



13th May 2019

To all State Association & Club Officials

Following my most recent communication providing notification of the upcoming Special General Meeting to consider a change for the HGFA from an Incorporated Association to a Company Limited by Guarantee, I've received a request from one Club for further clarification on some matters. Specifically, the following questions were asked;

1. Will the CLG be members only?
2. Will the Clubs, as "Affiliated Entities" become a part of the Company by merger, or remain an independent Incorporated Association in its own right?
 - a. Further, if a merger is likely will the Incorporated Association (Club) have to relinquish its Certificate of Incorporation and transfer assets to the CLG
3. Can you please clarify exactly what an "Affiliated Entity" is and how it interacts with the CLG?

The responses and points of clarification are shown below.

1. Members of the CLG

The members of the proposed CLG will be the same as the members of the HGFA. The composition of the board and mechanism for electing members to it will be the same. The member categories of the proposed CLG are described in section 5.1 of the proposed constitution and they **will all be natural persons**. Individual Members and Life Members will have voting rights (in the same way they do now), and Associate Members will not (in most cases these members will be Student Members and Visiting Pilot Members). As part of their membership, each voting member provides a 'Guarantee' in the event the CLG is wound up. This is described in section 21 of the proposed constitution and limits the amount to \$1 per member.

2. Effect on Clubs

The relationship between the National body, State and Regional Associations, and Clubs **will remain the same**. Further, **Clubs & State/Regional associations will retain their own legal structures**. There are no mergers nor any requirement for Clubs and/or State/Regional associations to alter their legal entities. It is only the HGFA which is asking members to approve a change in its legal entity from an Incorporated Association to a Company Limited by Guarantee. The proposed Constitution (and the Corporations Act under which it falls) provides no powers to compel any other Incorporated Association to do anything, nor do they allow for any claim on assets other Incorporated Associations may possess. Only the members of an Incorporated Association, or the Regulator, can effect change to that Association. Similarly, if the HGFA succeeds in adopting the CLG legal structure, it has no powers to compel change to the legal structure of any other legal entity (e.g. Incorporated Association), **nor can it take over or interfere with any of their assets**.

Affiliated Entities

Section 5.1 of the proposed constitution also states that **Affiliated Entities are not members of the association**, although the transitional provisions in section 22.2(c) states that Affiliated Entities of the HGFA are taken to be Affiliated Entities of the company. The purpose of that transitional clause is to make clear that **all the rights and responsibilities of current affiliated Clubs and state associations remain the same**. Affiliated Entities will not have to provide the nominal \$1 'Guarantee' as they are not members.

To provide further clarity, I will step through the meaning and intent of relevant parts of section 5.5 of the proposed constitution (note that definitions of Affiliated Entities, Sports Clubs, Regional Associations, Sport, Policy and Aviation Authority are towards the beginning of the constitution; note also that a reference to 'Policy' is also a reference to all relevant 'Policies' as the singular includes the plural and vice versa):

- 5.5 (b) *'The Directors may affiliate Sports Clubs as Affiliated Entities in accordance with the Policy on Sports Clubs.'* The purpose of this clause is to recognize in the constitution that Sports Clubs are an important category of Affiliated Entity and that a Club should only become newly affiliated if it meets a few requirements. We are currently drafting a policy along the lines of the following principles:
 - That the proposed affiliated Club promotes the sport (i.e. it should be focused on one or more of our sports, and not some other activity).
 - That it can do the things required of it under other HGFA policy, in particular the rights and responsibilities afforded to Clubs under the Operations Manual in relation to the delegation of Aviation Authority.
 - That it has an appropriate governance structure.
 - That it can provide suitable contact details so that they can be communicated to HGFA members.

This policy upgrade is being developed **irrespective of whether we become a CLG or remain an Incorporated Association** – the whole area of affiliation needs greater clarity. Note also that **affiliation is not a new requirement**. The policy for affiliation of Clubs has been in place for many years, it just hasn't been closely followed.

5.5 (c) *'An Affiliated Entity must be recognised as an entity under Commonwealth or State Law.'* The purpose of this clause in relation to Clubs is simply to ensure that it is **actually** a legal entity (such as an Incorporated Association, another Company, or a Government body). If a Club is not a legal entity then it can neither be insured by the HGFA/SAFA insurance, nor can any of the Aviation Authority delegated to it under the operations manual be recognized.

- 5.5 (d) *'The Company may make Policy regarding reporting and ongoing affiliation requirements for Affiliated Entities.'* The purpose of this clause is to require that we put in place a policy to ensure that SAFA Members can be assured that the previous two clauses are met on an ongoing basis. The draft new policy is seeking to replicate (but with greater clarity), the current policy (which has not always been followed), of annual affiliation. Annual affiliation is appropriate because most of our current Affiliated Entities are Incorporated Associations, and in order to continue to be so, would be submitting an annual return to the relevant Office of Fair Trading in their state.

The benefits of affiliation for a Club

Nothing in the proposed constitution (or any policy being drafted) compels a Club to be affiliated. However, there are clear benefits to HGFA/SAFA members, and to the Club itself, in doing so. In summary:

- Affiliation means the 'Associations Liability' insurance policy can be extended from the HGFA/SAFA to Clubs. This provides insurance to committee members (as directors and office holders) of Clubs. Without this insurance it is less likely that HGFA members would choose to serve on Club committees as they would be personally exposed to liabilities of the Club.
- Affiliation means that the Club can exercise delegated Aviation Authority. This flows from the Civil Aviation Act → Civil Aviation Regulations → Civil Air Orders (such as 95.8) → HGFA Operations Manual → Clubs. HGFA/SAFA Members benefit from Clubs having the authority to appoint Duty Officers, Safety Officers, support accident investigations and administrate flying activity in their area. If the Club is not affiliated, then this authority cannot be delegated from the Operations Manual.
- Affiliation means that the HGFA/SAFA can communicate contact details of the Club to members.

In summary, the proposed new constitution seeks to effect the least change to the current one as possible. It's also worth noting that the duties and responsibilities of Directors & staff in a CLG are much more onerous and robust than in an Incorporated Association. As a result, we are also doing our utmost to ensure our administration is well situated to meet the higher standards imposed.

I encourage all members to take the opportunity to support the Special Resolution and help our organization evolve & modernize.

Paul Green
President
HGFA