

# Statement by the Constitutional and Legal Committee on the constitutional challenges posed by the international travel restrictions following the COVID-19 pandemic

23 March 2020

## Introduction

The Constitutional and Legal Committee (CLC) deliberated extensively on the possibilities of holding constitutionally robust Executive Committee and Co-Chair elections as well as induction of newly elected members (immediately preceded by the end of membership of those completing their 5<sup>th</sup> year in the GYA) during a time of international travel restrictions following the COVID-19 pandemic.

Summarizing the discussions, there are two viable options, one that requires amendments to the Constitution (A) and one option (B) in the current constitutional setting:

- A. Virtual AGMs,
- B. AGM that likely fails quorum, followed by an SGM to elect the EC and Co-Chairs.

Further options have been discussed, like the possibility of admission of members at SGMs and the implicit option of not having an AGM (nor SGM) this year (which would lead to continuation of term of office of the Co-Chairs and other EC members but would significantly impact on membership terms), neither of which received broad-based favourable attention of the CLC at this stage.

## A. Virtual AGMs

In exceptional cases, the EC shall be allowed to call for AGMs to be held virtually. For that, the CLC proposes the following changes to the constitution [changes highlighted in bold]:

### Change 1

4.3. Subject to Section 4.7 only members of the GYA who are physically present at the time of the vote or election are eligible to vote.

4.5. The General Assembly shall normally convene at least once every calendar year for an Annual General Meeting or AGM at a location and time set by the Executive Committee. **Subject to Section 4.7**, the notice shall be sent at least three months before the meeting.

4.6. The Executive Committee may call for a Special General Meeting of the General Assembly at its discretion or shall do so at the request of one-third of the members. ~~The Executive Committee may decide that the Special General Meeting shall convene virtually, or in any way that will assure the integrity of the voting process.~~ The notice shall be sent at least 4 weeks before the meeting.

**4.7. The Executive Committee may decide that the Annual or Special General Meeting shall convene virtually, or in any way that will assure the integrity of the voting process. The Annual General Meeting shall convene virtually only in exceptional circumstances, such as political upheaval or natural disaster, that may affect the ability of GYA members to participate physically in the meeting. In this case, the length of the AGM may be extended to allow for the voting procedures to conclude before the end of the AGM. The notice that the Annual General**

**Meeting shall convene virtually instead of physically may be required to be sent on short notice.**

**4.7→4.8, 4.8→4.9, 4.9→4.10, 4.10→4.11, 4.11→4.12, 4.12→4.13**

9.3.1. The General Assembly is entitled to overrule any CLC constitutional interpretation if more than 2/3 of the participants in a vote decide so and provided that at least one-third of its members participate in the General Meeting as stipulated in Section 4.10.

## B. AGM that likely fails quorum, followed by an SGM to elect the EC and Co-Chairs

Inception of new members requires an (in-person) AGM but neither quorum, nor physical attendance of the new members (Section 3.3). Elections of Co-Chairs and other members of the EC may be conducted at SGMs (Sections 4.6 and 8.1), which may be virtual (Section 4.6) but also require quorum (Section 4.9).

Hence, a combination of AGM (as already announced) and virtual SGM would work. This requires Announcement of a virtual SGM to take place (directly) after the AGM (4 weeks' notice before the SGM; Section 4.6), anticipating failure of quorum at the AGM, with the agenda (15 days' notice before the SGM; Section 4.8) including the elections to take place at this SGM (Section 8.1).

## Recommendation 1

As there are concerns regarding the viability of Option B, the CLC recommends a change in the Constitution (Option A) to achieve a more elegant approach to hold AGMs in situations that do not allow for physical participation of many GYA members.

## Further changes

In the deliberations of the CLC, it became clear that the Constitution has the shortcoming of stating a few times "Annual General Meeting" or "AGM", when it wants to say "General Meeting" (to include SGMs):

4.11: The co-chairs preside over the AGM ...but not over any SGM,

4.12: EC may invite alumni, etc. to AGMs ...but not (explicitly) to SGMs.

To address these shortcomings, the CLC proposes the following changes to the Constitution [changes highlighted in bold]:

### Change 2

~~4.11. The GYA Co Chairs shall preside over the Annual General Meetings.~~

**4.11. (deleted)**

*Section 4.11 is redundant, given Section 5.2 reads (and stands)*

5.2 The Co-Chairs shall preside over the meetings of the General Assembly and the Executive Committee with a partition of tasks to be agreed by them.

*Further, Section 4.11 fails to address that the Co-Chairs shall preside over all General Meetings, AGMs and SGMs, which Section 5.2 does address.*

**4.12.** The EC may invite alumni, GYA staff, members of the Advisory Board and other people as it sees fit to attend and participate in the running of the **AGM General Meetings**. Invited attendees may not participate in voting and shall not count towards quorum.

## Recommendation 2

In any of the above options, A or B, the proposed changes to Section 4.11 and Section 4.12 should be effected.

## Further notes

Note 1. Option A requires a 4 weeks' notice for the SGM to effect constitutional changes. This SGM must conclude before the AGM.

Note 2. Option A requires further a 3 months' notice for the AGM, but no further notice period to decide it to be virtual. Note that in the case of the 2020 AGM, at the current date, this notice has already been served and the AGM has not formally been cancelled.

Note 3. Option B requires a 4 weeks' notice for the SGM to be conducted after the set-to-fail-quorum AGM. This notice can be given even before the AGM.

Note 4. Notices of all respective agendas require a 15 days' notice (Section 4.8).

Note 5. Option A requires quorum (Section 4.9) at the SGM and favourable votes (Section 4.4.1) for changing the Constitution. Option B can serve as the default fall-back solution.

Having outlined all the above, the CLC wants to stress a few practical points related to the proposed change of Constitution

Point 1. In case the proposed Option A is adopted, a new EC will be elected and will take office without in-person interaction.

Point 2. In case the proposed Option A is adopted, new members will be inducted and outgoing members will be retired –also without in-person interaction.

Point 3. The term of Co-Chairs and other EC members only ends at the next elections, and holding the 2021 AGM very early in the year could also serve as an option, although this would significantly impact on membership terms.

Point 4. The GYA can hold an in-person meeting in Nov/Dec/Jan in India (provided that outer circumstances permit this) but we advise against announcing such a meeting as an AGM. A virtual AGM in June would by no means preclude this meeting. Such an in-person meeting in India could either be an in-person SGM or just a meeting of GYA members without considering a legislative General Assembly convening (the difference being whether decisions can be taken at that meeting or not).

Point 5. The CLC is currently still discussing possible further changes, particularly in regards to Section 4.5 and Section 8.1. We do not regard them urgent in terms of holding back further action on the topic of this statement, but will try to have a resolution before the notice of the agenda for an eventual SGM might be served (15 days' notice).

**In conclusion, the CLC recommends that EC calls an SGM with the agenda that includes votes to enact, in two separate votes, Change 1 and Change 2 in the GYA Constitution.**