

*Social***Firms UK**

# Template Social Firm Guarantee Company



by GEOFF COX for Social Firms UK

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## Social Firms UK

Social Firms UK is the national support agency for social firms. It is a membership organisation with the mission of creating employment opportunities for disabled people through the initiation, development and support of social firms throughout the UK.

As well as lobbying to improve the overall environment for social firm development, SFUK aims to provide tools and resources to its members to help them develop their enterprises. This template company constitution is just one resource it is able to offer the social firms sector – for others please refer to the Resource Centre on the Social Firms UK website:

[www.socialfirms.co.uk](http://www.socialfirms.co.uk)

Geof Cox has been involved in social enterprise for 25 years, has been a consultant with the social enterprise development company *Economic Partnerships* since 1995, and an associate of the international social enterprise organisation, *NESsT*, since 2004. He is a specialist in organisational change and restructuring, especially around the start or expansion of trading activities by public or voluntary sector bodies. His work includes the development of appropriate organisational structures for trading, the 'floating-off' of trading activities, and training public and voluntary sector staff in social enterprise development and management skills. He works throughout the UK and also frequently in Eastern Europe and Eurasia.

Published work includes

*Delivering Community & Employee Buy-outs* (co-author - Co-operatives<sup>UK</sup> 2003)

*Legal/Financial Structures for Social Firms* (SFUK 2000)

*The Musician's Union Guide to Music Co-operatives* (Musicians' Union 1996)

*Turnarounds - A Guide to Democratic Conversions and Buy-outs* (OpenUniversity 1995)

Sally Reynolds of SFUK and Guy Turnbull of *Economic Partnerships* have also contributed valuable time and ideas to the development of this Template.

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## Introduction

Most social firms are currently choosing to register as **'not-for-profit' guarantee companies**. The 'Template' company constitution set out here is intended to assist social firms to form themselves into a company if they have already decided on this type of guarantee company structure.

It must be noted that 'not-for-profit' is a notoriously vague and misleading term. It may have originated in American English - and indeed it does have a specific meaning in US tax law. Many alternatives have been suggested, of which perhaps Declan Jones' 'More-than-Profit' is the best. However, 'not-for-profit' is still firmly entrenched in funders' language, and for most this is reason enough to continue using the term to describe the kind of guarantee company set out here. Precisely what 'not-for-profit' means in this context is explained under *The main points of the Template* on p.6 below.

It is NOT our intention to influence any potential social firm's choice of structure. For many social firms, some other organisational form or status, such as a share company, society, charity or co-operative will be more appropriate. The 'decision chart' on the right outlines some of the issues that are typically addressed in deciding on an organisational structure.

Usually, the social firm founders will have a rough initial idea of the organisational model they want, which, according to the ownership and management arrangements they have in mind, will generally fall into one of the broad categories of:

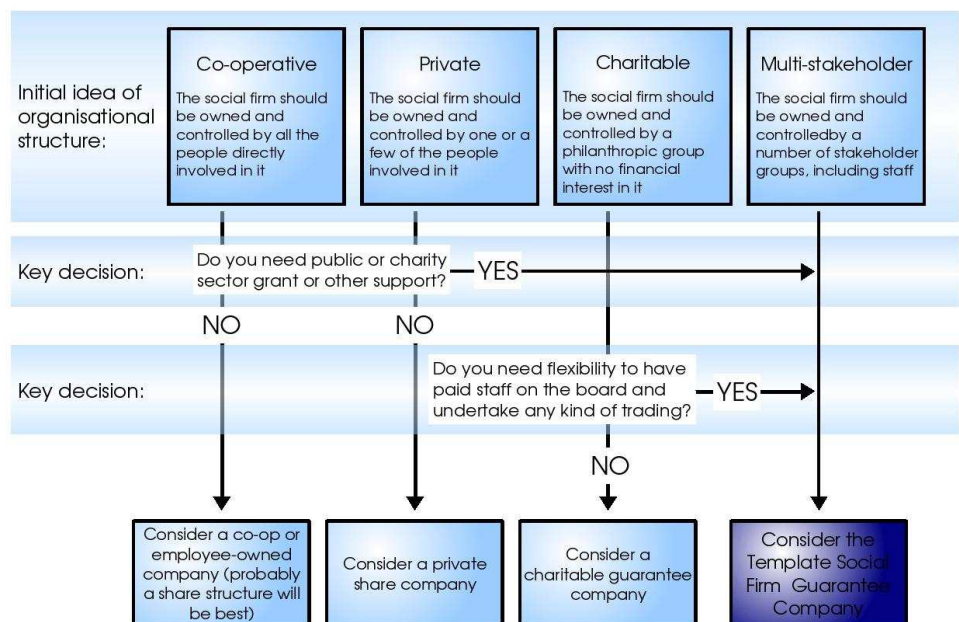
- ∞ co-operative
- ∞ private

- ∞ charitable
- ∞ multi-stakeholder

However, this starting point must be subjected to a number of key questions - two of the most important are suggested in the diagram - that often lead the founders to compromise their initial model. Help is usually needed in working out these key questions, and discussion involving all of the key people is important both to getting the legal/financial structure right and any necessary compromises understood and supported by all. *This Template will be most useful late in this advice and discussion process, when other options have been discussed and ruled out, and you are sure that a 'not-for-profit guarantee company' is really what you want.*

To help with the earlier discussion, Social Firms UK produces a short guide to Legal/Financial Structures for Social Firms which sets out the uses, advantages and disadvantages of different types of organisational structure.<sup>1</sup> We also strongly advise you to talk to a solicitor or other specialist adviser - perhaps through one of the free professional service schemes such as ProHelp ([www.prohelp.org.uk](http://www.prohelp.org.uk)).

Why a group planning a social firm might want to choose the Template social firm guarantee company



<sup>1</sup> Legal/Financial Structures for Social Firms by Geof Cox, SFUK 2000. This short guide will be revised and extended in 2005 when recent changes to company and other law, such as the introduction of Community Interest Companies, are complete.

However, for perhaps the majority of social firms a 'not-for-profit' guarantee company structure like that set out here does combine a number of important advantages:

- ∞ it is simpler and cheaper than most other structures to establish and to manage
- ∞ it is charity-like, and many grant-giving bodies will support it - and many local authorities will also grant discretionary rate relief
- ∞ however, it is not restricted in many of the ways registered charities can be: for example it can trade freely and have paid employees as directors.

The main *disadvantages* of this kind of not-for-profit guarantee company structure are that:

- ∞ unlike a registered charity, there is no guarantee of any rate relief (or corporation tax relief - but this is only important if you might make big profits - and most social firms don't!)
- ∞ unlike share companies or societies, no equity investment can be raised, and value cannot be taken out of a guarantee company tax-efficiently.

These disadvantages have a greater impact on larger organisations, so most small social firms currently take the view that, at least if they can secure discretionary rate relief, the advantages of the not-for-profit guarantee company structure outweigh the disadvantages.

During 2005 the government intends to introduce a new form of company, called a 'Community Interest Company' or 'CIC', which is designed specifically for small social enterprises. In its guarantee company form the CIC will in fact include most of the features of this Template, and for those who want to take the further step of becoming a CIC the change in status from the current Template should be straightforward.

## The 'Mem&Arts'

The constitution of a company is called '*the memorandum and articles of association*', which is normally abbreviated to '*the Mem&Arts*'. Writing a company constitution is a skilled task, but if you are sure that you have properly considered the most appropriate organisational form and status, and believe the Template set out here is right for you, you can download a word-processable version of the Template set out here from the Social Firms UK website, and use this as the basis for your own constitution.

The aspects of the Template Mem&Arts you **must** change, such as the company's name and the main objects, and also some areas you should definitely *consider* changing, are highlighted in the Template. In addition, there are many aspects you may wish to alter, and some common variations are discussed in the *Notes* on p.30.

However, any substantial alterations require great care, and usually professional advice if you are to avoid inconsistencies with company law and also to be sure that your chosen wording will hold good in any dispute - which might ultimately end up in court.

Neither the author of this Template, nor Social Firms UK, can accept any responsibility for the changes you make.

## The process of forming a company

The process of forming a company like this is fairly straightforward. Companies House, the government department that deals with company registration and administration, publishes a booklet called [Company Formation](#) which describes the process, and which is available free by post or can be downloaded from [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

In addition to the Mem&Arts you will also need at least 2 forms to register the company - known as Company Forms 10 and 12 - examples are included at p.34 below - which can also easily be downloaded from the Companies House website. Form 12 is a 'statutory declaration' and must be witnessed by a solicitor or one of the other officials listed on the form.

The following are the steps you need to take to form the company:

1. Decide on the name for your company. Normally this must end in the word 'Limited' or the abbreviation 'Ltd' (you must choose one or the other of these and use it consistently throughout the Mem&Arts and Forms 10 and 12). It is possible, for this type of company, to omit Limited/Ltd from the name but to do this you will have to complete another statutory declaration - Form 30(5)(a) - and write a covering letter setting out why you needn't have 'Limited' or 'Ltd' in the name. Also note that there are some words you cannot use in company names, or for which you need permission. Again you can download a free leaflet called [Company Names](#) from the Companies House website explaining all this.
2. Check that the name is available. First check the name online at the Companies House website - just click through to the 'WebCheck' area and type your proposed name in the box. The search engine will take you through to the relevant part of the companies register. If the name is already on the register you will have to think again. Although only a slight variation

may be required for company registration purposes, there are other legal risks around using a name that is very similar to any other organisation - whether they are a company or some other kind of body such as a partnership. It is therefore wise in addition to the company register check to look in other directories - one easy way is to type your proposed name into the 'yellow pages' search engine at [www.yell.com](http://www.yell.com). You can also search registered trade marks (follow the link from the Companies House Webcheck area). If these on-line searches and local knowledge don't throw up any problems you are probably safe.

3. Decide on at least one person - preferably 2 people - who will be the first director(s). We do not recommend more than 2 directors at this stage - it is easier to appoint the other directors (if any) once the company is registered.
4. Decide who will be the company secretary. Often this role is taken by one of the first directors - but note that if there is only one first director s/he cannot also be the secretary.<sup>2</sup> To complete Companies Form 10 you will need the basic details of the director(s) and secretary - names, addresses, dates of birth, etc.
5. Decide on the 'registered office' and get the full address. If you do not yet have premises it is quite usual to use some other convenient location for the registered office such as the home address of one of the directors or the secretary. The main consideration is that it is a safe and convenient place to receive important letters.
6. Print the finalised version of the Mem&Arts, including now your company name, sign both the memorandum and the articles in front of a witness, and fill in the other details in the relevant spaces - the witness also signs and fills in their details. The 'subscribers' who sign the Mem&Arts will be

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2 More information on the roles of director and secretary can be found in our guide [Legal/Financial Structures for Social Firms](#).

the company's first members, and we advise only 2 people to do this - further members can be admitted as soon as the company registration is complete, but it is usually inconvenient for a large group to sign at the registration stage.

7. Fill in Form 10 - this is where you need the personal details of the first director(s) and secretary and also the registered office address. Again our advice is that only 2 people sign - usually the same as sign the Mem&Arts, but this time they are signing as *directors* rather than *members*. Note that the subscribers to the Mem&Arts also sign Form 10 at the end whether or not they are the same people as the first directors.

*Make sure you read the notes on Form 10 and fill it in accurately. One question that often catches people out, for example, is on 'other directorships' - if any of the first directors are already directors of other companies they need to list them here, but if they are not they must write the word 'none' here - if it's just left blank the form will be regarded as not completed, and it will be sent back to you to finish off.*

8. One of those who have signed as a director or secretary then fills in the company name and their own name and address at the top of Form 12, *but does not sign it yet*. They take this Form and the other registration documents to a solicitor (or one of the other officials listed on Form 12) and signs it in front of them - the solicitor fills in the rest. The formality of this 'statutory declaration' procedure varies, and there may be a very small charge (often, we find, £5). You may also be asked for proof of identity.
9. Photocopy all of the signed documents - this is important as you will have to pay to get copies once they go off to Companies House.
10. Send all of the documents along with a cheque for the registration fee (currently £20) to Companies House (in Cardiff if the registered office is to be in England or Wales, or Edinburgh if in Scotland - the

addresses are on the Forms - or again just look at the website, where indeed it might be wise to check the current registration fee anyway as it does change from time to time).

11. In a week or two you should receive your company registration certificate - from the moment the registration certificate is given the company exists. You will also receive further information about what to do next in terms of running the company.

## The main points of the Template

A company constitution is in two parts:

- ∞ The *memorandum of association*, which sets out all the things that are most important to the *outside* world in dealing with the company, such as what kind of legal entity it is, what it's called, where it is, and what it's for.
- ∞ The *articles of association*, which set out the things that are only really important to the people *inside* the company - its members and directors - such as how to admit members, hold meetings, elect directors and so on.

The memorandum starts with the name - discussed above - and the location. You may have to change this to 'Scotland' or 'Wales', or you can and should use 'England and Wales' if there is any possibility that you might move between the two.<sup>3</sup>

## The objects and powers

It is important to recognise that the objects have two main purposes:

- ∞ First, they guide future members and directors on the range of aims and activities which the Company should pursue, and offer potential members a statement of the purpose of the organisation they may join which is more permanent - because less easily changed - than any 'mission statement' or business plan 'aims and objectives'.
- ∞ Secondly, the objects offer a guide to outside bodies, especially potential funders, on the real purposes and activities of the Company.

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<sup>3</sup> You cannot however choose other combinations such as 'England and Scotland'. Moving your registered office between these two countries, or between Scotland and Wales, requires re-registration. Company law applies throughout Great Britain and the Template can be used in Scotland, but note that other aspects of the legal system are normally consistent across England and Wales but may be slightly different in Scotland.

In the Template, object A is reserved for your own trade purpose. For example, this might be something like:

*A. To manufacture and sell soaps and related products;*

or:

*A. To provide printing and related services.*

Objects B to E define the company's status as a social firm, are broadly charitable, and should appeal to potential funders. For example, object D -

*D. To promote and improve for the public benefit the economic and social well-being of people living and working in areas where the Company operates.*

- refers specifically to local authority 'well-being' powers, and this wording has been required by some local authorities considering funding social firms. Note that you may change 'areas where the Company operates' to a specific location, such as 'Northumberland and surrounding areas' if you wish - this can strengthen the case for local authority support by limiting this aspect of your activities to their area. Try not to be too specific though as many organisations that limit themselves to too small an area come to regret it - hence we usually add a phrase like '... and surrounding areas'.

The objects are followed by a long list of 'powers' - these have been found to be useful in legal case law over the years and should not be changed without advice.<sup>4</sup>

## 'Not-for-profit'

As previously noted, this type of guarantee company is often described as 'not-for-profit', and funders especially may expect you to use this description. What 'not-for-profit' actually means here is really *that the Company does not distribute profits to members or directors.*

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<sup>4</sup> For commercial companies it is now usual to integrate the objects and powers clauses, and to give the power 'to do all such things as are incidental or conducive to the carrying on of any trade or business'. However, this approach is not recommended for social firms.

Specifically:

- ∞ profit cannot be extracted as dividends from a guarantee company;
- ∞ extracting profit through artificially high interest payments is prevented by memorandum clause 7;
- ∞ any other kind of profit extraction is prevented by memorandum clause 8; note that in this Template directors cannot be paid in respect of their duties as directors, but - unlike most charities - they *can* be employees;
- ∞ 'asset-stripping' is prevented by memorandum clause 9 - in a winding-up assets must be given to a body promoting other social firms.

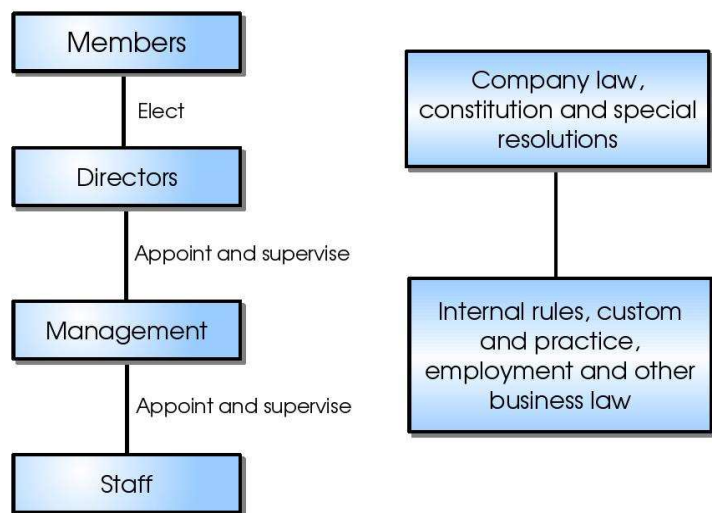
Again, if you might get local authority support it may strengthen your case to substitute for the words 'a regional or local organisation' the more specific wording: 'an organisation in (the actual local authority area). This increases the chances that the value that local authority support has helped to build up in the social firm will remain local even if the company has to wind up.

## Membership

The usual relationships within a company, and how they are governed, are illustrated in the diagram on the right.

The members in general meeting have the power to take certain fundamental decisions, such as changing the articles of association (though to do this at least 75% of them must vote for the change, because it requires a 'special resolution').<sup>5</sup> Most importantly, however, the members have the power to elect the directors, and can remove directors at any time (though they have to go through a specific procedure to do this).

The directors are responsible for the day-to-day management of the Company - though of course they normally appoint



managers and staff to do most of this.

Because it is the members - not the directors - who are ultimately in control of the Company, careful consideration must be given to the membership structure - *who should the members be?*

In most companies, the members are the investors who establish the business or provide new finance, but this is of course not normally the case for social enterprises, which might equally draw their membership from say their staff (as in a worker co-operative) or a local community (as in a community business).

Some social firms choose co-operative models, although this can lead to funding problems if grants are required, because co-operatives are by definition profit-making. Mostly, social firms choose a 'multi-stakeholder' organisational model.

The multi-stakeholder model has proven very successful in a number of areas of social enterprise, perhaps most strikingly in the Development Trusts movement. Development Trusts, which are about local economic and social regeneration, typically include at least 3 stakeholder groups - individuals living and/or working in the area of benefit, local businesses, and local authorities.

Co-incidentally, in most social firms there are also at least 3 'stakeholder groups':

- ∞ staff (disabled and non-disabled)

<sup>5</sup> Again, for more information see our guide [Legal/Financial Structures for Social Firms](#).

- ∞ volunteers and other helpers and supporters such as the parents of the disabled people involved
- ∞ organisations such as charities, health trusts or local authorities that provide support either in-kind or financially.

The membership categories in the Template company structure put forward here reflect these three groups:

- a) **'Employee members'** are employees of the Company or its subsidiaries.
- b) **'Supporter members'** are individual members who support the aims of the Company and make use of its services and/or provide practical aid directly to the Company or its employees.
- c) **'Supporting organisation members'** are organisations which support the objects of the Company and have an interest in the Company primarily by virtue of providing funds, facilities, advice or other practical support directly to the Company or its employees.

As ever, however, it is important that you think through for yourself the question of who your members should be, taking full account of your specific aims and circumstances - *and especially the nature of the disabilities you are dealing with*. Most social firms in the UK include people with learning disabilities or mental health problems who find it most difficult to enter the general labour market, and the Template rather assumes that additional support will be required. For people with conditions less disabling in relation to work - such as most physical disabilities and many mental health problems - a worker co-operative or employee-ownership model may be more empowering and successful.

## Composition of the board of directors

The membership exercises its most important power when it elects the directors, and by varying the voting rights of the different membership categories different 'balances of power' can be achieved to better reflect your aims and circumstances. You might for example see the need to involve all of the

above stakeholder groups but still give the staff control over day-to-day decisions - this is easily achieved by giving membership category 'a' the right to elect more than half of the board of directors.

In this case however it must also be remembered that if more than 75% of the whole membership wants to change this allocation of voting rights they can vote through a 'special resolution' to actually change the articles of association in this respect, so care must always be taken over who exactly is admitted to membership. Note that article 7 in the Template gives the directors the right to refuse any application for membership: *nobody has an automatic right to membership in this Template*, although it is assumed that most employees will in fact be admitted as members.

In the Template it is article 34 that contains our suggested 'balance of power' - which is in fact an equal balance of the stakeholders:

34. *The maximum number of directors shall be nine. The composition of the board of directors shall be as follows:*
  - a) *not less than one person nor more than three persons from the category of **employee members**; and*
  - b) *not less than one person nor more than three persons from the category of **supporter members**; and*
  - c) *not less than one person nor more than three persons from the category of **supporting organisation members**.*

There are a number of issues to be considered here.

- ∞ First, the number of directors. In general this is a question of balancing representation - which usually pushes the number up - and practicality - which pushes it down. Any *maximum* number between 6 and 12 usually works pretty well - below this is usually unrepresentative in a multi-stakeholder structure, and may also mean missing out on some useful skills and other contributions, but more than 12 directors is definitely unwieldy, unless you intend to grow very big very quickly.

- ∞ Second, the Template proposes substantial staff representation but *not* majority control. A majority of staff on the board of directors would put off some funders, because they might vote themselves pay increases that would reduce the Company's effectiveness in relation to its wider social or charitable objectives. This is also one of the reasons for article 76, which prevents any director voting on their own pay and conditions. If for example a pay rise or bonus was proposed for all staff it would have to be agreed at a meeting only of those directors who are not paid staff. *In general you have to bear in mind, if you really need grant funding, that you cannot expect most funders to be happy unless at least a majority of members and directors are 'disinterested' in financial terms.*
- ∞ Finally, the Template gives the individual supporters and the supporting organisations equal representation of between 1 and 3 directors each.

Another key aspect of the election of directors in the Template is the 'election by thirds' system. Many will be familiar with this because a lot of local council elections now work in this way: only a third of the seats come up for election each year. so in effect every representative is elected for a three year stint. For companies this has been the norm for many years, and has the advantage over alternative arrangements, such as annual election of the whole board, of providing continuity - since each year two thirds of the board continue in office - and giving each director a reasonable time to settle in and think strategically. They can stand for re-election and so may carry on after 3 years too.

## Equal opportunities and social auditing

The idea of equal opportunities is of course at the very heart of the social firms movement, and Social Firms UK has developed a number of articles - 71 to 75 in the Template - intended to give legal expression to this commitment.

In addition, the wording throughout the Template has been carefully chosen to emphasise equal opportunities. This is not just a matter of political correctness, but of

encouraging a more positive view of disabling conditions. For example where many company constitutions include provisions to terminate a director's office specifically on mental health grounds, we prefer to see any incapacity caused by mental health problems in exactly the same light as incapacity caused by any other kind of health problem - hence our wording at article 39:

- a) *he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months.*

Finally, the articles set out some suggestions as to how a social audit should be conducted if required. Note that this is set out in the form of an option rather than an obligation, mainly because there will usually be a cost attached to carrying out a social audit and in the lives of most social enterprises there will be times when limited funds have to be spent elsewhere!

In this, as in most other respects, the articles give only a framework in which to carry out your real work - monitoring your social and environmental impact is best done as part of your routine operating procedures, just as you must monitor your financial performance by adding up your income and expenditure each week or month, rather than waiting for your audit at the year end!

THE COMPANIES ACT 1985

COMPANY LIMITED BY GUARANTEE

Memorandum and Articles of Association

of

A Template Social Firm Limited

The Companies Acts 1985 & 1989

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF  
**A TEMPLATE SOCIAL FIRM LIMITED**

- 1 The name of the Company (hereinafter called 'the Company') is **A Template Social Firm Limited**.
- 2 The registered office of the Company will be situated in **England**.
- 3 The objects of the Company are:
  - A. To [REDACTED]
  - B. To promote and provide for the public benefit volunteering, training, work experience and employment opportunities to unemployed people with disabilities or other severe disadvantage in finding employment.
  - C. To advance the education of the public with particular reference to social firms for people with disabilities and the benefits they provide to the public and to their workers.
  - D. To promote and improve for the public benefit the economic and social well-being of people living and working in areas where the Company operates.
  - E. To protect and conserve the environment and advance the education of the public with particular reference to the protection of the environment.
- 4 In furtherance of the above but not otherwise, the Company shall have the following powers:
  - a) To carry on any other trade or business whatsoever which can in the opinion of the Company be advantageously carried on by the Company incidental to or conducive to or ancillary to any of the objects of the Company or is calculated directly to benefit the Company or enhance the value of or render profitable any of the Company's property or rights or is required by any client or customer or persons (legal or natural) dealing with the Company.
  - b) To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, easements, rights, privileges, concessions, patent rights, licences, secret processes, property of any kind necessary or convenient for the purpose of or in connection with the Company's objects or any branch or department thereof.

- c) To erect, construct, lay down, enlarge, alter and maintain any shops, stores, factories, buildings, works, ways, plant and machinery necessary or convenient for the Company's objects and to contribute to or subsidise the erection, construction and maintenance of any of the above.
- d) To borrow or raise or secure the payment of any money for the purposes of or in connection with the Company's business, and for the purpose of and in connection with the borrowing or raising of money by the Company to become a member of any Building Society.
- e) To mortgage and charge the undertaking and all or any of the real or personal property and assets, present and future, and to issue at par or at a premium or discount, and for such consideration and with and subject to such rights, powers and privileges and conditions as may be thought fit, debentures or debenture stock, either permanent or repayable, and collaterally or further to secure any securities of the Company by a trust deed or other assurance subject to the provisions of clause 7 hereof.
- f) To issue and deposit any securities which the Company has power to issue by way of mortgage to secure any sum less than the nominal amount of such securities and also by way of security for the performance of any contracts or obligations of the Company or in whose undertakings the Company is interested, whether directly or indirectly.
- g) To receive money on deposit or loan upon such terms as the Company may approve and to guarantee the obligations and contracts of clients and customers including members of the Company, subject to the provisions of clause 7 hereof.
- h) To draw, make, accept, endorse, negotiate, discount and execute promissory notes, bills of exchange, cheques and other negotiable instruments.
- i) To invest and deal with the monies of the Company not immediately required for the purposes of its objects in or upon such investments or securities and in such manner as may from time to time be determined by the Company.
- j) To accept payment for any property or rights sold or otherwise disposed of or dealt with by the Company either in cash, by instalments or otherwise, or in fully or partly paid up shares of any company or corporation, with or without deferred or preferred or special rights or restrictions in respect of dividend, repayment or capital, voting or otherwise, or in mortgage debentures or debenture stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and generally on such terms as the Company may determine, and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.
- k) To enter into any partnership or joint-purse arrangement for sharing profits, union of interests or co-operation, or amalgamate with any company, firm or person carrying on or proposing to carry on any objects within the objects of the Company, and to acquire and hold, sell, deal with or dispose of shares, stock, securities or property of any such body, and to guarantee the contracts or liabilities of or payments of the dividends, interest or capital of any shares, stock, securities or property of and to subsidise or otherwise assist any such body subject to the provisions of clause 7 hereof.

- l) To establish or promote or concur in establishing or promoting any company, firm, or other organisation the promotion of which shall in any manner be calculated to advance directly or indirectly the objects or interests of the Company and to acquire and hold or dispose of shares, stock, securities or property issued by or any other obligations of such organisation.
  - m) To purchase or otherwise acquire and undertake all or any part of the business, property, assets, liabilities and transactions of any person, firm or company carrying on any business which the Company is authorised to carry on.
  - n) To make, publish, supply, sell or deal in books, periodicals, audio film and video recordings, and other publications in any medium or any other educational or training materials.
  - o) To obtain, acquire and purchase all necessary permits, licences, franchise agreements or trade marks and other intellectual property rights required for the purpose of enabling the Company to carry on its objects upon such terms and conditions as it may think fit.
  - p) To sell, improve, manage, develop, turn to account, exchange, let on rent, royalty, share of profits or otherwise, grant easements, licences and other rights in or over, and in any other manner deal with or dispose of the undertaking and any or all of the property and assets for the time being of the Company for such consideration as the Company may think fit, subject to the provisions of clause 9 hereof.
  - q) To do all such other lawful things as may be necessary for the attainment of the Company's Objects or any of them.
- 5 The liability of the members is limited.
- 6 Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up while s/he or it is a member or within one year after s/he or it ceases to be a member for payment of the debts and liabilities of the Company contracted before s/he or it ceased to be a member, and of the costs, charges or expenses of winding up and for the adjustments of the rights of the contributors amongst themselves, such amount as may be required not exceeding one pound.
- 7 The rate of interest on money borrowed, except by way of loan, overdraft or mortgage from a bank, building society, local authority or finance house, shall not exceed a rate necessary to obtain and retain the capital required to carry out the objects of the Company. The Company may receive interest-free loans and donations towards its objects.
- 8 The income and property of the Company shall be applied solely towards the promotion of the Objects and no part shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to members of the Company; and no director shall be paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company PROVIDED THAT nothing shall prevent any payment in good faith by the Company:

- a) Of reasonable and proper remuneration for any services rendered to the Company by any member, officer or servant of the Company who is not a director;
  - b) Of the usual salary or other benefit in money or money's worth of any employee of the Company who is elected to the board of directors;
  - c) Of the usual professional charges for business done by any director who is a solicitor, accountant or other person engaged in a profession, or by any partner of his or hers, when instructed by the Company to act in a professional capacity on its behalf; PROVIDED THAT at no time shall a majority of the directors benefit under this provision AND THAT a director shall withdraw from any meeting at which his or her appointment, or that of his or her partner, is under discussion;
  - d) Of interest on money lent by any member of the Company (or of its board of directors) at a rate per annum not exceeding 1 per cent less than the base lending rate of a clearing bank to be selected by the board of directors;
  - e) Of reasonable and proper rent for premises demised or let by any member of the Company or of its board of directors;
  - f) Of reasonable out-of-pocket expenses to any director.
- 9 If upon the winding up or dissolution of the Company there remains after the satisfaction of its debts and liabilities any property whatsoever, such property shall not be paid to or distributed among the members of the Company but shall be given or transferred to **Social Firms UK**, a charitable company registered in Scotland (Company Number SC214915); or to a regional or local organisation promoting or supporting social firms, or a number of such organisations, having objects similar to the objects of Social Firms UK, such organisation or organisations to be determined by the members of the Company at or before the time of dissolution.

*We wish to be formed into a company under this Memorandum of Association.*

NAMES, SIGNATURES & ADDRESSES OF SUBSCRIBERS:

Name:

Address

Signature:

Name:

Address

Signature:

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---

Dated this ..... day of ..... 20 .....

WITNESS TO THE ABOVE SIGNATURES:

Name:

Address

Signature:

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The Companies Acts 1985 & 1989

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION OF  
**A TEMPLATE SOCIAL FIRM LIMITED**

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## General structure

1. The structure of the company consists of:
  - a) The MEMBERS - who have the right to attend the annual general meeting (and any extraordinary general meeting) and have important powers under the articles of association and the Companies Acts; in particular, the members take decisions in relation to changes to the articles themselves, and elect people to serve as directors;
  - b) The DIRECTORS - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company; in particular, the directors are responsible for monitoring the financial position of the company.

## Qualifications for membership

2. The members of the company shall consist of the subscribers to the memorandum of association and such other persons and bodies as are admitted to membership under articles 3 to 7.
3. Membership shall be open to
  - a) any person who has attained the age of eighteen years and who is in agreement with the objects of the Company, without discrimination between persons by reference to wealth, politics, race, religion, age, disability, sex or sexual orientation; and
  - b) any society, company or public authority which is in agreement with the objects of the Company;

PROVIDED THAT only persons and organisations shall be admitted who qualify for one of the membership categories specified in article 4.
4. Every member upon admission shall be allocated one of the following categories of membership at the absolute discretion of the directors:
  - a) '**Employee members**' shall be employees of the Company or its subsidiaries.
  - b) '**Supporter members**' shall be individual members who support the aims of the Company and make use of its services and/or provide practical aid directly to the Company or its employees.
  - c) '**Supporting organisation members**' shall be organisations which support the objects of the Company and have an interest in the Company primarily by virtue of providing funds, facilities, advice or other practical support directly to the Company or its employees.
5. The directors may at any time amend a member's category of membership in the event of a change in circumstances, and shall notify the member in question of their decision within fourteen days.

## Application for membership

6. Any person or body who/which wishes to become a member must sign, and lodge with the company, a written application for membership; in the case of a corporate body, the application must be signed by an appropriate officer of that body.
7. The directors shall consider each application for membership at the first directors' meeting which is held after receipt of the application; the directors shall, within a reasonable time after the meeting, notify the applicant of their decision on the application. The directors may, at their discretion, refuse to admit any person or body to membership.

## Register of members

8. The directors shall maintain a register of members, setting out the full name and address of each member, the date on which he/she/it was admitted to membership, and the date on which any person or body ceased to be a member.

## Withdrawal from membership

9. Any person or body who/which wishes to withdraw from membership shall sign (in the case of a corporate body, through an appropriate officer), and lodge with the company, a written notice to that effect; on receipt of the notice by the company, he/she/it shall cease to be a member.

## Expulsion from membership

10. Any person or body may be expelled from membership by special resolution (see article 23), providing the following procedures have been observed:-
  - a) at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion
  - b) the member concerned shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

## Termination/transfer

11. Membership shall cease on death or (in the case of a corporate body) on receivership, liquidation, dissolution or striking-off of the body which constituted the member.
12. A member may not transfer his/her/its membership to any other person.

## General meetings (meetings of members)

13. The directors shall convene an annual general meeting in each year (but excluding the year in which the company is formed); the first annual general meeting shall be held not later than 18 months after the date of incorporation of the company.
14. Not more than 15 months shall elapse between one annual general meeting and the next.
15. The business of each annual general meeting shall include:-
  - a) a report by the chair on the activities of the company
  - b) consideration of the annual accounts of the company

- c) the consideration of the social audit presented by the directors, if such an audit has been carried out pursuant to article 70;
  - d) the election/re-election of directors, as referred to in articles 36 to 38.
16. The directors may convene an extraordinary general meeting at any time.
17. The directors must convene an extraordinary general meeting if there is a valid requisition by members (under section 368 of the Act) or a requisition by a resigning auditor (under section 392A of the Act).

## Notice of general meetings

18. At least 21 clear days' notice must be given of (a) an annual general meeting or (b) an extraordinary general meeting at which a special resolution (see article 23) or a resolution requiring special notice under the Act, is to be proposed; all other extraordinary general meetings shall be called by at least 14 clear days' notice.
19. The reference to "clear days" in article 18 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, (or, in the case of a notice contained in an electronic communication, the day after the time when it was sent) and also the day of the meeting, should be excluded.
20. A notice calling a meeting shall specify the time and place of the meeting; it shall (a) indicate the general nature of the business to be dealt with at the meeting and (b) if a special resolution (see article 23) (or a resolution requiring special notice under the Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution.
21. A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting; any other general meeting shall be called an extraordinary general meeting.
22. Notice of every general meeting shall be given (either in writing or, where the party to whom notice is given has notified the company of an address to be used for the purpose of electronic communications, by way of an electronic communication) to all the members and directors, and (if there are auditors in office at the time) to the auditors.

## Special resolutions and ordinary resolutions

23. For the purposes of these articles, a 'special resolution' means a resolution passed by 75% or more of the votes cast on the resolution at an annual general meeting or extraordinary general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 18 to 22; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.

24. In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution,
  - a) to alter its name
  - b) to alter its memorandum of association with respect to the company's objects
  - c) to alter any provision of these articles or adopt new articles of association.
25. For the purposes of these articles, an "ordinary resolution" means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at an annual general meeting or extraordinary general meeting, providing proper notice of the meeting has been given in accordance with articles 18 to 22.

## Procedure at general meetings

26. No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be twenty-five percent of the membership or 3 members, whichever is the greater, present in person or (in the case of members which are corporate bodies) present via their duly authorised representatives.
27. If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
28. The chair of the company shall (if present and willing to act as chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as chairperson within 15 minutes after the time at which the meeting was due to commence, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.
29. The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.
30. Every member shall have one vote, which (whether on a show of hands or on a secret ballot) must be given personally or (in the case of a member which is a corporate body) given via its duly authorised representative present at the meeting. A member which is a corporate body shall be entitled to authorise an individual to attend and vote at general meetings; he/she will then be entitled to exercise the same powers on behalf of the body which he/she represents as that body could have exercised if it had been an individual member of the company.
31. If there is an equal number of votes for and against any resolution, whether on a show of hands or on a ballot, the Chairperson shall not have a second or casting vote, and the resolution shall be deemed to be lost.
32. A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two persons present at the meeting and entitled to vote, whether as members or as

representatives of corporate members); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.

33. If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such a manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

## Composition of the board of directors

34. The maximum number of directors shall be nine. The composition of the board of directors shall be as follows:
  - a) not less than one person nor more than three persons from the category of **employee members**; and
  - b) not less than one person nor more than three persons from the category of **supporter members**; and
  - c) not less than one person nor more than three persons from the category of **supporting organisation members**.

## Eligibility

35. A person shall not be eligible for election/appointment as a director under articles 36 to 38 unless he/she is a member of the company or has been nominated for election/appointment as a director by a member which is a corporate body.

## Election, retirement, re-election

36. At each annual general meeting, the members may (subject to article 34) elect any member (providing he/she is willing to act) to be a director.
  - a) A member which is a corporate body may (subject to article 36b) nominate any individual for election/appointment as a director; he/she will then be deemed to be a member of the company for the purposes of articles 36 and 37.
  - b) No more than one individual nominated under article 36a by each corporate member may serve as a director at any given time.
37. The directors may at any time appoint any member (providing he/she is willing to act) to be a director (subject to article 34).
38. At the first annual general meeting, one third (to the nearest round number) of the directors shall retire from office; the question of which of them is to retire shall be determined by some random method. At each annual general meeting (other than the first) any director appointed under article 37 during the period since the

preceding annual general meeting shall retire from office; and out of the remaining directors one third (to the nearest round number) shall retire from office. The directors to retire shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method. A director who retires from office under this article shall be eligible for re-election.

## Termination of office

39. A director shall automatically vacate office if:-
- b) he/she ceases to be a director through the operation of any provision of the Act or becomes prohibited by law from being a director
  - c) he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months
  - d) he/she ceases to be a member of the company or (if he/she was nominated by a corporate body) the corporate body which nominated him/her ceases to be a member of the company
  - e) he/she resigns office by notice to the company
  - f) he/she is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove him/her from office
  - g) he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 303 of the Act.

## Register of directors

40. The directors shall maintain a register of directors, setting out full details of each director, the name of the corporate member which nominated each director (if applicable), the date on which each such person became a director, and the date on which any person ceased to hold office as a director.

## Officers

41. The directors shall elect from among themselves a chair and a treasurer, and such other officers (if any) as they consider appropriate.
42. All of the officers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.
43. A person elected to any office shall cease to hold that office if he/she ceases to be a director, or if he/she resigns from that office by written notice to that effect.

## Powers of directors

44. Subject to the provisions of the Act, the memorandum of association and these articles, and subject to any directions given by special resolution, the company and its assets and undertaking shall be managed by the directors, who may exercise all the powers of the company.
45. A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

## Personal interests

46. A director who has a personal interest in any transaction or other arrangement which the company is proposing to enter into, must declare that interest at a meeting of the directors; he/she will be debarred (in terms of article 57) from voting on the question of whether or not the company should enter into that arrangement.
47. For the purposes of the preceding article, a director shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director (or any other party who/which is deemed to be connected with him/her for the purposes of section 317 of the Act), has a personal interest in that arrangement.
48. Provided he/she has declared his/her interest - and has not voted on the question of whether or not the company should enter into the relevant arrangement - a director will not be debarred from entering into an arrangement with the company in which he/she has a personal interest (or is deemed to have a personal interest under article 47) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.
49. No director may be given any remuneration by the company for carrying out his/her duties as a director, but any employee of the company who becomes a director may continue to receive the usual salary or other benefit in money or money's worth of his or her employment.
50. The directors may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the directors, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

## Procedure at directors' meetings

51. Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
52. Questions arising at a meeting of the directors shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall not have a

second or casting vote, but shall refer the matter to a general meeting of the company.

53. No business shall be dealt with at a meeting of the directors unless a quorum is present; the quorum for meetings of the directors shall be three directors.
54. If at any time the number of directors in office falls below the number fixed as the quorum, the remaining director(s) may act only for the purpose of filling vacancies or of calling a general meeting.
55. Unless he/she is unwilling to do so, the chair of the company shall preside as chairperson at every directors' meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the directors present shall elect from among themselves the person who will act as chairperson of the meeting.
56. The directors may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the directors; for the avoidance of doubt, any such person who is invited to attend a directors' meeting shall not be entitled to vote. In particular, the company shall make reasonable provision for mentoring, advocacy or other support to be provided for directors who by reason of disability, incapacity or other circumstance require additional support to carry out their duties. The participation in board meetings of any person acting as a mentor, advocate or supporter for a director must be restricted to assisting that director and not personally participating in the business of the meeting.
57. A director shall not vote at a directors' meeting (or at a meeting of a committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the company; he/she must withdraw from the meeting while an item of that nature is being dealt with.
58. For the purposes of article 57, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director, has a personal interest in that matter.
59. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
60. The company may, by ordinary resolution, suspend or relax to any extent - either generally or in relation to any particular matter - the provisions of articles 57 to 59.

## Delegation to sub-committees

61. The directors may delegate any of their powers to any sub-committee consisting of one or more directors and such other persons (if any) as the directors may determine; they may also delegate to the chair of the company (or the holder of any other post) such of their powers as they may consider appropriate.

62. Any delegation of powers under article 61 may be made subject to such conditions as the directors may impose and may be revoked or altered.
63. The rules of procedure for any sub-committee shall be as prescribed by the directors.

## Operation of bank accounts

64. The signatures of two out of the signatories appointed by the directors shall be required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the company; at least one out of the two signatures must be the signature of a director.

## Secretary

65. The company secretary shall be appointed by the directors for such term, at such remuneration (if any), and upon such conditions, as they may think fit; the company secretary may be removed by them at any time.

## Minutes

66. The directors shall ensure that minutes are made of all proceedings at general meetings, directors' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.

## Accounting records and annual accounts

67. The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
68. The directors shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if they otherwise think fit, they shall ensure that an audit of such accounts is carried out by a qualified auditor.
69. No member shall (unless he/she is a director) have any right of inspecting any accounting or other records, or any document of the company, except as conferred by statute or as authorised by the directors or as authorised by ordinary resolution of the company.

## Social Audit

70. A social audit of the Company's activities may, by resolution of the directors, be undertaken annually in addition to the financial audit required by law. The role of

the social audit shall be to identify the social costs and benefits of the Company's work, and to enable an assessment to be made of the Company's overall performance in relation to its objects more easily than may be made from financial accounts alone. Such a social audit may be drawn up by an independent assessor appointed by the directors, or by the directors, who may submit their report for verification or comments to any independent assessor. A social audit may include

- a) an assessment of the internal democracy and decision making of the Company;
- b) the health and social costs and benefits for employees of the Company and the cost and benefits to such employees of moving from social welfare benefits into employment;
- c) the wages, health and safety, skill sharing and education opportunities of employees of the Company, and other matters concerning the overall personal or job satisfaction of such employees;
- d) an assessment of the Company's activities externally, including its effects on users and suppliers, on people in the same or similar field of activity, on persons residing in areas where the Company is located or on the natural environment.

## Equal Opportunities

71. Applications for membership of the Company shall be welcome from any individuals, corporate bodies or organisations regardless of any issues concerned with wealth, social class, age, politics, race, creed, religion, culture, ethnic origin, sex or sexual orientation, marital status, any kind of disability or chronic illness, and the Company shall not be entitled to withhold or reject membership on the grounds of any such issue.
72. Individuals incapacitated and who require the services of an advocate may be admitted to membership, at the discretion of the board of directors. In such circumstances, the advocate shall be deemed responsible for exercising any rights and powers required by the individual, as agreed with the board of directors. Those acts of the advocate, on behalf of the individual, shall be deemed the same as that of the individual.
73. The board of directors, in managing the business of the Company, shall have regard to the equal opportunities implications of the issues under their deliberation and in particular the extent to which equal opportunities might be furthered by their decisions but, for the avoidance of doubt, shall not be bound to treat equal opportunities as the overriding consideration.
74. To assist directors to participate fully in the business of board meetings, the company shall use its best endeavours to offer training on the duties and responsibilities of company directors, if such training is requested by any director.
75. Whenever possible, all papers to be discussed at directors' meetings will be circulated at least five clear days prior to such meetings to enable directors to consider the papers and to receive assistance in understanding the content and implications of the papers if necessary.

## Wages and Welfare

76. The terms and conditions of the contracts of employment of employees shall be determined by the directors. A director who is also an employee shall not vote on her/his own contract of employment and no question relating to terms and conditions of employment shall be decided at a meeting of the board of directors where one half or more of those present are employees of the Company.
77. The Company shall respect the rights of employees to be members of a trade union, and shall offer employees all facilities for trade union work as may be determined by statute, and as the directors may from time to time agree.

## Notices

78. Any notice which requires to be given to a member under these articles shall be given either in writing or by way of an electronic communication; such a notice may either be given personally to the member or be sent by post in a pre-paid envelope addressed to the member at the address last intimated by him/her/it to the company or (in the case of a member who has notified the company of an address to be used for the purpose of electronic communications) may be given to the member by way of an electronic communication.
79. Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
80. Any notice contained in an electronic communication shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any electronic communication was sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.

## Not for Profit Status and winding-up

81. Clauses 7 and 8 of the memorandum of association relating to the not-for-profit nature of the Company shall have effect as if their provisions were repeated in these articles, and if the company is wound up, the liquidator shall give effect to the provisions of clause 9 of the memorandum of association.

## Indemnity

82. Every director or other officer or auditor of the company shall be indemnified out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office; that may include, without prejudice to that generality, any liability incurred by him/her in

defending any proceedings (whether civil or criminal) in which judgement is given in his/her favour or in which he/she is acquitted or any liability in connection with an application in which relief is granted to him/her by the court from liability for negligence, default or breach of trust in relation to the affairs of the company.

83. The indemnity contained in article 82 shall be subject to the provisions of the Act and is without prejudice to any other indemnity to which a director may otherwise be entitled.

## Interpretation

84. In these articles

“the Act” means the Companies Act 1985; any reference in these articles to a provision of the Act shall be taken to include any statutory modification or re-enactment of that provision which is in force at the time;

“electronic communication” has the same meaning as is assigned to that expression in the Electronic Communications Act 2000.

85. Reference in these articles to the singular shall be deemed to include the plural.

### NAMES, SIGNATURES & ADDRESSES OF SUBSCRIBERS:

Name:

Address

Signature:

Name:

Address

Signature:

Dated this ..... day of ..... 20 .....

WITNESS TO THE ABOVE SIGNATURES:

Name:

Address

Signature:

## Notes on the articles

These notes are intended to help you make minor amendments to the Template articles. They give some more detailed background to the company law associated with some of the articles, and also give you alternative wordings for a couple of common variations:

- ∞ to allow proxy voting, and
- ∞ to allow a sponsoring body or bodies to directly appoint a director or directors

To ease reading, the amendments you need to make to introduce these variations are shown against this blue-grey background.

*However, please take care if you make these (or other) changes, not only to renumber the articles as required, but to check all the cross-referencing within the articles to ensure that in every respect the numbering remains correct.*

Articles 1-7 deal with the membership structure. This is an important area and is fully discussed under 'The main points of the Template' on pages 7-8 above.

Article 8 is a reminder of the statutory requirement to keep a proper register of members. You can buy books and loose-leaf systems with pre-printed formats for the register of members and other parts of the company register (or 'statutory books' as they are sometimes called), or you can make your own. It is also possible to keep the register on computer (with the usual precautions). Note that if you are holding more than basic name and address information about members on computer, or if sensitive data can be inferred from their membership (including medical conditions) you will fall under the provisions of the Data Protection Act.

Articles 9-12 deal straightforwardly with ceasing to be a member.

Articles 13-15 tell you when you need to hold AGMs and what business is normally conducted at an AGM (other business must be notified). It is possible for most companies to pass an 'elective resolution' not to hold an AGM, but for social firms this is not recommended. Note that

unless such an elective resolution has been passed the requirements that the first AGM be held within 18 months, and that there must not be more than 15 months between AGMs, are statutory requirements and should not be altered.

Articles 16-17 cover other general meetings (called Extraordinary General Meetings or EGMs). Section 368 of the Companies Act 1985 provides that one tenth of the members of a company may (if they comply with the statutory procedure) require the board to convene an EGM.

Articles 18-22 tell you how to give notice of meetings. Note that the periods of 14 days and 21 days are the statutory minimum in each case and cannot be decreased. The requirement to specify a special resolution in advance is also statutory.

Articles 23-25 define special and other resolutions, and again reflect company law. *Note that it is possible to alter some aspects of the memorandum in addition to those outlined in article 24, but it is very important that you seek legal advice before embarking on this.*

Article 26 establishes the quorum for general meetings. Like a number of other issues this is a matter of balancing the need for meetings to be representative with the need to sometimes get on with business even if a lot of members can't come. The quorum suggested is quite low - only 3 members until the number of members reaches 12, then 25% of the members - but this has been found to be practical over long experience.

Articles 27-33 tell you how to conduct general meetings, especially voting. Note that:

- ∞ in this Template there is no specific role for a vice-chair - for simplicity, if the chairperson is absent any person present can be elected to chair a meeting
- ∞ the chairperson has no second or casting vote; again in small organisations - where there may be as few as 3 people at the meeting - giving the chair two votes is not usually appropriate

- ∞ there is no voting by proxy - again this is partly for simplicity as administering proxy voting can become complicated; also, however, in small organisations it is more important that everyone voting actually hears the discussion, and in this respect personal rather than proxy voting is preferred.

However, if you wish to include voting by proxy you should make the following changes:

1. Amend article 26:-

26. *No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be ..... persons entitled to vote, each being a member or a proxy for a member*

2. Amend article 30:

30. *Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy*

3. Insert the following new articles 31-34 and renumber throughout the articles accordingly:

31. *A member who wishes to appoint a proxy to vote on his/her behalf at any meeting must lodge with the company, prior to the time when the meeting commences, a written proxy form, signed by him/her*

32. *A proxy need not be a member of the company*

33. *A member shall not be entitled to appoint more than one proxy to attend the same meeting*

34. *A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting*

4. Amend article 32 (now renumbered as article 36) as follows:

36. *A resolution put to the vote at a general meeting shall be decided on a show*

*of hands unless a secret ballot is demanded by the chairperson (or by at least two persons present at the meeting and entitled to vote, whether as members or as proxies for members); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.*

Articles 34-39 deal with the composition of the board and election of directors, and are discussed above under 'The main points of the Template' on pages 8-9.

Note that Section 303 of the Companies Act says that any director can be removed by an ordinary resolution providing the correct procedure is followed - broadly this means giving the director concerned 28 days written notice and an opportunity to put forward their case.

It may also be important here that many social firms are established as a result of the work of a particular public or charitable body, and it is sometimes appropriate to acknowledge the special role of this sponsoring body in the board structure. For example, you may want to give it the right to directly appoint a director. If so, you can make the following amendments to the Template. '**Sponsor Organisation**' is used as an example of the sponsoring body here, but of course you will substitute your own sponsoring body or bodies.

1. Amend article 34:

34. *The maximum number of directors shall be nine. The composition of the board of directors shall be as follows:*

- a) *not less than one person nor more than three persons from the category of **employee members**; and*
- b) *not less than one person nor more than three persons from the category of **supporter members**; and*
- c) *one person appointed by **Sponsor Organisation** and not more than two other persons from the category of **supporting organisation members**.*

2. Amend article 35:

35. A person shall not be eligible for election/appointment as a director under articles 37 and 38 unless he/she is a member of the company or has been nominated for election/appointment as a director by a member which is a corporate body; a person appointed as a director under article 39 need not be a member of the company.

3. Amend article 38:

38. At the first annual general meeting, one third (to the nearest round number) of the directors (other than any director appointed under article 39) shall retire from office; the question of which of them is to retire shall be determined by some random method. At each annual general meeting (other than the first) any director appointed under article 37 during the period since the preceding annual general meeting shall retire from office; and out of the remaining directors (other than any director appointed under article 39) one third (to the nearest round number) shall retire from office. The directors to retire shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method. A director who retires from office under this article shall be eligible for re-election.

4. Insert the following new article 39 and renumber throughout the articles accordingly:

39. **Sponsor Organisation** shall be entitled to nominate any person to serve as a director; the directors shall, at the directors' meeting which follows receipt of any such notice, appoint the individual named in the notice (subject to articles 39a and 39b) as a director with immediate effect.

- a) No more than one person nominated under article 39 may serve as a director at any given time.
- b) For the avoidance of doubt, a director appointed under article 39 shall not be required to retire from office at any annual general meeting.

5. Amend article 39 (which will now have

been renumbered as 40) as follows:

40. A director shall automatically vacate office if:

- a) he/she ceases to be a director through the operation of any provision of the Act or becomes prohibited by law from being a director
- b) he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months
- c) except in the case of a director appointed under article 39, he/she ceases to be a member of the company or (if he/she was nominated by a corporate body) the corporate body which nominated him/her ceases to be a member of the company
- d) in the case of a director appointed under article 39, **Sponsor Organisation** withdraws his/her nomination by written notice to the company to that effect
- e) he/she resigns office by notice to the company
- f) he/she is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove him/her from office
- g) he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 303 of the Act.

6. Amend article 84 (now renumbered as article 85) as follows:

85. In these articles

"the Act" means the Companies Act 1985; any reference in these articles to a provision of the Act shall be taken to include any statutory modification or re-enactment of that provision which is in force at the time;

"electronic communication" has the same meaning as is assigned to that expression in the Electronic Communications Act 2000;

"Sponsor Organisation" is a charitable company registered in England (Company Number XXXXXXXX).

Article 40 is a reminder of the statutory requirement to keep a register of directors - another part of the 'company register' described in the note on article 8 above. The details to be included in the register are the same as those which have to be entered on Form 288a informing Companies House of the appointment of a new director, plus the date of appointment (and, eventually, the date of ceasing to be a director).

Articles 41-43 deal with the officers appointed from among the directors - note that the company secretary need not be a director and is dealt with separately in article 65.

Articles 44-60 deal with the powers and procedures of directors, including much on possible conflicts of interest - an important area for social firms, which might be in receipt of public or charitable funds and which in any case will want to adopt the highest ethical standards.

Note also that:

- ∞ as in general meetings, the chairperson does not have a casting vote in board meetings
- ∞ the quorum for board meetings is again fairly low - just 3 directors - and you may want to increase this figure
- ∞ there is again no provision for proxies on the board (called 'alternate directors' in company law).

Articles 61-69 deal with a number of company administration points, and largely reflect the requirements of company law. Note however in relation to article 64 that there is no legal requirement that cheques should have more than one signature, or that one of them must be a director - this article simply reflects SFUK's view on good financial practice for social firms.

Articles 70-77 deal with social auditing, equal opportunities, wages and welfare, and the main issues here were discussed above under 'The main points of the Template' on page 9 and also on page 8 specifically in relation to

directors voting on their own wages.

Articles 78-80 explain how notices of meetings etc required by the articles are to be given - including the possible use of e-mail.

Article 81 restates and reinforces the not-for-profit status of the Company.

Articles 82-83 state the principle that the company should reimburse a director who incurs liability in carrying out their duties as a director. However, under company law it cannot indemnify the director against liability arising from negligence, default, breach of duty or breach of trust.

Articles 84-85 define some of the key terms used in the articles.



10

*Please complete in typescript, or in bold black capitals.*

CHWP000

Notes on completion appear on final page

**First directors and secretary and intended situation of registered office**

**Company Name in full**


**Proposed Registered Office**

(PO Box numbers only, are not acceptable)


Post town

County / Region

Postcode

If the memorandum is delivered by an agent for the subscriber(s) of the memorandum mark the box opposite and give the agent's name and address.

Agent's Name

Address



Post town

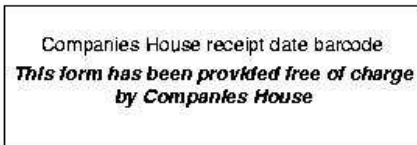
County / Region

Postcode

Number of continuation sheets attached

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

<input type="text"/>	
<input type="text"/>	
Tel	
DX number	DX exchange



v 08/02

When you have completed and signed the form please send it to the Registrar of Companies at:  
 Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff  
 for companies registered in England and Wales

or  
 Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB  
 for companies registered in Scotland

DX 235 Edinburgh  
 or LP - 4 Edinburgh 2

**Company Secretary** (see notes 1-5)

Company name

**NAME** \*Style / Title  \*Honours etc

\* Voluntary details Forename(s)

Surname

Previous forename(s)

Previous surname(s)

**Address** <sup>††</sup>

Post town

County / Region  Postcode

Country

I consent to act as secretary of the company named on page

**Consent signature**  **Date**

**Directors** (see notes 1-5)

Please list directors in alphabetical order

**NAME** \*Style / Title  \*Honours etc

Forename(s)

Surname

Previous forename(s)

Previous surname(s)

**Address** <sup>††</sup>

Post town

County / Region  Postcode

Country

I consent to act as director of the company named on page 1

**Date of birth** Day  Month  Year  **Nationality**

**Business occupation**

**Other directorships**

**Consent signature**  **Date**



## Notes

1. Show for an individual the full forename(s) NOT INITIALS and surname together with any previous forename(s) or surname(s).

If the director or secretary is a corporation or Scottish firm - show the corporate or firm name on the surname line.

Give previous forename(s) or surname(s) except that:

- for a married woman, the name by which she was known before marriage need not be given,
- names not used since the age of 18 or for at least 20 years need not be given.

A peer, or an individual known by a title, may state the title instead of or in addition to the forename(s) and surname and need not give the name by which that person was known before he or she adopted the title or succeeded to it.

Address:

Give the usual residential address.

In the case of a corporation or Scottish firm give the registered or principal office.

Subscribers:

The form must be signed personally either by the subscriber(s) or by a person or persons authorised to sign on behalf of the subscriber(s).

2. Directors known by another description:

- A director includes any person who occupies that position even if called by a different name, for example, governor, member of council.

3. Directors details:

- Show for each individual director the director's date of birth, business occupation and nationality.  
**The date of birth must be given for every individual director.**

4. Other directorships:

- Give the name of every company of which the person concerned is a director or has been a director at any time in the past 5 years. You may exclude a company which either **is** or at **all times during the past 5 years**, when the person was a director, **was**:

- dormant,
- a parent company which wholly owned the company making the return,
- a wholly owned subsidiary of the company making the return, or
- another wholly owned subsidiary of the same parent company.

If there is insufficient space on the form for other directorships you may use a separate sheet of paper, which should include the company's number and the full name of the director.

5. Use Form 10 continuation sheets or photocopies of page 2 to provide details of joint secretaries or additional directors.

E  
X  
A  
M  
P  
L  
E

To complete on-line click in the first active field, enter data and use your tab key to move to the next field. To complete any check boxes press the spacebar. On completion please print the form, sign and date it before returning to us by post.



12

Please complete in typescript, or in bold black capitals.

CHWP000

**Declaration on application for registration**

Company Name in full

[Empty box for Company Name in full]

I, [Empty box]

of [Empty box]

† Please delete as appropriate.

do solemnly and sincerely declare that I am a <sup>†</sup> [Solicitor engaged in the formation of the company] person named as director or secretary of the company in the statement delivered to the Registrar under section 10(1) of the Companies Act 1985] and that all the requirements of the Companies Act 1985 in respect of the registration of the above company and of matters precedent and incidental to it have been complied with.

And I make this solemn Declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declarant's signature

[Empty box for Declarant's signature]

Declared at [Empty box]

Day Month Year

On [Empty box]

• Please print name

before me <sup>•</sup>

[Empty box for name before me]

Signed

[Empty box for signature] Date [Empty box]

<sup>†</sup> A Commissioner for Oaths or Notary Public or Justice of the Peace or Solicitor

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

[Empty box for contact information]

Tel [Empty box]

DX number [Empty box] DX exchange [Empty box]

Companies House receipt date barcode

*This form has been provided free of charge by Companies House.*

Form revised 10/03

When you have completed and signed the form please send it to the Registrar of Companies at:

Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff for companies registered in England and Wales

or Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB for companies registered in Scotland

DX 235 Edinburgh or LP - 4 Edinburgh 2

## Links

### Social Firms UK

1st Floor Furness House  
53 Brighton Road  
Redhill Surrey RH1 6PZ

Tel 01737 764021  
Fax 01737 766699  
Email [info@socialfirms.co.uk](mailto:info@socialfirms.co.uk)

[www.socialfirms.co.uk](http://www.socialfirms.co.uk)

### Geof Cox

Economic Partnerships Limited  
14 Manchester Street  
Morpeth Northumberland NE61 1BH

Tel 01665 830110  
Fax 01665 830110  
Email [geof.cox@economicpartnerships.com](mailto:geof.cox@economicpartnerships.com)

[www.economicpartnerships.com](http://www.economicpartnerships.com)

### Companies House

Crown way  
Maindy Cardiff CF14 3UZ

37 Castle Terrace  
Edinburgh EH1 2EB

Tel 0870 33 33 636  
Email [enquiries@companies-house.gov.uk](mailto:enquiries@companies-house.gov.uk)

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

### The Charity Commission

See website for appropriate address

Tel 0870 333 0123  
Email [cservice@charitycommission.gsi.gov.uk](mailto:cservice@charitycommission.gsi.gov.uk)

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)