

~~BURNESS~~

**CONSTITUTION**  
**of**  
**LEISURE & CULTURE DUNDEE**

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<b>CONTENTS</b>		
<b>GENERAL</b>	type of organisation, Scottish principal office, name, purposes, powers, liability of members, general structure	clauses 1 - 10
<b>MEMBERS</b>	qualifications for membership, application, subscription, register of members, withdrawal, transfer of membership	clauses 11 - 20
<b>DECISION-MAKING BY THE MEMBERS</b>	members' meetings, notice, procedure at members' meetings, voting at members' meetings, written resolutions, minutes	clauses 21 - 53
<b>BOARD (CHARITY TRUSTEES)</b>	number, composition, initial charity trustees, eligibility, appointment, retiral, termination of office, register of charity trustees, office-bearers, powers, general duties, code of conduct	clauses 54 - 94
<b>DECISION-MAKING BY THE CHARITY TRUSTEES</b>	notice, procedure at board meetings, minutes	clauses 95 - 115
<b>ADMINISTRATION</b>	sub-committees, Nominations Committee, operation of accounts, accounting records and annual accounts	clauses 116 - 128
<b>MISCELLANEOUS</b>	winding up, alterations to the constitution, interpretation	clauses 129 - 134

## **GENERAL**

### **Type of organisation**

- 1 The organisation (“the SCIO”) will, upon registration, be a Scottish Charitable Incorporated Organisation.

### **Scottish principal office**

- 2 The principal office of the SCIO will be in Scotland (and must remain in Scotland).

### **Name**

- 3 The name of the SCIO is “Leisure & Culture Dundee”.

### **Purposes**

- 4 The SCIO’s purposes are:
  - 4.1 To advance the arts, heritage, culture and science;
  - 4.2 To advance public participation in sport;
  - 4.3 To provide recreational facilities, and organise recreational activities with such facilities/activities being made available to members of the public at large with the object of improving their conditions of life;
  - 4.4 To advance education;
  - 4.5 To advance health;
  - 4.6 To advance citizenship and/or community development (which may include the promotion of civic responsibility, volunteering, the voluntary sector and/or the effectiveness or efficiency of charities);
  - 4.7 To relieve those in need by reason of age, ill health, disability, financial hardship or other disadvantage;
  - 4.8 To promote, establish, operate and/or support other similar schemes and projects which further charitable purposes;

through the provision of services (including those entrusted to it by Dundee City Council), which contribute to advancing well-being (primarily the wellbeing of residents of Dundee) including (i) the operation, management and development of galleries, museums and other facilities which provide public access to collections of works of art, antiquities and objects of scientific interest; (ii) the development and delivery of arts and cultural activities and events, artistic programmes, and educational projects; (iii) the operation, management and development of libraries and provision of library and archive services; (iv) the operation, management and development of indoor and outdoor sports facilities (including arrangements to facilitate

access to such facilities by those on lower incomes or having special needs and to encourage wider participation in healthy exercise); (v) the development and delivery of sports activities and events directed towards wider participation in sport; (vi) the development and delivery of community learning and adult learning initiatives; and (vii) the delivery of services focused on social renewal and the needs of young people.

### **Powers**

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 No part of the income or assets of the SCIO may be paid or transferred (directly or indirectly) to the members - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's purposes.

### **Liability of members**

- 7 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **General structure**

- 9 The structure of the SCIO consists of:-
  - 9.1 the MEMBERS - who have the right to attend members' meetings (including any annual members' meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;
  - 9.2 the BOARD - who hold regular meetings, and generally control the activities of the SCIO; for example, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **Qualifications for membership**

- 11 Membership is open to the following:
  - 11.1 Dundee City Council (“the Council”);
  - 11.2 Dundee City Council Nominees Limited (“DCCN”).
- 12 Employees of the SCIO are not eligible for membership.
- 13 The individuals who applied for registration of the SCIO shall automatically cease to be members with effect from the time at which the bodies named in clause 11 are admitted to membership.

### **Application for membership**

- 14 Any body named in clause 11 which wishes to become a member must submit a written application for membership, signed by an appropriate officer of that body; the body will automatically become a member of the SCIO with effect from the time when the application is received by the SCIO.

### **Membership subscription**

- 15 No membership subscription will be payable.

### **Register of members**

- 16 The board must keep a register of members, setting out
  - 16.1 for each current member:
    - 16.1.1 its full name and address; and
    - 16.1.2 the date on which it was registered as a member of the SCIO;
  - 16.2 for each former member - for at least six years from the date on which it ceased to be a member:
    - 16.2.1 its name; and
    - 16.2.2 the date on which it ceased to be a member.
- 17 The board must ensure that the register of members is updated within 28 days of any change:
  - 17.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
  - 17.2 which is notified to the SCIO.

- 18 If a member or charity trustee of the SCIO requests a copy of the register of members, the board must ensure that a copy is supplied to him/her/it within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

**Withdrawal from membership**

- 19 Any body which wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed on its behalf by an appropriate officer; it will cease to be a member as from the time when the notice is received by the SCIO.

**Transfer of membership**

- 20 Membership of the SCIO may not be transferred by a member.

## **DECISION-MAKING BY THE MEMBERS**

### **Members' meetings**

- 21 The board must convene a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 22 The gap between one AGM and the next must not be longer than 15 months.
- 23 Notwithstanding clause 21, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is formed.
- 24 The business of each AGM must include:-
- 24.1 a report by the chair on the activities of the SCIO; and
  - 24.2 consideration of the annual accounts of the SCIO.
- 25 The board may convene a special members' meeting at any time.

### **Notice of members' meetings**

- 26 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 27 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 27.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
  - 27.2 in the case of any other resolution falling within clause 47 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 28 The reference to "clear days" in clause 26 shall be taken to mean that, in calculating the period of notice,
- 28.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
  - 28.2 the day of the meeting itself should also be excluded.
- 29 Notice of every members' meeting must be given to all the members of the SCIO, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 30 Any notice which requires to be given to a member under this constitution must be: -

- 30.1 sent by post to the member, at the address last notified by it to the SCIO; *or*
- 30.2 sent by e-mail to the member, at the e-mail address last intimated by it to the SCIO.

#### **Procedure at members' meetings**

- 31 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 32 The quorum for a members' meeting is two members, present in person (in the case of a member which is a corporate body, present via its duly authorised representative) or represented by proxy.
- 33 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 34 The chair of the SCIO should act as chairperson of each members' meeting.
- 35 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 36 If neither the chair nor the vice chair of the SCIO is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

#### **Voting at members' meetings**

- 37 In relation to each members' resolution:
  - 37.1 the Council shall have 99 votes;
  - 37.2 DCCN shall have 1 vote.
- 38 A member's vote(s) may be given *either* personally (in the case of a member which is a corporate body, via its authorised representative present at the meeting) *or* by proxy.
- 39 A member which wishes to appoint a proxy to vote on its behalf at any members' meeting:-
  - 39.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by an appropriate officer of the member; or



39.2 must send by electronic means to the SCIO at such electronic address as may have been notified to the members for that purpose, a proxy form (in such terms as the board requires)

providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).

40 In calculating the 48-hour period referred to in clause 39, no account shall be taken of any part of a day that is not a working day

41 An instrument of proxy which does not comply with the provisions of clause 39, or which is not lodged or given in accordance with such provisions, shall be invalid.

42 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

43 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member which appointed him/her to speak at the meeting; and need not be a member of the SCIO.

44 A member which is a corporate body may authorise an individual to act as its representative at any members' meeting, providing particulars of the individual so authorised and of the body which he/she is to represent are received by the SCIO prior to the commencement of the members' meeting.

45 An individual authorised under clause 44 as the representative of a corporate body shall be entitled to exercise the same powers on behalf of the member which he/she represents as that corporate body could exercise if it were an individual member.

46 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 47.

47 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 50):

47.1 a resolution amending the constitution;

47.2 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);

47.3 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);

47.4 a resolution for the winding up or dissolution of the SCIO.

- 48 If there is an equal number of votes for and against any resolution at a members' meeting, the chairperson of the meeting will not be entitled to a second (casting) vote.
- 49 A resolution put to the vote at a members' meeting will be decided on a show of hands.

#### **Written resolutions by members**

- 50 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.
- 51 A resolution under clause 86 agreed to in writing (or by e-mail) by a member or members holding a majority of the votes of all members shall be as valid as if it had been passed at a members' meeting.

#### **Minutes**

- 52 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 53 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

## **BOARD**

### **Number of charity trustees**

54 The maximum number of charity trustees is 13.

55 The minimum number of charity trustees is 5.

### **Composition of the board**

56 Subject to any vacancies which may exist from time to time, the board shall consist of:

56.1 4 charity trustees who are elected members of the Council;

56.2 1 charity trustee who is either (a) the Council's Director of Finance (or the holder of the nearest equivalent post, if the post of Director of Finance ceases to exist) or (b) a finance officer of the Council nominated by the Director of Finance (or, as applicable, by the holder of the nearest equivalent post);

56.3 1 charity trustee who holds the post of Managing Director of the SCIO; and

56.4 7 charity trustees who are neither elected members nor officers of the Council.

### **Initial charity trustees**

57 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the SCIO.

### **Eligibility**

58 A person will not be eligible for appointment to the board if he/she is: -

58.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

58.2 an employee of the SCIO.

### **Appointment of charity trustees**

59 Subject to clauses 56 and 58, the Council may by notice in writing given to the SCIO:-

59.1 appoint any individual (providing he/she is willing so to act) to be a charity trustee; or

59.2 remove any individual previously appointed by it, from office as a charity trustee.

- 60 Any appointment or removal of a charity trustee under clause 59 shall have effect from
- 60.1 the date on which the relevant notice is given to the SCIO; or
  - 60.2 any later date stated in the notice.
- 61 A notice under clause 59 shall be valid only if signed by an appropriate officer of the Council.
- 62 The Council shall exercise its powers of appointment and removal under clause 59 in such a way as to reflect the intended composition of the board, as set out in clause 56.
- 63 The Council shall be guided by the Nominations Committee (as defined in clause 121) in relation to the selection of appropriate individuals for appointment as charity trustees under paragraph 56.4.
- 64 The board shall endeavour to establish the Nominations Committee within a reasonable period after the incorporation of the SCIO; until such time as it is established, the reference in clause 63 to the Council being guided by the Nominations Committee shall be disregarded.

#### **Retiral/re-appointment of independent charity trustees**

- 65 At the conclusion of each AGM, 2 out of the 7 charity trustees appointed by the Council under paragraph 56.4 (independent charity trustees) shall retire from office, but (subject to clause 67) may then be re-appointed under clause 59.
- 66 The charity trustees to retire under clause 65 shall consist of those who have been longest in office since they were last appointed or re-appointed; as between charity trustees who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method.
- 67 Subject to clause 68, a charity trustee appointed by the Council under paragraph 56.4 (independent charity trustees) who has served for a period of six years shall not be eligible for re-appointment until a further period of one year has elapsed.
- 68 The board may, by way of a resolution passed by majority vote at a board meeting, waive the provisions of clause 67 in relation to a particular charity trustee if they consider that exceptional considerations make that appropriate.
- 69 For the purposes of clause 67:
- 69.1 the period between the date on which an individual was appointed as a charity trustee and the annual general meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);

- 69.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
- 69.3 if an individual ceases to hold office as a charity trustee and is re-appointed as a charity trustee within a period of six months, he/she shall be deemed to have held office as a charity trustee continuously.

### **Retiral of other charity trustees**

- 70 A charity trustee appointed by the Council under paragraph 56.1 (elected members) who has held office for a period of six years shall retire from office at the AGM which next follows the end of that six-year period, and shall then not be eligible for re-appointment until a further period of one year has elapsed.
- 71 The provisions of clause 69 shall apply in relation to the interpretation of clause 70.
- 72 For the avoidance of doubt, charity trustees appointed by the Council under paragraph 56.1, 56.2 or 56.3 shall not require to retire from office at any AGM, except as provided for in clause 70.

### **Termination of office**

- 73 A charity trustee will automatically cease to hold office if: -
  - 73.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 73.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
  - 73.3 in the case of a charity trustee appointed under paragraph 56.1, he/she ceases to be an elected member of the Council;
  - 73.4 in the case of a charity trustee appointed under paragraph 56.2, he/she ceases to be the Council's Director of Finance (or, as the case may be, a finance officer of the Council);
  - 73.5 in the case of a charity trustee appointed under paragraph 56.3, he/she ceases to hold the post of Managing Director of the SCIO;
  - 73.6 he/she becomes an employee of the SCIO;
  - 73.7 he/she gives the SCIO a notice of resignation, signed by him/her;
  - 73.8 he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove him/her from office;

- 73.9 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 93);
  - 73.10 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 73.11 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 74 A resolution under paragraph 73.9, 73.10 or 73.11 shall be valid only if: -
- 74.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
  - 74.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
  - 74.3 (in the case of a resolution under paragraph 73.9 or 73.10) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

### **Register of charity trustees**

- 75 The board must keep a register of charity trustees, setting out
- 75.1 for each current charity trustee:
    - 75.1.1 his/her full name and address;
    - 75.1.2 the date on which he/she was appointed as a charity trustee;
    - 75.1.3 the category into which he/she falls (ie by identifying the paragraph of clause 56 under which he/she was appointed); and
    - 75.1.4 any office held by him/her in the SCIO;
  - 75.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
    - 75.2.1 the name of the charity trustee;
    - 75.2.2 the category into which he/she fell (as interpreted for the purposes of paragraph 75.1.3);

75.2.3 any office (under clauses 78 to 83) held by him/her in the SCIO; and

75.2.4 the date on which he/she ceased to be a charity trustee.

76 The board must ensure that the register of charity trustees is updated within 28 days of any change:

76.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or

76.2 which is notified to the SCIO.

77 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

### **Office-bearers**

78 The charity trustees must elect (from among themselves) a chair, a vice chair and a secretary.

79 A charity trustee shall not be eligible for election as the chair unless he/she is the Council's Convener of Policy and Resources or has been nominated for appointment as chair by the Council's Convener of Policy and Resources.

80 A charity trustee shall not be eligible for election as the vice chair unless he/she is a charity trustee appointed under paragraph 56.4 (independent charity trustees).

81 In addition to the office-bearers required under clause 78, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

82 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 78 or 81.

83 A person elected to any office will automatically cease to hold that office: -

83.1 if he/she ceases to be a charity trustee; *or*

83.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

### **Powers of board**

84 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.

- 85 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 86 The members may, by way of a resolution passed by majority vote (either at a members' meeting or via a written resolution), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.
- 87 The members shall, in exercising their powers under clause 86, comply with the duties imposed on members of a SCIO by section 51 of the Charities and Trustee Investment (Scotland) Act 2005.

#### **Charity trustees - general duties**

- 88 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 88.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;
  - 88.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 88.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
    - 88.3.1 put the interests of the SCIO before that of the other party;
    - 88.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
  - 88.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 89 In addition to the duties outlined in clause 88, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 89.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
  - 89.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 90 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 91 and to the provisions relating to remuneration for services contained in the



Charities and Trustee Investment (Scotland) Act 2005) he/she may retain any personal benefit which arises from that arrangement.

- 91 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out his/her duties as a charity trustee.
- 92 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

**Code of conduct for charity trustees**

- 93 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 94 The code of conduct referred to in clause 93 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of board meetings**

- 95 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 96 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### **Procedure at board meetings**

- 97 No valid decisions can be taken at a board meeting unless a quorum is present; subject to clause 99, the quorum for board meetings shall (subject to clause 98) be 5 charity trustees, present in person.
- 98 A quorum shall not be deemed to be constituted at any board meeting unless there is at least one charity trustee falling under paragraph 56.1 (elected members) and at least three charity trustees falling under paragraph 56.4 (independent charity trustees) present at the meeting.
- 99 During the period from the date of incorporation of the SCIO until the date occurring 12 weeks after incorporation of the SCIO,
- 99.1 the quorum for board meetings shall be 3 charity trustees, present in person; and
- 99.2 the provisions of clause 98 shall not apply.
- 100 If at any time the number of charity trustees in office falls below the number required at the time to form a quorum, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 101 A charity trustee may participate in a board meeting (or a meeting of a committee of charity trustees) by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting
- 102 The chair of the SCIO should (subject to clauses 103 and 104) act as chairperson of each board meeting.
- 103 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 104 If the chair of the SCIO considers that he/she has a significant conflict of interest in relation to a particular item to be discussed at a board meeting,

he/she shall allow the vice chair to take over from him/her as chairperson of the meeting while that item is being dealt with.

- 105 If neither the chair nor the vice chair is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 106 Every charity trustee has one vote, which must be given personally.
- 107 All decisions at board meetings will be made by majority vote.
- 108 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 109 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 110 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 111 For the purposes of clause 110: -
- 111.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 111.2 a charity trustee will (subject to clause 112) 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 representative has an interest in that matter.
- 112 A charity trustee appointed under paragraph 56.1, 56.2 or 56.3 shall, notwithstanding the provisions of clause 110 and paragraph 111.2, be entitled to vote in relation to a particular matter notwithstanding that the Council has an interest in that matter; but on the basis that in exercising his/her voting rights in respect of any such matter, the charity trustee shall comply with the provisions of clauses 88 and 93 and in particular (but without limitation) must give priority to the interests of the SCIO.
- 113 For the avoidance of doubt, charity trustees shall not be entitled to vote at a board meeting unless they are personally present, or are participating in the meeting in a manner permitted under clause 101; charity trustees are not entitled to appoint substitutes to vote in their place at board meetings.

## **Minutes**

- 114 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 115 The minutes to be kept under clause 114 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

## **ADMINISTRATION**

### **Delegation to sub-committees**

- 116 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 117 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 118 When delegating powers under clause 116 or 117, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 119 Any delegation of powers under clause 116 or 117 may be revoked or altered by the board at any time.
- 120 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Nominations Committee**

- 121 The board shall establish a committee (referred to in this constitution as “the Nominations Committee”) to make recommendations to the Council in relation to the selection of appropriate individuals for appointment as charity trustees under paragraph 56.4 (independent charity trustees).
- 122 The members of the Nominations Committee shall comprise:
- 122.1 three charity trustees falling under any of paragraphs 56.1, 56.2 or 56.3; and
  - 122.2 two further individuals (not being charity trustees) with specialist expertise (one of whom shall have expertise in HR matters and the other shall have expertise in the leisure and/or culture sectors).
- 123 Subject to clause 122, the composition and proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the board from time to time.
- 124 In carrying out its functions, the Nominations Committee shall give effect to the following principles:
- 124.1 the Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;
  - 124.2 nominations for charity trustees falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;

- 124.3 all expressions of interest should be considered by the Nominations Committee; and
- 124.4 the Nominations Committee should maintain a register of suitable candidates for future reference

### **Operation of accounts**

- 125 Subject to clause 126, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; at least one out of the two signatures must be the signature of a charity trustee.
- 126 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 125.

### **Accounting records and annual accounts**

- 127 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 128 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

## **MISCELLANEOUS**

### **Winding-up**

- 129 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 130 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO, as set out in this constitution.

### **Alterations to the constitution**

- 131 This constitution may (subject to clause 132) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 47) or by way of a written resolution of the members.
- 132 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Interpretation**

- 133 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 133.1 any statutory provision which adds to, modifies or replaces that Act; and
- 133.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 133.1 above.
- 134 In this constitution: -
- 134.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
- 134.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

This is the proposed constitution referred to in the accompanying form, applying for a SCIO to be constituted with the name set out in clause 3 above.