**Proposed Revision of ROC’s Articles of Association**

*An interim written version of an oral progress report on proposed changes to ROC’s Articles of Association. This interim report contains salient background information, and will be supplemented by further explanation at the ROC board meeting on 25.3.19 (item 11).*

Hugh Wilkins

ROC Honorary Secretary

22 March 2019

**Background**

On taking on the role of honorary secretary for Radiology and Oncology Congresses I made it my business to acquaint myself with the rudiments of company secretarial practice, particularly as it relates to charitable companies. As part of this I made enquiries about ROC’s governing document. Richard kindly sent me the *ROC Manual*, which ROC’s trustees should be familiar with.

Our governing document is contained in Annex 1 of the the ROC Manual. It essentially consists of ROC’s Memorandum and Articles of Association. It is not an easy read.

As I read it, I became increasingly uneasy about a number of aspects. In particular I was concerned that it makes repeated references to *The Companies Acts 1985* and *1989* and *The Charities Act 1993,* but not to more recent legislation (notably *The Companies Act 2006* and *The Charities Act 2011*, both have which have been subsequently amended.

I undertook CPD to augment my knowledge in relevant areas, including becoming a member of ICSA, formerly known as the *Institute of Chartered Secretaries and Administrators*. In keeping with the times it now refers to itself as *The Governance Institute* and as *the professional body for governance*. To help me undertake this role to the best of my ability I studied a number of their publications, and acquired an understanding of their mission, values and culture.

I also attended a Trustee Training Workshop advertised in one of their mailings, organised by Wilsons Law, a solicitors firm with offices in Salisbury and London. I met Gillian Fletcher, who came to our last meeting on 8th October 2018. Gillian is the Director of Charity Law and Governance at Wilsons Law, and was a senior lawyer at *The Charity Commission* for many years. She knows her onions.

The more I learned, the more concerned I became about our legal position. With Gunter’s agreement I invited Gillian to cast her eye over our governing document, and she confirmed my suspicions. **We need to bring our *Articles of Association* into line with current legislation. We also need to re-visit and resolve what appears to be an omission in actions taken in 2005.** (It is not clear whether a number of changes made to our governing document in 2001 and 2005 were notified to *The Charities Commission*, as they should have been.)

Gillian drafted an initial set of proposals to revise ROC’s Articles. These went through several iterations in July 2017 and I gave the resulting preliminary proposals for revised Articles to our Chair. Gunter thought they were too long, and said he would shorten them. I don’t think the abbreviated version which he said he would write saw the light of day, probably because at the time there was a very strong focus on other matters (resulting in today’s meeting being held in Lincoln’s Inn Fields).

Whilst other matters were being prioritised the proposed revision of ROC’s Articles were kept on the back burner. Wanting to bring it back to the boil, I invited Gillian to attend our meeting in October, which most of us attended. Some of us were also present at the meeting of ROC Events Ltd later that day, when there was further discussion.

**Extract from Minutes of ROC board meeting held on 8th October 2018 (11:10 – 13:10)**

**Item 8: *Governance matters (Articles of association\*; ROC-E structure; … )***

*GD welcomed Gillian Fletcher, Director of Charity Law and Governance at Wilsons LLP, who joined the meeting for this item. GF has 30 years’ experience in this field, including 13 years as a senior lawyer in the Charities Commission (CC). She undertook preliminary work on revision of our Articles and Memoranda of Association in 2017. This was put on hold pending resolution of member organisation discussions, but it is now time to take this forward. Two documents relevant to this item had been distributed before the meeting:*

* *ROC Articles (GF proposals 170717)*
* *Outline of key changes made - Memorandum and Articles of Association*

*GF explained what she has reviewed so far, and the institutional background of the charity. ROC is established as a charitable company limited by guarantee. It is incorporated in Companies House and registered with the CC. It was incorporated in 2000. Some minor governance changes were made in 2001, then substantive revisions in 2005. The 2001 changes were recorded with both Companies House and the CC; the 2005 changes were recorded with Companies House, but not with the CC. Some of the 2005 changes required CC consent. It is not clear whether that consent was received, so tidying-up is required.*

*GD asked whether this was contentious, in that we may have failed to inform the CC. GF said she would regard this as a technical breach and does not anticipate major difficulties, though she cannot speak for the CC. When submitting revised Articles we will have to explain the glitch in 2005, in the light of different versions of the Articles currently held by Companies House and CC.*

*GF has updated ROC’s Articles to reflect changes introduced in the Companies Act 2006, which came into force in 2009. She outlined key changes in this draft revision, as described in the ‘Outline of key changes made – Memorandum and Articles of Association’ document. They relate to: Membership provisions; Trustee-Directors (including terms of office - GF encouraged the board to make the Articles fit with what we do in practice); absence of need for memorandum of association and AGM; increased flexibility, e.g. electronic meetings; administration; good governance; compliance with current legislation (Companies Act 2006 and Charities Act 2011); modernisation of powers; reversion to original restriction of benefits; etc. GF said that the suggested changes, which are open to discussion, are not intended to change how we operate, but rather how this is documented.*

*ROC’s members are the four member organisations (BIR, CoR, IPEM, RCR). The proposals for revision of the articles include tightening-up, such that organisations have Authorised Representatives. ROC’s trustees are its directors. Directors have a range of fiduciary responsibilities to the charity. ROC’s charitable company status notwithstanding, individuals can be held personally liable for any breach of trust, e.g. use of funds for purposes outside our charitable objects. We have a mix of corporate directors and individuals, which in GF’s view is undesirable; it is preferable for directors to be individuals, because it is then clear where responsibilities rest. The present mix muddies the waters in respect of decision-making processes; from a governance perspective it is far from ideal.*

*Various ways of appointing trustees are possible. Each of the member organisations could have the right to appoint one or more trustees, who would be named individuals. If there are two trustees from each member organisation each organisation would have two votes. This would be different from the current arrangement in which each member organisation has just one vote.*

*GD queried whether, to retain the current arrangement in practice, member organisations could have alternates – i.e. one of two named individuals representing each member organisation at any one time. GF replied that the CC does not like alternate arrangements. RC asked about proxy arrangements – GF said that proxy arrangements are not desirable when it comes to trustee voting responsibilities; they are only appropriate when proxies are acting on behalf of members (i.e. on behalf of member organisations rather than ROC).*

*GD commented on the suggestion that honorary officers be appointed from among the directors nominated by member organisations. Whilst member organisations are involved in strategic decisions the honorary officers undertake executive roles between meetings, and are directors of the commercial enterprise (ROC Events Ltd) which runs the congresses. GF replied that there would normally be a core body of trustees, who would be: self-perpetuating with ability to co-opt; or elected; or appointed by member organisations. Most charitable companies would then choose honorary officers from among that core of trustees. If the necessary skills/attributes required to undertake the honorary officer roles were not present, the trustees would be able to appoint from outside that core body.*

*There was discussion as to how this might work for ROC. The Articles could be written such that each member organisation has the right, but not the obligation, to nominate two trustee-directors. The board would be able to co-opt additional board members to undertake honorary officer roles - executive committee appointments could be either members of member organisations or external appointments. ROC would not be obliged to accept nominations – acceptance could be by majority voting. GF advised against being too prescriptive as to member organisation nominations. There could be an expectation that one of the member organisation nominations would normally be their CEO, and the other the President or another person with particular skills/attributes. It was agreed that the Congress President be on the board ex officio, though appointed as an individual. This could lead to a board of between 9 and 13 trustee directors, allowing for possibility of dual roles. It was noted that the Articles allow us to write our own bye-laws.*

*The relationship between ROC and its trading subsidiary, ROC Events Ltd (ROC-E), was discussed. GF commented that, if ROC-E’s role is confined to primary purpose trading, from a charity perspective and possibly a tax perspective there is no need for ROC and ROC-E to be separate companies. JT noted that a large part of congress income comes from exhibitors at the exhibition - GF agreed that this points to separate companies. Article 4.21 provides powers for ROC to establish and own, in whole or in part, any company. We have power in any case to do lawful things deemed to be expedient. We do not need anything in the charity’s Articles to say how we would organise things that go on in the subsidiary.*

*There was further discussion about how ROC Events Ltd is constituted. At present the honorary officers (the executive committee) are also directors of the trading company and, in addition, the Chair represents the member organisations. ROC owns the shares in ROC-E. GF advised that we need to be conscious of potential conflicts of interest. She suggested that ROC is currently overly-represented in ROC-E and that this be reduced, whilst maintaining ROC oversight.*

*GD noted that ROC Events Ltd has additional directors, and that the direction of travel has been to reduce the number of ROC-E directors whilst increasing the role of supporting committees. GF supported the reduction in the number of ROC-E’s directors but queried the balance of ROC-E’s board. There could be scope for appointment of, for example, someone with event management experience, though it is important that ROC, as the sole member, controls who is on ROC-E’s board. GD commented that current arrangements allow for representation of ROC, and that the executive committee directorships are a matter of expedience, as we do not want separate officers for ROC and ROC-E. GF noted that the CC and Companies House look at the relationship between charities and their trading subsidiaries in different ways; whilst there is independence the charity still needs control. She said that there would be no benefit to us in switching from being an incorporated charitable company to being a charitable incorporated organisation.*

*It was agreed that GF be asked to take things forward in liaison with HW, further developing the draft revised articles in line with the discussion at this meeting and liaising with the CC as appropriate. Updating ROC-E governance can be considered as stage 2.*

***Action GF, HW***

**Extract from Minutes of ROC-E board meeting held on 8th October 2018 (14:00 – 15:30)**

**From item 4: *Minutes of last meeting*** *(3rd July 2018)*

*GD noted some items from the minutes to be taken forward: ……………………… ROC-E board structure. In respect of the latter and the relationship between ROC and ROC-E, GD commented that, in light of the legal advisor’s comments in the morning’s ROC board meeting, we now seem to be moving full circle. The preliminary advice we are now getting, contrary to the earlier emerging consensus to make ROC-E’s board smaller and more streamlined as a sub-set of officers, with committee heads and expert co-optees in specific areas attending, is to have a greater distinction between the charity board and the operational board. This will require further debate, linked with revision of the Articles of Association, and we should not make any rash decisions.*

**22.3.19 Update and next steps**

Proposals for revision of ROC’s Articles have gone through several iterations since the last ROC board meeting. The latest version (version 3) is dated 22 March 2019. I think it represents a reasonably mature draft which now needs detailed consideration by others, in particular ROC’s Members (BIR, CoR, IPEM and RCR).

I will prepare an overview of key features of version 3 of the proposed revision of ROC’s Articles for the ROC board meeting on Monday 25.3.19.

HBW

22.3.19