

## **EXPLANATORY NOTES ON THE PROPOSED AMENDMENTS TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF HONG KONG TRIATHLON ASSOCIATION LIMITED (the "ASSOCIATION")**

### **BACKGROUND**

Since the inception of the Association in 1984, changes have been made to the Articles of Association (the "Articles") to deal with the gradual needs of the Members and the development of the Association. It transpires that different members of the Executive Committee (where applicable, hereinafter referred to as the "ExCom") adopted different interpretation on the Articles due to certain inherent inconsistency or problem of drafting. A pressing need to review the provisions of the Articles is imminent which resulted in the present exercise. A Constitution Committee comprising current ExCom member, Member with no club affiliation but legal background and ex-President and original drafter of the Articles, was formed at the end of January, with a view to thoroughly review the Articles with reference to Members' grievances and current unsatisfactory practices of the Association in implementing its objects, and most importantly to revise same to best suit the growing needs of our Members. A simultaneous review of the Memorandum of Association (the "Memorandum") of the Association had also conducted.

This Note sets out a summary of the major areas covered, the salient provisions of the proposed changes of the Articles and the way ahead. This is aimed at enabling our Members to comprehend and better understand the rationale, the underlying principles and the philosophical basis for the proposed amendments made thereto.

### **MAJOR AREAS COVERED**

Whilst most of the proposed amendments to the existing provisions of the Articles are cosmetic in nature, there are a number of new proposals and substantive amendments contained in the draft document. Particular attention is drawn to the following:-

<u>New Article No.</u>	<u>Subject</u>
8	Renewal -- of different class of membership
17	Committee -- new structure of ExCom and Club representation
19	Secretary -- scope of responsibility
20	Treasurer -- scope of responsibility
22	Eligibility -- preferred criteria for Secretary and Treasurer respectively
23	Term of Office -- introduction of fixed term of office
24	Election -- introduction of electronic and paper voting of ExCom members
25	Replacement -- simplified procedure to avoid disruption/dysfunction of ExCom
26	Vacation of Office -- resulted from misconduct and failure to disclose interests

27	Powers & Duties – to make policies and strategies and establish clear rules
28	Standing Committees – rename the title of current Sub-Committees
30	Disciplinary Committee – new introduction to deal with complaints on misconduct of coaches or athletes
31	Appeal Committee – should be formed to hear and handle complaints on decisions or conduct of race official or standing committees etc.
32	Validity – By-laws and term of reference are also binding on all Members
34	Attendance – Head Triathlon Coach's function in Elites Committee only
37	Voting -- no voting right or counting of quorum of interested members
41	Annual General Meetings – announce election results
63	Miscellaneous – adjudication by Appeal Committee and Special Resolution

### **SALIENT PROVISIONS OF PROPOSED AMENDMENTS**

#### ***A. Housekeeping***

Article 1 and Article 2 – Definitions and Interpretation

To maintain consistency and unity of common use of terminology, clear and concise defined terms are adopted throughout the Articles. As such, a number of new defined terms with particular meaning such as para.1, 2, 4, 5, 6, 8, 9, 11, 12, 15, 16, 17 and 18 of Article 1 are introduced. Generic interpretation and expression of commonly adopted words such as para.3, 5 and 7 of Article 2 are included.

#### ***B. Testamentary of Objects clause***

Article 5 – Eligibility

The importance of our Club Members or new clubs to actually put into place the objects of the Association established under paragraph 3 of the Memorandum and to engage and participate in three disciplines of Triathlon at an active level is expressly recognized.

Article 6 – Application

The proposed amendments aim to provide a clear guideline or requirement on application procedure for club membership.

Article 7 – Admission

The proposed amendments serve to remove repetition but provide a simple and clear meaning.

Article 8 – Renewal

New provision is made by setting out the expectation on, and the precise procedure of, Members renewing their membership, which seems to be unclear for the past years.

#### Article 10 – Conditions

It is considered a privilege of our Members in helping out by holding(hosting) and officiating regular Triathlon events on roster basis, with a view to promote friendly interactions, facilitate a deeper relationship and enhance mutual support among Members and Clubs through the organization and running of events. 8 prime Triathlon Club Members are requested, and strongly encouraged to join the Events standing committee for this purpose in the future.

#### **C. *Members default***

##### Article 12 – Suspension and Termination due to non-payment

It is considered an upright duty of Members renewing their membership automatically without any written reminder, notification or demand from the secretariat office. Although it is rare for the office staff to issue notice of termination of membership to Members in the past, this will cause embarrassment to a default member for failure in paying a nominal subscription fees. Hence, the deletion of certain drafting of this Article is made. An expected due date for membership renewal is introduced.

For administrative reason and management convenience, Members have to re-apply for membership one month after its due date of payment, and pay requisite admission fee.

Other self-explanatory amendments to the Articles 13, 14 and 15 are for consistency and tidying up purpose.

#### **D. *Core of the Association***

##### Article 17 – Structure of Executive Committee

There are grave concern as to insufficient representation of our various Club Members, block voting of Clubs, exclusion of ExCom members for being members of sub-committee etc., a new structure and composition of the Executive Committee is introduced, with a view to promote openness, to achieve a higher degree of fairness and to maintain a balanced opportunity and wider participation of Clubs of different sizes.

Whilst the four important positions of President, vice-President, Secretary and Treasurer are indispensable, it is equally important to have representatives from our prime Club Members who possess, other than talented triathletes, individual of extensive experiences, skills and insights and whom are able to contribute sound and creative ideas as well as effective management of the business of the Association. On this basis, a new category of club representatives from 4 Club Members having the highest number of voting members and race participations is initiated. The provision of 4 club representatives can also guarantee an effective operation and a minimum number of quorums for committee meeting. By means of a pre-determined mechanism and calculation of voting members of individual clubs,

it is hoped that a higher and extensive level of participation of triathlon races by Club Members can also be promoted.

As mentioned, it is believed that wider representation and participation of different Club Members in the Committee are beneficial to the Association vis-à-vis the development of the triathlon sport itself. Independent Members or individuals without club affiliation as well as Club Members of smaller size should also be provided with equal opportunities to get nominated and elected as permanent officers or elected members into the Executive Committee. To achieve this, Members standing for each position of the ExCom are required to meet certain requirements, in terms of the permitted and maximum number of Members and positions to be nominated or elected for each category of ExCom members. (See Article 17.2.iii).

Meanwhile, the current adopted practice and principle of "two Members from each club" is retained. In order to ensure fair play, it is essential to set out clearly that transfer of club after election is strictly forbidden. (see Article 17.5 and Article 17.6)

#### Article 19 – Secretary, Article 20 – Treasurer and Article 21 – Vice-President

It is believed to be the best interest of the Association if the roles and functions of the permanent officers are clearly identified and specified in the Articles, and hence the proposed amendments.

#### Article 22 – Eligibility

It is the rationale to maintain fairness and equal opportunities of Members; one ordinary member is entitled to stand for only one position of a committee member. Previous experiences evidenced that the President and Vice- President would best serve their functions if they possess work experiences in the Association for a minimum of 2 years. Meanwhile, for the position of Secretary, a member with legal qualifications (i.e. a qualified lawyer) will provide sound management and constructive advice to the daily operation and administration of the Association, as well as support to the secretariat office, so as to avoid avoidable mistakes or inadvertent errors.

Equally, a Member whose expertise is in the area of accounting or business operation will benefit the Association in the effective and efficient application and the constructive use of funds in the promotion of triathlon sport, so as to implement the objects and function of the Association to fullest extent.

Those preferred criterion for the Secretary and the Treasurer are subject to availability of Members standing for such positions. If no such Members of the preferred criterion are, in an ideal situation, available in standing for election, these requirements will be relaxed.

#### Article 23 --- Term of Office

In order to maintain continuity and effective planning of policies and implementation of the objects of the Association, as well as to allow best performance of the functions of Executive Committee members, it is considered that previous requirement of retirement of one third of its members every year create inconsistency and does not serve the above purpose constructively, and hence should be repealed.

Hence, a 3 years term with a maximum consecutive term of 2 years for the post of President is considered as the best arrangement. As the Vice-president plays an assistant role and carries a supplemental function to the President, same term of office of 3 years as the President is regarded reasonable and logical. Other members all having two years of service in the Executive Committee is considered a sound and consistent approach Provided that a maximum of 6 years for a continuous term of office for the same position is only allowed.

Moreover, it is also expressed in the Articles that no ExCom member is allowed to stand for election of another position of Executive Committee without resigning from his current position.

#### Article 24 -- Election

While Secret Ballot is maintained, new election method and election procedure are introduced. This is aimed to encourage high level of participation of all Ordinary Members, to preserve openness and transparency, to resolve physical constraint and to provide administrative convenience to Members.

1. Electronic voting or paper voting for those without electronic means is recommended to replace physical presence in voting on a fixed day.
2. Independent accountancy firm will be appointed to oversee the process, to adjudicate and announce results at AGM.
3. Nominees are requested to deliver his deliberations and attend a "questions and answers" forum before election to enable Members to better understand the candidates and to make a well informed decision.
4. Absolute majority of votes for permanent officers are expected.
5. Candidates and Members present at AGM to receive announcement of results or be appointed or co-opted as non-voting members, as the case may be.

#### Article 25 – Replacement

It is hoped that all elected and nominated committee members are able to complete their respective fixed terms of office. A simple mechanism of appointment of non-voting Members for filling up vacancies in the middle of a calendar year for a term of office lasts until the next AGM and re-election of such vacancy is considered an appropriate, as well as time saving and cost-effective approach.

A new arrangement to deal with a rare situation of complete dysfunction of ExCom is also proposed.

#### Article 26 – Vacation of Office

It is hoped that none of the situations stated in this Article will arise, 2 new situations are proposed in the case where an ExCom member was found to have committed misconduct or failed to declare his/her interests as being an ExCom member is required to do so.

#### Article 27 – Powers & Duties

It is considered paramount to state clearly and precisely the entrusted responsibilities and vested authority of ExCom in discharging its role and proper function in the Association, without being challenge of ultra vires or abuse of due process. It also aimed to provide a clear direction for the whole ExCom in planning and establishing short term and long term goals and policies of the Association in relation to Triathlon sport during its term of office.

#### Article 28 – Standing Committee

As an affiliated member of ITU, it is considered appropriate to adopt similar titles for our regular committees who have its own unique role and function in the Association. It is therefore proposed to change the title of current and active sub-committees into standing committees, but at the same time retaining a lower hierarchy of sub-committee serving other advisory role or ad hoc function or operational purpose (see Article 29).

While it is the current provision of the existing Articles that any ordinary member is entitled to nominate himself/herself for being appointed as members to the standing committees, it is a prevailing condition that no interested member is allowed to be appointed by ExCom as chairman of the relevant committee, and that no more than one standing committee can be chaired by the same chairman of another committee. This is to avoid the common phenomenon or challenge of “conflict of interests” of our committee members. Furthermore, to prevent overbearing of role and duties of the President, it is considered more appropriate to specify in its term of reference of each standing committee as to the ex-officio requirement or capacity of the President in the relevant standing committee.

#### Article 30 – Disciplinary Committee

To preserve the integrity, openness and transparency of the Association to deal with complaints on coaches in relation to breach of conduct or breach of code of ethics, an independent committee entitled Disciplinary Committee is proposed to set up with the stated composition, term of office and authority. It is expected that no member of any Club, or Executive Committee or standing committee will be served as the 3 members of Disciplinary Committee. The term of office shall be 2 years from the date of appointment by the ExCom in writing.

#### Article 31 – Appeal Committee

To maintain good governance and proper checks and balances of the Association, and as a request of LCSD, it is required to establish an Appeal Committee to deal with complaints in general. To preserve impartiality, members of Appeal Committee should have legal qualifications and are independent from ExCom or Club or standing committees and disciplinary committee. The decisions, recommendations or determinations of the Appeal Committee are binding and conclusive, save for proposed amendment of the Articles. The term of office shall be 2 years from the date of appointment by ExCom in writing.

#### Article 32 – Validity

While the Articles set out the general basic principles and parameters for proper conduct and power, the By-laws provide a means to an end by setting out the details of requisite rules, regulations and procedures. It is equivalent to a mini Articles and can only be amended by way of Special Resolution. Moreover, the provisions of the Articles shall, unless expressed stated otherwise, equally apply to any term of reference of the standing committees or Disciplinary Committee or Appeal Committee.

### ***E. Formality of Committee Meeting***

#### Article 34 -- Attendance

To allow our Head Triathlon Coach to focus his time, energy and effort in training our elite squads, it is more conducive and beneficial to both the Head Coach and our athletes that he is only expected to be a member of the Elites Committee which mainly deals with elite triathletes, their development, training, racing and other related matters.

#### Article 35 – Quorum

It is commonly adopted practice to have a minimum of half of its members of the Executive Committee to form a quorum in any meeting. And it is also essential to set out clearly the situation which constitutes valid quorum.

#### Article 37 – Voting

Again, to preserve good governance and proper due process, it is material that no interested member shall be counted as quorum or entitled to vote in any motion or resolution.

### ***F. Formality of General Meetings***

#### Article 41 – Annual General Meeting

Due to new voting mechanism, election of members to ExCom will be replaced by announcements of results.

#### Article 49 – Voting Procedure

The new election method is specified here for consistency purpose.

#### ***G. Tidying Up***

For better and clearer drafting, Articles 42, 43, 44, 45, 48, 50, 53, and 56 are also revised. A miscellaneous provision is also introduced to provide venue for resolution of conflicting interpretation. Meanwhile, for reference purpose or easy reading by Members, a Chinese translation of the Memorandum and Articles of Association will also be provided, although it is not used or intended to use for construction or interpretation of the provisions of the Articles.

### **THE MEMORANDUM OF ASSOCIATION**

In so far as the Memorandum is concerned, the Constitution Committee is thankful to the contribution from our Members who offered his comments thereon. A review on the Memorandum was made and, in particular, the adopted name and the objects of the Association were revised. And in order to best reflect and properly describe the mission and the purpose of the Association and to bring the reality of our objects up to date, paragraph 3 of the Objects Clause was substantially re-drafted to make it more meaningful, achievable and comprehensible. Certain catch all provisions such as paragraph 3(h) of the Objects Clause and the general independent objects clause were also added to allow flexibility of the Association in performing its function.

### **IMPLEMENTATION OF NEW ARTICLES – WAY AHEAD**

Upon approval by Members of the revised Memorandum and Articles of Association in EGM, the Association is required to notify the Companies Registry the approved amendments which will be implemented with immediate effect.

In so far as the Executive Committee and all standing committees (current sub-committees) are concerned, the terms of offices of all their membership shall last until the date of the Annual General Meeting which is due to take place on 14 December 2012, and where the new structure, composition, nomination and election of the Executive Committee and standing committees are put into place. In other words, current members of all committees shall continue their services until election of all members of all committees by the end of December. This serves to provide a clean start, and a smooth transition and successions, of committee members, and to prevent inconsistent or contradictory practices of the provisions of the Articles.

Meanwhile, Constitution Committee will proceed, with the support of the Association's staff, to devise the detailed procedures and format of electronic and paper voting. All Clubs are



requested to submit for verification by the Association the numbers of voting members of its Club for the purpose of nomination of Club representatives. Ordinary Members are invited to stand for election of the positions of permanent officers and elected members, and submit nominations for further action and process by Executive Committee. Interested Members who would like to contribute in the work of standing committees may nominate themselves for consideration by the new Executive Committee. Appointment of accountancy firm shall also be made.