

NAIRN BID LTD

THE CURRENT PROVISIONS RELATING TO THE APPOINTMENT OF DIRECTORS

- (1) Any person who is willing to act as a director, is a BID levy payer or is a representative of a BID levy payer, and is permitted by law to do so, may be appointed to be a director:
 - (a) By ordinary resolution, or
 - (b) by a decision of the directors.
- (2) In any case where, as a result of death, the Company has no members and no directors, the personal representatives of the last member to have died have the right, by notice in writing, to appoint a person to be a director.
- (3) For the purposes of paragraph (2), where 2 or more members die in circumstances rendering it uncertain who was the last to die, a younger member is deemed to have survived an older member.
- (4) The number of directors shall not exceed twelve.

Suggested amendment (*add a new clause 5*)

- (5) **In addition, the directors may appoint two additional directors who are not BID levy payers nor representatives of a BID levy payer to serve for a term of up to three years.**

THE CURRENT PROVISIONS RELATING TO ASSETS REMAINING ON DISSOLUTION

40 Dissolution

If the Company is wound up or dissolved and after all its debts and liabilities have been satisfied there remains any property it shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other company or companies, society or societies (whether charitable or not) having activities similar to those of the Company at the time of dissolution which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Company by article 39 above, chosen by the members of the Company at or before the time of dissolution.

WHAT THE LEGISLATION SAYS

The Business Improvement Districts (Scotland) Regulations 2007

Termination of BID arrangements

Regulation 19.—(1) The local authority may terminate BID arrangements where—

- (a) in the opinion of the If the Company is wound up or dissolved and after all its debts and liabilities have been satisfied there remains any property it shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other company or companies,

society or societies authority, the BID body will have insufficient finances to meet its liabilities for the current chargeable period and the authority has—

(i) offered the BID body a reasonable opportunity to arrange for financing the shortfall or for a reduction in the works or services under the BID arrangements which is sufficient to offset the shortfall; and

(ii) given those persons who are liable to the BID levy an opportunity, at a public meeting, to make representations in relation to the termination of the BID arrangements; or

(b) the authority is unable, due to any cause beyond the control of the authority, to provide works or services which are necessary for the BID arrangements to continue and the authority has (where there is a BID body) consulted the BID body and conducted a consultation with such representatives of the business community for the geographical area of the business improvement district as the authority considers appropriate.

(2) Subject to paragraph (3), the BID body may terminate the BID arrangements where—

(a) the works or services to be provided under the BID arrangements are no longer required; or

(b) the BID body is unable, due to any cause beyond its control, to provide works or services which are necessary for the BID arrangements to continue.

(3) The BID body shall take no steps to terminate the BID arrangements until it has consulted the local authority and conducted a consultation with such representatives of the business community for the geographical area of the business improvement district as the authority considers appropriate.

(4) The local authority shall notify the BID body in writing of its intention to terminate the BID arrangements under paragraph (1) at least 28 days before the date of the termination.

(5) The BID body shall notify the local authority in writing of its intention to terminate the BID arrangements under paragraph (2) at least 28 days before the date of the termination.

(6) Where BID arrangements are terminated under this regulation the local authority shall, as soon as is reasonably practicable, give notice of the termination in writing to each person liable for the BID levy and the notice shall include an explanation of whether a repayment under regulation 16(4) is to be made.

(7) In the event of a disagreement between the local authority and the BID body in relation to whether circumstances have occurred under this regulation that would enable the termination of BID arrangements, the matter shall be referred to the Scottish Ministers for determination as to whether those circumstances have occurred.

BID Revenue Account

Regulation 16 (3) This paragraph applies where BID arrangements come to an end (whether by reason of termination under regulation 19 or otherwise) and there is a credit to the BID Revenue Account which, after deducting a reasonable sum for the cost of administering the arrangements for crediting or refunding the amount, would provide a credit or refund of at least £10 for each person who was liable to pay the BID levy immediately prior to the end of the BID arrangements (in this regulation, a “previous levy payer”).

(4) Where paragraph (3) applies, the billing body shall—

(a) calculate the amount of the credit to the BID Revenue Account (after the deduction referred to in paragraph (3) has been made) which is to be credited or refunded to each previous levy payer;

(b) ensure the amount to be credited or refunded to each previous levy payer is calculated by reference to the amount of the BID levy each previous levy payer was liable to pay for the last chargeable period of the BID arrangements; and

(c) make arrangements for the amount so calculated to be credited against any liability by way of non-domestic rates of each previous levy payer or, where there is no liability for that person by way of non-domestic rates, for the amount to be refunded to that person.

(5) Where paragraph (3) does not apply, the local authority shall carry the credit balance in the BID Revenue account to the credit of its general fund.

SUMMARY

Regulation 19 of the Act sets out the conditions whereby (1) the local authority can terminate the operation of the BID and (2) the BID itself can bring about the cessation of activities. Regulation 19 (2) (a) covers the situation where the BID decides not to hold a “renewal” vote or a “renewal” vote is lost. *(the BID body may terminate the BID arrangements where the works or services to be provided under the BID arrangements are no longer required).*

Regulation 16 applies where the BID arrangements come to an end (under Regulation 19 or otherwise). This regulation requires for any surplus to be returned to those levy payers who paid levies in the chargeable period immediately before the end of the BID arrangements subject to a minimum payment of £10. Refunds will be proportionate to the amount of the individual levies paid in the previous chargeable period.

Any sum refundable is first to be set against any non-domestic rates that is due from the levy payer. If there is no non-domestic rates due, then a cash refund will be made to the levy payer.

If the amount available for distribution after an allowance for the costs of distribution is insufficient to ensure that a minimum payment of £10 can be made, then the local authority will be the beneficiary of the residual funds.

Paragraph 40 of our present Articles is therefore wrong as it is contrary to the relevant legislation. I would propose that we delete it entirely. I do not believe that we need to replace it with anything as we are obliged to follow the regulations of The BID Scotland Regulations 2007.

PDS

19.01.21