

**Commentary on the proposed new Articles of Association (New Articles) of  
The Hebe Haven Yacht Club Limited ("Club")**

**1. Introduction**

- 1.1 The existing Memorandum and Articles of Association (**Existing Articles**) of the Club are in urgent need of modernisation for many reasons including:-
- (a) the Club was incorporated in 1963. Since then its Articles have been amended piecemeal. As a result, taken as a whole, they are now difficult to understand, lacking in cohesion, contain many omissions and do not reflect modern practice. A wholesale re-draft is required.
  - (b) company law has been updated with the passing of the new Companies Ordinance (Cap.622: Laws of Hong Kong) (**New Ordinance**). The New Ordinance has amended the laws in relation to Companies' constitutions and corporate governance and the Club's Articles should be up-dated to incorporate the changes.
  - (c) the Government's Review on Policy of Private Recreational Leases has brought corporate governance of private club's and community access to their facilities into sharp focus. The New Articles take these matters into account.
- 1.2 The Club now has twelve categories of members with rights that are confusing and difficult to understand. The New Articles set out the rights of each category in a logical order, remove inconsistencies and create a clear scheme of progression from Cadet to Full with credits and reductions in entrance fees. It is hoped that this will result in Members joining as Junior and Associate Members and maintaining their membership. At present, these categories are not used.

**2. Commentary**

- 2.1 The New Ordinance ended the need for a Company to have a separate Memorandum of Association. The New Articles alone will comprise the Club's constitution. The following is a detailed commentary on the New Articles. Paragraph numbers refer to the relevant Article(s).
1. Additional defined terms have been introduced to improve the drafting. Save for the definition of "Spouse", which may lead to discussion, we do not believe the new definitions or interpretation are controversial.
- 3-5. These Articles are mandatory.
6. Under the New Ordinance, it is not necessary to include the objects of the Club in the Articles but it is customary for companies limited by guarantee to do so. If no objects are included, the Club is able to do anything that a natural person can do. If the objects are included, the Club must only do what its objects authorise it to do. The objects in Article 6 have been drafted in the context of the New Ordinance and are intended to encapsulate the Club's core objects.

7. Article 7.1 and 7.2 are not mandatory but preserve the non-profit making status of the Club.
- 7.3 The New Articles must be approved by the Lands Department and a draft has been sent to them to get that process moving.
- 7.4 Article 7.4 sets out a long list of "powers". Again this is not necessary but it is customary. Article 7.4 is not exhaustive and the powers must be exercised only in relation to matters authorised by the objects. Note Article 7.4(m). This ties in to the relevant provisions of the Club's lease and should be read in conjunction with the object in Article 6(b).
8. The provisions relating to Membership have been substantially revised. The provisions of the Existing Articles are very difficult to follow, not understood by relevant stakeholders, and consequently not used. At present, there are no Junior Members, 3 Associate Members under 25 and 1 Associate Member over 25. Upon analysis there is a basis in the Existing Articles for a logical scheme involving Cadet (Age 6 to 17), Junior (18 to 20), Associate I (21 to 24) and II (25 to 30), Senior Associate (over 21), and Full (Members who have been a Senior Associate for two years) ("the Scheme categories"). The remaining categories of Membership (Life, Term, Temporary, Corporate, Community Group and Honorary) stand-alone and do not form part of the proposed membership scheme.

The detail of the proposed membership scheme is to be found in Articles 8.6 to 8.11, 9.10 and 11. In summary:-

- (i) Non-members may be elected for the relevant category upon payment of the entrance fees set-out in 11.1(a) and (b). Note that these fees are the same as those that now apply under the Existing Articles, and a General Meeting may reduce them by ordinary resolution.
- (ii) In the case of existing Members, applications to be elected must be made for Junior, Senior and Full Membership. No application will be required when Junior Members convert to Associate I Membership and Associate I Members convert to Associate II Membership (N.B.: conversion will happen unless the Member chooses to resign).
- (iii) In order to encourage the use of Junior, Associate I and Associate II Membership, credits will be given for entrance fees already paid, and there will be further reductions by reference to periods of membership (see Article 11.1(c) to (f)). These proposals will reduce substantially the entrance fees paid by Members as they move from one category to the next. For example, a Member who joins as a Cadet and remains a Member until they become a Senior Associate (**SA**) will pay a total entrance fee of 10% of the SA entrance fee which applies when they become a Cadet / Junior Member. (Note that, as now, the entrance fee payable by an SA will be determined by ordinary resolution at a General

Meeting of voting Members from time to time). By way of example, the entrance fee paid by a Members joining as a Cadet will be calculated as follows:-

- (i) on becoming a Cadet Member – 5% of SA entrance fee;
- (ii) on becoming a Junior Member – 5% of SA entrance fee (10% minus 5% already paid);
- (iii) on becoming an Associate I Member – 0%;  
(25% minus 10% already paid = 15%. 15% reduced to 0 by reduction of one third for each year as a Junior Member).
- (iv) on becoming an Associate II Member – 0%  
(50% minus 25% (10% already paid + 15% credit for previous reduction), 25% then reduced to 0% by reduction of one fourth for each year as an Associate I Member);
- (v) on becoming an SA – 0%  
(100% minus 50% (10% already paid + 40% credit for previous reductions), 50% then reduced to 0% by reduction of one sixth for each year as an Associate II Member.

Another example is a Member who joins as an Associate II Member at 26 years of age. They will pay an entrance fee of 50% of SA entrance fee and, if they become a Senior Associate at age 31, having been a Member for four years, they will pay an entrance fee of 16.5% of the SA entrance fee (100% minus 50% already paid, balance of 50% reduced by four sixths (one sixth per year)).

In addition to the entrance fee, the Member will pay the monthly subscriptions set out in Article 11.2.

#### 8.12 to 8.19

Articles 8.12 to 8.19 deal with "non Scheme" categories of membership (Life, Term, Temporary, Corporate, Community Group, Honorary, Members' Spouses and their children (NB not members) and Absent Membership. The drafting has been tidied up but no material changes have been made. Article 8.15 (Corporate Membership and Corporate Nominees) has been substantially re-drafted to reflect the present arrangements re: nominating up to three Nominees, entrance fees and subscriptions and voting by proxy or representative.

- 10. (Applications and Elections of Members) has been tidied up. Save for the General Committee being empowered to delegate the approval of applications for Cadet Membership to the General Manager, there are no material changes.

12. The "Other Rules of Membership" have been gathered together in Article 12. There are no material changes.
13. Article 13 deals with General Meetings of the Club, and follows the Model Articles for Companies Limited by Guarantee prescribed under the New Ordinance (the **Model Articles**) closely. Article 13.5 makes it clear that notices of General Meetings will only be given to Members who are entitled to attend and vote (Life, Full, Senior Associate and Corporate).
- 13.7 Article 13.7 provides for the appointment of proxies (Note the Existing Articles have no provisions for proxies and so the rights to appoint proxies are subject only to the relevant provisions of the New Ordinance. This allows proxies to be delivered at any time prior to the AGM (contrary to general practice and an administrative burden). The new provisions are based on the Model Articles and Article 13.7(g) requires proxies to be received at least 48 hours before the relevant General Meeting.

14, 15 and 17.

These Articles are new and deal with Officers of the Club, composition of the General Committee and General Committee elections. Articles 27 to 30 of the Existing Articles deal with these matters very briefly. Under the Existing Articles:-

- (i) the General Committee consists of the Commodore, Vice-Commodore, two Rear Commodores, the Honorary General Secretary, the Honorary Treasurer and not less than three nor more than eight other members;
- (ii) all General Committee members are elected annually at each AGM;
- (iii) nominations may be given to the Secretary up to 72 hours before the AGM; and
- (iv) the Existing Articles are unclear as to how the voting arrangements work.

As a result, there is uncertainty as to who will be elected, and what positions they will hold, and the re-constitution of the entire General Committee every year results in a lack of continuity. The arrangements do not comply with modern standards of corporate governance nor do they comply with the New Ordinance.

The key features of the new arrangements are as follows:-

- (a) The Flag Officers will be the Commodore, Vice-Commodore and **three** Rear-Commodores who will be named "Operations", "Sailing" and (**new**) "Sail Training".
- (b) They will be elected for **two year terms**, the Commodore and Vice-Commodore being elected at the AGM in even years and the three Rear-Commodores being elected in odd years.

- (c) There will also be an Honorary Secretary and an Honorary Treasurer who will be Officers of the Club. Again they will have **two year terms**, the Honorary Secretary being elected in even years and the Honorary Treasurer in odd years.
- (d) Officers must be ordinarily resident in the HKSAR. The Commodore and Vice-Commodore must be Full or Life Members and have served on the General Committee for at least 2 years. The Rear-Commodores must be Senior Associate, Full or Life Members and have served on the General Committee for at least 1 year. The Honorary Officers must be Senior Associate, Full or Life Members for at least 1 year.
- (e) The General Committee shall consist of the **seven** Officers and **eight** other Life, Full or Senior Associate Members who will also hold office for **two years**, four being elected at the AGM in even years and the other four in odd years. Such Members must be ordinarily resident in the HKSAR and have been Senior Associate, Full or Life Members for at least 1 year.
- (f) Note that there are provisions enabling the General Committee to fill casual vacancies and to preserve the two year rotations in the event of casual vacancies or resignations during a term of office.
- (g) The quorum for the General Committee is **eight** members.
- (h) There are new rules in relation to "Conflicts" (Article 15.10) which require Committee Members to declare material interests in arrangements with the Club which are significant in relation to the Club's business and not to vote or be counted in the quorum on resolutions relating to those interests.
- (i) Article 15.11(d) enables General Committee meetings to take place when members are not in the same place.
- (j) Article 15.20 permits resolutions in writing signed by a majority of the General Committee members who are voting in favour.
- (k) Article 17 introduces a **new scheme for the election of members** of the General Committee which is designed to provide much greater participation and transparency. In brief:-
  - (i) The General Committee will appoint a Nominating Committee of at least [five] Life or Full Members who have served for at least one year on the General Committee. The Nominating Committee will select suitable eligible Members to fill vacancies occurring at the next AGM.
  - (ii) Life, Full and Senior Associate Members may also propose to the Nominating Committee eligible Members for consideration as candidates.
  - (iii) The Nominating Committee will then publish the names of its selected candidates.

- (iv) Thereafter, Life, Full and Senior Associate Members may propose other eligible candidates.
- (v) Prior to each AGM a list of the vacancies to be filled and the candidates standing for election to them will be published.
- (vi) Article 17.2 deals with the election procedure and Article 15.4 empowers the General Committee to fill vacancies which are not otherwise filled.

18-24. These Articles follow the Model Articles closely and up-date the relevant provisions (e.g. Officers Indemnity and Insurance, Accounts and Audit, Reporting Documents, the Seal of the Club and Notices) to reflect the relevant provisions of the New Ordinance. The changes are not controversial.

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29 August 2019