ICGN MEMBER CONSULTATION:
PROPOSED REVISIONS TO ICGN’S ARTICLES OF ASSOCIATION

Introduction

1. The Articles of Association are ICGN’s constitution. They define our purpose, the rights of members, the responsibilities of the Board and the procedures by which we operate. The current Articles can be found at www.icgn.org/about/articles-association.

2. At last year’s AGM, Members approved changes to ICGN’s membership categories and subscription levels. As a consequence, some amendments to the Articles are now necessary. The Board has decided to take this opportunity to undertake a comprehensive review of the Articles, something which last done in 2008 when ICGN was formally incorporated as a legal entity.

3. A working group was established to undertake the review and advise the Board (see Annex 1 for the terms of reference and membership). The review included an assessment of ICGN’s Articles against peer organisations and ICGN’s own Global Governance Principles.

4. Following the review, the Board has identified a number of additional issues for which it considers revisions to the Articles might be appropriate. These relate to:

   • ICGN’s defined purpose;
   • The process by which Board members are nominated;
   • The length of tenure of the Chair and Vice-Chair;
   • The ability to hold virtual General Meetings and the participation rights of Members at such meetings; and
   • A ‘written consent’ procedure for some Board decisions.

5. Any changes to the Articles must be formally approved by Members by special resolution (that is to say, a resolution for which at least 75% of votes cast must be in favour in order for it to be approved).

6. The Board intends to recommend specific amendments for Member approval at the AGM, currently scheduled to be held on 2 September 2021. Before doing so, the Board is keen to hear Members’ views on the proposed changes, which are explained in more detail in this consultation paper.

7. As well as getting your views on the proposals in the paper, the Board would also like to hear from Members if you believe that other changes to the Articles are required.

8. Please send your comments by Friday 12 March 2021 to Garvin Payne (email: Garvin.Payne@icgn.org).
Consultation questions

Question 1: Should there be an explicit reference to investor stewardship in ICGN’s Objects?

Question 2: Should the Nomination Committee be made a committee of the Board rather than a separate committee made up of ICGN Members who are not on the Board?

Question 3: Should the maximum tenure as a Board member be extended from six to eight years for the Chair and Vice-Chair, subject to them not being able to hold those positions for more than three years?

Question 4: Should the Articles provide ICGN with the ability to hold either physical or virtual general meetings?

Question 5: Should the Articles be amended to ensure that Members participating remotely in general meetings have the right to speak and ask questions?

Question 6: Should the Articles permit the Board to take decisions in writing or by electronic communication in limited circumstances and with clear safeguards?

Question 7: Are there any other revisions to the Articles that should be considered? If so, what are they and why are they needed?
ICGN's Objects

Extracts from the Articles

“The objects of ICGN are the advancement of education worldwide for the public benefit through the study, the development and the promotion of corporate governance standards and guidelines, the promotion of good corporate governance and the exchange of information and education in all matters regarding corporate governance.” (Article 3)

9. The ‘Objects’ clause in the Articles describes ICGN’s formal purpose and, together with the ‘Powers’ clause (Article 4), prescribes the activities that it can undertake.

10. At present, the Objects make no explicit reference to investor stewardship. While the current wording is broad enough to encompass ICGN’s activities relating to stewardship as they are part of its efforts to promote good corporate governance, the Board considers that it would be appropriate to incorporate a direct reference to reflect the importance of investor stewardship to ICGN’s mission.

Question 1: Should there be an explicit reference to investor stewardship in ICGN's Objects?

The Board nomination process

Extracts from the Articles

“The Governors shall propose a Nomination Committee for approval, and individual election, by Members each year for the purpose of identifying candidates who are willing and able to contribute to the governance of ICGN as Governors. None of those proposed for election by members to the Nomination Committee shall already be Governors. In addition, the Board shall annually appoint two Governors to serve on the Nomination Committee as non-voting members.” (Article 12.1)

“The Nomination Committee shall each year, allowing sufficient time for consideration and response, notify each Member of a call for nominations to the Governors for decision at the Annual General Meeting, and in any event no later than four months before the date of the Annual General Meeting.” (Article 12.6)

11. The ICGN Board of Governors is comprised of 12 members, all of whom are directly elected by Members and independent of ICGN’s executive management. The Nomination Committee, which consists of ICGN Members who do not serve on the Board, has the lead responsibility for identifying and proposing Board members.

12. It was announced at the 2020 AGM, following a suggestion from the outgoing Nomination Committee Chair, that the Board would review its working relationship with that Committee.
13. Under the Articles, the Committee’s responsibilities include soliciting nominations from the membership, and for formally recommending Board appointments for the year ahead for Member approval at the AGM.

14. While the Board receives a report from the Committee, it does not have any power under the Articles either to approve or reject its recommendations for Board members. The Board is, however, responsible for recommending the members of the Nomination Committee itself for annual election by Members.

15. Given the intrinsic linkage between succession planning and the nomination process for Board members, it is necessary to have close communication between the Nomination Committee and the Board. However, the absence of any overlap between their respective membership has at times contributed to an inadvertent lack of communication between the Board and the Committee and, in turn, an insufficient and unnecessarily time-consuming Board succession planning process.

16. Amendments made to the Articles in 2018 permitting two Board members (in practice, the Chair and Vice-Chair of the Board) to attend Committee meetings as non-voting members have alleviated matters to an extent. However, in the Board’s view, they have not proved sufficient to resolve the inherent problem, which is that the processes of evaluating the effectiveness and composition of the incumbent Board against its skills matrix and diversity policy on the one hand and identifying and nominating new candidates on the other are entirely separated.

17. It is the Board’s opinion that these activities are too intrinsically linked to be divided in this manner. The Board therefore proposes that the status and composition of the Nomination Committee should be revised so that it becomes a committee of the Board rather than a stand-alone committee.

18. The effect of such a change would be that the Committee’s members would be selected from among the Board members, as is the case for all other Board committees, rather than being elected separately by Members at the AGM.

19. The Board considers that this approach would be consistent with what the ICGN Global Governance Principles expects of public listed companies. The Principles state that “the board should establish a Nomination Committee comprised of a majority of independent non-executive directors”. In that context, independence refers to being independent of executive management or controlling owners – which all ICGN Members are – not independent of the Board itself.

20. The Board acknowledges that there is a potential for conflicts of interest to arise when recommending whether or not to recommend the reappointment of serving Board members, but conflicts can potentially arise in relation to all manner of decisions taken by the Board and its committees. The Board’s view is that the general provisions in the Articles for managing conflicts of interest are adequate for addressing any conflicts that might arise in this context.

21. Changing the status and composition of the Nomination Committee would not result in any change to the way in which Board members are chosen by the membership. Board members will continue to be elected individually and annually, and ICGN Members will continue to be invited to identify possible candidates whose suitability would be assessed by the reconstituted Nomination Committee.
Question 2: Should the Nomination Committee be made a committee of the Board rather than a separate committee made up of ICGN Members who are not on the Board?

Length of tenure of Board members

Extracts from the Articles

“Members of the Board shall hold office for a term commencing at the end of the Annual General Meeting at which they are elected and terminating at the end of the following Annual General Meeting. Members may be elected for a maximum of six consecutive terms. A member of the Board is ineligible for nomination and election to the Board upon service of six consecutive terms, until a further three year period has passed in which the member has remained in good standing.” (Article 11.3)

22. Under the Articles, Board members can serve no more than six consecutive one-year terms. The Board sees no reason to propose an increase in the maximum length of tenure for all Board members. Experience has shown that the ICGN membership includes more than enough individuals with the skills, expertise and willingness to contribute to ensure that there is a diverse and effective board without requiring a general extension of tenure.

23. However, the Board considers that it may be appropriate to have the flexibility to make an exception in the case of the Chair and Vice-Chair, in the interests of ensuring necessary continuity.

24. Current practice is for the Chair and Vice-Chair to hold those positions for three years subject to annual re-election, although this is not specified in the Articles. As things stand, an individual appointed to one of those positions at the beginning of their sixth term as a Board member would be required to step down after serving one year in that capacity (or two years if appointed at the beginning of their fifth term).

25. This has the potential to be disruptive given the important relationships between the Chair, Vice-Chair and CEO in managing situations that could have a significant adverse impact on the delivery of ICGN’s long-term strategic objectives, such as the consequences of the COVID-19 pandemic.

26. The Board proposes that the Articles should be extended to enable the tenure of individuals holding the position of Chair or Vice-Chair at the end of their sixth one-year term as a Board member to be extended for up to two years (that is to say, eight years in total). This would be subject to them serving no more than three years in those positions.

27. The Board considers this would be compatible with the ICGN Global Governance Principles which note that the length of tenure after which directors’ independence is considered to be potentially compromised is defined as between eight to 12 years depending on the jurisdiction.

28. The Board also notes that, in its guidance on the 2018 UK Corporate Governance Code, the Financial Reporting Council recognises that “there may be reasons for justifying a
limited extension to the term of the chair... if prior to being appointed chair, they have been a board member for a significant amount of time, and the appointment supports the company’s succession plan and diversity policy”.

**Question 3: Should the maximum tenure as a Board member be extended from six to eight years for the Chair and Vice-Chair, subject to them not being able to hold those positions for more than three years?**

**Virtual AGMs**

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<th>Extracts from the Articles</th>
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<tr>
<td>“Every notice calling a general meeting shall specify the place, day and time of the meeting and the general nature of the business to be dealt with at the meeting.” (Article 9.9)</td>
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<tr>
<td>“ICGN may make arrangements for Members to attend a general meeting by telephone or by televisual or other electronic or virtual means provided that all remote attendants may securely identify themselves, hear the proceedings and cast their votes online.” (Article 9.21)</td>
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The ability to hold virtual AGMs

29. ICGN’s general preference has been to hold the AGM in person, usually immediately prior to the commencement of the ICGN Annual Conference. While this has some logistical benefits, this format and timing does not always optimise Member attendance. This is evidenced by the greater than usual participation in the virtual AGM held last year - 58 Members attended the meeting, and just under 200 more voted in advance.

30. The 2020 experience was brought about due to the restrictions imposed on physical events. It was possible to hold the AGM in this form because of temporary UK legislation that was introduced to enable organisations to hold general meetings virtually, irrespective of whether or not their Articles require them to hold physical AGMs. This legislation is currently due to expire at the end of March 2021.

31. The Board’s view is that apart from a few technical problems the virtual AGM worked well. Importantly, ICGN Members were able to exercise the same participation rights as they would at a physical meeting. To ensure that Members were able to participate fully, the following actions were taken:

- The agenda and papers were posted one month ahead of the meeting;
- The online voting system was available one month ahead of the meeting;
- Information around how to vote and participate was published on ICGN website;
- ICGN Team communicated directly with Members by email/ telephone; and
- Multiple emails detailed the AGM arrangements and options for participation.

32. The Board considers that there are some potential advantages in having the option for future AGMs to be held virtually or in a hybrid format (where Members have the choice of

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1 ‘Guidance on Board Effectiveness’, Financial Reporting Council; 2018
participating in person or virtually). This would enhance the ability of Members in different locations to participate fully, a particularly important consideration for ICGN, with Members in over 40 countries.

33. There is a caveat, however, which is that it is not entirely clear whether UK law – under which ICGN is governed – will continue to permit fully virtual general meetings once the temporary legislation expires.

34. The UK Companies Act 2006 requires all organisations holding a general meeting to issue a notice to Members identifying the place and time at which the meeting will be held. The wording in ICGN’s Articles mirrors the wording in the law. The issue is that there is no definitive interpretation of whether a ‘place’ must be a physical location or could also be a virtual location.

35. We are currently waiting for guidance from the UK Government on this point. If it concludes that a ‘place’ can be a virtual location then it would appear that the Articles already permit ICGN to hold fully virtual meetings. If that is the case then it may not be necessary to make any amendments. However, in that eventuality, the Board would still wish to know whether Members are in principle in favour of permitting general meetings to be held virtually in future.

36. If, on the other hand, the UK Government concludes that the law as drafted does not permit fully virtual meetings, the future position would depend on whether it proposed to amend the law in order to allow such meetings. In any event, ICGN would be able to hold hybrid AGMs with some Members attending in person and others participating remotely.

**Question 4: Should the Articles provide ICGN with the ability to hold virtual as well as physical general meetings?**

**Participation rights**

37. As noted, the Board considers it essential that Members should be able to exercise the same rights at a virtual meeting as they would if attending a physical meeting. The same applies to Members participating remotely in a physical meeting. This is consistent with ICGN's guidance on virtual AGMs set out in the Viewpoint issued in September 2020².

38. In practice, Members participating in the 2020 AGM had the ability to speak and ask questions as recommended in the guidance. However, at present the Articles only explicitly provide participants taking part remotely with the right to hear the proceedings and exercise their vote. The Board proposes that the Articles should be amended to make it clear that Members who participate in this way have the full rights available to those who attend in person.

**Question 5: Should the Articles be amended to ensure that Members participating remotely in general meetings have the right to speak and ask questions?**

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² Shareholder Meetings and Investor Dialogue: The New Normal; ICGN; September 2020
‘Written Consent’ procedure

Extracts from the Articles

The possibility for the Board to approve decisions by writing or electronic communication is not currently explicitly covered by the Articles.

39. At present, the Articles make no express provision for the Board to take decisions outside Board meetings. It is proposed that the Board should have the ability to do so if needed, but with clear safeguards.

40. It is not envisaged that the Board would wish to take decisions in writing or by electronic communication very often – for the majority of decisions, particularly those that are complex or potentially controversial, proper discussion at a meeting will continue to be essential. However, it would be useful for the Board to have the permission to take decisions outside meetings in circumstances where approval was required urgently for uncontroversial or routine decisions and it was not possible to convene a quorate meeting for some reason. The Articles of peer organisations such as PRI and the UK’s Investor Forum contain such provisions.

41. In order to prevent the ability to take decisions outside Board meetings being abused, it is proposed that any such decisions would require the agreement of at least 80% of the Board members to be ratified. With the current board size of 12 members, this would mean that at least 10 Board members would need to give their approval. By contrast, under Article 13.4, decisions taken at Board meetings only require the approval of the majority of those Board members present at the meeting.

42. In addition, it is proposed any decisions made in this manner would have to be referred to in the minutes of the next Board meeting to ensure that there was a formal record of the decision and the basis on which it was made. This is in line with the ‘written consent’ procedure in the US and practice in other jurisdictions such as France.

Question 6: Should the Articles permit the Board to take decisions in writing or by electronic communication in limited circumstances and with clear safeguards?

Other proposed changes to the Articles

References to membership and fee structures

Extracts from the Articles

“What subject to the Board’s discretion as set out above, there is no limit on the number of Organisational Members for whom an organisation may pay subscriptions and the membership of an Organisational Member is freely transferable within the subscription year to another person nominated by the paying organisation without further payment.”
(Article 8.5)
“Every corporate Member shall appoint an individual to represent it at meetings of ICGN and the name of such representative and the fact that he or she is the representative of such Member shall be noted in the register of Members”. (Article 8.6)

Details of membership categories and fees are set out in Section 4 of the Bylaws.

43. Changes to ICGN’s membership and fee structure were approved at 2020 AGM. Details of membership categories and related fees are contained in the Bylaws, which will need to be updated to reflect the new arrangements. Unlike the Articles, changes to the Bylaws do not require formal Member approval.

44. Consequential changes to the Articles will also be needed. Under the previous arrangements, organisations that subscribed to ICGN were entitled to multiple memberships depending on the level of fees they paid - one membership for those in Band 1, two in Band 2 and so on up to Band 4. Organisations were also required to identify named individuals to whom each of these memberships was allocated. Only these named individuals were able to benefit from ICGN services and vote at the AGM.

45. Under the new structure, it is the organisation itself rather than named individuals working for it that will be the Member of ICGN, and there are no multiple memberships. As such all employees of the Member organisation may participate in ICGN’s activities, not just those previously designated as Members. There will, however, need to be a named contact who will be responsible for voting on behalf of the organisation.

46. This change needs to be reflected in the Articles, which will involve either revising or deleting Article 8.5.

Tidying up outdated references

47. The Articles contain some outdated references and terminology – for example, the use of the term ‘Chairman’ rather than ‘Chair’ – which the Board proposes should be amended as part of this exercise. There would be no change in the substance of what the Articles required as a result.

Suggestions from Members

48. This consultation paper sets out the Board’s proposals for revising the Articles. As well as your comments on these proposals, we would also welcome any suggestions that you may have for revising other sections of the Articles not covered here.

Question 7: Are there any other revisions to the Articles that should be considered? If so, what are they and why are they needed?
ICGN ARTICLES REVIEW GROUP

Terms of reference

The purpose of the review is to consider whether the Articles of Association continue to provide a governance framework for ICGN that enable it to be governed effectively while ensuring that the Board of Governors and executive are appropriately accountable to the Members.

The review will consider whether revisions to the Articles are needed to reflect changes to ICGN's organisation, activities and membership structure since the Articles were last revised. As ICGN is registered in the UK, the review will also consider whether there have been any changes in UK law or practice that might necessitate revisions.

The review will specifically consider:

- The impact of the changes to the membership structure and categories that were approved at the 2020 AGM;
- Whether the Articles are sufficiently flexible to deal with potential future disruption such as that caused by Covid-19, and in particular with disruption to the AGM;
- The respective roles of the Board and Nomination Committee in identifying and nominating new members of the Board; and
- Whether the provisions in the Articles relating to the length of tenure of board members continue to be appropriate.

The review will be led by an Articles Review Group made up of ICGN members which will report to the Governance Committee and Board of Governors. A majority of the members of the Group will be independent of the Board.

Membership

Anne-Marie Jourdan (Chair) (Fonds de Reserve Pour Les Retraites and former ICGN Board member)
David Couldridge (Ninety One and former ICGN Board member)
Simon Osborne (Governance Consultant and former Chair of the ICGN Bylaws and Procedures Committee)