



Received: 03/28/23

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Summary: Abrogation of Section 23.6 Constitution "Extraordinary Circumstances"

Affects:

<input checked="" type="checkbox"/>	Constitution	By-Laws	Class Rules
<input type="checkbox"/>	Deed of Gift	Rules of Conduct	NoR or SI Template
<input type="checkbox"/>	Other		

Objective:

In 2022, Rule Change Proposal 22-02 requested, among various changes to the Constitution, the addition of the new Section 23.6. ("Extraordinary circumstances"):

Section 23.6 Extraordinary Circumstances: The Board of Governors, only by absolute majority of vote, and only under extraordinary circumstance, or in cases of force majeure that affects the Class immediately with no possibility of a solution according to what is established in Section 28, has the right to take whatever action it deems necessary for the correct administration of the Class.

The reason for the addition of this new Section (23.6) was thus verbatim and concisely expressed in proposal 22-02:

"Reasons: We need some paragraph that covers situations like the one we had in 2020/21"

While the General reasons for all the changes to the Constitution, contained in proposal 22-02, are expressed verbatim as follows:

"General reasons: With the COVID pandemic many changes were taken in disregard of the Constitution [sic]. This changes were not taken lightly by the Board, but in the worse of circumstances, being the Snipe Class the first one that suspended the entire 2020 events agenda. This circumstance forced elections of officers and meetings to take place in circumstances not described or included in the present Constitution.

We need to adapt some parts, add flexibility in others and to add some things in order to give the Board tools to legally manage the Class in the case of future extreme circumstances.

Also, some sections need an update or clarification, or removal of duplication."

¹ Proposals can be made by the Board, Technical Committee, National Secretaries or 5 fleet captains up to 1st March.



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Section 23.6 grants too broad and undefined powers to the Board. It must therefore be deleted from the Constitution for the reasons explained in the last paragraph ("Reasons").

Proposal (include current & proposed changed wording- changes to be shown in red): Example: By Laws: **Section 1. Racing Season**

The official racing sailing season of this Association shall extend for the full twelve months of the year starting on January 1st and ending on December 31st.

~~**Section 23.6 Extraordinary Circumstances:** The Board of Governors, only by absolute majority of vote, and only under extraordinary circumstance, or in cases of force majeure that affects the Class immediately with no possibility of a solution according to what is established in Section 28, has the right to take whatever action it deems necessary for the correct administration of the Class.~~

Reasons:

Section 23.6 Constitution should be deleted for the following reasons:

- a) It is not clear what "extraordinary circumstances" or "force majeure" mean. The two locutions are totally indeterminate. There is no definition. In the absence of certainty, Section 23.6 could be misused.
- b) The concept of "force majeure" is only relevant to contract law; when a contract excludes the liability of a party in the event of a breach of an obligation.
- c) By invoking Section 23.6 any Class Rules, including fundamental provisions of the Constitution, could be changed. The so-called "Decision Making Process" allows all members, Fleet Captains, National Secretaries, Measurers and Technical Committees to read, evaluate, comment, criticize or support the rule change proposals. The Decision Making Process [see the diagram at the Botton of this document] is stated in the Constitution in Section 28, spelling out a procedure that governs the presentation, discussion, and approval of proposals. This guarantees transparency, publicity and discussion. Any changes to the rules of the class, especially to the Constitution, must follow a democratic process. Under "extraordinary circumstances," there could be abuses; the Board could even perpetuate its own power and remain in office beyond their elected terms.

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"Extraordinary circumstances" should never allow changes to the Constitution without following the Decision Making Process.

- d) Cancellations of regattas, postponements of regattas to a different date, or to a different venue, approvals of bid forms, submitted by candidates to host regattas, are decisions which may be taken and voted by ballot by the Board or others officers (e.g. European NSs or WH&A NSs) at any time of the year, with online voting. In these cases Section 23.6 is useless and unnecessary.

- e) There may be a case of urgency to correct an obvious error in a specific Class Rule, or you need to provide an interpretation, or opinion to a Class Rule (e.g. if there was a "hole" in the technical rules -not the Constitution- and someone had taken advantage of it, obtaining a significant advantage). This situation is already regulated by:

Section 28 - first paragraph:

"[omissis] This Committee [Technical Committee], in accordance with World Sailing Regulations, shall have power to clarify any rule whenever its meaning is deemed not clear or unfair. If necessary, such clarifications may be submitted as rules amendments to World Sailing after approval of the Board of Governors."

Section 28 - third paragraph:

"Whenever a "circular Letter" from the Technical Committee over the signature of the Chairman is posted on the Snipe website the corrections, interpretations or simplifications appearing therein shall become a part of the current Official Rulebook. Such corrections, interpretations or simplifications will also be posted on the SCIRA website, Rules section. www.snipe.org."

So, again, in these cases Section 23.6 is useless and unnecessary.

- f) Outside of cases d) and e), reasons of urgency (or, to use the wording of the current Section 23.6, "Extraordinary circumstances" or "force majeure") do not exist. If they are invoked, they can only lead to abuse.

- g) In the majority of cases (Rule Change proposals concerning modifications to the Class Rules) the approval of World Sailing is always required, before the rule approved by the Board becomes effective. Therefore, this is another reason why the Decision Making Process cannot be derogated.

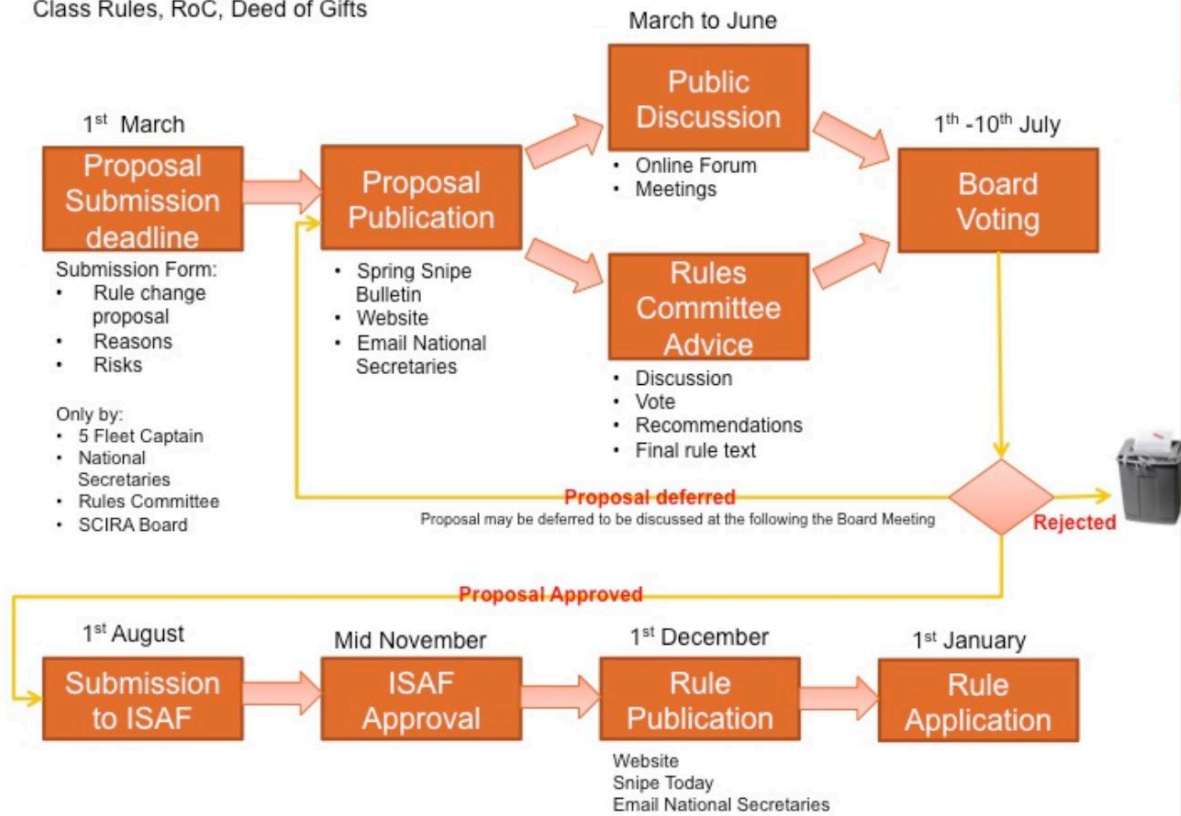
- h) Furthermore, assuming and not granting that the above reasons are not decisive, the "absolute majority" vote is exactly equal to the absolute majority required for all other votes. Therefore, not even unanimity is required for a decision taken under alleged "extraordinary circumstances".



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RULES CHANGE PROCESS

Class Rules, RoC, Deed of Gifts



Rule Change Process - as described in the Class website: