

APPENDIX A

Memorandum and Articles of Association

Article 3.2 (c) – Article 3 (2) states that board members will not be entitled to remuneration other than (a) professional fees for certain work carried out for the company (b) reasonable and proper remuneration for services provided by board members or employees and (c) interest on money by any member or officer of the company at a reasonable rate

Recommendation - That point (c) is removed as it is not deemed to be relevant or necessary

Article 7.2 – The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

Given that any of the articles cannot be amended without shareholder consent, the board does not think it is appropriate for the board to be given this level of consideration.

Recommendation – That 7.2 is deleted

Article 15 – Conflicts of Interest

- Article 15 (3) – This allows a director who is interested in an actual or proposed transaction or arrangement with the company to participate in the decision making process when
(a) the Company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;
(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
(c) the director's conflict of interest arises from a permitted cause.

Recommendation – The Shareholder reviews Article 15(3) as to whether permitted cause is defined anywhere in the Articles, if not and they deem it appropriate that, (c) be deleted

- Article 15 (8) – This states that where the number of non-conflicted directors is less than quorum, the quorum shall be all the disinterested directors.

Recommendation - That where the number of non-conflicted directors is less than the quorum, the matter be referred to the Shareholder

Article 19 - Tenure of directors

The articles state that directors should be appointed for a term of 3 years with a maximum of 3 terms equating to 9 years in total. This was in line with the 2015 NHF Code of Governance. However, the new code of governance states

“Maximum tenure will normally be up to six consecutive years (typically comprising two terms of office), but where a member has served six years, and the board agrees that it is in the organisation's best interests, their tenure may be extended up to a maximum of nine years”

Recommendation – That article 19 is amended to bring it into line with the new code of governance

Recommendation – That all references to Chairman are amended to Chair

Terms of Reference for the board

Functions – The new Code of Governance places a significant emphasis on Resident Focus and requires that *“the needs and safety of the organisation’s current and future residents and other customers are placed at the heart of the board’s decision-making.”*

Function 3 of the ToR is *“Setting a positive culture, with a strong customer focus, seeking to understand and improve customers’ experience.”*. It is recommended that this is strengthened to reflect requirements of the new Code of Governance.

Delegation – The ToR states that the Board plans to establish an Audit and Risk Committee. However, the board subsequently determined that this was not necessary due to the size of the organisation. It is recommended that this decision is reviewed and the ToR amended accordingly.

Accountability – The ToR will need to be amended to reflect any amendments to the term or maximum tenure for directors within the MEMARTS.

Quorum – The ToR states that quorum for directors meetings is 2. However, this is not consistent with the MEMARTS which specifies quorum as not less than 3. It is recommended that the ToR are amended to be consistent with MEMARTS.

Urgency Policy – It is recommended that the reference to Skype is replaced with Video Conferencing

Board Member Role Description

It is recommended that a point is added under Main Purpose with reference to ensuring compliance with the Code of Governance adopted by the Company

Chair Role Description

As above, it is recommended that reference is made to ensuring compliance with the Code of Governance