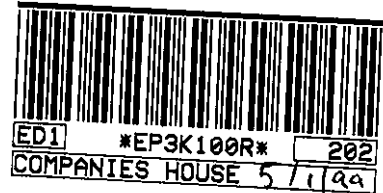


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New
Articles of Association
of
Motive Communications Limited

Dated 4th January 1999

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The Companies Act 1985

Private company limited by shares

**New
Articles of Association**

of

Motive Communications Limited

(as adopted by a single member resolution
passed on 4th JANUARY 1999)

1. Preliminary

- 1.1 Except as otherwise provided in these Articles, the regulations contained or incorporated in Table A shall apply to the Company.
- 1.2 These Articles and the regulations incorporated in them shall take effect subject to the requirements of the Act and of every other statute for the time being in force affecting the Company.
- 1.3 In these Articles, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Accounts” the audited profit and loss account of the Company or, if at the relevant time the Company has any subsidiary undertaking(s), a consolidation of the audited profit and loss accounts of the Company and its subsidiary undertaking(s), for each financial year;

“Act” the Companies Act 1985 (as amended);

“Board” the board of Directors of the Company;

“Directors” the Directors for the time being of the Company;

“Group Director Consent” the prior written approval of the Group Director (which shall be deemed given if

	he gives approval at a meeting of the Board) or, if the Group Director requires, or if there is no Group Director, the written approval of the holders of more than 75% of the Ordinary Shares in issue at the time;
"Group Director"	the Director appointed under Article 15;
"Management Participation Shares"	the Shares of 10p each in the capital of the Company and having the rights set out in Articles 2 and 3;
"Manager Shareholder"	a holder of Management Participation Shares;
"Ordinary Shares"	the ordinary shares of 10p each in the capital of the Company;
"Parent Company"	BBH Communications Limited;
"Preference Shares"	the preference shares of £1 each in the capital of the Company;
"Shareholder"	a holder for the time being of Shares in the capital of the Company;
"Shares"	the issued shares in the capital of the Company from time to time;
"Shareholder Agreement"	the shareholder agreement entered into on the same date as these Articles between Mr Mark Cranmer and others (1) the Company (2) BBH Communications Limited (3) and BBH Holdings Limited (4) and BBH Trustees Limited as that agreement may be amended from time to time;
"Subsidiary"	a subsidiary undertaking for the purposes of Section 258 of the Act and "Subsidiaries" shall be construed accordingly;
"Supplemental Deed"	a deed supplemental to the Shareholders Agreement substantially in the form set out in the Shareholders Agreement;

"Table A"	Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (as amended);
"Trustee"	BBH Trustees Limited; and
"Wholly-owned Group"	a body corporate and any holding company of which it is a wholly-owned subsidiary and any other wholly-owned subsidiaries of that holding company (including any wholly-owned subsidiary of the body corporate).

1.4 References in these Articles to:

- (a) **"employees"** shall be deemed to include consultants and Directors (other than the Group Director) and contracts of, commencement or cessation of, employment shall include contracts for, commencement or cessation of, consultancy or Directorship; and
- (b) a **"share"** shall include any interests in shares referred to in Section 209(1)(a) and (e) and 209(10)(c) of the Act.

1.5 The headings to these Articles do not affect the construction of these Articles.

1.6 A person shall be deemed to be connected with another if that person is connected with another within the meaning of Section 839, Income and Corporation Taxes Act 1988.

2. Authorised share capital

2.1 The authorised share capital of the Company at the date of adoption of these Articles is £3,585,000 divided into 750,000 Ordinary Shares, 100,000 Management Participation Shares and 3,500,000 Preference Shares.

2.2 The Directors be and they are generally and unconditionally authorised for the purposes of Section 80 of the Act to allot, or to grant any right to subscribe for or to convert any security into, shares in the Company up to a maximum nominal amount of £3,585,000 at any time or times during the period from the date of the adoption of these Articles up to the fifth anniversary of the date of adoption of these Articles on which date this authority shall expire and this authority shall allow the Company to make an offer or agreement before the expiry of the authority which would or might require shares to be allotted, or rights to subscribe for or to convert any security into shares to be granted,

after the expiry of the authority.

- 2.3 Pursuant to Section 91 of the Act, sub-section (1) of Section 89 and sub-sections (1) to (6) inclusive of Section 90 of the Act shall be excluded from applying to the Company.

3. **Rights attaching to shares**

3.1 ***Income***

(a) *Ordinary Shares*

The sum which shall become payable by the Company as the dividend on the Ordinary Shares shall be that sum which the Parent Company shall determine. Such determination shall be evidenced by written notice to the Company from the Parent Company which notice shall also state the date upon which the dividend is payable.

(b) *Preference Shares*

The holders of Preference Shares shall not be entitled to receive any dividend.

(c) *Management Participation Shares*

The Management Participation Shares shall not carry any entitlement to a dividend.

(d) *Further distributions*

The balance of any profits resolved to be distributed in any financial year or period shall be distributed amongst the holders of the Ordinary Shares pro rata according to the amount for the time being paid up on them.

(e) *Declaration and payment of dividends*

- (i) Subject to the provisions of paragraph (ii) below, every sum which shall become payable by the Company on any due date ("**dividend date**") in respect of the Ordinary Shares in accordance with the foregoing provisions of this Article 3 shall on that dividend date ipso facto, and without any resolution of the Directors or of the Company in general meeting and notwithstanding anything provided in Regulations 102 to 105 (inclusive) of Table A, become a debt due from the Company and immediately payable.

- (ii) The Company shall procure that each of its Subsidiaries shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the dividend payable in respect of the Ordinary Shares.

3.2 *Capital*

On a return of assets on liquidation or capital reduction or otherwise (except upon the redemption of shares of any class or the purchase by the Company of its own shares), the assets of the Company available for distribution amongst Shareholders after payment of its liabilities shall be applied in the following manner and order of priority:

- (a) first, in paying to the holders of the Preference Shares £1 per share;
- (b) second, in paying to the holders of the Management Participation Shares 10p per share; and
- (c) third, in paying the balance to the holders of the Ordinary Shares as if they constituted one class of share.

3.3 *Voting*

(a) *Preference Shares*

The holders of the Preference Shares shall be entitled to receive notice of and to attend either in person or by proxy at any general meeting of the Company but shall not be entitled to vote at it (either personally or by proxy) unless at the date when the notice convening such general meeting is sent to the Shareholders:

- (i) the business of the meeting includes a resolution directly and adversely affecting, altering or abrogating the rights, privileges or restrictions attached to the Preference Shares;
- (ii) a breach of the Shareholder Agreement has occurred;

in which event each holder of Preference Shares present in person or by proxy or representative shall be entitled to one vote for every Preference Share held.

(b) *Ordinary Shares*

The holders of the Ordinary Shares shall have the right to receive notice of, to attend and vote at any general meeting of

the Company. Each such holder present in person or by proxy or by representative shall be entitled on a show of hands to one vote and on a poll to one vote for each Ordinary Share held by him.

(c) *Management Participation Shares*

The holders of the Management Participation Shares shall have the right to receive notice of, to attend but not to vote at any general meeting of the Company including the Annual General Meeting of the Company.

4. **Variation of class rights**

Whenever the share capital of the Company is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied, modified, abrogated or cancelled only with the consent in writing of the holders of 75% of the issued shares of that class.

5. **Redemption and purchase of Shares**

Subject to the provisions of Part V of the Act and to the rights of the holders of the respective classes of Shares of the Company, the Company may:

- (a) issue shares which are to be redeemed or are liable to be redeemed at the option of the Company or the Shareholder concerned;
- (b) purchase its own shares (including any redeemable shares); and
- (c) make a payment in respect of the redemption or purchase under Section 159 or 160 or (as the case may be) Section 162 of the Act and the relevant power under (a) or (b) above, 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 Section 171 and Section 172 of the Act.

6. **Lien**

The lien conferred by Regulation 8 of Table A shall attach also to fully paid-up shares and the Company shall also have a first and paramount lien on all shares, whether fully paid or not, standing registered in the name of any person indebted or under liability to the Company, whether he shall be the sole registered holder thereof or shall be one of two or more joint holders, for all moneys presently payable by him or his estate to the Company.

7. **Permitted transfers**

7.1 A holder of Management Participation Shares shall only be entitled to transfer, pledge, encumber or, without limitation, otherwise dispose of, his Management Participation Shares to persons being employee(s) of the Company or persons who intend subsequently to transfer such shares to employee(s) of the Company (including without limitation the Trustee) and even in those circumstances only with Group Director Consent

7.2 ***Transfers by corporate shareholders***

A corporate member may at any time transfer Ordinary Shares or Preference Shares to another member of its Wholly-Owned Group.

7.3 ***Transfers with Group Director Consent***

A transfer of Ordinary Shares or Preference Shares may be made to any person with Group Director Consent.

8. **Deemed transfer provisions**

For the purpose of this Article save for where the Board with Group Director Consent resolves within 14 days of the Deemed Transfer Event that such shall not be the case, the following events ("**Deemed Transfer Events**") shall be deemed (without limitation) to constitute service of a Transfer Notice (as defined in the Shareholder Agreement) in respect of those Management Participation Shares ("**Leaver's Shares**") held by a Manager Shareholder ("**a Leaver**") who falls within the following provisions of this Article so that the provisions of this Article 8 shall apply:

- (a) where the Manager Shareholder is a Director or employed by the Company, the cessation of the directorship or employment of that Manager Shareholder howsoever arising;
- (b) the bankruptcy of any Manager Shareholder; or
- (c) the death of any Manager Shareholder.

8.2 ***Terms of Deemed Transfer Notice***

- (a) In respect of any Transfer Notice deemed to have been given under Article 8.1 ("**Deemed Transfer Notice**") such Deemed Transfer Notice shall be in respect of all Management Participation Shares held by the Leaver.
- (b) The Deemed Transfer Notice shall not be revocable by the Leaver save with the consent of the Board with Group Director

Consent.

- (c) The Deemed Transfer Notice shall be deemed to have been served and the Company shall be deemed to have received it on the date 15 days from the Deemed Transfer Event. In the event of any dispute as to the date of the Deemed Transfer Event the decision of the Group Director shall be final and binding.

8.3 **Default in transferring Leaver's Shares**

If a Leaver fails to deliver a duly executed stock transfer form for his Leaver's Shares to the Company by the date set for Transfer Completion (as defined in the Shareholder Agreement) ("**the Transfer Completion Date**") any Group Director may transfer and execute an instrument of transfer in respect of the Leaver's Shares on the Leaver's behalf to the transferee nominated by the Parent Company (including the Parent Company itself) to the extent that the transferee has, by the Transfer Completion Date, put the Company in funds on behalf of the transferee to pay the Purchase Price (as determined pursuant to the Shareholder Agreement) for the Leaver's Shares. The Board shall then authorise registration of the transfer once appropriate stamp duty has been paid. The defaulting Leaver shall accordingly surrender his share certificate for the Leaver's Shares to the Company. On surrender, the Leaver shall be paid the Purchase Price (in accordance with the terms of the Shareholder Agreement) for the Leaver's Shares.

8.4 **Purchase Price**

- (a) The Purchase Price for each of the Leaver's Shares shall be calculated in accordance with the provisions of the Shareholder Agreement save that the Purchase Price shall consist of a cash payment only.
- (b) Notwithstanding the provisions of sub-clause (a) above, where a Deemed Transfer Notice is given in the event of a Leaver ceasing to be employed by the Company as a result of such employment being lawfully terminated for gross misconduct, the Purchase Price for each of the Leaver's Shares shall be the nominal value.

9. **Registration of transfers**

- 9.1 The Directors shall refuse to register a proposed transfer not made under or permitted by Article 7.
- 9.2 The Directors may also refuse to register a transfer of a share on which the Company has a lien.
- 9.3 A person executing an instrument of transfer of a share is deemed to

remain the holder of the share until the name of the transferee is entered in the register of members of the Company in respect of it.

- 9.4 The Directors shall (unless he is already a party to the Shareholders Agreement) refuse to register a transferee of Shares or a person entitled to Shares by transmission until such transferee has executed (in a form satisfactory to the Group Director) an undertaking under seal to those persons who are parties to or who have agreed to adhere to the Shareholders Agreement whereby such transferee undertakes to adhere to and be bound by the provisions of the Shareholders Agreement as if such transferee were an original party thereto and an original copy of such undertaking has been delivered to the Company.
- 9.5 The first sentence of Regulation 24 of Table A shall not apply.

10. General meetings

- 10.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before, or on the declaration of the result of, the show of hands) demanded by the Chairman or by any Shareholder present in person or by proxy. Unless a poll be so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 10.2 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.

11. Written resolutions

A resolution in writing signed by or on behalf of all the Shareholders for the time being entitled to vote shall be as effectual as if it had been passed at a general meeting of the Company duly convened and held, and may consist of several documents in the like form each signed by one or more Shareholder. In the case of a corporation the resolution may be signed on its behalf by a Director of it or by its duly appointed or duly authorised representative. Regulation 53 of Table A shall not apply.

12. General meeting on members' requisition

- 12.1 In addition to any relevant provisions of the Act, the Directors shall

forthwith proceed to convene an extraordinary general meeting of the Company on the requisition of holders of not less than 50 per cent. by nominal value of the Ordinary Shares in issue at the date of deposit of the requisition, such meeting to be convened for such date as is specified in the requisition or as soon thereafter as the Act permits.

- 12.2 The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the Company, and may consist of several documents in like form each signed by one or more requisitionists.
- 12.3 If the Directors do not within 7 days from the date of the deposit of the requisition proceed to convene a meeting in accordance with this Article, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.
- 12.4 A meeting convened under this Article by requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by Directors.
- 12.5 Any reasonable expenses incurred by the requisitionists by reason of the failure of the Directors to convene a meeting in accordance with this Article shall be repaid to the requisitionists by the Company, and any sum so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the Directors as were in default.

13. Votes of members

A proxy appointed by a member of the Company under Section 372 of the Act may vote on a show of hands as well as on a poll, but no person present shall be entitled to more than one vote on a show of hands. Regulation 54 of Table A shall be amended accordingly.

14. Directors

- 14.1 The number of Directors (other than alternate Directors) shall not be less than 2 of whom at least one must be a Group Director. Regulation 64 of Table A shall not apply.
- 14.2 The Directors shall not be subject to retirement by rotation and Regulations 73 to 75 (inclusive) and the last sentence of Regulation 84 of Table A shall not apply and Regulations 76 to 79 (inclusive) shall be amended accordingly.
- 14.3 The quorum necessary for the transaction of business of the Directors

shall be 2 at least one of whom shall be a Group Director if at the time of the Meeting a Group Director has been appointed.

- 14.4 In the event of a quorum not being present or ceasing to be present, the meeting shall be adjourned to the same day in the next week at the same time and place and, provided that at least one of the Group Directors are present at such adjourned meeting, such Directors as may be present at such adjourned meeting shall constitute a quorum.
- 14.5 Any Director able to participate in the proceedings of a meeting by means of a communication device (including, without limitation, a telephone) which allows all the other Directors present at such meeting (whether in person or by proxy or by means of such type of communication device) to hear at all times such Director and such Director to hear at all times all other Directors present at such meeting (whether in person or by proxy or by means of such type of communication device) shall be deemed to be present at such meeting and shall be counted when reckoning a quorum.
- 14.6 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit provided that all meetings of the Directors shall be held within the United Kingdom. A Director may, and the secretary on the requisition of a Director shall, at any time summon a meeting of the Directors. Unless a majority of the Directors (including the Group Director) or their duly appointed alternates present in the United Kingdom shall agree to the holding of a meeting by shorter notice, at least 72 hours' notice of every meeting of Directors shall be given either in writing or by cable or telex or other means of visible communication to each Director, unless absent from the United Kingdom. Regulation 88 of Table A shall be amended accordingly.
- 14.7 A person may be appointed a Director notwithstanding that he shall have attained the age of 70 years and no Director shall be liable to vacate office by reason of his attaining that or any other age.
- 14.8 At any meeting of the Directors each Director (or his alternate Director) present at the meeting shall be entitled to one vote.
- 14.9 In the case of an equality of votes at any meeting the Chairman of such meeting shall not be entitled to a second or casting vote. Regulation 88 of Table A shall be modified accordingly.
- 14.10 Subject to the provisions of Section 317 of the Act, a Director (including an alternate Director) may contract with and participate in the profits of any contract or arrangement with the Company as if he were not a Director. A Director shall also be capable of voting in respect of such contract or arrangement, where he has previously

disclosed his interest to the Company, or in respect of his appointment to any office or place of profit under the Company or of the arrangement the terms of it and may be counted in the quorum at any meeting at which any such matters is considered. Regulations 94 to 96 (inclusive) of Table A shall not apply.

- 14.11 In Regulation 79 of Table A there shall be inserted the words "shall then be eligible for re-election" in place of the words "shall not be taken into account in determining the directors who are to retire by rotation at the meeting."
- 14.12 A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened and held, and may consist of several documents in the like form, each signed by one or more of the Directors, but so that the expression "Director" in this paragraph shall not include an alternate Director. Regulation 93 of Table A shall not apply.
- 14.13 The Directors may by resolution exercise all the powers of the Company to make provision (in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the Company or any Subsidiary) for the benefit of persons employed or formerly employed by the Company or that Subsidiary.
- 14.14 A Director and an alternate Director shall not be required to hold any shares, but nevertheless shall be entitled to attend and speak at any general meeting of the Company.

15. Group Directors

- 15.1 The Parent Company shall be entitled to appoint up to two persons as Group Directors of the Company and to remove from office any person so appointed and (subject to such removal) to appoint another person in his place.
- 15.2 Any appointment or removal of a Group Director shall be by signed instrument in writing served on the Company by the Parent Company and shall take effect on and from the date on which such instrument is lodged or deposited at the registered office of the Company.
- 15.3 The Group Director (and any alternate Director appointed by him) shall be entitled to make such disclosure to the Ordinary Shareholders in relation to the business and affairs of the Company and its Subsidiaries (if any) as they may in their absolute discretion determine but subject always to his fiduciary duties.

16. Executive Directors

The Board may appoint any person (not being a Director) to any office

or employment having a designation or title including the word "director" or attach to any existing office or employment with the Company such designation or title and may define, limit, vary or restrict the powers, authorities and discretions of persons so appointed and may terminate any such appointment subject to any contract between him and the Company or the use of such designation or title. The inclusion of the word "director" in the designation or title of any such office or employment shall not imply that such person is or is deemed to be or is empowered in any respect to act as a Director or a member of any committee of the Board of Directors for any of the purposes of the Act or these Articles.

17. Alternate Directors

- 17.1 Each Director shall have the power at any time to appoint as an alternate Director either another Director or any other person approved for that purpose by a resolution of the Directors (such approval not to be unreasonably withheld), and, at any time, to terminate such appointment. Every appointment and removal of an alternate Director shall be in writing signed by the appointor and (subject to any approval required) shall (unless all the Directors agree otherwise) only take effect upon receipt of such written appointment or removal at the registered office of the Company.
- 17.2 An alternate Director so appointed shall not be entitled as such to receive any remuneration from the Company except only 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, but shall otherwise be subject to the provisions of these Articles with respect to Directors. An alternate Director shall during his appointment be an officer of the Company and shall not be deemed to be an agent of his appointor.
- 17.3 An alternate Director shall (subject to his giving to the Company an address at which notice may be served upon him) be entitled to receive notices of all meetings of the Directors and of any committee of the Directors of which his appointor is a Shareholder and to attend and to vote as a Director at any such meeting at which his appointor is not personally present and generally in the absence of his appointor to perform and exercise all functions, rights, powers and duties as a Director of his appointor and to receive notice of all general meetings. Regulation 66 of Table A shall not apply.
- 17.4 The appointment of an alternate Director shall automatically determine on the happening of any event which if he were a Director would cause him to vacate such office or if his appointor shall cease for any reason to be a Director otherwise than by retiring and being re-appointed at

the same meeting. Regulation 67 of Table A shall not apply.

- 17.5 A Director or any other person may act as alternate Director to represent more than one Director and an alternate Director shall be entitled at meetings 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. The last sentence of each of Regulations 88 and 89 of Table A shall not apply.

18. 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 it, and to issue debentures, debenture stocks and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

19. Notices

- 19.1 Every Director of the Company and every alternate Director shall, upon supplying the Company with an address for the giving of notices, be entitled to receive notices of general meetings, provided always that non-receipt of any such notice by any Director or alternate Director shall not invalidate the proceedings at the meeting convened by such notice.

- 19.2 A notice may be given:

- (a) by the Company to any Shareholder or Director either personally or by sending it by first class post (airmail if abroad) or Royal Mail Special Delivery post or by telex or other means of visible communication to him or to his registered address or to the address supplied by him to the Company for the giving of notice to him; or
- (b) to the Company for the purpose of these Articles by like method at its registered office for the time being.

- 19.3 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, preparing and posting a letter containing the notice, and to have been effected at the expiration of 48 hours after the letter containing the same is posted. Where a notice is sent by telex or other means of visible communication, service of the notice shall be deemed to be effected forthwith.

20. Indemnity

Every Director or other officer of the Company shall 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 to it, 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 Sections 144 and 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 to it. This Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act. Regulation 118 of Table A shall not apply.