

## **MINUTES OF THE CFU TRUST BOARD MEETING 6<sup>TH</sup> AUGUST 2018**

The CFU Trust Board (TB) met on 6<sup>th</sup> August 2018. Present were: Robert Osbourn (Chair), Margaret Pearson, Frank Pearson (Secretary), Martin Chapman, Colin Proctor, Dave Matthew-Jones, Joy Childs, Nigel Browne, John Bilboa, Brian Thorby, Andrew Stephen, Nigel Pearce and James Taylor.

Apologies were received from: Carol Looker, Pat Morgan. Terry Wilby

The following is an abbreviated version of the minutes of the meeting.

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On membership, Robert said that CFU currently had just under 300 members.

On the lottery, Nigel B said it had 153 members and that the lottery would sponsor kit man Gordon Millar for the coming season.

DMJ reported that some CUFC backroom staff had left. Some would not be replaced and those that are would be on lower salaries to help reduce the club's wage bill. A lot of repair work had been required on the pitch after the summer concert. The club will consider carefully whether further concerts should be held on the pitch, but it is acknowledged that they are a potential good source of revenue. The Board has agreed to subject the 2017-18 accounts to an audit. A new part-time, salaried finance director has been appointed, reporting to Shaun Grady. The work the club does with schools has been transferred to the CUFC Trust.

The stadium maintenance work undertaken by the team of volunteers led by DMJ was discussed. Some fans are suggesting this work lets the Board off the hook, but we agreed the work has benefits beyond the stadium maintenance itself, including benefiting the volunteers themselves. DMJ was thanked for leading this work, and for all his efforts as Fans Elected Director.

JT agreed to set up a new CFU TB email group, importantly in a way that will retain the email archive. The TB was reminded that email is not secure. RO agreed to collect and circulate up to date email addresses and phone numbers of TB members.

The TB welcomed the news of the upcoming audit of the 2017-18 accounts. RO confirmed that CFU will have an input to the audit terms of reference, and is waiting for a meeting with the audit team. CFU will press for regular meetings with Renford Sargent and other directors, to re-build our relationship with the Board.

John presented his report on his analysis of the changes made to the CUFC Articles of Association (AoA) in the summer of 2017. There were some concerns to highlight. The changes were presented to shareholders as simply bringing the AoA up to date and into line with the model AoA – in fact we find there are a number of additional clauses slipped in, many that are about protecting the interest of the majority shareholder. Directors can now be appointed and/or sacked by the majority shareholder alone, without referral to shareholders (as was the case), and shareholders' legal recourse to any actions / decisions of the BoD has been removed. Also, the wording around the appointment of a Fans Elected Director had been amended, removing that "as of right" CFU is allowed to nominate one person to sit on the Board. JB will seek advice from Supporters Direct on this issue.

In concluding the AoA discussion the meeting agreed that (the FED clause apart) there was little merit in re-visiting the changes as they have long been implemented. We now better understand the significance of the AoA and must ensure that future proposed changes are fully scrutinised by CFU, and advice provided to shareholders, before they are voted on. The TB thanked John for his very thorough analysis and report.

The CFU TB will discuss a potential MOU with the club at the next meeting.

Under AoB:

- Concern that tickets for Colchester away increased in price week by week before the game but the club had yet to make them available – DMJ will take this up with the club;
- Nigel P suggested a survey of CFU members, to test how they think we are doing – NP will draft suggested questions, to issue ahead of the 2019 CFU AGM;
- Margaret reported that a new away fans information sheet had been created;

- Robert reported that the floor of the CFU caravan had been replaced.
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## **CFU REVIEW OF THE CHANGES MADE TO THE CAMBRIDGE UNITED FC ARTICLES OF ASSOCIATION IN JULY 2017**

### **New Articles- Background**

Proposed by Special Resolution circulated 27<sup>th</sup> June 2017 prepared by Mills and Reeves and based on new Companies Act -“Model Articles”- which were updated following numerous Company issues regarding the failure of Directors in their duties ambiguity in the Companies Act and Corporate Governance reviews and pending legislation.

### **The New Articles -Process**

A special Resolution is needed with 75% shareholder support to change a company’s articles.

It is legal to obtain this by written resolution without holding a meeting of shareholders and the resolutions carried as soon as 50%+ (ordinary)75%+ (special) responses in favour are received.

The new articles appear to have followed the proper legal process and cannot now be challenged unless it can be shown the correct percentages were not reached.

The results of the vote must be retained for a minimum of 10 years and are open to inspection by any Director accompanied by a “specialist” for advice if required.

### **Significant Differences between old (2002 amended by special resolutions to June 2017) and the new articles (July 2017)**

#### **Pre-emption rights.**

These are statutory rights for existing shareholders, confirmed or amended in the Articles. They give Existing shareholders first option to buy any new shares issued by the BoD in proportion to their current share % holding.

Any shares not purchased can then be sold to anyone authorised by the BoD.

The same rights apply to the transfer of any shares held by existing shareholders.

#### **Issue of New Shares**

The 2002 Articles do not specifically reference new share allocations therefore Statutory pre-emption rights apply.

This has been changed by the 2017 Special Resolution which by law had to have conformed to the following section from the Companies Act.

“ 5) A special resolution under this section, or a special resolution to renew such a resolution, must not be proposed unless—

- (a) it is recommended by the directors, and
- (b) the directors have complied with the following provisions.
- (6) Before such a resolution is proposed, the directors must make a written statement setting out—
  - (a) their reasons for making the recommendation,
  - (b) the amount to be paid to the company in respect of the equity securities to be allotted, and
  - (c) the directors' justification of that amount. “

The 2017 Articles (S 32 “Exclusion of Statutory Pre-emption rights”) replaces these rights with something very similar but includes a catch-all giving Directors power to

“...allot or grant options or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper.” (S 32.4)

The whole of this section in any event has been waived for 5 years by the 2017 Special resolution which allows the BoD to allocate shares whenever and to whoever they wish with no reference to the existing shareholders **provided that the written notice conforms to 6) above from the Companies Act. Was this given?**

### **Share Capital**

All reference to the amounts and value of issued and unissued share capital have been removed in the 2017 CUFC Articles

### **Transfer of Shares**

The 2002 Articles ensure that any transfer of shares is subject to pre-emption rights.

This is retained in the new articles but with exceptions – “Permitted Transfers” (S 38)

In summary these are

- Family Privileged Relations
- Trustees of a Family Trust
- A subsidiary company of a corporation holding shares or a holding company if the shareholder is a subsidiary company
- Shareholder transfers less than 1% of the issued share capital.

### **Notice of General Meetings**

There is nothing in the 2017 Articles relating to notice of meetings so the Companies Act S307 applies.

### **Voting of members**

The 2002 Articles states every member “...shall have one vote for each share...”. This is not present in the 2017 Articles but forms part of the Companies Act.

The 2002 requirement to hold paid up shares as a pre-condition for voting rights is not present on the 2017 Articles.

## **Appointment and retirement of Directors**

The condition in the 2002 Articles (S12.4/5) that two Directors retire by rotation has been removed together with the shareholders right to re-elect or appoint a proposed replacement.

Appointment of a Director can now only be made by the BoD or by Ordinary Resolution (+50% vote)

A majority shareholder can now appoint or remove any Director at any time by receipt by the Company of a signed notice by the shareholder or signed on its behalf by a Director.

**This should be considered in conjunction with the following change.**

### **The CFU Director**

The wording has been changed regarding the appointment of the CFU Director

2002 Articles

“That as long as Cambridge Fans United (CFU) exist ..... and have not sold the shares they own, they are entitled to nominate one person to the Board as of right and others at the discretion of the Board”.

2017 Articles

“For as long as CFU exists and holds any shares in the Company, CFU shall be entitled to nominate one (1) person to the Board as a Director of the company (CFU Director).

### **Alternate Directors**

There is a new section in the 2017 Articles (S 26-28) not present in the Companies Act allowing Directors to appoint any person agreed by the BoD to act on their behalf as an Alternate in their absence.

An Alternate Director

- Are deemed for all purposes to be a Director in their own right with the same legal responsibilities
- must be appointed in writing and approved by the BoD
- can only be removed in writing by the person who appointed them unless the appointing Director is removed.
- must be notified of all meetings and committees attended by the Director who they are an alternate and have the same voting rights.

### **Transactions with the Company**

There are marked differences between the Government proposed Model Articles on which the new 2017 CUFC Articles are supposed to be based and that within the 2002 Articles.

In summary the 2002 articles allow a Director to be fully involved in a transaction once an interest to the BoD is declared (must be declared by law) and the BoD accept their declaration. (e.g. full voting rights, attending meetings, obtaining personal/corporate benefit and/or remuneration).

However the Companies Act 2006 also states a shareholders/member’s resolution is required for a substantial property transaction (5% of assets held if more than £10K, or £100k of assets).

The Act is not specific as to whether this needs to be an Ordinary or Special Resolution (something which would need to be stipulated in the Articles).

The new Model Articles are slightly more stringent on Directors and does not enable any participation in decisions merely by virtue of a declaration only if agreed by an ordinary resolution or limited exceptions.

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[New Model Articles

14.—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.]

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The CUFC 2017 Articles are similar to the old Articles and still allow participation in a connected transaction following a declaration to the BoD (notwithstanding that a majority shareholder could also pass an ordinary resolution to waive a declaration under the new Model Articles).

They also categorically state that a Director

- is not accountable to the Company for any benefit derived
- can be entitled to remuneration- overriding the Article that Directors remain un-salaried
- Can vote on any matter connected with the transaction.

### **Conflicts of Interest**

The 2006 Companies Act states Directors have a duty of care to avoid conflicts of interest -S175

“ A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.”

The 2017 Articles (S 16) allow the CUFC BoD to authorise

“any matter proposed to them....which would if not authorised involve a breach of duty...including without limitation any matter which relates to a situation in which a Director has, or can have, an interest which conflicts ,or may possibly conflict, with the interests of the Company...”

“...may make any such authorisation subject to any limits or conditions they may expressly impose but such authorisation is otherwise given to the fullest extent permitted.”

“For the purposes of these Articles a conflict of interest includes a conflict of interest and duty and a conflict of duties, and interest includes both direct and indirect interests.”

Where a Directors relationship with another person has been authorised by the BoD, then the “Companies Act S176 -Duty not to accept benefits from third parties” is ignored and specifically he is not committing a breach of duty if he absents himself from meetings or receipt of documents relating to such a conflict.

“A director is not required to account to the Company for any remuneration, profit or benefit which he derives from or in connection with a relationship involving a conflict which has been authorised by the directors or by the company in a general meeting” [ ie ordinary resolution]

### **Directors discretion to make further rules**

The 2017 Articles allow

“subject to the Articles the directors may make any rule they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors”

This was not part of the 2002 Articles

**The Shareholders letter stated that on the basis of legal advice we also intend to bring the Articles of Association up to date with current legislation.**

**This implies a legal rationale for making the changes which is not the case. The Companies Act 2006 still forms the legal basis for private companies with the results of a longstanding Corporate Governance review to be enacted in potentially 2018/19.**

**There have been no significant legal changes to the Companies Act which by necessity required changes to the CUFC articles The changes appear to make the powers of the Board and any majority shareholder more wide ranging, particularly with respect to absolving the Directors of any Duty of Care and in allowing transacting for profit with Company (Club) a risk free process.**

### **Notes on the 2017 Resolutions Letter**

Ordinary Resolution (A) gives the Board authority to convert £1,843,214.60 of loans into shares (36,864,292)

Special Resolution (D) gives the Board authority to waive pre-emption rights over £1,843,214.60 worth of shares for 5 years

Paul Barry has converted only £474,483 loans to shares and purchased £560,000 new shares since totalling £1,034,483 of shares (20,689,660)

Adrian Hauser has purchased £50,000 new shares since

Authorised share capital from 2002 Articles = 69,879,740 shares

Shares subject to Resolutions [A] and [D] =  $36,864,292/69,879,740 = 52.75\%$

