

The Highland Council

Highland Council – 19 December 2013

Agenda Item	24(i)
Report No	HC/63/13

High Life Highland – Amendment to Articles of Association

Report by Director of Education, Culture and Sport

The Highland Council, as the sole Member of High Life Highland (a company limited by Guarantee), is asked to consider a request from the Board of High Life Highland to amend the company's Articles of Association in regard to the retiral of Independent Directors on the Board and to make the necessary resolution.

1. Background

- 1.1 As High Life Highland had reached its second anniversary, the Company's Board felt that it was appropriate that consideration be given to reviewing its Memorandum and Articles of Association.
- 1.2 Several specific areas were considered including the quorum and the method for dealing with Urgent Items of business. However, at its meeting on 20 June 2013 the Board decided that the quorum should remain unchanged and that, especially with the adoption of a Scheme of Delegation, there were sufficient arrangements in place for prompt action to be taken in response to Urgent/Emergency items of business.
- 1.3 In addition, the Board considered the process for the retiral of Independent Directors. The Board of High Life Highland is made up of 4 Council Directors and 8 Independent Directors. Council Directors remain in office until removed by the Highland Council or until such point as they cease to be elected members. In relation to Independent Directors, their term of office is dependent on who has served longest in office. Where there are Independent Directors who were appointed on the same date, and no Independent Director volunteers to retire, this is determined by some random method such as the cutting of cards.
- 1.4 The current Articles of Association requires the retiral of Independent Directors, as outlined in paragraph 1.3 above, to take place at the conclusion of the Annual General Meeting. High Life Highland's Nominations Committee then meets to consider applications received for the vacancies prior to making a recommendation to the Highland Council as to the appointment of Directors.

2. Proposed Amendments

- 2.1 As a result of the requirement for two Independent Directors to retire at the conclusion of the Annual General Meeting, a gap is created each year whereby the Board is reduced to 10 Directors for a period which can last up to 3 months.
- 2.2 At its meeting on 20 June 2013, followed by intimation in early December by

the Chair, the Board considered the issue and agreed to request that the following amendments now be made to the company's Memorandum and Articles of Association in relation to the Retirement of Independent Directors with aim of eliminating the gap. This will require the following changes to be made to the Memorandum and Articles of Association

2.2.1 **Article 59**

Remove the existing Article 59

"The Highland Council shall be guided by the Nominations Committee (as defined in article 114) in relation to the selection of appropriate individuals for appointment as Independent Directors"

and replace with the following:-

"Article 59:-

"The Highland Council shall be guided by the Nominations Committee (as defined in article 114) in relation to the selection of appropriate individuals for appointment/re-appointment as Independent Directors"

2.2.2 In addition, it has since become apparent that, when the point is reached in the Company when Directors have different dates of (re)appointment, the two longest serving Directors will require to retire, regardless of whether or not there is a fellow Director choosing, for whatever reason, to retire early. Accordingly, it is therefore suggested that the following amendment is also made to the company's Memorandum and Articles of Association.

Article 62

Remove existing Article 62

"The Independent Directors to retire under article 61 shall those who have been longest in office since they were last appointed or re-appointed; as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method"

and replace with the following:-

"Article 62:-

The question of which Independent Directors are to retire under article 61 at a given annual general meeting shall be determined at a board meeting held six months or more in advance of the anticipated date of that annual general meeting, on the basis of the following principles:

- (a) any Independent Director may put himself/herself forward for retiral at the forthcoming annual general meeting;
- (b) if no Independent Director puts himself/herself forward for retiral at the

forthcoming annual general meeting, the Independent Directors who are to retire at that annual general meeting shall be the two Independent Directors who have been longest in office since they were last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at the board meeting;

- (c) if only one Independent Director puts himself/herself forward for retirement at the forthcoming annual general meeting, the other Independent Director who is to retire at that annual general meeting shall be the Independent Director (out of those remaining) who has been longest in office since he/she was last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at that board meeting;
- (d) if two Independent Directors put themselves forward for retirement at the forthcoming annual general meeting, they will retire from office at the forthcoming annual general meeting accordingly;
- (e) if more than two Independent Directors put themselves forward for retirement at the forthcoming annual general meeting, the question of which of them is to retire shall be determined by some random method conducted at the board meeting.

62A. At the board meeting referred to in article 62, as soon as the question of which Independent Directors are to retire under article 61 at the forthcoming annual general meeting has been determined, each of those two Independent Directors shall intimate whether or not he/she is willing to be re-appointed with effect from the conclusion of that annual general meeting.

62B. The chairperson of the board meeting referred to in article 62 shall formally declare at the board meeting the names of the two Independent Directors who are to retire from office at the forthcoming annual general meeting, and whether or not (based on the intimations under article 62A) each of them is willing to be re-appointed with effect from the conclusion of that annual general meeting; any such declaration shall be final and conclusive and (for the avoidance of doubt) it shall not be open to any Independent Director to withdraw, after that declaration has been made, his/her statement of willingness to retire at the forthcoming annual general meeting nor his/her intimation of willingness to be re-appointed with effect from the conclusion of that annual general meeting except (in either case) in exceptional circumstances where the directors have resolved that it would be reasonable for him/her to do so.

62C. Immediately after the conclusion of the board meeting referred to in article 62, the directors shall request the Nominations Committee to address the question of which individuals should be appointed/re-appointed as Independent Directors with effect from the conclusion of the forthcoming annual general meeting (advising the Nominations

Committee at the same time of which (if any) of the retiring Independent Directors are willing to be re-appointed, on the basis of the intimations given under article 62A), and on the basis that the Nominations Committee should be asked to make recommendations to The Highland Council in that regard in good time to enable the appropriate decision-making processes within The Highland Council to be carried through and completed prior to the annual general meeting”.

2.2.3 Article 63

Remove existing Article 63

“For avoidance of doubt, there shall be no limit on the number of occasions on which a given Independent Director can be re-appointed under article 56.”

and replace with the following:-

“Article 63:-

For the avoidance of doubt, there shall be no limit on the number of occasions on which a given Independent Director can be re-appointed under article 56”.

2.3 To effect the proposed amendments to the Memorandum and Articles of Association, a formal Special Resolution will be required by the Highland Council as the Member of the company. The special resolution is attached for approval at **Appendix 1**.

3. Resource Implications

3.1 There are no resource implications identified.

4. Recommendations

It is recommended that:-

- i. the Highland Council, as member of High Life Highland Limited, approve the amendment to the company’s Articles of Association as outlined in paragraphs 2.2.1 - 2.2.3 above and that the Chief Executive, or their nominee, sign the special resolution on the Council’s behalf.

Designation: Director of Education, Culture and Sport

Author: Hugh Fraser

Date:

COMPANIES ACTS

MEMBER'S WRITTEN SPECIAL RESOLUTION

OF

**HIGH LIFE HIGHLAND ("the Company")
COMPANY NUMBER: SC407011
SCOTTISH CHARITY NUMBER: SC042593**

Circulation Date:- 19 December 2013

In accordance with sections 288 to 300 of the Companies Act 2006, we, being the sole member of the Company (which is a Scottish charity) and representing 100% of the voting rights in respect of this resolution on its Circulation Date, agree to the following resolution, which is proposed as a special resolution of the Company:

That the provisions of the articles of association of the Company be altered by:

1. The deletion of the existing provision of article 59 and the insertion in their place of the following:

"59 The Highland Council shall be guided by the Nominations Committee (as defined in article 114) in relation to the selection of appropriate individuals for appointment/re-appointment as Independent Directors."
2. Article 62 of the said Articles of Association is deleted and the following Article 62 substituted instead:-

"62 The question of which Independent Directors are to retire under article 61 at a given annual general meeting shall be determined at a board meeting held six months or more in advance of the anticipated date of that annual general meeting, on the basis of the following principles:
 - (a) any Independent Director may put himself/herself forward for retiral at the forthcoming annual general meeting;
 - (b) if no Independent Director puts himself/herself forward for retiral at the forthcoming annual general meeting, the Independent Directors who are to retire at that annual general meeting shall be the two Independent Directors who have been longest in office since they were last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at the board meeting;
 - (c) if only one Independent Director puts himself/herself forward for retiral at the forthcoming annual general meeting, the other Independent Director who is to retire at that annual general meeting shall be the Independent Director (out of those remaining) who has been longest in

office since he/she was last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at that board meeting;

- (d) if two Independent Directors put themselves forward for retiral at the forthcoming annual general meeting, they will retire from office at the forthcoming annual general meeting accordingly;
- (e) if more than two Independent Directors put themselves forward for retiral at the forthcoming annual general meeting, the question of which of them is to retire shall be determined by some random method conducted at the board meeting.

62A. At the board meeting referred to in article 62, as soon as the question of which Independent Directors are to retire under article 61 at the forthcoming annual general meeting has been determined, each of those two Independent Directors shall intimate whether or not he/she is willing to be re-appointed with effect from the conclusion of that annual general meeting.

62B. The chairperson of the board meeting referred to in article 62 shall formally declare at the board meeting the names of the two Independent Directors who are to retire from office at the forthcoming annual general meeting, and whether or not (based on the intimations under article 62A) each of them is willing to be re-appointed with effect from the conclusion of that annual general meeting; any such declaration shall be final and conclusive and (for the avoidance of doubt) it shall not be open to any Independent Director to withdraw, after that declaration has been made, his/her statement of willingness to retire at the forthcoming annual general meeting nor his/her intimation of willingness to be re-appointed with effect from the conclusion of that annual general meeting except (in either case) in exceptional circumstances where the directors have resolved that it would be reasonable for him/her to do so.

62C. Immediately after the conclusion of the board meeting referred to in article 62, the directors shall request the Nominations Committee to address the question of which individuals should be appointed/re-appointed as Independent Directors with effect from the conclusion of the forthcoming annual general meeting (advising the Nominations Committee at the same time of which (if any) of the retiring Independent Directors are willing to be re-appointed, on the basis of the intimations given under article 62A), and on the basis that the Nominations Committee should be asked to make recommendations to The Highland Council in that regard in good time to enable the appropriate decision-making processes within The Highland Council to be carried through and completed prior to the annual general meeting”.

3. Article 63 of the said Articles of Association is deleted and the following Article 63 substituted instead:-

“63 For the avoidance of doubt, there shall be no limit on the number of occasions on which a given Independent Director can be re-appointed under article 56”.