

EGM Webinar by Zoom, Thursday 30th July 2020 at 2 p.m. BST.

Panellists: James B Sunley (President), C.W.A. Bott (Hon. Treasurer), Sir Brian Williamson CBE (Past-President), D.G. Payne (Hon. Vice-President), G.A. Lowe (Secretary and CEO), Lady Brabazon of Tara (Membership Secretary).

Attendees: Air Cdre S. Abbott, R. Allenspach, J.V.C. Bausch, Lord Brabazon of Tara, R.A.H. Buchanan, L. Burri, J.J.A. Cavendish, C.D.F. Corsten, Mr & Mrs A. Cuthbert, B. De Hond, M.D. DiGiacomo, Charlotte Duncombe, T.J.C. Ellsmore, Mrs Carina Evans, M.M.K. Fischer, A.R. Fischer, S.J.H. Ford, M. Ghezzi, Lady Gibbs, A.G. Gimlette, P.C. Goddard, M.C. Greenland, J.W. Grootes, M.G. Hamill, C S-A. Hamilton, O. Hattink, R.L. Hoare, C.J.A. Hobbs, A.S. Hoefer, Dr. H-J Hosch, J.M. Jacob, H.H. Loew, E.W.H. Lowe, D. Mackie, J.G. Macpherson, Comm. H.C.B. Malim, A.W.F. Mallinckrodt, Amber McKenzie, R. Mendelsohn, P.F. Michel, Melissa Michel, Lt-Cdr A. Mills, Lt.Col. R.M. Morgan, M. Rehfeldt, R.S. Robbins, F.V. Rueda (Snr), Eliane Salomon, S.O. Seccombe, R.E. Seel, Toni Slotkin, O.M. Stahel, G.F. Stahel, R.H. von S. Street, Lt. Col. J.A.E. Summers, C.M.B. Sunley, D. Vincze, J.M. Wakeham, A.M.P. Weber, R.D. Wilson, A.H.E. Ziros, Aris Ziros, L.A. Ziros and one other connecting by telephone.

Andrew Lowe, of Metro Productions, opened the webinar by introducing the Panellists and explained how it was possible to pose questions via a Q&A window. Gary Lowe welcomed attendees and said that the Notice of the EGM was sent out 26th June, thus giving the requisite notice. The Meeting was quorate as there were over 20 Active Members and at least four elected Members of the Committee present (James Sunley, Charlie Bott, Rollo Hoare, Marc Fischer and Caspar Hobbs).

The President thanked Andrew Lowe for co-ordinating the meeting and welcomed those present to this, the first ever Cresta General Meeting conducted via a webinar. He hoped it would not be the first of many, as it was not the way the Club preferred to conduct its business.

He also hoped it would be rather less contentious than the previous EGM two years before, and continued, "I hope wherever you are in the world you are having a lovely, healthy time. In typical Cresta fashion we seem to have garnered Members from all over the world to log in to this webinar. The one thing I can't immediately do is work out exactly who you all are, but I know who signed up. Potentially we have the Ford family from Sydney at one end of the spectrum and then moving to the other side of the globe, Tom Zaidman in Venezuela. We have the McKenzie family in the West Indies, Maik Rehfeldt in Canada and Brad de Hond in America, Fernando Rueda in South Africa and I'm very sorry if I've missed out anyone joining us from elsewhere. Thank you all very much indeed for giving up some of your afternoon to be with us.

"I appreciate that this is a really important meeting in many respects, but it is a rather bizarre one in others, because we are not actually going to decide anything today, other than the fact that we are formalising the process of a vote which, as Gary said, was given due notice. I wrote to you about this in late June, and the business of today's meeting has been fairly well trailed at the last two AGMs. For those of you who are on the call, I know that about a third of the Membership has voted already but I don't know who or how. You can vote during this meeting and up until 5 o'clock British Summer Time tomorrow. We will let you know the result on Monday, or Tuesday at the latest, to confirm where we are headed. Obviously I hope that at that juncture the Membership will be supportive of the unanimous opinion of the Committee, who think that it is essential that we make these changes because, frankly, doing nothing is not an option. Our Rules are lost in the mists of time to some degree, coming as they have from November 1887. We need to move with the times, both in Switzerland and the United Kingdom. I will now remind you what I put in my letter of 25th June as to what is proposed. After that, Harriet will read out some of the questions that we have received in advance of the meeting. Gary will answer these and then we'll take it from there, if there are still questions you would like to raise.

“Historically we have operated as an unincorporated body in the UK with assets in Switzerland. In Switzerland, we operate essentially as a Verein. All of this has been somewhat unofficial. The purpose of this meeting and all the paperwork is that all the Club's assets will transfer tax free to St Moritz Tobogganing Club Limited. This company will be limited by guarantee and all Members will become guarantors, to the maximum sum of £1 for each Member. The new structure attempts to replicate the existing management arrangements by having a small formal Board of Directors of the company which is advised by the Main Committee, as usual. In addition to the normal elections to the various offices of the Club there will also be elections for the five Directors of the Board. We will also form an Operating Company with limited liability in Switzerland - an AG - which will be legally separate from the UK body but will be wholly owned by it. There will be a clear contractual relationship whereby the AG operates the Cresta Run, and SMTC Ltd will contract to send its Members and guests as users of the Run. SMTC Ltd is incorporated under the law of England and Wales, and needs a new set of Rules and Articles of Association, copies of which you have had. Today you are being asked to vote to adopt those Rules and Articles. Should the motion be carried (and it requires a two-thirds majority) then we will move to create the AG and the relationship between the two entities.

“Extensive work has already been carried out on this, in the hope that today's vote should be uncontentious, because it is for the betterment of the Members, the betterment of the Club and the Club's long-term prosperity and security. The work that Gary (helped and abetted by David Payne) has done on this has been quite remarkable, very much over and above the 'normal' duties of the Secretary. We have explored all manner of configurations with lawyers and accountants. It is an exercise that first started with Lord Bledisloe. I am very happy to have reached the point where, in July 2020, we can put these proposals to the Membership, with the knowledge of a job well done to protect our future.

“We are asking you to vote on the adoption on the new Rules and Articles of Association for the St Moritz Tobogganing Club Limited, a company limited by guarantee to a maximum of £1 only per guarantor, incorporated in England and Wales.

“I will now ask Harriet to read out questions submitted in advance by Members, and Gary and/or I will answer them.” The attendees were invited to submit questions to the panel initially through the Q&A facility, and subsequently by asking in person through the webinar. The questions and answers were as follows *[and related questions have been grouped together for simplicity]*:

Q. Peter Michel: *Will the Swiss AG be subject to corporation tax?*

A. Yes. However, operating the Run is historically a loss making undertaking, even after the generous contributions from the local community (St Moritz, Celerina and the St Moritz Tourist Board), therefore any tax is likely to be *de minimis*. One of the challenges is to try and ensure that we get the AG as close to break even as possible.

Q. (Follow up question) *If the Swiss AG generally makes a loss, is it the expectation that the UK Ltd company will cover this?*

A. Historically the operation of the Run had almost always made a loss. This was offset by the generosity of St Moritz Hoteliers, the St Moritz & Celerina authorities and generous benefactors from the Membership. There had been many dark periods in the Club's history when it was not possible to open from Top, or to open the Run at all. The objective, in conjunction with advice from lawyers and accountants, is to make the Swiss arm break even and to minimise the tax burden for both entities. There is some flexibility for revenues to be moved around. The next step will be to formally split the revenues of the two bodies in which will likely result in break even on a consolidated basis.

Q. From Peter Michel *Will riding fees be subject to VAT?*

A. It is not absolutely certain at this stage whether the AG will have to register for VAT but if it has to register, the current advice is that rides will not be subject to a VAT charge. There will be other items subject to VAT if we do register. This is all part of the ongoing negotiations with the various authorities, and will be inked in once we have the AG physically formed and negotiations concluded.

Q. Richard Mendelsohn: *What are the contractual arrangements between the UK Club and the AG and is there a risk that there could be a dispute between the two entities?*

A. Whilst a lot of preparatory work has been done on formation of the AG, including a clear contract between the two entities, it is premature to enter into any detail. It would be presumptive to anticipate the results of the vote. However, we are ready with various drafts to proceed. In any case it is not actually possible to form the AG until the CLG is approved and assets are transferred from the unincorporated Club to the incorporated body. There will be a contract between the two bodies and the AG directors will consist of a blend of UK and Swiss members along with a senior member of the St Moritz Tourist Authority. It is important for tax purposes that the two entities are seen to be separate, so the Directors will not be the same as those for SMTC Ltd. However, although it will be a separate legal entity, the AG will be wholly owned by the SMTC Ltd. On this basis, dispute is unlikely.

Q. Philip Mallinckrodt: *Will the UK company publish simple or consolidated accounts?*

A. This is yet to be determined. One of our challenges in optimising the Club's tax position is to allocate revenues and costs such that the AG is close to break even. Using our historical method it will not be easy to achieve this. Members should know that for the past few years the consolidated position is roughly break even. Any surpluses generated result largely from generous donations which are tax free. The bulk of the existing Club assets, the staff flats, Junction Hut and the Clubhouse bricks and mortar, will be held by the CLG, with the AG essentially holding operating cash.

Q. (Follow up) Heinz Loew: *Can the Membership see the actual results in terms of economic figures at the end of a season ?*

A. The accounts of SMTC Ltd will be published on the Companies House website within 9 months of the end of the Club's financial year (31st May).

Q. (Follow up) Peter Michel: *Will the names of the guarantors of SMTC Ltd be published in the Companies House records?*

A. No.

Q. Philip Mallinckrodt: *Will the Secretary always be a director, ex officio , of the CLG?*

A. No. At the moment, only the President and the Hon. Treasurer, both of whom have to be elected at the AGM, are ex officio directors. The other three directors, Sir Brian Williamson and David Payne were selected as either past/current Presidents or past/current Hon. Treasurers. Gary Lowe, having worked on the new arrangement for the last 6 years, is currently one of the five Directors of the SMTC Ltd Board. Of these three, one will offer himself for re-election at the AGM by rotation. Also, the Board will be advised by the Committee who will be elected in the same way as today. In the future, in all probability, the Secretary would be a Director of the Swiss company because that is where much of risk will sit, should an action be brought against the Club or the operator of the Cresta Run. If such action were to occur, then the liability would sit with the Swiss company.

Q. Toni Slotkin *In case of a legal action against the club for riding issues - which company is the responsible party? Will this simplify the jurisdictional issues in case of a lawsuit? Please explain how this will work?*

A. The plan is that all responsibility for managing and running the Cresta Run will rest with the Swiss Company. Any action concerning anything to do with the Run would be brought against the operator of the Run, St Moritz Tobogganing Club AG and be subject to Swiss law. This is why it was so important to keep the separation discrete between the two entities, even though the UK arm will own the Swiss one. The Members and the Club's assets would therefore be protected. However, it is not possible to contract out of statutory negligence. The responsibilities of the Chairman of the Run & Safety sub-Committee and the Secretary under these obligations remains enormous, as the experience of David Payne has demonstrated only too clearly. There is nothing to stop someone suing the new UK Club, but all steps possible have been taken to ensure that this would be highly unlikely, and to protect the Membership by making them limited guarantors. Currently all Members were jointly and severally liable.

Q. Maik Rehfeldt: *Will the AG carry liability insurance, and if so, for how much?*

A. Once the AG is formed, Peter Achenbach will look into liability insurance. The Club already had Director & Officer insurance for a large amount. Under the new Articles of Association we will be taking out such insurance and will do so for the AG as well, once it is formed.

Q. Hugh Malim: *Has the city of St Moritz expressed a view on these changes, as their support is financially important?*

A. The St Moritz authorities had been kept informed and had expressed their approval. The Secretary had met with them the previous week. Adrian Ehrbar (Martin Berthod's successor) had said that he would consider joining the Board of the AG if requested. They had also confirmed that the annual grant to the Club would be forthcoming next season.

Q. Aris Ziros: *Will the employees of the Club be employed by the UK or Swiss company?*

A. All the Tower Team working in St Moritz will be employed by the AG and be subject to all taxes associated with their part-time employment in Switzerland. The Membership Secretary and part of the Secretary's time would fall under the UK company and thus liable for UK taxes.

Q. (Follow up) Peter Michel: *will all employees in Switzerland have a work permit?*

A. The employees in St Moritz will require work permits and these had been arranged for the last few seasons.

Q. (Follow up) Sam Seccombe: *Does the new employment status of workers of the AG mean Tower Boys will get pension contributions?*

A. Tower Boys' employment was more in the nature of an internship. Previous Tower Boys are not grandfathered into any arrangements in terms of benefits. They now have work permits and tax and insurance deducted at source. Any pension entitlement would be *de minimis*, and it was arguable that they might have incurred a tax liability for a benefit in kind, given that they did not pay for their riding.

Q. Doug Wilson: *Despite all these changes to protect the Club, can you confirm that the daily running and 'feel' of the Club will stay the same?*

A. To all intents and purposes, and assuming that the vote is positive, anyone coming to ride the Cresta in the future will not be aware of any difference.

Q. Alexander Mallinckrodt: *While it was clear that the proposals were designed to protect the Membership. employees and officers in the future, was there anything to stop actions for incidents that had happened in the past?*

A. Unfortunately not, save statutes of limitation.

Q. Alessandro Fischer: *Who will actually be the shareholders of the SMTCLtd?*

A. SMTC Ltd does not have any actual shareholders. It is a 'company limited by guarantee' - a structure that has existed for a very long time. Every Member is a **guarantor** (up to the maximum value of £1) and not a shareholder. This structure is normally employed by Clubs such as ours to reflect the fact that they are Members' Clubs, rather than trading companies. Being a trading company would have negative consequences.

Q. (Follow up) David Vincze: *If the AG is owned by SMTC Ltd and SMTC Ltd is owned by the current Members does every new Member then get 1 share (or buy for £1). Why is the value set so low? Would it be an option to increase the value over the years for new entrants so we could raise some money and create a capital increase for the Club?*

A. Again, SMTC is not a trading company. Members are asked to pledge a guarantee of £1 and to make the payment as part of their membership fee. All Members will be asked to pay this sum in the months to come should the vote be positive. It is not a money raising exercise, it is to achieve the guarantee for the minimum amount as required by law.

Q: Maik Rehfeldt: *Will all Members (Active and Non-Active) be part of the UK entity?*

A. Yes.

Q. Fernando Rueda: *What are the chances of the Run being able to open next season?*

A. We are in close touch with the St Moritz authorities and will be allied as to whether or not the Bob Run is built. Seiler did not start building either Run until late November, but obviously Members need fair warning. The situation will be reviewed at the beginning of October and the Membership informed of thinking at that stage. Options will be kept open for as long as possible. It would be necessary to consider the difficulties of international travel, given that, for example, this was currently impossible from Australia and South Africa. Many options and contingencies were being considered. The worst outcome would be if the Run was opened and then had to close because of a further outbreak of the pandemic.

[Follow up] **Hugh Malim** said that life in St Moritz was currently completely normal and although it was impossible to predict the future, he felt it was important not to be too gloomy.

Q. Andrew Mills: *Do we envisage any necessary or indeed opportunistic benefit in the status of the UK arm following Brexit from a tax or legal perspective?*

A. At this stage it was too difficult to predict what the outcome might be.

Q. Hansjorg Hosch. *Are we finally a Swiss or an English Club? Do we have to follow Swiss Verein rules? This concerns e.g. financial transparency on whether Committee meeting Minutes are made public?*

A. This depends on an individual viewpoint. The parent company is very much an English organisation, should these proposals be approved. Company Minutes are not normally available to view, although the Committee had always attempted to be transparent in its communications with the Membership, particularly in matters of safety and due process.

Simon Ford thanked Gary Lowe and David Payne and everyone who had worked so hard on this matter and looked forward to thanking people in person in St Moritz. This was echoed by Johannes Bausch, Andrew Mills and Fernando Rueda..

There being no more questions, the President thanked all those who had participated in this unusual EGM and asked them to cast their vote if they had not already done so. The result would be communicated early the following week. He concluded the meeting by saying, "Regardless of the outcome of the vote, rest assured there will no change to the spirit, the enthusiasm and the passion of the Club next season."

ADDENDUM: Result of the vote, received from Civica on 3rd August 2020:

662 votes for (97.5%)

17 votes against (2.5%)

Total number of votes 679

Invalid votes 0

The resolution was passed.