

## **WS Interpretation 001-25**

### **Background**

This Interpretation is issued in response to the identical requests received by the Board from FRA, ALG and ISR on 5<sup>th</sup> February 2025. It pertains to the process for determining two proposals put to the World Sailing Membership on 15<sup>th</sup> January 2025 via Written Resolution, and the Extraordinary General Meeting subsequently called by the Board for 13<sup>th</sup> March 2025.

### **Procedure**

The interpretation is issued under Articles 62.2 and 62.3 of the World Sailing Constitution according to which any question or dispute from a Member concerning the interpretation of the Constitution or the Regulations must be referred to the Board in the first instance for its opinion. In the event the Board's opinion does not resolve the matter within a reasonable time, the question must be referred to the Governance Committee. The Committee must permit any parties who have a direct interest in the dispute to make representations to it and must then issue a ruling on the proper interpretation. The decision of the Committee is final within the Federation.

As the Board's opinion did not resolve the present matter within a reasonable time, the question was referred to the Governance Committee and the Committee permitted the three submitting MNAs, as parties who have a direct interest in the dispute, to make representations to it, with the MNA from France submitting their representation on 25<sup>th</sup> February 2025.

### **External legal advice**

In arriving at the Interpretation, the Governance Committee has relied heavily on the advice of three sets of external legal counsel; the London office of international law firm Bird & Bird and Isle of Man based DQ Advocates the advice of which was obtained by the Board, as well as Isle of Man based Athena Law the advice of which was sent to the Committee by a third party.

### **General remarks**

In arriving at the Interpretation, the Governance Committee has relied primarily on the World Sailing Constitution (where Articles 16.2 and 62.1 refer) and to the Isle of Man Companies Act 2006 (where mainly Articles 67 and 71 are relevant) as well as on the external legal advice received. At the same time, the Committee wishes to note that none of the members of the Committee are specialists in Isle of Man Law.

The interpretation work carried out by the Committee was not a straightforward process as there are no unequivocal written provisions in either the Isle of Man Companies Act 2006 or the World Sailing Constitution. The lack of available case law from either the Isle of Man or neighbouring jurisdictions indicates that this is a highly unusual (indeed, potentially unprecedented) situation and one where differences of opinion and interpretation are inevitable.

The below Interpretation 001-25 is issued on the basis of what the Committee collectively believe to be the most reasonable balance of probability, having carefully considered all available advice and both potential interpretation alternatives in each case.

The Committee strongly recommends that World Sailing take steps to amend its Constitution, in order to remove any ambiguity for any future circumstances in which a Written Resolution

process and EGM are called regarding the same matter. In addition, the Committee believes it is important for World Sailing to establish an accurate, cost efficient, universally accessible and trustworthy means of conducting electronic votes on all matters.

Dr. Balazs Hajdu, Chair, Governance Committee  
Monday 11<sup>th</sup> March 2025

## **Question 1**

*If a decision-making procedure in writing has already been initiated by the World Sailing Board under Article 62.1(i) of the Constitution - with dozens of members already having their votes cast on a proposal from members to amend the Constitution, does a resolution made on the same proposal at a subsequently convened meeting of the General Assembly under Article 16.2(b) of the Constitution take precedence over the resolution made within the framework of the decision-making procedure in writing?*

### **Answer 1:**

**8 members of the Committee were in favour of alternative 1.1 with 7 members in favour of alternative 1.2.**

**Therefore, the Committee approved alternative 1.1 by a majority of 8 votes in favour and 7 votes against.**

### **1.1**

- **Yes, it does:** the request for an Extraordinary General Meeting (EGM) takes precedence over a written resolution process. In this instance, Article 16.2(b) of the Constitution as well as Section 67(2) of the Isle of Man Companies Act 2006 were triggered when sufficient members requested in writing that the proposed amendments be considered at an Extraordinary General Meeting.
- Article 16.2(b) of the Constitution refers specifically to calling “*a meeting*” and there is no flexibility: the clear purpose of Section 67(2) is to ensure that resolutions can be considered at a meeting and therefore be subject to discussion and debate.
- Once the necessary threshold of 10% of MNAs had been met, the World Sailing Board was obligated to call such a meeting, regardless of any previous written circulation. In this case, as the request for an EGM asks for the same two motions to be discussed, then the voting results of the written resolution procedure effectively become null and void and the matter must be decided at the EGM.
- The principles of ordinary contractual interpretation would consider what a reasonable person (equipped with the relevant legal, regulatory and factual background available to the parties at the time the contract was made) would understand the relevant provisions to mean. The most likely hypothetical member would prefer the alternative which is most consistent with corporate common sense. As running two distinct processes simultaneously to determine the same matter would be viewed as plainly inefficient, impractical, costly, and with an obvious risk of inconsistent results the conclusion is that the matter should be determined at the EGM.

### **1.2**

- **No, it does not:** according to Article 62.1(j) as well as Section 71 written decisions are valid and effective as if they had been passed at a duly convened and held meeting of the relevant body. Therefore, the written resolution procedure and the EGM are two separate, and concurrent / competing, procedures, what can also be inferred from the fact that both, the World Sailing Constitution as well as the Isle of Man Companies Act 2006

regulate the two a separate procedures (Articles 16.2 and 62.1(j) of the Constitution and Sections 67 and 71 of the Act).

- Once commenced, as a proper democratic process expressly allowed for in the World Sailing Constitution and the Isle of Man Companies Act 2006, a written resolution procedure *must* be completed and the votes validly cast within it counted and communicated to the MNAs, notwithstanding any subsequent or additional calls for an EGM which should be dealt with as a separate process and within its own timeframes.
- The principles of ordinary contractual interpretation (as detailed above) are based on the most likely preference of a hypothetical member. As the written resolution process enables members working in multiple time zones and in multiple languages to more easily assimilate and share the information necessary to vote, the conclusion is that once the written resolution procedure was initiated, the matter shall be determined by the written resolution.
- Finally, in the present case, the initial set of MNAs who submitted their proposals to amend the Constitution through written resolutions specifically referenced Article 16.2(b) and Section 67 (2). Similarly, the subsequent set of MNAs referenced these same provisions in their request to the Board to convene an EGM. In the Committee's opinion, once 10% of the members had requested a resolution on their proposed amendments to the Constitution, the Board held the sole authority to determine the process (in this instance, the written procedure).

## **Question 2**

*If a decision-making procedure in writing has already been initiated by the World Sailing Board under Article 62.1(i) of the Constitution - with dozens of members already having their votes cast on a proposal of members to amend the Constitution, does the call for a meeting of the General Assembly under Article 16.2(b) of the Constitution (with the meeting taking place after the decision-making procedure in writing has been completed) bring the decision-making procedure in writing to a halt?*

*If the answer is yes, who has the authority to declare the halt? What is the exact time of the halt?*

*In case of a halt shall the votes cast by members after the call of the meeting but before the voting deadline be disregarded?*

## **Answer 2:**

**8 members of the Committee were in favour of alternative 2.1 with 7 members in favour of alternative 2.2.**

**Therefore, the Committee approved alternative 2.1 by a majority of 8 votes in favour and 7 votes against.**

### **2.1**

- **Yes, it does:** The written resolution process is always overridden by an EGM. Once the threshold of 10% of the membership is met, World Sailing is obligated to call a meeting to determine the motions already circulated.
- Authority for this decision lies with The Board.
- The date on which the EGM is deemed to have superceded the written resolution process is the date on which the calling notice for the EGM is issued to members (in this case 31<sup>st</sup> January 2025).
- All votes shall be disregarded, as the written resolution process is deemed null & void, and Members will instead cast their votes at the EGM.

### **2.2**

- **No, it does not:** the written resolution procedure and EGM are two competing, separate processes with their own timescales. Neither one brings the other to a halt.
- Once a written resolution process has been set in motion, the Board of an Isle of Man company does not have the power to recall the written resolution notice. Nor does it have the power to frustrate the implementation of a written resolution which has attracted the required majority.
- Consequently, the written resolution process initiated by World Sailing was not capable of being halted and reached its natural conclusion on 5<sup>th</sup> February 2025.
- As the answer is no, the supplementary questions of authority and timing are not relevant.
- All valid votes received by the deadline for the written resolution process should be counted and the result communicated to members.

### **Question 3**

*In the light of Article 62.1(j) of the Constitution, can a meeting of the General Assembly be validly called under Article 16.2(b) of the Constitution once a decision-making procedure in writing has already been initiated by the World Sailing Board under Article 62.1(i) of the Constitution on the same proposal to amend the Constitution?*

### **Answer 3:**

#### **The Committee voted unanimously in favour of Answer 3**

- **Yes, it can.**
- Furthermore, there is no impediment to the same resolutions being resolved by way of written resolution and debated (and voted on) again at a subsequent EGM – save that the wording of the resolutions would need to be changed to reflect any Constitutional amendments already made as a result of a positive vote within the written resolution process.