

CONSORTIUM *of* EUROPEAN RESEARCH LIBRARIES

Rules and Regulations

1. Introduction

The Consortium of European Research Libraries is an organisation formed on the initiative of major research libraries in European countries with as primary objective to improve access to the written European heritage, especially the printed heritage of the period before c.1830. In order to sustain an independent international organisation embarking on database development, the libraries that had informally agreed to participate in this initiative, on legal advice, formed in 1994 a company limited by guarantee, not having a share capital. A term more usual in the USA to designate such a company is a 'not-for profit' company. The company thus formed is registered in England and governed by English law (the Companies Act 1985).

The basis for the organisational form is laid down in two documents, the Articles of Association and the Memorandum of Association, which were drawn up with legal advice and signed on 16 June 1994 on behalf of the British Library, the Bayerische Staatsbibliothek, the Bibliothèque nationale de France and the National Library of Scotland. These two documents define the Consortium's purpose and remit, its obligations in law and to the membership. They are sent to each member on entering membership of the company. The third legally binding document is the Funding Agreement, which is an agreement committing signatories to payment of an annual fee for a period of three years, the maximum agreed by the members on the basis of budgetary proposals submitted at their Annual General Meetings. The Funding Agreement ensures financial stability over each three-year period. When this period has passed, members are invited to renew the Funding Agreement. The *Articles of Association* and the *Memorandum of Association* are publicly available on the Consortium's website.

These three documents as well as the Companies Act 1985 are the basis for the way the Consortium conducts its activities. In addition there are rules regarding categories of membership, the institution of committees and the rotation of their membership, which have been developed as the project developed and the need arose. They have been submitted to and approved by the members at their Annual General Meeting, and as such have been recorded in the minutes of these meetings.

The present document intends to bring the various legal obligations and rulings together as practical guidelines. For full background information the user is referred to the three documents mentioned above, as well as to the guidelines for Directors and Secretaries issued by Companies House, which can be found on their Website: <http://www.companieshouse.gov.uk/notes.gbal.html/>

2. Aim and mission of the Consortium of European Research Libraries

There are short mission statements. The broadest formulation of the Consortium's objectives is:

'The Consortium's objects are to promote and protect the common interest [...] in connection with the promotion, arrangement, design, production, compilation, investigation, study, teaching and the like of the bibliography of printing, printed heritage, preservation, history and any related areas; to regulate the use of such data bases and systems by the members of the Company and by third parties; to act as publishers and book sellers, literary agents, proprietors, editors, producers, recorders and printers of programmes, records, tapes, books, labels, journals, newspapers, publications and other educational works and undertakings in connection with the bibliography of printing, printed heritage, preservation, history and related areas [...] to establish, maintain and carry on a training programme for persons engaged in or connected with computer and technology systems and historical bibliography or any other operation authorised to be carried on by the Company.'

(Memorandum of Association, 3)

3. Organisation

The Consortium has a Board of Directors, a Management team consisting of the Company's officers,

an Executive Committee and an Advisory Task Group. The Finance Committee is a sub-committee of the Executive Committee. This section sets out their respective responsibilities and how they interrelate.

3.1 Directors

3.1.1 By law a company is required to have at least one Director. In order to have adequate representation, the Consortium members agreed to a Board of Directors. The Board is constituted of the Chairman and six other Directors. There is, however, no rule stating the maximum number of Directors.

3.1.2 The Directors are nominated and elected by the members following legal procedures (see below 5.1).

Each year two Directors step down by rotation at the end of a three-year term. A Director can stand for re-election for one more successive term. In exceptional circumstances a third term can be agreed.

3.1.3 Directors, acting in the person of the Chairman, are the legal body concluding contracts with other institutions and with the Consortium's employees.

3.1.4 The Treasurer is one of the Directors.

3.1.5 The Company Secretary is Secretary of the Board of Directors.

3.1.6 The Companies Act formulates the responsibilities towards Companies House as follows:

Every company director has a personal responsibility to ensure that statutory documents are delivered to the Registrar as and when required by the Act. In particular:

Accounts.

Annual returns.

Notice of change of directors or secretaries, and their particulars.

Notice of change of registered office.

Failure to deliver documents on time is a criminal offence that can lead to prosecution.

To this end the Directors must

* meet at least once a year.

* approve at this meeting the annual report including the accounts prepared by CERL's appointed accountants for submission to Companies House by the obligatory date.

3.1.7 The Articles of Association state:

(4.) No organisation or person shall be admitted as a member of the Company unless they are approved by the Directors. Every organisation or person who wishes to become a Member shall deliver to the Company an application for membership, in such form as the Directors require, executed by that organisation or person. [...]

(6.) The Directors shall terminate the membership of a member on receipt of the prior written consent of a majority of the Members entitled to vote at a General Meeting in accordance with Clause 7.1.

Directors are therefore asked by the Secretary:

* to approve applications for membership. This is of particular significance in the case of applications for Special Membership (see 6.2.3) and the submission of clusters of libraries to be attached to Single Membership (see 6.2.1.2).

3.1.8 Directors receive the minutes of the meetings of the Executive Committee, in order to be regularly informed of the Consortium's progress.

4. Management

4.1 Management team

4.1.1 As the Consortium consolidated, the Chairman, Secretary and Executive Manager developed the practice of meeting at least once a month in the Consortium's office, in order to ensure that the activities in their respective areas of responsibility are coordinated and coherently presented to the Executive Committee, the Directors and the Members. Progress is reviewed at each of these meetings, and agenda and papers for the various CERL meetings are prepared.

4.1.2 Areas of responsibility covered are:

Policy development and implementation, Membership, Finance, Communications, Expansion and use of the database, Database development, Management and Organisation, Marketing and Promotion, and added to these main topics the many other areas of current business.

4.1.3 In practice the management team shares the responsibility for the day-to-day management of the Consortium.

4.1.4 The Chairman, Secretary and Executive Manager are the authorized signatories for the Consortium's bank accounts.

4.2 Executive Committee

4.2.1 The existence of an Executive Committee is not a legal requirement of the Companies Act, nor is it directed by the memorandum or Articles of Association.

4.2.2 The Executive Committee was constituted as a representative body delegated by Members to monitor policies and progress and reports to the AGM through the office bearers; its role is to ensure that the Consortium's projects and policies keep in step with the strategies and wishes of the members represented in the Committee, as well as with the aims and stated objectives of the Consortium itself. Through its wide representation it functions as a valuable source of information on and contacts for projects and developments taking place elsewhere. The Executive Committee is a forum for wider and more open discussion than is appropriate in the more formal remit of the Board of Directors.

4.2.3 The Executive Committee has not the power to take formal decisions on behalf of the Members. The recommendations resulting from its deliberations are conveyed to the Board of Directors and to the Members for decision.

4.2.4 The Executive Committee is chaired by CERL's Chairman. The Executive Manager is its Secretary.

4.2.5 The Committee meets three or four times per year. The Executive Manager (also on behalf of the Treasurer), the Secretary and the Chair of the Advisory Task Group bring out progress reports. A representative of RLG is invited to attend the meetings, and to report and comment on progress and development projects.

4.2.6 Representation:

4.2.6.1. The Committee aims to have a good representation of Member institutions in Europe and recommends that no more than one committee member per institution should be elected. Members, once elected, are expected to participate actively in the decision-making process.

4.2.6.2. Overall rotation of membership will be encouraged, and will be relied on to take place as the occasion occurs.

4.2.6.3. Nomination for membership of the committee is to be supported by a Member. Elections take place at the AGM.

4.2.6.4. A representative of an Associate Member may be co-opted to the committee.

4.2.6.5. The Annual General Meeting in November 2001 increased the size of the Executive Committee to eleven elected members and recommended that its membership should be reviewed every three years but that there should be no fixed term for membership. The three-year review took place in 2004 and 2007. The next will be due in 2010.

4.3 The Advisory Task Group

4.3.1 The Advisory Task Group (ATG) is a Committee of database experts delegated by Members, whose task is to monitor progress from the functional and technical perspectives of database development, to discuss, monitor and comment on proposals, and to approve test phases of developments before their implementation.

4.3.2 The Chair of the ATG is proposed by the membership or by the Executive Committee, the nomination to be approved by the members. There is no fixed term of office.

The number of members of this Task Group is not fixed. The ATG operates as a small core group of experts with long experience of the Consortium's database developments. It is encouraged to co-opt other experts with regard to specific projects or issues to take part for a limited period.

The ATG members are professionally in intense contact with the developments in database technology and may ensure that the Consortium does not fall behind in an area of technical development that is rapidly evolving.

4.3.3 The ATG communicates by e-mail and in meetings which normally precede the meetings of the Executive Committee.

4.3.4 The Chair of the ATG brings out a report to the Executive Committee in its meeting following the ATG.

4.3.5 The Executive Manager is Secretary of the ATG.

4.4 Finance Committee

4.4.1 The Finance Committee consists of the Chairman, the Treasurer, the Secretary, the Executive Manager and two members of the Executive Committee. It meets at least once a year to discuss the draft budget for the following financial year (prepared by the Treasurer and the Executive Manager), together with a further financial forecast. The budget is then submitted for comment to the Executive Committee before being progressed to the Members for their approval at the Annual General Meeting and where it is submitted to vote.

4.5 Officers

Officers of the Consortium are:

the Chairman, Secretary, Treasurer and Executive Manager.

4.5.a The Chairman and Treasurer are Directors, elected under the terms of the Articles of Association which also define the length of their term of office, i.e. a three-year term which can be extended by one further term upon re-election and in exceptional circumstances by a third term upon re-election.

4.5.a.1 *Chairman*

The legal responsibilities of the Chairman as a Director are defined by Companies law (see above (3.1.6) and by the Articles of Association.

4.5.a.1.1 The job responsibilities of the Chairman are set out in a separate document.

4.5.a.2 *Treasurer*

4.5.a.2.1 The legal responsibilities of the Treasurer as a Director are defined by Companies Law.

4.5.a.2.2 Neither the Companies Act nor the Articles of Association require the Consortium to appoint a Treasurer and the officer's responsibilities are not legally defined.

4.5.a.2.3 From the beginning, however, it was deemed desirable to have a senior officer in overall charge of the Consortium's finances and bearing the responsibilities with regard to the members.

4.5.a.2.4 The Treasurer is responsible for reporting the state and details of the Consortium's finances to the Members. While delegating the day-to-day supervision of the finances to the Executive Manager, he is responsible for the presentation of annual budgets and he is instrumental in the presentation of the annual financial report as prepared by CERL's appointed accountants.

4.5.b The Secretary and the Executive Manager are employed by the Consortium on contractual basis, on terms and conditions of service agreed in the individual contracts. The contracts are signed by the Chairman on behalf of the Board of Directors. In terms of 'line management' structure the Secretary reports to the Chairman and the Executive Manager reports to the Secretary, the Chairman acting as senior officer.

Contracts stipulate that expenses for travel undertaken on behalf of the Consortium are compensated out of the Consortium's funds.

4.5.b.1 *Secretary*

4.5.b.1.1 The Companies Act requires every Company to have a Secretary.

4.5.b.1.2 The legal duties of the Secretary include those defined in the Companies Act as follows:

A secretary may be criminally liable under section 744 of the Act for defaults committed by the Company, for example failure to file — in the time allowed — any change in the details of the company's directors and secretary, and the company's annual return.

Maintaining the statutory registers:

- the register of members
- the register of directors and secretaries
- the register of directors' interests
- the register of charges

Ensuring that statutory forms are filed promptly
 Providing members and auditors with notice of meetings
 Sending the Registrar copies of (extraordinary) resolutions
 Supplying a copy of the accounts to every member of the company
 Keeping, or arranging for the keeping of minutes of directors' meetings and general meetings
 Ensuring that people entitled to do so can inspect company records
 Custody and use of the company seal.
 The Company secretary has no power, except to sign certain re-registration applications.
 The Company Secretary's rights depend on the term of his or her contract with the company.

4.5.b.1.3 The job responsibilities of the Consortium's Secretary are set out in a separate document.
 4.5.b.1.4 There is no precedent for the appointment of a Secretary, either by open competition, with a process of advertising and an appointment board, or by election. The Companies Act requires the Secretary to be based in England or Wales

4.5.b.2 *Executive Officer.*

4.5.b.2.1 The Secretary's tasks are supported by the Executive Officer, who also assists the Executive Manager, especially in the day-to-day running of the finances and in the development and updating of the Consortium's Website.

4.5.b.2.2 The Executive Officer has an annual renewable contract, signed on behalf of the Board of Directors by the Chairman.

4.5.b.2.3 The job responsibilities of the Executive Office are set out in a separate document.

4.5.b.3 *Executive Manager.*

4.5.b.3.1 From its beginning the Consortium saw the need to have its project managed by a full-time manager. Initially the manager was on secondment from one of the member libraries. After one full term he stepped down, and the present Executive Manager was appointed following a process of open competition by advertising and an appointment board. The conditions of appointment are set out in a three-year contract.

4.5.b.3.2 The job responsibilities of the Executive Manager are set out in a separate document.

5. Elections

5.1 Election procedures for Directors are set out in the Articles of Association.

No person other than a Director retiring by rotation shall be appointed a Director at a General Meeting unless not less than fourteen nor more than thirty-five clear days before the date appointed for the General Meeting, notice signed by a Member qualified to vote at the General Meeting has been given to the Company of the intention to propose that person for appointment, together with notice signed by that person of his willingness to be appointed.

(Articles of Association, 15(h))

5.2 When the need to elect a Director to act as Chairman arose when the first Chairman had served two consecutive terms of three years (1994-2000), a search committee constituted by the Executive Committee deliberated whether it was necessary to add further regulations for this particular function. They concluded that members could be approached for initial soundings, which would be reported to the Executive Committee. The Executive Committee would then arrive at a recommendation to be submitted to the Members when soliciting nominations within the time limits in which all Directors have to be nominated (see above 5.1). This procedure was duly followed in 2000, 2006 and 2009 for the election of the Chairman.

5.3 Election for the Executive Committee.

Nominations are to be received by the Secretary before or during the AGM before the relevant agenda point. Nominations are to be proposed by the member institution which is to be represented and supported by another full member.

6. Membership

6.1 The Articles of Association include the following definitions:

4. The subscribers to the memorandum of Association of the Company and such other organisations or persons as are admitted to membership in accordance with these articles shall be Members of the Company. No organisation or person shall be admitted as a Member of the Company unless they are approved by the Directors. Every organisation or person who wishes to become a Member shall deliver to the Company an application for membership, in such form as the Directors require, executed by that organisation or person.

6.2 Membership structure

6.2.1 *Single Membership*

A Member is a partner in the company with full voting rights and has signed the Articles of Association and the Funding Agreement committing for three consecutive years to an annual contribution to the Consortium. Membership allows access to and full use of the records in the HPB database and to such of the RLIN databases as the Consortium can allow on terms as negotiated by the Consortium every year. Non-European members are admitted on the same terms as European members.

6.2.1.2 *Cluster Libraries*

Members are invited to submit to Directors a proposal to give access to the HPB database to a maximum of 15 other library organisations with which they have some form of organisational link, be it local, regional or subject-oriented. This right is available only for Full Members of the Consortium.

6.2.2 *Group Membership*

Group membership allows a group of libraries to become Full members at a reduced rate. Originally, a group had to be formed by six (or a multiple of six) institutions within a country.

At the Annual General Meeting in November 2004, the Consortium approved new rules which allow more flexible Group membership. Existing groups will continue in their present form until their three-year funding period expires. The Directors were given discretion for further flexibility at the Annual Meeting of members in 2007.

The essentials of the new scheme are:

- A Group pays a subscription, committed for three years, at a rate calculated from a Group fee plus an individual fee for each participating library.
- One institution in the Group undertakes responsibility for full payment by the Group members.
- Only one national or state library is allowed to be part of each Group
- Groups may have multi-national membership.
- A Group is entitled to up to four votes at CERL meetings, depending on its size.

The overall effect of the new Group membership is that the average subscription for each participant is cheaper than the cost of Full Membership, especially in the case of large Groups. The full rules for the new Group Membership scheme, as adopted by the members at the Annual General Meeting in Edinburgh in November 2004 and amended in November 2007 and again in November 2008, are set below.

1. A group should be a corporate body or a group of libraries with a Leading Partner which is entitled to enter into a contract with CERL and act on behalf of the participants, having legally established relations with the said participants in order to define its role and the payments due from each. The Leading Partner will be responsible for dealing with search accounts and passwords as well as payment of the Group's combined CERL membership fee.
2. Institutions participating in a Group can be from different countries.
3. Normally, only one national library or regional equivalent will be allowed in a Group, exceptions being permitted at the discretion of the Board of Directors.
4. The minimum number of participating institutions in a Group is two; there is no prescribed maximum number.
5. Group members will not be allowed to have Cluster libraries.

6. All applications for Group membership will be subject to approval by CERL's Board of Directors.
7. The fee for Group membership consists of a Group fee, plus an additional fee for each participating library: The fee set by CERL is for the whole Group but the distribution of the cost within the Group is for the members of the Group to decide. The current annual level of fees (2008/2009) is set at €8,000 for the Group fee, plus €3,500 for each participant library after the first (i.e. €11,500 for a group of two members; €15,000 for a group of three members; etc.). The Directors may agree a specific fee for cases where the full amount is not appropriate.
8. The Group will be required to sign a three-year funding agreement.
9. A Group with two members has 1 vote at the AGM; a Group of 3 or 4 members has 2 votes; a Group of 5 or 6 members has 3 votes; a Group of 7 or more members has 4 votes.
10. The Group may either vote through its administrative body, or its votes may be exercised by nominated institutions within the Group.
11. Group members receive unlimited access to the HPB database, and each institution participating in the group will have 200 free searches in OCLC's WorldCat file.
12. Group members are warmly encouraged to submit files to CERL for addition to the HPB and the CERL Thesaurus, and to participate in other projects that CERL may develop.

6.2.3 *Special Members*

To this category are reckoned to belong museums of the book, small collections and special libraries or institutions not normally funded by public funding. The final decision on whether an institution will be accepted as a Special Member lies with the Directors. Special members will pay a reduced fee annually. Special members will have full voting rights but will not be eligible to stand for election to the Executive Committee.

6.2.4 *Associate Membership*

Associate Membership is offered to organisations where financial or technical constraints make it impossible to join the Consortium immediately as full single members, but where there is a clear intention to become a full member when the constraints are removed. Associate Membership is granted for a period of three years and will be reviewed at the end of this period. An Associate Member is entitled to receive information about the Consortium's work, and to attend the Consortium's open meetings as observers.

6.2.5 *Special arrangements for membership*

Following the report of the CERL Membership Group, the following resolution was adopted at the 2004 Annual General Meeting:

Discount scheme to encourage membership from countries with severe long-lasting economic pressures:

1. That a formal discount scheme to assist potential members in countries with severe long-lasting economic pressures is not practicable.
2. That the Directors shall be empowered to agree a reduced membership fee for Full or Group members for a finite term (extensible, where considered necessary) at a level set at the discretion of the Directors, in response to the case made by a library or set of libraries in very particular circumstances.

6.3 Termination of Membership

The Articles of Association (5-6) state that:

6.3.1 A Member may at any time withdraw from the Company by giving at least one hundred and eighty clear days' notice to the Company. Membership shall not be transferable and shall cease in any event on the winding up of the Member.

6.3.2 The Directors shall terminate the membership of a Member on receipt of the prior written consent of a majority of the Members entitled to vote at a General Meeting in accordance with Clause 7.1.

6.4 Meetings

See Articles of Association 9(a). In brief:

6.4.1 An Annual General Meeting shall be called by at least twenty-one day's clear notice, specifying time and place of the meeting.

6.4.2 Any Member entitled to attend and vote at a General Meeting shall be entitled to appoint another person (whether a Member or not) as his proxy to attend and vote, and to speak at the meeting.

6.4.3 No business shall be transacted at a General Meeting unless a quorum is present representing at least a third of the Members registered at the time of the meeting.

6.4.4 If a quorum is not present within half an hour from the time appointed for a General Meeting, the General Meeting shall stand adjourned to such other day as the Directors may determine.

6.5 Rights of Membership

6.5.1 Members have voting rights in the Annual General Meeting and whenever a vote is sought by the Directors of the Company.

6.5.2 Representatives of Members and Group Members are eligible to the Consortium's Board of Directors and to Committees.

6.5.3 Membership allows access to and full use of the records in the HPB database and to such other databases as the Consortium can allow on terms as negotiated by the Consortium. Members are encouraged to organise the provision of access to the HPB database to a cluster of a maximum of fifteen libraries, subject to approval of the Consortium's Directors upon submission of a proposal.

7. Contracts

In order to fulfill its commitments to the members of the Consortium enters into contracts.

7.1 With a database service provider (currently OCLC) selected by the Consortium on the basis of legal tender as database host. The Consortium enters into separate agreements with RLG regarding specific areas of development.

7.2 With the Data Conversion Group, Göttingen (DCG), for preparing UNIMARC files for loading by RLG, and for developing the Thesaurus file.

7.3 Into short-term contracts with other organisations and with individual consultants, in which specific tasks are defined, to be carried out in connection with the development and maintenance of the database functions.

8. Auditors

The Rules originally stated that:

The Board of Directors appoints annually an Auditor to audit the annual financial report before submission to Companies House.

Following changes introduced in The Companies Act 1985 (Audit Exemption) (Amendment) Regulations 2000, small companies have exemptions from the requirements for full audit. CERL has taken advantage of these exemptions that exist under the Act, and, in addition, CERL's Memorandum and Articles of Association do not specify that a full audit must be conducted. If at least 10% of the Consortium's members request an audit, an audit must be held. The demand for an audit must be in the form of written notice, delivered to CERL's registered office at least 1 month before the end of the financial year.

October 2001 - L. Hellinga

December 2004 - D. J. Shaw

February 2006 - A. Matheson, D. J. Shaw

June 2009 - D.J. Shaw