

THE COMPANIES ACT 1985
COMPANY LIMITED BY SHARES

MERCURY AIRFREIGHT HOLDINGS LIMITED

At an extraordinary general meeting of Mercury Airfreight Holdings Limited duly convened and held at Falcon House, Central Way, Feltham, Middlesex TW14 OUQ on 15 December, 1995 the following resolutions were passed as special resolutions:-

SPECIAL RESOLUTIONS

1. THAT:-

- (a) the authorised share capital of the company be increased by the creation of an additional 1,500,000 'B' ordinary shares of 10p each, in each case having the rights and being subject to the restrictions to be set out in the articles of association of the company as amended pursuant to paragraph (b) below;

- (b) the articles of association of the company be amended as follows:-

- (i) article 2 shall be modified by the addition of a new definition after the definition of "'A' Ordinary Shares" as follows:-

"'B' Ordinary Shares" means the 'B' Ordinary Shares of 10p each in the share capital of the Company;"

- (ii) article 2 shall be further modified by the addition of a new definition after the definition of "Employee Share Option Scheme" as follows:-

"'Flotation" means the admission of the whole of the issued ordinary share capital of the Company to the Official List of the London Stock Exchange, and such admission becoming effective";

- (iii) article 2 shall be further modified by the addition of a new definition after the definition of "the Founders" as follows:-

"'Group" means the Company and any subsidiary of the Company from time to time;"

- (iv) article 2 shall be further modified by replacing the full stop at the end of the definition of "the Share Warrants" with a semi-colon and by the addition of new definitions after the definition of "the Share Warrants" as follows:-



"'VAA' means Virgin Atlantic Airways Limited (registered no. 1600117);

'VAS' means Virgin Aviation Services Limited (registered no. 1927016);

'VMD' means the mailing, wrapping and distribution business formerly carried on by VAA and VAS."

- (v) article 5 shall be modified by the deletion of the first sentence thereof and by replacing the same with the following:-

"The share capital of the Company at the date of the passing of the resolution amending this first sentence of Article 5 is £2,144,111-60 divided into 1,500,000 Preference Shares of £1 each, 1,899,999 'A' Ordinary Shares of 10p each, 1,500,000 'B' Ordinary Shares of 10p each and 3,041,117 Ordinary Shares of 10p each."

- (vi) article 5 shall be further modified by the addition of a new paragraph (e) thereto, at the end of paragraph (d), as follows:-

"(e) 'B' Ordinary Shares

- (i) Subject only to the rights of the holders of the Preference Shares to receive the Preference Dividend and to the rights of the holders of the 'A' Ordinary Shares to receive the Fixed Dividend and the Participating Dividend (but not, for the avoidance of doubt, the Additional Dividend), the profits of the Company available for distribution in respect of the financial year ending 31st December 1996 and in respect of each financial year thereafter shall be applied in paying to the holders of the 'B' Ordinary Shares a fixed cumulative preferred net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the VMD Dividend') of an amount per share equal to:-

$$\frac{X}{Y}$$

where X is the lower of:-

(A) £500,000; and

(B) the amount shown by the Company as being the actual cash flow (calculated in accordance with financial reporting standard no. 1) which VAS and VAA would have received in the year ending 31st October 1996 had VMD remained owned by them (the "Hypothetical Cash Flow")

and Y is the number of 'B' Ordinary Shares which would be issued if the £7.5 million interest free unsecured convertible loan notes 1996 of Mercury SDS Limited were converted in full in accordance with the provisions of condition 2 thereof and the ordinary shares in the capital of Mercury SDS Limited issued on such conversion were exchanged for 'B' Ordinary Shares in accordance with the provisions of condition 3 thereof

PROVIDED THAT the amount of the VMD Dividend for any financial year shall be reduced pro rata in the event that a 'B' Ordinary Share is converted into an Ordinary Share during the course of that financial year pursuant to the provisions of subparagraph (vi) below and PROVIDED FURTHER THAT if Flotation should occur during the course of a financial year, no VMD Dividend shall be payable in respect of that financial year, and the holders of the 'B' Ordinary Shares shall only be entitled to be paid the same dividend per share for that financial year as the holders of Ordinary Shares, but immediately prior to Flotation, any accrued but unpaid VMD Dividend in respect of any prior financial year shall be paid in full.

The VMD Dividend shall be paid at the same time as the Participating Dividend, and the provisions of the third last and second last paragraphs of paragraph (a) of this Article 5 shall apply to the VMD Dividend as if the same were referred to therein in the same manner as the Preference Dividend, the Fixed Dividend, the Participating Dividend and the Additional Dividend.

For the avoidance of doubt, no dividend shall be paid in respect of the Ordinary Shares in respect of any financial year unless and until the VMD Dividend has been paid in full in respect of that financial year.

If the Company believes that the Hypothetical Cash Flow is sufficiently below £500,000 as to make it worthwhile to attempt to show that the Hypothetical Cash Flow is below £500,000, it shall, prior to 31 December 1996, deliver to the holders of the £7.5 million interest free unsecured convertible loan notes 1996 of Mercury SDS Limited a statement to that effect, containing the figures which, in the reasonable opinion of the Company, justify such belief. Within 14 days after the delivery of such statement to such noteholders, the noteholders shall deliver a notice to the Company either confirming their acceptance of the same or rejecting the same, giving, in the case of a rejection, reasonable details of the points in dispute (and failure to deliver such notice shall be deemed conclusive evidence of acceptance by the holders of the 'B' Ordinary Shares of the statement delivered by the Company as aforesaid). If the noteholders should notify the Company that they reject the statement

delivered by the Company, then, in default of agreement on the points in dispute within 14 days after the Company's receipt of the notice delivered by the noteholders (and the Company shall negotiate in good faith with the noteholders with a view to resolving the points in dispute), each point remaining in dispute shall, if so requested by the Company or the noteholders, be referred for determination by an independent firm of chartered accountants agreed upon by the Company and the noteholders or, in the absence of agreement within 21 days after the Company's receipt of the notice delivered by the noteholders, by such other firm of chartered accountants as is nominated at the request of the Company or the noteholders by the President for the time being of the Institute of Chartered Accountants in England and Wales (or his duly appointed deputy). In making such determination, any such firm of chartered accountants shall act as experts and not as arbitrators and their decision shall (in the absence of manifest error) be final and binding on the Company and the holders of the 'B' Ordinary Shares. The cost of any referral to a firm of chartered accountants shall be borne by the Company and the holders of the 'B' Ordinary Shares in the proportions the firm may direct or, in the absence of direction, equally between the Company on the one part and the holders of the 'B' Ordinary Shares on the other part.

- (ii) If the aggregate dividends per Ordinary Share (exclusive of the Associated Tax Credits) paid in respect of any financial year of the Company should be less than the VMD Dividend paid in respect of that financial year, then a net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the Ordinary Top-Up Dividend') of an amount equal to the aggregate of the excess of the VMD Dividend over the aggregate dividends paid per Ordinary Share and interest on the amount of such excess (calculated at the base rate from time to time of Barclays Bank plc from (and including) the date of payment of the relevant VMD Dividend to (but excluding) the date of payment of the Ordinary Top-Up Dividend) shall be paid (in priority of any further VMD Dividend) in respect of each Ordinary Share as soon as the distributable reserves of the Company allow the same to be paid and the directors resolve that the same should be so paid.

Any Ordinary Top-Up Dividend shall be taken into account for the purposes of calculating any Additional Dividend to be paid in respect of the 'A' Ordinary Shares, and for this purpose shall be deemed to have been paid under the provisions of Article 5(a)(v)(A) as referred to in Article 5[(a)](iv)(A).

Immediately prior to Flotation, any accrued but unpaid Ordinary Top-Up Dividend and any resultant Additional Dividend shall be paid in full.

Upon a sale of the whole of the issued ordinary share capital of the Company, the Ordinary Top-Up Dividend (if any) and the resultant Additional Dividend (if any) shall be paid (to the maximum extent that the distributable reserves of the Company so permit) to the holders of Ordinary Shares and 'A' Ordinary Shares entitled thereto, and, to the extent that the distributable reserves of the Company do not permit the Ordinary Top-Up Dividend and the resultant Additional Dividend (if any) to be paid in full, the consideration which would otherwise be payable by the purchaser for the ordinary share capital of the Company shall be apportioned among the holders thereof in such manner as, as nearly as practicable, puts the holders of the Ordinary Shares and the holders of the 'A' Ordinary Shares, viz a viz the holders of the 'B' Ordinary Shares, in the same position as they would have been in had the Top-Up Ordinary Dividend (and the resultant Additional Dividend, if any) been paid in full and, to the extent that any holder of shares receives consideration in respect of the shares in the capital of the Company sold by him in excess of the amount due to be received by him in accordance with the provisions of this Article 5(e)(ii), he shall hold the excess on trust for those holders of shares in the capital of the Company who received less than the consideration due to be received by them in accordance with the provisions of this Article 5(e)(ii) and shall account therefor forthwith upon demand.

- (iii) If it is proposed that any dividend be paid in respect of the Ordinary Shares (hereinafter in these Articles referred to as the 'proposed ordinary dividend') such that the aggregate dividends per Ordinary Share (exclusive of the Associated Tax Credits) paid in respect of any financial year of the Company would exceed the VMD Dividend paid in respect of the same financial year, then the proposed ordinary dividend (if necessary) shall be reduced to such amount as would enable the Company to pay, at the same time as the (reduced, if such be the case) proposed ordinary dividend, both the resulting Additional Dividend (if any) payable in respect of the 'A' Ordinary Shares and a further net cash dividend exclusive of the Associated Tax Credit (hereinafter in these Articles referred to as 'the VMD Top-Up Dividend') of an amount which, when added to the VMD Dividend paid for the same financial year, shall equal the aggregate dividends per share paid in respect of the Ordinary Shares for the same financial year. The VMD Top-Up Dividend shall be paid at the same time as the (reduced, if such be the case) proposed ordinary dividend.
- (iv) For so long as Virgin Associates (as defined in Article 10(h)) together hold not less than 10 per cent of the issued share capital of the Company, the holders of the 'B' Ordinary Shares shall have the right at any time and from time to time by a

memorandum signed by or on behalf of the holders of a majority of the 'B' Ordinary Shares to appoint one person to be a director of the Company and may in like manner remove any director so appointed and appoint another in his place. Any such appointment or dismissal shall take effect from the later of the time when the memorandum is lodged at the registered office of the Company and the time when the memorandum is first produced to a meeting of the directors of the Company.

Any such memorandum of appointment or removal of a director which is required to be signed by a corporate shareholder may be signed on its behalf by any one of its directors or its company secretary.

If any director appointed pursuant to this sub-paragraph (iv) is removed by the Company otherwise than by a resolution proposed by a holder of 'B' Ordinary Shares, or on which the holders of a majority of the 'B' Ordinary Shares vote in favour, then the Company shall be responsible for, and shall hold harmless, the holders of the 'B' Ordinary Shares and each of them from and against any claim for loss of office as director arising out of such removal and any reasonable costs and expenses incurred by the holders of the 'B' Ordinary Shares in defending such proceedings including, without prejudice to the generality of the foregoing, legal costs actually incurred without reference to any basis for calculating costs provided in the Rules of the Supreme Court.

- (v) Immediately prior to Flotation, the rights attaching to the 'B' Ordinary Shares shall automatically be varied to the effect that each of such shares is converted into one Ordinary Share.
 - (vi) Upon an issued 'B' Ordinary Share ceasing to be held by a Virgin Associate (as defined in Article 10(h)), the rights attaching to that 'B' Ordinary Share shall automatically be varied to the effect that such share is converted into one Ordinary Share PROVIDED THAT, notwithstanding any other provision of these Articles, the holder of such resulting Ordinary Share shall not be entitled to receive any Ordinary Top-Up Dividend payable as a result of any VMD Dividend which has already been paid.
 - (vii) Save as expressly otherwise provided in these Articles, the 'B' Ordinary Shares shall rank *pari passu* in all respects with, and shall be treated as shares of the same class as, the Ordinary Shares."
- (vii) article 5 shall be further modified by the deletion of sub-paragraph (iii) of paragraph (b) and by replacing the same with the following:-

- "(iii) third in paying to the holders of the Ordinary Shares and the 'A' Ordinary Shares any arrears, deficiencies or accruals of the Ordinary Top-Up Dividend and any resulting Additional Dividend;
- (iv) fourth in paying to the holders of 'B' Ordinary Shares any arrears, deficiencies or accruals of the VMD Dividend;
- (v) fifth in paying to the holders of the Ordinary Shares and the 'A' Ordinary Shares any Ordinary Top-Up Dividend and any resulting Additional Dividend payable as a result of the payment pursuant to Article 5(b)(iv);
- (vi) sixth in paying to the holders of the 'B' Ordinary Shares and the Ordinary Shares a sum per share equal to the amount of capital paid on each 'A' Ordinary Share pursuant to Article 5(b)(ii).

The balance of such assets shall be distributed among the holders of the 'A' Ordinary Shares, the 'B' Ordinary Shares and the Ordinary Shares (pari passu as if the same constituted one class of share) in proportion to the amounts paid up or credited as paid up on the 'A' Ordinary Shares, the 'B' Ordinary Shares and the Ordinary Shares held by them respectively."

- (viii) article 10 shall be amended by the addition of a new paragraph (h) after the existing paragraph (g) as follows:-

"a transfer of any share in the Company held by any member of the Company which is a Virgin Associate may be made between that Virgin Associate and another Virgin Associate.

For the purposes of this paragraph (h), the following definitions shall apply:-

"Undertaking" a body corporate or partnership or an unincorporated association situate in any jurisdiction carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, references to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to Undertakings of that description);

"Virgin Associate" (i) any spouse of the Virgin Individual, or any child or remoter issue of the Virgin Individual's grandparents; and/or

- (ii) the trustee or trustees for the time being of any settlement made by the Virgin Individual or any person mentioned in (i) above (but only when acting in that capacity); and/or
- (iii) any Undertaking in any jurisdiction in which the Virgin Individual himself or any person mentioned in (i) or (ii) above or (iv), (v) or (vi) below or any such persons taken together who has or have control (as defined in section 435(10) of the Insolvency Act 1986) directly or indirectly; and/or
- (iv) any personal representative of the Virgin Individual or any person mentioned in (ii) above (but only when acting in that capacity); and/or
- (v) any person acting as bare nominee for the Virgin Individual or any of the persons referred to in (ii) or (iv) above (but only when acting in that capacity);

"Virgin Individual"

R.C.N. Branson."

- (ix) article 11 shall be modified by the addition of the words "to be" after the words "unless all the Transfer Shares are sold to the persons" in paragraph (a);
- (x) article 11 shall be further modified by the addition of the words "provided that such refusal must be exercised reasonably and in good faith" at the end of sub-paragraph (i) (before "; and") of paragraph (f);
- (xi) article 13 shall be modified by the addition of the words ", 'B' Ordinary Shares" after each reference to "'A' Ordinary Shares" occurring in paragraph (a) of article 13, prefixing those words with the word "and" where grammatically appropriate;
- (xii) article 13 shall be further modified by the deletion of sub-paragraph (i) of paragraph (c) and by replacing the same with the following:-

"the expression 'a Controlling Interest' shall mean an interest (within the meaning of Schedule 13 Part I and Section 324 of the Companies Act 1985) in shares in a company conferring in the aggregate 10% or more (where the consent of the holders of 'A' Ordinary Shares and/or Ordinary Shares is in issue) or 50% or more (where the consent of the holders of the 'B' Ordinary Shares is in issue) in either case of the total voting rights conferred by all the issued equity share capital in that company;"

- (xiii) article 19 shall be modified by the addition of the words "of which at least one shall, if the holders of the 'B' Ordinary Shares have appointed a director pursuant to article 5(e)(iv), be such a director" at the end of the first sentence; and
- (xiv) article 21 shall be modified by the addition of a new sentence at the end of such article as follows:-

"A director may participate in a meeting of the board or of a committee of the board by means of conference telephone or similar communications equipment whereby all the directors participating in the meetings can hear each other, and the directors participating in a meeting in this manner are deemed to be present in person at any such meeting."; and

- (c) the directors of the company be and they are hereby generally and unconditionally authorised pursuant to section 80 of the Companies Act 1985 to exercise all powers of the company to allot relevant securities (as defined in sub-section (2) of section 80 of the Companies Act 1985) up to an aggregate nominal amount of £150,000, such authority to expire on 31st January 1997, provided that this authority shall be limited to the grant by the company of the rights set out in condition 3 of the £7.5 million interest free unsecured convertible loan notes 1996 of Mercury SDS Limited (a copy of which are, for the purposes of identification only, produced to the meeting and initialled by the chairman) and the issue by the company of shares in the capital of the company in accordance with such condition 3.

2. THAT:-

- (a) the authorised share capital of the company be increased by the creation of an additional 2,500 ordinary shares of 10p each ranking *pari passu* in all respects with the existing ordinary shares of 10p each; and
- (b) article 5 of the articles of association of the company be modified as follows:-

- (i) if the first special resolution set out in the notice of general meeting of the company dated 11 December 1995 is passed, by the deletion of the first sentence thereof and by replacing the same with the following:-

"The share capital of the Company at the date of the passing of the resolution amending this first sentence of Article 5 is £2,144,361.60 divided into 1,500,000 Preference Shares of £1 each, 1,899,999 'A' Ordinary Shares of 10p each, 1,500,000 'B' Ordinary Shares of 10p each and 3,043,617 Ordinary Shares of 10p each."; or

- (ii) if the first special resolution set out in the notice of general meeting of the company dated 11 December 1995 is not passed, by the deletion of the first sentence thereof and by replacing the same with the following:-

"The share capital of the Company at the date of the passing of the resolution amending this first sentence of Article 5 is £1,994,361.60 divided into

Goodwell

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