

TORONTO DISTRICT WORKERS' CLUB LIMITED

ACN 000 991 266

EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

At the Annual General Meeting of the Club to be held at 4pm on 14th November 2022, members will be asked to consider a Special Resolution to adopt a new Constitution to replace the existing Constitution of the Club (**existing Constitution**). This Explanatory Memorandum is to assist members to understand the proposed new Constitution and why it is appropriate to adopt it.

Members who wish to review the proposed new Constitution can inspect it at the Club's noticeboard and it is also prominently on display on the Club's website together with a copy of the existing Constitution. Members may also obtain a copy of the proposed new Constitution and the existing Constitution upon request at the Club's office.

The Club's lawyers have advised that the Club should adopt a new Constitution to replace the existing Constitution in order to be updated to reflect and comply with the requirements of the Corporations Act, Registered Clubs Act, Liquor Act, Gaming Machines Act, and their respective Regulations.

A summary of the proposed new Constitution and its principal features is set out below. **Significant variations from the existing Constitution are set out in bold**. However, there are many additional new provisions which reflect the requirements of various pieces of legislation which impact on the Club. These have not been set out in bold.

NAME

1. Rule 1 states that the name of the company is Toronto District Workers' Club Limited.

PRELIMINARY

2. Rule 2.1 states that the Club is a company limited by guarantee and a non-proprietary company.
3. Rule 2.2 provides that the company is established for the purposes set out in the Constitution.
4. Rule 2.3 provides that the replaceable rules referred to in the Corporations Act are displaced or modified as provided in the Constitution.
5. Rule 2.4 provides that every member must comply with the Constitution and any By-laws of the Club.
6. Rule 2.5 provides that the Constitution has the effect of a contract between the Club and each member; and between the Club and each Director; and each member and each other member.
7. Rule 2.6 provides that the Club must supply a member with a copy of the Club's Constitution if a copy is requested by a member as prescribed by the Corporations Act.

DEFINITIONS

8. Rule 3 sets out definitions and terms used in the proposed new Constitution.

OBJECTS AND ORIGINAL SUBSCRIBERS

9. Rule 4 sets out the objects for which the Club was established.
10. The objects reflect those in the existing Constitution. However, slight alterations have been made to bring the objects into line with the Liquor Act and Registered Clubs Act.

WINDING UP AND MEMBER'S LIABILITY

11. Rule 5 states that the liability of the members is limited. That limit is three dollars (\$3.00) as set out in Rule 6.
12. Rule 6 provides that each member of the Club undertakes to contribute an amount not exceeding three dollars (\$3.00) if the Club is wound up and the assets of the Club are insufficient to discharge the liabilities. This undertaking continues for a period of twelve (12) months after the person ceases to be a member.
13. Rules 7.1 and 7.2 provide that on the winding up of the Club, if there remains any assets (after the satisfaction of all debts and liabilities), those assets shall not be distributed among the members but shall be given or transferred to an institution which has similar objects to the Club which is approved by members.

PROPERTY AND INCOME

14. Rule 8.1 provides that the property and income of the Club must be applied solely towards the promotion of the objects of the Club.
15. Rules 8.2 and 8.3 set out specific requirements of the Registered Clubs Act in relation to benefits available to members.
16. Rule 8.4 provides that a director of the Club cannot be appointed or elected to any office of the Club paid by salary or wages or any similar basis of remuneration.
17. Rule 8.5 provides that the payment in good faith of reasonable and proper remuneration to any officer, employee or to any member of the Club for services actually rendered, or for interest on money lent by the director to the Club or rent on property leased to the Club by the director, is not prohibited.
18. Rule 8.6 specifies that a director shall not receive from the Club remuneration or any other benefit in money or monies worth except by way of an honorarium and for any reasonable out of pocket expenses.

LIQUOR AND GAMING

19. Rules 9.1 and 9.2 provide that liquor shall not be sold, supplied or disposed of on the premises of the Club to any person under the age of 18 years in accordance with the Registered Clubs Act and the Liquor Act.
20. Rule 9.3 states that a person under the age of 18 years shall not use or operate the Club's gaming facilities.
21. Rules 9.4 to 9.6 inclusive prohibit a person associated with the Club from receiving any bonuses or remuneration related to the Club's sale or supply of liquor to patrons, or from the operation of the Club's gaming machines.

MEMBERSHIP

22. Rule 10.1 states that no person under the age of 18 years is to be admitted as a member of the Club.
23. Rule 10.2 sets out the categories of Full membership of the Club. The categories of Full membership of the Club are Club members, Elements of Toronto Residential members and Life members.
24. Rule 10.3 provides that persons who are not Full members may be admitted to the Club as Provisional members, Honorary members, or Temporary members.
25. Rule 10.4 provides that the number of Full members having the right to vote in the election of the Board shall not be less than the minimum number of Full members required by the Registered Clubs Act.
26. Rule 10.5 provides that the rights of a class of membership may be varied or cancelled by way of eligible members passing a special resolution (without the need for a separate special resolution to be passed by members of that class of membership).
27. Rules 10.6 to 10.20 set out the eligibility requirements for membership of the Club (including Life membership) and the rights and entitlements of members. These remain unchanged.
28. Rule 10.6 provides that, subject to any restrictions contained in the Constitution, Club members are entitled to:
 - (a) playing and social privileges and advantages of the Club; and
 - (b) attend and vote at general meetings (including Annual General Meetings) of the Club;
 - (c) nominate for and be elected to hold office on the Board;
 - (d) vote in the election of the Board;
 - (e) vote on any Special Resolution (including a Special Resolution to amend the Constitution);
 - (f) propose, second, or nominate any eligible member for any office of the Club;
 - (g) propose, second or nominate any eligible member for Life membership; and

(h) introduce guests to the Club.

29. Rule 10.10 provides that Elements of Toronto Residential members are entitled to:

- (a) such social privileges and advantages of the Club as may be determined by the Board from time to time; and
- (b) to introduce guests to the Club.

30. Rule 10.11 provides that Elements of Toronto members are not entitled to:

- (a) attend and vote at general meetings (including Annual General Meetings) of the Club;
- (b) nominate for and be elected to hold office on the Board;
- (c) vote in the election of the Board;
- (d) vote on any Special Resolution (including a Special Resolution to amend this Constitution);
- (e) propose, second, or nominate any eligible member for any office of the Club;
- (f) propose, second or nominate any eligible member for Life membership.

31. Rules 10.12 to 10.20 provide that Life members have the same rights as Club members but are not required to pay any annual subscription. The Rules relating to Life members remain the same.

Transfer between classes of membership

32. Rule 11 deals with the transfer of members between classes of membership.

Provisional Members

33. Rule 12 deals with Provisional membership in accordance with the requirements of the Registered Clubs Act. Any person may apply for Provisional membership upon completing and submitting the appropriate membership form and paying the membership subscription in advance (if any is applicable). The eligibility requirements and entitlements of Provisional members reflect the existing practice of the Club.

Honorary Members

34. Rule 13 deals with Honorary membership in a way that is consistent with the Registered Clubs Act.

Temporary Members

35. Rule 14 deals with Temporary membership in a way that is consistent with the requirements of the Registered Clubs Act and the existing Constitution.

ELECTION OF MEMBERS

36. Rule 15 deals with the process of the election of persons to membership of the Club and is consistent with the existing Constitution and the requirements of the Registered Clubs Act.

JOINING FEES, SUBSCRIPTIONS AND LEVIES

37. Rule 16 deals with joining fees, subscriptions, and levies.

38. Subscriptions shall be due and payable on a date or dates determined by the Board from time to time. Renewal notices must be provided to all members.

39. Any person who has not paid his or her subscription by the due date shall cease to be entitled to the privileges of membership of the Club and may by resolution of the Board be removed from membership of the Club.

NON-FINANCIAL MEMBERS

40. Rule 17 clarifies that Non-Financial members cease to be entitled to all of the rights and privileges of membership, which include the right to attend at the premises of the Club, the right to participate in the social and sporting activities of the Club, the right to vote, the right to attend meetings of the Club and the right to be elected to the Board.

REGISTERS OF MEMBERS AND GUESTS

41. Rule 18 sets out the registers the Club is required to maintain in respect of members and guests. This is consistent with the Registered Clubs Act.

ADDRESSES OF MEMBERS

42. Rule 19 requires members to advise the Club of any change in their address and details within seven (7) days to ensure compliance with the Registered Clubs Act and to keep records up to date.

DISCIPLINARY PROCEEDINGS

43. Rule 20 deals with powers of the Board to discipline members. The principles of the existing disciplinary proceedings process have been retained.
44. **The disciplinary proceedings process has been updated to allow for the outcome of disciplinary proceedings to be dealt with by the Board either in person or via letter sent to the member's address.**
45. **Rules 20.5 to 20.10 are new provisions which give the Secretary the power to issue a suspension of membership for a period up to 12 months if the Secretary is of the view that a member has engaged in conduct unbecoming of a member etc however the member concerned has the right to request that the matter be referred to the Board to be dealt with in the usual way at a disciplinary hearing.**
46. **Rule 21 provides that the Board may delegate its disciplinary powers to a disciplinary committee comprising of three (3) directors. The Board retains the power to review a decision of a disciplinary committee provided the Board follows the procedure set out in Rule 20.**
47. Rule 22 clarifies that any member suspended from membership of the Club shall, during the period of suspension, cease to be entitled to all of the rights and privileges of membership. This includes the right to attend at the premises of the Club, the right to participate in the social and sporting activities of the Club, the right to vote, the right to attend meetings of the Club and the right to be elected to the Board.
48. Rule 23 deals with the power given to the Secretary and employees of the Club under the Liquor Act to remove persons from the Club's premises and to prevent that person from returning to the Club. These powers given to the Secretary and employees are no wider than those given under the Liquor Act. Rule 23 reflects the existing Constitution, but it is more comprehensive than the existing Constitution to accord with the Liquor Act.
49. Rule 24 deals with the procedure for a member to resign from the Club.

GUESTS

50. Rule 25 deals with guests of members and reflects the provisions of the Registered Clubs Act.

MINOR AS A GUEST

51. Rule 26 deals with the right of Temporary members to introduce minors as guests of the Club in a way that is consistent with the Registered Clubs Act.

BOARD OF DIRECTORS

52. Rule 27.1 provides that the Board will continue to consist of 7 Directors comprising of a President, a Vice President and five (5) other Directors. This is consistent with the existing Constitution.
53. Rule 27.1(b) clarifies that Board has the power to appoint up to two (2) directors to the Board (Board Appointed Directors) in accordance with the Registered Clubs Act and Registered Clubs Regulations. In this regard:
- (a) The Registered Clubs Act and Registered Clubs Regulations enable boards of registered clubs which have seven (7) or fewer directors to appoint up to two (2) Board Appointed Directors.

- (b) The power to appoint Board Appointed Directors is intended to allow boards to identify persons with particular skills, expertise and experience which may be beneficial to the registered club and allow the Board to appoint those persons to the Board.
- (c) The provisions of the Registered Clubs Act and Registered Clubs Regulations (being the power referred to appoint Board Appointed Directors) will apply irrespective of whether or not the Constitution contains provisions expressly stating the Board can appoint Board Appointed Directors.
- (d) Although it is not legally required to do so, the Board believes that it is prudent for the power to appoint Board Appointed Directors to be incorporated into the Constitution, so members are aware of the provisions and their operation.
- (e) The provisions to be inserted into the Constitution reflect the Registered Clubs Act and Registered Clubs Regulations and do not provide the Board with any powers over and above those contained in the Registered Clubs Act and Registered Clubs Regulations.
- (f) For the avoidance of doubt:
 - (i) The Board Appointed Directors are in addition to the seven (7) directors elected by members or appointed by the Board to fill casual vacancies; and
 - (ii) The Board is not required to appoint any Board Appointed Directors, but it may do so if it wishes.
 - (iii) Any person appointed by the Board as a Board Appointed Directors only has to satisfy the requirements of the Registered Clubs Act and Registered Clubs Regulations to be appointed and does not have to satisfy any requirement in the Constitution.
 - (iv) If a person is appointed to the Board, the Club must, within twenty-one (21) days of the appointment, display a notice on the Club's noticeboard and website stating the reasons for the person's appointment, the person's relevant skills and qualifications and any payments to be made to the person in connection with his or her appointment.

54. Rule 27.2 provides that the Board shall continue to be elected biennially (that is every two (2) years).

55. Rule 27.3 provides that only Life members and Club Members shall be eligible to nominate for and be elected or appointed to the Board of directors of the Club. This is consistent with the existing Constitution.

56. Rules 27.4 and 27.5 provide the criteria for a member's eligibility to stand for the Board. Rule 27.5 reflects the existing Constitution, but includes additional eligibility criteria by providing that a member who:

- (a) is an employee; or
- (b) is currently under suspension pursuant to the disciplinary proceedings rules;
- (c) is not a financial member of the Club;
- (d) is disqualified from managing any company under the Corporations Act, Liquor Act or the Registered Clubs Act;**
- (e) is of unsound mind or whose person or estate is liable to be dealt with any way under the law relating to mental health;**
- (f) is prohibited from being a director by reason of any order or declaration made under the Corporations Act, Liquor Act, Registered Clubs Act or any other applicable legislation;**
- (g) has been convicted of an indictable offence (irrespective of whether or not a conviction was actually recorded) but it does not include a spent conviction (as defined in the Criminal Records Act 1991);**
- (h) has been convicted of an indictable offence (irrespective of whether or not a conviction was actually recorded) but it does not include a spent conviction (as defined in the Criminal Records Act 1991);**

- (i) is a current contractor of the Club or a director, secretary, employee, or business owner of a contractor;
- (j) was a contractor of the Club or a director, secretary, employee, or business owner of a contractor immediately preceding the proposed date of election or appointment to the Board.
- (k) is a director of another registered club

shall not be eligible to stand for or be elected to the Board.

- 57. Rule 27.6 provides that the President and the Vice President shall form the Executive.
- 58. Rule 27. provides that any person who is elected or appointed to the Board must complete the mandatory training for directors, as required by the Registered Clubs Act.
- 59. Rule 27.8 provides that a member is not entitled to be elected or appointed to the Board if he or she does not have a Director Identification Number (unless exempted from doing so) on the proposed date of his or her election or appointment to the Board, as is required by the Corporations Act.

ELECTION OF BOARD

- 60. Rule 28 retains the principles for the procedure for the election of the Board but updates the Rules to allow for greater flexibility and to accord with the requirements of the Corporations Act and the Registered Clubs Act.
- 61. **Rule 28.1(x) provides that if at the close of the Annual General Meeting any vacancies remain on the Board, such vacancies will be casual vacancies and may be filled in accordance with Rule 35.3 (discussed below). This is a change to the existing Constitution which provided that any vacancies remaining at the close of the Annual General Meeting could be filled by calling for nominations from the floor of the meeting.**

POWERS OF THE BOARD

- 62. Rule 29 deals with the Board's powers. The provisions reflect the existing Constitution and the established practices of the Club.

PROCEEDINGS OF THE BOARD

- 63. Rule 30 deals with proceedings of the Board. The provisions reflect the existing Constitution and there is no broadening of the Board's powers, other than to allow for the powers contained in the Corporations Act and the Registered Clubs Act relating to the use of technology for Board meetings and requiring the Board to meet at least once per quarter, rather than once per month.
- 64. Rule 30.4 provides that the quorum for a meeting of the Board shall be a majority of directors in office at the time of the meeting. This is consistent with the existing Constitution.
- 65. Rule 30.5 allows the President at any time and the Secretary upon the request of not less than two (2) directors to convene a meeting of the Board.
- 66. Rule 30.6 provides that all decisions of the Board are determined by a majority vote. In the case of an equality of votes the chairperson of the meeting has a second or casting vote.
- 67. **Rule 30.10 allows a meeting of the Board to be called or held using technology consented to by all directors. This is consistent with the Corporations Act and the Registered Clubs Act.**

MATERIAL PERSONAL INTERESTS AND REGISTERED CLUBS ACCOUNTABILITY CODE

- 68. Rules 31, 32 and 33 introduce new provisions in relation to corporate governance and accountability for the Club which are consistent with the Corporations Act and the Registered Clubs Act.

REMOVAL FROM OFFICE OF DIRECTORS

- 69. Rule 34 provides that the members in a general meeting may by ordinary resolution remove any director, or the whole Board, before the expiration of his, her or their period of office and appoint another person or persons in his, her or their place. This Rule reflects the Corporations Act and the existing practice of the Club.

VACANCIES ON THE BOARD

70. Rule 35.1 clarifies how a casual vacancy on the Board arises. Rule 35.3 states that the Board has the power to fill a casual vacancy. Any person appointed to fill a casual vacancy will hold office only until the next Annual General Meeting.

GENERAL MEETINGS

71. Rules 36.1 to 36.53 inclusive relate to the calling and holding of general meetings (and Annual General Meetings) of the Club. The Rules are consistent with the existing Constitution, however, they are more comprehensive than the existing Constitution.
72. The Rules in relation to general meetings reflect the requirements of the Corporations Act.

ATTENDANCE AND VOTING AT GENERAL MEETINGS

73. Rules 36.19 to 36.31 inclusive relate to attendance and voting at general meetings.
74. Only Life members and financial Club members can attend and vote at a general meeting and Annual General Meeting of the Club.
75. Proxy voting is not permitted. This is a requirement of the Registered Clubs Act.
76. Every member eligible to vote, either by show of hands or a poll, is entitled to one vote.
77. A member, who is also an employee of the Club, is not permitted to vote. This is a requirement of the Registered Clubs Act.
78. All questions and resolutions (other than Special Resolutions) shall be decided by a simple majority of votes.
79. Voting shall be on a show of hands unless a poll is demanded

QUORUM AT GENERAL MEETINGS

80. Rules 36.32 to 36.35 inclusive detail the quorum required for general meetings.
81. Rule 36.32 provides that no business may be transacted at a general meeting unless a quorum of members is present.
82. Rule 36.33 provides that, at any general meeting (including an Annual General Meeting) convened by the Board, fifteen (15) members present and eligible to vote will constitute a quorum. This is consistent with the existing Constitution.
83. Rules 36.34 and 36.35 set out the procedure to be followed if a quorum is not present.

MEMBERS' RESOLUTIONS AND STATEMENTS

84. Rule 37 provides for members' resolutions and statements by members.
85. Rule 37 also sets out the procedure for members to require the Board to include an item of business or notice of motion in the business of an Annual General Meeting.

MINUTES

86. Rule 38 provides that minutes of all resolutions and proceedings at general meetings must be entered in the Minute Book within one month of the meeting and signed by the chairperson of that meeting or the chairperson of the next succeeding meeting.

ACCOUNTS

87. Rule 39 deals with the accounts and reporting to members and is consistent with the Corporations Act and Registered Clubs Act.

FINANCIAL YEAR

88. Rule 40 provides that the financial year of the Club shall commence on the first day of July in each year and will end on the last day of June in the following year. This is consistent with the existing Constitution.

AUDITOR

89. Rule 41 requires the Club to appoint an auditor. The auditor holds office until removed by the members in general meeting or resigns from office or dies. This is a requirement of the Corporations Act.

SECRETARY

90. Rule 42 requires the Board to appoint one Secretary who will be the Chief Executive Officer of the Club for the purposes of the Registered Clubs Act.

EXECUTION OF DOCUMENTS

91. Rule 43 deals with execution of documents and the common seal of the Club.

NOTICES

92. Rule 44 deals with the requirements of giving notice to members, including by electronic means in accordance with the Corporations Act and the Registered Clubs Act. Where a notice of a meeting is sent by post it shall be deemed to have been effectively served on the member on the day following the posting.

INDEMNIFICATION OF OFFICERS

93. Rule 45 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

94. Rule 46 deals with the interpretation of the Club's Constitution and it reflects the existing Constitution of the Club.

AMENDMENTS TO CONSTITUTION

95. Rule 47 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members. Only Life members and financial Club members can vote on any Special Resolution to amend the Constitution. This is consistent with the existing Constitution and the existing practice of the Club.

MEETINGS AND VOTING

96. Rule 48 reflects the new requirements of the Registered Clubs Act, which allows the Club to utilise electronic means to distribute documents and hold meetings if the Board determines this to be in the best interests of the Club.

It is hoped that this summary will provide members with sufficient background and information to enable them to make an informed decision in relation to the proposed special resolution to adopt the new Constitution. However, there may be matters about which members may have questions not covered by this Memorandum. In those circumstances, they are invited to raise their questions with the Secretary Manager who, if necessary, will obtain advice from the Club's lawyers to pass back to the member.

The Board considers the proposed new Constitution as being a significant improvement on the existing Constitution and it recommends that members vote in favour of the Special Resolution. To be passed, the Special Resolution will need votes from not less than three-quarters (75%) of those members who being eligible to do so vote in person at the meeting.

Dated: 29th SEPTEMBER 2022

Mark Singleton JP
Chief Executive Officer