

**The Companies Act 2006**

**Company Limited by Guarantee and not having a Share Capital**

## **Articles of Association**

**of**

## **The NGT Foundation**

**Company No: 03444689**

**(As amended by special resolution dated: 12 October 2021)**



10 Queen Street Place, London EC4R 1BE  
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## **The Companies Act 2006**

### **Company Limited by Guarantee and not having a Share Capital**

#### **Articles of Association of The NGT Foundation**

**Company No: 03444689**

#### **INTERPRETATION**

##### **1. Defined terms**

The interpretation of these Articles is governed by the provisions set out in the Schedule at the end of the Articles.

#### **OBJECTS AND POWERS**

##### **2. Objects**

2.1 The objects for which the Foundation are established are to support the charitable objects of the National Gallery, London ("the National Gallery") and to assist the National Gallery in carrying out its charitable objects by such charitable means as shall be thought fit including in particular but without prejudice to the generality of the foregoing:

2.1.1 making grants (of cash or other assets including land and buildings) to the National Gallery in support of activities or projects involving the acquisition exhibition or restoration of works of art or the construction or rehabilitation of galleries or other buildings in connection with the display or preservation of works of art;

2.1.2 directly conducting and carrying out such activities or projects; and

2.1.3 acquiring and/or holding real or personal property for the use and/or benefit of the National Gallery.

And "charitable objects" shall mean those objects which are charitable in accordance with the laws of England and Wales.

##### **3. Powers**

3.1 To further its objects the Foundation may:

3.1.1 provide and assist in the provision of money, materials or other help;

3.1.2 organise and assist in the provision of conferences, courses of instruction, exhibitions, lectures and other educational activities;

3.1.3 publish and distribute books, pamphlets, reports, leaflets, journals, films, tapes and instructional matter on any medium;

- 3.1.4 promote, encourage, carry out or commission research, surveys, studies or other work, making the useful results available;
- 3.1.5 alone or with other organisations seek to influence public opinion and make representations to and seek to influence governmental and other bodies and institutions regarding the reform, development and implementation of appropriate policies, legislation and regulations provided that all such activities shall be confined to those which an English and Welsh charity may properly undertake;
- 3.1.6 enter into contracts to provide services to or on behalf of other bodies;
- 3.1.7 acquire or rent any property of any kind and any rights or privileges in and over property and construct, maintain, alter and equip any buildings or facilities;
- 3.1.8 dispose of or deal with all or any of its property with or without payment and subject to such conditions as the Trustees think fit (in exercising this power the Foundation must comply as appropriate with the Charities Act 2011);
- 3.1.9 borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds, including charging property as security for the repayment of money borrowed or as security for a grant or the discharge of an obligation (the Foundation must comply as appropriate with the Charities Act 2011 if it wishes to mortgage land);
- 3.1.10 set aside funds for special purposes or as reserves against future expenditure;
- 3.1.11 invest the Foundation's money not immediately required for its objects in or upon any investments, securities, or property;
- 3.1.12 arrange for investments or other property of the Foundation to be held in the name of a nominee or nominees and pay any reasonable fee required;
- 3.1.13 lend money and give credit to, take security for such loans or credit and guarantee or give security for the performance of contracts by any person or company;
- 3.1.14 open and operate bank accounts and other facilities for banking and draw, accept, endorse, issue or execute promissory notes, bills of exchange, cheques and other instruments;
- 3.1.15 accept (or disclaim) gifts of money and any other property;
- 3.1.16 raise funds by way of subscription, donation or otherwise;
- 3.1.17 to give financial support, either by means of payments under covenant or other agreement, or in such other manner as may be deemed expedient, to any one or more charitable trusts or organisations whether corporate or unincorporate wheresoever situate (notwithstanding that it may be a member of the Foundation) concerned with the furtherance of all or any of the objects of the Foundation;
- 3.1.18 make any donation either in cash or other property;
- 3.1.19 trade in the course of carrying out the objects of the Foundation and carry on any other trade which is not expected to give rise to taxable profits;

- 3.1.20 incorporate and acquire subsidiary companies to carry on any trade;
- 3.1.21 subject to Article 4 (Limitation on private benefits):
  - (a) engage and pay employees, consultants and professional or other advisers; and
  - (b) make reasonable provision for the payment of pensions and other retirement benefits to or on behalf of employees and their spouses and dependants;
- 3.1.22 establish and support or aid in the establishment and support of any other organisations and subscribe, lend or guarantee money or property for charitable purposes;
- 3.1.23 become a member, associate or affiliate of or act as trustee or appoint trustees of any other organisation (including without limitation any charitable trust of permanent endowment property held for any of the charitable purposes included in the Foundation's objects);
- 3.1.24 undertake and execute charitable trusts;
- 3.1.25 impose restrictions, which may be revocable or irrevocable, on the use of any property of the Foundation, including (without limitation) by creating permanent endowment;
- 3.1.26 amalgamate or merge with or acquire or undertake all or any of the property, liabilities and engagements of any body;
- 3.1.27 enter into partnership or into any consortium or arrangement for sharing of funding or profits, co-operation or joint venture;
- 3.1.28 co-operate with charities, voluntary bodies, statutory authorities and other bodies and exchange information and advice with them;
- 3.1.29 insure the property of the Foundation against any foreseeable risk and take out other insurance policies as are considered necessary by the Trustees to protect the Foundation;
- 3.1.30 provide indemnity insurance for the Trustees and officers of the Foundation in accordance with, and subject to the conditions in, Section 189 of the Charities Act 2011 (provided that in the case of an officer who is not a Trustee, the second and third references to "charity trustees" in the said Section 189 shall be treated as references to officers of the Foundation); and
- 3.1.31 do all such other lawful things as may further the Foundation's objects.

## **LIMITATION ON PRIVATE BENEFITS**

### **4. Limitation on private benefits**

- 4.1 The profits (if any) or other income and property of the Foundation shall be applied solely towards the promotion of the objects as set out in Article 2 and no dividend, bonus or other distribution of profits or assets, howsoever effected shall be made to members of the Foundation and no payment of money or transfer of property or assets of the Foundation shall be made directly or indirectly to any such member, except as permitted by Article 3.1.17.

- 4.2 Provided that nothing herein shall prevent any payment in good faith by the Foundation of the payments listed in this Article 4.2 and Article 4.3:
- 4.2.1 reasonable and proper remuneration to any member, officer or servant of the Foundation not being a Trustee for any services actually rendered to the Foundation;
- 4.2.2 the payment of interest at a rate per annum not exceeding 2% less than the Base Rate of National Westminster Bank plc from time to time on any money lent by any member to the Foundation;
- 4.2.3 the payment of reasonable or proper rent for premises let or demised by any member of the Foundation to the Foundation or to any Trustee being a solicitor, accountant or other person engaged in any profession of all usual professional or other charges for work done by them or their firm in connection with the promotion of the Foundation's objects as stated in Article 2; or
- 4.2.4 the payment to any company of which a Trustee is a member holding not more than one hundredth part of the equity capital and such Trustee shall not be bound to account for any share of profits they may receive in respect of any such payment.
- 4.3 Trustees may be paid all reasonable travelling expenses properly incurred by them in connection with their attendance at meetings of the Trustees or committees thereof or general meetings or separate meetings of the holders of debentures of the Foundation or otherwise in connection with the discharge of their duties. The Trustees shall not be entitled to remuneration while acting as Trustees.

**S501(c)(3) recognition**

- 4.4 The Foundation shall be a body which is capable of recognition under Section 501(c)(3) of the United States Internal Revenue Code of 1986 ("the Code"), as amended (or the corresponding provision of any future United States internal revenue law) as an organisation operating exclusively for charitable purposes within the meaning of the Code and that for the purpose of such recognition it is further declared that:
- 4.4.1 no part of the profits (if any) or other income and property of the Foundation shall be applied for the benefit of any private individual unless such application is in pursuance of the charitable objects of the Foundation;
- 4.4.2 no substantial part of the activities of the Foundation shall consist of carrying on propaganda or otherwise attempting to influence legislation except to the extent authorised under Section 501(h) of the Code and the Foundation shall not participate in or intervene in (including by publishing or distributing statements) any political campaign on behalf of (or in opposition to) any candidate for public office;
- 4.5 the Foundation shall not be permitted to undertake any activity or to make any payment or to do anything unless it is in furtherance of the objects as described in Article 2; and
- 4.6 the Trustees shall at all times have regard to their powers duties and responsibilities arising under the law of England and Wales relating to charities.

## **LIMITATION OF LIABILITY AND INDEMNITY**

### **5. Liability of members**

5.1 The liability of the members is limited.

5.2 Every member of the Foundation undertakes to contribute to the assets of the Foundation, in the event of the same being wound up while he or she is a member, or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the Foundation contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories amongst themselves, such and for the amount as may be required not exceeding one pound.

### **6. Indemnity**

Subject to the provisions of the Companies Acts and subject to the Articles but without prejudice to any indemnity to which a Trustee may otherwise be entitled, every Trustee or other officer or auditor of the Foundation shall be indemnified out of the assets of the Foundation against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgement is given in his or her favour or in which he or she is acquitted or in connection with any application in which relief is granted to him or her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Foundation.

## **TRUSTEES**

### **TRUSTEES' POWERS AND RESPONSIBILITIES**

### **7. Trustees' general authority**

Subject to the Articles, the Trustees are responsible for the management of the Foundation's business, for which purpose they may exercise all the powers of the Foundation.

### **8. Chair and Vice-Chair**

The Trustees may appoint from among their number a Chair and Vice-Chair of the Trustees for such term of office as they determine and may at any time remove him or her from that office.

### **9. Trustees may delegate**

9.1 Subject to the Articles, the Trustees may delegate any of their powers or functions to any committee or to any one Trustee.

9.2 Subject to the Articles, the Trustees may delegate the implementation of their decisions or day to day management of the affairs of the Foundation to any person or committee.

9.3 Subject to Articles 9.7 and 9.8, any delegation by the Trustees may be:

9.3.1 by such means;

9.3.2 to such an extent;



- 9.3.3 in relation to such matters or territories; and
- 9.3.4 on such terms and conditions;  
as they think fit.
- 9.4 The Trustees may authorise further delegation of the relevant powers, functions, implementation of decisions or day to day management by any person or committee to whom they are delegated.
- 9.5 The Trustees may revoke any delegation in whole or part, or alter its terms and conditions.
- 9.6 The Trustees may by power of attorney or otherwise appoint any person to be the agent of the Foundation for such purposes and on such conditions as they determine.
- 9.7 A sole Trustee shall not incur expenditure on behalf of the Foundation except in accordance with a budget which has been approved by the Trustees.
- 9.8 The majority of members of any committee and any one person to whom the Trustees delegate their powers under Articles 10, 11 and 12 shall be normally resident in the United Kingdom.
- 10. **Committees**
- 10.1 In the case of delegation to committees:
  - 10.1.1 the resolution making the delegation must specify those who shall serve or be asked to serve on the committee (although the resolution may allow the committee to make co-options up to a specified number);
  - 10.1.2 the composition of any committee shall include two Trustees but otherwise shall be entirely in the discretion of the Trustees;
  - 10.1.3 the deliberations of any committee and the performance of any delegated powers must be reported regularly to the Trustees and any resolution passed or decision taken by any committee must be reported promptly to the Trustees and every committee must appoint a secretary for that purpose;
  - 10.1.4 the Trustees may make such regulations and impose such terms and conditions and give such mandates to any committee as they may from time to time think fit; and
  - 10.1.5 no committee shall knowingly incur expenditure or liability on behalf of the Foundation except where authorised by the Trustees or in accordance with a budget which has been approved by the Trustees.
- 10.2 The meetings and proceedings of any committee shall be governed by the Articles regulating the meetings and proceedings of the Trustees so far as they apply and are not superseded by any regulations made by the Trustees.

**11. Delegation of day to day management powers**

11.1 In the case of delegation of the day to day management of the Foundation to a chief executive or other manager or managers:

11.1.1 the delegated power shall be to manage the Foundation by implementing the policy and strategy adopted by and within a budget approved by the Trustees and (if applicable) to advise the Trustees in relation to such policy, strategy and budget;

11.1.2 the Trustees shall provide any manager with a description of his or her role and the extent of his or her authority; and

11.1.3 any manager must report regularly to the Trustees on the activities undertaken in managing the Foundation and provide them regularly with management accounts which are sufficient to explain the financial position of the Foundation.

**12. Delegation of investment management**

12.1 The Trustees may delegate the management of investments to a Financial Expert or Financial Experts provided that:

12.1.1 the investment policy is set down in Writing for the Financial Expert or Financial Experts by the Trustees;

12.1.2 timely reports of all transactions are provided to the Trustees;

12.1.3 the performance of the investments is reviewed regularly with the Trustees;

12.1.4 the Trustees are entitled to cancel the delegation arrangement at any time;

12.1.5 the investment policy and the delegation arrangements are reviewed regularly;

12.1.6 all payments due to the Financial Expert or Financial Experts are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and

12.1.7 the Financial Expert or Financial Experts must not do anything outside the powers of the Trustees.

**13. Power to change name of Foundation**

13.1 The Trustees may change the name of the Foundation at any time by:

13.1.1 majority decision of the Trustees present and voting at a meeting; or

13.1.2 majority decision of all the Trustees taken following the procedure in Article 20.

## **DECISION-MAKING BY TRUSTEES**

### **14. Trustees to take decisions collectively**

14.1 Any decision of the Trustees must be either:

14.1.1 by decision of a majority of the Trustees present and voting at a quorate Trustees' meeting (subject to Article 19); or

14.1.2 a decision of a majority of the Trustees taken in accordance with Article 20.

### **15. Calling a Trustees' meeting**

15.1 Any Trustee may (and the Secretary, if any, must at the request of any Trustee) call a Trustees' meeting.

15.2 Notice of Trustees' meetings must be given to each Trustee.

15.3 Notice of Trustees' meetings need not be in Writing.

15.4 Article 33 shall apply, and notice of Trustees' meetings may be sent by Electronic Means to an Address provided by the Trustee for the purpose.

### **16. Participation in Trustees' meetings**

16.1 Subject to the Articles, Trustees participate in a Trustees' meeting, or part of a Trustees' meeting, when:

16.1.1 the meeting has been called and takes place in accordance with the Articles; and

16.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting (for example via telephone or video conferencing, electronic facilities and/or electronic platforms).

16.2 In determining whether Trustees are participating in a Trustees' meeting, it is irrelevant where any Trustee is or how they communicate with each other. For the avoidance of doubt, a Trustee participating in a meeting via telephone or other communication in accordance with Article 16.1 shall be treated as being present in person at the meeting for all purposes (including, without limitation, for the purposes of any provisions of the Articles relating to the quorum for the meeting).

16.3 If all the Trustees participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **17. Quorum for Trustees' meetings**

17.1 At a Trustees' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

17.2 The quorum for Trustees' meetings may be fixed from time to time by a decision of the Trustees, but it must never be less than three or, if there shall be less than three Trustees, the number of Trustees for the time being.

17.3 If the total number of Trustees for the time being is less than the quorum required, the Trustees must not take any decision other than a decision to appoint further Trustees.

**18. Chairing of Trustees' meetings**

18.1 The Chair, if any, or in his or her absence the Vice-Chair (if any) shall preside as chair of each Trustee's meeting. In the absence of the Vice-Chair, another Trustee nominated by the Trustees present shall preside as chair of each Trustees' meeting.

18.2 If a question arises at a Trustees' meeting as to the right of a Trustee to vote, the question may, before the conclusion of the meeting, be referred to the chair of the meeting and their ruling in relation to any Trustee other than themselves shall be final and conclusive.

**19. Casting vote**

19.1 If the numbers of votes for and against a proposal at a Trustees' meeting are equal, the chair of the meeting has a casting vote in addition to any other vote he or she may have.

19.2 Article 19.1 does not apply if, in accordance with the Articles, the chair of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

**20. Trustees' decision making by majority**

20.1 The Trustees may, in the circumstances outlined in this Article, make a majority decision without holding a Trustees' meeting.

20.2 If:

20.2.1 a Trustee has become aware of a matter on which the Trustees need to take a decision;

20.2.2 that Trustee has taken all reasonable steps to make all the other Trustees aware of the matter and the decision that needs to be taken;

20.2.3 the Trustees have had a reasonable opportunity to communicate their views on the matter and the decision to each other; and

20.2.4 a majority of the Trustees vote in favour of a particular decision on that matter,

a decision of the Trustees may be taken by majority in accordance with this Article 20 and shall be as valid and effectual as if it had been taken at a Trustees' meeting duly convened and held.

20.3 Trustees participating in the taking of a majority decision otherwise than at a Trustees' meeting in accordance with this Article 20:

20.3.1 may be in different places, and may participate at different times; and

20.3.2 may communicate with each other by any means.

20.4 No decision shall be taken by the Trustees in accordance with this Article unless a quorum participates in the decision-making process. The quorum for Trustees' decision-making in accordance with this Article shall be the same as the quorum for Trustees' meetings as set out in Article 17.2.

20.5 The Chair, or such other Trustee as shall be appointed by the Trustees shall be the chair of the process of decision-making in accordance with this Article.

20.6 In the case of an equality of votes in any decision-making process in accordance with this Article, the chair of the process shall be entitled to a casting vote in addition to any other vote he or she may have. But this does not apply if, in accordance with the Articles, the chair of the process is not to be counted as participating in the decision-making process for quorum, voting or agreement purposes.

## 21. **Conflicts of interest**

### ***Declaration of interests***

21.1 Unless Article 21.2 applies, a Trustee must declare the nature and extent of:

21.1.1 any direct or indirect interest which he or she has in a proposed transaction or arrangement with the Foundation; and

21.1.2 any duty or any direct or indirect interest which he or she has which conflicts or may conflict with the interests of the Foundation or his or her duties to the Foundation.

21.2 There is no need to declare any interest or duty of which the other Trustees are, or ought reasonably to be, already aware

### ***Participation in decision-making***

21.3 If a Trustee's interest or duty cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Foundation, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. Any uncertainty about whether a Trustee's interest or duty is likely to give rise to a conflict shall be determined by a majority decision of the other Trustees taking part in the decision-making process.

21.4 If a Trustee's interest or duty gives rise (or could reasonably be regarded as likely to give rise) to a conflict of interest or a conflict of duties with or in respect of the Foundation, he or she may participate in the decision-making process and may be counted in the quorum and vote unless:

21.4.1 the decision could result in the Trustee with him or her receiving a benefit other than:

(a) any benefit received in his, her or its capacity as a beneficiary of the Foundation (as permitted under Article 3.1.17) and which is available generally to the beneficiaries of the Foundation;

(b) the payment of premiums in respect of indemnity insurance effected in accordance with Article 3.1.30;

(c) payment under the indemnity set out at Article 6; and

(d) reimbursement of expenses in accordance with Article 4.3; or

21.4.2 a majority of the other Trustees participating in the decision-making process decide to the contrary;

in which case he or she must comply with Article 21.5.

21.5 If a Trustee with a conflict of interest or conflict of duties is required to comply with this Article 21.5, he or she must:

21.5.1 take part in the decision-making process only to such extent as in the view of the other Trustees is necessary to inform the debate;

21.5.2 not be counted in the quorum for that part of the process; and

21.5.3 withdraw during the vote and have no vote on the matter.

***Continuing duties to the Foundation***

21.6 Where a Trustee has a conflict of interest or conflict of duties and the Trustee has complied with his or her obligations under these Articles in respect of that conflict:

21.6.1 the Trustee shall not be in breach of his or her duties to the Foundation by withholding confidential information from the Foundation if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her; and

21.6.2 the Trustee shall not be accountable to the Foundation for any benefit expressly permitted under these Articles which he or she or any person Connected with him or her derives from any matter or from any office, employment or position.

**22. Register of Trustees' interests**

The Trustees must ensure a register of Trustees' interests is kept.

**23. Validity of Trustee actions**

All acts done by a person acting as a Trustee shall, even if afterwards discovered that there was a defect in his or her appointment or that he or she was disqualified from holding office or had vacated office, be as valid as if such person had been duly appointed and was qualified and had continued to be a Trustee.

**24. Trustee's discretion to make further rules**

Subject to the Articles, the Trustees may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Trustees.

***APPOINTMENT AND RETIREMENT OF TRUSTEES***

**25. Number of Trustees**

25.1 There shall be at least six and no more than nine Trustees.

26. **Appointment of Trustees and retirement of Trustees by rotation**

***Appointment of Trustees***

- 26.1 Any person who is willing to act as a Trustee, and who would not be disqualified from acting under the provisions of Article 27, may be appointed to be a Trustee by a decision of the Trustees.
- 26.2 A trustee of the National Gallery Board as selected by the National Gallery Board shall be a Trustee ex officio ("**National Gallery Board Trustee**").
- 26.3 A majority of the Trustees for the time being shall be resident and normally resident in the United Kingdom.

***Automatic retirement***

- 26.4 Subject to Article 26.11, each Trustee (with the exception of the National Gallery Board Trustee) shall retire from office at the end of the fourth Annual Retirement Meeting following the commencement of his or her term of office. Subject to Article 26.6.2, any retirement in accordance with this Article 26.4 shall take effect at the end of the relevant Annual Retirement Meeting.
- 26.5 The Annual Retirement Meeting shall be the meeting of the Trustees at which the accounts of the Foundation are adopted.

***Maximum term***

- 26.6 Subject to Article 26.7, retiring Trustees may be reappointed but a Trustee who has served for two consecutive terms of office must take a break from office and may not be reappointed until the earlier of:
- 26.6.1 the anniversary of the commencement of his or her break from office; and
- 26.6.2 the Annual Retirement Meeting following the Annual Retirement Meeting at which his or her break from office commenced.
- 26.7 The Trustees may resolve, in exceptional circumstances, that a Trustee who would otherwise be required to take a break from office pursuant to Article 26.6 be reappointed for an additional two year period (i.e. ending at the second Annual Retirement Meeting following the start of such additional period), at the end of which he or she must take a break from office and may not be reappointed until the earlier of the two dates stated in Articles 26.6.1 and 26.6.2.
- 26.8 If the retirement of a Trustee under Article 26.4 causes the number of Trustees to fall below that set out in Article 25 then the retiring Trustee shall remain in office until a new appointment is made.

***Minimum age***

- 26.9 No person may be appointed as a Trustee unless he or she has reached the age of 16 years.

### ***General***

- 26.10 A Trustee may not appoint an alternate director or anyone to act on his or her behalf at meetings of the Trustees.

### ***Transitional Provisions***

- 26.11 In relation to persons who are Trustees at the time of these Articles being adopted, except as resolved otherwise by the Trustees in particular cases, such Trustees shall retire from office at the end of the first Annual Retirement Meeting following the fourth anniversary of the date of their appointment as a Trustee (of their current term). Trustees retiring under this Article 26.11 may be re-appointed under Article 26.6, provided they have served two or fewer consecutive terms of office. Their re-appointment shall be treated as the second consecutive term under Article 26.6 and the rules about retirement at Article 26.6 shall apply to the Trustee's new term.

## **27. Disqualification and removal of Trustees**

- 27.1 A Trustee shall cease to hold office if:
- 27.1.1 he or she ceases to be a director by virtue of any provision of the Companies Act 2006, or is prohibited from being a director by law;
  - 27.1.2 he or she is disqualified under the Charities Act 2011 from acting as a trustee of a charity;
  - 27.1.3 the Trustees reasonably believe he or she has become physically or mentally incapable of managing his or her own affairs and they resolve that he or she be removed from office;
  - 27.1.4 notification is received by the Foundation from him or her that he or she is resigning from office, and such resignation has taken effect in accordance with its terms (but only if at least five Trustees will remain in office when such resignation has taken effect);
  - 27.1.5 he or she fails to attend more than six consecutive meetings of the Trustees without permission of the Trustees and the Trustees resolve that he or she be removed for this reason;
  - 27.1.6 at a meeting of the Trustees at which at least half of the Trustees are present, a resolution is passed that he or she be removed from office. Such a resolution shall not be passed unless he or she has been given at least 14 Clear Days' notice that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of either (at his or her option) being heard by or of making written representations to the Trustees; he or she ceases to be a member of the Foundation; or
- 27.2 he or she was appointed to the office of Trustee by virtue of his or her membership of the National Gallery Board and he and she ceases to be a member of the National Gallery Board.



## **MEMBERS**

### ***BECOMING AND CEASING TO BE A MEMBER***

#### **28. Trustees as members**

- 28.1 The Trustees from time to time shall be the only members of the Foundation.
- 28.2 A Trustee shall become a member on becoming a Trustee. All new Trustees are treated as having agreed to become members of the Foundation.
- 28.3 The names of the members of the Foundation must be entered in the register of members.

#### **29. Termination of membership**

- 29.1 A member shall cease to be a member if he or she ceases to be a Trustee.
- 29.2 Membership is not transferable and shall cease on death.

#### **30. Associate members**

The Trustees may establish such classes of associate membership with such description and with such rights and obligations (including without limitation the obligation to pay a subscription) as they think fit and may admit and remove such associate members in accordance with such regulations as the Trustees shall make, provided that no such associate members shall be members of the Foundation for the purposes of the Articles or the Companies Acts.

### ***DECISION-MAKING BY MEMBERS***

#### **31. Members' Meetings**

- 31.1 The Trustees may call a general meeting of the members at any time.
- 31.2 Subject to Articles 31.3 to 31.5 (inclusive), such meetings must be called and held in accordance with the provisions regarding such meetings in the Companies Acts.
- 31.3 The quorum for general meetings is three or, if there shall be less than 3 members, the number of members for the time being, provided that if the quorum for Trustee's meetings is fixed at a different level by a decision of the Trustees, in accordance with Article 17.2, the quorum for general meetings shall change accordingly.
- 31.4 The Trustees may make such arrangements as they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it. Such arrangements may, without limitation, include arrangements for attending by suitable means agreed by the Trustees in which all participants may communicate with all the other participants (including without limitation by use of telephone or video conferencing and/or use of electronic facilities and/or electronic platforms).
- 31.5 In determining attendance at a general meeting, it is immaterial whether any three or more members attending it are in the same place as each other. Members attending a general meeting in accordance with the arrangements outlined at Article 31.4 shall be treated as being

present and/or present in person at the meeting for all purposes (including, without limitation, for the purposes of any provisions of the Articles relating to the quorum for the meeting).

## **WRITTEN RESOLUTIONS**

### **32. Written resolutions**

#### ***General***

32.1 Subject to this Article 32 a written resolution agreed by:

32.1.1 members representing a simple majority; or

32.1.2 (in the case of a special resolution) members representing not less than 75%;  
of the total voting rights of eligible members shall be effective.

32.2 On a written resolution each member shall have one vote.

32.3 A written resolution is not a special resolution unless it stated that it was proposed as a special resolution.

32.4 A members' resolution under the Companies Acts removing a Trustee or auditor before the expiry of his or her term of office may not be passed as a written resolution.

#### ***Circulation***

32.5 A copy of the proposed written resolution must be sent to every eligible member together with a statement informing the member how to signify his or her agreement and the date by which the resolution must be passed if it is not to lapse.

32.6 In relation to a resolution proposed as a written resolution of the Foundation the eligible members are the members who would have been entitled to vote on the resolution on the Circulation Date of the resolution.

32.7 The required majority of eligible members must signify their agreement to the written resolution within the period of 28 days beginning with the Circulation Date.

32.8 Communications in relation to written resolutions must be sent to the Foundation's auditors in accordance with the Companies Acts.

#### ***Signifying agreement***

32.9 A member signifies his or her agreement to a proposed written resolution when the Foundation receives from him or her (or from someone acting on his or her behalf) an authenticated Document:

32.9.1 identifying the resolution to which it relates; and

32.9.2 indicating the member's agreement to the resolution.

- 32.10 For the purposes of Article 32.9:
- 32.10.1 a Document sent or supplied in Hard Copy Form is sufficiently authenticated if it is signed by the person sending or supplying it; and
- 32.10.2 a Document sent or supplied in Electronic Form is sufficiently authenticated if:
- (a) the identity of the sender is confirmed in a manner specified by the Foundation; or
  - (b) where no such manner has been specified by the Foundation, if the communication contains or is accompanied by a statement of the identity of the sender and the Foundation has no reason to doubt the truth of that statement.
- 32.11 If the Foundation gives an electronic Address in any Document containing or accompanying a written resolution, it will be deemed to have agreed that any Document or information relating to that resolution may be sent by Electronic Means to that Address (subject to any conditions or limitations specified in the Document).

## **ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS**

### **33. Communications by the Foundation**

#### ***Methods of communication***

- 33.1 Subject to the Articles and the Companies Acts, any Document or information (including any notice, report or accounts) sent or supplied by the Foundation under the Articles or the Companies Acts may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by the Foundation, including without limitation:
- 33.1.1 in Hard Copy Form;
  - 33.1.2 in Electronic Form; or
  - 33.1.3 by making it available on a website.
- 33.2 Where a Document or information which is required or authorised to be sent or supplied by the Foundation under the Companies Acts is sent or supplied in Electronic Form or by making it available on a website, the recipient must have agreed that it may be sent or supplied in that form or manner or be deemed to have so agreed under the Companies Acts (and not revoked that agreement). Where any other Document or information is sent or supplied in Electronic Form or made available on a website the Trustees may decide what agreement (if any) is required from the recipient.
- 33.3 Subject to the Articles, any notice or Document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means which that Trustee has asked to be sent or supplied with such notices or Documents for the time being.

### ***Deemed delivery***

- 33.4 A member present in person or by proxy at a meeting of the Foundation shall be deemed to have received notice of the meeting and the purposes for which it was called.
- 33.5 Where any Document or information is sent or supplied by the Foundation to the members:
- 33.5.1 where it is sent by post it is deemed to have been received 48 hours (including Saturdays, Sundays, and Public Holidays) after it was posted;
- 33.5.2 where it is sent or supplied by Electronic Means, it is deemed to have been received on the same day that it was sent;
- 33.5.3 where it is sent or supplied by means of a website, it is deemed to have been received:
- (a) when the material was first made available on the website; or
  - (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- 33.6 Subject to the Companies Acts, a Trustee or any other person (other than in their capacity as a member) may agree with the Foundation that notices or Documents sent to that person in a particular way are deemed to have been received within a specified time, and for the specified time to be less than 48 hours.

### ***Failed delivery***

- 33.7 Where any Document or information has been sent or supplied by the Foundation by Electronic Means and the Foundation receives notice that the message is undeliverable:
- 33.7.1 if the Document or information has been sent to a member and is notice of a general meeting of the Foundation, the Foundation is under no obligation to send a Hard Copy of the Document or information to the member's postal address as shown in the Foundation's register of members, but may in its discretion choose to do so;
- 33.7.2 in all other cases, the Foundation shall send a Hard Copy of the Document or information to the member's postal address as shown in the Foundation's register of members (if any), or in the case of a recipient who is not a member, to the last known postal address for that person (if any); and
- 33.7.3 the date of service or delivery of the Documents or information shall be the date on which the original electronic communication was sent, notwithstanding the subsequent sending of Hard Copies.

### ***Exceptions***

- 33.8 Copies of the Foundation's annual accounts and reports need not be sent to a person for whom the Foundation does not have a current Address.
- 33.9 Notices of general meetings need not be sent to a member who does not register an Address with the Foundation, or who registers only a postal address outside the United Kingdom, or to a member for whom the Foundation does not have a current Address.

**34. Communications to the Foundation**

The provisions of the Companies Acts shall apply to communications to the Foundation.

**35. Secretary**

35.1 A Secretary may be appointed by the Trustees for such term, at such remuneration and upon such conditions as they may think fit, and may be removed by them. If there is no Secretary:

35.1.1 anything authorised or required to be given or sent to, or served on, the Foundation by being sent to its Secretary may be given or sent to, or served on, the Foundation itself, and if addressed to the Secretary shall be treated as addressed to the Foundation; and

35.1.2 anything else required or authorised to be done by or to the Secretary of the Foundation may be done by or to a Trustee, or a person authorised generally or specifically in that behalf by the Trustees.

**36. Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not specified in the notice.

**37. Minutes**

37.1 The Trustees must ensure minutes are made:

37.1.1 of all appointments of officers made by the Trustees;

37.1.2 of all resolutions of the Foundation and of the Trustees (including, without limitation, decisions of the Trustees made without a meeting); and

37.1.3 of all proceedings at meetings of the Foundation and of the Trustees, and of committees of Trustees, including the names of the Trustees present at each such meeting;

and any such minute, if purported to be signed (or in the case of minutes of Trustees' meetings signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any member or Trustee of the Foundation, be sufficient evidence of the proceedings.

**38. Records and accounts**

38.1 The Trustees shall comply with the requirements of the Companies Acts and of the Charities Act 2011 as to maintaining a members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Charity Commission of:

38.1.1 annual reports;

38.1.2 annual statements of account; and

38.1.3 annual returns or confirmation statements.

**39. Exclusion of model articles**

The relevant model articles for a company limited by guarantee are hereby expressly excluded.

**WINDING UP**

**40. Winding up**

If upon the winding up or dissolution of the Foundation there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Foundation, but shall be given or transferred to some other charitable institution or institutions for the support of the charitable objects of the National Gallery, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation under or by virtue of Article 4, such institution or institutions to be determined by the members of the Foundation at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object.

## SCHEDULE

### INTERPRETATION – DEFINED TERMS

1. In the Articles, unless the context requires otherwise, the following terms shall have the following meanings:

	<b>Term</b>	<b>Meaning</b>
1.1	<b>"Address"</b>	includes a postal or physical address and a number or address used for the purposes of sending or receiving Documents or information by Electronic Means;
1.2	<b>"Annual Retirement Meeting"</b>	has the meaning given in Article 26.5;
1.3	<b>"Articles"</b>	the Foundation's articles of association;
1.4	<b>"Chair"</b>	has the meaning given in Article 8;
1.5	<b>"Code"</b>	has the meaning given in Article 4.4;
1.6	<b>"Foundation"</b>	The NGT Foundation;
1.7	<b>"Circulation Date"</b>	in relation to a written resolution, has the meaning given to it in the Companies Acts;
1.8	<b>"Clear Days"</b>	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
1.9	<b>"Companies Acts"</b>	the Companies Acts (as defined in Section 2 of the Companies Act 2006), in so far as they apply to the Foundation;
1.10	<b>"Connected"</b>	<p>in relation to a Trustee means any person falling within any of the following categories:</p> <ul style="list-style-type: none"><li>(a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of the Trustee; or</li><li>(b) the spouse or civil partner of any person in (a); or</li><li>(c) any other person in a relationship with the Trustee which may reasonably be regarded as equivalent to such a relationship as is mentioned at (a) or (b); or</li><li>(d) any company, partnership or firm of which the Trustee is a paid director, member, partner or employee, or shareholder holding more than 1% of the capital;</li></ul>

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|------|---|---|
| 1.11 | <b>"Document"</b>                               | includes summons, notice, order or other legal process and includes, unless otherwise specified, any document sent or supplied in Electronic Form;  |
| 1.12 | <b>"Electronic Form" and "Electronic Means"</b> | have the meanings respectively given to them in Section 1168 of the Companies Act 2006;   |
| 1.13 | <b>"Financial Expert"</b>                       | an individual, company or firm who, or which, is authorised to give investment advice under the Financial Services and Markets Act 2000;  |
| 1.14 | <b>"Hard Copy" and "Hard Copy Form"</b>         | have the meanings respectively given to them in the Companies Act 2006;   |
| 1.15 | <b>"Public Holiday"</b>                         | means Christmas Day, Good Friday and any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the company is registered;  |
| 1.16 | <b>"National Gallery Board"</b>                 | the board of trustees of the National Gallery, meaning the board of trustees of the non-departmental public body and exempt charity, The Board of Trustees of the National Gallery, governed by the Museum and Galleries Act 1992, under which it has exempt charitable status; |
| 1.17 | <b>"National Gallery Board Trustee"</b>         | has the meaning given in Article 26.2;  |
| 1.18 | <b>"Secretary"</b>                              | the secretary of the Foundation (if any);   |
| 1.19 | <b>"Trustee"</b>                                | a director of the Foundation, and includes any person occupying the position of director, by whatever name called;  |
| 1.20 | <b>"Vice-Chair"</b>                             | has the meaning given in Article 8; and   |
| 1.21 | <b>"Writing"</b>                                | the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.  |
2. Subject to paragraph 3 of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.
3. Unless the context otherwise requires, words or expressions contained in the Articles which are not defined in paragraph 1 above bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles became binding on the Foundation.