

GUIDANCE NOTES

ARTICLES OF ASSOCIATION - PRIVATE COMPANY LIMITED BY GUARANTEE

This is only intended as a guidance note, if you have any specific queries please take independent legal advice.

Should you choose to incorporate your club, you will need to incorporate a company which is registered in accordance with the Companies Act 2006. Whilst companies can be limited by guarantee or limited by shares (further details about the difference between these can be found at <https://www.lta.org.uk/workforce-venues/tennis-venue-support/club-management/club-governance>), we have found that a company limited by guarantee is more common for clubs and the template articles of association and this guidance note relate to this type of company. The constitution (known as the Articles of Association) may be a little more complicated than the rules of an unincorporated association, is a public document that is filed at Companies House and is underpinned by provisions in the Companies Act 2006 (i.e. there are laws contained in the Companies Act 2006 which apply to a private company limited by guarantee in addition to the articles of association).

There is an LTA Template Articles of Association (**Articles**) which should be read in conjunction with this guidance and amended in accordance with your club's needs. More details can be found at <https://www.gov.uk/limited-company-formation/choose-company-name>.

Articles of association can either be adopted on incorporation by including the said articles of association in the application to incorporate a company (Form IN01, section A8) or they can be adopted post-incorporation by a resolution passed by 75% of the voting members (this can usually be by either a written resolution or a resolution at a general meeting of the members). The resolution and articles of association then need to be sent to Companies House at Companies House, Crown Way, Cardiff CF14 3UZ within 14 days of the resolution being passed.

Company Name

Care should be taken in choosing a company name. There are restrictions on the choice of registered name that a company may adopt. It must also include the appropriate ending (for example, Limited, plc, c.i.c). The Registrar of Companies will refuse registration of any unacceptable name.

Articles 2 and 3 - Object & Powers

The objects and powers of a club set out the purpose of the club and its authority to pursue that purpose organisationally. Unless you specifically limit this in your Articles, the objects and powers are unlimited and the club can carry out any business activity.

The Sport England Code for Sports' Governance (**Code**) states that the club should have a clear purpose - why the organisation exists and the area of work it is involved with.

There are also certain circumstances where the objects and powers need to be limited for instance to benefit from the exemption of using "limited" and charitable status.

The Articles should include the club's long term goals, what you want to achieve and how you want to achieve it. Please consider each of these and amend as necessary.

It is common practice to set out the powers which the club may exercise in pursuit of the objects in a separate Article, including a "blanket" power for the club to do anything that can be said to be in support of its objects, as long as it is legal.

However, unless the club is a charity, the club's ability and the powers of its directors to bind the club (by entering into contracts for example) will not be limited by the powers set out in this Article.

Please consider each of these and amend as necessary.

Article 4 – Income

A limited company is allowed to distribute its profits to its members provided there is nothing in its Articles to the contrary. However, where your club wishes to benefit from the exemption from the requirement to have "limited" in its name it must be either a charitable company or it is a company limited by guarantee which its Articles require:

- its income to be applied in promoting its objects;
- that dividends (or returns of capital) to its members are prohibited; and
- all the assets that would otherwise be available to its members generally to be transferred on its winding up to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto, (whether or not the body is a member of the company).

Even if your club decides to have "limited" in its name, you might wish to include a ban on distributing income to members in your Articles if you wish to make clear that the club is not about generating profit for the members but supporting philanthropic causes, for instance, the growth and development of tennis.

Most tennis clubs do not distribute profits to their members, preferring to focus on being community orientated and running the club to develop tennis opportunities within the area.

A not-for-distribution clause does not prevent your club from generating profit. It restricts the club's ability to distribute income or profit to its members by seeking to ensure that any profit generated is applied for the purposes of the club (its objects).

Article 5 - Winding Up

On a winding up or dissolution of the club, this Article prevents any surplus assets that remain after all the club's debts and liabilities have been paid off from being distributed to members. Such assets must be transferred to a body with similar objects to the club.

Article 6 – Guarantee

Members are liable to a company limited by guarantee, to the extent of their guarantees (usually a nominal amount, in the template Articles we have set this at £1 per member), but only if the club is wound up and a contribution is needed to enable its debts to be paid. This amount is not an asset of the club but should the club be wound up the members will be required to pay this.

A company limited by guarantee must deliver a statement of guarantee under the legislation.

Articles 7 to 23 – Directors

The directors of the club (**Directors**) will owe the following statutory duties to the club:

- To act within powers;



- To promote the success of the club;
- To exercise independent judgment;
- To exercise reasonable care, skill and diligence;
- To avoid conflicts of interest;
- Not to accept benefits from third parties; and
- To declare an interest in a proposed transaction or arrangement.

The Directors will have control of the day to day running of the club, however, the club's members can direct the Directors to take or refrain from taking specified action (as set out in Article 11).

Number and Composition of Directors

Legislation provides that your club must have at least one Director who is a human being rather than a company.

Please consider the minimum number of Directors required by your club. We would recommend you do not set this number too high as you will need to find volunteers to act as Directors and if you do not meet the minimum number the club will be unable to take any decisions. We consider a minimum of 3 directors and a maximum of 8 directors allows you to have a sensible sized board.

Each club will be slightly different but it would be normal to specify which positions sit on the board of Directors. The template Articles include a Chair, Treasurer and a number of Independent Non-Executive Directors. Please amend as necessary.

The Code requires that at least three of the Directors must be unrelated or non-cohabiting.

Appointing Directors

The template Articles require the club (i.e. its members) to appoint the Directors. The Code requires that in deciding who sits on its board of Directors the club considers the skills and diversity required.

Retirement of Directors

The Code states that Directors should be subject to regular election and ideally should serve no more than 9 years.

Please consider how long a Director should hold office and how many terms he or she can serve. You should allow Directors a chance to settle into the role and an opportunity to make a change before they are subject to re-election and it is common to see terms of 2 or 3 years. Please amend as appropriate.

Directors' delegation

Please consider whether the Directors should be able to delegate their powers as they see fit. The club may want to establish committees for example safeguarding and disciplinary committees.

Please remove Article 12 and 13 if the Directors should not be able to delegate and remove Article 14 if the Directors should be able to delegate.

Calling a Director's Meeting

The Code requires regular meetings (at least four times a year) decisions of which should be recorded. Please consider the minimum number of times a year the Directors of your club should meet and amend accordingly.



Please consider how much notice of a meeting the Directors should be given.

Quorum for Directors' Meeting

The quorum of a meeting relates to how many Directors must be in attendance (this can be in person/on the telephone/over skype) for the board of directors to be able to make decisions.

The Article provides for a quorum of 50% of appointed directors (provided always, this is at least two eligible directors) but this can be increased at your option.

Chairman and Casting Vote

The Directors can appoint a Director to chair the director meetings.

Please consider whether the chairman of a Directors' meeting should be entitled to a casting vote should the voting for and against be equal. By giving a chair a casting vote it allows the club to move forward but does give one individual more power.

Directors' Conflicts of Interest

The Code requires conflicts of interest are recognised, managed by the chair and recorded.

Article 24 – Secretary

A private company is not required to have a company secretary. Usually a company secretary will deal with the company's administrative tasks.

Articles 25 to 29 – Members

Membership

You need to decide who will be entitled to be a member of your tennis club (**Member**). For companies limited by guarantee without a share capital, Membership does not depend on a holding of shares. Members must agree to become a Member of the club and have their names entered in the register of Members.

This Article provides that no person shall become a Member of the club unless he or she has completed an application form in the form approved by the Directors.

The Code seeks to promote greater diversity and an inclusive approach. Your club should take all reasonable steps to ensure you are accessible and non-discriminatory to all sections of the community.

Sometimes, the Directors may wish to establish different classes of Members to provide for different categories of Member. For example, a club may have junior or associate Members who may pay a lesser subscription price and as a result do not have voting rights. Included here would be a definition of the various categories of Membership.

Members have various rights which are set out in both statute and in the Articles. These rights, amongst other things, enable the Members to censure decisions of the directors and, ultimately, to remove them from office. The vast majority of the Members' statutory rights cannot be limited or removed by the Articles.

Rules and by-laws in addition to the Articles may prescribe the rights and obligations of the Members or classes of Membership.



In this section the club should include the costs of the Membership categories, how and when it should be paid to the club and the processes for joining the club as a Member.

Transfer of Membership

Please consider whether you wish Members to be able to transfer their Membership. It would be unusual for a club to allow the transfer of Membership.

If Membership is transferable, delete Article 27. If Membership is not transferable, delete Article 26.

Expulsion of Member

It is sensible in this section to include when someone ceases to be a Member or has his or her Membership withdrawn.

The Article refers to the club's disciplinary procedure, we would expect to see this in the Rules. This can be included here, however, it will be easier to amend and update if it is dealt with separately.

The Article sets out some basic circumstances in which a Member can be expelled. Please consider whether you wish to amend these and/or add some further circumstances for instance:

- Failure to pay Membership fees; or
- Failure to attend three consecutive meetings.

Please use Article 28 if the Directors should have the ability to expel a Member without the approval of the Members and delete Article 29.

Please use Article 29 if the Directors should be required to seek Member approval to expel a Member and delete Article 28.

A Member facing expulsion is entitled to make representations in writing or in person as to why his or her Membership should not be terminated. The Directors/Members have to consider his or her views before coming to a decision. Once the Directors/Members have come to their decision there is no further right of appeal.

The Article provides that an expelled Member will remain liable to pay any sums owed by him or her.

Articles 30 to 47 - Decision Making by Members

Resolutions

In accordance with company law, there are a number of matters which the Directors are unable to action without the approval of the Members including but not limited to:

- adopting new Articles of association;
- approval of loans to Directors;
- ratification of acts by Directors; and
- approval of agreement for transfer of non-cash asset.

These matters are approved by either ordinary resolutions or special resolutions passed at a general meeting or by a written resolution.

Please seek independent legal advice for more information regarding what resolutions are required.

AGM



You may wish to include in the Articles a requirement to hold a general meeting at least once a year. This is usually a good opportunity for the Directors to present the financial accounts to the Members and give Members an opportunity to discuss the plans for the Club.

Persons entitled to receive notice of meetings

Please consider who should receive notice of general meetings. It is usual for all classes of Members to receive notice of and attend general meetings even if they do not have the right to vote.

Other persons might include:

- LTA representative;
- Umpire;
- Any representatives of tournaments you participate in.

Quorum for general meetings

The quorum of a general meeting relates to how many Members must be in attendance for the general meeting to pass any resolutions.

The Article provides for a quorum of at least 30% of Members entitled to attend. This can be increased or decreased at your option. Bear in mind that if you have a large membership base, you may find it difficult to get the minimum numbers required in order to reach the quorum level.

Votes of Members

Consider which categories of Members (if not all) should have the right to vote in relation to resolutions.

For example, if you have chosen to have Junior Members it might not be appropriate for them to vote.

It is usual for the same classes of Members to be able to vote by a show of hands, poll vote and a written resolution.

Article 48 – Rules

This Article provides for rules to be drawn up by the Directors rather than the Members. Rules can be amended more easily than Articles and therefore, provide greater flexibility.

Examples of the matters which may be set out in the rules rather than the Articles are:

- the conduct expected of the Members;
- the Membership fee;
- the application form required; and
- disciplinary procedures.

Rules are not required to be registered at Companies House and therefore a member should be referred to the rules when he/she applies for Membership.

The Articles shall prevail over the terms of the rules in the event of a conflict.

