

Governance Committee

Finance Council 2022 – Proposed Constitutional Amendments

- 1 This note offers a brief explanation of the Governance Committee's proposed constitutional amendments to be considered at Finance Council 2022. The resolutions referred to in paragraphs 2, 3 and 4 below amend the articles of association and so are special resolutions. As a result, they require a majority of 75% of votes cast in order to be passed; and are incapable of substantive amendment at the Meeting. The resolutions referred to in paragraphs 5, 6 and 7 are ordinary resolutions and so require a simple majority of votes cast in order to be passed.
- 2 Resolution 12 amends article 22 so as to be consistent with the practice of amending the voting register after its initial publication so as to reflect changes that occur after publication, such as the admission of new members and the assignment of votes pursuant to article 32.
- 3 Resolution 13 amends article 37 by giving the flexibility to accept proxies in electronic form after the current deadline. (The current deadline for a meeting on a Saturday is midnight on the preceding Wednesday.) This change will help address some difficulties that have arisen in practice.
- 4 Resolution 14 is the first of a series of resolutions relating to Direct Members' Representatives "(DMRs)". The articles of association currently provide that the Board, in conjunction with the Chair of Council, fill any casual vacancies in DMR positions. The Governance Committee believes it is inappropriate that any such power be vested in the Board and so resolution 14 proposes to replace article 14 with a new article providing that a bye-election will be held if there is a vacancy on or before 31st January in any term.
- 5 The Governance Committee shares the concern that there is currently no guidance as to how DMRs should best carry out their duties. Accordingly, it is proposed in resolution 15 that wording be added to the Direct Members Bye Laws setting out an obligation to consult with relevant Direct Members prior to Council meetings and, when speaking and voting at the meeting, to bear in mind the views expressed by those consulted.
- 6 Resolution 16 proposes that, at the time of election/re-election, a DMR must be a Direct Member of the same category as those he/she is seeking to represent (e.g. a candidate to be a bronze DMR must be a bronze Direct Member). This change would constitute the reversal of a change made in October 2017 at the time of the increase to 40 of the number of votes at Council allocated to DMRs. There was a concern at the time that there might be insufficient candidates wanting to become DMRs; this concern has not been justified and the Governance Committee believes it is appropriate to return to a position where the DMR is aligned with those he or she represents.
- 7 The view has been expressed, both at the 2021 AGM and subsequently in representations to the Governance Committee, that it is inappropriate for someone simultaneously to be both a DMR and a Director. The Governance Committee is also of this view; there is a clear conflict between the duties a Director owes as a Director (including the duty of collective responsibility) and the need as a DMR to be able to challenge or be critical of the Board. Accordingly, it is proposed in Resolution 17 that a Director cannot stand as a DMR, and that a DMR vacates office upon becoming a Director.