Incorporation of Scientific Committee on Antarctic Research

Introduction

It is proposed that the existing SCAR legal entity ("SCAR Existing Entity")\(^1\) is incorporated into a company limited by guarantee (registered in England and Wales) and is registered as a charity.

In simple terms, the process of the incorporation will be as follows:

1. a new company limited by guarantee will be incorporated with the Memorandum of Association and Articles of Association as detailed below;
2. the Company will apply to become a registered charity (referred to hereinafter as the "Charity");
3. the SCAR Existing Entity will transfer its employees, assets and rights to the Charity in consideration for the Charity assuming all of the SCAR Existing Entity's liabilities; and
4. the SCAR Existing Entity will cease to exist once all of its liabilities have been satisfied.

Summary

The purpose of this note is to explain the material provisions of the proposed constitutional documents of the Charity. These are the Memorandum of Association and Articles of Association.

The Charity Commission recommends a standard form of Memorandum and Articles. However, the Memorandum and Articles have, to the extent that the Charity Commission are likely to accept, been amended to take into account the existing provisions of the SCAR Existing Entity's constitution.

The numbering of the paragraphs below, where appropriate, corresponds with the numbering of the Memorandum and Articles. The defined terms used have the same meaning as those defined in the Memorandum and Articles. Whilst this note attempts to highlight some of the material provisions of the documents, please do read/review the documents in full.

The Memorandum of Association

In summary, this document sets out:

- the Charity's name,
- where the registered office of the Charity is situated (in England); and
- what it will do (its objects or mission statement).

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\(^1\) The current constitution of SCAR does not cite its legal status. The most likely status is an unincorporated association.
1 The name proposed for this entity is “Scientific Committee on Antarctic Research”. The word “limited” will not be used as the entity is a charity.

2 The Charity must have its registered office in England or Wales as it is incorporated under the law of England and Wales.

3 The objects clause specifies the Charity's objects, its purpose, and the powers it is to have.

4 This clause specifies in detail the powers that the Charity may exercise in the furtherance of its objects, as laid down in clause 3.

4.11 The majority of companies obtain directors’ and officers’ insurance to cover their directors (to the extent permitted by law) for any acts/omissions whilst carrying out their duties as directors (and trustees as the entity is a charity). It is strongly recommended that the Charity procures such insurance cover. Please note the Charity may not, as a matter of law, procure insurance cover for certain liabilities – these limitations are set out in clauses 6 and 7. See also clause 10 regarding trustee indemnity insurance.

8 All income and property of the Charity shall be used solely for the promotion and furtherance of the objects, laid out in clause 3.

9 Directors may be reimbursed their reasonable expenses incurred when acting on behalf of the Charity.

11 Members may not receive income or property from the Charity. Note the exceptions for members who are also directors in clauses 11.1 and 11.2 (e.g. receiving a salary (where appropriate)). There is also an absolute prohibition upon the net assets of the Charity being divided amongst its members (clause 22).

12 Prohibits directors from buying or selling from the Charity or receiving remuneration or other financial benefit from the Charity unless they fall within the exception in clauses 13 and 14 and comply with the procedure in clause 15 – this is a Charity Commission requirement.

18 In basic terms, if the Charity is wound up (which may happen, for example, if the Charity cannot pay its debts) then each member will have to pay no more than £1 to the Charity. This is the amount that each member 'guarantees' or promises to pay to the Charity by becoming a member.

20 & 21 These clauses deal with how the net assets of the Charity may be dealt with upon its dissolution. If the Charity dissolves and the procedures in clauses 21 and 22 are not followed then the net assets shall be applied for charitable purposes as directed by the Charity Commission (clause 22).

You will note that the Royal Society is a subscriber (the Initial Member) to the Charity. Every Charity must have one or more subscribers. It is suggested that, in the first instance, only one member of the SCAR Existing Entity is a member of the Charity. This will hopefully make the adoption/approval of any minor changes that the Charity Commission requires to be made to the Memorandum/Articles much easier in terms of administration. Once the
Charity has been fully registered then it is intended that all of SCAR Existing Entity’s members will become members of the Charity.

**The Articles of Association**

This document sets out the “rules” for the operation of the Charity’s internal affairs.

All companies must register their articles with Companies House.

2.3 The number of members is not limited. Each member may hold only one membership.

2.7 Membership to the Charity may not be transferred and ceases on death or dissolution of the Member.

2.8 A register of the members of the Charity shall be kept in accordance with the law of England and Wales governing companies.

3.1 Membership: There are currently four categories of membership with differing rights and obligations; Full, Associate, Union and Honorary. According to article 4.2 the different categories of membership shall have differing levels of representation. The directors may create further classes of member (article 3.2) but may not alter the rights and obligations of existing members (article 3.3). The rights and obligations attaching to existing classes of membership may only be varied if three-quarters of the members of that class consent in writing or a special resolution is passed agreeing to the alteration, at a separate general meeting of that particular class.

4.1 The Charity must receive notice of the appointed representative of the member organisations. The representative will continue as the member’s representative until written notice to the contrary is received by the Charity.

5 This article sets out the various ways by which membership may be terminated.

6 General Meetings:

Pursuant to legal requirements, the Charity must hold an annual general meeting (AGM) once every twelve months, but the first meeting may be held up to eighteen months following incorporation.

However, the Charity intends, as is permitted by law, to dispense with the requirement to hold AGMs. To follow the current SCAR constitution, it has been provided that the Charity will hold a general meeting (a Meeting of Delegates) once every 30 months, (it is intended that a meeting will be held once every 24 months, but an extra period of 6 months is given in case the timetable slips in any given period).

7 This article sets out the statutory notice periods (it is noted that the Rules of Procedure provide for longer periods) for calling general meetings. Note under article 7.5 that proceedings will not be invalidated due to the accidental omission of the Charity to give notice to a person entitled to attend and vote.
This article sets out how the general meetings will be operated. No business may validly transacted unless half the total voting members are present (articles 8.1 and 8.2). In the case of a full member either but not both of the delegates must be present to count in the quorum (article 8.3).

Unless otherwise provided in the Articles, by Member Approval or in the Rules of Procedure, all business conducted at the general meeting shall require a three-quarters majority of those voting Members present.

The Rules of Procedure may specify that certain matters shall only be passed by unanimous consent.

This article details the voting rights of the different classes of member. Under article 9.2 a member may not vote if he owes money to the Charity.

Directors must be natural persons, aged over eighteen. The number of Directors shall not be less than three.

The Directors shall exercise all powers of the Charity subject to the Companies Act 1985, the Memorandum and the Articles.

This article lays out the tenure, composition and appointment of the Directors of the Charity. The Directors shall be elected in accordance with the Rules of Procedure (article 12.2).

A Director shall cease to hold office if he/she is prohibited for legal reasons; ceases to be a representative of any Full Member (unless he/she has been President within the past two years); becomes incapable of administering his/her own affairs; resigns as a Director; is absent without the permission of the Directors for two consecutive meetings and the Directors resolve that he/she should cease to be a director; or dies.

There is a prohibition on Directors receiving remuneration unless it is authorised by the Memorandum.

The Directors must hold a minimum of two meetings per twelve months.

The Directors may not make a decision unless at least half the total number of Directors is present. A Director will not count in the quorum when a decision is taken upon which they are not entitled to vote. If a quorum is not present within half an hour of the commencement of the meeting or ceases during the meeting then the meeting shall be adjourned and at least seven clear days’ notice of the new meeting given. At the reconvened meeting where no quorum is present after thirty minutes from commencement then Director vacancies may be filled and a general meeting called (article 16.3).

This article allows Directors to delegate their powers or functions to committees comprising two or more directors.

Subject to Member Approval, the Directors may create Working Groups to undertake certain aspects of the business of the Charity. The Working
Groups shall have the composition set out in Article 17.9. The formation and operation of the Working Groups will be governed by the Rules of Procedure.

21 It is necessary for the Directors to comply with the charity law governing England and Wales.

22 This article lays out the rules and procedures regarding the giving of notices pursuant to the Articles.

23 This article provides that the Charity will indemnify the Directors and officers of the Charity against liabilities incurred in defending civil or criminal proceedings, providing that the individual receives judgement in their favour or is acquitted (see clause 4.11 above in respect of directors and officers’ insurance).

24 This article allows the Directors to adopt any reasonable and proper rules that they deem necessary for the management of the Charity.