



CALL TO MEMBERSHIP

28 May 2020

RESOLUTION RE: 2020 AGM AND ELECTION OF EXECUTIVE COUNCIL (ACTION REQUIRED)

This Call to Membership (CTM) and Resolution is posted to all SRN Members via the SRN mailing list and is available on the [SRN Website](#) and on the [SRN2020 Conference website](#) as well. It aims to consult and call **all Members to take action** by expressing their preference for one of two options re: this year's AGM and related EC elections.

- 1) Both AGM and elections to be delayed to September 2021 + Mandate of current EC members extended automatically by one year; or
- 2) AGM (only) delayed to September 2021 + "virtual" EC elections to be held in September 2020

Members are invited to read the [full details below](#) and to cast their preference by clicking [HERE](#) by no later than **Thursday 19 June, 3 pm** (UK time).

The CTM follows on from the announcement issued on 17 March re: the postponement of the SRN2020 Annual Conference and Awards due to the COVID-19 crisis. It outlines the legalities of the pending situation and reports about the decision/recommendation reached by the Executive Council re: this year's AGM and related EC elections, which has been the most substantial item of discussion in the April and May meetings. You can find full details of these in the agendas and minutes available on the SRN website as usual.

Summary of content:

- Preamble
- Legal framework
- Options assessed
- "Frustration" due to force majeure
- Recommendation and resolution (in detail)

Note: all extracts from SRN Constitution in blue preceded by article/clause number. Emphasis in bold not in original text. The full text of the SRN Constitution is available on the SRN website.

PREAMBLE

The SRN is an unincorporated association. There is no legal requirement per se for unincorporated organisations to hold an AGM: it is therefore up to the governing document of the association to determine whether an AGM is in fact required. The SRN Constitution states this clearly:

7.1. There shall be a General Meeting of the membership held annually. This will be called by the Executive Council, which will give two months' notice of the date and location of the AGM.

Had we been able to run the Oxford SRN2020 Conference in September 2020 as per original plan, the Executive Council would have issued notice of the next AGM to be held during the Conference by no later than early July 2020. The business and proceedings to be considered by the AGM are specified in the Constitution, in accordance to underlying legislation and customary practice, and include (but are not limited to): issues regarding membership (4.3 to 4.6), chairing role (7.2), the

Executive Council reporting to members on the activities and achievement of the previous year (7.3), proper account of the views of members (7.5), any proposed changes to the Constitution (7.5 and 10.2) and, importantly, elect new members of the Executive Council (5.9).

5.9. Elections to the Executive Council will be conducted by secret ballot, by means appropriate to an international Association (e.g. by postal ballot with proof of membership, added to votes received at an AGM etc.).

Since the adoption of the Constitution in 2012, all AGMs have been held during the Annual Conference as it is the only occasion throughout the year to ensure the largest possible attendance *in presentia* by members coming from so many different countries. If we cannot hold the AGM and deliberate on the above issues as per usual, what happens in the absence of those decisions should depend once again on the terms of the Constitution. It is worth remembering that governing documents are legal documents. Unfortunately, the SRN Constitution does not cater for how a decision can/should be made re: the impossibility of holding a physical AGM and related elections of members of the Executive Council under extraordinary circumstances such as the current COVID-19 crisis.

LEGAL FRAMEWORK

As with any other similar organization, the responsibility for proper governance of the SRN rests with its trustee body (i.e. the Executive Council), including any risk assessment, particularly in setting the parameters of the process and reviewing and considering the results as a matter of good practice. While we have to acknowledge that due to the current situation we find ourselves unable to abide by the Constitution in relation to the matter of the AGM, we also need to consider that this could put us in breach of the rules re: the Executive Council elections. The potential risks of this scenario for the SRN would concern its governance (e.g. ensuring appropriate organizational structure, avoiding potential conflicts of interest, etc.) and its external and internal public perception (e.g. reputation within academia, members' trust, not following government policy, etc.).

The Executive Council has considered these thoroughly and although it estimates the potential impact to be low, this resolution aims at addressing and minimizing these risks.

The SRN is an international association with members residing and working in more than 50 countries. Nonetheless, it is important to stress that the SRN Constitution:

10.1. [...] is subject to the laws of the United Kingdom of Great Britain and Northern Ireland.

As expected from a trustee body, the Executive Council has taken reasonable steps to identify the legal framework/requirements by reading relevant guidance and seeking appropriate advice where available pro bono. To this purpose, the Executive Council consulted the following trusted sources:

- C19-related briefs and measures introduced by the UK Government
- Relevant guidance issued by:
 - the ICSA (i.e. the Chartered Governance Institute in the UK)
 - the Charity Commission for England and Wales
 - the NCVO (National Council for Voluntary Organisations)
 - the Association of Chairs
 - the Small Charities Coalition
- Information, legal help and guidance briefs available pro bono via the websites of the following organizations/law firms:
 - LawWorks
 - Trust Law
 - Bates Wells
 - Russell-Cooke
 - Slaughter & May
 - Net Lawman
 - Charity Governance Code

In the United Kingdom, the SRN is considered an unincorporated association – i.e. a “private concern” with no legal entity/personality and not separate from its members. There is no statutory definition of an unincorporated association: rather, it is governed by common law (i.e. custom and judicial precedent) and its legal basis is the general law of contract governing the agreements its members make with each other – in short, our written Constitution one subscribes to upon becoming a member.

The uncertainties that arise out of the absence of recognition of unincorporated associations as legal entities are well recognised. Even during the current emergency, the entirety of government/ ministerial/legal guidance issued in regard to AGMs and related concerns focuses on incorporated companies and charities and contain no mention whatsoever of unincorporated associations.

That said, member-interest associations such as the SRN share with charities the common characteristics of having non-profit-making objectives; adopting analogous good governance instruments (i.e. AGMs, trustee body); and (compared to some types of charities) not being incorporated – the main differences being the wider, voting membership and elected (rather than appointed) trustees of associations. As a result, common law and legal guidance available tend to imply that in case of similar concerns (e.g. AGMs) they may apply to unincorporated associations as well.

On the other hand, since the SRN does not carry out trading, business or commercial activities, have employees, run profits, pay taxes or own properties, it has the advantage of not having a legal requirement to be audited or to report to any authority other than its members (e.g. to the Charity Commission, the Companies House or the Financial Services Authority).

OPTIONS ASSESSED

As the Charity Commission¹ noted recently, under current government restrictions charities (just like other organizations) will have **no choice but to cancel or rearrange (e.g. postpone) face-to-face meetings, including AGMs**. Further to this, the ICSA has issued government-reviewed guidance in consultation with regulatory bodies and law firms: although these are addressed primarily to companies and other incorporated entities, the advice provided with regards to AGMs in particular reiterates the Charity Commission’s suggestion for organizations to **consider their own individual circumstances**, including their articles of association. In short, whatever approach is taken, the indication that emerges clearly is: “**It’s your decision**”. (CC27).

Below we assess various options that have been suggested with regards to AGMs.

Options unavailable (i.e. adjourn, postpone)

Adjourning the AGM or postponing its scheduled date are viable options only once the notice of the AGM has already been issued and if permitted under the articles of associations. As of this document’s date, such notice has not been issued and provisions for these are not present in the SRN Constitution.

Delaying the AGM and elections

If notice of the AGM has not been issued yet, it is possible to delay it. In fact, this option only grants a “stay of execution”: put simply, a temporary suspension of the AGM for a maximum of, normally, six (6) months from the reference year-end. Assuming this to be the end of the academic year in the UK, this would enable us to delay the AGM until the end of February 2021. In short, we would delay but not resolve the issue at hand, with the added complication of then having to host two AGMs in one year.

¹ The Charity Commission is a non-ministerial department of the UK Government.

Virtual/Hybrid AGM and elections

UK common law provides legal authority that general meetings require the participants to be able to “both see and hear each other”; therefore, meetings conducted and attended from remote via electronic means should be permissible unless the governing document states otherwise. On the other hand, LawWorks remains cautious, advising that unless the Constitution includes specific provision permitting remote formal AGMs (as opposed to routine meetings such as the monthly ones of the Executive Council), the legal position on whether these are indeed valid is unclear.

Generally, virtual-only AGMs are not valid meetings. The usual alternative to these is hybrid meetings – i.e. the Chair and other members hosting from the physical location of the meeting, the members attending from remote. We could assume that current circumstances (as well as the international nature of our membership) are such that, since hybrid is not an available option a priori, the only way to circumvent them is by hosting a virtual-only AGM.

The SRN Constitution neither mentions the possibility of hosting a virtual AGM (e.g. via remote means such as teleconferencing apps) nor does it prohibit it expressly. However, it does say that the notice should include the “location of the AGM” (7.1), which implies a face-to-face, physical meeting to be held at a given place – i.e. a meeting from remote cannot be validly held. Even assuming that Article 5.9 of the Constitution mentioned above offers leeway for broader interpretation in that using teleconferencing facilities could be interpreted as “means appropriate for an international association”, a number of criticalities remain, especially concerning the matter of the elections.

- Although it is understood that not all members will decide to attend the AGM (even from remote), good practice dictates that all members should be able to, should they wish to do so. It is practically impossible to ensure this.
- Any meeting via video-conferencing means remains exposed to technical risks (e.g. poor or lost connections) that jeopardize the validity of the proceedings.
- At the moment, the most commonly used free video-conferencing solutions available are:
 - o Google Hangouts Meets allows up to 250 participants per call and no time limit. But currently, it is free only until 1 July 2020;
 - o Zoom allows up to 100 participants for max 40 minutes. But it has been shown to be severely plagued by a number of serious security and privacy issues that have been shown likely to be in breach of General Data Protection Regulation;
 - o Skype has no time limit, but is limited to 50 users.

Even assuming that any of the above enabled us to host a valid AGM, on the matter of the elections none of them offers a fail-proof solution that guarantees a “secret ballot” while live (as required by the SRN Constitution, 5.9).

- The requirement of a “secret ballot” also excludes the possibility of voting by proxy.

Changing the Constitution

A resolution to amend the Constitution could be proposed in order to address the *vulnus* at hand. This can be actioned by issuing a Call to Membership outlining such resolution but will still be highly impractical because members’ views on the proposal could only be debated from remote. Furthermore:

10.2. [...] the Constitution may be altered by a resolution passed by not less than two thirds of Association members of at least one year’s standing.

Therefore, such majority would have to be calculated based on the totality of the SRN membership as opposed to a simple quorum of voters – at present, eligible members would be around 560 with a required majority estimated to be around 375 members. Even assuming that we could achieve such majority by “silent assent” we must remember that this would not be a minor amendment; on the contrary, one with significant ramifications for the ordinary governance of the SRN and therefore the process would not be devoid of risks (e.g. lack of clarity, inability to ensure comprehensive participation, etc.). In view of the above, the recommendation of the Executive Council on this matter is that such changes to the Constitution should be more properly debated at an actual AGM.

“FRUSTRATION” DUE TO FORCE MAJEURE

Given all the above; and although the SRN Constitution does not include an article re: force majeure; it seems clear that under the current, unforeseeable circumstances that have dragged everyone’s life and work away from familiar routines and customs, the common law principle of “frustration” applies and forces us to make tough but necessary decisions and look for alternative arrangements.

We, the Executive Council, acknowledge our role as agent for all the members in accordance with the SRN Constitution.

6.1. The Executive Council is the servant of the Association, and shall act in accordance with the wishes of the Association.

6.2. The Executive Council shall decide policy and strategy, and make decisions for and on behalf of the Association, in accordance with the wishes of the Association.

After much discussion and deliberation, the Executive Council has approved unanimously the resolution outlined below. However:

6.3. The Executive Council has a duty to consult the membership over matters deemed by the Council as significant for the wellbeing of the Association.

Therefore, before making a final ratification, the Executive Council issues the present Call to Membership with the following:

RECOMMENDATION AND RESOLUTION (IN DETAIL)

In order to ensure that the views of members are taken into due account in the decision-making process, we call to all members to express their preference between the options outlined below.

Option I (recommended by the Executive Council)

- a. Both AGM and elections to be delayed to September 2021 to be held *in presentia* during the Oxford Conference.
- b. The mandate of current members of the Executive Council to be extended automatically by one year. More precisely:
 - i. Margaret McVeigh and Paolo Russo (until September 2021)
 - ii. Rose Ferrell, Rafael Leal and Rosanne Welch (until September 2022)

Note: Carmen Sofia Brenes has notified the Executive Council of her intention to stand down in September 2020 anyway. In accordance with the Constitution, the Executive Council will still consist of the required minimum number of five members in post (5.1) to be valid and fully operative and therefore there is no need to replace Prof Brenes for just one year.

- c. The next elections to be held in September 2021 will resume with the usual rota system (three members to be renewed every year).
- d. The present decision does not concern the appointment of the Early Career Researchers representative (currently Alexandra Ksenofontova), who is inducted by the Executive Council (i.e. not elected). A call for the renewal of this role (from September 2020 to September 2021) will be issued in June/July 2020.
- e. The Executive Council will still publish its Annual Report (for 2019/20) and Action Plan (for 2020/21) via the SRN mailing list and website in September 2020. Suggestions from Members for items to be included in the Action Plan are most welcome.
- f. Resolution(s) to address the issues expounded above will be proposed and properly discussed and voted at the AGM during the Annual Conference in September 2021, so as to give the SRN the appropriate time and instruments to tackle similar situations in the future, if any.

Option 2

- a. AGM only to be delayed (de facto, adjourned) to September 2021.
- b. Mandate of current members of the Executive Council not to be extended.
- c. Call for Nominations to be posted in July 2020, as per usual.
- d. Election of three new members to be held from remote via Google Survey in September 2020.

Note: while a virtual vote held by electronic means (e.g. Google Survey) would meet the requirement of a “secret ballot” it would still be in breach of the Constitution as the elections would be conducted entirely outside of an AGM. Members’ overall preference for this option will be considered as democratic consensus to bypass this under the circumstances (also see below). However, the Executive Council does not recommend it because, should the validity of this option be questioned after the elections took place, there is a risk of not having a valid Executive Council in post until at least the next AGM can actually take place and address the issue (including by amending the Constitution).

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Members can express their preference for one of the two options above by clicking [HERE](#) by no later than **Thursday 19 June, 3 pm** (UK time/UTC+1).

The Executive Council will check the result and ratification of the decision will be the top-priority item in the agenda of the next monthly meeting scheduled on Monday 22 June 2020. The final decision will be notified to the Membership shortly afterwards.

Regardless of the preference expressed by members, it is important to stress that this is a one-off, exceptional executive decision made exclusively with the aim of bypassing the lack of a specific provision in the Constitution, but in accordance with current law provision and guidance, in order to tackle the current COVID-19 crisis. Consider, by way of comparison, that in the UK the administrative elections that were due to be held in May 2020 have similarly been postponed by one year, de facto extending the mandate of those who were due to stand down this year.

This resolution assumes that the emergency will have subsided by 2021 and that the planned Oxford Conference can be run safely. Should the emergency continue, worst scenarios will be considered by the Executive Council in the new academic year. Given the longer time and, hopefully, more information available, the Executive Council will make sure to consult the Membership and, in case the need for any further significant resolutions arise, we might eventually decide to actually issue a call for a Special General Meeting (from remote).

The Executive Council appreciates that these is a difficult decision and welcomes any thoughts, concerns or suggestions on the matter. Please do get in touch with me if you wish to discuss any of the above in person.

Paolo Russo
SRN Acting Chairperson
on behalf of the SRN Executive Council