

“Precedent” FWBO Constitution

The following is a template for a FWBO constitution that was produced by a solicitors firm a few years ago. It has been produced with the needs of FWBO charities and trustees in mind, especially as regards issues such as: who is the members of an FWBO charity, can trustees receive any financial support, trustees indemnity etc.

The following are a few notes of explanation from the solicitor, especially as to how it differs from the previous standard FWBO constitution...

- I. The objects remain unchanged.
2. I have called the Branch '~The Association" throughout, so saving repetition of the full title as in the existing precedent.
3. I have divided the document into identifiable sections and so in many cases have moved around matters which appeared in different parts of the current precedent.
4. Clause 2 expresses the object which remains unchanged.
5. Clause 3 specifies the principles which will be applied in carrying out that object. All of these principles are taken from various parts of the existing precedent.
6. Clause 4 sets out the powers of the branch and many of these are new having been taken from our standard list of powers appropriate to a charity. I have included in this a power to take out trustees' indemnity insurance to cover members of the Council. Please note that any existing branch which wanted to have such insurance would have to obtain the Charity Commissioners' consent. Please let me know if you have any comments or questions about the particular powers included.
7. Clause 5 deals with members, their appointment and removal and is self-explanatory. I have included provision in clause 5.9 that the Council shall keep a register of members so that everyone is absolutely clear who is and who is not a member. It is all too common for charities both large and small to find themselves entangled in difficulties by not knowing who their members are and where they can be contacted.
8. Clause 6 deals with the appointment of the Council. The principal differences from the existing precedent are:
 - (i) Clause 6.1 specifies that it is they who run the charity.
 - (ii) Clause 6.3 specifies that the first Council Members will be the Officers who subscribe their names to the Rules. This clause would have to be deleted if an existing Branch were to adopt this constitution in place of its own.
 - (iii) Clause 6.6 sets out the circumstances in which a person will cease to be a Council Member.
 - (iv) Clause 6.7 provides for reasonable notice of Council Meetings to be given to each Council Member. This is implied anyway, but worth stating.

(v) Clauses 6.8 and 6.11 allow flexibility in the holding of Council Meetings, the first clause allowing for telephone conferences (for example) and the second allowing for written resolutions. Note that written resolutions must be unanimous.

(vi) Restrictions on Council Members' benefits are contained in clause 9.

9. Clause 7 deals with the Officers and is self-explanatory. Clause 7.3 would need to be deleted if this constitution were adopted by an existing branch.

10. Clause 8 contains detailed provisions for the conduct of general meetings which are lacking in the existing precedent. I regard these as necessary as the first step to ensuring that branches are run properly and with proper accountability.

11. Clause 9 deals with the use of the branch's funds, benefits to Members and Council Members and how conflicts of interest must be dealt with (clause 9.4). This clause is an amalgam of our precedents with the provisions for remunerating members of the Buddhist Sangha. Note that there is a power in Clause 4.16 to appoint nominee trustees to hold property on behalf of the Branch. This is important, particularly in relation to land (including leasehold property) and investments.

12. Clause 10 provides for amendment of the rules which may be made by the Council (rather than the members as a whole). Note carefully the restrictions in clauses 10.1 and 10.2.

13. Clauses 11 and 12 are there for good housekeeping and to ensure that the Council complies with charity law. Clause 15.1 is also there for good housekeeping and to make sure the charity is run properly.

14. Clause 14 gives an indemnity to the Council Members in respect of their activities as Council Members, providing they have not acted wilfully or fraudulently. It also allows the Council Members to resolve to take out trustees' indemnity insurance as permitted by clause 4.18, even though there is a conflict of interest when they are so deciding. Although I have not so stated in the draft, members of an unincorporated association have no liability to contribute towards losses suffered by the unincorporated association or its Council Members. It is the Council Members who have full personal liability.

**RULES GOVERNING
THE FRIENDS OF THE WESTERN BUDDHIST ORDER ()
AS ADOPTED AT THE INAUGURAL MEETING ON**

Name

1. The name of the Association is Friends of the Western Buddhist Order (). ("the Association").

Object

2. The object of the Association ("the Object") is the advancement of the Buddhist religion, in particular by:

2.1 encouraging members and others to live in accordance with the teachings of the Buddha; and

2.2 supporting ordained members of the Western Buddhist Order and other duly ordained Buddhists, at the discretion of the Council of the Association; and

2.3 maintaining close communication with and working under the guidance of the Western Buddhist Order and in co-operation with other groups with the same object.

Principles

3. The Association shall operate in accordance with the following principles ("the Principles"):

3.1 The Association is organisationally and financially independent from other groups with the same object.

3.2 The Association accepts all aspects of the Buddhist tradition and recognises the value of each, and intends to work in harmony with all other existing Buddhist groups and organisations promoting the Buddhist religion.

3.3 The Association shall not be run for profit and any surplus which may accrue from publications or other activities shall be devoted to the furtherance of the Object.

3.4 The Association shall not be affiliated with any political party or organisation. The Association shall not take part in political activities except in accordance with guidelines issued from time to time by the Charity Commissioners of England and Wales.

Powers

4. The Association has the following powers, which may be exercised only in promoting the Object:

4.1 to hold services of worship and perform other devotional acts;

4.2 to organise lectures, broadcasts and courses of instruction;

4.3 to publish literature and other instructional material in any format;

4.4 to provide or assist in the provision of money, materials or other help of whatsoever kind in and towards the Object;

4.5 to buy, take on lease or in exchange, hire or otherwise acquire any property necessary for the achievement of the Object and to maintain and equip it for use;

4.6 subject to any consents required by law, to sell, lease or otherwise dispose of all or any part of the property held by the Association;

4.7 to raise funds and invite and receive contributions, provided that in raising funds, the Association shall not undertake any substantial permanent trading activity and shall conform to any relevant statutory regulation;

4.8 to carry on trade in the course of carrying out the Object;

4.9 to carry on temporary trade ancillary to carrying out the Object;

4.10 subject to any consent required by law, to borrow money and to charge the whole or any part of the property of the Association with repayment of the money so borrowed;

4.11 to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the Object or of similar charitable purposes and to exchange information and advice with them;

4.12 to establish or support any charitable trusts, associations or institutions in pursuit of the Object;

4.13 to establish branches comprising members of the Association, such branches to be governed by regulations from time to time prescribed by the Council;

4.14 to make grants or loans of money and give guarantees;

4.15 to invest the monies of the Association not immediately required for the Object in or upon such investments, securities or property as the Council may think fit, subject nevertheless to such conditions (if any) as may for the time being be imposed or required by law;

4.16 to appoint and remove at least two but not more than four trustees (or a corporate trustee registered in England and Wales) as nominee(s) for the Association held on its behalf and under the control of the Council any assets of the Association;

4.17 to insure the Association's property against any foreseeable risk and take out other insurance policies to protect the Association where required;

4.18 to insure members of the Council against the costs of a successful defence to a criminal prosecution brought against them as charity trustees or against personal liability incurred in respect of any act or omission which is or is alleged to be a breach of trust or breach of duty (unless the Council member concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty);

4.19 subject to clause [

], to employ paid or unpaid agents, staff or advisers;

4.20 to enter into contracts to provide services to or on behalf of other bodies;

4.21 to pay the costs of forming the Association;

4.22 to do anything else within the law which promotes or helps to promote the Object.

Members

5.1 Membership is open to all those persons over the age of 18 years prepared to support the Object in accordance with the Principles.

5.2 Election to membership is in the hands of the Council whose officers and members must be satisfied as to the suitability of the candidates. The Council may decline to accept any person as a member and shall not be required to give reasons for so doing.

5.3 Members are expected to support the work of the Association to whatever extent they feel able and to pay such minimum subscription as may be acceptable to the Council.

5.4 Members are deemed to be cognisant of these rules, a copy of which is to be available for their inspection on request, and to be willing to assent to them.

5.5 Membership ceases upon receipt by the Council of written resignation or by the refusal of the member to pay the minimum subscription acceptable to the Council. The Council may terminate the membership of anyone whose conduct, in its opinion, renders that member unsuitable for continued membership. Such a member shall be given the opportunity to appear before the Council to state his or her case, but the Council's decision shall be final.

5.6 Life members may be elected by the Council upon such terms as it may approve. Life membership may nevertheless be terminated in accordance with clause 5.5.

5.7 Honorary membership may be extended to those considered by the Council to merit it for their services to Buddhism. Honorary membership may nevertheless be terminated in accordance with clause 5.5.

5.8 Membership is not transferable and shall cease on death.

5.9 The Council shall keep a register of members.

Council

6.1 The Council shall govern the Association and shall exercise all the powers of the Association not specifically reserved in these rules to the members of the Association in general meeting.

6.2 The Council shall consist of not fewer than three and not more than ten members of the Association, who shall be elected at the Annual General Meeting ("AGM"). Nominations for election, proposed and seconded by existing members must be delivered to the Secretary at least one week before the date of the AGM.

[6.3 The first Council Members shall be the Officers who subscribe their names to the Rules.]

6.4 Council members shall serve for a period of one year, after which they are eligible for re-election. All candidates for election to the Council must be professed Buddhists.

6.5 Vacancies on the Council (including vacancies in the posts of the Officers) may be filled during any year by co-option by the Council, such co-opted members to hold office until the next AGM.

6.6 A Council member automatically ceases to be a member of the Council if he or she:

6.6.1 is disqualified under the Charities Act 1993 from acting as a charity trustee; or

6.6.2 is incapable, whether mentally or physically, of managing his or her own affairs; or

6.6.3 ceases to be a member of the Association (but such a person may be reinstated by resolution of all the other members of the Council on resuming membership of the Association); or

6.6.4 resigns by written notice to the Council (but only if at least two Council members will remain in office); or

6.6.5 is removed by a resolution passed by all the other members of the Council after inviting the views of the Council member concerned and considering the matter in the light of any such views.

6.7 The Council shall hold its meetings as it thinks fit and reasonable notice of all meetings shall be given to each Council member.

6.8 A Council meeting may be held either in person or through suitable alternative means agreed by the Council in which each participant may communicate simultaneously with all other participants.

6.9 The Chairman, or (if the Chairman is unable or unwilling to do so), some other member of the Council chosen by the members present, presides at each Council meeting.

6.10 The Council shall attempt to act unanimously in all matters, but in the absence of unanimity decisions shall be by a majority vote, the Chairman having a casting vote in the event of a tie.

6.11 A resolution which is in writing and signed by all members of the Council is as valid as a resolution passed at a meeting and for this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.

Officers

7.1 The Officers of the Association shall be a Chairman, Secretary and Treasurer and such other as may be decided by the Council.

7.2 The Officers shall be elected by the Council from among their number at the first Council meeting after the AGM and shall hold office until the following AGM. Officers may resign from office by informing the Council in writing of their wish to do so. They will nevertheless remain as Council Members unless they also resign in accordance with clause 6.5.4.

[7.3 The first Officers shall be those who subscribe their names to these rules].

General Meetings

8.1 All members are entitled to attend general meetings of the Association in person.

8.2 General meetings are called by 14 days' written notice to the members specifying the business to be transacted.

8.3 There is a quorum at a general meeting if the number of members personally present is at least three (or ten percent of the members if greater).

8.4 The Chairman of the Council or (if he or she is unable or unwilling to do so) some other member elected by those present, presides at a general meeting.

8.5 Every matter at a general meeting is decided by a simple majority of the votes cast by the members present in person.

8.6 Except for the chairman of the meeting, who has a second or casting vote, every member present in person is entitled to one vote on every matter.

8.7 An AGM shall be held in each year no AGM being held more than 15 months after the previous AGM at which the members:

8.7.1 receive the accounts of the Association for the previous financial year

8.7.2 receive the report of the Council on the Association's activities since the previous AGM

8.7.3 elect Council members to replace those retiring from office

8.7.4 discuss and determine any matters of policy or deal with any other business put before them

8.8 An Extraordinary General Meeting may be called at any time by the Council and must be called within 21 days after a written request to the Council from at least five members.

9. Property & Funds

9.1 The property and funds of the Association must be used only for promoting the Object and do not belong to the members of the Association or the Council.

9.2 No Council member may receive any payment of money or other material benefit (whether direct or indirect) from the Association except

9.2.1 under clauses 4.18 (indemnity insurance), 9.2.6 (fees) and 9.2.8 (support for the Buddhist Sangha); and

9.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Association; and

9.2.3 interest at a reasonable rate on money lent to the Association; and

9.2.4 a reasonable rent or hiring fee for property let or hired to the Association; and

9.2.5 an indemnity in respect of any liabilities properly incurred in running the Association (including the costs of a successful defence to criminal proceedings); and

9.2.6 any Council member who possesses specialist skills or knowledge, and any firm or company of which such a person is a member or employee, may charge and be paid reasonable fees for work carried out for the Association on the instructions of the other Committee members but (i) only if the procedure prescribed by clause 9.4 is followed in selecting the member, firm or company concerned and setting the fees and (ii) provided that this provision may not apply to more than one half of the Council members in any financial year; and

9.2.7 in the case of an individual member, charitable benefits in his or her capacity as a beneficiary; and

9.2.8 support to members of the Western Buddhist Order or other duly ordained members of the Buddhist Sangha, or priesthood, who are asked to serve on the Council in any capacity.

9.3 Members of the Association who are not Council members may be employed by the Association.

9.4 Whenever a Council member has a personal interest in a matter to be discussed at a Council meeting, the Council member must

9.4.1 declare an interest before discussion begins on the matter

9.4.2 withdraw from that part of the meeting unless expressly invited to remain in order to provide information

9.4.3 not be counted in the quorum for that part of the meeting

9.4.4 withdraw during the vote and have no vote on the matter

9.5 Any trust corporation which is appointed as a holding trustee or any nominee for the Association may be paid reasonable fees

Amendment of Rules

10. The Council may by resolution amend the provisions of these rules provided that:

10.1 no amendment may be made without the prior written consent of the Charity Commissioners to clause 2 (the Object); clause 4.18 (indemnity insurance); clause 9 (benefits to members and Council members) clause 6 (dissolution) or this clause; and

10.2 no amendment may be made which has the effect of the Association ceasing to be a charity at law.

Minutes

11. The Secretary shall keep minutes, in books kept for the purpose, of the proceedings at meetings of the Council and the Association.

Accounts and Reports

12. The Council shall comply with the obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to:

12.1 the keeping of accounting records for the Association;

12.2 the preparation of annual statements of account for the Association;

12.3 the auditing or independent examination of the statements of account of the Association; and

12.4 the transmission of the statements of account of the Association to the Charity Commissioners; and

12.5 the preparation of an annual report and its transmission to the Commissioners; and

12.6 the preparation of an annual return and its transmission to the Charity Commissioners.

Bank account

13. Any bank account in which any part of the funds of the Association is deposited shall be operated by the Council and shall be held in the name of the Association. All cheques and orders for the payment of money from such account shall be signed by at least two of the Officers.

Council Members - Indemnity

14.1 Without prejudice to any statutory or other right to indemnification which they may have the Council Members shall jointly and severally be indemnified out of the assets of the Association at all times in respect of each and every claim made against them or any of them whether in their capacity as Council Members or personally in respect of any liability arising or alleged to arise from any matter act or default arising from or in respect of the Association, its affairs, administration or activities or any aspect of any of the same PROVIDED ALWAYS that the right of a Council Member to an indemnity under this clause shall not extend to

any claim arising from wilful fraud or wrongdoing or wrongful omission on his or her part.

14.2 No Council member shall be liable for any loss to the property of the Association arising by reason of any improper investment made in good faith (so long as he or she shall have sought professional advice before making such investment) or for the negligence or fraud of any agent employed by him or her or by any other Council Member in good faith (provided reasonable supervision shall have been exercised), although the employment of such agent was strictly not necessary, or by reason of any mistake or omission made in good faith by any Council Member or by reason of any other matter or thing other than wilful and individual fraud, wrongdoing or wrongful omission on the part of the Council Member who is sought to be made liable.

14.3 The Council members shall if they think fit pay for any premium in respect of any indemnity policy as described in clause 4.18.

Notices

15.1 Notices under these rules may be sent by hand, or by post or by suitable electronic means or (where applicable to members generally) may be published in any newsletter distributed by the Association

15.2 The address at which a member is entitled to receive notices is the address noted in the register of members (or, if none, the last known address)

15.3 Any notice given in accordance with these rules is to be treated for all purposes as having been received

15.3.1 24 hours after being sent by electronic means or delivered by hand to the relevant address; or

15.3.2 two clear days after being sent by first class post to that address; or

15.3.3 three clear days after being sent by second class post or overseas post to that address; or

15.3.4 on being handed to the member personally; or, if earlier,

15.3.5 as soon as the member acknowledges actual receipt

15.4 A technical defect in the giving of notice of which the members or the Council members are unaware at the time does not invalidate decisions taken at any meeting of the members or Council Members.

Dissolution

16. The Council Members may resolve to dissolve the Association and after the discharge of or provision for all debts and liabilities of the Association, the Council shall transfer the residue to such other charitable organisation with similar objects or to such other Buddhist charitable organisation or organisations as the Council may decide.

Chairman

Secretary

Treasurer

Dated: