

Company No: 3189363

The Companies Act 1985

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM

and

ARTICLES OF ASSOCIATION

of

PRIORY HOSPITALS HOLDINGS LIMITED

Eversheds
East Midlands
NOTCOR1\18119-2



RE-SCAN

22.1-97
055

Company No. 3189363

PRIVATE COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

of

COMPANIES HOUSE 18/01/97

PRIORY HOSPITALS HOLDINGS LIMITED

- 1 The Company's name is "Priory Hospitals Holdings Limited"¹
- 2 The Company's registered office is to be situated in England and Wales.
- 3 The objects for which the Company is established are:-
 - 3.1 (a) To purchase take on lease or exchange or promote or otherwise acquire or establish equip and carry on hospitals nursing homes and to undertake the training and supply of nurses and medical attendants and to carry on business as manufacturing and retail chemists and druggists and as manufacturers of, and dealers in, patients' requisites of all kinds.
 - (b) To engage, manage, hire, act as agents for nursing, professional, technical, clerical, manual and other staff, personnel and workers and to enter into agreements with such staff, personnel and workers with a view to allocating their services to any person, firm, company, hospital, clinic and nursing home requiring the same and to establish and maintain an agency for all or any of the above purposes.
 - (c) To provide or procure the provision by others of every and any service need, want or requirement of any medical, nursing or business

¹The name of the Company was changed from Foray 911 Limited to Priory Hospitals Holdings Limited by special resolution on 21st June 1996.

nature required by any person, firm, company, hospital, clinic and nursing home or required in connection with any business carried on by them.

- (d)²
 - (i) To purchase take on lease, licence or in exchange or promote or otherwise acquire or establish equip manage administer and carry on and to dispose of all or any part of any children's home, independent school, special school and/or establishment, business, institution or therapeutic community for the care, treatment and/or education of children and/or young persons and in particular to acquire, maintain and dispose of any registration, licence or certification considered necessary or desirable in relation to any aspect of any of the foregoing.
 - (ii) To purchase take on lease, licence or in exchange or promote or otherwise acquire or establish equip manage maintain administer use and carry on and to dispose of all or any part of any real or personal property of any kind (including, but not limited to, any intellectual property) for the purpose of housing accommodating educating training instructing and/or caring for such children and/or young persons or for any purpose ancillary or conducive thereto.
- 3.2 To carry on business as a holding company and to acquire and hold shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations and securities of any kind issued or guaranteed by any company, corporation or undertaking of whatever nature and wherever constituted or carrying on business, and shares, stocks, debentures, debenture stocks, bonds, obligations, and other securities issued or guaranteed by any government, sovereign ruler, commissioners, trust, local authority or other public body, whether at home or abroad, and to vary, transpose, dispose of or otherwise deal with from time to time as may be considered expedient any of the Company's investments for the time being.
- 3.3 To co-ordinate the administration, policies, management, supervision, control, research, planning, trading and any and all other activities of and to act as financial advisers and consultants to any company or companies or group of companies now or hereafter formed or incorporated or acquired which may be or may become related or associated in any way with the Company or with any company related or associated therewith.
- 3.4 To acquire any such shares, stocks and other securities before mentioned by

² Paragraphs 3.1 to 3.6 were added by Special Resolution passed on 21st June 1996.

subscription, syndicate participation, tender, purchase, exchange or otherwise and to subscribe for the same, either conditionally or otherwise, and to guarantee the subscription thereof and to exercise and enforce all rights and powers conferred by or incident to the ownership thereof.

- 3.5 To pay for any business or other property or any shares, stocks, securities or rights of any kind acquired by the company either in cash or shares, with or without any preferred or deferred rights, 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.
- 3.6 To carry on any commercial, industrial or financial business or undertaking whether as manufacturers, engineers, financiers, concessionaires, contractors, wholesalers, retailers, factors or otherwise in any manner which may seem to the Company capable of being conveniently carried on in connection or conjunction with any other business of the Company or any company or companies for the time being related or associated in any way with the Company.
- 3.7 To carry on any other trade or business whatever which can in the opinion of the board of directors be advantageously carried on in connection with or as being ancillary to any of the businesses or activities of the Company.
- 3.8 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.
- 3.9 To apply for, register, purchase, or by other means acquire and protect, prolong and renew, whether in the United Kingdom or elsewhere any patents, patent rights, brevets d'invention, licences, secret processes, trade marks, designs, protections and concessions 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.
- 3.10 To acquire and undertake the whole or any part of the business, goodwill and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and as part of the consideration for any such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, 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.

- 3.11 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.
- 3.12 To invest and deal with the moneys of the Company not immediately required in such manner as may from time to time be determined by the board of directors and to hold or otherwise deal with any investments made.
- 3.13 To lend and advance money or give credit on any terms and with or without security 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) and to receive money on deposit or loan upon any terms.
- 3.14 To guarantee or otherwise support or secure, either with or without the Company receiving any consideration or advantage and whether by personal covenant or by mortgaging or charging all or any part of the undertaking, property, assets, rights and revenues (present and future) and uncalled capital of the Company, or by both such methods or by any other means whatever, the performance of the liabilities and obligations of and the repayment or payment of any moneys whatever by any person, firm or company, including (but not limited to):-
- 3.14.1 any liabilities and obligations whatever of, and the repayment or payment of any moneys whatever by, any company which is for the time being or is likely to become the Company's holding company or a subsidiary of the Company or another subsidiary of the Company's holding company or otherwise associated with the Company in business; and
- 3.14.2 any liabilities and obligations incurred in connection with or for the purpose of the acquisition of shares in the Company or in any company which is for the time being the Company's holding company in so far as the giving of any such guarantee or other support or security is not prohibited by law; and
- 3.14.3 the repayment or payment of the principal amounts of, and premiums, interest and dividends on, any borrowings and securities.
- 3.15 To borrow and raise money in any manner and to secure the repayment of any money borrowed, raised or owing by mortgage, charge, standard security, lien or other security upon the whole or any part of the Company's property or assets (whether present or future), including its uncalled capital, and also by a similar mortgage, charge, standard security, lien or security to secure and guarantee the performance by the Company of any obligation or liability it may undertake or which may become binding on it.
- 3.16 To draw, make, accept, endorse, discount, negotiate, execute and issue cheques,

bills of exchange, promissory notes, bills of lading, warrants, debentures, and other negotiable or transferable instruments.

- 3.17 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 to the board of directors to be calculated directly or indirectly to promote the Company's interests, and to oppose any proceedings or applications which may seem to such board to be calculated directly or indirectly to prejudice the Company's interests.
- 3.18 To enter into any arrangements with any government or authority (supreme, municipal, local, or otherwise) that may seem to the board of directors to be 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 such board may think desirable and to carry out, exercise, and comply with any such charters, decrees, rights, privileges and concessions.
- 3.19 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.
- 3.20 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 make payments by way of subvention or otherwise and any other arrangements which may seem to the board of directors to be desirable with respect to any business or operations of or generally with respect to any such company or companies.
- 3.21 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 operations which may appear to the board of directors to be 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.
- 3.22 To sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the board of directors may think fit, and in particular (but without limitation) for shares, debentures, or securities of any company purchasing the same.

- 3.23 To act as agent or broker and as trustee or nominee for any person, firm or company, and to undertake and perform sub-contracts.
- 3.24 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.
- 3.25 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.
- 3.26 To provide, and to establish and maintain or concur in establishing and maintaining trusts, funds, schemes, clubs or other arrangements (whether contributory or non-contributory) with a view to providing:
 - 3.26.1 pensions, insurances, allowances, gratuities, bonuses and incentives and benefits of every description including, but not limited to, retirement benefits schemes and/or life assurance schemes; and
 - 3.26.2 employees' share schemes (within the meaning of section 743 of the Companies Act 1985) including, but not limited to, profit sharing, share option and share purchase schemes to or for the benefit of officers, ex-officers, employees or ex-employees of the Company or its predecessors in business or of any company which is for the time being or has at any time been the Company's holding company or a subsidiary of the Company or another subsidiary of that holding company or of any predecessor in business of any such company or the dependants or relatives of any such persons; and to provide or lend money or provide other financial assistance in accordance with or for the purposes of such arrangements.
- 3.27 To support (whether by direct subscription, the giving of guarantees or otherwise) any charitable, benevolent or educational fund, institution or organisation, or any event or purpose of a public or general nature, the support of which will or may, in the opinion of the board of directors, directly or indirectly benefit, or is calculated so to benefit, the Company or its business or activities or its officers, ex-officers, employees or ex-employees or the business, activities, officers, ex-officers, employees or ex-employees of any company which is for the time being or has at any time been the Company's holding company or a subsidiary of the Company or another subsidiary of that holding company or the officers, ex-officers, employees or ex-employees of any predecessor in business of the Company or any such company as aforesaid.
- 3.28 Subject to and in accordance with a due compliance with the provisions of sections 155 to 158 (inclusive) of the Act (if and so far as such provisions shall be applicable), to give, whether directly or indirectly, any kind of financial

assistance (as defined in section 152(1)(a) of the Act) for any such purpose as is specified in section 151(1) and/or section 151(2) of the Act.

- 3.29 To purchase and maintain, for the benefit of any director (including an alternate director), officer or auditor of the Company or of any company which is the holding company, a subsidiary, or a fellow subsidiary of the Company, insurance against any liability as is referred to in section 310(1) of the Act and, subject to the provisions of the Act, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a director (including an alternate director), officer or auditor and, subject also to the provisions of the Act, to indemnify any such person out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the lawful execution of the duties of his office or otherwise in relation thereto and, without prejudice to the foregoing, to grant any such indemnity after the occurrence of the event giving rise to any such liability.
- 3.30 To distribute among the members of the Company in kind any property of the Company of whatever nature.
- 3.31 To procure the Company to be registered or recognised in any part of the world
- 3.32 To do all or any of the things or matters aforesaid in any part of the world and either as principal, agent, contractor or otherwise, and by or through agents, brokers, sub-contractors or otherwise and either alone or in conjunction with others.
- 3.33 To do all such other things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

AND so that:-

- (a) none of the objects set out in any of the preceding sub-clauses of this Clause 3 shall be restrictively construed but the widest interpretation shall be given to each such object, and none of such objects shall, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other object or objects set forth in such sub-clause, or by reference to or inference from the terms of any other sub-clause of this Clause 3, or by reference to or inference from the name of the Company;
- (b) none of the preceding sub-clauses of this Clause 3 and none of the objects therein specified shall be deemed subsidiary or ancillary to any of the objects specified in any other such sub-clause, and the Company shall have as full a power to exercise each and every one of the objects specified in each sub-clause of this Clause 3 as though each such sub-clause contained the objects of a separate company;
- (c) the word "company" in this Clause 3, except where used in reference to the

Company, shall be deemed to include any partnership or other body of persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere;

- (d) in this Clause 3 the expressions "holding company" and "subsidiary" shall have the meanings given to them respectively by section 736 of the Act and the expression "subsidiaries" shall include a subsidiary undertaking as defined by section 258 of the Act; and
- (e) in this Clause 3 the expression "the Act" means the Companies Act 1985, but so that any reference in this Clause 3 to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision at the time this Clause 3 takes effect.

4 The liability of the members is limited.

5 The Company's share capital is £272,371.20 divided into 573,810 A Ordinary Shares of 10p each and 2,149,902 B Ordinary Shares of 10p each. *

* The issued and unissued share capital of the Company was sub-divided into 10,000 Ordinary Shares of 10p each on 21st June 1996.

The authorised share capital of the Company was increased from £1,000 to £272,371.20 by Ordinary Resolution on 21st June 1996

The Ordinary Shares of 10p each in the capital of the Company were redesignated as 573,810 A Ordinary Shares of 10p each and 2,149,902 B Ordinary Shares of 10p each on 21st June 1996.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

NAMES, ADDRESSES AND DESCRIPTIONS
OF SUBSCRIBERS

Number of Shares taken
by each Subscriber

ANDREW JOHN CARPENTER

One

Melton Court
7 Melton Road
West Bridgford
Nottingham

Solicitor

YVONNE CATHERINE MARY GOLDINGHAM

One

55 Repton Road
West Bridgford
Nottingham
NG2 7EP

Solicitor

DATED: 25th March 1996

WITNESS to the above signatures:

MARY MANNING

7 Easthorpe View
Bottesford
Nottingham
NG13 0DL

Secretary

COMPANIES ACT 1985

Company Limited by Shares

Articles of Association

of

PRIORY HOSPITALS HOLDINGS LIMITED³

(adopted by Special Resolution passed on 21 June 1996 and
amended by Written Resolution on 16th December 1996)

1. REGULATIONS OF THE COMPANY

- 1.1 The articles comprise these Articles and, save in so far as it is modified by these Articles, Table A (which expression means that Table as prescribed by regulations made pursuant to the Companies Act 1985 and in force on the date of adoption of these Articles).
- 1.2 Regulations 8, 24, 25, 50, 53, 54, 60-62 (inclusive), 64 to 69 (inclusive), 73-78 (inclusive), 80, 82, 87, 89, 100, 109 and 118 in Table A do not apply to the Company.

2. INTERPRETATION

Unless the context otherwise requires:

- (a) words denoting the singular number shall include the plural number and vice-versa;
- (b) words denoting the masculine gender shall include the feminine and neuter genders and

³ The name of the Company was changed from Foray 911 Limited by Special Resolution passed on 21 June 1996

vice versa; and

- (c) references to persons shall include bodies corporate, unincorporated associations and partnerships.

3. DEFINITIONS

- 3.1 In these Articles unless the context otherwise requires the words standing in the first column of the following table bear the meanings set opposite them respectively in the second column:

<i>Expression</i>	<i>Meaning</i>
"Act"	the Companies Act 1985 (as amended from time to time);
"A" Shareholders"	the holders for the time being of "A" Ordinary Shares;
"A" Ordinary Shares"	the "A" Ordinary Shares of 10p each in the capital of the Company;
"Auditors"	the auditors for the time being of the Company;
"Bank"	The Royal Bank of Scotland plc;
"Board"	the board of directors for the time being of the Company;
"B" Shareholders"	the holders for the time being of "B" Ordinary Shares;
"B" Ordinary Shares"	the "B" Ordinary Shares of 10p each in the capital of the Company;
"C" Shareholders"	the holders for the time being of "C" Ordinary Shares;
"C" Ordinary Shares"	the "C" Ordinary Shares of 10p each in the capital of the

Company;

"Consolidated Post-Tax Profit"

the consolidated profit of the Company and its subsidiary undertakings (if any) as shown by an audited profit and loss account of the Company (or, as the case may be, an audited consolidated profit and loss account of the Company and its subsidiary undertakings) which shall be drawn up in accordance with generally accepted accounting principles in the United Kingdom and:

- (a) before any provision is made for the payment of any dividend on any share in the capital of the Company or for any share distribution by the Company or for the transfer of any sum to any reserves of the Company forming part of shareholders' funds;
- (b) after there has been deducted any corporation tax (or any other tax levied upon or measured by profits of or gains realised by the Company and its subsidiary undertakings (if any));
- (c) before there have been credited or deducted any capital gains or losses on the sale or disposal of real property held other than as trading stock but after crediting or deducting any other capital gains or losses which are not regarded as extraordinary items;
- (d) after allowing for minority interests; and
- (e) after there have been deducted any interest charges paid or payable by the Company and its Subsidiaries (including any interest payable or

accrued on the Loan Notes),

all as reported by the Auditors;

"Consultant"	a person engaged or employed by any member of the Group to provide consultancy services, but excluding any such person the level of whose services and connection with the Group's business is (after he has become a "C" Shareholder) reduced to such an extent that (in the reasonable opinion of the Board) it is no longer appropriate for him to remain a "C" Shareholder;
"Controlling Interest"	an interest (within the meaning of Schedule 13 Part I and s 324 of the Act) in shares in the Company conferring in the aggregate 30% or more of the total voting rights conferred by all the issued shares in the Company;
"Collective investment scheme"	as defined in s 75 Financial Services Act 1986;
"Fair Value"	The fair value of a share computed in accordance with Article 14.3(j);
"Family Trust"	<p>in relation to any "A" Shareholder or "C" Shareholder or any employee or director of the Company or any of its subsidiaries a trust, whether arising:</p> <ul style="list-style-type: none">(a) under a settlement inter vivos; or(b) under a testamentary disposition by whomsoever made; or(c) on intestacy;

in respect of which shares in the Company are held under which no beneficial interest in the shares in question is for the time being vested in any person other than the member concerned or a Privileged Relation of such member and no power of control over the voting powers conferred by such shares is for the time being exercisable by or subject to the consent of any person other than the trustees or the member concerned or a Privileged Relation of such member;

"Financial Advisers"

the merchant bank and/or broker appointed by the Board to advise in connection with an offer for sale or Listing;

"Group"

the Company and its subsidiary undertakings from time to time;

"Investment Agreement"

the Agreement dated the same date as the date of adoption of these Articles between Ian Reynolds and others, Mercury Asset Management plc and the Company;

"Investors"

the financial institutions listed in Schedule II of the Investment Agreement and any person who is named an Investor in a Deed of Adherence (as defined therein), in each case while it is a party to the Investment Agreement;

"Listing"

- (a) *the listing of the Company's Ordinary Shares on London Stock Exchange Limited ("The Stock Exchange") becoming effective; or*
- (b) *the granting of an application by the Company for the dealing in any of the Company's Ordinary Shares on any other public securities market*

	whereby such Shares can be freely traded and the approval for such dealing becoming effective;
	<i>whether such listing or admission to trading is effected by way of an offer for sale, a new issue of shares, an introduction, a placing or otherwise;</i>
"Loan Agreements"	the Agreements dated the same date as the date of adoption of these Articles between the Company and the Bank relating to the provision of various facilities to the Company and the agreement between the Investors, the Company and the Bank and others regulating the priority of the facilities and the Loan Notes;
"Loan Notes"	the £35,250,000 Secured Loan Notes constituted by an instrument of the Company dated the same day as the date of adoption of these Articles;
"Ordinary Shareholders"	the holders for the time being of Ordinary Shares;
"Ordinary Shares"	the Ordinary Shares of 10p each in the capital of the Company arising out of conversion of the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Ordinary Shares as the case may be;
"Personal Security"	the security granted over any "A" Ordinary Shares by the holder of such Shares for the purposes of financing the original subscription for the Shares in accordance with clause 13.3 of the Investment Agreement;
"Outside Purchaser"	the Offeror referred to in Article 17;
"Privileged Relation"	the wife or husband or child or grandchild (including any adopted child or stepchild or step grandchild) of a

	member of the Company;
"Qualifying Institution"	any person who manages a Collective investment scheme or who manages funds on its own behalf and for clients on a discretionary basis;
"Sale"	the sale of any interest in the shares of the Company to any person or group (other than an Investor) (whether in one transaction or a series of transactions) resulting in that person or group alone or together with persons acting in concert with such person or group (as defined by the City Code on Take-Overs and Mergers) holding the right to exercise 50% or more of the voting rights at any general meeting of the Company but for the purposes of these Articles none of the "B" Shareholders shall be deemed to be acting in concert with one another;
"Shares"	the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Ordinary Shares (or the Ordinary Shares as the case may be) or any of them if the context so requires;
"Special Director"	a director appointed pursuant to Article 26.1;
"Specified Date"	<p>(a) the date of admission of the whole or any part of the equity share capital of the Company to the official list of The Stock Exchange or to any other recognised stock exchange approved in writing by the holders of the majority of the "B" Ordinary Shares; or</p> <p>(b) the date upon which an agreement or agreements for a Sale is or are unconditional in all respects;</p>

"Specified Majority" the holders of two-thirds in nominal value of the "B" Ordinary Shares for the time being in issue;

"Transfer Notice" as defined in Article 14;

"Warrant Instrument" an instrument of the Company dated the same date as the date of adoption of these Articles, constituting rights to subscribe for 2.75% of the Company's issued ordinary share capital.

3.2 *Save where the context otherwise requires words and phrases defined in the Act shall have the same meaning herein.*

4. **SHARE CAPITAL**

4.1 The share capital of the Company at the date of the amendment of these Articles is divided into:

(a) 450,566 "A" Ordinary Shares of 10p each;

(b) 2,150,659 "B" Ordinary Shares of 10p each; and

(c) 150,000 "C" Ordinary Shares of 10p each.

4.2 Each of the "A" Ordinary Shares, the "B" Ordinary Shares, the "C" Ordinary Shares and/or (following conversions of the "C" Ordinary Shares, the "B" Ordinary Shares and "A" Ordinary Shares as the case may be) the Ordinary Shares shall constitute separate classes of Shares.

5. The rights and restrictions attaching to the respective classes of shares shall be as follows:

5.1 **Income**

(a) If a Specified Date has not occurred on or before 30 November 2001 the profits which are available for distribution in each financial year thereafter (including retained distributable profits) shall be applied in paying to the holders of the "A" Ordinary

Shares, the "B" Ordinary Shares and the "C" Ordinary Shares from time to time in issue a cumulative participating net cash dividend (the "Participating Dividend") in each financial year commencing with the financial year ending 30 November 2002 at the rate of 50% of the Consolidated Post-Tax Profit for the relevant financial year, such dividend to be distributed among the "A" Shareholders, the "B" Shareholders and the "C" Ordinary Shares in proportion to the amounts paid up or credited as paid up on the Shares held by them *pari passu* as if the same constituted one class of share.

- (b) The Participating Dividend (if any) shall be paid on 31 March every year (or, if 31 March in any year is not a Business Day, the next Business Day thereafter) and shall be determined by reference to the audited consolidated accounts in respect of each financial year (and the first such payment shall be made on 31 March 2003 calculated by reference to the financial year ending 30 November 2002). Where a Specified Date or a reduction or return of capital involving the purchase by the Company of Shares (the "Purchased Shares") (in this Article referred to as the "Relevant Date") occurs after 30 November 2001, the Participating Dividend (in the case of a reduction or return of capital, on the Purchased Shares only) accrued in the period from 1 December immediately preceding the Relevant Date up to and including the Relevant Date shall be due on the Relevant Date and shall be determined by reference to the management accounts prepared for the period from 1 December immediately preceding the Relevant Date up to the last date for which management accounts are prepared prior to the Relevant Date.
- (c) Participating Dividends shall, subject to the provisions of the Loan Agreements, be due and payable on the dates or at the times herein stipulated and the amounts due and payable on such dates or at such times shall, subject to the provisions of the Loan Agreements, *ipso facto* and without any resolution of the directors or the Company in general meeting (and notwithstanding anything contained in Regulations 102 and 105 (inclusive) of Table A) become a debt due from and immediately payable by the Company to the "A" Shareholders, the "B" Shareholders and the "C" Shareholders entitled to such dividends (subject to there being profits out of which the same may lawfully be paid and subject to such payment not being prohibited by the Loan Agreements) and, interest shall accrue and be immediately due and payable on the amount of any Participating Dividend which is payable hereunder, such interest to

accrue on a daily basis from the date for payment of the relevant Participating Dividend as specified herein up to the date of its actual payment (subject to any deduction the Company may be required by law to make) at the rate of three per cent per annum above the London Inter Bank Offer-Rate for six month sterling deposits specified by The Royal Bank of Scotland Plc as being the relevant rate at the date for payment of the Participating Dividend.

- (d) The Participating Dividend shall be paid together with (and not inclusive of) the associated tax credit at the rate from time to time prevailing.
- (e) If in any financial year of the Company ending on or after 30 November 2002 there shall be insufficient profits of the Company available for distribution and resolved to be distributed in respect of such financial year for which the Company's accounts are made up, or such payment is prohibited by the Loan Agreements, then any amount unpaid in respect of the Participating Dividend shall be paid as soon as the Board considers that the profits available for distribution are sufficient to cover such payment and/or shall be paid as soon as the payment is permitted by the Loan Agreements. No dividend shall be proposed, declared, or paid on any other class of share in the capital of the Company, nor any other return of capital made, unless and until all arrears of the Participating Dividend have been paid.
- (f) For so long as there are "A" Ordinary Shares, "B" Ordinary Shares and "C" Ordinary Shares in issue the Company shall require the Auditors to report on the Consolidated Post-Tax Profit for each financial year or period of the Company ending on or after 30 November 2002 at the same time as the consolidated accounts of the Company and its subsidiary undertakings for that year or period are being audited (such report to be dated the same date as the audit report prepared by the Auditors). The Company shall cause a copy of the report prepared for such financial year or period to be delivered to every member as soon as possible and in any case within 30 days after the signing of the audited consolidated accounts of the Company and its subsidiary undertakings for such financial year or period, together with a statement of the adjustments (if any) made to the consolidated profits of the Company and its subsidiary undertakings (as shown in the audited consolidated accounts) and the reasons therefor in order to arrive at the figures contained in such report.

- (g) Subject to the provisions of article 5.1(a) the balance of any profits which are available for distribution (including retained distributable profits) may, after payment of the Participating Dividend (whether declared or not) if the Participating Dividend has become due in accordance with article 5.1(a), be determined by the Company to be distributed amongst the "A" Shareholders, the "B" Shareholders and the "C" Shareholders *pari passu* as if the same constituted one class of shares according to the amounts paid up or credited as paid up on the "A" Ordinary Shares, the "B" Ordinary Shares and the "C" Shareholders (including the premium, if any, paid on the issue thereof) held by them respectively.
- (h) Notwithstanding anything else in these Articles, the payment of any dividend shall be made only if and to the extent permitted by the Loan Agreements. If the payment of all or any part of the Participating Dividend cannot be paid by virtue of the Loan Agreements, then no such payment shall be made but the unpaid portion shall accrue to the relevant shareholder and shall be due and payable on the Specified Date and on any winding up or reduction or return of capital .

5.2 As regards capital

In the event of a winding up of the Company or upon a reduction or return of capital, the assets of the Company remaining after payment of its debts and liabilities and of the costs, charges and expenses of such winding up or reduction or return of capital shall be applied in the following manner and order of priority:

- (a) firstly, in paying to the "B" Shareholders the amount paid up or credited as paid up on each such share (including the premium (if any)) together with any arrears or accruals of the Participating Dividend;
- (b) secondly, in paying to the holders of the "A" Ordinary Shares and the "C" Ordinary Shares, or, if the "A" Ordinary Shares, "B" Ordinary Shares and the "C" Ordinary Shares have been converted into Ordinary Shares, in paying to the holders of the Ordinary Shares, the amount paid up or credited as paid up on such shares (including the premium (if any)) together with any arrears or accruals of the Participating

Dividend;

- (c) thirdly in distributing the balance amongst the "A" Shareholders, the "B" Shareholders and the "C" Ordinary Shareholders (or the Ordinary Shareholders if conversion has taken place in accordance with Article 5.3) in proportion to the amount paid up or credited as paid up on such shares (including the premium (if any)) and as if they were all holders of shares of the same class.

5.3 As regards conversion

When a Specified Date occurs, the "A" Ordinary Shares, "B" Ordinary Shares and the "C" Ordinary Shares shall automatically be converted into and be re-designated Ordinary Shares on the basis of one Ordinary Share for each "A" Ordinary Share, "B" Ordinary Share and "C" Ordinary Share, such conversion to be deemed to occur with effect from 00.01am on the Specified Date.

5.4 As regards voting

Subject to any special rights or restrictions as to voting attached by or in accordance with these Articles to any class of shares, 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 for every share of which he is the holder.

6. CLASS RIGHTS

- 6.1 Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class of shares may be varied or abrogated, either whilst the Company is a going concern or during or in contemplation of a winding-up, with the consent in writing of the holders of the Specified Majority (in respect of the "B" Ordinary Shares) and 50% in aggregate in respect of the "A" Ordinary Shares and the "C" Ordinary Shares of the issued shares of those classes, or with the sanction of a resolution passed at a separate meeting of the holders of the shares of these classes subject, in each case, to a 75% majority being required in the circumstances set out in the Act, but not otherwise. To every such separate meeting all

the provisions of these Articles relating to general meetings of the Company or to the proceedings thereat shall, mutatis mutandis, apply, save that the necessary quorum shall be two persons at least holding or representing by proxy one third in nominal amount of the issued shares of the class (but so that if at any adjourned meeting of such holders a quorum as above defined is not present those members who are present shall be a quorum and where there is only one person holding shares of that class that sole shareholder shall be a quorum), and that the holders of shares of the class shall, on a poll, have one vote in respect of every share of the class held by them respectively.

6.2 Without prejudice to the generality of this Article the special rights attached to the "B" Ordinary Shares shall be deemed to be varied:

- (a) by any alteration to the Memorandum or Articles of Association of the Company; or
- (b) by any alteration, increase, reduction, subdivision, consolidation or other variation of any of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries or the reduction in the amount, if any, standing to the credit of the share premium account or capital redemption reserve fund of the Company or any of its subsidiaries except as expressly provided in or permitted by these Articles; or
- (c) by the creation of any shares other than the "A" Ordinary Shares, the "B" Ordinary Shares, the "C" Ordinary Shares and (by conversion in accordance with these Articles) the Ordinary Shares; or
- (d) by the grant of any right to require the allotment or issue of any shares or securities in the Company (other than the creation, allotment or issue of any shares or securities on the date of adoption of these Articles or as expressly provided for or permitted by the Investment Agreement or pursuant to the Warrant Instrument); or
- (e) by the sale or transfer or other disposal (other than from one wholly owned subsidiary to another or from or to the Company to or from a wholly owned subsidiary) of the undertaking, assets or property of the Company or of any of its subsidiaries or any substantial part thereof; or

- (f) by any alteration or relaxation of the restrictions on the powers of the directors of the Company or any of its subsidiaries to borrow or give guarantees or create any mortgage or charge contained in Article 27 hereof or in the Articles of Association of any subsidiary of the Company; or
- (g) by any change in the accounting reference date or the auditors for the time being of the Company; or
- (h) by the application by way of capitalisation of any sum in or towards paying any debenture or debenture stock (whether secured or unsecured) of the Company; or
- (i) by any material alteration to the structure of the business of the Company or of any of its subsidiaries or its cessation to a material extent; or
- (j) by the purchase or other acquisition by the Company or any of its subsidiaries of any share capital of the Company; or
- (k) by the passing of a resolution for the winding-up of the Company or any of its subsidiaries; or
- (l) by any Listing or Sale.

6.3 The rights conferred upon the holders of shares of any class shall not, unless otherwise expressly provided by the terms of the shares of that class, be deemed varied by the creation or issue of further shares ranking in priority to or *pari passu* therewith.

7. ALLOTMENT OF SHARES

7.1 Subject to paragraph 7.4 of this Article the directors shall not without the authority of the Company in general meeting and any consents required pursuant to Article 6.2 allot any of the shares in the capital of the Company, other than pursuant to the exercise of the rights granted under the Warrant Instrument or as expressly provided for or permitted by the Investment Agreement.

- 7.2 Where authority has been given to the directors as referred to in paragraph 7.1 of this Article to allot shares the directors may subject to the terms of such authority and subject to any terms on which any shares are created or issued and in accordance with this Article allot shares provided that no shares shall be issued at a discount contrary to the Act.
- 7.3 In the foregoing paragraphs of this Article references to allotment of shares shall include references to the grant of any right to subscribe for, or to convert any security into, shares.
- 7.4 Where authority has been given to the directors as referred to in this Article to grant a right to subscribe for, or to convert any security into, shares the directors shall allot such shares as may be required to be allotted pursuant to the exercise of such right.
- 7.5 Sections 89(1) and 90 of the Act shall not apply to the Company.
8. In Regulation 3 in Table A there shall be inserted after the words "provided by the articles" the following words, namely: "or by special resolution".
9. Subject to the provisions of Part V of the Act and subject to any other rights attaching to any class of share of the Company under these Articles or otherwise, the Company may:
- 9.1 issue shares which are to be redeemed or are liable to be redeemed at the option of the Company or the shareholders concerned;
- 9.2 purchase its own shares (including any redeemable shares);
- 9.3 make payment in respect of the redemption or purchase under ss 159 and 160 or (as the case may be) s 162 of the Act, together with the relevant consent, of any of its own shares, otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares to the extent permitted by ss 171 and 172 of the Act.
10. **SHARE CERTIFICATES**

In Regulation 6 in Table A there shall be inserted after the word "seal" the following words,

namely: "or the official seal of the company".

11. LIEN

The Company shall have a first and paramount lien on all the shares registered in the name of any member (whether solely or jointly with others) for all moneys due to the Company from him or his estate, whether solely or jointly with any other person (whether a member or not) and whether such moneys are presently payable or not. The Company's lien on a share shall extend to all dividends or other moneys payable thereon or in respect thereof. The directors may at any time resolve that any share shall be exempt, wholly or partly, from the provisions of this Article.

12. CALLS ON SHARES

The directors may accept from any member the whole or any part of the amount remaining unpaid on any share held by him notwithstanding that no part of that amount has been called up.

13. TRANSFER OF SHARES

13.1 No transfer of any share may be registered without the approval of the directors. The directors may withhold such approval if (but only if) either the share is not fully paid up or the Company has a lien thereon or the transfer has not been effected in accordance with these Articles or the directors are otherwise entitled to withhold such approval under these Articles but the directors *shall approve a transfer permitted by these Articles.*

13.2 The provisions of these Articles shall apply mutatis mutandis to the sale or other disposal of any shares allotted to a member by means of a renounceable letter of allotment or other renounceable document of title. No member shall transfer or agree to transfer the legal or beneficial ownership of any share registered in his name or allotted to him except by means of a transfer and subject to the provisions of Article 14, 15, 18 or 19.

13.3 The directors shall not recognise a renunciation of the allotment of any share by the allottee in favour of some other person except and to the extent that the renunciation is in favour of a

person to whom they may be transferred pursuant to Article 15; and in all cases other than this a Transfer Notice shall be deemed to have been given the day before the date of such renunciation.

13.4 The directors may also refuse to register a transfer unless:

- (a) it is lodged duly stamped at the office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
- (b) it is in respect of only one class of share; and
- (c) it is in favour of not more than four transferees.

13.5 If the directors refuse to register a transfer of a share, they shall within 14 days after the date on which the transfer was lodged with the Company send to the transferor notice of the refusal.

13.6 All instruments of transfer which are registered shall be retained by the Company, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.

14. **PRE-EMPTION PROVISIONS**

14.1 This Article is subject to the provisions of Articles 15, 16, 17, 18 and 19.1.

14.2 References in this Article to "A" Ordinary Shares and "C" Ordinary Shares shall be construed as referring to Ordinary Shares if the "A" Ordinary Shares and the "C" Ordinary Shares shall have converted pursuant to Article 5.3.

14.3 The provisions contained in this Article 14.3 relate only to the transfer of "A" Ordinary Shares and the "C" Ordinary Shares:

- (a) A member or a person entitled by transmission or otherwise, who intends to transfer

shares (the "Vendor") shall give to the Company notice in writing of his intention (the "Transfer Notice"), specifying the shares which he intends to transfer (the "Shares for Sale") and the price per share (the "Sale Price") being:

- (i) the price at which he is prepared to sell the Shares for Sale; or
 - (ii) the price at which he is bound to sell at pursuant to the provisions of Articles 16.2 or 16.4 ("the Specified Price"); or
 - (iii) where appropriate, that he is prepared to sell at the Fair Value.
- (b) The Transfer Notice once given may not be withdrawn. On receipt of the Transfer Notice by the Company the Transfer Notice shall constitute the Company the Vendor's agent for the sale in accordance with the following provisions of this Article.
- (c) On receipt by the Company of a Transfer Notice the Board shall be entitled to determine, subject to the prior written approval of the Special Director, to allocate all or part of the Shares for Sale at the lower of the Fair Value or the Specified Price to a person or persons replacing (directly or indirectly) the Vendor as an employee, Consultant or director of the Company or any of its subsidiaries PROVIDED that such replacement is found within six months of the date of the Transfer Notice.

Such determination shall be made within 28 days of the date of the Transfer Notice and shall be communicated in writing to the Vendor. If or to the extent that no such determination is made within this period, or if a determination is made and no replacement is found within the period specified in Article 14.3(c), the Shares for Sale (or the remainder thereof following such allocation) shall be offered in accordance with the remaining provisions of this Article. The date of expiry of the said 28 day or six month period, as the case may be, is herein referred to as the "Relevant Date".

- (d) Within seven days of the Relevant Date the Company shall offer such of the Shares for Sale as are "A" Ordinary Shares to the "A" Shareholders and such of the Shares for sale as are "C" Ordinary Shares to the "C" Shareholders, on the register at the Relevant Date. The offer will invite them to apply for such number of the Shares for

Sale as they are respectively prepared to purchase. Every such offer shall be made in writing and shall specify the number of Shares for Sale offered to each "A" Shareholder or "C" Shareholder PROVIDED that if the Board considers that the provisions of this Article 14.3 could mean that the offer of the Shares for sale would require a prospectus in accordance with the Public Offers of Securities Regulations 1995, the Board shall (in its absolute discretion) be entitled to devise such other method of offering such Shares which does not require a prospectus. For the avoidance of doubt, such other method may involve the offering of Shares to a limited number of "A" Shareholders or "C" Shareholders selected by such method as the Board shall in its discretion think fit.

- (e) Each "A" Shareholder or "C" Shareholder shall be entitled to such of the Shares for Sale as are "A" Ordinary Shares or as are "C" Ordinary Shares as nearly as may be in proportion to the number of the existing issued "A" Ordinary Shares or "C" Ordinary Shares held by him at the date of the offer (the "Proportionate Entitlement"). Each offer shall be accompanied by forms of application for use by the "A" Shareholder or "C" Shareholder in accepting his Proportionate Entitlement and in applying for any shares in excess of his Proportionate Entitlement (the "Excess Shares"). Every such offer shall be open for acceptance in whole or in part within 21 days from the date of its despatch. If the Transfer Notice specifies a Sale Price, every form of application completed by a purchasing "A" Shareholder or "C" Shareholder pursuant to any such offer shall state whether, in respect of all (but not some) of the shares applied for, the "A" Shareholder or "C" Shareholder is prepared to accept the Sale Price or requires the Fair Value to be determined in accordance with Article 14.3(i).
- (f) At the expiration of such 21 days, the directors shall allocate the Shares for Sale, in the following manner:
 - (i) if a determination has been made, in accordance with Article 14.3(c);
 - (ii) subject to Article 14.3(f)(i), to each purchasing "A" Shareholder or "C" Shareholder as appropriate there shall be allocated his Proportionate Entitlement or such lesser number of the Shares for Sale for which he may

have applied;

- (iii) if the number of any Shares for Sale which remain unallocated is less than the aggregate number of Excess Shares for which applications have been made, the unallocated shares shall be allocated (as nearly as may be) in the proportions which the Excess Share applications bear to one another;
 - (iv) if the number of the Shares for Sale which remain unallocated equals or is greater than the aggregate number of shares for which Excess Share applications have been made, each purchasing member who has applied for Excess Shares shall be allocated the number of Excess Shares for which he applied.
- (g) If there remains a balance of Shares for Sale which are unsold after the above procedure has been followed, the directors shall offer
- (i) any remaining "A" Ordinary Shares firstly to the "C" Shareholders and thereafter to the "B" Shareholders; and
 - (ii) any remaining "C" Ordinary Shares firstly to the "A" Shareholders and thereafter to the "B" Shareholders;

and the procedure set out in Article 14.3(d) and 14.3(e) shall be followed with the necessary modification.

- (h) Within seven days of the determination under Article 14.3(c) or the expiry of the last 21 day period in which applications from purchasing members can be made in accordance with this Article 14.3, as the case may be, the Company shall notify the Vendor and all purchasing members of the details of the acceptances and applications which have been made and of the allocations made as between purchasing members under this Article. Each purchasing member shall be bound by the terms of any acceptance and application made by him to purchase in accordance with this Article such number of shares as are specified therein at the Sale Price or, where such purchasing member has specified that he is not prepared to accept the Sale Price, the

Fair Value per share.

- (i) In the case of a determination under Article 14.3(c) or if any purchasing member states in his form of acceptance and application that he is not prepared to accept the Sale Price, the price for the Shares for Sale shall equal the fair value of the Shares for Sale based on the most recent annual valuation carried out and computed in accordance with Article 14.3(j) (the "Fair Value") unless the Board believes that there has been a material change in the value of the Shares for Sale, in which case the Sale Price shall be the fair value calculated in accordance with Article 14.3(j) by the Auditors, and the cost of obtaining such Auditors' report shall be borne, in the case of a determination under Article 14.3(c) or where the further valuation has not been at the request of the Vendor, by the Company and in all other cases by the purchasing members in proportion to the number of shares allocated to each such purchasing member.
- (j) The directors shall arrange that every year as soon as practicable following completion of the audit of the Company's statutory accounts the Auditors shall certify in writing the sum which in their opinion is the fair value of an "A" Ordinary Share and a "C" Ordinary Share (on the basis that the Vendor is a willing seller and the transferee a willing buyer). In reporting on such sum no account shall be taken of the number of shares comprised in the Shares for Sale, nor the number of shares held by other members, nor the fact that the Shares for Sale constitute a minority interest but the Auditors shall otherwise have regard to such considerations as the Board may reasonably direct at the time of each valuation and such other criteria as they shall regard as appropriate for the purpose. In so reporting, the Auditors shall be considered to be acting as experts and not as arbitrators and, accordingly, the Arbitration Acts 1950 and 1979 or any statutory reenactment or modification thereof for the time being in force shall not apply.
- (k) Any sale of shares effected pursuant to this Article to a purchasing member who has stated that he is prepared to accept the Sale Price shall be at the Sale Price and any sale of shares effected pursuant to this Article under Article 14.3(c) or to a purchasing member who has stated that he is not prepared to accept the Sale Price pursuant to Article 14(e) shall be at the Fair Value so fixed.

- (l) The Vendor shall be bound, upon payment of the Sale Price, the Specified Price or the Fair Value (as the case may be), to transfer the Shares for Sale which have been allocated pursuant to this Article to the persons nominated by the Board pursuant to Article 14.3(c) or to the purchasing members (as the case may be). If, after becoming so bound, the Vendor makes default in transferring any of the Shares for Sale, the Company may receive the purchase money and the Vendor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of Shares for Sale to the purchaser and upon execution of such transfer the Company shall hold the purchase money in trust for the Vendor. The receipt of the Company for the purchase money shall be a good discharge to each purchaser and, after his name has been entered in the register of members of the Company, the validity of the proceedings shall not be questioned by any person.
- (m) If all or any of the Shares for Sale are not accepted by purchasers in accordance with this Article, the Vendor may within six months of the date on which he receives notification of the details of the acceptances and applications by purchasing members under this Article transfer all of the Shares for Sale which have not been accepted to any person or persons approved by the Special Director(s) (such approval not to be unreasonably withheld) on a bona fide sale at a price per share being either the Specified Price or where the Vendor is not bound to sell at the Specified Price at a price per share not less than the Fair Value (after deduction, where appropriate, of any dividend or other distribution to be retained by the Vendor).

14.4 The provisions in this Article 14.4 relate only to the transfer of "B" Ordinary Shares:

- (a) The transfer of "B" Ordinary Shares shall be carried out following the same procedure as in Article 14.3, save as varied below.
- (b) Article 14.3(c) shall not apply. The Shares for sale shall be offered in accordance with Article 14.3(d) within 28 days of the date of receipt of the Transfer Notice to "B" Shareholders on the register on that date.
- (c) The "B" Ordinary Shares shall be offered under Article 14.3(d) above only to "B" Shareholders and each "B" Shareholder shall be entitled to receive a proportionate

entitlement calculated pro rata by reference to the "B" Shareholder's holding of "B" Ordinary Shares as against the total of issued "B" Ordinary Shares (the "Proportionate Entitlement"). Each "B" Shareholder shall be entitled to apply for "B" Ordinary Shares in excess of his Proportionate Entitlement.

- (d) No provisions contained in Article 14.3 in relation to determination of the price at which the "B" Ordinary Shares are to be transferred or to a Fair Value in respect of the "B" Ordinary Shares or the ability to require that any "B" Ordinary Shares which are Shares for Sale to be transferred at a Fair Value shall apply in relation to the transfer of "B" Ordinary Shares and the provisions of Article 14.3 shall be modified accordingly. *The price at which the "B" Ordinary Shares shall be transferred pursuant to this Article 14 shall be the price specified by the proposing transferor in the Transfer Notice and references in Article 14.3 to the Fair Value shall be deemed to be references to the price specified in the relevant Transfer Notice.*
- (e) If there are "B" Ordinary Shares not taken up after the expiry of the 21 days under Article 14.4(a) to (c), then the balance remaining shall be offered to the members holding "B" Ordinary Shares who shall be entitled to receive a Proportionate Entitlement calculated by reference to their holding of "B" Ordinary Shares to the total of issued "B" Ordinary Shares, but such members may apply for "B" Ordinary Shares in excess of their Proportionate Entitlement. No "B" Ordinary Shares shall be capable of being offered under the procedures contained in this Article 14.4 to any "A" Shareholder or "C" Shareholder.
- (f) *Save as otherwise provided in these Articles, on any transfer of "B" Ordinary Shares in accordance with these Articles by a Vendor who holds both "B" Ordinary Shares and Loan Notes, either all or the same proportion of the Loan Notes as the transferred "B" Ordinary Shares bear to the total number of "B" Ordinary Shares in issue, whichever is the lesser, shall also be transferred to the same Transferee at the same time and as part of the same transaction. No transfer of "B" Ordinary Shares shall be permitted except in accordance with this Article 14(f) provided always for the avoidance of doubt this Article shall not apply to a transfer of "B" Ordinary Shares where the Vendor does not hold any Loan*

Notes.

14.5 For the purpose of ensuring that a transfer of shares is duly authorised or that no circumstances have arisen whereby a Transfer Notice is required to be given hereunder the directors may and shall at the written request of the Special Director and at the Company's expense request any member or past member or the personal representative or trustee in bankruptcy, administrative receiver or liquidator or administrator of any member or any person named as transferee in any instrument of transfer lodged for registration to furnish to the Company such information and evidence as the Board may reasonably think fit regarding any matter which they may deem relevant to such purpose. Failing such information or evidence being furnished to the reasonable satisfaction of the Board within 14 days after such request the Board shall be entitled to refuse to register the transfer in question or, if such information or evidence discloses that a Transfer Notice ought to have been given in respect of any shares, the Special Director may by notice in writing require that a Transfer Notice be given forthwith in respect of the shares concerned.

14.6 If in any case where under the provisions of these Articles:

(a) the Special Director requires a Transfer Notice to be given in respect of any shares;
or

(b) a person has become bound to give a Transfer Notice in respect of any shares;

and such a Transfer Notice is not duly given within a period of two weeks of demand being made or within the period allowed thereafter respectively a Transfer Notice shall be deemed to have been given at the expiration of the said period. In any such case as aforesaid the provisions of this Article shall take effect.

14.7 No share shall be issued or transferred to any bankrupt or person of unsound mind.

14.8 The provisions of this Article may be set aside with the consent of the Specified Majority and shall cease and determine (except in relation to shares which are then the subject of a Transfer Notice) on the Specified Date.

15. **PERMITTED TRANSFERS**

Notwithstanding the provisions of any other Article the transfers set out in this Article 15 shall be permitted without restriction as to price or the requirement to follow the pre-emption procedure in Article 14, subject always to compliance with the provisions of Article 14.4(f).

15.1 **Permitted transfers by Investors**

- (a) Any transfer by a trustee or nominee for an Investor to another trustee or nominee for the Investor or to the Investor itself.
- (b) Any transfer of any shares in the Company held by an Investor ("Original Transferor") between the Original Transferor and any subsidiary company of the Original Transferor or any holding company of the Original Transferor or another subsidiary of such holding company or between one subsidiary of such holding company and such holding company or any other such subsidiary PROVIDED that if subsequently such transferee ceases to be a subsidiary of the ultimate holding company of the Original Transferor or if the beneficial interest in the shares (or the value thereof) ceases to be owned by such ultimate holding company or any of its subsidiaries, such transferee shall:
 - (i) forthwith notify the directors in writing that such event has occurred; and
 - (ii) be bound to give a Transfer Notice in respect of such shares.
- (c) Where shares are held by an Investor as a nominee or on trust for one or more beneficial owners any transfer between that Investor and any other nominee or trustee or the beneficial owner for the time being who becomes an Investor.
- (d) Where shares are held by an Investor as a nominee or on trust, whether directly or indirectly, for an approved scheme or schemes as defined in s 612(1) Income and Corporation Taxes Act 1988 any transfer between that member and any other nominee or trustee, whether direct or indirect, for the same approved scheme or schemes.

- (e) Any transfer to a Collective investment scheme (or its nominee) managed by an Investor or any other person who becomes a manager or trustee of such a Collective investment scheme.
- (f) Any transfer to a limited partnership in which each of the limited partners is at the time of the transfer a beneficial owner of some or some part of the shares the subject of the transfer ("a qualifying partnership") or the general partner or a nominee of the qualifying partnership or any transfer thereafter by a qualifying partnership or the general partner or a nominee of such qualifying partnership to the beneficial owner of the shares.
- (g) Any transfer to a nominee formed for the purposes of administering a co-investment scheme of an Investor.
- (h) Any transfer to a Qualifying Institution.
- (i) Any transfer to any other Investor.

15.2 Permitted transfers by shareholders who are not Investors

- (a) Any transfer of shares or the creation or transfer of any interest therein by a trust or other scheme for the benefit of employees or directors to or in favour of an employee or director of the Company or of any of its subsidiaries as approved by the Board.
- (b) *Any transfer pursuant to Article 14.3.*
- (c) Any transfer to trustees upon a Family Trust and, on a change of trustees, by such trustees to the new trustees of the same Family Trust PROVIDED that:
 - (i) no such transfer shall be made except with the prior consent of the Special Director and where such consent is requested such consent shall be given when the Special Director is satisfied:
 - (aa) with the terms of the trust instrument relating to such Family Trust and

in particular with the powers of the trustees pursuant to such instrument;

(bb) with the identity of the proposed trustees;

(cc) that the proposed transfer will not result in 50 per cent or more in aggregate of the Company's equity share capital being held by trustees of that and any other Family Trust; and

(dd) that no costs incurred in connection with the setting up or administration of the relevant Family Trust are to be paid by the Company;

(ii) if and whenever any such shares are to cease to be held upon a Family Trust, the trustees shall be bound to serve a Transfer Notice.

15.3 Permitted transfers by all shareholders

Any transfer permitted by Article 17 (Change of control) and 18 (Dragalong).

16. COMPULSORY TRANSFERS

16.1 (a) If an employee or director of the Company or any of its subsidiaries ceases for whatever reason to be such an employee or director without remaining or becoming an employee of the Company or any other subsidiary (as the case may be) (the "Leaving Employee Shareholder"), such employee or director (and any Related Person as defined in Article 16.5) shall be deemed to have given a Transfer Notice at the date of such cessation in respect of all the shares then registered in his or their names. In any such case as aforesaid the provisions of Article 14 shall take effect save that the Sale Price shall be as set out in Article 16.2.

(b) If a Consultant ceases for whatever reason to be a Consultant (the "Leaving Consultant Shareholder"), such Consultant (and any Related Person as defined in Article 16.5) shall be deemed to have given a Transfer Notice at the date of such

cessation in respect of all the shares then registered in his or their names. In any such case as aforesaid the provisions of Article 14 shall take effect save that the Sale Price shall be as set out in Article 16.4.

- (c) If at any time any person (whether or not a member) ceases for whatever reason to be a director or employee of the Company or any of its subsidiaries ("Former Employee") and at any time thereafter he or a Related Person becomes the holder of any shares in the Company by virtue of any rights or interests acquired by him whilst he was such director or employee, he shall thereupon be bound to give a Transfer Notice in respect of all such shares in accordance with Article 16.1(a).
- (d) If at any time any person (whether or not a member) ceases for whatever reason to be a Consultant ("a Former Consultant"), and at any time thereafter he or a Related Person becomes the holder of any shares in the Company by virtue of any rights or interests acquired by him whilst he was such a Consultant, he shall thereupon be bound to give a Transfer Notice in respect of all such shares in accordance with Article 16.1(b).
- (e) If at any time the Personal Security granted by an "A" Shareholder is enforced, such an "A" Shareholder (the "Enforced Shareholder") shall be deemed to have given a Transfer Notice in respect of all the shares then registered in his or their names in accordance with Article 16.1(a).

16.2 The Sale Price for the shares of a Leaving Employee Shareholder, an Enforced Shareholder and Former Employee and any Related Person shall be:

- (a) subject to Article 16.2(c), if the date on which the Transfer Notice is required to be given arises prior to 30 November 1997 (other than for one of the reasons set out in Article 16.3(b) or (c)) the cost of acquisition of the Shares (including, in the case of Shares issued prior to November 1996, the interest accrued on any loan taken out for the purpose of financing the acquisition of the Shares) by the Leaving Employee Shareholder, the Enforced Shareholder or Former Employee;

- (b) if the Leaving Employee Shareholder or Former Employee has ceased to be an employee at any time for one of the reasons set out in Article 16.3(b) or (c) or at any time on or after 30 November 1997 for any one of the reasons set out in Article 16.3(a), (d), (e) or (f) the price shall be the Fair Value;
- (c) if the Leaving Employee Shareholder or Former Employee has ceased to be an employee at any time for any reason other than one set out in Article 16.3 the price shall be the lower of cost of acquisition of the Shares (including, in the case of Shares issued prior to November 1996, the interest accrued on any loan taken out for the purpose of financing the acquisition of the Shares) by the employee or director and the Fair Value;
- (d) for an Enforced Shareholder, if the date on which the Transfer Notice is deemed to have been given arises after 30 November 1997, the price shall be the Fair Value.

16.3 The reasons referred to in Article 16.2(a) and (b) are:

- (a) his retirement on reaching retirement age in accordance with his terms of employment;
- (b) his death;
- (c) his ill health or permanent disability;
- (d) his redundancy;
- (e) his dismissal where such dismissal is found by a tribunal or court of competent jurisdiction to have been unfair or wrongful;
- (f) because he is employed by a subsidiary or business of the Company which is sold or otherwise disposed of,

PROVIDED that if the Leaving Employee Shareholder or Former Employee resigned (other than as a result of retirement, ill-health or permanent disability or in circumstances which are found by a tribunal or court of competent jurisdiction to amount to constructive dismissal), that

shall not constitute a reason within this Article 16.3.

16.4 The Sale Price for the shares of a Leaving Consultant Shareholder, Former Consultant and any Related Person shall be:-

- (a) subject to Article 16.4(c), and subject to the discretion of the Board if the date on which the Transfer Notice is required to be given arises prior to 30th November 1998 (other than for one of the reasons set out in Article 16.3(b) or (c)) the cost of acquisition of the shares by the Leaving Consultant Shareholder or the Former Consultant;
- (b) if the Leaving Consultant Shareholder or Former Consultant has ceased to be a Consultant at any time for one of the reasons set out in Article 16.3(b) or (c) or subject to 16.4(c) at any time on or after the 30th November 1998 as a result of notice being served either by the Consultant or by the Company or subsidiary to which he is appointed, the price shall be the Fair Value;
- (c) if the Leaving Consultant Shareholder or Former Consultant has ceased to be a Consultant as a result of being dismissed from his appointment without notice on justifiable grounds the price shall be the lower of the cost of acquisition of the Shares by the Consultant and the Fair Value.

16.5 In determining the Fair Value of the Ordinary Shares to be offered pursuant to Article 16.1, the Company may propose to the Leaving Employee Shareholder, the Enforced Shareholder Former Employee or the Leaving Consultant Shareholder a price which if accepted by the Leaving Employee Shareholder, the Enforced Shareholder Former Employee or the Leaving Consultant Shareholder shall be deemed to be the Fair Value. In the absence of agreement Fair Value shall be determined in accordance with Article 14.3(j).

16.6 In this Article a "Related Person" is any person who has derived title to any shares from the Leaving Employee Shareholder, Former Employee, Enforced Shareholder or Leaving Consultant Shareholder pursuant to Article 15.2 and includes the Family Trusts, personal representations and Privileged Relations of the Leaving Employee Shareholder, Former Employee or Leaving Consultant Shareholder.

17. LIMITATION ON TRANSFER OF CONTROL

17.1 No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous consent of the Specified Majority if, as a result of such sale or transfer and the registration thereof, a Controlling Interest is obtained or increased in the Company by a person who was not a member of the Company on the date this Article was adopted unless and until the proposed transferee or his nominee (the "Offeror") makes an offer to purchase all the Shares at not less than a price approved by the Specified Majority with security as to the performance of the obligations of the proposed transferee which is satisfactory to the Specified Majority and on the following terms:

- (a) save as provided in Article 17.1(b) below, the Offer must be conditional only upon the Offeror having received acceptances in respect of the Shares which, together with the Shares held by the Offeror, will result in the Offeror holding more than 70% by nominal value of the Shares;
- (b) the Offer may, if appropriate, be conditional upon notification being received from the Office of Fair Trading that the Secretary of State for Trade and Industry does not intend to refer the proposed acquisition by the Offeror to the Monopolies and Merger Commission;
- (c) the Offer must be open for acceptances for a period of not less than 21 days and not more than 60 days; and
- (d) the Offer must be in cash, or have a cash alternative.

17.2 For the purpose of this Article the expressions "transfer" and "transferee" shall include respectively the renunciation of a renounceable letter of allotment and the renouncee under any such letter of allotment.

17.3 If the Offer becomes unconditional in all respects Shares may be transferred to the Offeror without going through the procedures laid down in Article 14 PROVIDED that the Offeror completes at the same time the purchase of all the Shares in respect of which the Offer is accepted.

18. DRAGALONG RIGHTS

- 18.1 If a proposed transferee of shares in the Company or his nominee or agent receives (within a period of 21 days of making the first of any offers hereinafter mentioned) acceptances of offers made to all members of the Company (on terms which comply with Article 17.1) which will (ignoring the pre-emption rights, if any, held by other members) result in such transferee or his nominee owning not less than 70% of the Company's issued share capital then such proposed transferee or his nominee may extend such offers on the terms set out in Article 18.2.
- 18.2 The terms of the extension are that such transferee or his nominee shall give written notice to those members who have not accepted such offers applicable to them requiring them so to do. Upon the giving of such notice each non-accepting member shall:
- (a) be deemed to have accepted the same in respect of all shares held by him in accordance with the terms of the offer applicable to him and to have irrevocably waived any pre-emption rights he may have in relation to the transfer of any of such shares; and
 - (b) become obliged to deliver up to such transferee or his nominee an executed transfer of such shares and the certificate(s) in respect of the same together with an executed waiver of all such pre-emption rights.
- 18.3 If any such non-accepting member as is referred to in Article 18.2 shall not, within 14 days of becoming required to do so, execute transfers in respect of the shares held by such member and pre-emption waives in respect of other relevant shares, then the directors shall be entitled to, and shall, authorise and instruct such person as they think fit to execute the necessary transfer(s) on his behalf and, against receipt by the Company (on trust for such member) of the purchase moneys payable for the relevant shares, deliver such transfer(s) and pre-emption waivers to the proposed transferee or his nominee and register such transferee or his nominee as the holder thereof, and after such transferee or his nominee has been registered as the holder the validity of such proceedings shall not be questioned by any person.
- 18.4 Any transfer pursuant to this Article shall not be subject to the pre-emption provisions of Article 14.

19. **TRANSMISSION OF SHARES**

19.1 Regulations 29 to 31 shall apply, with the following modifications:

- (a) The personal representatives of the deceased (where he was a sole holder or only survivor of joint holders) shall be entitled to be registered as the holder of the shares held by the deceased without restriction as to price or the requirement to go through the pre-emption procedure in Article 14. Any instrument of transfer executed by the personal representatives in accordance with regulation 30 shall be subject to Article 14 unless the transfer is permitted under Article 15.
- (b) The person entitled to a share in consequence of the death or bankruptcy of a holder shall be bound to give a Transfer Notice in respect of all the Shares then registered in the name of the deceased or bankrupt holder:
 - (i) in the circumstances set out in Article 16; and/or
 - (ii) *at any time, if and when called to do so in writing by the Specified Majority.*

20. **ALTERATION OF SHARE CAPITAL**

The provisions of regulations 32, 33, 34 and 36 of Table A shall take effect subject to the provisions of Article 6.

21. **GENERAL MEETINGS**

- 21.1 Every notice convening a general meeting shall comply with the provisions of s 372(3) of the Act as to giving information to members in regard to their right to appoint proxies; and notices of and other communications relating to any general meeting which any member is entitled to receive shall be sent to the directors for the time being of the Company and the Auditors.
- 21.2 A poll may be demanded by any member present in person or by proxy or (being a corporation) by its duly authorised representative. Regulation 46 in Table A shall be construed accordingly.

22. **PROXIES**

The instrument appointing a proxy shall be in writing in any usual or common form and shall (except in the case of an appointment by telex or a facsimile copy of an appointment otherwise complying with the requirements of this Article) be executed by the appointor or his attorney duly authorised in writing or in such other form as the directors may approve. A proxy need not be a member of the Company.

23. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is executed, or a notarially certified copy of such power or authority, shall be deposited or received at the registered office (or at such other place in the United Kingdom as is specified for that purpose in any instrument of proxy sent by the Company in relation to the meeting) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or handed to the chairman of the meeting or adjourned meeting, and, in default, the instrument of proxy shall be invalid.

24. **WRITTEN RESOLUTION**

Subject to the provisions of the Act, a resolution in writing signed by all the members of the Company who would be entitled to receive notice of and to attend and vote at a general meeting, or by their duly appointed proxies or attorneys, shall be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held. Any such resolution may be contained in one document or in several documents in the same terms each signed by one or more of the members or their proxies or attorneys, and signature in the case of a body corporate which is a member shall be sufficient if made by a director or the secretary thereof or by its duly authorised representative.

25. **DIRECTORS**

- 25.1 Unless and until otherwise determined by special resolution of the Company the number of directors shall not be less than two. Regulation 64 in Table A shall not apply to the Company.
- 25.2 A director shall not require a share qualification but shall be entitled to attend and speak at any

general meeting of the Company and at any separate meeting of the holders of any class of shares in the capital of the Company.

26. SPECIAL DIRECTOR

- 26.1 Mercury Asset Management plc ("MAM") for so long as it or any of its nominees or clients, or any person to whom it has transferred shares in accordance with Article 15.1(b) or any nominee or client of any such person, or any combination of them, is or are the holder of not less than 5% in nominal value of the issued "B" Ordinary Shares, and thereafter the Specified Majority, shall be entitled by notice in writing addressed to the Company from time to time to *appoint as a director of the Company any one person (the "Special Director") and may remove from office any person so appointed and to appoint another person in his place by such written notice.*
- 26.2 Any Special Director appointed pursuant to Article 26.1 above, shall be entitled to all notices and voting rights and in all other respects be treated as the other directors of the Company, save that the remuneration of the Special Director shall be at a such fee as is agreed between *the persons appointing him and the directors.*
- 26.3 On any resolution pursuant to s 303 of the Act or Article 29 hereof for the removal of a Special Director the "B" Shareholders present at such meeting shall together have twice as many votes as all other Shareholders voting on such resolution.
- 26.4 If so required by his appointor, a Special Director shall be appointed a director of any or all *the subsidiaries of the Company and the provisions of these Articles relating to the conduct of the business of the Company and the holding of meetings of the board of directors of the Company shall be deemed to apply mutatis mutandis to such subsidiaries to which a Special Director is appointed and the Company shall procure such appointment and observance of this Article 26.4.*
- 26.5 Any Special Director shall be entitled to report back to his appointors upon the affairs of the *Company and its subsidiaries and to disclose such information as he shall reasonably consider appropriate to them.*

26.6 For so long as any Investor is entitled to appoint a Special Director but has not exercised such right such Investor shall be entitled from time to time to appoint any person (an "Observer") to attend meetings of the board of directors of the Company, including committees thereof and meetings of the boards of directors of subsidiaries of the Company and committees of such boards. An Observer shall be given (at the same time as the directors) notice of all such meetings of the directors and all agendas, minutes and other papers relating to such meetings. Observers shall be entitled to speak at such meetings and to require that business be upon the agenda for any such meeting but shall not in any circumstances be entitled to vote. The Company shall reimburse all expenses of the Observer properly incurred in performance of his functions whether such functions are performed in respect of the Company or one of its subsidiaries.

26.7 The Specified Majority shall be entitled by notice in writing addressed to the Company from time to time to appoint any persons as additional directors of the Company and may remove from office any such person or persons and appoint another person in place of one or all of such persons by such written notice.

27. **BORROWING POWERS**

The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, and to issue debentures and other securities, whether outright or as collateral security, for any debt, liability or obligation of the Company or of any third party.

28. **QUALIFICATION OF DIRECTORS**

28.1 In addition to the provisions of Regulation 81, the office of a director shall also be vacated if:

- (a) he becomes of unsound mind;
- (b) he is removed under Article 26, being a Special Director.

28.2 Any person may be appointed or elected as a director, whatever his age, and no director shall be required to vacate his office by reason of his attaining or having attained the age of 70 years

or any other age.

29. **REMOVAL OF DIRECTORS**

In addition and without prejudice to the provisions of s 303 of the Act, the Company may by extraordinary resolution remove any director before the expiration of his period of office and may by ordinary resolution appoint another director in his stead.

30. **ALTERNATE DIRECTORS**

A director may at any time appoint any other person (whether a director or member of the Company or not) to act as alternate director at any meeting of the directors at which the director is not present, and may at any time revoke such appointment. The appointment of any person who is not already a director as an alternate shall require the prior approval of the Board, except the case of an alternate for a Special Director. An alternate director so appointed shall not be entitled as such to receive any remuneration from the Company but shall otherwise be subject to the provisions of Table A and of these Articles with regard to directors. An alternate director shall be entitled to receive notice of all meetings of the directors and to attend and vote as a director at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions, rights, powers and duties of the director by whom he was appointed. An alternate director shall ipso facto cease to be an alternate director if his appointor ceases for any reason to be a director. Where a director who has been appointed to be an alternate director is present at a meeting of the directors in the absence of his appointor such alternate director shall have one vote in addition to his vote as director. Every appointment and revocation of an alternate director shall be made by instrument in writing under the hand of the director making or revoking such appointment and such instrument shall only take effect on the service thereof at the registered office of the Company.

31. **REMUNERATION OF DIRECTORS**

The directors shall be entitled to the remuneration which the Board shall approve. Any director who serves on any committee, or who devotes special attention to the business of the Company, or who otherwise performs services which in the opinion of the Board are in addition to or

outside the scope of the ordinary duties of a director (which services shall include, without limitation, visiting or residing abroad in connection with the Company's affairs), may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the directors shall approve.

32. DIRECTORS' AND EMPLOYEES' GRATUITIES AND PENSIONS

32.1 Subject to the Investment Agreement, the directors may:

- (a) establish and maintain, or procure the establishment and maintenance of any share option or share incentive or profit sharing schemes or trusts or any non-contributory or contributory pension or superannuation schemes or funds for the benefit of, and may make or give or procure the making or giving of loans, donations, gratuities, pensions, allowances or emoluments (whether in money or money's worth) to, or to trustees on behalf of, any persons who are or were at any time in the employment of the Company, or of any company which is a subsidiary of the Company, or is allied to or associated with the Company or with any such subsidiary, or who are or were at any time directors or officers of the Company or of any such other company as aforesaid, and to the wives, husbands, widows, widowers, families and dependants of any such persons;
- (b) 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;
- (c) make payments for or towards policies of assurance on the lives of any such persons and policies of insurance of or in respect of any such persons (including insurance against their negligence) as aforesaid;
- (d) pay, subscribe or guarantee money to or for any charitable or benevolent objects, or for any exhibition, or for any political, public, general, or useful object; and
- (e) do any of the above things either alone or in conjunction with any such other company

as aforesaid.

- 32.2 Subject always if the Act shall so require to particulars with respect to the proposed payment being disclosed to the members of the Company and to the payment being approved by the Company in general meeting, any director shall be entitled to participate in and retain for his own benefit any such loan, donation, gratuity, pension, allowance or emolument.

33. **PROCEEDINGS OF DIRECTORS**

In Regulation 88 in Table A there shall be substituted for the third sentence the following sentences namely: "All directors shall be given notice of every meeting of the directors. Any director or alternate director may by notice to the Company waive his right to receive notice of the meeting and the presence of any director or alternate director at the commencement of a meeting shall constitute such waiver by him".

34. **QUORUM**

- 34.1 The quorum for meetings of the directors shall be two one of whom must be the Special Director (if appointed) or his alternate.

- 34.2 For the purpose of determining whether a quorum exists for the transaction of the business of the board of directors:

- (a) in the case of a resolution agreed by directors in telephonic or audio-visual communication with one another, all such directors shall be counted in the quorum and any resolution so agreed shall be as valid and effective as if passed at a meeting of the board of directors duly convened and held;
- (b) in the case of a meeting of the board of directors, in addition to the directors present at the meeting, any director in telephonic or audio-visual communication with such meeting shall be counted in the quorum and entitled to vote; and
- (c) any person attending a meeting of the board, or in telephonic or audio-visual communication with such a meeting, who is acting as an alternate director for one or

more directors shall be counted as one for each of the directors for whom he is so acting and, if he is a director, shall also be counted as a director, but not less than two individuals, whether both present at the meeting or in telephonic or audio-visual communication with each other, can be a quorum.

35. A resolution in writing of all the directors or all the members of a committee of directors shall be as effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held either:

- (a) if it consists of an instrument executed by or on behalf of each such director or committee member; or
- (b) if it consists of several instruments in the like form each either:
 - (i) executed by or on behalf of one or more of such directors or committee members; or
 - (ii) sent by or on behalf of one or more of such directors or committee members by telex or facsimile transmission and deposited or received at the office or received by the secretary,

and any such instrument executed or sent by or on behalf of an alternate director shall be deemed to have been duly executed or sent (as the case may be) by or on behalf of his appointor.

36. Subject to any requisite declaration of interest in accordance with the provisions of the Act and (if applicable) Regulation 85 in Table A having been made by him, a director may vote as a director in regard to any transaction or arrangement in which he is interested, or upon any matter arising therefrom and Regulations 94 and 95 in Table A shall be construed subject to this provision.

37. In Regulation 97 In Table A:

- (a) there shall be inserted after the words "the appointment" the following words, namely: "or the terms of appointment"; and
- (b) the following words shall be deleted, namely: "and be counted in the quorum" and there shall be inserted after the words "his own appointment" the following words, namely: "and shall be counted in the quorum in respect of each resolution including that concerning his own appointment".

38. **MINUTES**

38.1 The directors shall cause minutes to be made in books kept for the purpose:

- (a) of all appointments of officers and alternate directors made by the directors; and
- (b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company of the directors, and of committees of directors, including the names of the persons present at each such meeting.

39. **DIVIDENDS**

Regulations 102 to 105 (inclusive) of Table A shall be subject to Article 5.

40. **THE SEAL**

The Company is authorised pursuant to s 39 of the Act for so long as its objects require or comprise the transaction of business in foreign countries to have an official seal for use in any territory, district or place elsewhere than in the United Kingdom.

41. **INDEMNITY**

41.1 Every director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability

incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under s 727 of the Act in which relief is granted to him by the Court and no director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by s 310 of the Act.

- 41.2 Without prejudice to the provisions of Article 41.1 the directors shall have power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time directors, officers or employees or auditors of the Company, or of any other company which is its holding company or in which the Company or such holding company or any of the predecessors of the Company has any interest whether direct or indirect or which is in any way allied to or associated with the Company, or of any subsidiary undertaking of the Company or of any such other company, or who are or were at any time trustees of any pension fund in which employees of the Company or of 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 the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to the Company or any such other company, subsidiary undertaking or pension fund.