

Subsidiary Legislation made under r.13 of the Small Vessels (Mooring Controls) Rules, 2016.

## **Notice of Publication of Constitution**

**LN.2016/245**

*Commencement*

**16.12.2016**

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### **ANNEX A SCHEDULE**

*In exercise of the powers conferred on him by rule 13 of the Small Vessels (Mooring Controls) Rules, 2016, the Captain of the Port hereby publishes the Constitution of the Mid-Harbour Small Boats Marina Association annexed to this Notice.*

**THE CONSTITUTION OF THE MID-HARBOUR SMALL BOATS MARINA ASSOCIATION**

This constitution provides for the proper management of the HM Government of Gibraltar owned Mid- Harbour Small Boats Marina facility. The management of such facility is entrusted to the Mid-Harbour Small Boats Marina Association and its committee.

The Mid-Harbour Small Boats Marina facility, including access gangways, walkways, all the pontoons and finger installations together with all mechanical and electrical infrastructure and including the shower and office block shall remain the sole property of HM Government of Gibraltar and no rights other than permitted use, upkeep and proper management of the same are vested in the Mid-Harbour Small Boats Marina Association.

The rights of permitted use, upkeep and proper management of the facility cited above remain subject to the provisions contained within all relevant legislation in force at the time and to strict compliance with any directive issued to the Association by the Captain of the Port.

**1 NAME OF THE ASSOCIATION**

The statutory body established by the SMALL VESSELS (MOORINGS CONTROLS) RULES 2016, (LN. 2016/019), to manage the Mid-Harbour Small Boats Marina shall be known as the Mid-Harbour Small Boats Marina Association (hereinafter referred to as “The Association”).

**2 OBJECTS OF THE ASSOCIATION**

The objects of the Association are:

- (a) To manage the Mid-Harbour Small Boats Marina as a boating association and in particular-
  - (i) The effective implementation of health and safety procedures, upkeep, maintenance, repair, replacements of parts, security, cleanliness of the facility;
  - (ii) The financial control and management of all funds and assets relating to the facility including, but not limited to, the management of a sinking fund for the replacement in 2041 of all the small boat facilities within the Mid-Harbour Small Boats Marina basin used by the membership, and the

collection of all relevant fees including but not limited to initial deposits, membership and berthing fees, and the undertaking of proper accounting of all funds held and used;

- (iii) To undertake all the activities of the Committee (as defined below), including but not limited to the employment and management of staff, payment of expenses, dispute resolution between members, management of members (including any disciplinary proceedings which may lead to the expulsion of members), the promotion of safe navigation and the proper and safe use of the facility and safe boating leisure activities, the implementation of all the Association's rules and byelaws, and liaising with the Gibraltar Port Authority and all other relevant entities so as to ensure the effective and proper day to day running and other affairs of the inner sea basin of the Mid-Harbour Small Boats Marina.

For the purposes of this paragraph the Mid-Harbour Small Boats Marina shall include the inner sea basin of the Mid-Harbour Small Boats Marina as enclosed by the security fence on the inner side of the wharf and the amenities block at the entrance to the main wharf.

For the avoidance of doubt the objects of the Association shall not include any matter relating to the allocation, relocation or removal of a berth within the Mid-Harbour Small Boats Marina. Such powers and responsibilities remain exclusively within the ambit of the Captain of the Port under the relevant law.

- (b) To accept and enroll as a Member of the Association any person to whom the Captain of the Port has granted a permit to moor a vessel at the Mid-Harbour Small Boats Marina for such time as (subject to any relevant internal disciplinary proceedings against the member) such person is permitted by the Captain of the Port to use such berth.
- (c) To manage the Association and the Mid-Harbour Small Boats Marina in compliance with all applicable legislation.
- (d) To comply with, and forthwith implement, any directive from the Captain of the Port.
- (e) Notwithstanding the generality of the above, for the purpose of managing the Mid-Harbour Small Boats Marina, to:-

- (i) Create a separate reserve in a sinking fund so as to cover the expense of replacing all the access gangways and all the pontoon installations together with all mechanical and electrical infrastructure thereof on or by the year 2041 and which fund may not be used for any other purpose; and
- (ii) Prepare and implement a costed annual maintenance programme which shall be subject to approval and amendment by the Captain of the Port (such report to be submitted for approval to the Captain of the Port annually on such date as the Captain of the Port shall determine);and
- (iii) For the calendar year 2017 and every calendar year thereafter set, with the approval of the Captain of the Port, the annual berthing fee payable in respect of berthing permits granted for mooring at the Mid-Harbour Small Boats Marina by the Captain of the Port (according to the size of vessels) which shall be such so as to meet the annual operational expenses of the Mid-Harbour Small Boats Marina, the creation and maintenance of the sinking fund set out in (i) above and provide for the annual maintenance programme as set out in (ii) above;
- (iv) Collect all the berthing fees stipulated in (iii) above and safe keep that part attributable to (i) above in a separate account and not use any such monies except for that stipulated in (i);
- (v) Collect from every member, in addition to all other fees stipulated herein, annual subscription fees stipulated in Schedule A on the person becoming a member;
- (vi) Set and collect a water usage fee and an electricity usage fee from Members to ensure all the water and electricity usage costs in the pontoon installations are covered. In the initial months from start-up, no water charge will be set, pending knowledge of typical consumption;
- (vii) Initially for the calendar year 2016, the Captain of the Port (CoP) will collect all the initial deposits of £365 GBP (three hundred and sixty five pounds sterling), paid in advance, by every Member on first becoming Member and allocated a berth, to the Captain of the Port under the provisions of the Small Vessels (Mooring Controls) Rules 2016 (as per rule 4 and Schedule 3).
- (viii) Initially for the calendar year 2016, the CoP will also collect all the initial berthing fees, paid in advance by every member when allocated a berth by the CoP under the provisions of the Small Vessels (Mooring Controls) Rules 2016;

- (ix) The total thus collected by CoP during the Caretaker Committee stage, will be held by the Gibraltar Port Authority (GPA) until such time as the Association has opened its own bank account. The amount eventually transferred from GPA to the Association will be covered by the appropriate records of monies received by berth-holders and receipts of monies paid out during the initial start-up period. The statement of accounts for this start-up period will be detailed in a statement prepared by GPA accounting staff and made available at the first Association AGM. Such sums collected will be used towards the operational expenses of the Mid-Harbour Small Boats Marina, the creation and maintenance of the sinking fund set out in (i) above, the annual maintenance programme as set out in (ii) above and the expenses incurred by the purchase of equipment and services, as determined by the caretaker committee and approved by the CoP, that will promote best use of the marina facilities to the membership in the best interests of the Association;
- (x) Apply all and any fees and revenues received in a proper manner, as trustees of the same, to best and most efficiently manage the Mid-Harbour Small Boats Marina in accordance with the provisions herein and for the benefit of all the Membership;
- (xi) Ensure that all reasonable environmental measures are introduced for the wellbeing of adjacent occupiers and the protection of the marine environment and birdlife.

### 3 PATRON OF THE ASSOCIATION

3.1. The Patron of the Association shall be the person who as from time to time may be elected as Chief Minister of Gibraltar.

### 4 COMPOSITION AND DEFINITION OF MEMBERS

4.1 Members – Persons who have been granted a permit to moor a vessel at an allocated berth in the MHSBM by the CoP automatically become a member of the Association. Such membership shall remain for as long as they have such allocated berth.

4.2 Any Member who fails to pay any applicable fees, be they the subscription fees, the berthing fee or any other fees, shall cease to be a member in accordance with the provisions of the Small Vessels (Mooring Controls) Rules 2016. Failure of payment will be reported to the Captain of the Port in order for procedures to revoke their mooring permit to be commenced. They will lose all other membership rights. The rights of any Member are subject to prevailing

legislation and in particular the Small Vessels (Mooring Controls) Rules 2016, (LN. 2016/019).

4.3 In particular if a Member is in arrears for a period of no less than three months to HM Government of Gibraltar, a Government Agency, a Government Company or any other Government entity or agent in relation to any debt including but not limited to Government Housing Rent, debts owed to the Department of Education, utility arrears, self-employed or employer Social Insurance Contributions, or Income Tax, then that person will cease to be a member of the Association, and under the Small Vessels (Mooring Controls) Rules 2016, (LN. 2016/019), his mooring permit is liable to be revoked.

## 5 RIGHTS OF MEMBERS

5.1 Only Members who fall under the description in rule 4.1 above shall be eligible to vote provided that all subscriptions have been paid, no debt accrued and no monies are owing to the Association.

5.2 In the event of ownership of a vessel being shared by two or more Members, only the Member who is the applicant for the mooring and to whom the permit to moor has been granted by the Captain of the Port shall be entitled to vote.

5.3 Unless otherwise specified in this Constitution or any byelaws enacted in consequences thereof, Members shall be entitled to all benefits and privileges of the Association.

5.4 No Member of the Association, can be expelled by the Committee without first having been given the opportunity to provide an explanation in writing or be heard by the Committee unless in the case of a Member the allocation of a berth to that Member has been revoked by the Captain of the Port and in which case expulsion will be automatic.

5.5 Members under the age of 18 shall be entitled to representation by parents or legal guardian.

5.6 All Members of the Association shall be entitled to be notified of any General Meeting of the Association and to be present at any such meetings. The appropriate notification shall be issued 14 days before the stipulated date of the AGM and in the form of a dedicated notice, displayed in the Association Notice Board and also displayed on each of the 6 access gates to the Marina. The same notification shall be emailed to all berth-holders whose email address is included in the Association database.

5.7 In the case that the Captain of the Port has restricted the access of a Member to the Mid-Harbour Small Boats Marina then all of that member's rights shall be suspended until the restriction is lifted.

6 THE COMMITTEE AND MEETINGS THEREOF

6.1 The Association shall be governed by a Committee who shall be entrusted with all the affairs of the Association and shall not be remunerated.

6.2 The Committee shall comprise of the following posts:

- (a) President;
- (b) Vice President;
- (c) Captain;
- (d) Secretary;
- (e) Treasurer;
- (f) Four members (hereinafter referred to as the four committee members).

6.3 The Committee shall be elected to office for a period of 12 months. The Association's AGM shall take place by no later than the 31st day of March in any year.

6.4 Any person in the Committee shall be eligible for re-election.

6.5 No person shall be eligible to serve in the Committee unless he is a Member.

6.6 The Committee shall meet as frequently as is required but shall in any event meet at least once in every calendar month.

6.7 Committee meetings shall be called by the President or in his absence the Vice-President or upon the request of any four members of the committee.

6.8 The Secretary shall notify members of the Committee of the date, time and location of a meeting with at least forty eight hours anticipation, shall keep record of proceedings of all meetings and conduct correspondence.

6.9 So long as the President or Vice-President is present at a Committee meeting, 5 Committee members shall form a quorum.

6.10 Decisions and resolutions shall be by majority vote. In the event of equality of votes the person presiding shall have a final or casting vote.

6.11 All Committee meetings shall be presided by the President or in his absence by the Vice-President.

In exceptional circumstances the President may delegate a senior post member of the Committee to preside.

6.12 A vacancy or absence within the Committee shall not be reason to invalidate any decision.

6.13 In order to maintain continuity in the running of the Association two of the four most senior posts shall be held for two consecutive years. These posts shall be rostered as follows:

(a) President and Treasurer; and

(b) Secretary and Captain

At the 1st AGM, the President and Treasurer elected shall hold post for 2 terms, but Secretary and Captain elected will hold their post for 1 term, with the 2 term roster enforced in subsequent elections.

In the event of retirement of the President, continuity shall be effected by Vice-President taking up the office. In the event of retirement of any of the other senior post-holders, continuity shall be effected by the taking up of this office by one of the remaining committee members, to be decided by a show of hands at committee level.

6.14 Subject to these rules the Committee may by byelaw or otherwise regulate its own procedures.

## 7 ELECTION OF MEMBERS OF THE COMMITTEE

7.1 The election of members of the Committee shall take place at a General Meeting. Upon the first

Committee being elected, the Caretaker Committee shall cease to have effect.

7.2 Two Members with the right to vote may propose and second any Member as candidate for election.

This may be done in writing or by nomination at a General Meeting. Candidates nominated for election to the Committee must confirm their acceptance.

7.3 Members present at the General Meeting who are entitled to vote shall elect the Committee. Each member of the Committee shall be voted for separately by secret ballot whenever nominations exceed the number of posts filled. In the case of one candidate for one post, voting shall be by show of hands.



7.4 Election to the Committee shall be by simple majority of votes cast.

7.5 The very first election of members of the Committee shall take place in early 2017, on a date stipulated by the Caretaker Committee and will take place at 7.00pm at the John Mackintosh Hall. Only Members and representatives of the Captain of the Port shall be permitted to attend.

#### 8 FAILURE TO ELECT A FULL COMMITTEE

8.1 Failure to elect a full Committee will entrust the management and administration of the Association to the Members elected who shall have the power to co-opt Members to fill the vacant posts. Co-opted Members must be Members with the right to vote in the Association.

#### 9 VACANCY IN THE COMMITTEE

9.1 The Committee shall have the power to co-opt a Member with the right to vote in the Association, to fill any casual vacancy which may exist during its term of office.

9.2 In the event of four or more posts becoming vacant, the most senior remaining Member in the Committee shall convene a General Meeting within one month.

#### 10 DUTIES OF THE COMMITTEE MEMBERS

10.1 The President shall have overall responsibility for the management of the Association. He shall ensure that each Committee member conducts his duties in the best interests of the Association. He shall be Chairman at all General and Committee meetings and shall govern in accordance with Association rules.

10.2 The Vice-President shall assist the President in his duties. He shall preside at all General and Committee meetings in the absence of the President.

10.3 The Captain shall have management and control over the proper and safe use, together with the upkeep, of all the facilities, fixtures, equipment in the Mid-Harbour Small Boats Marina and without prejudice of the generality of the aforementioned to include the gangways, pontoons, water and electrical supply pylons together with ensuring the proper and safe use of all the facilities, moorings and vessels within the Mid-Harbour Small Boats Marina basin and in entering or exiting the basin. The Captain shall act in accordance within the Committee's prevailing policy.

10.4 The Committee may appoint a management company to carry-out the responsibilities of the pier-master, office administrator and cleaners. This appointment should come about as the result of requesting these services to a minimum of 3 companies, with final selection based on

lowest pricing. The management company will act under the guidance and supervision of the Captain and will have a 12-month contract terminable by 1 month's notice.

10.5 The Secretary shall be responsible for the administration of the Association, as approved by the Committee. He shall keep a written record of all Committee and Association meetings and conduct correspondence including notifying elected members of their admission.

10.6 The Treasurer shall have charge of all the funds of the Association which shall be deposited at a bank approved by the Committee. No expenses other than that required for normal running and

maintenance shall be incurred save with the authority of the Committee. Furthermore the Treasurer shall:

- (a) Keep record of money received and expended;
- (b) Pay any expenditure made by the Association for which receipts shall always be obtained;
- (c) Take any possible steps to recover monies due to the Association;
- (d) Submit his books and statements of account to the Committee and the appointed auditors for inspection when required;
- (e) Produce his books and records for inspection by any member who requests to do so in writing and has given at least seven days notice and demonstrating a reason for this request, which reason is accepted by the Committee;
- (f) Present fully audited accounts to all the Members at a General meeting once every year.

10.7 The Committee may delegate duties to any or all of the four Committee Members;

- (a) As assistants to Secretary, Treasurer and/or Captain;
- (b) In relation to repair and maintenance of the Mid-Harbour Small Boats Marina;
- (c) In relation to the running and administration of any facility of the Association; and
- (d) In relation to any other ancillary duty.

10.8 The Committee shall have no power to change or alter in any way whatsoever any of the Mid- Harbour Small Boats Marina facilities, unless authorized to do so by the CoP. This is,

and shall remain, the exclusive privilege of the Captain of the Port. Any requests for changes or alterations will be in writing to the CoP.

10.9 Any document which is written on behalf of the Association and which requests, or agrees to, a financial transaction, will require the signature of both the President and the Treasurer, on any transaction above £100.00.

## 11 POWERS OF THE COMMITTEE

11.1 The Committee shall have the following additional powers of management:

- (a) Expulsion of Members;
- (b) Making, revoking or amending of any byelaw for the exclusive purpose of implementing any of the Objects of the Association as contained herein;
- (c) Deciding on matters on which these rules are silent provided these do not contravene any term herein and the prevailing legislation and with the approval of the Captain of the Port;
- (d) Writing off amounts due to the Association when justified by circumstances and approved by CoP;
- (e) Institute legal proceedings and/or appoint a lawyer to defend the interests of the Association when necessary;
- (f) Co-opt a Member to the Committee in the event of vacancy;
- (g) Appoint sub-committees which shall always act upon a written "Terms of Reference";
- (h) Advise the Captain of the Port that a Member has been expelled so that the permit to berth may be revoked.

## 12 ADMISSION OF AND CONTINUANCE AS MEMBERS

12.1 Any person who has been allocated a berth at the Mid-Harbour Small Boats Marina by the Captain of the Port shall be a Member of the Association and shall remain a Member of the Association until such permit to berth is surrendered to or revoked by the Captain of the Port or the Member is expelled from the Association by the Committee.

## 13 ENTRANCE AND SUBSCRIPTION FEES

13.1 All Members shall pay the relevant annual subscription in advance.

13.2 Annual subscription fees shall be those governed by the Schedule set out at Annex A. All fees shall be revised at the discretion of the Committee but never more than once in any year and must always be approved at the Annual General Meeting.

13.3 Any Member who resigns or is expelled from the Association shall not be entitled to any refund for joining or for subscription fees.

13.4 Any Member who resigns from the Association will need to hand over the berth to the Gibraltar Port Authority who will in turn allocate such berth to a person on the waiting list. The boat owner will need to remove the vessel from the Mid-Harbour Small Boats Marina as soon as he resigns.

13.5 Annual subscriptions are payable in advance.

13.6 Annual berthing fees, after year one, shall be set by the Committee in accordance and compliance with the relevant legislation.

#### 14 ARREARS

14.1 Payments of all fees levied by and due to the Association (including fees for subscriptions, boat berths and/or any other facility) shall be the absolute responsibility of the Member who incurs said fees irrespective of whether or not a demand or notice of liability has been made by the Association.

14.2 Annual subscriptions are payable in advance and any arrears of any kind owed to the Association shall be paid on demand. Any debt of over three months may render the Member liable to expulsion from the Association with revocation of the berth-holder's permit by the CoP and removal of his vessel from MHSBM basin by GPA.

14.3 No rule shall be deemed or interpreted as precluding the Association from commencing legal proceedings against a member for the recovery of any debts. A Member three months in arrears at the time of a General meeting shall be debarred from voting.

14.4 Any Member who ignores a demand or notice given to him in respect of arrears or resigns from the Association whilst in arrears shall be liable to legal proceedings at the discretion of the Committee.

#### 15 RESIGNATION

15.1 It is a requisite that any Member who wishes to resign must give notice in writing to the Secretary.

The GPA must be notified immediately and berth handed over for reallocation.

15.2 Any Member who resigns, ceases to be member or is expelled shall lose any rights and privileges bestowed upon members.

15.3 Any Member who resigns, ceases to be Member or is expelled shall remove his boat from the Mid- Harbour Small Boats Marina within a month. Failure to comply with this directive shall be deemed to be confirmation that the Association may dispose of the boat as it deems fit without fear of incurring any claim and/or liability for loss and/or damage.

## 16 EXPULSION AND DISCIPLINE OF MEMBERS

16.1 Each Committee upon being elected to the office shall, from within, establish a sub-committee comprising of three committee members, one of whom must be a senior post holder. This sub- committee shall be known as the Disciplinary Board

16.2 The responsibility of the Disciplinary Board shall be to investigate all breaches of Association rules or byelaws, all complaints received against a member or members and any other matter which could be interpreted as being against the best interests of the Association or as bringing the Association into disrepute.

16.3 The Disciplinary Board shall have the power to decide what procedure it will follow when investigating a complaint and it shall have power to summon any member before it for the purpose of gathering information.

16.4 The Disciplinary Board shall afford Members against whom a complaint has been launched, reasonable opportunity to either hand in a written explanation or appear before it.

16.5 The Disciplinary Board shall, when concluding its investigations, submit a written report to the President with details of its findings and recommendations.

16.6 The President or in his absence the Vice-president, shall call a full Committee meeting to discuss the report. The Committee shall not be obliged to follow the recommendations of the Disciplinary Board and its decision shall be final.

16.7 The powers of discipline of the full Committee shall include:

- (a) Requesting a member to tender his resignation;

- (b) Expelling a member;
- (c) Suspending a member from entering Mid-Harbour Small Boats Marina premises for a specified period;
- (d) Reporting a member to the pertinent authorities and/or taking any legal action as necessary;
- (e) Giving the member a written warning that further breaches of MHSBM rules could render him liable to expulsion. Being expelled from the association would mean that the berth will need to be vacated and the GPA will allocate such berth to the next person on the waiting list.

16.8 Any member who feels aggrieved by the decision taken by the Committee shall have fourteen days in which to make representations as to why he thinks the action against him has been unjust or unfair. Failing any representation the Committee's decision shall be deemed to be confirmed.

16.9 Any member who is expelled from the Association will not be permitted in the premises under any circumstances. The expelled member's name shall be posted on the Association's notice board for at least thirty days.

16.10 In the event of untoward misconduct on the part of a Committee member, the President shall, in the best interest of the Association and in accordance with rule 10.1, at his discretion request the said Committee member to resign from the Committee or convene an Extraordinary General Meeting for the purpose.

16.11 In the event of untoward behaviour and/or improper behaviour and/or misconduct on the part of the President of the Association the Committee through the Secretary shall convene an Extraordinary General Meeting as soon as possible not later than fourteen days after the decision is taken by the Committee to do so.

## 17 DIRECT EXPULSION

17.1 Any member who is found guilty in a court of law of any offence against the Imports and Exports Act 1986, the Merchant Shipping Act, the Port Act, the Fast Launches (Control) Act 1987, Part 21 of the Crimes Act 2011 (Drugs Misuse), the Proceeds of Crime Act 2015 or the Drug Trafficking Offences Act 1995, shall be expelled forthwith.

17.2 Any member who hires, lends or in any other manner allows his boat to be used for unlawful activities, as reported by GPA, RGP, Customs or the ministry for the environment and the user of the boat is found guilty in a court of law, shall be expelled forthwith.

17.3 Any member found guilty in a court of law of any illicit activity, as defined in 17.1 above, in connection with which a boat other than his own boat has been used shall be expelled.

17.4 Any member who has had the right to berth in the Mid-Harbour Small Boats Marina revoked by the Captain of the Port shall have their membership revoked.

## 18 DAMAGE TO VESSELS AND EQUIPMENT

18.1 It is the responsibility of any member who, whilst piloting his/her vessel, collides with another vessel or with marina equipment, to report the collision to the pier master within 24 hours and to ensure that it is recorded in the 'Incidents Book'

18.2. Any person causing loss of, or damage to, any property in the Mid-Harbour Small Boats Marina (fair wear and tear excepted) by virtue of a breach of the MHSBM rules, un-seamanlike conduct, careless control of his vessel or inappropriate moorings shall be liable for the cost of replacement of, or repairs to such property as well as disciplinary action.

18.3 Willful damage of any property by a member or his guest may result in the automatic expulsion of the member.

## 19 GENERAL MEETINGS

19.1 Except as provided in clause 6.3, Annual General Meetings shall normally be held during the month of March each year at a time and place as the Committee shall appoint. The Outgoing Committee Report and Statement of Account covering their tenure of office of approximately 12 months, shall be presented to the floor, and a new Committee elected for the ensuing year.

19.2 All Association meetings other than the Annual General Meeting shall be called Extraordinary General Meeting.

19.3 The Agenda of the Annual General Meeting shall comprise:

- (a) The President's Address;
- (b) The Secretary's Report;
- (c) The Treasurer's Statement of Account and the independently prepared Auditor's Report;
- (d) The election of the New Committee;

- (e) The appointment of Two Auditors;
- (f) Any other business.

19.4 No business shall be transacted at any General Meeting unless a quorum of members eligible to vote is present. At the time the General Meeting is called, eighty members eligible to vote shall form a quorum. If a quorum is not present the President shall postpone the meeting for thirty minutes, at the end of which members present and eligible to vote shall form a quorum.

19.5 An Extraordinary General Meeting shall be called by the Committee at its discretion, or by forty five or more members eligible to vote who must put their request in writing to the Committee giving details of the required Agenda. In the event of forty five or more members requesting the meetings, all members requesting the meeting shall be present before a quorum can be constituted.

19.6 Voting shall be by a simple majority of a show of hands of members eligible to vote, unless otherwise specified in these rules or unless the Chairman decides. Voting by proxy shall not be permitted. In the event of equality of votes the Chairman shall have a second or casting vote.

19.7 In the event of absence of the President and Vice-President the Committee shall elect from amongst their number a Chairman to preside over the meeting.

19.8 Members shall be informed of date, time and location of any General Meeting at least with seven days' notice.

19.9 Any proposals to add, amend or alter any provision herein shall only be considered at a General Meeting. However, no such proposal shall be considered unless there is present two thirds of all Members of the Association. No changes to these rules can be effected without the prior approval of the Captain of the Port and no change shall be considered by the Captain of the Port if such change purports to vest in the Association any powers in relation to any matter relating to the allocation, relocation or removal of a berth within the Mid-Harbour Small Boats Marina which are the exclusive privilege of the Captain of the Port or if such change purports to change the berthing fees in a manner which will cause the annual revenues to fail to meet the annual operational expenses of the Mid-Harbour Small Boats Marina, the creation and maintenance of the sinking fund and to adequately provide for the annual maintenance programme as set out in the Objects of the Association or if such change could have negative health and safety implications, generate unfairness, are un-environmental or are generally contrary to the Objects of the Association, the policy, the ethos and intentions for which HM Government of Gibraltar created the Mid-Harbour Small Boats Marina.



## 20 AUDIT

20.1 The accounts of the Association shall be audited by the auditors elected at the Annual General Meeting. The auditors shall certify the correctness of the accounts submitted to the Annual General Meeting.

## 21 CONDITIONS GOVERNING THE MID HARBOUR SMALL BOATS MARINA BASIN

21.1 Only a pleasure boat, motor boat, fishing boat, sailing boat, rowing boat, rigid inflatable boat and the like which has been legally imported into Gibraltar, is owned in compliance with all relevant legislation and conforms with Port Rules and Regulations and is the property of a Member, with the written permission of the Captain of the Port may be berthed at the Mid-Harbour Small Boats Marina.

21.2 Any contravention of any laws shall immediately be communicated by the Committee to the pertinent authorities (i.e. Commissioner of Police, Collector of Customs, and Captain of the Port).

21.3 All the berths and all installations contained in the Mid-Harbour Small Boats Marina are the sole property of HM Government of Gibraltar. The mooring fees shall become payable forthwith and shall thereafter be payable annually in advance.

21.4 Membership is conditional to having a berth for a particular vessel allocated by the Captain of the Port in the Mid-Harbour Small Boats Marina and shall cease to be valid upon any change in ownership of the vessel.

21.5 All moorings shall be allocated by the Captain of the Port in accordance with prevailing legislation.

21.6 No member shall be entitled to or be granted more than one permit to moor a vessel in the Mid- Harbour Small Boats Marina. The Committee at its discretion may request proof of ownership of any vessel and may furnish their findings to the Captain of the Port.

21.7 A member who contravenes Association rules and/ or byelaws may be expelled and as a consequence thereof his permit to moor may be revoked by the Captain of the Port with the vessel removed by the GPA at his expense and such person may face any legal action the Committee may determine necessary in the best interest of the Association.

21.8 Membership will be revoked if a member ceases to be the owner of the vessel to which the permit by the Captain of the Port was granted; or if any fees are unpaid or in arrears for three months; or if the member knowingly attempts to transfer a berthing permit granted by the Captain of the Port to any other person other than in accordance with prevailing legislation.

21.9 A Member, owner of a vessel, who has a permit issued by the Captain of the Port and who transfers the ownership of the vessel to any other person shall:

- (a) Inform the Committee forthwith, furnishing name and address of transferee;
- (b) Surrender his Membership to the Committee; and
- (c) Inform the Captain of the Port

21.10 Every member shall cause the name of the vessel and the number of the permit issued by the Port Authority to be marked on it clearly in a visible place and as is lawfully required.

21.11 Vessels shall be within the Mid-Harbour Small Boats Marina at the sole risk of the owner and no responsibility shall be placed on the Committee or the Association in respect of the security or safety of any such vessel or any damage that the vessel may cause.

21.12 Neither the Association nor the Committee shall be responsible for any insecure or improper mooring of any vessel, for any defective moorings or appliances, nor for any damage or consequence arising therefrom.

21.13 Any member contravening any of the Association Rules and Bye-laws or the provisions of any membership requirements herein contained shall face disciplinary or legal action as the Committee shall determine.

21.14 A member who for the purpose of obtaining the grant of a mooring for himself or any other person, knowingly makes any false statement shall be expelled forthwith.

21.15 Members shall ensure that vessels are properly secured at all times with mooring ropes, chains, warps, fenders etc. to prevent damage to cleats, mooring brackets, pontoons, installations and other property including all other vessels within the Mid-Harbour Small Boats Marina. Drilling or damaging marina equipment in any other way is not permitted as neither is metal to metal contact between mooring equipment and marina hardware.

21.16 The Association shall be entitled to exercise a possessory lien on any vessel and/or equipment in the Mid-Harbour Small Boats Marina in the event of any debt being outstanding and which has accrued from any service performed by the Association. The lien will remain in force until the debt has been settled.

21.17 The Committee, in the interests of safety and expediency, reserves the right to move any vessel and/or equipment at the owner's sole risk, but an attempt needs to be made to inform the owner of a proposed move.

21.18 All pets shall be kept under the direct control of their owners at all times, and on a leash when off the vessel. In the event of any such animal causing a nuisance, such as noise or fouling, the Committee reserves the right to insist that such animal be removed from the Mid-Harbour Small Boats Marina and shall hitherto not be allowed within MHSBM perimeter.

21.19 The Mid-Harbour Small Boats Marina or designated areas under the control of the Association shall not be used for or in connection with any commercial activity or purpose save with prior written authority of the Committee and the Captain of the Port.

21.20 Any vessel moored in the Mid-Harbour Small Boats Marina shall not be used as a houseboat or for storage purposes, including storage of fuel, or for any commercial activity without the written consent of the Committee and the Captain of the Port.

21.21 Bilges containing oil or contaminated water shall not be pumped anywhere within the Mid-Harbour Small Boats Marina Basin or at sea as this is against the law. Owners must ensure that any waste is disposed of in the correct manner.

21.22 No toilet solids will be permitted to be pumped into the Marina Basin waters.

21.23 Storage lockers or any other structures shall not be erected within the MHSBM perimeter.

21.24 Pontoons and access thereto shall be free from obstacles or litter at all times. Litter shall be deposited in the receptacles available for the purpose.

21.25 In the interests of safety, fishing, bathing and diving from pontoons shall not be permitted. Fishing and bathing from members' boats shall be at the member's own risk and responsibility with bathing

access using vessel's own boarding ladder and only within a 2 metre radius from it. Inflatables are not permitted.

21.26 BBQs, naked flames and/or fires of any sort or kind shall not be permitted on the boats, pontoons, finger jetties, concrete walkways or access ramps. Additionally, no charcoal BBQs are allowed anywhere within the MHSBM perimeter, including boats.

21.27 Guests and visitors enter the Mid-Harbour Small Boats Marina and designated areas at their own risk and are the responsibility of the member by whom they are accompanied or by whom they have been invited.

21.28 The use of Jet-skis by any member within the Mid-Harbour Small Boats Marina is strictly prohibited.

21.29 The use of spear guns within the Mid-Harbour Small Boats Marina shall be strictly prohibited.

21.30 Bicycles, motorcycles, push scooters, roller skates and skate boards shall not be permitted on the pontoons or gangways.

21.31 Children are the responsibility of the member with whom they have entered the Mid-Harbour Small Boats Marina facilities and by whom they shall be controlled and prevented from tampering with the Mid-Harbour Small Boats Marina facilities or other person's property. All children under the age of sixteen years of age shall be accompanied and supervised at all times by the member with whom they have entered the Mid-Harbour Small Boats Marina facilities.

21.32 Boats leaving or entering the Mid-Harbour Small Boats Marina shall do so at a speed not exceeding three knots to avoid creating a wash. The speed limit within the harbour is five knots and this must be respected at all time day or night. Failing to comply may result in the revocation of the license of any owner. Navigation lights shall be switched on when maneuvering in the hours of darkness. Boats shall at all times proceed to navigate in accordance with Port Rules and Regulations.

21.33 No cutting and gutting of tuna or any other fish is allowed on the pontoons or within the MHSBM basin and no fish waste may be deposited within marina waters.

## 22 BYE-LAWS

22.1 The Committee may from time to time enact such bye-laws which in their opinion serve for the better management of or are in the best interests of the Association, provided always that no Bye-laws shall be inconsistent with any of the Objects of the Association or its rules herein.

22.2 The Committee may from time to time amend or repeal any bye-laws made by the Committee. When in force all such bye-laws shall be binding upon all members of the Association.

## 23 INTERPRETATION OF RULES

23.1 The Committee shall be deemed to be the authority for the interpretation of the rules and bye-laws. The decision of the Committee on the question of interpretation or of any matter affecting the Association which is not provided for in these rules or bye-laws shall be final and binding on the Members.

23.2 The Committee shall have discretionary powers to deal with any matter which is not covered by the

Association's rules and bye-laws.

23.3 The Committee of the Mid-Harbour Small Boats Marina shall be entitled to issue such directions as they may think necessary or expedient for the proper control and management of the Association and designated area and any act or omission which contravenes such directions without reasonable excuse shall be deemed to constitute a contravention of the Association rules and bye-laws.

23.4 Nothing in this Constitution shall be deemed to impose any additional liability or responsibility upon the Committee or the Association for any loss or injury within the Mid-Harbour Small Boats Marina designated areas other than that created by law

ANNEX A SCHEDULE

Annual Subscription Fees for Member: £20

One Additional Access card can be issued to existing berth-holders on payment of £10.