

**COMPANY NO: 3074698**

**THE COMPANIES ACTS 1985 – 1989**

**PRIVATE COMPANY LIMITED BY SHARES**

**MEMORANDUM**

**AND**

**ARTICLES OF ASSOCIATION**

**OF**

**HIGHBANK HEALTH CARE LIMITED**

**ADOPTED BY SPECIAL RESOLUTION 28 JANUARY 2000**

**INCORPORATED THE 30th DAY OF JUNE 1995**



**THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES  
ARTICLES OF ASSOCIATION  
OF  
Highbank Health Care Limited**

**1. PRELIMINARY**

The regulations contained in Table A in The Companies (Table A to F) Regulations 1985 (as amended so as to affect companies first registered on the date of the adoption of these Articles) shall, except as hereinafter provided and so far as not inconsistent with the provisions of these articles, apply to the Company to the exclusion of all other regulations or Articles of Association. References herein to Regulations are to regulations in the said Table A unless otherwise stated.

**2. SHARE CAPITAL**

The share capital of the Company at the date of the adoption of these Articles is £100 divided into 100 Ordinary Shares of £1 each.

**3. ISSUE AND PURCHASE OF SHARES**

Subject to Section 80 of the Companies Act 1985, all unissued shares shall be at the disposal of the Directors and Section 89(1) of the Companies Act 1985 shall not apply.

**4. PAYMENT OR DISTRIBUTION OF SHARES**

No payment or distribution may be declared, made or paid on any share in the capital of the Company to the extent prohibited by the Finance Documents at any time whilst the Finance Documents remain in full force and effect, except to the extent that the Finance Documents remain in full force and effect, except to the extent that the Finance Documents are terminated or the duties and/or obligations of the Company under the Finance Documents are waived or discharged by the Majority Banks (as defined in the Senior Facility Agreement).

**5. TRANSFER OF SHARES**

Subject to the provisions of Regulation 24, any shares may only be transferred to any person with the consent in writing of all other members of the company.

Notwithstanding anything contained in the articles the directors shall not decline to register any transfer of shares, nor may they suspend the registration thereof, where such transfer is executed by any bank or institution to whom such shares have been charged by way of security, or by any nominee or nominees of such a bank or institution, pursuant to the power of sale under such security and

certificate by any official of such bank or institution if the shares were so charged and the transfer was so executed shall be conclusive evidence of such facts.

6. Except in the case of a transfer expressly authorised by the preceding sub-clause, no transfer of a share shall be registered and no sale, disposal or other disposition of any interest in any share whether legal or beneficial shall be permitted, without the sanction of an effective resolution of the Directors and if such sanction be not given or refused within eight weeks after the transfer is lodged for registration the sanction shall be deemed to have been refused at the expiration of such period and the transferee shall be notified accordingly and any purported sale, disposal or other disposition aforesaid shall be void unless prior notice thereof is given to the Directors and such sanction obtained prior to any actual sale, disposal or other disposition.

## **7. PROCEEDINGS AT GENERAL MEETINGS**

If at any adjourned meeting a quorum is not present within ten minutes from the time appointed for the adjourned meeting (or such longer interval as the chairman of the meeting may think fit to allow) the meeting shall be dissolved except that if a meeting to consider a resolution or resolutions for the winding up of the Company and the appointment of a Liquidator be adjourned for want of a quorum and if at each adjourned meeting such a quorum is not present within five minutes from the time appointed for the adjourned meeting, any one or more members present in person or by proxy shall constitute a quorum for the purposes of considering and if thought fit passing such resolution or resolutions but no other business may be transacted. Regulation 41 shall be extended accordingly.

8. The chairman at any General Meeting shall not be entitled to a second or casting vote. Regulation 50 shall not apply.
9. In the case of a body corporate a resolution in writing may be signed on its behalf by a Director or the Secretary thereof or by its duly appointed attorney or duly authorised representative. Regulation 53 shall be extended accordingly.

## **10. VOTES OF MEMBERS**

On a show of hands every member who is present in person shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote.

11. An instrument appointing a proxy (and, where it is signed on behalf of the appointor by an attorney, the letter or power of attorney or a duly certified copy thereof) must either be delivered at such place or one of such places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting (or, if no place is so specified, at the registered office) at least one hour before the time appointed for holding the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used or be

delivered to the Secretary (or the chairman of the meeting) on the day and at the place of, but in any event before the time appointed for holding, the meeting or adjourned meeting or poll. An instrument of proxy shall not be treated as valid until such delivery shall have been effected. Regulation 62 shall not apply.

**12. NUMBER OF DIRECTORS**

The maximum number of Directors shall be twelve. Regulation 64 shall not apply.

**13. ALTERNATE DIRECTORS**

The holders of a majority in number of all of the issued shares may at any time appoint any person (including another Director) to be the alternate Director of any Director and may at any time terminate such appointment. The same person may be appointed as the alternate Director of more than one Director. Regulations 65 to 68 shall be modified accordingly.

14 The appointment of any alternate Director shall determine on the happening of any event which if he were a Director would cause him to vacate such office or if the Director of whom he is the alternate ceases to be a Director.

15. An alternate Director shall be entitled to receive notices of all meetings of the Directors and of all committees of Directors of which the Director of whom he is the alternate is a member to attend and vote and be counted in the quorum at any such meeting at which the Director of whom he is the alternate is not personally present and generally to perform all the functions of the Director of whom he is the alternate in his absence and the provisions of these Articles shall apply as if he were a Director of the relevant class. If he shall be himself a Director or shall attend any such meeting as an alternate for more than one Director his voting rights shall be cumulative. The last sentence of Regulation 66 shall be deleted.

**16. APPOINTMENT AND REMOVAL OF DIRECTORS**

The holders of a majority of shares may from time to time appoint any person to be a Director. The Directors shall not be subject to retirement by rotation. Regulations 73 to 80 shall not apply.

17. Subject to Article 15, the Directors may appoint a person who is willing to act to be a director either to fill a vacancy or an additional director provided. that the appointment does not cause the number fixed by or in accordance with the articles as the maximum number of directors.

18. The office of a Director shall be vacated in any of the events specified in Regulation 81 and also if he shall be removed from office by the holders of a majority of the shares or shall in writing offer to resign and the Directors shall resolve to accept such offer.

19. Any such appointment or removal by the holders of a majority of shares shall be in writing served on the Company, and signed by the holders of a majority of the issued Shares. In the case of a body corporate such document may be signed on its behalf by a Director or the Secretary thereof or by its duly appointed attorney or duly authorised representative.

**20. PROCEEDINGS OF DIRECTORS**

No Director shall be appointed otherwise than as provided in these Articles. Regulation 90 shall be modified accordingly.

- 21 Any Director or alternate Director may participate in a meeting of the Directors or a committee of the Directors by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

22. The quorum for a meeting of the Directors or of any such committee shall be fixed by the Directors and unless so fixed at any other number shall be two.

23. A Director may, and the Secretary at the request of a Director shall, call a meeting of the Directors. Any notice convening a meeting of the Directors shall be given in writing to all the Directors of the Company together with an agenda setting out details of the matters to be discussed at that meeting. No business shall be discussed at any meeting of the Directors unless it is contained in the agenda accompanying the notice of the meeting. The Chairman shall not be entitled to a second or casting vote. Regulation 88 shall be modified accordingly.

24. On any matter in which a Director is in any way interested he may (subject always to his properly disclosing the same) nevertheless vote and be taken into account for the purposes of a quorum and (save as otherwise agreed) may retain for his own absolute use and benefit all profits and advantages directly or indirectly accruing to him thereunder or in consequence thereof. Regulations 94 to 98 shall be modified accordingly.

- 25 25.1 Subject to the provisions of the Act, the Memorandum and the Articles, to any directions given by special resolution and to the provisions of Article 25.2 the business of the company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the Directors by the Articles and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors. Regulation 70 shall not apply.

**25.2** The following matters shall save to the extent envisaged in the relevant annual budget of the Company (together with any amendments made thereto) adopted or amended in accordance with Article 25.2.23 shall require the consent of the Board of Directors of the ultimate holding company from time to time of the Company (where "holding company" shall have the meaning prescribed to it in the Companies Act 1985 (as amended)) and the Company shall not effect any of the following matters without obtaining such consent:

**25.2.1** make any change in the Accounting Reference Date of the Company;

**25.2.2** save as required by law sell, transfer, lease, licence, assign or otherwise dispose of the whole or any material part of its business, undertaking, property and/or assets;

**25.2.3** carry on any activity other than the Business as defined in the attached Schedule or cease to carry on the business carried on by it at the date of adoption of these Articles;

**25.2.4** issue or allot or agree to issue or allot any shares or stock in its capital or any security convertible into such shares or stock or any loan stock or grant or agree to grant options over or rights in any such shares, stock, securities or loan stock;

**25.2.5** enter into any contract of employment or consultancy with any person or make any change to the terms of engagement of any employee or consultant having a salary (on a full time basis) equivalent to or in excess of £25,000 per annum;

**25.2.6** pay fees or emoluments to the Directors other than to the Directors who have service contracts with the Company in circumstances where the payments are made in accordance with the terms thereof;

**25.2.7** give any guarantee, indemnity or the like save in the ordinary course of business in respect of a liability that does not exceed £5,000;

**25.2.8** create or issue any debenture, mortgage, charge or other security or increase the amount of any borrowings capable of being secured thereby;

**25.2.9** acquire or dispose of any share, debenture, mortgage, loan capital or security (or any interest therein) in any body corporate or trust;

**25.2.10** make any loan other than credit given in the normal course of trading;

**25.2.11** make any tax elections;

**25.2.12** purchase, lease, acquire, take options over, exchange or otherwise deal in any real property or any interest therein, acquire any asset for a consideration

of more than £5,000 or otherwise enter into a capital commitment in respect of an amount which exceeds £5,000;

**25.2.13** institute any litigation arbitration or other similar proceedings except in respect of debt collection in the ordinary course;

**25.2.14** enter into any agreement, transaction or arrangement with any of the members of the ultimate holding company from time to time of the Company or any person who is an associated company or affiliate or with any person who is otherwise connected with any of them within the meaning of S.839 Income and Corporation Taxes Act 1988 and for these purposes "affiliate" in relation to a partnership shall mean any other partnership, corporation, company, other entity or person which owns or controls a majority of the voting interests in that partnership and "associated company" shall mean in respect of a body corporate any subsidiary of that body corporate or any company of which the body corporate is a subsidiary or a subsidiary of such company and "subsidiary" shall have the meaning ascribed to it in Section 736 of the Companies Act 1985;

**25.2.15** enter into any loan agreement or other financing agreement other than any of the financing agreements in existence at the date of adoption of these Articles or incur commitments of a like nature which shall include without limitation agreements for the leasing hire purchase or purchase on deferred terms of any asset (other than in respect of office equipment and office consumables which do not exceed £5,000 in aggregate), make alterations to any such agreement as is entered into or make drawings or pre-payments thereunder or make any amendment to the terms thereof;

**25.2.16** enter into any material contract or commitment or pay any management or other fee other than in the ordinary and proper course of business on arm's length terms;

**25.2.17** enter into any joint venture, partnership or profit sharing agreement with any other person;

**25.2.18** sell, release, assign or factor the debts or securities of the Company;

**25.2.19** appoint any person as a Director of the Company or any subsidiary company;

**25.2.20** approve any transferee or allottee of any share in it;

**25.2.21** pay any dividend;

**25.2.22** do or permit or suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsory);

**25.2.23** approve any annual budget or any amendments thereto or any business plan from time to time of the Company; or

**25.2.24** commit itself to incur expenditure whether of a revenue or a capital nature which exceeds in each case £5,000 unless such expenditure is included in the relevant annual budget approved or amended in accordance with Article 25.1.23

**25.3** Any breach of the foregoing Article 25.2 may be ratified by the Board of Directors from time to time of the ultimate holding company from time to time of the Company.

**25.4** Notwithstanding anything contained in these Articles the Company and the Directors shall be bound to recognise a transfer of any share in the Company the transfer of which is required by any person pursuant to such person's proper enforcement of security granted to such person over such share.

**25.5** The Directors may be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or separate meetings of the holders of any class of shares or debentures of the Company or otherwise in connection with the discharge of their duties provided always that such expense shall not exceed £5,000 per annum in aggregate. Regulation 83 shall be amended accordingly.

## **26. INDEMNITY**

**26.1** Subject to the provisions of and so far as may be permitted by law, every Director, Auditor, Secretary or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto including any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company and in which judgement is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court. Regulation 118 shall not apply

**26.1** The Company shall be entitled to purchase and pay for Directors' and officers' liability insurance for the benefit of the Directors and its officers.

## **SCHEDULE**

'Business'	the operation and management of one or more private hospitals and/or nursing homes specialising in brain injury rehabilitation
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**MEMORANDUM OF-ASSOCIATION**

**OF**

**HIGHBANK HEALTH CARE LIMITED**

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**PRIVATE COMPANY LIMITED BY SHARES**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHBANK HEALTH CARE LIMITED**

1. The Name of the Company is Highbank Health Care Limited
2. The Registered Office of the Company is to be situated in England and Wales.
- 3.1 The object of the Company is to carry on business as a general commercial company pursuant to Section 3A of the Companies Act 1985 ("the Act");
- 3.2 Without prejudice to the generality of 3.1 above the Company also has the following objects:
  - 3.2.1 To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of any property.
  - 3.2.2 To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any trade marks, patents, patent rights, brevets d'invention, licences, secret processes, designs, and other protections and rights whatsoever and to disclaim, alter, modify, use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon, testing and improving any patents, inventions or rights which the Company may acquire or propose to acquire.
  - 3.2.3 To purchase or otherwise acquire and undertake the whole or any part of the business, goodwill, property and assets of any person, firm, or company carrying on or proposing to carry on all or any of the objects for the time being of the Company and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with (whether by sale or purchase and whether as to all or part of the shares or undertaking of the Company or other person, firm or company and with or without winding up), or enter into partnership or into any arrangement for sharing profits, or for co-operation or for mutual assistance with any such person, firm or

company, or for subsidising or otherwise assisting any such person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock or securities that may be agreed upon, and to hold and retain, or sell, mortgage and deal with any shares, debentures, debenture stock or securities so received.

- 3.2.4 To improve, manage, construct, repair, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- 3.2.5 To apply for, promote, and obtain any Act of Parliament, order, or licence of the Department of Trade or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or application which may seem calculated directly or indirectly to prejudice the Company's interests.
- 3.2.6 To enter into any arrangements with any government or authority that may seem conducive to the attainment of the Company's objects or any of them, and to obtain from any such government or authority any charters, decrees, rights, privileges or concessions which the Company may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges, and concessions.
- 3.2.7 To subscribe for, take, purchase, or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any other company constituted or carrying on business in any part of the world, and debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority, municipal, local or otherwise in any part of the world.
- 3.2.8 To control, manage, finance, subsidise, co-ordinate or otherwise assist any company or companies in which the Company has a direct or indirect financial interest, to provide secretarial, administrative, technical, commercial and other services and facilities of all kinds for any such company or companies and to enter any arrangements which may seem desirable with respect to any business or operations of or generally with respect to any such company or companies.
- 3.2.9 To promote any other company for the purpose of acquiring the whole or any part of the business or property or undertaking or any of the liabilities of the Company, or of undertaking any business or operation which may appear likely to assist or benefit the Company or to enhance the value of any property or business of the Company, and to place or guarantee the

placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.

- 3.2.10 To act as agents or brokers and as trustees for any person, firm or company, and to undertake and perform sub-contracts.
- 3.2.11 To remunerate any person, firm or company rendering services to the Company either by cash payment or by the allotment to him or them of shares or other securities of the Company credited as paid up in full or in part or otherwise as may be thought expedient.
- 3.2.12 To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling, or guaranteeing the subscription of any shares or other securities of the Company.
- 3.2.13 To guarantee, grant indemnities in respect of, support or secure, whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company or by both such methods, the performance of the contracts or obligations and the repayment or payment of the principal and premium of and interest and dividends on any securities or obligations of any person firm or company whether having objects or engaged or intending to engage in business similar to those of the Company or not, notwithstanding the fact that the Company may not receive any consideration or advantage, direct or indirect, from entering into any such guarantee or other arrangement or transaction contemplated herein and without prejudice to the generality of the foregoing and insofar as the same is not prohibited by law in the same manner to guarantee, grant indemnities in respect of, support or secure the performance of obligations and liabilities incurred by any person firm or company in connection with or for the purpose of the acquisition of shares in the Company or in any holding company of the Company.
- 3.2.14 To advance or lend money or give any credit to any person, firm or company (including without prejudice to the generality of the foregoing any holding company, subsidiary or fellow subsidiary of, or any other company associated in any way with, the Company) on such terms as may be thought fit and with or without security, and to give financial assistance as statutorily permitted for the acquisition of any shares, debentures, option rights or other security of the Company or of any holding company of the Company.
- 3.2.15 To borrow or raise or secure the payment of money for the purposes of or in connection with the Company's business, and for the purpose of or in connection with the borrowing or raising of money by the Company to become a member of any building society.

- 3.2.16 To mortgage and charge the undertaking and all or any of the real and personal property and assets, present or future, and all or any of the uncalled capital for the time being of the Company, and to issue for such consideration and with and subject to such rights, powers, privileges and conditions as may be thought fit, debentures or debenture stock, either permanent or redeemable or repayable, and collaterally to secure any securities of the Company by a trust deed or other assurances.
- 3.2.17 To establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances, or emoluments to any persons who are or were at any time in the employment or service of the Company, or of any company which is for the time being the Company's Holding or Subsidiary Company as defined in the Act, or otherwise associated with the Company in business or who are or were at any time Directors or officers of the Company or of any such other company as aforesaid, and the wives, widows, families and dependants of any such persons, and also to establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or of any such other company as aforesaid, or of any such persons as aforesaid, and to make payments for or towards the insurance of any such persons as aforesaid, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object, and to do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid.
- 3.2.18 To draw, make, accept, endorse, negotiate, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- 3.2.19 To invest and deal with any moneys in such manner as may from time to time be determined and to hold or otherwise deal with any investments made.
- 3.2.20 To pay for any property or rights acquired by the Company, either in cash or fully or partly paid-up shares, with or without preferred or deferred or special rights or restrictions in respect of dividend, repayment of capital voting or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another, and generally on such terms as the Company may determine.
- 3.2.21 To accept payment for any property or rights sold or otherwise disposed of or dealt with by the Company, either in cash, by instalments or otherwise, or in fully or partly paid-up shares of any company or corporation, with or without deferred or preferred or special rights or restrictions in respect of dividends, repayment of capital, voting or otherwise, or in debentures or

mortgage debentures or debenture stock, mortgages or other securities of any company or corporation, or partly in one mode and partly in another, and generally on such terms as the Company may determine, and to hold, dispose of or otherwise deal with any shares, stock or securities so acquired.

- 3.2.22 To sell, improve, manage, develop, turn to account, exchange, let on rent, royalty, share of profits or otherwise, grant licences, easements and other rights in or over, and in any other manner deal with or dispose of the undertaking and all or any part of the business or property and assets for the time being of the Company either together or in portions for such consideration as the Company may think fit and in particular for shares, debentures, or securities of any company purchasing the same.
- 3.2.23 To purchase and maintain insurance for or for the benefit of any persons who are or were at any time officers, Directors (including non-executive Directors) employees or auditors of the Company, or of any company in which the Company has any interest whether direct or indirect which is in any way allied to or associated with the Company, or any subsidiary undertaking of the Company or any such other company or who are or were at any time trustees of any retirement benefits scheme or employee benefits trust in which employees or former employees of the Company or any such other company or subsidiary undertaking are interested including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in relation to the Company or any such other company subsidiary undertaking or retirement benefits scheme or trust and to the extent permitted by law to indemnify or to exempt any such persons against or from any such liability.
- 3.2.24 To provide whether directly or indirectly any financial assistance permitted by the Act.
- 3.2.25 To distribute among the members in specie any property of the Company, or any proceeds of sale or disposal of any property of the Company, but so that no distribution amounting to a reduction of capital be made except with the sanction (if any) for the time being required by law.
- 3.2.26 To procure the Company to be registered or recognised in any part of the world.
- 3.2.27 To do all or any of the above things in any part of the world, and either as principals, agents, trustees, contractors or otherwise, and either alone or in conjunction with others, and either by or through agents, trustees, sub-contractors or otherwise.

- 3.2.28 To do all such things as may be deemed incidental or conducive to the attainment of the above objects or any of them or any powers given to the Company by the Act.

And it is hereby declared that the objects of the Company as specified in each of the foregoing paragraphs of this clause (except only if and so far as otherwise expressly provided in any paragraphs) shall be separate and distinct objects of the Company and shall not be in any ways limited by reference to any other paragraphs or the name of the Company.

- 4. The liability of the Members is limited.
- 5. The share capital of the Company £100 divided into 100 ordinary shares of £1 each.