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STATUTORY INSTRUMENTS

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**2012 No. 3012**

**The Charitable Incorporated  
Organisations (General) Regulations 2012**

**PART 3**

**CONSTITUTION**

**Matters to be provided for in constitution**

**13.**—(1) A CIO’s constitution must state the names of the persons who are to be the first charity trustees of the CIO.

(2) In addition to the provision required by section 206(2) of the 2011 Act, a CIO’s constitution must make—

- (a) the standard charity trustee provisions; and
- (b) the standard member provisions.

(3) In this regulation—

“standard charity trustee provisions” means provision about—

- (a) how a charity trustee of the CIO retires from office;
- (b) the other circumstances in which a charity trustee of the CIO will cease to hold office and in particular, if the CIO’s constitution permits its members to remove a charity trustee from office, the circumstances in which a charity trustee may be removed from office and the procedure for doing so;
- (c) the holding of meetings of the charity trustees of the CIO and in particular—
  - (i) the procedure for calling such meetings;
  - (ii) the appointment of a chair of such meetings;
  - (iii) the quorum for such meetings;
  - (iv) if the charity trustees of the CIO are to have the right to demand a poll, the exercise of that right and the manner in which the poll is to be conducted; and
- (d) subject to compliance with section 222 of the 2011 Act and regulation 36, the extent to which a charity trustee of the CIO may, if at all, benefit personally from any arrangement or transaction entered into by the CIO.

“standard member provisions” means provision about—

- (a) how a member retires from membership of the CIO;
- (b) the other circumstances in which, and method by which, a member’s membership of the CIO may or must be terminated; and
- (c) the holding of general meetings of its members and in particular—
  - (i) the procedure for calling such meetings;
  - (ii) the appointment of a chair of such meetings;

- (iii) the representation at such meetings of any body corporate who is a member of the CIO;
- (iv) the quorum for such meetings; and
- (v) if the members of the CIO are to have the right to demand a poll, the exercise of that right and the manner in which a poll is to be conducted.

(4) If the CIO is to have a common seal, the constitution must make provision about the use of the seal.

(5) If a CIO's constitution permits its members to appoint a proxy, the constitution must make provision about—

- (a) the way in which a member makes such an appointment;
- (b) the rights of the proxy; and
- (c) the termination of such an appointment.

(6) If a CIO's constitution permits its members to vote by post, the constitution must make provision about the circumstances in which, and the way in which, such votes may be given.

(7) If a CIO's constitution permits its members to make decisions at a general meeting otherwise than by voting on resolutions, the constitution must make provision as to the alternative process by which the members may make decisions at a general meeting.

(8) If a CIO's constitution permits its members to make decisions otherwise than at a general meeting, the constitution must make provision as to the alternative process by which the members may make decisions otherwise than at a general meeting.

(9) If the members of a CIO are to have different voting rights, the constitution must state the voting rights which are to attach to each class of member.

(10) If the members of a CIO are to be treated, as a result of becoming members, as having agreed to receive communications from the CIO by electronic means, the constitution must include—

- (a) a statement to this effect; and
- (b) provision setting out, as a result of the deemed agreement, the circumstances in which its members will receive communications by electronic means from the CIO.

(11) If a CIO is to communicate with its members by means of a website, the constitution must make provision as to the circumstances in which a website may be used as a means of communication with its members.

(12) If a CIO's constitution requires more than one charity trustee to be in office for the business of the CIO to be discharged, the constitution must make provision indicating the minimum number of charity trustees that are to be in office to enable its business to be discharged.

(13) If a CIO's constitution is to permit its charity trustees to make decisions at a meeting otherwise than by voting on resolutions, the constitution must make provision as to the alternative process by which the charity trustees may make decisions at a meeting.

(14) If a CIO's constitution is to permit its charity trustees to make decisions otherwise than at a meeting, the constitution must make provision as to the alternative process by which the charity trustees may make decisions otherwise than at a meeting.

### **Constitution not to restrict ability to dispose of property**

**14.** A CIO's constitution must not include any restriction of the power in section 216 of the 2011 Act (powers of CIO)(1) that would deprive the CIO of its ability to dispose of its property.

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(1) 2011 c.25.

### **Provision for entrenchment**

**15.—**(1) A CIO’s constitution may contain provision (“provision for entrenchment”) to the effect that specified provisions of the constitution may be amended or repealed by resolution of its members only if specified conditions are met, or specified procedures are complied with, that are more restrictive than those applied by section 224(2) of the 2011 Act (amendment of constitution by resolution of members).

- (2) Provision for entrenchment may only be made—
  - (a) in the constitution proposed in the application for registration; or
  - (b) by an amendment of the constitution agreed to by all of the members of the CIO.
- (3) Provision for entrenchment does not prevent amendment of the CIO’s constitution—
  - (a) by agreement of all of the members of the CIO; or
  - (b) by order of the court or by the Commission.
- (4) Nothing in this regulation affects—
  - (a) any power of a court or the Commission to alter a CIO’s constitution; or
  - (b) the operation of sections 225 to 227 of the 2011 Act (amendment of constitution, Commission’s consent and coming into effect of amendments).

### **Date of resolution amending constitution**

**16.—**(1) Subject to paragraph (2), if a resolution under section 224 of the 2011 Act to amend a CIO’s constitution is passed otherwise than at a general meeting it is treated as having been passed on the date on which the last member agreed to it.

(2) Paragraph (1) does not apply if a provision in the CIO’s constitution treats such a resolution as having been passed on a date later than the date on which the last member agreed to it.

### **Provision for entrenchment: statement of compliance**

**17.—**(1) This regulation applies where a CIO’s constitution contains provision for entrenchment.

(2) If the CIO amends its constitution, it must send a statement of compliance to the Commission with the documents that it is required to send to the Commission by section 227(1) of the 2011 Act.

(3) The Commission may rely on the statement of compliance as sufficient evidence of the matters stated in it.

(4) In this regulation “statement of compliance” means a statement certifying that the amendment has been made in accordance with the provision for entrenchment.

### **Effect of amendment of constitution on members**

**18.—**(1) A member of a CIO (“M”) is not bound by an amendment to its constitution after the date on which M became a member, if that amendment increases in any way M’s liability to contribute to the CIO’s assets if it is wound up.

(2) Paragraph (1) does not apply if M agrees in writing, either before or after the amendment is made, to be bound by the amendment.