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| HIGH LIFE HIGHLAND  REPORT TO BOARD OF DIRECTORS  28 March 2013 | AGENDA ITEM 17  REPORT No HLH 10/13 |

## **AMENDMENTS TO MEMORANDUM AND ARTICLES OF ASSOCIATION - Report by Company Secretary**

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| **Summary** This report invites the Board to consider a number of amendments to High Life Highland’s Memorandum and Articles of Association.  It is suggested that Directors recommend to the Highland Council that Article 61 of the Memorandum and Articles of Association be amended to read “At the conclusion of each Annual General Meeting, two of the Independent Directors *shall intimate their retiral* from office *with effect from the day prior to the Spring Board meeting*, but shall then be eligible for re-appointment under article 56”. | |
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| **1.** | **Business Plan Contribution** |
| 1.1 | This report contributes to the achievement of outcome seven of the High Life Highland (HLH) Business Plan “A growing company”. |
| **2.** | **Background** |
| 2.1  2.2 | The Memorandum and Articles of Association of a Company are a main governance document which sets out the company's objects covering matters such as the responsibilities of Directors, the categories of Directors, the composition of the Board etc.  The current Memorandum and Articles of Association of High Life Highland have been in operation since 8 September 2011 and, during this time, Directors have felt that the Member of the Company, the Highland Council, should review certain aspects, namely:-   1. how urgent items could be dealt with; 2. the quorum; and 3. continuity of Director Membership to avoid gaps in Board membership following the Annual General Meeting. |
| **3.** | **Issues** |
| 3.1  3.1.1  3.1.2  3.1.3  3.1.4  3.2  3.2.1  3.2.2  3.2.3  3.2.4  3.2.5  3.2.6  3.3  3.3.1  3.3.2  3.3.3  3.3.4 | Urgent Items    HLH Board Meetings take place in March, June, September and December of each year. However, on occasion there may be major matters which arise needing consideration by the Board and it is appropriate, when this occurs, for the Company Secretary to call a special meeting of the Board at short notice.  However, there may also be instances where items of urgent business arise once a Board agenda and papers have been issued. It would be permissible, where this occurs, for the Chair to determine whether or not such business should be considered, given the special circumstances that necessitates the item(s) being taken as a matter of urgency. These special circumstances should be specified at the meeting and in the minutes.  It is important that such items are handled in this way so that Board Directors are aware of items on agendas in advance and that only items requiring urgent attention are added at the last minute.  There are also circumstances were urgent matters require immediate attention. In such circumstance, the Chief Executive, as detailed in 3.1 of the “Schedule of Matters Reserved to the Board and Scheme of Delegation to Officers” is empowered to take emergency/urgent action on behalf of the Board in matters which would normally have been considered by the Board itself but where no meeting of the Board is available for that purpose. On all such occasions, he/she shall consult first with the Chair, or in his/her absence the Vice Chair, before taking action and shall then seek endorsement of the action at the next Board meeting. In so doing it allows prompt action to be taken as necessary and for the matter to be discussed in an open and transparent manner.  Quorum  The current Quorum for Board meetings of HLH is five, one of which must be a Council Director and at least one being an Independent Director. Where this quorum is not met the meeting is adjourned to such time and place as fixed by the chair of the meeting.  Board meeting dates are set in advance and agreed by the Board with up to one year’s notice being given of some meetings. However, it is appreciated that, unforeseen circumstances can prevent Directors from attending Board meetings at relatively short notice. However against this, the importance of ensuring as many Directors possible can attend has to be weighed.  The quorum for other similar companies are as follows:-  Highland Opportunity Limited – 3 (out of a membership of 9), Eden Court Theatre – 5 (out of a membership of 12) and Caledonian Community Leisure Limited – 5 (out of a membership of 12).  By raising the quorum of HLH there is a danger that future Board meetings are inquorate and thus necessitate replacement Board Meetings to be called at short notice, compounding the difficulty of Directors being able to attend. This could have potentially serious consequences for some items of business requiring discussion.  Attendance at HLH Board meetings have generally been very good but there has already been an instance where the minimum number was reached (June 2012). If the quorum had been any higher it would have been necessary for this meeting to be adjourned and held a week/two weeks later, compounding the difficulty of Directors to attend a Board meeting called at short notice.  It is therefore suggested that the quorum of five Directors achieves the need for detailed discussion of matters by Directors at meetings and minimises the chances of meetings being inquorate, requiring replacement Board meetings to be called at short notice.  Retiral of Directors  In terms of Article 61, it is necessary for two Independent Directors to retire from office at the conclusion of the Annual General Meeting. The Directors due to retire are those have been longest in office since they were last appointed.  At present, 6 of the 8 Independent Directors have the same term of office and the question of who should retire from this remaining group is, without volunteers, determined by some random method.  The responsibility for making recommendations to the Highland Council as to the appointment of Directors is the responsibility of the Nominations Committee. This Committee considers applications received during the period when the vacancies were advertised. This year this took place following the Annual General Meeting.  Although Directors’ terms of office end at the Annual General Meeting it is suggested that, to avoid a gap where the Board is, in effect, two Directors down, where there is equality of terms of office, Directors notify their intention to resign at the Annual General Meeting but that their term of office conclude the day prior to the Spring Board meeting. |
| **4.** | **Risk Implications** |
|  | There are no additional risks associated with the recommendation of this report. |
| **Recommendation** It is recommended that the Board recommend to Highland Council that Article 61 of the Memorandum and Articles of Association be amended to read “At the conclusion of each Annual General Meeting, two of the Independent Directors *shall intimate their retiral* from office *with effect from the day prior to the Spring Board meeting*, but shall then be eligible for re-appointment under article 56”. | |

Signature:

Designation: Company Secretary

Date: 26 February 2013