

# MEMORANDUM

(Incorporating all changes up to and including 23 May 2005)

AND

# NEW ARTICLES OF ASSOCIATION

(Adopted 23 May 2005)

of

## Soho House Limited

Incorporated on 5 December 1996

No. 3288116



THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES

**MEMORANDUM OF ASSOCIATION**  
of  
**SOHO HOUSE LIMITED**

(As amended 23 May 2005)

1. The Company's name is SOHO HOUSE LIMITED\*
2. The registered office of the company will be situated in England and Wales.
3. The objects for which the company is established are:-
  - (1) To carry on business as a general commercial company and any trade or business whatsoever and any lawful purpose pursuant to the Companies Act 1985 (hereinafter called "the Act") as amended, extended or applied by or under any other enactment or as re-enacted.
  - (2) To carry on any other business, which, in the opinion of the company, may be capable of being conveniently carried on in conjunction with or subsidiary to any other business of the company and is calculated to enhance the value of the company's property or further its objects or any of them.
  - (3) To purchase or by any other means, acquire freehold, leasehold or any other property for any estate or interest whatever, movable or immovable, or any interest in such property, and to sell, lease, let on hire, develop such property, or otherwise turn the same to the advantage of the company.
  - (4) To apply for, register, purchase, or by any 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.
  - (5) To build, re-construct or generally maintain buildings and works of all kinds, whether or not these are situate on the property of the company.

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\* The company was incorporated as Soho House Country Limited. On 8 May 1997 it became Soho House Country plc. On 30 July 2001 the name of the company was changed to Soho House plc. On 23 May 2005 a special resolution was passed re-registering the company as a private limited company.

- (6) To invest and deal with the monies of the company in such shares or upon such securities and in such manner as from time to time may be determined.
- (7) To acquire or 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 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 agreement 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 security so received.
- (8) To enter into any arrangements with any government or authority (Supreme, Municipal, Local or otherwise) that may seem conducive to the attainment of the company's objects or any of them, and to obtain from any government or authority any charters, decrees, rights, privileges or concessions which the company may think desirable and to carry out, exercise, and to comply with any such charters, decrees, rights, privileges and concessions.
- (9) To sell or otherwise dispose of the whole or any part of the business or property of the company, for any consideration, shares or debentures and the company may think fit.
- (10) a) To lend and advance money or give credit on such terms as may seem expedient and with or without security to customers and others, to enter into guarantees, contract of indemnity and surety ships of all kinds, to receive money on deposit or loan upon any terms and to secure or guarantee the payment of any sums of money or the performance of any obligation by any company, firm or person including any holding company, subsidiary or fellow subsidiary company in any manner.
- b) Either with or without the company receiving any consideration or advantage, direct or indirect, from giving such guarantee and so as to be an independent object of the company, to guarantee the performance of the obligations of others including the payment of capital or principal together with any premium of any and dividends or interest on or other payment in respect of loans, credits, stocks, shares, or securities or other obligations of any nature whatsoever and without limiting the generality of the foregoing obligations for the repayment of money and / or discharge of liabilities both present and future, actual or contingent and insofar and the same is not prohibited by law, obligations and liabilities 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 as defined by Section 736 of the Companies Act 1985, due, owing or incurred to Bankers or any other person of any other company, firm or person, and in particular (but not by way of limitation) of the company's holding company or any company which is contemplated to become the company's holding company as a subsidiary, as

defined in Section 736 of the Companies Act 1985 of the company or of the company's holding company or otherwise associated with the company in business, or any company, firm or person which the directors of the company shall think appropriate and to create mortgages charges or liens upon all or any of the property or assets of the company (both present and future) including its uncalled capital in support of such guarantees or otherwise as security for any obligations and liabilities of others.

- (11) To borrow and raise money in such 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 upon it.
- (12) To pay or remunerate any person, firm or company for rendering services to the company in the promotion of the company or the placing and issue of shares, debentures, debenture stock or other securities of the company.
- (13) To support and subscribe to any charitable or public object and to support and subscribe to any institution, society, or club which may be for the benefit of the company or its directors or employees, or may be connected with any town or place where the company carries on business; to give or award pensions, annuities, gratuities, and superannuation or other allowances or benefits or charitable aid and generally to provide advantages, facilities and services for any persons who are or who have been employed by or who are serving or who have served the company or the holding company of the company or a fellow subsidiary of the company or the predecessors in business of the company or of any such subsidiary, holding or fellow subsidiary company and to the wives, widows, children and other relatives and dependants of such persons; to make payments towards insurance; and to set up, establish, support and maintain superannuation and other funds or schemes (whether contributory or non-contributory) for the benefit of any of such persons and of their wives, widows, children and other relatives and dependants; and to set up, establish, support and maintain profit sharing or share purchase schemes for the benefit of any of the employees of the company or of any subsidiary, holding or fellow subsidiary company and to lend money to any such employees or to trustees on their behalf to enable any such purchase schemes to be established or maintained.
- (14) To draw, make, accept, endorse, discount and execute bills, warrants, notes or other negotiable or transferable instruments.
- (15) To assist in the promotion of or promote any company or undertaking which may appear likely to assist or benefit the company and to place or guarantee the placing of, subscribe or underwrite or otherwise acquire any part of the stock, debentures, debenture stock or other obligations of such company.
- (16) To promote by way of advertising the company's products and services in any manner and to reward customers or potential customers and to promote or take part in any scheme likely to benefit the company.

(17) To distribute in specie any of the shares, debentures, or securities of the company between the members of the company in accordance with their rights.

(18) To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

The objects set forth in each clause shall not be restrictively construed but the widest interpretation shall be given thereto, and they shall not, 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 clause or from the terms of any clause or from the name of the company. None of such clauses or the object or objects therein specified or the powers thereby conferred shall be deemed subsidiary or ancillary to the objects or powers mentioned in any other clause, but the company shall have as full a power to exercise all or any of the objects conferred by and provided in each of the said clauses as if each clause contained the objects of a separate company. The word "company" in this clause except where used in reference to the word company, shall be deemed to include any partnership or other body or persons, whether incorporated or unincorporated and whether domiciled in the United Kingdom or elsewhere.

4. The liability of the members is limited.
5. The share capital of the company is £500,000 divided into 5,000,000 ordinary shares of 10p each.\*\*

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\*\*On 6<sup>th</sup> May 1997 the authorised share capital was increased to £700,000 divided into 3,500,000 'A' ordinary shares of 10p each and 3,500,000 'B' ordinary shares of 10p each. On 12 July 2001, the authorised share capital was increased to £2,000,000 divided into 20,000,000 ordinary shares of 10p each.

We, the subscribers to this Memorandum of Association wish to be formed into a Company pursuant to this Memorandum, and we agree to take the number of Shares shown opposite our respective names:-

NAMES and ADDRESSES of SUBSCRIBERS	Number of Shares taken by each Subscriber
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Grant Directors Limited	ONE
31-33 Bondway	
London	
SW8 1SJ	
Company Director	

Grant Secretaries Limited	ONE
31-33 Bondway	
London	
SW8 1SJ	
Company secretary	

Dated the 27th day of November 1996

WITNESS to the above signatures

Sara O'Keefe  
9 Norway Gate  
The Lakes  
Rotherhithe  
SE16 ITR  
Company Formation Manager

COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

SOHO HOUSE LIMITED

(the 'Company')

FOR AND ON BEHALF OF  
CARSON RESTAURANT HOLDINGS  
LIMITED

*DM Plesner*  
DM PLESNER  
FOR AND ON BEHALF OF  
PRAXIS DIRECTORS ONE LIMITED

(Adopted by special resolution dated 23 May 2005 )

1. Preliminary

- 1.1 The regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 as amended and for the time being in force ('Table A') shall apply to the Company except in so far as they are excluded or varied by these Articles. References in these Articles to numbered Regulations are references to regulations in Table A.
- 1.2 In case of any variation or inconsistency between these Articles and Table A, these Articles shall prevail.
- 1.3 In Regulation 1, the words 'and in Articles of Association adopting the same' shall be inserted after the words 'contained in these regulations' in the last paragraph of that Regulation.

2. Definitions and Interpretation

- 2.1 In these Articles the following words and expressions shall have the following meanings:

'Acceptance Period'	a period during which an offer made under Article 10.6 is open for acceptance;
'Accepting Shareholders'	shall have the meaning set out in Article 12.2;
'Associate'	(a) the husband, wife, mother, father, grandmother, grandfather, brother, sister, child (including step and/or adopted child) or other lineal descendant of the relevant person;

- (b) the trustees of any settlement (whether or not set up by the relevant person) under which the relevant person and/or any other Associate of the relevant person is or is capable of being a beneficiary;
- (c) any nominee or bare trustee for the relevant person or any other Associate of the relevant person; and
- (e) any person with whom the relevant person or any Associate of the relevant person is connected, the question of whether any such person is so connected falling to be determined for this purpose in accordance with the provisions of s839 Income and Corporation Taxes Act 1988;

<b>'Auditors'</b>	the auditors of the Company from time to time;
<b>'Board'</b>	the board of Directors as constituted from time to time or any committee appointed by such board in accordance with these Articles;
<b>'Business Day'</b>	any day which is not a Saturday, Sunday or a public holiday on which banks ordinarily are open in the City of London;
<b>'Circular'</b>	the circular to the Company's shareholders dated 28 April 2005 (in its original form or with or subject to any modification, addition or condition approved or imposed by the court or in accordance with the terms of the Scheme);
<b>'Continuing Shareholders'</b>	shall have the meaning ascribed to it in the Circular;
<b>'Director'</b>	any director from time to time of the Company including, where applicable, any alternate director;
<b>'Employee'</b>	a person who is or is proposed to be employed by the Company or any member of the Group or a person whose services are made available to the Company or any member of the Group under the terms of an agreement between the Company or any member of the Group (whether as an employee, consultant or otherwise);
<b>'Excess Sale Shares'</b>	shall have the meaning set out in Article 10.6(e);



<b>'Excluded Person'</b>	any Shareholder or other person who has been required to give or has been deemed to have given a Transfer Notice under Article 11 but so that such Shareholder or other person shall cease to be an Excluded Person if, at the end of the Acceptance Period, the Company has failed to find Shareholders wishing to purchase all the Sale Shares the subject of the Transfer Notice;
<b>'Group'</b>	the Company and any subsidiary or holding company of the Company and any other subsidiary of any holding company of the Company;
<b>'Investment Fund'</b>	any company, trust, limited partnership or fund holding shares for investment purposes;
<b>'Majority Shareholders'</b>	shall have the meaning set out in Article 12.11;
<b>'Minimum Shareholding'</b>	a holding of at least 8% of the issued share capital of the Company;
<b>'Minimum Transfer Condition'</b>	shall have the meaning set out in Article 10.2(e);
<b>'New Shareholders'</b>	shall have the meaning ascribed to it in the Circular;
<b>'Notifying Shareholders'</b>	shall have the meaning set out in Article 12.4;
<b>'Offeror'</b>	shall have the meaning set out in Article 12.1;
<b>'Permitted Transfer'</b>	a transfer of Shares in accordance with Article 9;
<b>'Permitted Transferee'</b>	a person to whom a Permitted Transfer of Shares may be made;
<b>'Prescribed Price'</b>	the price per Sale Share specified in the Transfer Notice or (if no price is specified) the price per Sale Share agreed or determined pursuant to Articles 10.3 and 10.4;
<b>'Proportional Entitlement'</b>	shall have the meaning set out in Article 10.6(d);
<b>'Proposed Buyer'</b>	shall have the meaning set out in Article 12.9;
<b>'Proposed Sale Date'</b>	shall have the meaning set out in Article 12.9;

<b>'Proposed Sale Notice'</b>	shall have the meaning set out in Article 12.9;
<b>'Proposed Sale Shares'</b>	shall have the meaning set out in Article 12.9;
<b>'Proposed Sellers'</b>	shall have the meaning set out in Article 12.8;
<b>'Proposing Transferor'</b>	shall have the meaning set out in Article 10.1;
<b>'Purchaser'</b>	a Shareholder willing to purchase Sale Shares comprised in a Transfer Notice;
<b>'Qualifying Offer'</b>	shall have the meaning set out in Article 12.1;
<b>'Refinancing'</b>	the refinancing and restructuring of the Group as more particularly described in the Circular;
<b>'Relevant Event'</b>	shall have the meaning set out in Article 11.1;
<b>'Remaining Shareholders'</b>	shall have the meaning set out in Article 12.3;
<b>'Sale Notice'</b>	shall have the meaning set out in Article 10.11;
<b>'Sale Shares'</b>	Shares comprised in a Transfer Notice;
<b>'Scheme'</b>	the scheme of arrangement between the Company, the Scheme Shareholders, the Continuing Shareholders and the New Shareholders under the Act, as set out in the Circular and terms defined in the Scheme shall have the same meanings in these Articles;
<b>'Scheme Shareholders'</b>	shall have the meaning ascribed to it in the Circular;
<b>'Shareholder'</b>	any person holding Shares from time to time;
<b>'Share Incentive Plan'</b>	any share ownership scheme, share option scheme, employee benefit trust or profit sharing scheme established by the Company or any member of the Group;
<b>'Shares'</b>	ordinary shares of £0.10 each in the capital of the Company; and
<b>'Transfer Notice'</b>	a written notice served or deemed to be served by a Shareholder on the Company in accordance with Articles 10 and 11; and

**'30% Holding'** shall have the meaning set out in Article 12.8.

2.2 In these Articles, unless the context requires otherwise:

- (a) use of any gender includes the other genders;
- (b) use of the singular includes the plural and vice versa;
- (c) any reference to **'a person'** includes a natural person, firm, partnership, company, corporation, body corporate, association, organisation, foundation and trust (in each case whether or not having separate legal personality);
- (d) references to the **'Act'** are to the Companies Act 1985 as from time to time re-enacted or amended. References to sections shall be to sections of the Act;
- (e) references to a holding company or subsidiary are to such a company within the meaning ascribed by s736 of the Act; and
- (f) **'control'** shall be construed in accordance with s416 Income and Corporation Taxes Act 1988 or any statutory modification or re-enactment thereof and **'controlled'** and **'change of control'** shall be construed accordingly.

### 3. **Share capital**

- 3.1 The authorised share capital of the Company at the date of adoption of these Articles is £2,000,000 divided into 20,000,000 Shares.
- 3.2 Subject to the provisions of the Act and without prejudice to the rights attached to any Shares, any Shares may be issued with or have attached to them such rights or restrictions as the Company may by special resolution determine.
- 3.3 The Company shall not have power to issue share warrants to bearer.

### 4. **Issue of Shares**

- 4.1 Subject to s80 of the Act and the provisions of these Articles, all unissued Shares or any other relevant securities in the Company shall be at the disposal of the Directors who may 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 fit up to the amount of the authorised share capital of the Company at the date of the adoption of these Articles or such other amount as may from time to time be authorised by the Company in general meeting provided that no Shares may be issued at a discount to par value.
- 4.2 The authority conferred on the Directors in Article 4.1 shall remain in force for a period of five years from the date of adoption of these Articles (and the Directors may, after that period,

allot any Shares or grant options over or otherwise dispose of them under that authority in pursuance of an offer or agreement made by the Company within that period) but may be revoked, varied or renewed from time to time by the Company in general meeting in accordance with the Act.

- 4.3 Subject to Article 4.4 any Shares for the time being unissued and any new Shares from time to time created shall before they are issued be offered to the Shareholders (other than any Excluded Person(s)) in proportion (as nearly as may be) to the nominal amount of their existing holding of Shares at that time. The offer shall be made by notice specifying the number of Shares offered and the price per Share and limiting a time (not being less than 10 Business Days or greater than 15 Business Days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of such time, or on the earlier receipt of an indication from a Shareholder to whom the offer is made that he declines to accept the Shares offered or any of them, the Directors shall offer the Shares declined in like manner to any Shareholders who have agreed to subscribe for all the Shares offered to them. If the Shares comprised in such further offer are declined or deemed to be declined the further offer shall be withdrawn.
- 4.4 The Shares not accepted pursuant to Article 4.3 shall be at the disposal of the Directors who may 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 fit; provided that no Shares to which Article 4.3 applies shall be issued:
- (a) at any time after the expiry of the three month period following the expiry of the period for acceptance of the last offer of such Shares made under Article 4.3; or
  - (b) on terms which are more favourable to the subscribers for them than the terms upon which they were offered to Shareholders pursuant to Article 4.3.
- 4.5 The provisions of Articles 4.3 and 4.4 shall not apply in respect of any Shares to be allotted and issued to Employees in accordance with any Share Incentive Plan.
- 4.6 The provisions of sections 89(1) and 90(1) to (6) of the Act shall not apply to the Company.
- 4.7 No Shares shall be allotted on terms that the right to take up the Shares allotted may be renounced in favour of, or assigned to, another person and no person entitled to the allotment of a Share may direct that such Share be allotted or issued to any other person.

## **5. Share certificates**

Regulation 6 shall apply to the Company with the substitution at the beginning of the second sentence of the words 'Every certificate shall be sealed with the seal' with the words 'Every certificate shall be

executed by the Company, whether by the affixing of the seal in accordance with Regulation 101 or by the signature of a director and the signature of either the secretary or a second director'.

**6. Lien**

The Company shall have a first and paramount lien on each Share, whether fully paid or not, registered in the name of any person, whether as sole or joint holder, for all monies due to the Company from such person or his estate, whether in respect of that Share or not and all expenses that may have been incurred by the Company by reason of such non-payment. The Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The Company's lien, if any, on a Share shall extend to any amount payable in respect of it. Regulation 8 shall not apply to the Company.

**7. Calls**

The liability of any Shareholder in default in respect of a call shall be increased by the addition at the end of the first sentence of Regulation 18 of the words 'and all expenses that may have been incurred by the Company by reason of non-payment of the call'.

**8. Transfers of Shares – general provisions**

8.1 The instrument of transfer of a Share may be in any usual form or in any other form which the Directors may approve and may be executed solely by or on behalf of the Proposing Transferor, whether the Share is fully paid or not. Regulation 23 shall be modified accordingly.

8.2 No Shareholder may transfer any Shares other than in accordance with Articles 8 to 12 (inclusive). Subject to Articles 8.3, 8.4 and 10.14(b) below, the Directors shall be required to register promptly any transfer of Shares made in accordance with the provisions of Articles 8 to 12 (inclusive), but shall not register any transfer of Shares not permitted by those Articles. Regulation 26 shall not apply to the Company.

8.3 The Directors may refuse to register a transfer unless:

- (a) it is lodged at the office or such other place as the Directors may appoint and it 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.

8.4 The Directors may also refuse to register a transfer of a Share if it is the transfer of a Share:

- (a) on which the Company has a lien;
- (b) to a bankrupt, a minor or a person of unsound mind;
- (c) which is not fully paid up; or
- (d) to a person reasonably believed by them to be to a competitor of the Company or a person connected with such a competitor (or nominee of either).

8.5 For the purposes of Articles 8 to 12 inclusive, a reference to a transfer of a Share shall include (without limitation) the transfer or sale of the legal title to and/or the beneficial ownership in a Share, the transfer or sale of any other interest in or right attaching to a Share, the grant or creation of any option, mortgage, charge, lien, encumbrance or trust over a Share or over any interest in or right attaching to a Share or any direction (whether by way of renouncement or assignment or otherwise) of any right to receive or subscribe for a Share, in each case whether or not for consideration and whether or not by means of an instrument in writing.

8.6 Any transfer of Shares made otherwise than in accordance with Articles 8 to 12 (inclusive) shall be void and of no effect.

8.7 For the purpose of ensuring that a transfer of Shares is duly authorised under these Articles or that no circumstances have arisen by reason of which a Transfer Notice may be required to be given, the Directors may from time to time require any Shareholder or past Shareholder or the personal representatives or trustee in bankruptcy, receiver, administrator or liquidator of any Shareholder or any person named as transferee in any instrument of transfer lodged for registration to provide to the Company such information as the Directors think reasonable regarding any matter which they consider relevant. If such information is not provided to the reasonable satisfaction of the Directors within 15 Business Days after request, the Directors shall be entitled to refuse to register the transfer in question or (in case no transfer is in question) to require by notice in writing that a Transfer Notice be given in respect of the Shares concerned or where a Transfer Notice ought to have been given in respect of any Shares the Directors may by notice in writing require that the Transfer Notice be given in respect of the Shares concerned. Any Transfer Notice required to be given under this Article shall not specify a Prescribed Price and shall not be subject to a Minimum Transfer Condition.

## **9. Permitted transfers**

A Shareholder shall be permitted to transfer the legal title to and/or beneficial ownership of a share:

- 9.1 if the Shareholder is a company, to any holding or subsidiary company or to any other subsidiary company of any such Shareholder's holding company; or any company under common control with such Shareholder;
- 9.2 to a person who is the beneficial owner of such Share or (in the case of the legal title only) to a different or additional nominee or trustee on behalf of such beneficial owner;
- 9.3 if the Shareholder is an individual, to an Associate; or
- 9.4 any Shares may at any time be transferred:
- (a) by a Shareholder which is an Investment Fund:
    - (1) to any trustee, nominee, subsidiary or custodian for such fund and vice versa; or
    - (2) to any member, shareholder, partner, participant, manager or adviser (or an employee of such manager or adviser) in any such fund; or
  - (b) to a trustee, nominee or custodian of any of the persons referred to in sub-paragraph (2) of paragraph (a) above.
- 9.5 Notwithstanding the provisions of Article 10 any Shareholder may transfer any Shares to any person with the prior written consent of the holders of 85% of the Shares from time to time in issue.
- 9.6 Notwithstanding the provisions of Article 10 the Directors shall be permitted to register all and any transfers made pursuant to and in accordance with the Scheme and/or the Refinancing.
- 9.7 Whilst any Shares are being transferred in accordance with Articles 10, 11 and 12 no transfers of Shares pursuant to Articles 9.1 and 9.2 shall be permitted.

## 10. Transfers of Shares subject to pre-emption rights

### Transfer Notice

- 10.1 Save in respect of a Permitted Transfer, any Shareholder who proposes to transfer any Shares (a **'Proposing Transferor'**) shall first give a Transfer Notice to the Directors. The Transfer Notice shall constitute the Company his agent for the sale of those Shares at the Prescribed Price. A Transfer Notice once given or deemed to be given shall not be revocable except with the consent of the Directors (other than the Proposing Transferor, if he be a Director).

## **Contents of Transfer Notice**

### **10.2 A Transfer Notice:**

- (a) shall specify the number of Sale Shares;
- (b) may specify the Prescribed Price per Sale Share;
- (c) shall, if the Proposing Transferor has received any offer to purchase Shares (whether or not an offer capable of becoming legally binding upon acceptance), within the period of three months prior to service of the Transfer Notice, give the name of the offeror, the number of Shares concerned and the price per Share offered;
- (d) shall specify the name of the third party (if any) to whom he proposes to transfer the Sale Shares;
- (e) may state that unless Purchasers are found for all or not less than a specified number of the Sale Shares, he shall not be bound to transfer any of such Shares (**'Minimum Transfer Condition'**); and
- (f) may not be given by an Excluded Person unless required under and in accordance with Articles 11 and 12.

## **The Prescribed Price**

10.3 Forthwith following receipt by the Company of a Transfer Notice which does not specify a Prescribed Price for the Sale Shares, the Board (other than the Proposing Transferor, if he be a Director) shall seek to agree the Prescribed Price with the Proposing Transferor. In the event that the Prescribed Price is not agreed within 10 Business Days of receipt of the Transfer Notice by the Company, the Directors shall within a further 3 Business Days request the Auditors (acting as experts and not as arbitrators) to certify the Prescribed Price on the basis set out in Article 10.4.

## **Terms of reference for valuing Shares**

10.4 The Auditors shall be instructed to certify to the Company the Prescribed Price within 10 Business Days of receipt of such instructions. The Prescribed Price shall be the value of each Sale Share calculated on the following basis:

- (a) by determining the sum which a willing purchaser would offer to a willing vendor for the whole of the issued share capital of the Company (as on arm's length terms); and



- (b) by making such adjustments as the Auditors consider fair and reasonable to reflect any premium or discount arising in relation to the size of the shareholding being the subject of the Transfer Notice and any restrictions on the transferability of the Shares;
- 10.5 The costs and expenses of the Auditors in determining the Transfer Price shall be paid as to one half by the Proposing Transferor and as to the other half by the Purchasers in proportion to the number of Sale Shares acquired by them. If none of the Transfer Shares is purchased pursuant to this Article 10 the Proposing Transferor shall pay all such costs and expenses.

#### **Offer of Sale Shares to Shareholders**

- 10.6 The Sale Shares shall, within 10 Business Days following receipt of the Transfer Notice (or in a case falling within Articles 10.3 or 10.4 agreement or certification of the Prescribed Price), be offered by the Company for purchase at the Prescribed Price in the following manner:
- (a) all offers shall be made by notice in writing;
  - (b) all offers shall limit a time (being not less than 10 and not more than 20 Business Days) within which the offer must be accepted in writing or, in default, will be deemed to have been declined;
  - (c) a copy of such offers shall at the same time be sent by the Company to the Proposing Transferor;
  - (d) the Sale Shares shall be offered to the Shareholders (other than the Proposing Transferor and any Excluded Person(s)) in proportion (as nearly as may be) to the nominal amount of their existing holding of Shares at that time (**'Proportional Entitlement'**); and
  - (e) each Shareholder to whom the offer is made (if more than one) shall be invited to indicate whether, if he accepts the number of Sale Shares offered to him pursuant to Article 10.6(d), he wishes to purchase any Sale Shares offered to other Shareholders in the same offer which they decline to accept (such Sale Shares being referred to as **'Excess Sale Shares'**) and if so the maximum number of Excess Sale Shares he wishes to purchase.

#### **Acceptance**

- 10.7 Any Shareholder to whom Sale Shares are offered may accept all or some only of the Sale Shares offered to him. Acceptances must be in writing and received by the Company within the period stipulated for acceptances in Article 10.6(b).

### **Allocation of Sale Shares**

- 10.8 If the Transfer Notice contains a Minimum Transfer Condition, the Company may not make any allocation of Sale Shares unless and until it has found Purchasers for the minimum number of Shares specified in the Minimum Transfer Condition.
- 10.9 Subject to Article 10.8, the Company shall allocate the Sale Shares and any Excess Sale Shares between the Shareholders who have indicated that they wish to purchase Sale Shares as follows:
- (a) if the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares, each Shareholder shall be allocated the number applied for in accordance with his application; but
  - (b) if the total number of Sale Shares applied for is greater than the available number of Sale Shares, each Shareholder shall be allocated his Proportional Entitlement or such lesser number of Sale Shares for which he has applied and applications for Excess Sale Shares shall be allocated in accordance with such applications or, in the event of competition, among those Shareholders applying for Excess Sale Shares in such proportions as equal (as nearly as may be) the proportions of all the Shares held by such Shareholders.
- 10.10 Allocations of Sale Shares made by the Company pursuant to Article 10.9 shall constitute the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person shall be obliged to take more than the maximum number of Sale Shares that he has indicated to the Company he is willing to purchase.
- 10.11 The Company shall forthwith upon allocating any Sale Shares give notice in writing (a '**Sale Notice**') to the Proposing Transferor and to each Shareholder to whom Sale Shares have been allocated of the number of Shares so allocated and the aggregate price payable for them.
- 10.12 Completion of the sale and purchase of the Sale Shares in accordance with the Sale Notice shall take place within 5 Business Days of the date of the Sale Notice whereupon the Proposing Transferor shall, upon payment of the relevant price due from each Purchaser, transfer the Sale Shares specified in the Sale Notice to the Purchasers to whom they have been allocated and deliver the relevant Share certificates to the appropriate Purchasers.
- 10.13 **Failure to transfer**
- If any person, after having become bound to transfer any Sale Shares under these Articles, shall fail to do so, the Directors may authorise any person (who is (as security for the

performance of the Proposing Transferor's obligations) hereby irrevocably and unconditionally appointed as the attorney and agent of the Proposing Transferor for the purpose) to execute on behalf of and as attorney and agent for the Proposing Transferor any necessary instruments of transfer and shall register the relevant Purchaser as the holder of the Sale Shares. The Company's receipt of the purchase money shall be a good discharge to the relevant Purchaser and the Company shall hold the purchase money on trust for the Proposing Transferor. To the fullest extent permitted by law, after the name of the relevant Purchaser has been entered in the register of members of the Company in purported exercise of these powers, the validity of the proceedings shall not be questioned by any person.

#### **10.14 Share transfers to third parties**

If all the Sale Shares are not sold under the provisions contained in Articles 10.1 to 10.13 (inclusive), the Company shall (forthwith upon the exhaustion of such provisions) so notify the Proposing Transferor and the Seller (subject to Articles 12.8 and 12.11) may at any time, within 3 calendar months after receiving such notification, transfer to any third party (including the Company) any unsold Sale Shares at any price not less than the Prescribed Price, provided that:

- (a) if the Proposing Transferor stipulated in the Transfer Notice a Minimum Transfer Condition which has not been satisfied, the Proposing Transferor shall not be entitled to sell any Sale Shares unless he complies with such Minimum Transfer Condition;
- (b) any such sale shall be a sale in good faith and the Directors may require to be satisfied (in such manner as they reasonably may think fit) that the Sale Shares are being sold for not less than the Prescribed Price without any deduction, rebate or allowance whatsoever and if not so satisfied may refuse to register the transfer; and
- (c) no Sale Shares may be transferred, or disposed of, pursuant to this Article 10.14 by or to any person who is an Excluded Person, without approval of the Board.

#### **11. Transfer of Shares on death or insolvency or similar events**

11.1 In this Article 11, a '**Relevant Event**' means:

- (a) in the case of a corporate Shareholder:
  - (1) a resolution is passed or an order is made for the winding-up of the Shareholder;
  - (2) the Shareholder becomes subject to an administration order;

- (3) a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Shareholder's property or assets; or
  - (4) such Shareholder ceases both (i) to be controlled by the person(s) who controlled such Shareholder and (ii) (if applicable) to be beneficially owned by the Family Trusts who owned such Shareholder, in both cases on the date on which it became a member of the Company or on the date of adoption of these Articles (whichever shall be the later); or
- (b) in the case of any Shareholder:
  - (1) the Shareholder proposes or enters into an arrangement or composition with its creditors;
  - (2) the Shareholder takes or suffers any similar or analogous action in consequence of debt;
  - (3) the Shareholder ceases or threatens to cease to carry on business;
  - (4) the Shareholder becomes insolvent; or
  - (5) the Shareholder ceases to be able to pay its debts as they fall due; or
- (c) in the case of an individual Shareholder:
  - (1) a petition for bankruptcy is presented in respect of the Shareholder;
  - (2) the death of the Shareholder; or
  - (3) (where that Shareholder holds Shares as a result of a transfer made by a person in relation to whom such Shareholder was a Permitted Transferee) that Shareholder ceasing to be a Permitted Transferee of such person, including, for the avoidance of doubt, on divorce).

11.2 Upon the happening of any Relevant Event, the Shareholder in question shall be deemed immediately to have given a Transfer Notice in respect of all the Shares registered in his name.

11.3 A Transfer Notice deemed to have been given pursuant to Article 11.2 shall not specify a Prescribed Price nor Proposed Purchaser and shall not contain a Minimum Transfer Condition. In such circumstances the Prescribed Price shall be determined in accordance with Articles 10.3 and 10.4.

## 12. Drag along and tag along

- 12.1 In this Article 12 a **'Qualifying Offer'** shall mean a bona fide arms' length offer in writing by or on behalf of any person (the **'Offeror'**) to the holders of Shares to acquire all their Shares and any shares subsequently registered in their name in pursuance of rights or interests obtained pursuant to any share ownership scheme for a specified amount of consideration being not less than fair value.
- 12.2 If the holders of not less than 51% of the Shares (the **'Accepting Shareholders'**) wish to accept the Qualifying Offer, then the provisions of this Article 12 shall apply.
- 12.3 The Accepting Shareholders shall give written notice to the remaining holders of Shares (the **'Remaining Shareholders'**) of their wish to accept the Qualifying Offer and the Remaining Shareholders shall, subject to the Accepting Shareholders accepting the Qualifying Offer and subject to Article 12.4, be bound to accept the Qualifying Offer (but only to the extent that the Accepting Shareholders shall be bound to transfer their Shares free of encumbrances in consideration of payment of the Agreed Price).
- 12.4 The holders of not less than 25% of the Shares (the **'Notifying Shareholders'**) may, if they consider that the Qualifying Offer is being made at less than fair value, give notice of this to the Directors within 14 days of receiving notice from the Accepting Shareholders. The Directors shall forthwith refer the determination of the fair value to the Auditors and the provisions of Article 10.4 shall apply mutatis mutandis as if the words 'Prescribed Price' are substituted with 'fair value'. If the Notifying Shareholders object to the appointment of the Auditors, the Directors shall forthwith refer the determination of the fair value to a chartered accountant nominated by agreement between the respective majorities of the Notifying Shareholders and the Accepting Shareholders. If the Notifying Shareholders and the Accepting Shareholders fail to agree on the appointment of a chartered accountant the fair value shall be determined by an independent firm of chartered accountants nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Auditors or any other chartered accountant appointed pursuant to this article shall act as expert and not as an arbitrator in determining the fair value.
- 12.5 If the Auditors or a chartered accountant are asked to certify the fair value as aforesaid his certificate shall be delivered to the Accepting Shareholders and the Notifying Shareholders and such certificate shall be final and binding. If the certificate states that the Qualifying Offer is not at fair value, Article 12.3 shall not apply unless the offer price of the Qualifying Offer is increased to fair value as stated in the certificate. The determination of the Auditors or the chartered accountant and, if applicable, the revised Qualifying Offer shall be communicated to the Remaining Shareholders as soon as reasonably practicable after such determination.

- 12.6 If any Remaining Shareholders shall not, within 7 days of receiving notice requiring them to do so or, if later, within 7 days of any such notice of a revised offer based on the Auditors' or independent accountant's determination in accordance with Articles 12.4 and 12.5, execute and deliver transfers in respect of the Shares held by them and deliver the certificate(s) in respect of the same (or a suitable indemnity in lieu thereof), then the company secretary shall be entitled to, and shall be entitled to authorise and instruct such person as he thinks fit to, execute the necessary transfer(s) and indemnities on the Remaining Shareholders' behalf and, against receipt by the Company (on trust for such Shareholders) of the consideration payable for the relevant Shares, deliver such transfer(s) and certificate(s) or indemnities to the Offeror (or his nominee) and register such Offeror (or his nominee) as the holder thereof and, after such registration, the validity of such proceedings shall not be questioned by any person.
- 12.7 As security for the obligations in this Article 12, each member irrevocably appoints the company secretary as its attorney to execute and do all such deeds, documents and things in the name of and on behalf of such member as may reasonably be required to give full effect to the provisions of this Article.
- 12.8 If at any time one or more Shareholders (the '**Proposed Sellers**') propose to sell, in one or a series of related transactions, more than 30% in nominal value of the Shares (the '**30% Holding**') to any person (not being an Offeror for the purposes of Article 12.1), the Proposed Sellers may only sell the 30% Holding if they comply with the provisions of this Article.
- 12.9 The Proposed Sellers shall give written notice (the '**Proposed Sale Notice**') to the other holders of Shares of such intended sale at least 14 days prior to the date thereof. The Proposed Sale Notice shall set out, to the extent not described in any accompanying documents, the identity of the proposed buyer (the '**Proposed Buyer**'), the purchase price and other terms and conditions of payment, the proposed date of sale (the '**Proposed Sale Date**') and the number of Shares proposed to be purchased by the Proposed Buyer (the '**Proposed Sale Shares**').
- 12.10 The Proposed Sellers shall procure that (by reducing the number of Shares they sell or otherwise) any other holder of Shares who gives written notice to the Proposed Sellers within 7 days of receipt of the Proposed Sale Notice, may sell such percentage of his shares as is equal to that percentage of the equity share capital in the Company held by the Proposed Sellers represented by the 30% Holding to the Proposed Buyer on the same terms and conditions as those set out in the Proposed Sale Notice.
- 12.11 If at any time one or more Shareholders holding not less than 50% of the issued Shares (the '**Majority Shareholders**') wish to sell all of the Shares held by them to a purchaser (other than a Shareholder) they will not be permitted to do so unless such purchaser makes an offer

to purchase the entire issued share capital of the Company and the provisions of Articles 12.9 and 12.10 shall apply mutatis mutandis as if the Majority Shareholders are Proposed Sellers and the purchaser is the Proposed Buyer.

- 12.12 If any member is not given the rights accorded him by the provisions of Articles 12.9 to 12.11 (inclusive), the Proposed Sellers may not complete their sale and the Company shall be bound to refuse to register any transfer intended to carry such a sale into effect.

**13. Proceedings at general meetings**

- 13.1 No business shall be transacted at any general meeting unless a quorum is present. Subject to Article 13.2 below, two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.
- 13.2 If and for so long as the Company has only one member, that member present in person or by proxy or (if that member is a corporation) by a duly authorised representative shall be a quorum.
- 13.3 If a quorum is not present within half an hour from the time appointed for a general meeting the general meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine. If at the adjourned general meeting a quorum is not present within half an hour from the time appointed therefor such adjourned general meeting shall be dissolved.
- 13.4 Regulations 40 and 41 shall not apply to the Company.
- 13.5 At any general meeting a poll may be demanded by any member present in person or by proxy and entitled to vote. Regulation 46 shall be modified accordingly.
- 13.6 If there is an equality of votes at any general meeting the chairman of the general meeting shall not have a second or casting vote. Regulation 50 shall not apply to the Company.
- 13.7 A member present at a meeting by proxy shall be entitled to one vote on a show of hands. In any case where the same person is appointed proxy for more than one member he shall on a show of hands have as many votes as the number of members for whom he is proxy. Regulation 54 shall be modified accordingly.
- 13.8 Unless resolved by ordinary resolution that Regulation 62 shall apply without modification, the appointment of a proxy and any authority under which the proxy is appointed or a copy of such authority certified notarially or in some other way approved by the Directors may be deposited or received at the place specified in Regulation 62 up to the commencement of the meeting or (in any case where a poll is taken otherwise than at the meeting) of the taking of

the poll or may be handed to the chairman of the meeting prior to the commencement of the business of the meeting.

**14. Number of Directors**

Unless and until the Company resolves otherwise, the number of Directors shall not be less than 5 and shall not be more than 13.

**15. Appointment and removal of Directors**

15.1 No Director shall be required to retire by rotation, and Regulations 73 - 75 (inclusive), the second and third sentences of Regulation 79 and Regulation 80 shall not apply to the Company. All other references to retirement by rotation shall be deleted.

15.2 Regulations 76 and 77 (requirements on appointment of Directors) shall not apply to the Company.

15.3 In its application to the Company Regulation 78 shall be modified by the deletion of the words '... and may also determine the rotation in which any additional Directors are to retire'.

15.4 In its application to the Company, Regulation 84 shall be modified by the deletion of the final sentence.

15.5 Any Shareholder (for these purposes to include Shares held by any Permitted Transferee) who is registered as the holder of at least 8% of the issued shares shall have the right to appoint one Director of the Company (who shall be referred to as an '**Investor Director**') and to remove such Director at any time and appoint a replacement thereof).

15.6 Any appointment or removal made pursuant to Article 15.5 shall be in writing and signed by or on behalf of the Shareholder in question and shall be addressed to the Secretary and shall take effect on delivery at the registered office of the Company.

15.7 Regulation 81 shall apply to the Company with the addition of sub-paragraphs (f) and (g) as follows:

"(f) if he is removed from office pursuant to Article 15.5 of the Company's Articles; or

(g) if he is convicted of a criminal offence (other than a road traffic offence not punishable by a custodial sentence) and the Directors resolve that his office be vacated.

15.8 In the event of a resolution being proposed at any general meeting of the Company for any alteration of the provisions of Articles 15.5 or 15.6, or for the adoption of new articles of association not incorporating those Articles; the holders of a Minimum Shareholding shall on



a poll in respect of such resolution each have the right to such number of votes per share as are sufficient to block the passing of such resolution and any such member present in person or by proxy shall have the right to demand a poll in respect thereof.

**16. Proceedings of Directors**

- 16.1 Any Director may participate in a meeting of the Directors by means of a telephone or other means of communication whereby all persons participating in the meeting can speak to each other and hear each other speak. Participation in a meeting in this manner shall constitute presence in person at such meeting and a Director so participating shall be counted in the quorum accordingly.
- 16.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. A Director may, and the secretary at the request of a Director will, call a meeting of the Directors. It shall be necessary to give notice of every meeting of the Directors to all the Directors, whether they are or not in the United Kingdom. Regulation 88 shall be modified accordingly.
- 16.3 The Directors may elect one of their number to be chairman of the Board and may at any time remove him from that office.
- 16.4 Save where specifically provided otherwise in these Articles, questions arising at a meeting of Directors shall be decided by a majority of votes. In the case of equality of votes the chairman shall be entitled to a second or casting vote.
- 16.5 The quorum necessary for the transaction of the business of the Directors shall be 5 except when the only business of the meeting is to appoint additional directors, when the quorum shall be one. Regulation 89 shall be modified accordingly.
- 16.6 The Directors may delegate any of their powers to a committee or committees consisting of such members of their body as they think fit. The meetings and proceedings of any such committee shall be governed by the provisions of these Articles regulating the meetings and proceedings of the Directors so far as applicable and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Directors. The first and last sentence of Regulation 72 shall not apply.

**17. 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, or any part of them, and, subject (in the case of any security convertible into shares) to s80 of the Act to grant any mortgage, charge or standard security over its undertaking, property and uncalled capital, or any part thereof and to issue

debentures, debenture stock or other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

**18. Alternate directors**

18.1 The appointment of an alternate Director shall not require approval by a resolution of the Directors. Regulation 65 shall be modified accordingly.

18.2 A Director, or any such other person, as is mentioned in Regulation 65 may act as an alternate director to represent more than one Director, and an alternate director shall be entitled at any meeting of the Directors of any committee of the Directors to one vote for every director whom he represents in addition to his own vote (if any) as a Director, but he shall count as only one for the purpose of determining whether a quorum is present.

18.3 An alternate Director shall not be entitled to receive any remuneration from the Company for his services as an alternate Director, save that he may be paid by the Company such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct, and the first sentence of Regulation 66 shall be modified accordingly.

**19. Gratuities and pension**

The Directors may exercise the powers of the Company conferred by clause 4(13) of the memorandum of association of the Company and shall be entitled to retain any benefits received by them or any of them by reason of the exercise of any such powers.

**20. Seal**

In accordance with the provisions of the Act, the Company need not have a seal. If it does have a seal, Regulation 101 shall apply.

**21. Notices**

21.1 The Company may give any notice to a member by facsimile transmission. Regulation 112 shall be modified accordingly.

21.2 A member shall be entitled to receive at such member's registered address any notice to be given by the Company, whether such registered address is located within the United Kingdom or not. Regulation 112 shall be modified accordingly.

21.3 Proof that a facsimile transmission containing a notice was properly despatched to the facsimile number of the member's registered address shall be conclusive evidence that the notice was given. Regulation 115 shall be modified accordingly.

## 22. Indemnity

Every Director, manager, secretary, other officer and auditor of the Company shall be entitled to be indemnified out of the assets of the Company against all costs, charges, losses, expenses or liabilities incurred by him in his capacity as such officer:

- 22.1 in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted; or
- 22.2 in connection with any application under s144(2) or (3) of the Act (acquisition of shares by innocent nominee) or s727 of the Act (general power to grant relief in case of honest and reasonable conduct) in which relief is granted to him by the Court.

Regulation 118 shall be modified accordingly.

## 23. Scheme

- 23.1 Notwithstanding any other provision of these Articles, if the Company registers the transfer of any Shares or issues any Shares (other than in accordance with the Scheme) after the adoption of these Articles and prior to 6.00 pm on the day before the date on which the order of the Court is made sanctioning this Scheme, the transfer of such Shares shall be on terms that, and such Shares shall be allotted and issued on terms that, such Shares are subject to the terms of the Scheme and the holder or holders of such Shares shall be bound by the Scheme accordingly.
- 23.2 If on or after 6.00 pm on the day before the date on which the order of the Court is made sanctioning the Scheme any Shares in the Company are allotted and issued or transferred to any person or persons (a '**non-Scheme member**') otherwise than in accordance with the Scheme or the Refinancing, such new Shares shall be transferred immediately upon the Scheme becoming effective in accordance with its terms or, if later, on issue, free of all encumbrances, to a person appointed by the Company, to be held as nominee for and on behalf of such person as may be nominated by the Directors (the '**Nominee**') in the same proportions as the new Ordinary Shares issued pursuant to clause 3 of the Scheme, in consideration of and conditional on the payment to the non-Scheme member by the Company on behalf of the Nominee of £4.25 for each such Share, funded by the Nominee in the same proportions as the new Ordinary Shares issued pursuant to clause 3 of the Scheme.
- 23.3 To give effect to any such transfer required by this Article 23, the Company may nominate the person so appointed or any other person to execute a form or instruction of transfer on behalf of the non-Scheme member in favour of the person so appointed and the Company may give a good receipt for the purchase price of the Shares so transferred and may register the

person so appointed as the holder thereof and issue to them certificates for the same. The Company shall not be obliged to issue a certificate to the non-Scheme member for any Shares to which this Article 23 applies. Pending the registration of the person so appointed as the holder of any shares to be transferred pursuant to this Article 23, the person so appointed shall act as attorney on behalf of the non-Scheme member in accordance with such directions as the Nominees and/or their respective nominee(s) may give in relation to any dealings with or disposal of such share (or any interest therein), exercising any rights attached thereto or receiving any distribution or other benefit accruing or payable in respect thereof.

- 23.4 If the Scheme shall not have become effective by 31 July 2005 or such later date (if any) as the Company and the Nominees may agree and the Court may approve this Article 23 shall be of no effect.