

**To** The ChildFund Alliance Board  
**From** Michael Rose  
**Date** 15 April 2019  
**Subject** Potential changes to the ChildFund Alliance Articles of Association, By-laws and Members Agreements

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## 1. Introduction

At the May Board meeting, the Board will consider a number of proposals which may, if adopted, require amendments to the ChildFund Alliance By-laws, Articles and Members Agreements. The possible changes, and a suggested approach to making amendments, are discussed below.

## 2. ChildFund Alliance By-laws

### a. Article I(2) – “Membership Interest”

Article I(2) of the By-laws deals with the number of Directors to be appointed by each Affiliated Organisation. The number of Directors is calculated by reference to each Member’s “Membership Interest”.

*Membership Interest* is calculated by dividing the Audited Net Revenues of a Member by the total Audited Net Revenues of all Members. In other words, a Member’s *Membership Interest* represents its proportionate contribution to total Alliance revenue.

The concept of *Membership Interest* is also relevant to the calculation of Membership Dues pursuant to Article 1.3 of the Standard Members Agreement.

If the Board votes to change the dues calculation model to a declining rate model as recommended, it would be sensible to align Article I(2) to the new dues model. If this was done, the number of Directors appointed by each member could be calculated by reference to the revenue bands agreed as part of the dues model. This would provide a better alignment between Board representation and dues contribution.

It is not possible to propose amendments to Article I(2) until a final decision has been reached in relation to the dues model.

### b. Article I(3) – Appointment of Directors

Article I(3) provides that Directors are appointed for four year terms. The Article does not impose any limit on the number of consecutive terms a Director may serve and, in practice, a number of Directors have served several consecutive terms.

If the Board determines that new term limits should be adopted, it will be necessary to amend Article I(3). If the Article was amended, it would be sensible to insert not only the new term but also a maximum number of consecutive terms.

### c. Article II(1) – Appointment of Chair and Vice-Chair

This article refers to the appointment of the Chair and Vice-Chair at the annual meeting of the Board. The proposed change from two meetings a year to one meeting will not affect the meaning of “annual meeting” and therefore will not affect the timing of these appointments.

Article II(1) also sets out the terms and term limits for the Chair and Vice-Chair. It may be necessary to consider amending these, depending on what changes are made to the term and term limits of Board members under Article I(3).

**d. Article III(1) – Board committees**

This Article deals with the establishment of Board committees and the specification of their composition, powers, responsibilities and limitations. If a new Governance sub-committee is formed, it should be established pursuant to this Article.

**e. Article IV(2) – Amendment of Articles and By-laws**

This Article sets out the voting thresholds for amendments to the By-laws and Articles. If the By-laws and Articles are to be amended after the May meetings, it will be necessary to comply with this provision.

This provision also relies on the *Membership Interest* concept. If the dues model is changed and new revenue bands are adopted, I would recommend that this provision also be changed to align with those new bands. As with Article I(2) it is not possible to propose an amendment until the precise nature of any change to the dues model is understood.

**3. Articles of Incorporation**

**a. Article 5(e) – Term of appointment for Directors**

This article refers to a four year term for Directors. If the By-laws are amended to change terms or term limits for Directors, a corresponding amendment should be made in the Articles.

There are no other provisions in the Articles which would require amendment as a result of the various proposals being considered at the May meetings.

**4. Members Agreement**

All members are a party to an Amended and Restated Members Agreement (Members Agreement) in the standard form. Article 1.3 of the Members Agreement deals with the allocation of ChildFund expenses.

Under Article 1.3, each Member agrees to pay its *pro-rata share* of ChildFund's annual expenses. The mechanism for calculating *pro-rata share* is the same mechanism used for calculating *Membership Interest* under the By-laws.

If the Board votes to change the dues calculation model to a declining rate model as recommended, it will be necessary to amend Article 1.3 of the Members Agreement in a way which aligns with changes made to the By-laws.

Any amendments to the Members Agreement must be in writing and signed by both ChildFund Alliance and the relevant member. If the Board resolves to change the dues model, it would also be sensible to pass a resolution authorising ChildFund Alliance to amend the Members Agreement with each Member.

**5. Approach to amendment**

The proposals relating to Board succession issues; a Governance Sub-committee; term limits for Directors and the timing and location of meetings, will be relatively straightforward amendments and it will be possible to draft them fairly quickly following the relevant resolutions of the Board.

Amendments relating to the calculation of membership dues and the use of revenue bands instead of *Membership Interest* and *pro-rata share* will be more complex, involving corresponding changes in the By-laws and Members Agreements. Depending on the decisions reached at the May meeting, I would recommend that the Board's resolutions be documented in very clear detail and that an attempt be made to circulate and vote on draft amendments as quickly as possible after the May meetings. Having regard to the need for various approvals by local Boards etc, there will be

some inevitable delays. However, it should be possible to complete all amendments by the end of June.

I would also recommend that legal advice be obtained to confirm the notification and/or registration requirements in relation to any amendments to the By-laws and Articles. This advice should also confirm that the amendments will not change ChildFund Alliance's status as a Virginia non-stock corporation or not-for-profit corporation.

The necessary resolutions and the suggested timeline for the amendment of the Articles, By-laws and Member Agreements are set out below:

#### **At the May Board meeting**

- A resolution confirming a change in the dues calculation model.
- A resolution to change the term of Board appointments and/or provide for a maximum number of terms.
- A resolution authorising the preparation of draft amendments to the Articles, By-laws and Members Agreement as required, and providing for a further Board meeting (by phone conference) to confirm those amendments.

#### **May and June**

- Prepare and circulate proposed amendments to the Articles, By-laws and Members Agreement.
- Prepare and circulate proposed resolutions to confirm the amendments.
- Obtain legal advice in relation to the filing and registration requirements in Virginia and to confirm no change to the corporate status of ChildFund Alliance.

#### **June**

- A telephone conference to confirm amendments.
- Resolutions amending the Articles, By-laws and Members Agreements.
- A resolution authorising ChildFund Alliance to amend the Members Agreement with each member.
- A resolution authorising the Secretariat to make any necessary filings with the Virginia Corporate Regulator.

**Michael Rose**