

Appendix A

Summary of WMR Ltd Articles of Association

Introduction

1. The Articles of Association of WMR Ltd (the Company) are derived from the model articles of association for companies limited by guarantee contained in Regulations made pursuant to the Companies Act 2006 but incorporating changes that are typically made to those model articles to clarify or to add to them and changes reflecting the proposed specific objects and bespoke governance arrangements developed by the WMR governance workstream group.

Objects and Powers

2. The objects of the Company (article 2) are limited to activities relating to the devolution of West Midlands rail services as described in the main body of this Report. The powers of the Company (article 3) are mostly generic powers enabling the Company to do all necessary things in pursuance of its stated objects.

Application of Income, Winding Up and Members' Liability

3. Any income/monies held by the Company are to be applied to promote the Company's objects and not returned to members except where the Company is formally wound up (in which case members share in accordance with their voting rights) (articles 4 and 5).
4. In the event of an insolvent winding up each member's liability is limited to £1 (article 6) and the position under applicable company law is that no member assumes any further liability in respect of the Company merely as a result of being a member (e.g. not including where they have otherwise agreed to assume such liability pursuant to a separate funding agreement).

Board of Directors

5. The Company's Board of Directors will be appointed by each member authority (other than the ITA) appointing a principal director and a substitute director to represent them (the substitute director only being entitled to vote in the absence of the principal director) (article 22). This right for member authorities to appoint directors could be amended in circumstances where the members agree by a 75% majority vote to the admission of a further member authority (for example as a result the creation of a combined authority with more than seven constituent authorities) and any changes to this right will also require a 75% majority vote.
6. A director may be removed by the appointing member authority and will cease to be a director in various specified circumstances, including where the director resigns, is an elected member of the appointing authority and ceases to be an elected member, or the appointing authority resigns its membership of the Company (articles 22 and 23).
7. The chair of the Board will be selected annually by the Board but the position must alternate between a director appointed by an ITA constituent council and a director appointed by a

shire council or unitary authority (with the vice chair for the time being selected from the other category of directors) (article 17).

8. Each director will have one vote at Board meetings and the chair will not have a casting vote (articles 12 and 17.4).
9. The quorum for Board meetings shall be a majority of directors (not counting substitute directors) (article 16).
10. Board meetings must be held at least four times per year and additional meetings may be called by any director (article 14).
11. Non-directors may be invited to Board meetings on a non-voting basis (article 11).
12. The Board will generally make all decisions on behalf of the Company and be responsible for the management of the Company except that:
 - a) the Company's members may by a special resolution (i.e. a 75% vote) direct the Board to take any specified action; and
 - b) any agreement between the Company and the Secretary of State for Transport relating to rail franchising (and any substantial amendment to any such agreement) will also require approval by such a special resolution (articles 7 and 8).

It is intended that further member approval rights will be considered in the light of the terms of the final agreement with the Secretary of State and the consequences on the decisions that it will be open to the Company to make. Those approval rights would either be incorporated into article 8.3 or in a separate agreement between the member authorities, which it is expected would also deal with funding issues.

13. The Board may delegate their powers (e.g. to a committee or to an employee or secondee acting for the Company) (articles 9 and 10).
14. Directors may participate at Board meetings by conference call/telephone (article 15). Board decisions can also be made by e-mail where a resolution is circulated to all Directors and approved by a majority of them within the timescale proposed with the resolution (with substitute directors counting and being entitled to vote only where the relevant principal directors have not indicated either agreement or disagreement to the resolution within the required timescale) (article 13).
15. Directors may authorise a conflict of interest relating to a director, but where the conflict relates to a personal financial interest it must also be authorised by ordinary resolution (i.e. majority vote) of the Company's members. A director may not vote on the authorisation of their own conflict of interest and any voting rights in relation to the relevant matter following authorisation of the conflict will depend on the terms of the authorisation decided on by the directors. (Article 18)

16. However, no conflict authorisation is required by reason of a director being a member or officer of a member authority and a director may provide his or her appointing authority with such information about the Company's activities as he or she sees fit (article 18.1).
17. Directors who are members of a member authority will not be entitled to receive any remuneration for acting as a director and any expenses payable will be limited by the relevant Local Government Act requirements (articles 25.3 and 26.2).

Membership

18. Membership of the Company is divided into two categories – members who are local transport authorities (as defined in section 108 of the Transport Act 2008) (LTA Members) and those who are not (Associate Members). Unless approved by special resolution of the members, only the ITA, the ITA's constituent councils and the other shire/unitary Partner Authorities may be admitted to membership (articles 28 and 29). Where further and different categories of members are approved by special resolution it may then be appropriate to amend the Articles of Association to adjust voting and director appointment rights, which could also be done by special resolution of the members.
19. Standard provisions are included regarding the calling and holding of a general meeting of members, the quorum for which is members holding a majority of the voting rights (articles 32 to 37 and 39 to 42). No requirement is included for the Company to hold annual general meetings, but the Directors may choose to convene these.
20. Members authorities would attend members meetings by resolving to authorise a representative to exercise their rights at the meetings (article 40).
21. Decisions at general meetings may be taken on a show of hands if unanimous and no one requires a poll vote, but will otherwise require a poll vote. On a poll vote only LTA Members will have a vote and the ITA will have one vote for each of its constituent councils, i.e. 7 votes in total and the other local transport authority members would have one vote each (articles 38 and 39). The proposed provision for a successor to the ITA (i.e. a combined authority) to have one vote for each constituent council for whose area it is the local transport authority is subject to further review in the light of the expected make up of the combined authority that is proposed to succeed the ITA.
22. It would be possible for the ITA or a successor combined authority to cast some of its votes for and some of its votes against a resolution if that were agreed by the constituent council leaders (sitting as the ITA/combined authority). However, under applicable company law, all of those votes would need to be cast by one representative acting for the ITA/combined authority (even though the authority would be able to appoint more than one representative to attend a general meeting if it wished to do so).
23. The chair of a general meeting is prohibited by law from exercising a casting vote (article 38.4).

24. There is an exception to the non-voting status of an Associate Member to allow such a member to vote on and to defeat any resolution under the Companies Act to remove a director it has appointed (article 38.3).
25. Any member may terminate its membership of the Company on 7 days notice at any time (article 30.1). Provision is made for expelling members who are not local authorities (should such members be admitted with the consent of the members) where their conduct is considered likely to have an adverse effect on the Company (article 31).
26. Provision is also made for membership changes arising from the proposed combined authority that is expected to succeed the ITA and for other potential changes. In particular, provision is made for the ITA's membership to be capable of transferring to a successor combined authority (article 30.2), for an LTA Member ceasing to be a local transport authority and thereby becoming a non-voting Associate Member (article 30.3) and for the combined authority then to have one vote for each constituent council for whose area it is the local transport authority (article 38.2). Depending on the number of such constituent councils and the number of other LTA members, this could result in any the combined authority having a majority of votes at members meetings those constituent councils between them also appointing a majority of the Directors.

Miscellaneous

27. Standard articles are included regarding company notices, use of a common seal and the right of Directors to be indemnified from the Company's assets (where it has assets) in respect of liabilities properly incurred as Directors and/or to insure against such liabilities (articles, 43, 44 and 46). In addition, reference is included to the applicability of transparency/information requirements applicable to the Company under the Local Authorities (Companies) Order 1995 (article 45).

