

COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

**SPECIAL AND ORDINARY RESOLUTIONS
OF
VIRGIN RAIL GROUP LIMITED**

Passed 13 February 2002

At an extraordinary general meeting of the company, duly convened and held on 13 February 2002, the following resolutions were duly passed as indicated below:

RESOLUTIONS


As a special resolution:

1. **THAT** with effect from the passing of this resolution the regulations contained in the document produced to this meeting and for the purposes of identification signed by the chairman hereof be and are hereby approved and adopted as the Articles of Association of the Company (the "**New Articles**") in substitution for and to the exclusion of all existing Articles of Association of the Company.

As an ordinary resolution:



2. **THAT** with effect from the passing of this resolution all of the authorised and issued A and B ordinary shares of 10 pence each in the capital of the Company each be and are hereby redesignated as ordinary shares ranking pari passu and having attached to them the rights and restrictions set out in the New Articles.


.....
Chairman of the Meeting

Company No. 3282548

SECOND ARTICLES 13/02/02
Adopted at EGM held
at 1.05 pm.

COMPANIES ACT 1985

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

VIRGIN RAIL GROUP LIMITED

(Adopted by Special Resolution passed
on 13 February 2002)

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THE COMPANIES ACT 1985

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution passed on 13 February 2002)

of

VIRGIN RAIL GROUP LIMITED

INTRODUCTION

- 1.1 The Regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 as amended by the Companies (Tables A to F) Amendment Regulations 1985 ("**Table A**") shall apply to the Company, save in so far as they are varied or excluded by, or are inconsistent with, the following Articles.
- 1.2 In Regulation 1 of Table A, the words "and in Articles of Association adopting the same" shall be inserted after the word "regulations" in the last paragraph of that Regulation and the sentence "Any reference to any statutory provision shall be deemed to include a reference to each and every statutory amendment, modification, re-enactment and extension thereof for the time being in force" shall be inserted at the end of that Regulation.
- 1.3 Regulations 24, 54, 57, 64, 94 to 98 (inclusive) and 118 of Table A shall not apply to the Company.

DEFINITIONS

2. In these articles the following words and expressions shall have the following meanings:

the "**Board**" the Board of Directors of the Company;

"**Director of Passenger Rail Franchising**" that person in whom the rights, obligations and discretions now conferred on the SRA were previously conferred under the terms of the Franchise Agreements;

"**Employee**" an individual who is employed by the Company or any of its subsidiaries or an individual whose services are made available to the Company or any of its subsidiaries under the terms of an agreement between the Company or any of its subsidiaries and such individual or any other person (and "contract of employment" shall be construed accordingly to include such an agreement);

"Employee Non-Voting Shares" the Employee Non-Voting Ordinary Shares of 10 pence each in the capital of the Company;

"Employee Non-Voting Shareholders" the holders of Employee Non-Voting Shares;

"Franchise Agreements" the Franchise Agreement dated 28 November 1996 expressed to be made between The Director of Passenger Rail Franchising (1) the Company (2) and (from 5 January 1997) CrossCountry Trains Limited (3) relating to the services for carriage of passengers by railway provided by CrossCountry Trains Limited, as amended from time to time, and the Franchise Agreement dated 19 February 1997 expressed to be made between The Director of Passenger Rail Franchising (1) the Company (2) and (from 9 March 1997) West Coast Trains Limited (3) relating to the services for the carriage of passengers by railway to be provided by West Coast Trains Limited, as amended from time to time;

"Group" the Company and each company which is for the time being a subsidiary undertaking of the Company;

"Listing" the admission of the issued ordinary shares of the Company to the Official List of the UK Listing Authority or the grant of permission for any of the ordinary shares of the Company to be dealt in on the Alternative Investment Market or the admission of ordinary shares of the Company to dealings on any other recognised investment exchange, as such term is defined for the purposes of the Financial Services and Markets Act 2000;

"Ordinary Shares" Ordinary Shares of 10 pence each in the capital of the Company other than the Employee Non-Voting Shares;

"Rail Regulator" that person appointed under section 1 of the Railways Act 1993 or such other person in whom the powers presently vested in the Rail Regulator under the terms of the operating licences held by West Coast Trains Limited and Cross Country Trains Limited may from time to time be vested;

"Shares" shares of any class in the capital of the Company;

"Shareholders" the Ordinary Shareholders and the Employee Non-Voting Shareholders; and

"SRA" the Strategic Rail Authority set up under the Transport Act 2000.

SHARE CAPITAL

3. The share capital of the Company at the date of adoption of these Articles is £10,170,068 divided into 100,000,000 Ordinary Shares and 1,700,680 Employee Non-Voting Shares.

SHARE RIGHTS

4. The Ordinary Shares and the Employee Non-Voting Shares shall have, and be subject to, the following rights and restrictions:

4.1 Income

Subject to the provisions of these Articles, the profits of the Company available for distribution and resolved to be distributed in respect of any financial year shall be distributed among the holders of the Shares. Every dividend shall be distributed to the holders of the Shares pro rata (as nearly as may be) according to the number of the Shares held by them respectively.

4.2 Capital

On a return of assets on liquidation or otherwise, the assets of the Company available for distribution among the members shall be applied first in paying to the holders of the Shares a sum equal to the nominal amount of each Share held by them and secondly the balance of such assets (if any) shall be distributed amongst the holders of the Shares, pro rata (as nearly as may be) according to the number of Shares held by them respectively.

4.3 Conversion

Upon a Listing, each Employee Non-Voting Share (whether in issue or forming part of the Company's authorised but unissued share capital) will automatically be converted into, and redesignated as, an Ordinary Share having equivalent rights to the rights set out in Articles 4.1 and 4.2 and entitling the holder thereof to one vote for every Ordinary Share.

4.4 Voting

4.4.1 Subject to any special rights, privileges or restrictions attached to any Ordinary Shares, at a general meeting of the Company on a show of hands every holder of an Ordinary Share who (being an individual) is present in person or by proxy (not being himself a member) or (being a corporation) is present by a representative duly authorised under section 375 of the Act (not being himself a member) shall have one vote, and on a poll every holder of an Ordinary Share present in person, by representative or by proxy shall have one vote for every Ordinary Share of which he is the holder.

4.4.2 The holders of Employee Non-Voting Shares shall not be entitled to attend, nor to vote at, any general meeting of the Company in respect of the Employee Non-Voting Shares held by them.

4.5 Restrictions on Share Rights

If any Share or Shares, or any interest in a Share or Shares, is transferred or disposed of in breach of these Articles until such breach is remedied the Share or Shares in question shall not carry the right to receive dividends or other income distributions and shall not entitle the holder or holders thereof to cast votes at general meetings or at any class meetings;

ISSUE OF NEW SHARES

5.1 All unissued Shares shall be at the disposal of the Board who may issue, offer, allot, grant options over or otherwise dispose of them to such persons at such times and generally on such terms and conditions as they think proper. Subject to the foregoing,

the Board is generally and unconditionally authorised (for the purposes of Section 80 of the Act) to allot Employee Non-Voting Shares up to an aggregate nominal amount of £170,068, such authority to expire on the fifth anniversary of the date of adoption of these Articles.

- 5.2 The provisions of Section 89(1) and Section 90(1) to (6) (inclusive) of the Companies Act 1985 shall not apply to the Company.

VARIATION OF CLASS RIGHTS

6. Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class 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 three-fourths of the issued shares of the class or with the sanction of an Extraordinary Resolution passed at a separate meeting of the holders of that class, but not otherwise. To every such separate meeting all the provisions of these Articles relating to general meetings of the Company shall apply *mutatis mutandis* except that:
- 6.1 the necessary quorum shall be at least two persons holding or representing by proxy one third in nominal amount of the issued shares of the class (save where there is only one holder of shares of the class in which case the necessary quorum shall be one holder of shares of that class), but so that at any adjourned meeting of such holders at which such a quorum is not present the holder or holders present shall be a quorum; and
- 6.2 the holders of shares of the class in question shall on a poll have one vote in respect of every share of the class held by them respectively.

TRANSFERS OF SHARES: GENERAL

- 7.1 The Directors shall be required (subject only to Articles 7.2, 7.3 and 7.4 and Regulation 24 of Table A) to register promptly any transfer of Shares made in accordance with the provisions of Articles 8 and 9 below, but shall not register any transfer of Shares not so made and shall not register a transfer made in contravention of Article 7.2. In its application to the Company, Regulation 24(a) of Table A shall be modified such that the Directors may not appoint any place other than the Company's registered office for the lodging of transfers.
- 7.2 No Share, and no interest in any Share, may be transferred or otherwise disposed of in breach of any legal or regulatory requirement to which the Company or any member of the Group is subject, or which would cause the Company or any member of the Group to be in breach of any obligation or undertaking to the SRA or the Rail Regulator, or give rise to a right for the SRA to terminate either or both of the Franchise Agreements or give rise to a right for the Rail Regulator to terminate any operating licence held by either of West Coast Trains Limited or CrossCountry Trains Limited or to review the protection from competition afforded to either of those subsidiaries under the Rail Regulator's moderation of competition policy. Articles 8 and 9 (inclusive) shall take effect subject to the provisions of this Article 7.2.

- 7.3 The Directors may refuse to register the transfer of a Share to a bankrupt, a minor or a person of unsound mind.
- 7.4 For the purpose of these Articles the following shall be deemed (without limit) to be a transfer by a member of Shares:
- 7.4.1 any direction (by way of renunciation or otherwise) by a member entitled to an allotment, issue or transfer of Shares that a Share be allotted or issued or transferred to some person other than himself; and
- 7.4.2 any sale or other disposition (excluding charging) of any legal or equitable interest in a Share (including any voting right attached to a Share) whether or not by the registered holder, whether or not for consideration and whether or not effected by an instrument in writing.

COMPULSORY TRANSFERS

8.1 Employee Non-Voting Shareholders

The provisions of this Article 8.1 shall have effect where all of the holders of the Ordinary Shares agree to sell all of the Ordinary Shares held by them (a "**Proposed Sale**").

8.1.1 In the event of a Proposed Sale, the holders of Ordinary Shares ("**Ordinary Shareholders**") must procure that an offer is made to the Employee Non-Voting Shareholders to acquire their entire holdings of Employee Non-Voting Shares, which offer complies with the provisions of Article 8.1.2, and the Ordinary Shareholders shall have the right to require all the Employee Non-Voting Shareholders to accept in full such offer (the "**Drag Along Right**"). The offer may include Employee Non-Voting Shares not in issue at the date on which the offer is made, but which may subsequently be issued (whether on exercise of an outstanding option to subscribe or otherwise).

8.1.2 An offer referred to in Article 8.1.1 shall be:

- (A) open for acceptance for not less than one month following the date of the making of the offer; and
- (B) on terms that for each Employee Non-Voting Share the Employee Non-Voting Shareholder shall be entitled to receive (whether in cash, securities or otherwise or in any combination thereof) consideration equal to the consideration to be paid for each of the Ordinary Shares and otherwise on the same terms as the Ordinary Shareholders.

For the avoidance of doubt, if the offer includes any Employee Non-Voting Shares which may be issued after the date of the offer, the consideration for each such Employee Non-Voting Share under the offer shall be the same as the consideration offered for each Employee Non-Voting Share in issue on the date the offer was made, determined in accordance with Article 8.1.2.

8.1.3 The Drag Along Right may be exercised by the Ordinary Shareholders, serving notice upon the Employee Non-Voting Shareholders at the same time as, or within seven days of, the offer made pursuant to Article 8.1.1 (the

"Drag Along Notice"). In the event that the Ordinary Shareholders do not sell all of their Ordinary Shares not later than the date specified as the date for completion of the sale and purchase of the Employee Non-Voting Shares pursuant to the acceptance of the offer, the Drag Along Notice shall lapse. In the event that the Ordinary Shareholders exercise the Drag Along Right, each Employee Non-Voting Shareholder shall be bound to accept the offer and transfer all of the Employee Non-Voting Shares registered in his name and to comply with the obligations assumed by virtue of such acceptance. If the offer includes any Employee Non-Voting Shares which may be issued after the date on which the offer is made, this Article 8.1.3 shall apply (*mutatis mutandis*) in respect of any Employee Non-Voting Shares so issued, save that the Drag Along Notice need not be served within seven days of the offer.

- 8.1.4 In the event that any Employee Non-Voting Shareholder fails to accept the offer made to him pursuant to Article 8.1.1 or, having accepted such offer, fails to complete the sale of any of his Employee Non-Voting Shares pursuant to the offer, or otherwise fails to take any action required of it under the terms of the offer, the Directors (or any of them) may authorise some person to accept the offer on behalf of that Employee Non-Voting Shareholder or undertake any action required under the terms of the offer on his part. The Directors may in particular authorise some person to execute a transfer of any Employee Non-Voting Shares in favour of the offeror (or its nominee) and the Company may give a good receipt for the consideration for such Employee Non-Voting Shares and may register the offeror (or its nominee) as holder thereof and issue to it (or as it may direct) certificates for the same whereupon the offeror (or its nominee) shall be indefeasibly entitled thereto. An Employee Non-Voting Shareholder shall in such case be bound to deliver up its certificate for its Employee Non-Voting Shares to the Company whereupon such Employee Non-Voting Shareholder shall be entitled to receive the consideration for such Employee Non-Voting Shares, which consideration shall in the meantime be held by the Company on trust for such person but without interest.

8.2 Departing Shareholders

- 8.2.1 Whenever any member of the Company who is an Employee (the **"Departing Shareholder"**) shall for any reason whatsoever cease to be an Employee then the Board may require such Departing Shareholder to sell all or any of his Shares to one or more Employees or other persons (as the Board may decide) at a price per share equal to:
- (A) the Employee Fair Value (as determined in accordance with Article 8.2.2, or 8.2.3), in circumstances where the Departing Shareholder has ceased to be an Employee due to his death, ill health or permanent disability (evidenced to the satisfaction of the Board), redundancy (within the meaning of section 139 of the Employment Rights Act 1996), retirement (on reaching the age of 65 years or any other age at which he is bound to retire in accordance with the terms of his contract of employment) or dismissal without cause (as determined at the absolute discretion of the Board); or

- (B) the lower of Employee Fair Value and the Departing Shareholder's cost of acquisition of the Shares in question, in any other case.

For the avoidance of doubt, the provisions of this Article 8.2 shall apply to any Shares issued to an Employee (or his personal representatives) on the exercise of an option, including Shares issued after he ceases to be an Employee.

- 8.2.2 In determining the Employee Fair Value the Company may propose to the Departing Shareholder a price which, if accepted by the Departing Shareholder, shall be deemed to be the Employee Fair Value. In the absence of agreement Employee Fair Value shall be determined in accordance with Article 8.2.3.
- 8.2.3 Subject to Article 8.2.2 , Employee Fair Value shall be the value per Share as between a willing buyer and a willing seller determined and certified by the auditors of the Company acting at the cost and expense of the Company as experts and not as arbitrators and whose determination shall be final. For the purposes of this sub-Article the auditors shall be instructed to value the Company as a whole and in particular:
 - (A) to have regard to the rights and restrictions attached to such shares in respect of income, capital and conversion; and
 - (B) to disregard the fact that such shares represent a minority interest.
- 8.2.4 Regulations 29, 30 and 31 of Table A shall be applied subject to the provisions of this Article.
- 8.3 If a Departing Shareholder shall fail to comply with a requirement to sell and/or transfer Shares pursuant to Article 8.2.1 the Directors may authorise any person to execute on behalf of and as attorney for the Departing Shareholder any necessary instruments of transfer and shall register the transferee of such shares as the holder of the Departing Shareholder Shares. The Company's receipt of the purchase money shall be a good discharge to the transferee, and the Company shall thereafter hold the same on trust for the Departing Shareholder. After the name of the transferee has been entered in the register in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

NOTICE OF GENERAL MEETINGS

- 9. Notice of every general meeting shall be given to all members (other than any who, under the provisions of these articles or any restrictions attached to any shares, are not entitled to receive such notice) and to the auditors. The last sentence of Regulation 38 in Table A shall not apply to the Company.

PROCEEDINGS AT GENERAL MEETINGS

- 10. Where the Company has only one member, Regulation 40 in Table A shall apply to the Company as if the reference to two persons were a reference to one, and the word "each" were omitted.

DELIVERY OF PROXIES

11. Regulation 62 in Table A shall apply to the Company as if, after the words "in a manner so permitted", there were inserted the words "or in such other manner as the directors may determine".

DIRECTORS

12. Unless otherwise determined by ordinary resolution the number of directors (other than alternate directors) shall not be subject to any maximum but, except where the Company has only one member, shall not be less than two.

APPOINTMENT RETIREMENT AND REMOVAL OF DIRECTORS

13. Regulations 73 to 80 (inclusive) and the last sentence of Regulation 84 in Table A shall not apply to the Company.
14. A member or members holding a majority in nominal value of the issued shares in the Company may appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director, and may remove from office any director however appointed. Any such appointment or removal shall be effected by an instrument in writing signed by the member or members concerned or, in the case of a corporate member, by its duly authorised representative, and delivered to the office or tendered at a meeting of the directors or a general meeting of the Company.
15. The directors may appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director.
16. The Company may by ordinary resolution appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director and, without prejudice to the provisions of the Act, may by ordinary resolution remove a director from office.
17. The removal of a director under these articles shall be without prejudice to any claim the director may have for breach of any contract of service between him and the Company.
18. No person shall be disqualified from being or becoming a director by reason of his attaining or having attained the age of 70 or any other age, nor shall it be necessary by reason of his age to give special notice under the Act of any resolution appointing, reappointing or approving the appointment of a director.

PROCEEDINGS OF DIRECTORS

19. A director who has duly declared his interest (so far as he is required to do so) may vote at a meeting of the directors or of a committee of the directors on any resolution concerning a matter in which he is interested, directly or indirectly. If he does, his vote shall be counted; and whether or not he does, his presence at the meeting shall be taken into account in calculating the quorum.
20. Where the Company has only one member and only one director, that director may exercise all the powers conferred on the directors by Regulation 70 in Table A or otherwise by virtue of these articles, notwithstanding any restriction in Regulation 89

(as to the quorum for the transaction of the business of the directors) or Regulation 90 (as to the purposes for which a sole continuing director may act).

21. A meeting of the directors may consist of a conference between directors some or all of whom are in different places provided that each director who participates in the meeting is able:

21.1.1 to hear of the other participating directors addressing the meeting; and

21.1.2 if he so wishes, to address each of the other participating directors simultaneously,

whether directly, by conference telephone or by any other form of communication equipment (whether in use when this Article is adopted or developed subsequently) or by a combination of such methods. A quorum shall be deemed to be present if those conditions are satisfied in respect of at least the number and designation of directors required to form quorum. A meeting held in this way shall be deemed to take place at the place where the largest group of directors is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates at the start of the meeting.

DIVIDENDS

22. Regulation 106 in Table A shall apply to the Company as if, after the words "to the order of", there were inserted the words "or to".

INDEMNITY

23. Subject to the provisions of the Act, but without prejudice to any indemnity to which a director may otherwise be entitled:

23.1.1 every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability, loss or expenditure incurred by him in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by him as an officer or auditor of the Company and in which judgment is given in his favour or in which he is acquitted, or incurred in connection with any application in which relief is granted to him by the court from liability in respect of any such act or omission or from liability to pay any amount in respect of shares acquired by a nominee of the Company; and

23.1.2 the directors may purchase and maintain insurance at the expense of the Company for the benefit of any director or other officer or auditor of the Company against any liability which may attach to him or loss or expenditure which he may incur in relation to anything done or omitted to be done or alleged to have been done or omitted to be done as a director, officer or auditor.