

EMBASSY Gallery Constitution - 2022

Plain speech version

This is a plain speech version of the new proposed EMBASSY gallery constitution. The constitution has been split up into segments and includes explanations of terms, clauses, and legal jargon.

Segments from the actual constitution are shown in the black outlined boxes.

Explanations are labelled with a [blue title](#).

This document includes the full EMBASSY Gallery constitution.

Constitution

What is a constitution?

The formal definition of a constitution is “a system of fundamental principles according to which a nation, state, corporation, or the like, is governed.”

In the context of EMBASSY, **EMBASSY Gallery’s constitution is the ‘governing document’ (or ‘rulebook’) for our organisation that explains how we run.**

The constitution is a formal document that lets the organisation's trustees (the committee who run the gallery) and any other interested parties (for example our members base, or members of the general public) find out detailed information on the way our organisation is managed.

The constitution is there to guide the way the space runs, and to legally state the rules on how any actions should be managed.

Included in the constitution is

- The purpose of the charity - i.e What does EMBASSY do, and why?
- Who runs it and how they run it
- How trustees will be appointed
- Rules about trustees’ expenses
- How to close the charity - i.e what happens if EMBASSY stops operating?

Constitution of Company

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

Trustees

What is a 'Trustee'?

A Trustee is an individual person, or member of a board, who has been given control or powers of administration of property in trust with a legal obligation to administer it solely for the purposes specified.

At EMBASSY, the trustees are the people trusted with the power to run the gallery, and to manage the annual budget that we receive from Creative Scotland. This budget is to be used for supporting artists, and hosting art events/ exhibitions for the general public . **The trustees are legally required to ensure this money is used only for this purpose.** This is part of their duties that are laid out in the constitution.

Why are we changing the constitution?

We are changing our constitution, as the proposed changes to our articles of association will allow us to **update our governance structure, and implement the support of our first ever board.** When we use the phrase "governance structure" we are referring to the structure of the organisation and the way it is run.

Currently committee members ARE the charity's trustees. This means that alongside managing both the day to day running of the gallery, i.e curating exhibitions, working with artists, installing, managing the emails etc. they also 'govern' the financial and strategic direction of the organisation. To 'govern' means rule, or be in power over.

As the current committee is in control of how the money is spent, it would be a conflict of interest for them to set their own rates of pay, and as such, the role is legally required to be unpaid.

EMBASSY are therefore proposing we change the structure to include a board of Trustees and an operational committee. This would split the responsibilities into two groups of people. The Board of trustees will act as an advisory panel, overseeing the work of the committee, while the operational committee does the work to manage the day to day operations.

Changing the constitution to allow for this new structure will therefore allow the role of operational committee members to be remunerated, making the role more accessible, whilst supporting the sustainability of the organisation.

Why are these changes important?

Currently the committee are performing all their labour free of charge, this means the role isn't something everyone feels they would be able to take on. Due to their overstretched capacities, the committee worry that we will reach a point of burnout, where the space will struggle to continue to operate

Being fairly paid, will allow operational committee members to dedicate 12 paid hours each week to work for EMBASSY, meaning the organisation will have a more stable structure. With the hours being paid, the committee will not have to work at unsuitable hours around other jobs, e.g. over the entire weekend, late at night or very early in the morning. This will make the organisation more sustainable - if something is 'sustainable' it means it is able to be maintained. We hope for EMBASSY to continue to operate far into the future, therefore we believe these current changes are necessary to support the organisation in doing so.

Our new structure will therefore be

- The Board of Trustees (2-7 people who act as a voluntary advisory panel, overseeing the galleries operations and supporting the operational committee)
- The Operational Committee (four people who are paid to do 12 hours per week, to programme the galleries events and exhibitions and day to day manage EMBASSY)
- The Members. (a membership base of up to 200 people that pay a subscription once a year. These people have the right to call a general meeting if so desired and have voting rights at Annual General Meetings and general meetings they have called. They also receive special members opportunities for example, but not limited to, members exhibitions, members trips, and members events.)

Defined terms

What are defined terms?

- Defined terms are **words that are given a specific definition in a contract**. In day to day life, words are able to have multiple definitions, however in a legal document (for example a constitution) certain words are given one strict meaning. If you see a capitalised word in a contract, its specific definition will be somewhere in the document.

Defined terms

2 In these articles of association, unless the context requires otherwise:-

- (a) “**Act**” means the Companies Act 2006;
- (b) “**Board**” means the board of directors from time to time;
- (c) “**charity**” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
- (d) “**charitable purpose**” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
- (e) “**Company**” means The Embassy Gallery (SC259872)
- (f) “**electronic form**” has the meaning given in section 1168 of the Act;
- (g) “**OSCR**” means the Office of the Scottish Charity Regulator;
- (h) “**property**” means any property, heritable or moveable, real or personal, wherever situated; and
- (i) “**subsidiary**” has the meaning given in section 1159 of the Act.

3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

Objects

What are “Objects” ?

‘Objects’ state the purpose and range of activities which the company is carried on.

This means our objects define what EMBASSY gallery is and what we aim to achieve with the work that we do.

- There are two types of objects in our constitution.
- There is the prime object which needs to be approved by the Office of the Scottish Charity Regulator and the ‘infurtherance objects’. The prime object is one or two sentences long and summarises the ultimate aim of our organisation. The infurtherance objects expand on this prime object in more detail.

- 4 The objects for which the Company is established are the advancement of the arts for the benefit of the general public in Scotland and elsewhere through the establishment and maintenance of an arts organisation known as the Embassy Gallery, and in furtherance thereof but not otherwise the Company shall seek:
- a. to implement accessibility measures to accompany and augment the gallery shows with the intention of creating a welcoming and accessible space;
 - b. to maintain these premises in such a manner as to be accessible as possible to the public;
 - c. to be a considered and yet welcoming art space that encourages dialogue surrounding art practice;
 - d. to organise public talks, events, exhibitions, shows and such other similar events with the intention of providing an enriching, inspiring and dynamic arts programme;
 - e. to encourage and exhibit the work of Scottish emerging artists who meet the objectives of the Company who are primarily based in, but not limited to Edinburgh, to also include artists who may be based in the rest of the UK or internationally;
 - f. to forge links with international galleries and artists, with the purpose of organising exchange projects in an effort to nurture relations between the Edinburgh community and international communities; and
 - g. To promote artists whose work may support the activities of the Company;
 - h. To create a database of artwork created with EMBASSY, available in the gallery to be viewed by any interested member of the public.

- i. to sustain artistic integrity in all decision-making regarding the running of the Company by ensuring that at least two directors hold a recognised degree qualification in the fine arts or equivalent artistic experience.

(hereinafter referred to as "the Objects of the Company").

- 5 The Company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the Company's objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

Powers

What is "powers" in a legal context?

At EMBASSY, the board of trustees, have legal powers to do anything to help support the objects of the company. This allows the Gallery to work towards achieving its aim of presenting art to the general public.

There are however, **Restrictions on use of the Company's assets**- these are rules of what the trustees **aren't** allowed to do, or use the Galleries money for.

Powers

- 6 In pursuance of the Objects of the Company listed in article 4 (but not otherwise), the Company shall have the power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

Restrictions on use of the Company's assets

- 7 (a) The income and property of the Company shall be applied solely towards promoting the Objects of the Company.
- (b) Except as provided in these articles, no part of the income or property of the Company shall be paid or transferred (directly or indirectly) to the members of the Company, whether by way of dividend, bonus or otherwise by way of profit to any member of the Company.

- (c) No director of the Company shall be appointed as a paid employee of the Company.
- (d) No benefit (whether in money or in kind) shall be given by the Company to any director except (i) repayment of out-of-pocket expenses (ii) reasonable payment in return for particular services (not being of a management nature) actually rendered to the Company or (iii) reasonable payment as permitted by article 75.

Liability of members

8 Each member undertakes that if the Company is wound up while they are a member (or within one year after they cease to be a member), they will contribute - up to a maximum of £1 to the assets of the Company, to be applied towards:

- (a) payment of the Company's debts and liabilities contracted before they cease to be a member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

Members

Who are the members?

EMBASSY Gallery members are the group of people who have signed up to be a part of EMBASSY. This is open to anyone who supports the values of the organisation.

- Members pay a fee of £15 a year, and receive opportunities to showcase in and around EMBASSY Gallery which include showing work in the annual members show, members projects, members trips and members events.
- The members also have the right to vote on the changes proposed by the gallery at the EMBASSY Annual General Meeting.

General structure

- 9 The structure of the Company consists of:
- (a) the MEMBERS – who have the right to attend AGMs and other general meetings, and have important powers under the articles of association and the Act;
 - (b) the BOARD – the Board will hold regular meetings during the period between AGMs, and generally control and supervise the activities of the Company; the directors are responsible for monitoring the financial position of the Company, and the strategic direction of the Company.

MEMBERS

- 10 The directors shall maintain a register of members, setting out the full name and address of each member, the date on which they were admitted to membership, and the date on which any person ceased to be a member.

Eligibility

- 11 Membership shall be open to anyone who supports the objects of the Company.
- 12 Employees of the Company shall not be eligible for membership; a person who becomes an employee of the Company after admission to membership shall automatically cease to be a member.

Application for Membership

- 13 Subject to a maximum cap of 200 members, any person who wishes to become a member must sign, and lodge with the Company a written application for membership. The application must be accompanied by a payment to meet the membership subscription.
- 14 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. If the decision was to refuse admission, the directors shall then return the payment lodged under article 13.
- 15 The Company reserves the right to refuse membership by a majority vote of the directors for any reason.

Membership Subscription

16 Members shall be required to pay a membership subscription, which shall be determined by the directors and reviewed on an annual basis.

17 A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription.

Withdrawal from membership

18 Any person who wishes to withdraw from membership shall lodge with the Company, a written notice to that effect; on receipt of the notice by the Company, they shall cease to be a member.

Expulsion from membership

19 Any person may be expelled from membership by decision of at least 75% of the directors at a Board meeting, providing the following procedures have been observed:

- (a) at least 7 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion; and
- (b) the member concerned shall be entitled to be heard on the resolution at the Board meeting at which the resolution is proposed.

Termination / Transfer

20 Membership shall cease on death.

21 A member may not transfer their membership to any other person.

Annual General Meetings (AGM)

What is an AGM?

An annual general meeting (AGM is a meeting of the general membership of an organisation. This is a meeting that happens once a year, that all members are invited to attend. EMBASSY is legally required to have an AGM, as this is stated in our constitution.

The AGM is a meeting to discuss the years activities of the gallery, and to report on the activities that have taken place. The AGM will also include a discussion about

EMBASSY's accounts and the Board members will be re-elected by a vote of those present at the AGM.

If a member cannot be present at the AGM they can send a 'proxy' (another person, member or not, in their place) to cast their vote on their behalf. The member must have informed the Board and/or the Operational Committee in writing beforehand or have given the 'proxy' a written note, with the absent members signature included.

GENERAL MEETINGS (MEETINGS OF MEMBERS)

- 22 The directors shall convene an annual general meeting ("**AGM**") in each year.
- 23 Not more than 15 months shall elapse between one AGM and the next.
- 24 The business of each AGM shall include:-
- (a) a report by the chair on the activities of the Company;
 - (b) consideration of the annual accounts of the Company; and
 - (c) the election/re-election of the directors, as referred to in articles 15 to 17.
- 25 Subject to articles 23, the directors may convene a general meeting at any time.
- 26 The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (if one is so appointed) (under section 518 of the Act).

Notice of general meetings

- 27 At least 14 clear days' notice must be given of a general meeting.
- 28 The reference to "clear days" in article 27 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 sent by electronic means, the day after it was sent) and also the day of the meeting, should be excluded.
- 29 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 32) (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.

- 30 A notice convening an AGM shall specify that the meeting is to be an AGM.
- 31 Notice of every general meeting shall be given:
- (a) in hard copy form;
 - (b) in writing or (where the individual to whom notice is given has notified the Company of an address to be used for the purpose of electronic communication) in electronic form; or
 - (c) (subject to the Company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.

Special resolutions and ordinary resolutions

- 32 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 a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 27 to 31; 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 total number of votes cast in relation to the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.
- 33 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 any provision of these articles or adopt new articles of association.
- 34 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 a general meeting, providing proper notice of the meeting has been given in accordance with articles 27 to 31.

Procedure at general meetings

- 35 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be three individuals entitled to vote (each being a member or a proxy for a member).
- 36 If a quorum is not present within 30 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.

37 The directors present at the general meeting shall select one of their number to chair the general meeting. That person shall be referred to as the **“chairperson of the meeting”**.

38 The chairperson of the meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.

39 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

40 A person is able to exercise the right to vote at a general meeting when:

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

41 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

42 Members may attend a general meeting regardless of where they are attending it from and by what means, provided that they can communicate with each other and vote.

43 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.

44 Any member who wishes to appoint a proxy to vote on their behalf at any meeting (or adjourned meeting):

(a) shall lodge with the Company, at the Company’s registered office, a written instrument of proxy (in such form as the directors require), signed by them; or

(b) shall send by electronic means to the Company, at such electronic address as may have been notified to the members by the Company for that purpose, an instrument of proxy (in such form as the directors require)

providing (in either case), the instrument of proxy is received by the Company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).

- 45 An instrument of proxy which does not conform with the provisions of article 44, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 46 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 47 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed them to speak at the meeting and need not be a member of the Company.
- 48 A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the Company at the Company's registered office (or, where sent by electronic means, was received by the Company at the address notified by the Company to the members for the purpose of electronic communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.
- 49 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 in person at the meeting and entitled to vote (whether as members or 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.
- 50 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.

Written resolutions

- 51 A resolution agreed to in writing (or by e-mail) by all the members of the Company, will be as valid as if it had been passed at a general meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

Board of Directors

What is a Board?

The Board of Directors are **the people who share ultimate responsibility for governing (ruling) a charity and directing how it is managed and run**. Individuals who sit on the board are responsible for overseeing the organisation's activities. Board members meet periodically to discuss and vote on the affairs of the organisation. At EMBASSY, the board will meet quarterly, which means four times a year.

Board memberships are not set up to be permanent positions; most organisations have terms set up for board members, which typically fall between two and five years.

BOARD

Number of directors

52 The minimum number of directors shall be two and the maximum number of directors shall be seven. Notwithstanding the foregoing, the number of directors may exceed seven if additional directors are required to be co-opted as a condition of a grant award to the Company.

Eligibility

53 A person will not be eligible for election or appointment to the Board if they are: -

- (a) disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- (b) disqualified from being a director under the Act;
- (c) not a member of the Company; or
- (d) an employee of the Company.

54 The directors must ensure that, on the board, at least 25% of the directors hold a recognised degree in the fine arts, such as a Bachelor of Arts, a Master of Arts, or a Master of Fine Arts, or an international equivalent, or equivalent art experience outwith holding a degree.

Appointment, retiral, re-appointment

55 At each AGM, the members may (subject to article 52) elect any member (providing they are willing to act) to be a director.

56 The directors may at any time appoint any member (providing they are willing to act)

to be a director (subject to article 52).

- 57 At each AGM, all the directors shall retire from office – but shall then be eligible for re-election.

Termination of office

58 A director shall automatically vacate office if:-

- (a) they cease to be a director through the operation of any provision of the Act or becomes prohibited by law from being a director;
- (b) they become debarred under any statutory provision from being a charity trustee;
- (c) they become incapable for medical reasons of fulfilling the duties of their office and such incapacity is expected to continue for a period of more than six months;
- (d) they cease to be a member of the Company;
- (e) they become an employee of the Company;
- (f) they resign office by notice to the Company;
- (g) they are absent (without permission of the directors or a valid reason such as holiday, sickness, family emergence, caring responsibilities, legal duties or religious commitments) from more than three consecutive meetings of the directors, and the directors resolve to remove them from office; or
- (h) they are removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.

59 A resolution under paragraph (h) of article 18 shall be valid only if:-

- (a) the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for their removal is to be proposed; and
- (b) the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote.

Register of directors

60 The directors shall maintain a register of directors, setting out full details of each director, including the date on which they became a director, and also specifying the date on which any person ceased to hold office as a director.

Office-bearers

61 The directors may elect from among themselves a chair and a treasurer, and such other office bearers (if any) as they consider appropriate.

62 All of the office bearers shall cease to hold office at the conclusion of each AGM, but shall then be eligible for re-election.

63 Any office bearer may be removed from their position by a unanimous resolution of the Board, excluding that office bearer.

64 A person elected to any office shall cease to hold that office if they cease to be a director, or if they resign from that office by written notice to that effect.

Powers of directors

65 Subject to the provisions of the Act, 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.

66 A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

Personal interest

What is personal interest ?

A personal interest means a person that someone on the Operational Committee and/or the Board has a personal connection with. This could be either a close social relationship defined in the constitution as a close relative/ partner or a business partner/ their own business/ a company they are a trustee of or a board member of. It is similar to nepotism which the art world is full of- we do not need more of it. Our constitution states how we try to avoid this.

An Operational Committee member or board member *is* allowed to suggest someone they have a personal interest with to be employed by EMBASSY Gallery. They are also allowed to explain why they think this person or company would be a

good fit for whichever position they are suggesting them for. **However, they also have to *clearly* state to everyone that they have a personal interest with this suggested person and what that connection is.**

They then cannot take part in voting whether the person will be employed by EMBASSY. We encourage secret ballots for personal interest employment to avoid social pressures on the other Operational Committee members and Board members voting.

If the Operational Committee member or Board member that has suggested someone they have a personal interest with will receive some sort of indirect payment through this, (for example if it is a business they are connected to they will profit from the arrangement) then the amount they will receive must be clearly written down and communicated to the rest of the Operational Committee and the Board. Any payment must reflect the standard EMBASSY rates of fair pay and *not* be above what would normally be paid to an employee.

Personal interests

- 67 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; they will be debarred (in terms of article 83) from voting on the question of whether or not the Company should enter into that arrangement.
- 68 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 theirs or any firm of which they are a partner or any limited company of which they are a substantial shareholder or director or any limited liability partnership of which they are a member or any Scottish charitable incorporated organisation of which they are a charity trustee or any registered society or unincorporated association of which they are a management committee member (or any other party who/which is deemed to be connected with them for the purposes of the Act) , has a personal interest in that arrangement.
- 69 Provided:
- (a) they have declared their interest
 - (b) they have not voted on the question of whether or not the Company should enter into the relevant arrangement and
 - (c) the requirements of article 73 are complied with,

a director will not be debarred from entering into an arrangement with the Company in which they have a personal interest (or is deemed to have a personal interest under article 68) and may retain any personal benefit which they gain from their participation in that arrangement.

- 70 The directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any conflict situation (as defined for the purposes of that section of the Act) that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.
- 71 For the avoidance of doubt, the provisions of section 175 of the Act and article 70 do not apply to a conflict of interest relating to a transaction or arrangement with the Company; conflicts of that kind are regulated by the provisions of articles 67 to 69 and articles 83 to 85.
- 72 No director may serve as an employee (full time or part time) of the Company, and no director may be given any remuneration by the Company for carrying out their duties as a director.
- 73 Where a director provides services to the Company or might benefit from any remuneration paid to a connected party for such services, then
- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
 - (b) the directors must be satisfied that it would be in the interests of the Company to enter into the arrangement (taking account of that maximum amount); and
 - (c) less than half of the directors must be receiving remuneration from the Company (or benefit from remuneration of that nature).
- 74 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.

DIRECTORS' MEETINGS

Procedure at directors' meetings

- 75 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 76 Except as expressly referred to in these Articles, questions arising at a meeting of the directors shall be decided by a majority of votes.

- 77 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.
- 78 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.
- 79 Unless they are unwilling to do so, the chair of the Company shall preside as chairperson at every directors' meeting at which they are 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.
- 80 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.
- 81 Subject to the Articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
- (a) the meeting has been called and takes place in accordance with the Articles; and
 - (b) they can communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 82 Directors may participate in a directors' meeting regardless of where they are participating from and by what means, provided they can communicate with each other and vote. If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.
- 83 A director shall not vote at a directors' meeting (or at a meeting of a committee) on any resolution concerning a matter in which they have a personal interest which conflicts (or may conflict) with the interests of the Company; they must withdraw from the meeting while an item of that nature is being dealt with.
- 84 For the purposes of article 83, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of theirs or any firm of which they are a partner or any limited company of which they are a substantial shareholder or director or any limited liability partnership of which they are a member or any Scottish charitable incorporated organisation of which they are a charity trustee or any registered society or unincorporated association of which they are a management committee member has a personal interest in that matter.
- 85 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which they are not entitled to vote.
- 86 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 83 to 85.

Conduct of directors

- 87 Each of the directors shall, in exercising their functions as a director of the Company, act in the interests of the Company; and, in particular, must
- (a) seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its objects;
 - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - (c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Company and any other party:
 - (i) put the interests of the Company before that of the other party, in taking decisions as a director; or
 - (ii) where any other duty prevents them from doing so, disclose the conflicting interest to the Company and refrain from participating in any discussions or decisions involving the other directors with regard to the matter in question; and
 - (d) ensure that the Company complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
- 88 Each of the directors shall comply with the code of conduct (if any) prescribed by the Board from time to time.
- 89 For the avoidance of doubt, any code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association; and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

Sub-committees

What is a sub-committee?

A subcommittee is a committee composed of some members of a larger committee, board, or other body and reporting to it.

In line with our constitution changes, EMBASSY will be implementing a group known as ‘an operational committee’. The operational committee is the same as the

sub-committee. The operational committee will be a group of people who are freelance workers, who have delegated responsibility.

- The operational committee, will therefore manage the day to day running of the gallery, and be responsible for activities such as curating, programming and installing exhibitions.
- They won't have any legal control over the organisation's structure or strategic direction.
- The operational committee will be required to report back to the board, to show that they have been working in line with the organisation's objectives.

The operational committee is not a formal part of EMBASSY Galleries constitution, and rather the description of their role will be stated in a document that is separate to the constitution. This will be a freelance worker contract that is able to be reviewed by the board of directors throughout time. This means the commitments of the role can be altered and reviewed in response to the funding EMBASSY receives, or the changing needs of the organisation.

The first operational committee will consist of four people, however this number could change over time.

MISCELLANEOUS

Delegation to sub-committees

90 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.

91 Any delegation of powers under article 90 may be made subject to such conditions as the directors may impose and may be revoked or altered.

92 The rules of procedure for any sub-committee shall be as prescribed by the directors.

Operation of bank accounts

93 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.

Minutes

94 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

- 95 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 96 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.
- 97 No member shall (unless they are 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.

Notices

- 98 Any notice which requires to be given to a member under these articles shall be given either in writing or by electronic means; such a notice may 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 them 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 electronic means.
- 99 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.
- 100 Any notice sent by electronic means shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed 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.

Winding-up

- 101 If on the winding-up of the Company any property remains after satisfaction of all the Company's debts and liabilities, such property shall be transferred to such body or bodies (whether incorporated or unincorporated) as may be determined by the members of the Company at or before the time of dissolution (or, failing such determination, by such court as may have or acquire jurisdiction), to be used solely for a charitable purpose or charitable purposes.
- 102 For the avoidance of doubt, a body to which property is transferred under article 97 may be a member of the Company.

103 To the extent that effect cannot be given to article 97 (as read with article 98), the relevant property shall be applied to some charitable purpose or purposes.

Indemnity

104 Every director or other officer or auditor of the Company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the Company against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office; that may include, without prejudice to that generality (but only to the extent permitted by those sections of the Act), any liability incurred by them in defending any proceedings (whether civil or criminal) in which judgement is given in their favour or in which they are acquitted or any liability in connection with an application in which relief is granted to them by the court from liability for negligence, default or breach of trust in relation to the affairs of the Company.

105 The Company shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the Company may sustain or incur in connection with the execution of the duties of their office; and such insurance may (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).

What else have we changed in the new constitution?

Beyond the changes to the involvement of the board, EMBASSY has also updated certain other parts of the constitution. This is to reflect the current needs and values of the organisation, that have also changed since the original constitution was written. These changes are as follows;

-The number of Members of EMBASSY has been capped to 200 people. This will ensure equality of powers and voting rights between the Board, the Operational Committee, and the members base. It will also ensure that EMBASSY does not need to raise the cost of membership subscription too highly if it happens that our members base becomes very large at the same time as our funding decreases. We want to assure our members base doesn't become so large, that we are unable to provide a fair amount of opportunities to those signed up.

-The wording of 'he/she' in the constitution has been updated to 'they.'

-The Membership fee payment figure is no longer a fixed amount, and rather the cost is to be reviewed once a year. This is to ensure that EMBASSY can remain financially accessible to members wishing to join. This also allows the board to assess

the financial need of membership subscriptions in response to the additional funding we receive. For example, if we didn't receive as much funding from our primary funder-Creative Scotland, we could increase the membership fee to help support the delivery of the galleries programme.

- **The Board of Trustees will no longer have an appointment chairperson.** Instead, at the beginning of each board meeting, a different trustee will be appointed to chair for that particular meeting, with the position then rotating throughout the board members. This is to maintain a non-hierarchical approach, and avoid a singular person holding more power.

- **Membership is now open to people under the age of 18.** Board members still need to be over 18, however we welcome people under 18 to become a member and be involved in the gallery in this capacity.

- **Directors no longer are required to have a degree in the Arts.** Relevant experience is now also included evidencing that a person is suitable for the role.

- **Only 14 days notice is now required for an AGM.** Previously, an AGM required 21 days notice, this has been updated to be only 14.

-**Board meetings, general meetings, and AGMs can now be held online as well as in person.** This is to reflect the COVID-19 pandemic.