



GENERAL ASSEMBLY MEETING  
30<sup>TH</sup> JUNE 2007

A BRIEFING PAPER ON THE CHANGES TO THE  
ARTICLES OF ASSOCIATION



## **PROPOSED CHANGE NUMBER 1**

### **Current situation**

This proposed change is an addition to the Articles of Association

### **Reason for change or addition**

The Association can accept payment either through Membership fees or through a contractual framework. The creation of a contract with the National Library of Medicine necessitated the creation of the ability to create a Defect Notice and for there to be a duty on the IHTSDO to attempt to provide a remedy.

It is a principle of the IHTSDO that all Members are equal so it was essential that the right required by the USA Member and present in their contract was also available to all the other Members through the Articles of Association. This change therefore creates equal rights between the Members

### **Assurance**

The Management Board can assure the General Assembly that it has discussed these changes and agreed them, it has sought and gained extensive legal advice, reached legal agreement on the wording with NLM legal advisers and confirmed that the changes are in line with Danish Law surrounding Danish Associations

### **Proposed text**

5.7.4 In the event that any Member reasonably determines that work performed by or for the Association, or any material product or service provided by the Association to the Members (including, without limitation, any International Releases), is defective or deficient in a material respect (collectively, a “Work Defect”), such Member may deliver a written notice to the Association (a “Defect Notice”) informing it of such determination by such Member and the basis thereof.

(a) As promptly as reasonably practicable of its receipt of a Defect Notice, and in any event within 60 days of such receipt, the Association will (i) notify the Member delivering the Defect Notice that the Work Defect has been remedied, or is in the process of being remedied, and provide an explanation of the steps that have been or are being taken in this regard, or (ii) notify such Member either that the Association has determined either (x) that the work, product or service that was the subject of the Defect Notice is not defective or deficient in a material respect or (y) that it is not reasonably practical, or not appropriate or consistent with the interests of the Association, to remedy the defect or deficiency cited in the Defect Notice, and in either case provide an explanation of such determination.

(b) If the Association fails to deliver any notice as required by clause 5.7.4(a), or if the Member receiving such notice disagrees with the position taken by the Association in any such notice, the Member may (but is not required to) deliver a written demand to the Association (a “Defect Demand”) that steps or actions specified by the Member in its Defect Demand be taken by the Association (which may directly relate to remedying the relevant defect or deficiency or may involve changes in the policies, management or personnel of the Association) and that a meeting of the General Assembly be convened to adopt a resolution requiring that such steps or actions are taken. If a Defect Demand is so received, an Extraordinary Meeting of the General Assembly for such purpose shall be convened as



promptly as practical, in accordance with the notice and other requirements contained in clause 8.

(c) All members of the Management Board shall, at a minimum and without limiting the roles or powers of the Management Board in any respect, receive copies of any Defect Notice, any notice by the Association in response to any Defect Notice, any Defect Demand, and any related written communications between the Association and a Member who have delivered a Defect Notice.

(d) In the event that the Association fails in a material respect to take actions required to be taken by it pursuant to clause 5.7.4 in response to the valid delivery of a Defect Notice or Defect Demand from a Member, and does not correct such failure within 30 days following notice thereof from such Member, then such Member may within 60 days thereafter resign from the Association in accordance with clause 4.5.5 and require that such resignation be treated as a resignation "for cause". A former Member whose resignation is treated as a resignation "for cause" pursuant to the foregoing shall have the same rights and obligations as any other former Member who has resigned in accordance with clause 4.5.5, provided that for purposes of paragraphs 6.1.2 and 6.2 of Schedule 3 such former Member shall be deemed to have not ceased to be a Member until the earlier of (a) the first anniversary of its resignation "for cause", and (b) the date (if any) on which paragraph 6.3 applies.



## **PROPOSED CHANGE NUMBER 2**

### **Current situation**

8.2.18 The Ordinary Meeting of the General Assembly taking place in October will consider and vote on resolutions concerning:

- (a) the presentation and adoption of:
  - i. the Management Board's annual strategic, business and operational plans for the next financial year; and
  - ii. the Management Board's proposed Aggregate Annual Fee for the next financial year.
  
- (c) the election of the:
  - i. the members of the Management Board (other than those appointed pursuant to clause 9.1.3) whose terms are then expiring;
  - ii. those members of any Committees (other than who are not required to be elected by the General Assembly) whose terms are then expiring;
  
- (d) any general or special business referred to the General Assembly by the Management Board for consideration in the Ordinary Meeting; and
  
- (e) any other business referred to the General Assembly by any Member for consideration in the Ordinary Meeting.

### **Reason for change or addition**

To correct the single numbering error

### **Assurance**

The Management Board can assure the General Assembly that it has discussed these changes and agreed them, it has sought and gained legal advice, reached legal agreement on the wording and confirmed that the changes are in line with Danish Law surrounding Danish Associations

### **Proposed text**

8.2.18 The Ordinary Meeting of the General Assembly taking place in October will consider and vote on resolutions concerning:

- (a) the presentation and adoption of:
  - i. the Management Board's annual strategic, business and operational plans for the next financial year; and
  - ii. the Management Board's proposed Aggregate Annual Fee for the next financial year.
  
- (b) the election of the:
  - i. the members of the Management Board (other than those appointed pursuant to clause 9.1.3) whose terms are then expiring;
  - ii. those members of any Committees (other than who are not required to be elected by the General Assembly) whose terms are then expiring;



(c) any general or special business referred to the General Assembly by the Management Board for consideration in the Ordinary Meeting; and

(d) any other business referred to the General Assembly by any Member for consideration in the Ordinary Meeting.



## **PROPOSED CHANGE NUMBER 3**

### **Current situation**

9.2.1 The Management Board may appoint, without limitation as to their ability to appoint further or different Executive Officers, the following Executive Officers:

- a Chief Executive Officer;
- a Chief Financial Officer;
- a Chief Terminologist;
- a Chief Technical Architect;
- a Chief Quality Assurance Officer; and
- a Chief Research and Innovation Officer.

A person can hold more than one of these positions at any one time, except that a single person may not hold the positions of Chief Executive Officer and Chief Financial Officer simultaneously. Although not generally intended, Directors may be appointed to hold one or more of these positions on a temporary basis.

### **Reason for change or addition**

The proposed change of the wording of clause 9.2.1 is a consequence of the fact that the IHTSDO would like to be able to enter into contracts with third parties that will deliver Executive Officers to the IHTSDO but without the IHTSDO entering into contract directly with the Executive Officers.

According to the present articles the Executive Officers are appointed by the IHTSDO (by the Management Board) and therefore there is a risk that a Danish court would find that it is not in accordance with the Articles that the Executive Officers are not employees of the IHTSDO.

Due to the special position of the CEO the CEO must be a direct employee of the IHTSDO and refer directly to and take direct orders from the Management Board.

### **Assurance**

The Management Board can assure the General Assembly that it has discussed these changes and agreed them, it has sought and gained legal advice, reached legal agreement on the wording and confirmed that the changes are in line with Danish Law surrounding Danish Associations. In addition the Management Board sought and received Danish legal assurance that the clause applying to the Chief Executive does not apply to other officer roles. This occurred at the Extra-ordinary Management Board meeting Sunday 24<sup>th</sup> June at which Martin Habersaat was in attendance. There was some discussion at the Management Board about the wording in the proposed new text and whether the phrase ‘obliging the other party’ should be replaced with ‘with the other parties’, but on a vote the formal wording was retained.

### **Proposed text**

9.2.1 The Management Board may appoint, without limitation as to their ability to appoint further or different Executive Officers, the following Executive Officers:

- a Chief Executive Officer;
- a Chief Financial Officer;



a Chief Terminologist;  
a Chief Technical Architect;  
a Chief Quality Assurance Officer; and  
a Chief Research and Innovation Officer.

A person can hold more than one of these positions at any one time, except that a single person may not hold the positions of Chief Executive Officer and Chief Financial Officer simultaneously. Although not generally intended, Directors may be appointed to hold one or more of these positions on a temporary basis.

The Association can enter into agreements obliging the other party to provide one of its employees to hold a position as Executive Officer in the Association on behalf of the other party. Such agreements can not be entered into regarding the position as Chief Executive Officer.



## **PROPOSED CHANGE NUMBER 4**

### **Current situation**

9.4.8 Each Standing Committee can, in order to ensure proper sharing of knowledge, create Working Groups that shall, subject to any terms of reference set by the Committee, address business specific to the function of that Committee.

### **Reason for change or addition**

The change was required because on deeper analysis of working groups it was found there are different types of working groups, with different functions and purposes. In addition there was not always a one to one relationship between a Working Group and a Committee. The Management Board has produced a Regulation on Working Groups to explain in detail about the differing types and functions. This was in line with legal advice.

### **Assurance**

The Management Board can assure the General Assembly that it has discussed these changes and agreed them, it has sought and gained legal advice, reached legal agreement on the wording and confirmed that the changes are in line with Danish Law surrounding Danish Associations. The Management Board did consider including Ad Hoc Committees into this proposed text but felt on balance that Ad Hoc Committees should not be able to create Working Groups, which were a feature of Standing Committees and their functions. In addition this left the Association with more flexibility about the composition and function of Ad Hoc Committees

### **Proposed text**

9.4.8 If approved by the Management Board each Standing Committee can create Working Groups that shall, subject to any terms of reference set by the Committee, address business specific to the function of that Committee. More than one Standing Committee may jointly create a Working Group, in which case the Working Group's terms of reference will be jointly determined by those Committees



## **PROPOSED CHANGE NUMBER 5**

### **Current situation**

9.4.9 Each Member can appoint a maximum of 2 members to any Working Group. The members of any Working Group may be appointed and dismissed at the Member's discretion.

### **Reason for change or addition**

There is a tension between having a completely open Working Group infrastructure and having a completely closed system. The original wording conveyed a completely closed system perception amongst the community of practice involved with SNOMED CT. In addition it appeared to exclude interested parties who wished to contribute, affiliates and individuals from Non-Member countries.

The Management Board feel the new wording points to an open approach. This wording was felt by the Management Board to reflect more accurately the reality and vision of the Management Board and those who wish to contribute.

### **Assurance**

This clause generated more discussion than any other both internally in the Management Board and externally with our legal advisers.

A business decision has been taken by the Management Board to make the Working Groups an open structure and process. This position was agreed at the extra-ordinary Management Board meeting of 24<sup>th</sup> June 2007 with no dissent.

Legal advice has been extensively sought through this process to challenge the MB and confirm their views. Legal opinion felt that the MB should produce a MB Regulation which gives greater detail and clarity to the proposed drafting. This regulation must not contradict the proposed Article and should detail when a Working Group can be set up, how a Working Group demonstrates its worth, how a Working Group can be disbanded. This Draft Regulation has been written agreed by the Management Board at its meeting of 26<sup>th</sup> June 2007 and posted on the IHTSDO web site for comment before final ratification and publication in six weeks

### **Proposed text**

9.4.9 Membership of Working Groups shall be open to interested parties who can demonstrably contribute to the work of those bodies. Responsibility for some activities and deliverables may be assigned to specific individuals by the relevant Standing Committee.



## **PROPOSED CHANGE NUMBER 6**

### **Current situation**

*[The existing wording shown below for paragraph (d) is the same in each of these sections 9.5.3 and 9.6.3 and 9.7.3 and 9.8.3.]*

(d) one member for and on behalf of each of the Geographical Constituencies, nominated and elected in the same manner as Directors are elected to the Management Board pursuant to clause 9.1.5

### **Reason for change or addition**

This change broadens the membership of the committee allowing for more Members to be seated at the committee. This will ensure both professional skills and political representation in the committee. The maximal numbers of seats will be 16. It is also explicit about Members being able to nominate people outside of their own country who are also either inside or outside their geographical constituency to represent them.

### **Assurance**

The Management Board can assure the General Assembly that it has discussed these changes and agreed them, it has sought and gained legal advice, reached legal agreement on the wording and confirmed that the changes are in line with Danish Law surrounding Danish Associations. The Management Board took a formal vote on whether to have unlimited nomination rights and the result was unanimously in favour of a restriction of nominees to 'up to three' for each Standing Committee.

### **Proposed text**

*[The proposed wordings shown below for paragraph (d) will be the same in each of these sections 9.5.3 and 9.6.3 and 9.7.3 and 9.8.3.]*

(d) at least one and no more than three members for and on behalf of, but not necessarily resident in, each of the Geographical Constituencies. These members will be nominated and elected in the same manner that Directors are elected to the Management Board pursuant to clause 9.1.5, subject to the exception that Members shall be free to nominate up to three candidates and vacant seats will be filled from these candidates according to the votes each received



## **PROPOSED CHANGE NUMBER 7**

### **Current situation**

Exhibit 1: Affiliate license agreement: 3.4 Subject to clauses 3.5 and 3.6, the Licensee shall own all Intellectual Property Rights in all Extensions and Derivatives that the Licensee creates under this Licence Agreement. The Licensee may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person has a Namespace Identifier; and (ii) the transfer is notified in writing to the Licensor within thirty (30) days after the transfer.

### **Reason for change or addition**

This change removes an inconsistency in the Articles. Affiliates do not require a Namespace Identifier to create non-Standards-Based Extensions and non-Standards-Based Derivatives. It therefore is unnecessarily restrictive to limit the assignment of IP in such items to persons with Namespace Identifiers.

### **Assurance**

There were no legal comments on this proposal apart from a minor wording change which has been incorporated into the final paragraph

### **Proposed text**

Exhibit 1: Affiliate license agreement: 3.4 Subject to clauses 3.5 and 3.6, the Licensee shall own all Intellectual Property Rights in all Extensions and Derivatives that the Licensee creates under this Licence Agreement. The Licensee may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person is an Affiliate and, in the case of Standards-Based Extensions or Standards-Based Derivatives, has a Namespace Identifier; and (ii) the transfer is notified in writing to the Licensor within thirty (30) days after the transfer.



## **PROPOSED CHANGE NUMBER 8**

### **Current situation**

Schedule 3, para 7.1.9(b):

(b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Third Party Extensions that the Affiliate creates from the Member's National Extensions, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;

Schedule 3, para 7.1.10(b)

(b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Derivatives that the Affiliate creates from the Member's National Extensions and Derivatives, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;

### **Reason for change or addition**

The change was for consistency with clause 3.4 of Exhibit 1. {Proposed Change Number 7}

### **Assurance**

This change was suggested by legal advisers

### **Proposed text**

Schedule 3, para. 7.1.9(b):

(b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Third Party Extensions that the Affiliate creates from the Member's National Extensions, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person is an Affiliate and has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;

Schedule 3, para. 7.1.10(b):

(b) the Affiliate shall own all Intellectual Property Rights in all Standards-Based Third Party Derivatives that the Affiliate creates from the Member's National Extensions, but that the Affiliate may not assign or otherwise transfer those Intellectual Property Rights to any other person unless (i) that person is an Affiliate and has a Namespace Identifier; and (ii) the transfer is notified in writing to both the Member and the Association within thirty (30) days after the transfer;



## **PROPOSED CHANGE NUMBER 9**

### **Current situation**

Exhibit 1, clause 2.1.5:

2.1.5 subject to clause 5.6, grant sub-licenses of the International Release to End Users to the extent necessary for the End Users to use the Licensee Products

.

### **Reason for change or addition**

Numbering error: The correct reference is to clause 5.8 (which prevents the Licensee from granting new sub-licences under clause 2.1.5 after either party has given notice to terminate the Affiliate Licence).

### **Assurance**

The error was spotted by the legal team who advised the Management Board who agreed with their recommendation to correct the mistake.

### **Proposed text**

Exhibit 1, clause 2.1.5:

2.1.5 subject to clause 5.8, grant sub-licenses of the International Release to End Users to the extent necessary for the End Users to use the Licensee Products.



## **PROPOSED CHANGE NUMBER 10**

### **Current situation**

No current section

### **Reason for change or addition**

It would be worthwhile including this clause because CAP may be processing Licensees' personal data in its role as the IHTSDO's Service Provider. This may involve personal data being transferred outside the EEA for processing by CAP in Illinois

### **Assurance**

This addition was suggested by the legal advisers

### **Proposed text**

Exhibit 1, new clause:

14.6 The Licensee agrees that the Licensor may appoint third parties to process personal data provided by the Licensee to the Licensor under or in connection with this Licence Agreement (including without limitation payment details provided in connection with the payment of Licence Fees). In connection with any such appointment, personal data provided by the Licensee may be transferred to, and processed in, a country outside the European Economic Area (EEA). The laws governing the processing of personal data may be less stringent in such a country than in the member countries of the EEA.



## **PROPOSED CHANGE NUMBER 11**

### **Current situation**

Exhibit 1: Section 2.3

2.3 The Licensee is only permitted under this Licence Agreement to create Third Party Extensions from the International Release and to create Derivatives from the International Release and from those Third Party Extensions. The Licensee may only create an Extension or a Derivative from any Member's Extension pursuant to a licence agreement with that Member in respect of the Member's National Release.

### **Reason for change or addition**

'Third Party' is used twice in conjunction with 'Extensions' in clause 2.3 but is not defined in Appendix A. This is probably a simple mistake which could be fixed by simply changing the words to 'third party'

### **Assurance**

IHTSDO legal review felt the reference to "Third Party" in these clauses is actually redundant, and advised to simply delete those words.

### **Proposed text**

Exhibit 1: Section 2.3

2.3 The Licensee is only permitted under this Licence Agreement to create Extensions from the International Release and to create Derivatives from the International Release and from those Extensions. The Licensee may only create an Extension or a Derivative from any Member's Extension pursuant to a licence agreement with that Member in respect of the Member's National Release.



## **PROPOSED CHANGE NUMBER 12**

### **Current situation**

Exhibit 1: Affiliate License terms

### **Reason for change or addition**

'Regulations' is used but again not defined in Appendix A. This may have been an oversight, perhaps because it is already defined in clause 17 of the IHTSDO Articles.

### **Assurance**

IHTSDO legal team agreed with this feedback and suggested the wording of the solution which was agreed at an extra-ordinary Management Board meeting 24<sup>th</sup> June 2007. This position did however have considerable ramifications through the Articles such that "regulation" needed to change to "Regulation" in clauses 2.6, 2.7, 8.4 and 10.2 (appears twice in 10.2) of Exhibit 1 to Schedule 3.

### **Proposed text**

Within Exhibit 1: Appendix A: In a new row following 'Qualifying Research Project'

<b>Regulations</b>	regulations of the Association made in accordance with its Articles of Association (vedtægter)
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Schedule 3: Exhibit 1: 2.6

2.6 If the Licensee becomes aware of any material error or change or correction needed in the International Release, the Licensee agrees to advise the Licensor promptly of such error, change or correction by following the Licensor's procedures for change notification that the Licensor prescribes by Regulations and notifies to the Licensee from time to time.

Schedule 3: Exhibit 1: 2.7

2.7 The Licensee shall comply with the Internet security measures that the Licensor prescribes by Regulations and notifies to the Licensee from time to time

Schedule 3: Exhibit 1: 8.4

8.4 The Licensee shall be entitled to use the "SNOMED" and "SNOMED CT" trade marks only on the Licensee Products distributed and modified in accordance with this Licence Agreement and any services relating thereto but not otherwise and subject to the trade mark utilisation Regulation developed by the Licensor and published by the Licensor from time to time. All use by the Licensee of the "SNOMED" and "SNOMED CT" trade marks, and all goodwill resulting from that use, shall inure to the Licensor's benefit.

Schedule 3: Exhibit 1: 10.2

10.2 As an Affiliate, the Licensee shall be entitled to participate in the Licensor's Affiliates Forum, which is a forum in which the Licensee and other Affiliates may communicate with the Licensor and with each other. The Licensor may make Regulations from time to time governing the Licensee's participation in the Affiliates Forum. New



Regulations that the Licensor shall make from time to time governing participation in the Affiliates Forum shall not remove the Licensee's right to participate in that forum.



## **PROPOSED CHANGE NUMBER 13**

### **Current situation**

#### Exhibit 1

3.7 Upon the transfer to the Licensor, or to a Member, of the Intellectual Property Rights in any Standards-Based Extension (or part thereof) or Standards-Based Derivative in accordance with **clauses 3.5 or 3.6**:

3.7.1 responsibility for the maintenance and distribution of that Extension (or part thereof) or Derivative shall also transfer from the Licensee to the Licensor or the Member (as the case may be); and

3.7.2 the Licensor hereby grants a licence back to the Licensee from the Licensor or may procure from the Member a licence back to the Licensee (as the case may be) of that Extension (or part thereof) or Derivative, on the same terms as apply to the International Release under **clause 2** of this Licence Agreement, until that Extension (or part thereof) or Derivative becomes part of the International Release or the Member's National Release (as the case may be).

### **Reason for change or addition**

The term; "may" in clause 3.7.2 of Exhibit 1 should read; "will" to ensure that the Licensee is at least assured of securing a license in respect of Extensions or Derivatives it develops (which we consider is the intent).

### **Assurance**

Legal advice would be content to change the word "may" to "will", but felt the IHTSDO would then need to add a new paragraph in Schedule 3. The Management Board discussed this at its extra-ordinary meeting on Sunday 24th June 2007 and confirmed its support for the change and the legal advice it received

### **Proposed text**

#### Exhibit 1

3.7.2 the Licensor hereby grants a licence back to the Licensee from the Licensor or will procure from the Member a licence back to the Licensee (as the case may be) of that Extension (or part thereof) or Derivative, on the same terms as apply to the International Release under **clause 2** of this Licence Agreement, until that Extension (or part thereof) or Derivative becomes part of the International Release or the Member's National Release (as the case may be).

### **AND NEW PARAGRAPH**

#### Schedule 3

8.13 a Member shall, if requested by the Association, grant a licence to an Affiliate as contemplated in clause 3.7.2 of Exhibit 1 to this Schedule 3"



## **PROPOSED CHANGE NUMBER 14**

### **Current situation**

5.6 The Licensee shall, by no later than thirty (30) days after termination of this Licence Agreement for any reason, remove all copies of the International Release from its computer systems and destroy all copies of electronic, paper copy and other media containing or representing any part of the International Release. The Licensee shall, if requested by the Licensor, certify in writing to the Licensor that the Licensee has complied with its obligations under this **clause 5.6**.

### **Reason for change or addition**

Under clause 5.6, the Licensee should be afforded at least 30 days after termination to cease use of the SNOMED CT. In reality, 30 days does not afford the Licensee enough time to implement a replacement framework and would be potentially detrimental to the ongoing provision of healthcare by the Licensee

### **Assurance**

Legal advice agrees that this is a commercial issue. Clearly, there is no point in stipulating a time period with which no Affiliate would be able to comply, but it is worth noting that this clause was the subject of extensive discussion between the Potential Charter Members (as they then were). The Management Board discussed this at an extra-ordinary meeting Sunday 24t June 2007 and concluded that the actual time frame is 345 days as shown in the table below:

<b>Section</b>	<b>Artefact</b>	<b>Notice or resolution period</b>
5.2.1/5.2.2	Escalation Notice	45 days
5.2.2/5.2.3	Breach Notice	90 days
5.2.3	Termination Notice	180 days
5.6	Removal of SNOMEDCT	30 days
<b>Not Applicable</b>	<b>Total</b>	<b>345 days</b>

The Management Board concluded that suppliers were concerned about the 30 days and even with the full explanation some members felt that the 30 days was too short. A motion was formally proposed that the time be extended to 45 days and a formal vote was taken. All voting Members attending voted to extend the time to 45 days.

### **Proposed text**

5.6 The Licensee shall, by no later than forty five (45) days after termination of this Licence Agreement for any reason, remove all copies of the International Release from its computer systems and destroy all copies of electronic, paper copy and other media containing or representing any part of the International Release. The Licensee shall, if requested by the Licensor, certify in writing to the Licensor that the Licensee has complied with its obligations under this **clause 5.6**.