

**General Meeting
18 November 2021**

Paper 2: Becoming a company limited by guarantee

Summary

The Leadership Team recommends to members that they:

- Accept the proposal that ADEPT adopts a ‘foundation model’ of a company limited by guarantee.
- Endorse the approach that the company directors are the President, Immediate Past President and Vice Presidents.
- Approve the timescales for becoming a company limited by guarantee from 1st April 2022.
- Provide any comment or query on the draft Articles of Association by Friday 14th January 2022.

1. Introduction

At the AGM earlier this year, the Chief Operating Officer (COO) outlined the issues with the current legal status of ADEPT, currently an unincorporated association (AGM papers are available [here](#)). These included:

- It is not a legal body – it does not have a ‘legal personality’.
- It cannot enter into contracts, own property or directly employ staff.
- Members of Leadership Team (LT) are personally liable for any debt. The likelihood of this is small; nonetheless, it remains a risk.

Having reviewed the options and taken legal advice, the LT recommended to members at the AGM that ADEPT becomes constituted as a company limited by guarantee. Becoming a company limited by guarantee deals with the immediate issue of incorporation – giving ADEPT a legal identity and providing more certainty, particularly in relation to financial risk – whilst minimising change as to how ADEPT has operated to date. Members accepted this recommendation. Since then, the Immediate Past President and COO have worked with lawyers to finesse the details.

This paper sets out the approach. Recognising that not all members will be at the General Meeting in Bath on 18 November, there will be a ‘window’ of 8 weeks for comments or queries, concluding Friday 14 January. The LT will consider feedback and respond appropriately. The intention is that ADEPT becomes a company limited by guarantee from 1st April 2022 to fit in with the financial year.

2. Articles of Association

The draft Articles of Association can be found at Appendix 1. We have sought to retain flexibility wherever possible.

Section 2 sets out the 'Objects' of the company; Section 3 its 'Powers'. This text is based on the original ADEPT constitution, and we are keen to ensure it is 'future proofed'. Section 4 refers to limitations on private benefits, clarifying that ADEPT is a not-for-profit organisation, whilst Sections 5 & 6 deals with remuneration and other benefits. Sections 7 & 8 refer to limitations of liability, where the liability of each member (as defined below) is limited to £1. Sections 9 & 10 clarify directors' powers and responsibilities, whilst Sections 11 & 12 relate to delegated powers. Sections 11-25 outline processes and procedures for directors to follow. Sections 26 & 27 expands on the appointment, retirement or disqualification of Directors. Sections 28, 29 & 30 confirms the role of members and associate members (more on this below). Sections 31-39 relate to decision making, written resolutions, administrative arrangements and miscellaneous. Section 40 outlines the approach to winding up the company.

3. Directors and legal members

ADEPT will be constituted as a company limited by guarantee. Companies limited by guarantee have both company law members and directors. This two-tier governance structure is common to all companies in England and Wales, where:

- The term director refers to a person who is on the board of a company for the purposes of company law.
- Legal members of a company limited by guarantee are equivalent to the shareholders of a company limited by shares. While legal members of a company limited by guarantee do not have a right to profit from dividends, and do not 'own' a company in the same way as shareholders, they play the same constitutional role of determining the constitutional and administrative rules that govern the company and holding the directors to account.

The proposal is that ADEPT adopts a 'foundation model', whereby its legal members and directors are the same individuals (sections 26-29). It is proposed that the President, Immediate Past President and the three Vice-Presidents shall ex-officio be directors of the company. A director ceases to hold office as and when they cease to hold the position of President, Immediate Past President or Vice President.

There are no additional legal members. Company law entrusts certain powers to the directors and certain powers to the legal members. This means that the same individuals will, in some cases, take on the role of legal members to take specific decisions, and in other cases will take on the role of directors.

In general, most top-level decisions about ADEPT will be made by the directors, with only relatively few key constitutional decisions reserved for its legal members (i.e. the directors acting in their capacity as legal members).

4. The Leadership Team

It is proposed to retain the Leadership Team with its current constituency. That includes the President, Immediate Past President, Vice Presidents – as company directors / legal members – along with the chairs of the Regional and Subject Boards, CCS Wales, SCOTS, the Department for Infrastructure Northern Ireland plus the Chief Operating Officer. Its role will be to continue to act as a consultative body, advising the Board of Directors on behalf of the wider membership.

The process of election of presidential officers will remain the same i.e. the Leadership Team will nominate candidates for election to the office of 2nd and 1st Vice President, plus President, for the ensuing year. Each nominee must be a member of the association and able to progress to the office of President in due course. If any member so desires, s/he may submit another nomination in writing. If required, an election will be undertaken. The President, 1st Vice President and 2nd Vice Presidents will be installed in office at the following Annual General Meeting.

5. Legal members and associate members

A company is required to have legal members, who have the rights set out in Appendix 2. Associate Members are entirely discretionary. In this case, the proposal is that it will be more administratively simple to restrict legal membership to the directors of the company for the time-being; and to create a class of Associate Members, who will retain the rights currently enjoyed by members of the unincorporated association (see Box 1).

Box 1 – Defining Associate Members (as set out in the current [Constitution](#))

- Local authority (LA) Associate Members will be drawn from subscribing authorities who must hold an appointment with strategic responsibility for strategic planning, transportation, waste management, economic development or related built environment functions of a relevant local authority or related public body in England, Wales, Scotland or Northern Ireland. For clarity these posts are considered to be direct reports to the Chief Executive or the next tier down (i.e. tier 2 and 3 posts). ADEPT membership benefits also extend to officers who operate at tier 4 or tier 5 levels.
- Chief Executives / Strategic Directors of Local Enterprise Partnerships, Combined Authorities, Sub-national Transport Bodies and other relevant local government associations are eligible to join the association.
- Honorary / Special Honorary Members
 - LA Associate Members will be eligible on retirement from relevant remunerated employment for transfer to the class of Honorary Member.
 - LA Associate Members or Honorary Members who take up relevant remunerated employment within the private sector or outside of local government in the public sector will be eligible for transfer to the class of Special Honorary Member as from the date of commencement of their new employment.
 - Special Honorary Members retiring from relevant remunerated employment within the private sector will be eligible for transfer to the class of Honorary Member.
- Chief Executives / Strategic Directors of private sector companies are eligible for Corporate Partner membership of the Association.

- The following will be recognised as Associate Bodies: CSS Wales, SCOTS, London Environment Directors Network, Department for Infrastructure Northern Ireland, TfL.

Technically, these rights could be withdrawn or varied by the directors at any time. However, as the whole existence of the company is dependent on meeting the needs of the Associate Members, it would be folly for the organisation to ignore the will of the Associate Members.

The articles will provide for regulations to be established which govern how the company engages with its Associate Members. In effect, these will reflect the current rules of ADEPT as set out in the constitution.

6. Summary

Much of the work to support the conversion from an unincorporated association to a company limited by guarantee has been done. The Leadership Team now seeks support from the members for the final stages.

Hannah Bartram
Chief Operating Officer
12th November 2021

Appendix 2: Legal members

The sections below relate to the legal members (hereafter, simply “members”). It does not consider the role, duties and powers of the same individuals when acting in their capacity as directors.

Role of members

Under the Articles of Association, members have ultimate control over the governance of a company limited by guarantee, including a right to appoint and remove directors, amend the constitution, and can direct the directors to take certain actions. This distinction is somewhat blurred here, as the individuals involved are the same in each case.

Rights and powers of members

Members of a company limited by guarantee have rights under company law, and other rights that are specifically conferred on them by the articles of association of the company.

Members vote at general meetings on matters that, in most cases, have been put to them by the directors or outside of a meeting by way of written resolutions circulated to them.

Generally, the matters which members can vote on include:

- a) amending the articles of association of the company;
- b) removing a director or auditors;
- c) resolving that the company should be wound up by the court liquidation;
- d) requisitioning a general meeting (if the directors fail to call a meeting, the members have power to call a meeting at the company’s expense); and
- e) ratifying the actions of a director.

There are some key constitutional matters that are reserved for member decisions (and cannot be passed by directors alone), such as approval of changes to and adoption of new articles of association.

To the extent there are decisions which cannot be taken by the directors and must be made by the members, we would anticipate a general meeting of the members being held at the start or end of a board meeting to deal with the relevant decisions (or a written resolution of the members being obtained).

Decisions by ordinary and special resolution

The following decisions of the members must be taken by “special” resolution:

- a) Change of name by the members;
- b) Approval of changes to and adoption of new articles of association; and
- c) Resolution that ADEPT should be wound up by the Court.

Other decisions are made by “ordinary” resolution. The table at Appendix 1 sets out whether a decision should be taken by a special or ordinary resolution.

Passing a special resolution at a meeting requires:

- a) A notice circulated in advance setting out the proposed resolution and specifying that it is proposed as a special resolution;
- b) A majority of 75% of the votes cast must be in favour of the resolution.

Passing a special resolution by written resolution requires 75% of all members entitled to vote in favour of the resolution.

Passing an ordinary resolution at a meeting:

- a) Does not require that the notice to contain the precise wording of the resolution, but it must give a general indication of the proposal, and
- b) Requires a simple majority of the votes cast to be in favour of the resolution.

Passing an ordinary resolution by written resolution requires a simple majority of all members entitled to vote in favour of the resolution.