

# Victory Hill Management Co. Limited

Appendix

Process and Procedures for General Meeting



winterthurway



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**The Victory Hill Management Company (VHMC) is regulated by its own constitution known - the Articles of Association, 2003.**

The Articles of Association:

- Are held by the Company Secretary and duplicated at Companies House.
- Set out rules for membership, voting at general meetings, election, conduct of directors and other obligations.
- Are enforced by law. Deviation from them is not permitted and will render any action or decision unenforceable by law.
- Are applied in conjunction with the Companies Act 2006 and the Companies (Shareholders Rights) Regulations 2009 (+ other legislation).

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# Potential Fraud

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- In December 2020 a person posted an erroneous set of Articles of Association to Companies House in an attempt to alter member voting rights.
- The erroneous articles were not provided by a designated officer of VHMC.
- It is the view of our legal advisers that this was a fraudulent act.
- In the UK, Action Fraud are the Police body responsible for fraud investigations.
- Companies House is passing details of this incident to Action Fraud.
- The person responsible will also be reported to the regulator of their profession.

*It is a shockingly self serving act designed to bestow on the individual preferential voting rights at a General Meeting - only the original 2003 VHMC Articles of Association have any standing in law.*

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The chairman (if any) of the Board of Directors shall preside as chairman at every general meeting of the Company, or if there is no chairman for the time being, or if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting. If at any meeting no Director is willing to act as chairman or if no Director is present within 15 minutes after the time appointed for holding the meeting the members present shall choose one of their number to be chairman of the meeting.

*Extract from the Articles of Association*

The Chairman of the Board (Matt Garvey) shall chair this meeting.

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## VOTES OF MEMBERS

22 Subject as hereinafter provided, every member present in person or by proxy shall have one vote

*Extract from the Articles of Association*

- Each member shall have 1 vote, irrespective of the number of dwellings that they possess. This has been confirmed by independent legal advice and by case law ("Sugarman") on appeal.

Duplicate votes shall be discarded.



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23 No member shall be entitled to vote at any General Meeting unless all moneys presently payable by him to the Company under the terms of the lease under which he holds his dwelling have been paid

*Extract from the Articles of Association*

- Any member who owes money to the Company is not entitled to vote at General Meetings. The Company Secretary shall advise if any member present is disqualified from voting.

Votes from members in arrears shall be discarded.

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The Directors may whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by Section 368 of the Act. If at any time there are not within the United Kingdom sufficient Directors capable of acting to form a quorum, any Director or any two members of the Company may convene an extraordinary meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

*Extract from the Articles of Association*

- Directors may call an EGM at any time.

This EGM has been lawfully convened and any resolutions passed shall be valid.

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### 303 Members' power to require directors to call general meeting

- (1) The members of a company may require the directors to call a general meeting of the company.
- (2) The directors are required to call a general meeting once the company has received requests to do so from—
  - (a) members representing at least **[F1 5%]** of such of the paid-up capital of the company as carries the right of voting at general meetings of the company (excluding any paid-up capital held as treasury shares); or
  - (b) in the case of a company not having a share capital, members who represent at least **[F1 5%]** of the total voting rights of all the members having a right to vote at general meetings.
- (3) **F2** .....
- (4) A request—
  - (a) must state the general nature of the business to be dealt with at the meeting, and
  - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (5) A resolution may properly be moved at a meeting unless—
  - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
  - (b) it is defamatory of any person, or
  - (c) it is frivolous or vexatious.
- (6) A request—
  - (a) may be in hard copy form or in electronic form, and
  - (b) must be authenticated by the person or persons making it.

Members may call an EGM subject to S.303 of Companies Act 2006.



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Mr C Davison submitted a request for an EGM on 2<sup>nd</sup> Dec 2020. The request:

- Fell short of the 5% of eligible members. Petitioners for an EGM counted multiple flats owned by a single leaseholder as multiple votes and one of the petitioners does not appear in the register of members. (s.303 (2)(b))
- Several of the petitioners were NOT eligible to vote at General Meetings at the time of the receipt of the demand because they have/had monies owing to the company. (s.303(b), s.23 Articles)
- The request failed to state the general nature of the business to be dealt with at the meeting (s.303 (4)(a))
- The request was not authenticated (signed) by the persons making the request (s.303 (6)(b)).

Mr C Davison request was invalid.

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**From:** Andrew Copley

**Sent:** 08 December 2020 13:13

**To:** Colin Davison <[REDACTED]>

**Cc:** David Nash <[REDACTED]>; Anne McCabe <[REDACTED]>; Des O'Neill <[REDACTED]>; Rafael Martins <[REDACTED]>; Jack Blogg <[REDACTED]>; Robert OBrien <[REDACTED]>; sau <[REDACTED]>; hiliary pack <[REDACTED]>; flevente <[REDACTED]>; sauwha7 <[REDACTED]>; sarah-wentworth <[REDACTED]>

**Subject:** RE: Victory Hill Management Co Limited - Extraordinary General Meeting Formal Request - s303 and s304 Companies Act

Dear Colin,

The Board acknowledge your request for an EGM of the Company and will make arrangements for this to take place in January.

The Board do not consider that your notice meets the requirements to call an EGM, as the Articles make it clear that each owner is only listed as a single member. However the Board are keen to be open and transparent on any matters that members wish to raise and in light of your collective concerns are happy to make arrangements.

The Board are due to meet on shortly, at which time a date will be set and notice issues to members, at this point we will invite agenda items for resolution.

The Board are clear that Service Charge Demands will be issued in accordance with the lease.

Kind regards,

Andrew.

The Company Secretary informed Mr C Davison that the request was invalid.

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- The Board agreed to convene an EGM for 22<sup>nd</sup> February 2021.
- Notice was issued to members on the 6<sup>th</sup> January 2021. This was in order to give sufficient time for notices to be issued and agenda items to be invited, vetted and agreed.
- Despite being told that the EGM request was invalid, on 8<sup>th</sup> January 2021 Mr C Davison issued a notice to members for a meeting to be held on 28<sup>th</sup> January 2021. As the EGM request was invalid, this was not a lawfully convened EGM.
- On the 13<sup>th</sup> January 2021 the Board issued to members a Letter from THP Solicitors confirming that the meeting called for the 28<sup>th</sup> was invalid and any business conducted would be illegal.

For more information, see:

<http://winterthurway.co.uk/latest-news/egm-information/28jan/>

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**No person other than a Director retiring at the meeting shall unless recommended by the Directors be eligible for election to the office of Director at any General Meeting unless not less than three nor more than twenty one days before the date appointed for the meeting, there shall have been left at the registered office of the Company notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice is given of his intention to propose such person for election, and also notice in writing, signed by that person of his willingness to be elected**

*Extract from the Articles of Association*

- Members i.e. leaseholders can be elected onto the VHMC board of directors subject to those members adhering to the process prescribed in the Articles of Association.

Signed notice has not been received from any of the those nominated for appointment.

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*Extract from the Articles of Association*

- Existing Directors may lawfully co-opt members to the Board at any point.

A number of members have recently been co-opted to the board.



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- 40      The Company may by ordinary resolution of which special notice has been given in accordance with Section 379 of the Act, remove any Director before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Company and such Director. Such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company.

*Extract from the Articles of Association*

- The removal of a director is regulated by the Articles of Association and the Companies Act 2006.

Resolutions to remove three directors shall be voted on this evening.

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Except as provided in Article 20, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be a resolution of the meeting at which the poll was demanded

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

- Voting at General Meetings is regulated by the Articles of Association. A vote can be conducted by a show of hands. Where the outcome is not decisive then a poll (vote) can be demanded by a director or 2 members entitled to vote or a person representing 10% of members (proxy)
- A poll (vote) can be demanded before a meeting where it is to be put to the vote. A poll is a vote of the members or proxies present at the General Meeting and is conducted in accordance with the Chairman's direction. A poll is not a canvass of ALL members, just those present at General Meetings and their proxies

Resolutions will be voted on through an on-line voting system.

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- Members unable to attend a General Meeting can appoint a proxy to vote on their behalf. A member can nominate a proxy, including the Chairman, and either provide direction on how they would like their proxy to vote or leave it to the discretion of the proxy on how to cast their vote.
- Proxy nominations must be received by the Company Secretary ahead of the General Meeting. Only approved, completed Proxy forms received prior to the submission deadline will be accepted. A reasonable deadline is set in order to allow for proxy forms to be verified.
- The Company Secretary will declare the number of proxies received at start of the General Meeting.

Only members with a current voting entitlement (e.g.: not in arrears) may appoint a proxy.

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- This General Meeting shall be conducted in accordance with the Articles of Association.
- The meeting is being recorded in order to ensure that, if required, VHMC can demonstrate compliance with the Articles of Association. In addition, a representative of xx is also present in order to, if required, provide legal guidance to the Board during the course of the meeting.
- The Chairman may adjourn the meeting in certain circumstances including to protect the safety of any person attending the meeting or to ensure that the business of the meeting is conducted in an orderly manner.

Only resolutions on the agenda shall be voted on at this General Meeting.