

Company number 1650504

**MACMILLAN U.S. SUBSCRIPTIONS LIMITED**  
(the "Company")


**WRITTEN RECORD OF SOLE MEMBER'S DECISION  
PURSUANT TO SECTION 357  
OF THE COMPANIES ACT 2006**

(Passed 25 November 2010)

**RESOLUTIONS**

The following decisions were taken by us in our capacity as the sole member of the Company on the date written below and such decisions are effective for all purposes as if agreed by the Company in general meeting

- 1 That for the purposes of paragraph 47(3)(b) of Schedule 4 to the Companies Act 2006 (Commencement No 5, Transitional Provisions and Savings) Order 2007, authorisation of conflicts of interest may be given by the directors in accordance with section 175(5)(a) of the Companies Act 2006 at any time following the passing of this resolution
- 2 That the articles of association contained in the document attached to this resolution be approved and adopted as the new articles of association of the Company in substitution for and to the entire exclusion of the existing articles of association (including those provisions which are treated as part of those existing articles by virtue of section 28 of the Companies Act 2006)

  
for and on behalf of  
Macmillan Limited  
Dated 25 November 2010

MONDAY



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29/11/2010  
COMPANIES HOUSE

Company number: 1650504

THE COMPANIES ACT 2006

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

MACMILLAN U.S. SUBSCRIPTIONS LIMITED  
(the "company")

(Adopted by special resolution of the shareholders of the company  
dated 25<sup>th</sup> November 2010)

MONDAY

A06

29/11/2010  
COMPANIES HOUSE

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1. Preliminary

- 1 1 Except as otherwise provided in these articles the Model Articles shall apply to the company. In the case of any inconsistency between these articles and the Model Articles, the provisions of these articles shall prevail. A copy of the Model Articles is set out in part 2 of the schedule to these articles.
- 1 2 Articles 7(2), 8, 9(3), 9(4), 11(2), 14, 15, 17(2) and (3), 18, 19(2), 19(4), 20, 21, 24(1) and (2), 26(1), 31(1), 36(4), 41(1), 45(1), 46(4), 49(3), 49(4), 52 and 53 of the Model Articles shall not apply.
- 1 3 Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (as amended) shall not apply to the company.

2. Definitions and interpretation

- 2 1 In these articles the following words and expressions shall (except where the context otherwise requires) have the following meanings

"Act" means the Companies Act 2006,

"alternate" and "alternate director" have the meaning given in article 7,

"Appointor" has the meaning given in article 7 1,

"Business Day" means any day other than a Saturday, Sunday or a public holiday in England,

"Committee" means a committee of the directors of the company,

"EEA State" has the meaning given in schedule 1 of the Interpretation Act 1978 (a copy of which provision as at the date of adoption of these articles is set out in part 1 of the schedule to these articles),

**"Electronic Address"** has the meaning given in section 333(4) of the Act (a copy of which provision as at the date of adoption of these articles is set out in part 1 of the schedule to these articles),

**"Electronic Means"** has the meaning given in section 1168(4) of the Act (a copy of which provision as at the date of adoption of these articles is set out in part 1 of the schedule to these articles),

**"Eligible Director"** means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of a particular matter),

**"Group Undertaking"** has the meaning given in section 1161(5) of the Act (a copy of which provision as at the date of adoption of these articles is set out in part 1 of the schedule to these articles),

**"Model Articles"** means the model articles for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these articles,

**"Officer"** in relation to a body corporate includes a director, manager or the company secretary,

**"Proxy Notice"** has the meaning given in article 8 7,

**"Qualifying Person"** means

- (a) an individual who is a member of the company,
- (b) a person authorised under section 323 of the Act (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or
- (c) a person appointed as proxy of a member in relation to the meeting, and

**"Relevant Officer"** means any director or other Officer or former director or Officer of the company or an associated company (within the meaning given in article 15 4)

## 2 2 In these articles

- (a) words and expressions defined in the Model Articles (or, in the absence of such definition in the Model Articles, in the Act) shall have the same meanings in these articles unless stated otherwise or the context otherwise requires,
- (b) headings are used for convenience only and shall not affect the construction or interpretation of these articles,
- (c) reference in these articles to an "article" is a reference to the relevant article of these articles unless expressly provided otherwise,
- (d) reference to any statute or statutory provision includes, unless expressly provided otherwise, a reference
  - (i) to that statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any statute or statutory provision, and
  - (ii) any subordinate legislation made under the relevant statutory provision,

- (e) reference in these articles to "**writing**" or "**written**" includes typing, printing, lithography, photography and other modes of representing words in a legible and non transitory form, including electronic form

### **3. Objects**

- 3 1 The objects of the company are unlimited
- 3 2 The liability of the members is limited to the amount, if any, unpaid on the shares held by them

### **4 Directors**

- 4 1 Unless otherwise determined by ordinary resolution, the number of directors shall not be subject to any maximum but shall be no fewer than one
- 4 2 In addition to the rights under article 17(1) of the Model Articles, a shareholder or shareholders having the right to attend and vote at any general meeting of the company and holding a majority in nominal value of the shares giving that right may from time to time by notice in writing or (subject to the Act) in electronic form to the company remove any director from office or appoint any person to be a director, and any such removal or appointment shall be deemed to be an act of the company and not only of such shareholder or shareholders. Any such notice may consist of one or more documents each executed by or on behalf of such shareholder or shareholders and shall take effect at and from the time when such notice is received at the registered office of the company or produced to a meeting of the directors of the company
- 4 3 In any case where, as a result of death or bankruptcy, the company has no shareholders and no directors, the transmittee(s) of the last shareholder to have died or to have had a bankruptcy order made against him (as the case may be) shall have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person) to be a director
- 4 4 For the purposes of article 4 3, where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder. Article 17(2) and (3) of the Model Articles shall not apply
- 4 5 A person shall cease to be a director as soon as that person
- (a) has a bankruptcy order made against him,
  - (b) ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director,
  - (c) becomes, in the reasonable opinion of a majority of his co-directors, incapable by reason of mental disorder of discharging his duties as a director,
  - (d) resigns his office by written notice to the company and such resignation takes effect in accordance with its terms, or
  - (e) is removed from office pursuant to article 4 2

Article 18 of the Model Articles shall not apply

- 4 6 Directors are entitled to such remuneration as the directors determine
- (a) for their services to the company as directors, and
  - (b) for any other service which they undertake for the company
- 4 7 Unless the company by ordinary resolution resolves otherwise or, in the case of remuneration under article 4 6(b), the directors decide otherwise, directors' remuneration accrues from day to day Article 19(4) of the Model Articles shall not apply
- 4 8 The company may pay any reasonable expenses which the directors (including alternate directors) and the secretary properly incur in connection with their attendance at
- (a) meetings of directors or committees of directors,
  - (b) general meetings, or
  - (c) separate meetings of the holders of any class of shares or of debentures of the company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company Article 20 of the Model Articles shall not apply

## **5. Directors' decision-making**

- 5 1 Any decisions made at a quorate meeting of the board of directors (or any Committee) shall be made by a majority decision Any written resolution of Eligible Directors must be unanimous (as set out in article 5 5)
- 5 2 Any director (including an alternate director) or other person may participate in a meeting of the directors or a Committee of which he is a member by means of a conference telephone or similar communicating equipment whereby all persons participating in the meeting can hear each other Resolutions and decisions of the kind normally made or taken at a physical meeting of the directors or a Committee in accordance with these articles can accordingly be so made or taken in circumstances where none or only some of the directors or other persons are physically present with each other Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is Directors (or their alternates) or other persons participating in the manner described in this article shall be deemed to be present in person and to be holding a meeting
- 5 3 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company at any time before or after the date on which the meeting is held Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it Article 9(4) of the Model Articles shall not apply
- 5 4 If
- (a) the company only has one director, and
  - (b) no provision of the articles requires it to have more than one director,

the director, or his alternate must (so far as possible) take decisions whilst having regard to the provisions of the articles relating to directors' decision-making Article 7(2) of the Model Articles shall not apply

- 5 5 A resolution in writing signed by all of the directors (or their alternates, or by each member of a Committee shall be as valid as if passed at a meeting of the directors (or, Committee) Any such resolution in writing may be evidenced by letter, telex, cable, electronic mail, facsimile, or otherwise as the directors may from time to time resolve

Any such written resolution shall be passed when all Eligible Directors indicate to each other by any means that they share a common view on a matter, provided that the Eligible Directors would have formed a quorum if the matter had been proposed at a meeting Such a decision may take the form of a resolution in writing, where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing (including confirmation given by Electronic Means) Article 8 of the Model Articles shall not apply

- 5 6 The directors must ensure that the company keeps a record, in writing, of all directors' decisions for at least ten years from the date of their adoption, including those taken by a sole director or a committee of directors Article 15 of the Model Articles shall not apply

- 5 7 Subject to any contrary provision of these articles, the quorum for directors' meetings may be fixed from time to time by a decision of the shareholders and unless otherwise fixed it is two, save that in the event that there is only one Eligible Director who would be entitled to vote on a matter if proposed as a resolution at a directors' meeting, the quorum for such meeting (or other decision making process) shall be one Article 11(2) of the Model Articles shall not apply

## **6. Directors' conflicts of interests**

- 6 1 Provided (if these articles so require) that he has declared to the directors, in accordance with the provisions of these articles, the nature and extent of his interest, and the directors have given authority for that interest to continue, a director may (save as to the extent not permitted by law from time to time), notwithstanding his office, have an interest of the following kind, namely

- (a) where a director (or a person connected with him) is party to or in any way directly or indirectly interested in, or has any duty in respect of, any existing or proposed contract, arrangement or transaction with the company or any other undertaking in which the company is in any way interested,
- (b) where a director (or a person connected with him) is a director, employee or other Officer of, or a party to any contract, arrangement or transaction with, or in any way interested in, any body corporate promoted by the company or in which the company is in any way interested,
- (c) where a director (or a person connected with him) is a shareholder in the company or a shareholder in, employee, director, shareholder or other Officer of, or consultant to, a Group Undertaking of the company,
- (d) where a director (or a person connected with him) holds and is remunerated in respect of any office or place of profit (other than the office of auditor) under the company or body corporate in which the company is in any way interested,

- (e) where a director is given a guarantee, or is to be given a guarantee, in respect of an obligation incurred by or on behalf of the company or any body corporate in which the company is in any way interested,
- (f) where a director (or a person connected with him or of which he is a shareholder or employee) acts (or any body corporate promoted by the company or in which the company is in any way interested of which he is a director, employee or other Officer acts) in a professional capacity for the company or any body corporate promoted by the company or in which the company is in any way interested (other than as auditor) whether or not he or it is remunerated for this,
- (g) an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- (h) any other interest authorised by ordinary resolution

Article 14 of the Model Articles shall not apply

- 6 2 For the purposes of this article 6, an interest of which a director is not aware and of which it is unreasonable to expect him to be aware shall not be treated as an interest of his
- 6 3 In any situation permitted by this article 6 (save as otherwise agreed by him) a director shall not by reason of his office be accountable to the company for any benefit which he derives from that situation and no such contract, arrangement or transaction shall be avoided on the grounds of any such interest or benefit
- 6 4 Subject to article 6 5, the directors may authorise a director's conflict of interest. The company has, by ordinary resolution, confirmed that the directors have this power by virtue of section 175(5)(a) of the Act. This resolution confirms that section 175(5)(a) of the Act applies to the company in accordance with paragraph 47(3)(b) of schedule 4 to the Companies Act 2006 (Commencement No. 5 (Transitional Provisions and Savings) Order 2007)
- 6 5 Any authority given in respect of a director ("**Interested Director**") who has proposed that the directors authorise his interest ("**Relevant Interest**") pursuant to that section may, for the avoidance of doubt
  - (a) be given on such terms and subject to such conditions or limitations as may be imposed by the authorising directors as they see fit from time to time, including, without limitation
    - (i) restricting the Interested Director from voting on any resolution put to a meeting of the directors or of a committee of the directors in relation to the Relevant Interest,
    - (ii) restricting the Interested Director from being counted in the quorum at a meeting of the directors or of a committee of the directors where such Relevant Interest is to be discussed, or
    - (iii) restricting the application of the provisions in articles 6 6 and 6 7, so far as is permitted by law, in respect of such Interested Director,
  - (b) be withdrawn, or varied at any time by the directors entitled to authorise the Relevant Interest as they see fit from time to time, and

- (c) an Interested Director must act in accordance with any such terms, conditions or limitations imposed by the authorising directors pursuant to section 175(5)(a) of the Act and this article 6
- 6 6 Subject to article 6 7 (and without prejudice to any equitable principle or rule of law which may excuse or release the director from disclosing information in circumstances where disclosure may otherwise be required under this article), if a director, otherwise than by virtue of his position as director, receives information in respect of which he owes a duty of confidentiality to a person other than the company, he shall not be required
  - (a) to disclose such information to the company or to the directors, or to any director, officer or employee of the company, or
  - (b) otherwise to use or apply such confidential information for the purpose of or in connection with the performance of his duties as a director
- 6 7 Where such duty of confidentiality arises out of a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company, article 6 6 shall apply only if the conflict arises out of a matter which falls within article 6 1 or has been authorised under section 175(5)(a) of the Act (subject to any restrictions imposed by the authorising directors)
- 6 8 Where a director has an interest which can reasonably be regarded as likely to give rise to a conflict of interest, the director may take such additional steps as may be necessary or desirable for the purpose of managing such conflict of interest, including compliance with any procedures laid down from time to time by the directors for the purpose of managing conflicts of interest generally and/or any specific procedures approved by the directors for the purpose of or in connection with the situation or matter in question, including without limitation
  - (a) absenting himself from any discussions, whether in meetings of the directors or otherwise, at which the relevant situation or matter falls to be considered, and
  - (b) excluding himself from documents or information made available to the directors generally in relation to such situation or matter and/or arranging for such documents or information to be reviewed by a professional adviser to ascertain the extent to which it might be appropriate for him to have access to such documents or information
- 6 9 Subject to section 182 of the Act, a director shall declare the nature and extent of any interest permitted by article 6 1 at a meeting of the directors, or by general notice in accordance with section 184 (notice in writing) or section 185 (general notice) of the Act or in such other manner as the directors may determine, except that no declaration of interest shall be required by a director in relation to an interest
  - (a) falling under article 6 1(g),
  - (b) if, or to the extent that, the other directors are already aware of such interest (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware), or
  - (c) if, or to the extent that, it concerns the terms of his service contract (as defined by section 227 of the Act) that have been or are to be considered by a meeting of the directors, or by a committee of directors appointed for the purpose under these articles



6 10 Provided (if these articles so require) that he has declared to the directors, in accordance with the provisions of these articles, the nature and extent of his interest (and subject to any restrictions on voting or counting in a quorum imposed by the directors in authorising a Relevant Interest), a director, in relation to any resolution concerning a matter in which he has an interest, whether a direct or indirect interest, or in relation to which he has a duty

(a) can vote, and be counted in reckoning as to whether a quorum is present, at a meeting of the directors or of a committee of the directors, and

(b) shall be an Eligible Director, and be counted as participating, for the purposes of determining whether a quorum is participating

6 11 Subject to section 239 of the Act, the company may by ordinary resolution ratify any contract, transaction or arrangement, or other proposal, not properly authorised by reason of a contravention of any provisions of this article

6 12 For the purposes of this article 6

(a) a conflict of interest includes a conflict of interest and duty and a conflict of duties,

(b) the provisions of section 252 of the Act shall determine whether a person is connected with a director, and

(c) a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified

## **7. Alternate directors**

7 1 Any director (the "**Appointor**") (other than an alternate director) may appoint as an alternate any other director or any other person to

(a) exercise that director's powers, and

(b) carry out that director's responsibilities,

in relation to the taking of decisions by the directors in the absence of the alternate's Appointor

7 2 Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the Appointor, or in any other manner approved by the directors

7 3 The notice must

(a) identify the proposed alternate, and

(b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice

7 4 An alternate director may act as an alternate to more than one director and has the same rights, in relation to any directors' meeting (including as to notice) or directors' written resolution, as the alternate's Appointor

- 7 5 Except as these articles specify otherwise, an alternate director
- (a) is deemed for all purposes to be a director,
  - (b) is liable for his own acts and omissions,
  - (c) is subject to the same restrictions as his Appointor, and
  - (d) is not deemed to be an agent of or for his Appointor
- 7 6 A person who is an alternate director but not a director
- (a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's Appointor is not participating), and
  - (b) may sign a directors' written resolution (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate)
- 7 7 A director who is also an alternate director is entitled, in the absence of his Appointor, to a separate vote on behalf of each Appointor, in addition to his own vote on any decision of the directors (provided that his Appointor is an Eligible Director in relation to that decision)
- 7 8 An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director, except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the company
- 7 9 An alternate director's appointment as an alternate director shall terminate
- (a) when the alternate director's Appointor revokes the appointment by notice to the company in writing specifying when it is to terminate,
  - (b) on the occurrence in relation to the alternate director of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director,
  - (c) on the death of the alternate director's Appointor, or
  - (d) when the alternate director's Appointor's appointment as a director terminates for any other reason

## **8. Decision-making by shareholders**

- 8 1 The quorum of a general meeting shall
- (a) be one Qualifying Person present at that meeting if and for so long as the company has only one member, and
  - (b) be two Qualifying Persons present at that meeting if and for so long as the company has more than one member
- 8 2 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, the meeting shall stand adjourned to such date and time as the directors may determine. Article 41(1) of the Model Articles shall not apply. Article 41(4) of the Model Articles shall only apply to meetings adjourned under article 41(2) of the Model Articles

- 8 3 The provisions of section 318 of the Act shall apply to the company, save that
- (a) if there is only one shareholder who is permitted to vote upon the business at the meeting, the quorum for that part of meeting considering the business for which only one shareholder is permitted to vote shall be one Qualifying Person present at the meeting, and
  - (b) if a quorum is not present at any meeting adjourned for the reason referred to in the first sentence of article 8 1, then, provided that the Qualifying Person present holds or represents the holder of at least 50 per cent in nominal value of the ordinary shares of the company in issue, any resolution agreed to by such Qualifying Person shall be as valid and effectual as if it had been passed unanimously at a general meeting of the company duly convened and held
- 8 4 If any two or more shareholders (or Qualifying Persons representing two or more shareholders) attend the meeting in different locations, the meeting shall be treated as being held at the location specified in the notice of the meeting, save that if no one is present at that location so specified, the meeting shall be deemed to take place where the largest number of Qualifying Persons is assembled or, if no such group can be identified, at the location of the chairman
- 8 5 If at any general meeting any votes are counted which ought not to have been counted, or are not counted which ought to have been counted, the error shall not vitiate the result of the voting unless
- (a) it is pointed out at the same meeting, and
  - (b) it is, in the opinion of the chairman of the meeting, of sufficient magnitude to affect the result of the voting
- 8 6 If a demand for a poll is withdrawn under article 44(3) of the Model Articles, the demand shall not be taken to have invalidated the result of a show of hands declared before the demand was made and the meeting shall continue as if the demand had not been made
- 8 7 Article 44(4) of the Model Articles shall apply to any vote taken on a poll
- 8 8 Proxies may only validly be appointed by a notice in writing (a "**Proxy Notice**") which
- (a) states the name and address of the shareholder appointing the proxy,
  - (b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed,
  - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine, and
  - (d) is either handed to the chairman any time before the start of the relevant meeting or delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate

Article 45(1) of the Model Articles shall not apply

## 9. Shares

- 9 1 The share capital of the company at the date of adoption of these articles is divided into ordinary shares of £1 each

- 9 2 The issued share capital of the company at the date of adoption of these articles is 100 ordinary shares of £1 each
- 9 3 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue
- 9 4 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the company
- 9 5 Any equity securities shall be at the disposal of the directors who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper
- 9 6 No shares shall (unless the board resolves otherwise) be allotted to any employee, director, prospective employee or director who is resident in the United Kingdom unless such person has entered into a joint election with the company under section 431 of the Income Tax (Earnings and Pensions) Act 2003
- 9 7 Whenever as a result of a consolidation of shares any shareholders would become entitled to fractions of a share, the directors may, on behalf of those shareholders, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the company) and distribute the net proceeds of sale in due proportion among those shareholders. The directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale
- 9 8 The company shall issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds. Every certificate shall specify
- (a) in respect of how many shares, of what class, it is issued,
  - (b) the nominal value of those shares, and
  - (c) the amount paid up on them
- Articles 24(1) and (2) of the Model Articles shall not apply
- 9 9 A shareholder exercising the right to be issued with a replacement certificate under article 25 of the Model Articles shall comply with such conditions as to evidence, indemnity and payment of a reasonable fee as the directors decide, including but not limited to the payment of the expenses reasonably incurred (if any) by the company in investigating evidence as the directors may determine. Article 25(2)(c) of the Model Articles shall be modified accordingly
- 9 10 The company may pay any person a commission in consideration for that person
- (a) subscribing, or agreeing to subscribe, for shares, or
  - (b) procuring, or agreeing to procure, subscriptions for shares

## **10. Transfer of shares**

10 1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor

10 2 Article 26(1) of the Model Articles shall not apply

## **11 Distributions**

11 1 Where a dividend or other cash sum which is a distribution is payable in respect of a share, it shall be paid by one or more of the following means

- (a) transfer to a bank or building society account specified by the distribution recipient (as defined in article 31(2) of the Model Articles) in writing,
- (b) sending of a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to such other address as specified by the distribution recipient in writing,
- (c) sending of a cheque made payable to such person by post to such person at such address as the distribution recipient has specified in writing, or
- (d) any other means of payment as the directors agree with the distribution recipient in writing

Article 31(1) of the Model Articles shall not apply

11 2 A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct

Article 36(4) of the Model Articles shall not apply

## **12 Company Secretary**

12 1 The directors shall be entitled (but not required) to appoint one or more company secretary and/or assistant company secretary for such term, at such remuneration and upon such conditions as they may think fit, and any company secretary or assistant company secretary so appointed may be removed by them

12 2 Any company secretary or assistant company secretary shall have such authority as vested in such Officer by the Company. In the absence of a resolution to the contrary, each such officer shall have authority to sign, execute and deliver documents on behalf of the Company and affix and witness the seal of the Company, on such basis as is required and approved or ratified by the board from time to time

## **13. Communications**

13 1 Subject to the Act, any notice given or document sent or supplied to or by any person under these articles, or otherwise sent by the company under the Act, may be given, sent or supplied

- (a) in hard copy form,

(b) in electronic form,

or partly by one of these means and partly by another of these means. For the purposes of this article 13 "electronic form" includes facsimile and email as well as any other type of electronic communication

Notices shall be given and documents supplied in accordance with the procedures set out in the Act, except to the extent that a contrary provision is set out in this article 13

13 2 Any notice, document or other information given or supplied under the Act or the articles shall be deemed to have been serviced and be effective

(a) if properly addressed and delivered by hand (whether in hard copy form or electronic form), at the time of delivery at the appropriate address,

(b) if properly addressed to an address in the United Kingdom and posted by prepaid United Kingdom first class post (whether in hard copy form or electronic form), on receipt or 48 hours after the time it was posted, whichever occurs first,

(c) if properly addressed and sent (either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom) by reputable international courier addressed to the intended recipient, provided that delivery within at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider), five business days after posting or, if earlier, the date of delivery as confirmed by the courier service provider,

(d) if sent by facsimile or email (to a fax number or an email address notified by the intended recipient for that purpose), on receipt or 24 hours after the time it was sent, whichever occurs first, or

(e) if sent by any other Electronic Means, at the time such delivery is deemed to occur under the Act

13 3 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was addressed to an address permitted for the purpose by the Act

13 4 Where the company is able to show that any notice, document or other information given or supplied under the Act or the articles by Electronic Means was properly addressed with the electronic address supplied by the intended recipient, the giving or supply of that notice, document or other information shall be effective notwithstanding any receipt by the company at any time of notice either that such method of communication has failed or of the intended recipient's non-receipt

13 5 In the case of joint holders of a share all notices, documents or other information shall be given or supplied to the joint holder whose name stands first in the register of members of the company in respect of the joint holding (the "**Primary Holder**") Notice so given shall constitute notice to all the joint holders and any other documents or information so supplied shall be deemed to have been given to all the joint holders

13 6 Anything agreed or specified by the Primary Holder in relation to the service, sending or supply of notices, documents or other information shall be treated as the agreement or specification of all the joint holders in their capacity as such (whether for the purposes of the Act or otherwise)

- 13 7 A document or information sent or supplied to the company by one person on behalf of another must be accompanied by written evidence of the authority (being the original, a duly certified copy of the grant of authority or such other evidence as the directors deem appropriate) of that person to act on behalf of the other

#### **14. Company seal**

- 14 1 Unless otherwise decided by the directors, if the company has a common seal and if the common seal is affixed to a document, the document must also be signed by no fewer than two directors or alternatively by one director and the company secretary or by one director and any assistant company secretary or by two persons duly authorised by resolution of the board of directors Articles 49(3) and 49(4) of the Model Articles shall not apply
- 14 2 Any other document executed and delivered as a deed by the company shall, unless otherwise decided by the directors, be signed by two directors of the company or by one director and the company secretary or by one director and any assistant company secretary

#### **15. Indemnity and insurance**

- 15 1 This article 15 does not authorise or provide any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law The provisions of sections 232, 234 and 239 (amongst others) of the Act (as set out in part 1 of the schedule to these articles) currently apply to qualifying indemnities under the Act
- 15 2 Subject to article 15 1
- (a) each Relevant Officer shall be indemnified out of the company's assets against
    - (i) any liability incurred by that person in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company, and
    - (ii) any other liability incurred by that person as an officer of the company or an associated company, and
  - (b) the company may provide any Relevant Officer with funds to meet expenditure incurred or to be incurred by him in connection with defending any civil or criminal proceedings or any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure
- 15 3 The directors shall (as permitted by section 233 of the Act) be entitled to purchase and maintain insurance, at the expense of the company, for the benefit of any Relevant Officer in respect of any loss or liability which has been or may be incurred by a Relevant Officer in connection with that Relevant Officer's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company
- 15 4 In this article 15, companies are "associated" if one is a subsidiary of the other or both are subsidiaries of the same body corporate

## **SCHEDULE**

### **Part 1**

**1. Extract from Schedule 1 to the Interpretation Act 1978:**

““EEA State”, in relation to any time, means—

- (a) a state which at that time is a member state, or
- (b) any other state which at that time is a party to the EEA Agreement,”

**2. Extract from section 333(4) of the Companies Act 2006:**

“(4) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means ”

**3. Extract from section 1161 of the Companies Act 2006:**

**“1161 Meaning of “undertaking” and related expressions**

(1) In the Companies Acts “undertaking” means—

- (a) a body corporate or partnership, or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit

(2) In the Companies Acts references to shares—

- (a) in relation to an undertaking with capital but no share capital, are to rights to share in the capital of the undertaking, and
- (b) in relation to an undertaking without capital, are to interests—
  - (i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking, or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up

(3) Other expressions appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description

This is subject to provision in any specific context providing for the translation of such expressions

(4) References in the Companies Acts to “fellow subsidiary undertakings” are to undertakings which are subsidiary undertakings of the same parent



undertaking but are not parent undertakings or subsidiary undertakings of each other

- (5) In the Companies Acts "group undertaking", in relation to an undertaking, means an undertaking which is—
- (a) a parent undertaking or subsidiary undertaking of that undertaking, or
  - (b) a subsidiary undertaking of any parent undertaking of that undertaking "

**4 Extract from section 1168(4) of the Companies Act 2006:**

- "(4) A document or information is sent or supplied by electronic means if it is—
- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and
  - (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means

References to electronic means have a corresponding meaning "

**5. Sections 232, 233, 234 and 239 of the Companies Act 2006:**

**"232 Provisions protecting directors from liability**

Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void

Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by

- (a) section 233 (provision of insurance)
- (b) section 234 (qualifying third party indemnity provision), or

**233 Provision of insurance**

Section 232(2) (voidness of provisions for indemnifying directors) does not prevent a company from purchasing and maintaining for a director of the company, or of an associated company, insurance against any such liability as is mentioned in that subsection

**234 Qualifying third party indemnity provision**

- (1) Section 232(2) (voidness of provisions for indemnifying directors) does not apply to qualifying third party indemnity provision
- (2) Third party indemnity provision means provision for indemnity against liability incurred by the director to a person other than the company or an associated company

Such provision is qualifying third party indemnity provision if the following requirements are met

- (3) The provision must not provide any indemnity against
  - (a) any liability of the director to pay
    - (i) a fine imposed in criminal proceedings, or
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), or
  - (b) any liability incurred by the director
    - (i) in defending criminal proceedings in which he is convicted, or
    - (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
    - (iii) in connection with an application for relief (see subsection (6)) in which the court refuses to grant him relief
- (4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings
- (5) For this purpose
  - (a) a conviction, judgment or refusal of relief becomes final
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and
  - (b) an appeal is disposed of
    - (i) if it is determined and the period for bringing any further appeal has ended, or
    - (ii) if it is abandoned or otherwise ceases to have effect
- (6) The reference in subsection (3)(b)(iii) to an application for relief is to an application for relief under
  - section 661(3) or (4) (power of court to grant relief in case of acquisition of shares by innocent nominee), or
  - section 1157 (general power of court to grant relief in case of honest and reasonable conduct)
    - (i) if not appealed against, at the end of the period for bringing an appeal, or
    - (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and

- (b) an appeal is disposed of
  - (i) if it is determined and the period for bringing any further appeal has ended, or
  - (ii) if it is abandoned or otherwise ceases to have effect

**239 Ratification of acts of directors**

- (1) This section applies to the ratification by a company of conduct by a director amounting to negligence, default, breach of duty or breach of trust in relation to the company
- (2) The decision of the company to ratify such conduct must be made by resolution of the members of the company
- (3) Where the resolution is proposed as a written resolution neither the director (if a member of the company) nor any member connected with him is an eligible member
- (4) Where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him

This does not prevent the director or any such member from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered

- (5) For the purposes of this section
  - (a) "conduct" includes acts and omissions,
  - (b) "director" includes a former director,
  - (c) a shadow director is treated as a director, and
  - (d) in section 252 (meaning of "connected person"), subsection (3) does not apply (exclusion of person who is himself a director)
- (6) Nothing in this section affects
  - (a) the validity of a decision taken by unanimous consent of the members of the company, or
  - (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company
- (7) This section does not affect any other enactment or rule of law imposing additional requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company "

## **Part 2**

### **MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED BY SHARES**

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**PART 1**  
**INTERPRETATION AND LIMITATION OF LIABILITY**

**Defined terms**

1 In the articles, unless the context requires otherwise—

**"articles"** means the company's articles of association

**"bankruptcy"** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy

**"chairman"** has the meaning given in article 12,

**"chairman of the meeting"** has the meaning given in article 39,

**"Companies Acts"** means the Companies Acts (as defined in section 2 of the Companies Act 2006) in so far as they apply to the company

**"director"** means a director of the company and includes any person occupying the position of director by whatever name called

**"distribution recipient"** has the meaning given in article 31

**"document"** includes, unless otherwise specified, any document sent or supplied in electronic form,

**"electronic form"** has the meaning given in section 1168 of the Companies Act 2006

**"fully paid"** in relation to a share means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company,

**"hard copy form"** has the meaning given in section 1168 of the Companies Act 2006,

**"holder"** in relation to shares means the person whose name is entered in the register of members as the holder of the shares,

**"instrument"** means a document in hard copy form

**"ordinary resolution"** has the meaning given in section 282 of the Companies Act 2006,

**"paid"** means paid or credited as paid,

**"participate"** in relation to a directors' meeting, has the meaning given in article 10

**"proxy notice"** has the meaning given in article 45,

**"shareholder"** means a person who is the holder of a share

**"shares"** means shares in the company

**"special resolution"** has the meaning given in section 283 of the Companies Act 2006,

**"subsidiary"** has the meaning given in section 1159 of the Companies Act 2006,

**"transmittee"** means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law and

**"writing"** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise

Unless the context otherwise requires other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company

#### **Liability of members**

- 2           The liability of the members is limited to the amount, if any, unpaid on the shares held by them

## **PART 2 DIRECTORS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES**

#### **Directors' general authority**

- 3           Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company

#### **Shareholders' reserve power**

- 4           (1)       The shareholders may, by special resolution direct the directors to take or refrain from taking, specified action
- (2)       No such special resolution invalidates anything which the directors have done before the passing of the resolution

#### **Directors may delegate**

- 5           (1)       Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—
- (a)       to such person or committee
- (b)       by such means (including by power of attorney),
- (c)       to such an extent
- (d)       in relation to such matters or territories, and
- (e)       on such terms and conditions,
- as they think fit
- (2)       If the directors so specify any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated
- (3)       The directors may revoke any delegation in whole or part or alter its terms and conditions

#### **Committees**

- 6           (1)       Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors
- (2)       The directors may make rules of procedure for all or any committees which prevail over rules derived from the articles if they are not consistent with them

## **DECISION-MAKING BY DIRECTORS**

#### **Directors to take decisions collectively**

- 7           (1)       The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8

(2) If—

(a) the company only has one director and

(b) no provision of the articles requires it to have more than one director,

the general rule does not apply and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making

#### **Unanimous decisions**

8 (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting

#### **Calling a directors' meeting**

9 (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time

(b) where it is to take place, and

(c) if it is anticipated that directors participating in the meeting will not be in the same place how it is proposed that they should communicate with each other during the meeting

(3) Notice of a directors' meeting must be given to each director, but need not be in writing

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held that does not affect the validity of the meeting or of any business conducted at it

#### **Participation in directors' meetings**

10 (1) Subject to the articles directors participate in a directors' meeting or part of a directors' meeting when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting

(2) In determining whether directors are participating in a directors' meeting it is irrelevant where any director is or how they communicate with each other

(3) If all the directors participating in a meeting are not in the same place they may decide that the meeting is to be treated as taking place wherever any of them is



#### **Quorum for directors' meetings**

- 11
- (1) At a directors' meeting unless a quorum is participating, no proposal is to be voted on except a proposal to call another meeting
  - (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors but it must never be less than two, and unless otherwise fixed it is two
  - (3) If the total number of directors for the time being is less than the quorum required the directors must not take any decision other than a decision—
    - (a) to appoint further directors or
    - (b) to call a general meeting so as to enable the shareholders to appoint further directors

#### **Chairing of directors' meetings**

- 12
- (1) The directors may appoint a director to chair their meetings
  - (2) The person so appointed for the time being is known as the chairman
  - (3) The directors may terminate the chairman's appointment at any time
  - (4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start the participating directors must appoint one of themselves to chair it

#### **Casting vote**

- 13
- (1) If the numbers of votes for and against a proposal are equal the chairman or other director chairing the meeting has a casting vote
  - (2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes

#### **Conflicts of interest**

- 14
- (1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested that director is not to be counted as participating in the decision-making process for quorum or voting purposes
  - (2) But if paragraph (3) applies a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes
  - (3) This paragraph applies when—
    - (a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process,
    - (b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest or
    - (c) the director's conflict of interest arises from a permitted cause
  - (4) For the purposes of this article, the following are permitted causes—
    - (a) a guarantee given or to be given by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries,

- (b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries or to underwrite, sub-underwrite or guarantee subscription for any such shares or securities and
  - (c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors
- (5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting
- (6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes the question may before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive
- (7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes

#### **Records of decisions to be kept**

- 15 The directors must ensure that the company keeps a record in writing for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors

#### **Directors' discretion to make further rules**

- 16 Subject to the articles the directors may make any rule which they think fit about how they take decisions and about how such rules are to be recorded or communicated to directors

### **APPOINTMENT OF DIRECTORS**

#### **Methods of appointing directors**

- 17 (1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
- (a) by ordinary resolution, or
  - (b) by a decision of the directors
- (2) In any case where, as a result of death the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing to appoint a person to be a director
- (3) For the purposes of paragraph (2) where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder

#### **Termination of director's appointment**

- 18 A person ceases to be a director as soon as—
- (a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law,
  - (b) a bankruptcy order is made against that person,
  - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts

- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months,
- (e) by reason of that person's mental health a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have,
- (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms

#### **Directors' remuneration**

- 19
- (1) Directors may undertake any services for the company that the directors decide
  - (2) Directors are entitled to such remuneration as the directors determine—
    - (a) for their services to the company as directors, and
    - (b) for any other service which they undertake for the company
  - (3) Subject to the articles, a director's remuneration may—
    - (a) take any form, and
    - (b) include any arrangements in connection with the payment of a pension allowance or gratuity, or any death, sickness or disability benefits to or in respect of that director
  - (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day
  - (5) Unless the directors decide otherwise directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested

#### **Directors' expenses**

- 20
- The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—
- (a) meetings of directors or committees of directors,
  - (b) general meetings, or
  - (c) separate meetings of the holders of any class of shares or of debentures of the company,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company

### **PART 3 SHARES AND DISTRIBUTIONS**

#### **SHARES**

##### **All shares to be fully paid up**

- 21
- (1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue
  - (2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum

#### **Powers to issue different classes of share**

- 22 (1) Subject to the articles, but without prejudice to the rights attached to any existing share the company may issue shares with such rights or restrictions as may be determined by ordinary resolution
- (2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder and the directors may determine the terms conditions and manner of redemption of any such shares

#### **Company not bound by less than absolute interests**

- 23 Except as required by law, no person is to be recognised by the company as holding any share upon any trust and except as otherwise required by law or the articles the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it

#### **Share certificates**

- 24 (1) The company must issue each shareholder free of charge with one or more certificates in respect of the shares which that shareholder holds
- (2) Every certificate must specify—
- (a) in respect of how many shares, of what class, it is issued
  - (b) the nominal value of those shares
  - (c) that the shares are fully paid and
  - (d) any distinguishing numbers assigned to them
- (3) No certificate may be issued in respect of shares of more than one class
- (4) If more than one person holds a share only one certificate may be issued in respect of it
- (5) Certificates must—
- (a) have affixed to them the company's common seal or
  - (b) be otherwise executed in accordance with the Companies Acts

#### **Replacement share certificates**

- 25 (1) If a certificate issued in respect of a shareholder's shares is—
- (a) damaged or defaced or
  - (b) said to be lost stolen or destroyed
- that shareholder is entitled to be issued with a replacement certificate in respect of the same shares
- (2) A shareholder exercising the right to be issued with such a replacement certificate—
- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates
  - (b) must return the certificate which is to be replaced to the company if it is damaged or defaced and
  - (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide

### Share transfers

- 26
- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors which is executed by or on behalf of the transferor
  - (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share
  - (3) The company may retain any instrument of transfer which is registered
  - (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it
  - (5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent

### Transmission of shares

- 27
- (1) If title to a share passes to a transferee, the company may only recognise the transferee as having any title to that share
  - (2) A transferee who produces such evidence of entitlement to shares as the directors may properly require—
    - (a) may subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and
    - (b) subject to the articles and pending any transfer of the shares to another person, has the same rights as the holder had
  - (3) But transferees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise unless they become the holders of those shares

### Exercise of transferees' rights

- 28
- (1) Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish
  - (2) If the transferee wishes to have a share transferred to another person the transferee must execute an instrument of transfer in respect of it
  - (3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transferee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred

### Transferees bound by prior notices

- 29
- If a notice is given to a shareholder in respect of shares and a transferee is entitled to those shares the transferee is bound by the notice if it was given to the shareholder before the transferee's name has been entered in the register of members

## DIVIDENDS AND OTHER DISTRIBUTIONS

### Procedure for declaring dividends

- 30
- (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends
  - (2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors

- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights
- (4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it
- (5) If the company's share capital is divided into different classes no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear
- (6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment
- (7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights

#### Payment of dividends and other distributions

31 (1) Where a dividend or other sum which is a distribution is payable in respect of a share it must be paid by one or more of the following means—

- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide,
- (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide,
- (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide or
- (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide

(2) In the articles "**the distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable—

- (a) the holder of the share or
- (b) if the share has two or more joint holders, whichever of them is named first in the register of members or
- (c) if the holder is no longer entitled to the share by reason of death or bankruptcy or otherwise by operation of law the transferee

#### No interest on distributions

32 The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued, or
- (b) the provisions of another agreement between the holder of that share and the company

#### Unclaimed distributions

33 (1) All dividends or other sums which are—

- (a) payable in respect of shares, and

(b) unclaimed after having been declared or become payable

may be invested or otherwise made use of by the directors for the benefit of the company until claimed

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment and

(b) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company

#### **Non-cash distributions**

34 (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation shares or other securities in any company)

(2) For the purposes of paying a non-cash distribution the directors may make whatever arrangements they think fit including where any difficulty arises regarding the distribution—

(a) fixing the value of any assets

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients, and

(c) vesting any assets in trustees

#### **Waiver of distributions**

35 Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect but if—

(a) the share has more than one holder or

(b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders or otherwise

the notice is not effective unless it is expressed to be given and signed by all the holders or persons otherwise entitled to the share

### **CAPITALISATION OF PROFITS**

#### **Authority to capitalise and appropriation of capitalised sums**

36 (1) Subject to the articles the directors may if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions

- (2) Capitalised sums must be applied—
  - (a) on behalf of the persons entitled and
  - (b) in the same proportions as a dividend would have been distributed to them
- (3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct
- (4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct
- (5) Subject to the articles the directors may—
  - (a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another
  - (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments), and
  - (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article

#### PART 4 DECISION-MAKING BY SHAREHOLDERS

##### ORGANISATION OF GENERAL MEETINGS

###### Attendance and speaking at general meetings

- 37 (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting during the meeting any information or opinions which that person has on the business of the meeting
- (2) A person is able to exercise the right to vote at a general meeting when—
  - (a) that person is able to vote during the meeting, on resolutions put to the vote at the meeting, and
  - (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it
- (4) In determining attendance at a general meeting it is immaterial whether any two or more members attending it are in the same place as each other
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting they are (or would be) able to exercise them

###### Quorum for general meetings

- 38 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum



#### Chairing general meetings

- 39 (1) If the directors have appointed a chairman the chairman shall chair general meetings if present and willing to do so
- (2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—
- (a) the directors present or
- (b) (if no directors are present) the meeting
- must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting
- (3) The person chairing a meeting in accordance with this article is referred to as **"the chairman of the meeting"**

#### Attendance and speaking by directors and non-shareholders

- 40 (1) Directors may attend and speak at general meetings whether or not they are shareholders
- (2) The chairman of the meeting may permit other persons who are not—
- (a) shareholders of the company or
- (b) otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting

#### Adjournment

- 41 (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum or if during a meeting a quorum ceases to be present the chairman of the meeting must adjourn it
- (2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—
- (a) the meeting consents to an adjournment, or
- (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner
- (3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting
- (4) When adjourning a general meeting the chairman of the meeting must—
- (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting
- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned the company must give at least 7 clear days' notice of it (that is excluding the day of the adjourned meeting and the day on which the notice is given)—
- (a) to the same persons to whom notice of the company's general meetings is required to be given, and
- (b) containing the same information which such notice is required to contain

- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place

#### VOTING AT GENERAL MEETINGS

##### Voting general

- 42 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles

##### Errors and disputes

- 43 (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at the meeting is valid
- (2) Any such objection must be referred to the chairman of the meeting, whose decision is final

##### Poll votes

- 44 (1) A poll on a resolution may be demanded—
- (a) in advance of the general meeting where it is to be put to the vote or
- (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared
- (2) A poll may be demanded by—
- (a) the chairman of the meeting
- (b) the directors
- (c) two or more persons having the right to vote on the resolution or
- (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution
- (3) A demand for a poll may be withdrawn if—
- (a) the poll has not yet been taken and
- (b) the chairman of the meeting consents to the withdrawal
- (4) Polls must be taken immediately and in such manner as the chairman of the meeting directs

##### Content of proxy notices

- 45 (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—
- (a) states the name and address of the shareholder appointing the proxy;
- (b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed
- (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine, and

- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate
- (2) The company may require proxy notices to be delivered in a particular form and may specify different forms for different purposes
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions
- (4) Unless a proxy notice indicates otherwise it must be treated as—
  - (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself

#### **Delivery of proxy notices**

- 46 (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it even though a valid proxy notice has been delivered to the company by or on behalf of that person
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates
- (4) If a proxy notice is not executed by the person appointing the proxy it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf

#### **Amendments to resolutions**

- 47 (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine) and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting materially alter the scope of the resolution
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if—
  - (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution
- (3) If the chairman of the meeting acting in good faith, wrongly decides that an amendment to a resolution is out of order the chairman's error does not invalidate the vote on that resolution

**PART 5**  
**ADMINISTRATIVE ARRANGEMENTS**

**Means of communication to be used**

- 48 (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company
- (2) Subject to the articles any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being
- (3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent and for the specified time to be less than 48 hours

**Company seals**

- 49 (1) Any common seal may only be used by the authority of the directors
- (2) The directors may decide by what means and in what form any common seal is to be used
- (3) Unless otherwise decided by the directors if the company has a common seal and it is affixed to a document the document must also be signed by at least one authorised person in the presence of a witness who attests the signature
- (4) For the purposes of this article, an authorised person is—
- (a) any director of the company,
  - (b) the company secretary (if any), or
  - (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied

**No right to inspect accounts and other records**

- 50 Except as provided by law or authorised by the directors or an ordinary resolution of the company no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder

**Provision for employees on cessation of business**

- 51 The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary

**DIRECTORS' INDEMNITY AND INSURANCE**

**Indemnity**

- 52 (1) Subject to paragraph (2) a relevant director of the company or an associated company may be indemnified out of the company's assets against—
- (a) any liability incurred by that director in connection with any negligence, default breach of duty or breach of trust in relation to the company or an associated company

- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)
- (c) any other liability incurred by that director as an officer of the company or an associated company
- (2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law
- (3) In this article—
  - (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
  - (b) a **"relevant director"** means any director or former director of the company or an associated company

#### Insurance

- 53 (1) The directors may decide to purchase and maintain insurance at the expense of the company for the benefit of any relevant director in respect of any relevant loss
- (2) In this article—
  - (a) a **"relevant director"** means any director or former director of the company or an associated company,
  - (b) a **"relevant loss"** means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company and
  - (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate