13 [*which covers the procedure for appointing the Chair and Vice-Chair*] and who has reached the end of their term limit as a Governor shall be eligible, subject to reappointment by the members at the Annual General Meeting, to remain as a Governor for an additional one year term up to a maximum of two further terms, if it is necessary".

As an additional safeguard, the draft new **Article 11.16** would limit any individual serving as Chair or Vice-Chair to a maximum of three years in that role. This is the current practice but it has not previously been specified in the Articles.

As with all proposed amendments to the Articles, if approved this change would not take effect until after the AGM has been completed. It would therefore not affect the position of the current Chair, who will complete his sixth term as a member of the Board at the AGM.

The Board also proposes a consequential change to the timing of when the Board chooses which of its members it wishes to serve as the Chair and Vice-Chair so that this decision is taken at the last Board meeting before the AGM – subject to their reappointment as a Board member then being approved at the AGM – rather than at the first meeting at the AGM as currently specified in the Articles.

This is necessary to deal with the circumstances where the Chair or Vice-Chair is approaching the end of their sixth term as a Board member and a decision is needed on whether there is cause for proposing that their tenure be extended. The revised process is set out in **draft new Articles 11.13 to 11.15**.

Resolution 5.3: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability to hold physical, hybrid or remote General Meetings and members' rights of participation in such meetings

While ICGN's general preference has been to hold the AGM in person, the Board considers that there are some potential advantages in having the option for future AGMs to be held virtually or in a hybrid format (that is, where members have the choice of participating in person or remotely).

As well as being useful in circumstances such as the COVID-19 restrictions that affected the 2020 AGM, this could enhance the ability of members in different locations to participate fully, a particularly important consideration for ICGN with members in over 40 countries.

The Board also considers that it is important to ensure that members participating remotely in the AGM should have the equivalent rights and ability to participate as those participating in person.

Since the earlier consultation with members, the Board has received legal advice that, while the current Articles permit ICGN to hold hybrid meetings, it is not clear whether they permit ICGN to hold fully virtual or remote meetings. The Board has also been advised that, at the time of writing, it is not clear whether UK law permits fully virtual AGMs as the temporary legislation under which they were permitted in 2020 – and under which ICGN's own AGM was held last year – has not been renewed

Reflecting this advice, the proposed amendments to the Articles are quite extensive. The **draft new Article 9.8** states that the AGM can be held in either a physical, hybrid or remote format to the extent permitted in law. The procedures to be followed if holding a hybrid or remote meeting are set out in **draft new Articles 9.11 and 9.12** respectively. They are too lengthy to cover in full in this paper but have been highlighted in the appended copies of the current and draft amended Articles.

Article 9.8 also states that, when deciding of the format of the AGM, the Board must take account of “the desirability of maximising member engagement and participation in general meetings and the exercise of member rights”.

In order to ensure that all members have the ability to participate fully, **draft new Article 9.9** states that all members attending the AGM whether physically or remotely must be able to exercise their rights to vote, speak and ask questions, and replaces the current Article 9.21; while **draft new Article 9.10** gives the Board some discretion in determining exactly how that is to be achieved.

Article 9.9 states that: “The Governors must ensure that a person attending a meeting either by Remote Means or by physically attending a meeting can exercise their right to speak and vote at the meeting and can also ask questions (taking into account technological differences in the format of the meeting), provided that such rights are not restricted by law. A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.”

Finally, an amendment is proposed in **draft revised Article 9.16** stating that members participating remotely are included in the calculation of whether there is a quorum at the AGM. This has always been the case but the Board considers that it would be clearer if it were to be made explicit.

Resolution 5.4: SPECIAL RESOLUTION to approve amendments to the Articles regarding the ability of the Board of Governors to approve decisions outside Board meetings in certain circumstances

At present, the Articles make no express provision for the Board to take decisions outside Board meetings. It is not envisaged that the Board would wish to take decisions in writing or by electronic communication very often – for the majority of decisions, particularly those that are complex or potentially controversial, discussion at a meeting will continue to be essential. However, the Board considers that it would be useful to have the ability to take routine decisions outside meetings in circumstances where approval was required urgently and it was not possible to convene a quorate meeting for some reason.

The **draft new Article 13.7** would enable the Board to take decisions outside meetings in limited circumstances. To guard against possible misuse, the draft Article contains the safeguards set out in the consultation paper and specifies that:

- The power to take decisions in this way can only be used if the decision is both urgent and not of significant controversy or complexity;
- Decisions should not be taken in this way if it is reasonably possible to convene a meeting of the Board; and
- All decisions taken in this way should be properly minuted.

In addition draft Article 13.7 requires any decision made in this way to have the approval of 80% of eligible Board members (as opposed to a simple majority for decisions taken in meetings).

The full text of the draft new Article is:

“Where a meeting of the Governors is not reasonably possible and a decision needs to be taken that (in the opinion of the Chair) is not of significant controversy or complexity but is required to be taken urgently, a decision may be made in accordance with this Article. A decision is taken in accordance with this Article when a number of Governors greater than or equal to 80% of the total number of Governors (excluding those who have a conflict of Interest resulting in them not being entitled to vote) indicate to each other (including by electronic means such as email) that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Governor in writing or to which each Governor has otherwise indicated agreement in Writing. The Governors must ensure a minute of a decision taken under this Article is prepared in accordance with Article 14.3 and is referred to in the minutes of the next Board meeting”.

Resolution 5.5: SPECIAL RESOLUTION to approve amendments to the Articles required to implement the changes to ICGN's membership structure approved by members at the 2020 AGM

At the 2020 AGM members approved a number of changes to ICGN's membership structure which require consequential amendments to the Articles. These amendments are in addition to the changes made to ICGN's Bylaws to implement the revisions of the membership categories and fee structure that were approved by members.

The majority of the amendments are required as a consequence of the fact that, with a few exceptions, membership of ICGN is now formally held by organisations and not by individuals. Prior to the changes approved at the 2020 AGM, while organisations could be members of ICGN (and were known as 'Corporate Members') the actual membership benefits and rights rested with named individuals identified by the organisation (who were known as 'Organisational Members').

This is no longer the case. With the exception of unaffiliated individuals, it is now the organisation itself that is the named member. This means that all employees of the organisation can enjoy the benefits of ICGN membership. However, the organisation still needs to identify one individual – known as the 'authorised representative' - for the purpose of exercising its membership rights such as attending the AGM and voting.

In order to implement these changes in the Articles, three sets of amendments are required:

- amending the definitions of membership categories;
- amending some references to how membership rights are exercised on behalf of the member organisation; and
- clarifying which individuals are eligible to serve on the Board and Nomination Committee.

Definitions of categories in the Articles

The current Articles contain two definitions (in **Article 1**): one for 'Corporate Members' and one for 'Organisational Members'. There is no definition of 'Individual Member' because, as explained above, until last year's AGM all members with rights and benefits were classified as individuals, the only difference being between those individual members that represented an organisation and those that did not. It was therefore not previously considered necessary to define 'individual'.

In the **draft revised Article 1**:

- The definition of 'Organisational Member' has been deleted as this category no longer exists. The previous Article 8.5 concerning Organisational Members has been deleted for the same reason, and some consequential amendments made elsewhere (for example in **draft revised Article 8.8** on the transfer and termination of membership);
- The definition of 'Corporate Member' has been expanded to make it clear that organisations are now members in their own right (although they are required to have an 'authorised representative'). A corporate member is defined as "a body corporate [which] holds its membership of the ICGN in its own corporate capacity".

The definition uses the term ‘body corporate’. As this term is used in the Articles and UK law it is not limited only to incorporated companies but includes all organisations that have a legal form. This includes, for example, registered charities and bodies established by charter;

A definition of ‘Individual Member’ has been added in **draft revised Article 1** to distinguish unaffiliated individuals from ‘authorised representatives’. This definition is expanded on in **draft revised Article 8.4**, which states that: “A person may only apply to be an Individual Member of ICGN if they are to hold their membership in their personal capacity and not as directed by, or as funded by, an organisation”.

As with the other categories, some other consequential amendments have been made (for example in **draft revised Article 8.2** on applications for membership).

In addition, **current Article 8.7** concerns specifically the registration and representation of unincorporated associations (that is, organisations with no legal form). There are no other references to unincorporated associations in the current Articles, nor are they referred to in the Bylaws when categorising member organisations for the purposes of setting fees. As far as can be ascertained there are no unincorporated associations among the current ICGN membership. For these reasons, it is proposed to remove current Article 8.7 from the revised Articles.

Exercise of membership rights

As noted, in practice it will still be necessary under the new membership structures for Corporate Members to identify a named individual (the ‘authorised representative’) who exercises the membership rights on behalf of the organisation.

The requirement to have an authorised representative is already set out in **current Article 8.6**. The **draft new Article 8.5** has been added to make it clear that all references to members participating in the general meeting (in Article 9) should be interpreted as meaning the authorised representative. This has been done to avoid the need to amend every separate reference in Article 9, which would lengthen and complicate the wording considerably.

Separately, wording has been added to **draft revised Article 8.10** to clarify that all Corporate and Individual Members have the same “company law rights” (that is, the right to participate and vote at the AGM, the right to requisition a general meeting and so on) regardless of the category in which they are placed or the level of fees that they pay. The purpose of doing so is to clarify that ICGN does not have different ‘share classes’. That is already the case, but the Board felt that it would be desirable to make this explicit in the Articles.

Eligibility to serve on the Board and Nomination Committee

The final amendments to be made to the Articles as a consequence of the change to having organisations as members relate to the eligibility criteria for serving as a member of the Board of Governors (current Article 11.2) and Nomination Committee (current Article 12.2).

Currently these Articles simply state that the members of both bodies must be “members of ICGN”, but that is no longer sufficient as it could be interpreted to mean that it was the member organisation that was entitled to sit on the Board and/or Committee.

Draft revised Articles 11.2 and 12.2 have therefore been amended to clarify that eligibility to serve as a member of both the Board and Committee is limited to “either Individual Members of ICGN or the authorised representatives, employees, board members or officers of an organisation that is holding membership of ICGN as a Corporate Member”.

There are also some consequential amendments in **draft revised Article 11.6** (regarding the qualifications required to serve as a Governor) and **draft revised Article 11.7** (regarding cessation of appointment) which make the same distinction.

Resolution 5.6: SPECIAL RESOLUTION to approve a number of technical amendments to the Articles including amendments to reflect changes to UK law relating to the requisitioning of General Meetings and to make use of gender-neutral terminology throughout the Articles

In addition to the substantive amendments covered by the other resolutions, a number of draft 'technical' amendments are proposed. Some of these are required to reflect changes in UK law since the Articles were last reviewed in 2008 (ICGN is a UK registered company and therefore subject to UK law. Other amendments are proposed to update the terminology used in the Articles and to make a small number of corrections to the current Articles.

Changes in UK law

The current Articles state that general meetings can be requisitioned by either 25 eligible members or 10% of all eligible members, whichever was the greater. UK company law now states that meetings can be requisitioned by 5% of eligible members.

The **draft revised Article 9.6** has been amended accordingly, and also now states that meetings can be called by whichever is the lesser (not greater) of 5% or 25 members. This is to cover the possibility that 25 members may equate to a figure higher than the 5% maximum specified in law.

The **draft revised Article 9.3** has been amended to apply the same criteria for determining when members have the right to add items of business to the Notice of the meeting.

It is proposed to remove a reference in **Article 11.6** to individuals automatically ceasing to be Board members if they are disqualified under UK charity law. As a result of changes to the law, these sanctions do not prevent individuals from serving as directors of organisations that are not registered charities, such as ICGN.

Changes in terminology

The terminology used throughout the draft revised Articles has been amended to make it gender neutral; for example, "Chairman" has been amended to "Chair", "he or she" has been amended to "they" and so on.

Correcting errors in the current Articles

Current Article 11.7 (**draft new Article 11.8**) set out the same procedure by which Governors can dismiss fellow Governors twice in successive sentences using slightly different language. The draft revised Article removes the second sentence in order to eliminate this duplication. **Article 9.2** has also been amended to remove some duplicate wording.

Minor grammatical errors in **Articles 11.5** and **12.6** have also been corrected.