

40077664

THE COMPANIES ACT 1985

A PRIVATE COMPANY LIMITED BY SHARES

NEW
ARTICLES OF ASSOCIATION
OF
GLOBAL COAL LIMITED

(Adopted by Special Resolution passed on 18th April, 2001 and amended by Written Resolution dated 26th September, 2001 and by Special Resolution passed on 13th June, 2002)

NO. 4007764

ALLEN & OVERY
LONDON



CO:788079

Company number
4007764

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GLOBAL COAL LIMITED

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PRELIMINARY

1. None of the regulations contained or incorporated in Table A shall apply to the Company. For the purposes of these articles, Table A means 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.

INTERPRETATION

2. In these articles:

"\$" means the lawful currency of the United States of America from time to time;

"the Act" means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force;

"articles" means the articles of the Company;

"Affiliate" means, in relation to any person, any subsidiary undertaking or parent undertaking of that person, or any other subsidiary undertaking of any such parent undertaking, provided that neither the Company nor any of its subsidiaries shall be considered an Affiliate of any person for the purposes of these articles and provided further that Rio Tinto Limited and each subsidiary of Rio Tinto Limited within the meaning ascribed to the term "subsidiary" in section

9 of the Corporations Law of Australia shall be considered an Affiliate of Rio Tinto and each Affiliate of Rio Tinto for the purposes of these articles;

"Business Day" means a day (other than a Saturday or Sunday) on which banks in London are open for general business;

"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"Coal Consumer" means a person who buys coal primarily for its own end-use, or the end-use of its Affiliates, and not for resale;

"Commencement Date" means in relation to ordinary shares issued to an Employee Member:

- the date determined by the board for the purposes of the particular invitation to subscribe for ordinary shares as specified in the invitation letter issued to an Employee Member, such ordinary shares being the original ordinary shares issued pursuant to the invitation and any new holding in addition to or which represents those ordinary shares as a result of a reorganisation of share capital; or
- in relation to any bonus issue, the date of subscription for such ordinary shares;

"Employee Member" means a person who is or has been a director and/or employee of the Company or any of its subsidiaries;

"Employee Trust" means a trust established by the Company whose beneficiaries are the bona fide employees of the Company and/or any of its subsidiaries, provided that such trust shall have been approved by the holders of not less than 51% of the preference shares of which no fewer than one holder shall be a Coal Consumer;

"executed" includes any mode of execution;

"Family Trust" a trust which only permits the settled property or the income therefrom to be applied for the benefit of:

- the Employee Member and/or a Privileged Relation of that Employee Member; or
- any charity or charities as default beneficiaries (meaning that such charity or charities have no immediate beneficial interest in any of the settled property or the income therefrom when the trust is created but may become so interested if there are no other beneficiaries from time to time except another such charity or charities);
- and under which no power of control is capable of being exercised over the votes of any ordinary shares which are the subject of the trust by any person other than the trustees, the Employee Member or a Privileged Relation of the Employee Member;

"HubCo" means Global HubCo BV, a company incorporated in the Netherlands, whose registered office is at Strawinskylaan 3105, 1077 ZX, Amsterdam, Netherlands;

"office" means the registered office of the Company;

"paid up" includes credited as paid up;

"Privileged Relation" the spouse or widow or widower of the Employee Member and the Employee Member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the Employee Member's children;

"Sale Price" means the subscription price paid or agreed to be paid on the subscription of the Sales Shares as defined in article 33A(7);

"secretary" means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;

"Termination Date" means: -

- where employment ceases by virtue of notice given by the employer to the employee, the date on which such notice expires;
- where a contract of employment is terminated by the employer and a payment is made in lieu of notice, the date on which notice of termination was served;
- where an Employee Member dies, the date of his death;
- where the Employee Member concerned was a director but not an employee the date on which his contract for services with the Company is terminated or, if he has no such contract, the date on which he ceases to be a director; and
- in any other case the date on which the contract of employment was terminated;

"the Statutes" means the Act and every other statute, statutory instrument, regulation or order for the time being in force concerning companies registered under the Act; and

"the United Kingdom" means Great Britain and Northern Ireland.

3. In these articles, unless the contrary intention appears:

- (a) words importing the singular number include the plural number and vice versa, words importing one gender include all genders and words importing persons include bodies corporate and unincorporated associations; and
- (b) words or expressions contained in these articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these articles become binding on the Company.

4. Headings to these articles are inserted for convenience only and shall not affect construction.

SHARE CAPITAL

5. (1) The authorised share capital of the Company at the date of adoption of these articles is £500,000 divided into 49,327,400 convertible voting preference shares of 1p each,

("preference shares"), 6,725,000 ordinary shares of 0.10p each ("ordinary shares") and one special deferred share of £1 being subject to the restrictions and having the rights set out in the special resolution of the Company passed on the date of adoption of these articles. The preference shares have the special rights and privileges set out in articles 10 to 13 inclusive, but otherwise rank *pari passu* with the ordinary shares.

- (2) The directors are generally and unconditionally authorised, in accordance with section 80 of the Act, to exercise all the powers of the Company to allot relevant securities up to a maximum nominal amount of £499,999.
 - (3) The authority contained in paragraph (2) shall expire on the day five years after the date of the adoption of these articles but the Company may, before the authority expires, make an offer or agreement which would or might require relevant securities to be allotted after it expires.
 - (4) Section 89(1) of the Act (which regulates the power to allot equity securities, as defined in section 94 of the Act) is excluded.
6. Subject to the provisions of the Act and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.
 7. Subject to the provisions of the Act, shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder on such terms and in such manner as may be provided by these articles.
 8. The Company may exercise the powers of paying commissions conferred by the Act. Subject to the provisions of the Act, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.
 9. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and (except as otherwise provided by these articles or by law) the Company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder.

RIGHTS ATTACHED TO PREFERENCE SHARES

10. Each holder of preference shares shall be entitled to be paid any dividend declared in respect of the preference shares from time to time. No dividend shall be declared or paid in respect of the ordinary shares without the consent in writing of: (a) at any point in time at which HubCo, Anglo American Finance (UK) Plc and their respective Affiliates together hold at least 67% of the preference shares for the time being in issue, the holders of not less than 67% of the preference shares for the time being in issue of which no fewer than one holder shall be a Coal Consumer; or (b) at any other time, the holders of not less than 67% of the preference shares for the time being in issue, unless:
 - (a) all dividends previously declared in respect of the preference shares have been paid in full to the holders of preference shares entitled thereto; and
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- (b) immediately before and in priority to the declaration or payment of the dividend in respect of the ordinary shares, a dividend is declared and paid in respect of the preference shares (which shall be treated for this purpose as if converted at the conversion rate then applicable into fully paid ordinary shares) of an amount equal to or greater than the dividend to be declared and paid in respect of the ordinary shares.
11. On a return of capital on a winding-up or otherwise (but not in respect of any redemption, conversion or purchase of shares by the Company) the assets of the Company available for distribution to its members shall be applied:
- (a) first, in paying to each holder of a preference share any dividends declared but not paid on that share;
 - (b) secondly, in repaying the capital paid up on each preference share together with any share premium at which such preference share was issued;
 - (c) thirdly, in distributing rateably amongst the holders of ordinary shares according to the amounts paid up on those shares (but subject to the rights of the special deferred share of £1 and the non-voting deferred shares (if any)), any surplus assets existing after the payments under sub-paragraphs (a) and (b) above, and the holders of the preference shares shall have no right of participation in those assets (except in so far as they convert such preference shares into ordinary shares).
12. (1) Each holder of preference shares is entitled to convert all or any of his fully paid preference shares into fully paid ordinary shares at the rate (subject to adjustment under this article) of 0.10p in nominal amount of ordinary share capital for every 1p in nominal amount of preference share capital so converted, representing at the date of adoption of these articles one ordinary share for every one preference share.
- (2) In these articles:
- (a) "**conversion rate**" means the rate of conversion set out in sub-paragraph (1) above, as adjusted from time to time under this article; and
 - (b) "**conversion notice**" means a notice of conversion in the form or manner specified by the Company to the holders of preference shares in writing from time to time, together with any certificates for, or other evidence which is reasonably required by the directors to prove title to, the preference shares to be converted.
- (3) The conversion rights are exercisable by sending, at any time, a conversion notice to the address specified by the Company from time to time. A conversion notice once lodged may not be withdrawn without the consent in writing of the Company. If a conversion notice is given in respect of part only of a holding of preference shares so that following the conversion the number of preference shares in that holding would be smaller than that required to convert into one ordinary share at the conversion rate (then applicable), all the preference shares in that holding shall be converted notwithstanding the figure inserted in the conversion notice.
- (4) Conversion of preference shares the subject of a conversion notice (the "**relevant preference shares**") may be effected in any manner the board may decide and which the
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law may allow including, without limitation, in the manner set out in any of the following provisions of this article.

- (5) On a conversion, a holder of relevant preference shares shall, as a result of the conversion, hold the number of ordinary shares to which he is entitled on conversion rounded down to the nearest whole ordinary share.
 - (6)
 - (a) The board may decide that conversion shall be effected by means of a consolidation of relevant preference shares and their sub-division and redesignation as ordinary shares in accordance with the following provisions of this sub-paragraph (6).
 - (b) On the conversion date the relevant preference shares held by any holder shall (under the authority given by the passing of the resolution to create the preference shares) be consolidated into one share and then sub-divided into ordinary shares and into non-voting deferred shares of 1p each having the rights and being subject to the restrictions set out below (the "**non-voting deferred shares**").
 - (c) The consolidation and sub-division shall be effected so that each holder of relevant preference shares whose shares are consolidated and sub-divided shall, as a result, hold that number of ordinary shares to which he is entitled on conversion of his relevant preference shares rounded down to the nearest whole ordinary share. The balance of the nominal amount of his consolidated share, after deducting the nominal amount of the ordinary shares (including any fractions) arising on the conversion, shall be sub-divided into non-voting deferred shares.
 - (d) If the holder of the relevant preference shares would otherwise have become entitled to a fraction of an ordinary share the provisions of sub-paragraph (9) below shall apply to that fraction.
 - (e) If any fraction of an ordinary share remains after applying the provisions of sub-paragraph (9) below, it shall be sub-divided into the appropriate number of non-voting deferred shares (if that sub-division can be made) and the board has full power to decide the holding to which those shares relate. The board also has full power to deal with fractions of ordinary shares or non-voting deferred shares representing less than 1p in nominal amount by aggregating them with other such fractions so as to form non-voting deferred shares and to decide the holding to which those shares relate.
 - (f) A non-voting deferred share:
 - (i) does not entitle its holder to receive any dividend or other distribution;
 - (ii) does not entitle its holder to receive notice of or to attend or vote at any general meeting of the Company;
 - (iii) entitles its holder on a return of capital on a winding-up (but not otherwise) only to the repayment of the amounts paid up on that share after payment in respect of the preference shares of the amounts referred to in article 11(a) and (b) and in respect of each ordinary share of the capital paid up on it and the further payment of £10,000 on each ordinary share; and
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- (iv) does not entitle its holder to any further participation in the capital of the Company.
 - (g) The Company may at its option at any time after the creation of any non-voting deferred shares:
 - (i) redeem all the non-voting deferred shares then in issue at an aggregate price of at least 1p for all the non-voting deferred shares to be redeemed on giving to their holders at least seven days' previous notice in writing of its intention so to do, fixing a time and place for the redemption, and at that time and place those holders shall be bound to surrender to the Company any certificates for or other evidence of title of their non-voting deferred shares to be cancelled and the Company shall pay the redemption moneys to one of the holders to be selected by lot;
 - (ii) appoint a person on behalf of any holder of a non-voting deferred share to transfer that share for nil consideration to any person appointed by the board to be the nominee holder of that share with power to deal with that share in accordance with the provisions of this article;
 - (iii) without obtaining the sanction of the holder, but subject to the Statutes:
 - (aa) purchase any non-voting deferred share;
 - (bb) cancel any non-voting deferred share without making any payment to the holder; and
 - (iv) pending any redemption, transfer, cancellation or purchase of a non-voting deferred share, retain the certificate or other document of title for that share.
 - (7) (a) To effect a conversion the board may decide to redeem the relevant preference shares on the conversion date at their nominal value together with any share premium at which such shares were issued out of profits which would otherwise be available for distribution.
 - (b) If the board decides to effect a conversion in this manner, then:
 - (i) each holder of relevant preference shares shall subscribe under this sub-paragraph (7) for the number of ordinary shares into which his relevant preference shares are required to be converted at the conversion rate at such aggregate premium (if any) as represents the amount by which the redemption moneys for the relevant preference shares exceed the total nominal amount of the ordinary shares to which he is entitled; and
 - (ii) the conversion notice given by a holder of relevant preference shares is deemed irrevocably to authorise and instruct the board to apply the redemption moneys payable to the holder of relevant preference shares in subscribing for those ordinary shares at that premium (if any).
 - (8) (a) To effect a conversion, the board may decide to redeem the relevant preference shares on the conversion date at their nominal value together with any share
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premium at which such shares were issued out of the proceeds of a new issue of ordinary shares to the holders of the relevant preference shares.

- (b) If the board decides to effect a conversion in this manner, then:
- (i) each holder of relevant preference shares shall, in accordance with sub-paragraphs (ii) and (iii) below, subscribe for the number of ordinary shares into which his relevant preference shares are required to be converted at the conversion rate at such aggregate premium (if any) as represents the amount by which the redemption moneys for the relevant preference shares exceed the total nominal amount of ordinary shares to which he is entitled;
 - (ii) the subscription shall be effected, on behalf of the holder, by his agent who shall be appointed by the board with authority to apply an amount equal to the redemption moneys in respect of his relevant preference shares in making the subscription (which authority includes the right to borrow money to subscribe and pay for those ordinary shares); and
 - (iii) following the allotment of the ordinary shares the board shall pay the redemption moneys to the agent who shall be entitled to retain them for his own benefit without being accountable to the holder and to apply them in repaying any moneys borrowed.
- (9) A holder of relevant preference shares shall not be entitled to receive any fractions of ordinary shares arising on conversion to which he would otherwise be entitled, but (if practicable) any fractions arising on conversion shall be aggregated and sold (on behalf of the holders) to any person (including, subject to the provisions of the Statutes, the Company) and the net proceeds of sale distributed *pro rata* among those holders (except that any proceeds less than a sum fixed by the board may be retained for the benefit of the Company). For the purpose of any such sale the board may authorise some person to transfer the shares to or as directed by the purchaser, who shall not be bound to see to the application of the purchase money; nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings relating to the sale. The board may make all other arrangements which appear to it necessary or appropriate for the settlement and disposal of fractional entitlements.
- (10) Allotments of ordinary shares arising from conversion shall be effected not later than 14 days after the conversion date. Within 28 days after the conversion date, the Company shall send to each holder of the relevant preference shares, at his own risk, free of charge, a definitive certificate for the appropriate number of fully paid ordinary shares and a new certificate for any unconverted preference shares comprised in the certificates surrendered by him, or such other evidence of title to the ordinary shares or unconverted preference shares as the board may reasonably decide, and a cheque for any money payable for fractional entitlements. In the meantime, transfers shall be certified against the register.
- (11) If the Company makes any issue of ordinary shares (not being an issue which results from the exercise by a shareholder of an option to take a share or shares instead of a cash dividend) by way of capitalisation of profits or reserves (including any share premium account and capital redemption reserve) to the holders of ordinary shares, then on any conversion of preference shares after the record date for that issue the nominal amount
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of ordinary share capital to be issued shall be increased *pro rata* and if any doubt arises as to the amount of that increase the certificate of the auditors for the time being of the Company shall be conclusive and binding on all concerned.

- (12) If the ordinary shares are consolidated or sub-divided, then the number of ordinary shares to be issued on any conversion of the preference shares after the consolidation or sub-division takes effect shall be reduced or increased accordingly and if any doubt arises as to the number of them the certificate of the auditors for the time being of the Company shall be conclusive and binding on all concerned.
 - (13) Upon the redemption of any preference shares or non-voting deferred shares under this article the board may under the authority given by the passing of the resolution to create the preference shares consolidate or subdivide and convert all or any of the authorised share capital previously representing shares cancelled on redemption into shares of any other class of share capital then comprised in the authorised share capital of the Company or into unclassified shares.
 - (14) Holders of preference shares shall be notified in writing of any adjustments to the conversion rate under this article within 14 days of the date of such adjustment.
13. (1) Each preference share entitles the holder to receive notice of, and attend and vote at, general meetings of the Company.
- (2) On a show of hands, each holder of preference shares who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote (provided that no person present shall be entitled to more than one vote on a show of hands) and, on a poll, each holder of preference shares shall have the number of votes for the preference shares held by him which he would have had if the preference shares held by him had been converted at the conversion rate then applicable into fully paid ordinary shares.

SHARE CERTIFICATES

14. Every member, upon becoming the holder of any shares, shall be entitled without payment to one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the directors may determine. Every certificate shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon. The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
15. If a share certificate is defaced, worn-out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing-out) on delivery up of the old certificate.
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LIEN

16. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. 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 on a share shall extend to any amount payable in respect of it.
17. The Company may sell in such manner as the directors determine any shares on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.
18. To give effect to a sale the directors may authorise any person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
19. The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES AND FORFEITURE

20. Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.
 21. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
 22. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
 23. If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Act) but the directors may waive payment of the interest wholly or in part.
 24. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if
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it is not paid the provisions of these articles shall apply as if that amount had become due and payable by virtue of a call.

25. Subject to the terms of allotment, the directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.
26. If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.
27. If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
28. Subject to the provisions of the Act, a forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and at any time before sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the share to that person.
29. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
30. A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

TRANSFER OF SHARES

31. Except as provided in articles 32 or 33 or 33A, neither a member nor a person entitled to shares in the Company by transmission shall be entitled to sell, transfer or otherwise dispose of or encumber any of his shares or any interest therein before the date two years after the date of adoption of these articles or six months after the date of admission of shares in the Company to trading on a recognised stock exchange, whichever occurs first.
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32. (1) Shares in the Company may be transferred in accordance with the following provisions:
- (a) a member, being a corporation, may transfer all or any of its shares to any of its Affiliates; and
 - (b) a member who subsequently becomes a shareholder of HubCo may transfer all its shares to HubCo.
- (2) If a member holding shares transferred to it under sub-paragraph (1)(a) ceases to be an Affiliate of the member who originally held those shares, the member shall, prior to ceasing to be such an Affiliate, transfer the shares held by it to the original member or an Affiliate of the original member designated by the original member. If it fails to do so, the directors may appoint a person to execute an instrument of transfer of those shares in favour of the original member, and shall cause the name of the original member to be entered in the register of members of the Company as the holder of those shares, and the validity of the proceedings shall not be questioned by any person.
33. (1) Where a member not being an Employee Member, being an individual, dies (a "**Deceased Shareholder**"), the directors may, and on the application of any holder of preference shares shall, by notice addressed to the Deceased Shareholder and served at his registered address, require that the shares held by the Deceased Shareholder be transferred to such persons as the directors may nominate.
- (2) The price per share for the transfer of any shares made pursuant to paragraph (1) shall be either:
- (a) such price as may be agreed between the personal representatives of the Deceased Shareholder and the directors; or
 - (b) in the absence of such agreement within 30 days of the date of a notice served by the directors under paragraph (1) (or such longer period the directors may decide), the Fair Price ascertained under article 34 as at the date on which a notice is given under paragraph (1) and by reference to the information available at that date.
- (3) If the personal representatives of the Deceased Shareholder fail to transfer the shares held by the Deceased Shareholder in accordance with a notice issued by the directors pursuant to sub-paragraph (1) the directors may appoint a person to execute an instrument of transfer of those shares in favour of the transferee nominated by them, and shall cause the name of the nominated transferee to be entered in the register of members of the Company as the holder of those shares, and the validity of the proceedings shall not be questioned by any person.
- 33A (1) Where any ordinary shares are held by the trustee of an Employee Trust:
- (a) on any change of trustees such ordinary shares may be transferred to the new trustees of that Employee Trust; and
 - (b) such ordinary shares may be transferred at any time to a beneficiary of that Employee Trust pursuant to the provisions of any trust deed for the time being in force regulating that Employee Trust and any arrangements which may be made by the trustees for achieving wider share ownership of ordinary shares in the Company.
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- (2) Except in accordance with the remaining provisions of this article 33A no Employee Member nor his permitted transferee in accordance with article 33A(3) nor any person entitled to shares in the Company by transmission on the death of an Employee Member shall be entitled to sell, transfer, dispose or encumber any of his ordinary shares or any interest therein until the date of conversion of the majority of the preference shares.
 - (3) An Employee Member may at any time during his lifetime transfer such number of his ordinary shares held by him as do not form part of the specified proportion of his ordinary shares (calculated in accordance with article 33A(6)) to a Privileged Relation or to trustees to be held in a Family Trust of which he is the settlor.
 - (4) Where any ordinary shares are held by trustees upon a Family Trust:
 - (a) on any change of trustees such ordinary shares may be transferred to the new trustees of that Family Trust;
 - (b) such ordinary shares may be transferred at any time to the Employee Member or to another Family Trust of which he is the settlor or to a Privileged Relation of the Employee Member.
 - (5) If and whenever any ordinary shares held by trustees upon a Family Trust cease to be so held upon a Family Trust (otherwise than in consequence of a transfer to the Employee Member or to any Privileged Relation of the Employee Member) or there ceases to be any beneficiaries of the Family Trust other than a charity or charities a Deemed Transfer Notice (as defined in article 33A(6)) shall be deemed to have been given in respect of the relevant ordinary shares (as hereinafter defined) by the holders thereof and such ordinary shares may not otherwise be transferred.

For the purposes of this sub-article the expression "relevant ordinary shares" means and includes the ordinary shares originally transferred to the trustees and any additional ordinary shares issued or transferred to the trustees by virtue of the holding of those ordinary shares or any of them.

- (6) Subject to article 33A(7) if an Employee Member dies or otherwise ceases to be a director or employee of the Company or any of its subsidiaries and does not continue in that capacity in relation to any of them a transfer notice ("**Deemed Transfer Notice**") shall be deemed to have been served by such Employee Member or his personal representatives on the relevant Termination Date in respect of the specified proportion (the "**Specified Proportion**") of the ordinary shares in respect of which he is an Employee Member, where: -
 - (a) if the Termination Date occurs on or before the day proceeding the first anniversary of the Commencement Date, the specified proportion shall be 100% of the ordinary shares held;
 - (b) if the Termination Date occurs on the first anniversary of the Commencement Date the specified proportion shall be 75%;
 - (c) if the Termination Date occurs after the first anniversary but before the fourth anniversary the specified proportion set out in paragraph (b) above shall be reduced by 2.08% for each complete month that has passed since the first anniversary;

and for the avoidance of doubt if the Termination Date occurs on or after the fourth anniversary of the Commencement Date, the specified proportion shall be zero.

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- (7) Where a Deemed Transfer Notice is deemed to be served pursuant to the provisions of articles 33A(5) and (6) the transferor under the transfer notice shall be here called the Vendor and the Deemed Transfer Notice shall constitute the Company the Vendor's agent for the sale of the ordinary shares specified therein ("the **Sale Shares**") at the Sale Price.
- (8) Any Sale Shares being sold by reason of a Deemed Transfer Notice shall be offered to the Company or to such other person, firm or company as the Company shall direct including for the avoidance of doubt an Employee Trust ("the **nominated person**").
- (9) If the Company or the nominated person agrees to buy the Sale Shares within two months of the Deemed Transfer Notice the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of them as the Company and/or a nominated person has agreed to buy). If the Vendor defaults in transferring any Sale Shares the Company shall receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the Company or the nominated person as appropriate (as purchasers) and shall enter the name of the purchasers in the Register of Members as the holder of such of the Sale Shares as shall have been transferred to them.
- (10) Pursuant to the provisions of article 33A (9) if neither the Company nor the nominated person shall accept the offer to purchase the Sale Shares under the terms of this article 33A the Vendor shall not be free to sell and transfer such of the Sale Shares as have not been so sold to any person unless and until a holder of preference shares has exercised the right of conversion set out in article 12(1).
- (11) No ordinary shares held by an Employee Member, his personal representatives or a permitted transferee of an Employee Member in accordance with article 33A(3) shall be transferred at a price which is less than the Sale Price.
34. For the purposes of article 33 "**Fair Price**" means the fair market value of the relevant shares as determined in good faith by the directors, taking into account such factors as the directors may consider relevant, including but not limited to the costs of and restrictions on divestment, current and projected results of the business of the Company and its subsidiaries, including extraordinary or exceptional items, and claims (contingent or otherwise) against the Company and its subsidiaries, and the determination of the directors shall be final and binding on the parties.
35. The restrictions on transfer contained in article 31 shall apply to all transfers and transmissions operating by law or otherwise.
36. The directors shall refuse to register a proposed transfer which contravenes these articles.
37. The directors may refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve and they may refuse to register the transfer of a share on which the Company has a lien. They may also refuse to register a transfer unless:
- (a) it is lodged at the office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
- (b) it is in respect of only one class of shares; and
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- (c) it is in favour of not more than four transferees.
38. If the directors refuse to register a transfer of a share, they shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.
39. The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee.
40. The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding thirty days in any year) as the directors may determine.
41. No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.
42. The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.
43. 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.

TRANSMISSION OF SHARES

44. If a member dies the survivor or survivors where he was a joint holder, and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.
45. Subject to article 33, a person becoming entitled to a share in consequence of the death or bankruptcy of a member who is an individual may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.
46. Subject to article 33, a person becoming entitled to a share in consequence of the death or bankruptcy of a member who is an individual shall have the rights to which he would be entitled if he were the holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any meeting of the Company or at any separate meeting of the holders of any class of shares in the Company.

ALTERATION OF SHARE CAPITAL

47. The Company may by ordinary resolution:
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- (a) increase its share capital by new shares of such amount as the resolution prescribes;
 - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - (c) subject to the provisions of the Act, sub-divide its shares, or any of them, into shares of smaller amount and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have any preference or advantage as compared with the others; and
 - (d) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.
48. Whenever as a result of a consolidation of shares any members would become entitled to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
49. Subject to the provisions of the Act, the Company may by special resolution reduce its share capital, and capital redemption reserve and any share premium account in any way.

PURCHASE OF OWN SHARES

50. Subject to the provisions of the Act, the Company may purchase its own shares (including any redeemable shares) and, if it is a private company, make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

GENERAL MEETINGS

51. All general meetings other than annual general meetings shall be called extraordinary general meetings.
52. The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene an extraordinary general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting.

NOTICE OF GENERAL MEETINGS

53. An annual general meeting and an extraordinary general meeting called for the passing of a special resolution or a resolution appointing a person as a director shall be called by at least twenty-one clear days' notice. All other extraordinary general meetings shall be called by at
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least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed:

- (a) in the case of an annual general meeting, by all the members entitled to attend and vote thereat; and
- (b) in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety-five per cent. in nominal value of the shares giving that right.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

Subject to the provisions of these articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all persons entitled to a share in consequence of the death or bankruptcy of a member and to the directors and auditors.

54. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

55. No business shall be transacted at any meeting unless a quorum is present. 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.
56. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine.
57. The chairman, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.
58. If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
59. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company.
60. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying
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the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

61. Save as provided in article 68(4), a resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on a declaration of the result of, the show of hands a poll is duly demanded. A poll may be demanded at any general meeting by the chairman or by any member present or participating in person or by proxy and entitled to vote.
 62. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
 63. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman or by any other member present or participating in person or by proxy and entitled to vote and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
 64. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
 65. The chairman at any general meeting shall not be entitled to a second or casting vote.
 66. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
 67. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
 68. (1) A general meeting or a meeting of any class of members of the Company may consist of a conference between members some or all of whom are in different places provided that each member who participates is able:
 - (a) to hear each of the other participating members addressing the meeting; and
 - (b) if he so wishes, to address all of the other participating members simultaneously,whether directly, by conference telephone or by any other form of communications equipment (whether in use when these articles are adopted or not) or by a combination of those methods.
 - (2) A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of members required to form a quorum.
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- (3) A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates.
 - (4) A resolution put to the vote of a meeting shall be decided by each member indicating to the chairman (in such manner as the chairman may direct) whether the member votes in favour of or against the resolution or abstains.
 - (5) References in this article to members shall include their duly appointed proxies and, in the case of corporate members, their duly authorised representatives.

SHAREHOLDERS' RESOLUTIONS

69. A resolution in writing signed or approved by letter, facsimile, telegram or telex by or on behalf of all the members of the Company who would be entitled to vote on it if it had been proposed at a general meeting or at a meeting of any class of members of the Company shall be as valid and effectual as if it had been passed at a general meeting or at such class meeting (as the case may be) duly convened and held. The resolution may be contained in one document or in several documents in like form each stating the terms of the resolution accurately and signed by or on behalf of one or more of the members. This article is in addition to, and not limited by, the provisions in sections 381A, 381B and 381C of the Act.

VOTES OF MEMBERS

70. Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall have one vote (provided that no person present shall be entitled to more than one vote on a show of hands) and, on a poll, every member (other than a holder of preference shares) shall have one vote for every share of which he is the holder and every holder of preference shares shall have the number of votes for the preference shares held by him which is calculated in accordance with article 13(2).
 71. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and seniority shall be determined by the order in which the names of the holders stand in the register of members.
 72. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with these articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
 73. No member shall vote at any general meeting or at any separate meeting of the holders of any class of shares in the Company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid.
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74. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
75. On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion.
76. An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve)-

" PLC/Limited
I/We, , of ,being a
member/members of the above-named company, hereby appoint of
, or failing him, of
, as my/our proxy to vote in my/our name[s] and on
my/our behalf at the annual/extraordinary general meeting of the company to be held on
, 20 , and at any adjournment thereof.
Signed on 20 ."

77. Where it is desired to afford members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve):

" PLC/Limited
I/We, , of ,being a
member/members of the above-named company, hereby appoint
of , or failing him
of , as my/our proxy to vote in
my/our names and on my/our behalf at the annual/extraordinary general meeting of the
company, to be held on , 20 , and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 *for *against
Resolution No. 2 *for *against.

*Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed this day of , 20 ."

78. The instrument appointing a proxy and any authority under which it is executed (or such copy of the instrument or the authority or both as the directors may approve) may:
- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for

holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (b) be deposited at the place where the meeting or adjourned meeting is to be held at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (c) in the case of a poll taken more than 48 hours after it is demanded, be deposited as specified in (a) above after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (d) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director; or
- (e) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be deposited at the place appointed for the taking of the poll at any time within the 24 hours preceding the time appointed for the taking of the poll,

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

79. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

DIRECTORS

80. (1) There shall be no more than twelve directors of the Company.
- (2) HubCo or any of its Affiliates shall (for so long as it is a member of the Company) be entitled by notice in writing to the Company to appoint four directors from time to time, and to remove or replace any directors so appointed.
 - (3) Anglo American Finance (UK) Plc or any of its Affiliates shall (for so long as it is a member of the Company) be entitled by notice in writing to the Company to appoint one director from time to time, and to remove or replace any director so appointed.
 - (4) The Coal Consumers or their respective Affiliates, which are members of the Company for the time being, shall be entitled by notice in writing to the Company (signed by any one of them) to appoint five directors from time to time, and to remove or replace any directors so appointed.
 - (5) The directors shall be entitled to appoint one director who shall be the chief executive of the Company, and to remove or replace any director so appointed. In the event of a deadlock on a proposed resolution to appoint or to remove or replace the director who is
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or is to be the chief executive, the chairman of the board of directors shall have a second or casting vote.

- (5)(A) The directors shall be entitled to appoint one director who shall be an independent non-executive director of the Company, and to remove or replace any director so appointed. In the event of a deadlock on a proposed resolution to appoint or to remove or replace such non-executive director, the chairman of the board of directors shall have a second or casting vote.
- (6) Every appointment or removal under this article shall take effect on and from the date on which notice of appointment or removal is lodged at the office or produced at a meeting of directors.
- (7) In addition to the circumstances set out in article 81 the office of a director shall be vacated if he is removed from office in accordance with this article.
- (8) The directors shall not be subject to retirement by rotation.
- (9) No director shall vacate his office or be ineligible for re-appointment as a director, nor shall any person be ineligible for appointment as a director, by reason only of his having attained a particular age.
- (10) No special notice is required of any resolution appointing or approving the appointment of such a director nor is any notice required to state the age of the person to whom the resolution relates.

DISQUALIFICATION OF DIRECTORS

81. The office of a director shall be vacated if-

- (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or
 - (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (c) he is, or may be, suffering from mental disorder and either-
 - (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960, or
 - (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
 - (b) he resigns his office by notice to the Company; or
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- (c) he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.

REMUNERATION OF DIRECTORS

82. The directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

DIRECTORS' EXPENSES

83. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.

DIRECTORS' GRATUITIES AND PENSIONS

84. The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any office or employment with the Company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

ALTERNATE DIRECTORS

85. (1) Any director (other than an alternate director) may appoint any other director or any other person willing to act as an alternate director and may remove from office an alternate director so appointed by him.
- (2) An alternate director shall be entitled to receive notice of all meetings of directors, to attend and to vote at any such meeting at which the director appointing him is not personally present and at that meeting to exercise and discharge all the functions, powers and duties of his appointor as a director and for the purposes of the proceedings at that meeting the provisions of these articles shall apply as if he was a director.
- (3) Every person acting as an alternate director shall have one vote for each director for whom he acts as alternate, in addition to his own vote if he is also a director, but he shall count as only one for the purpose of determining whether a quorum is present.
- (4) Any person appointed as an alternate director shall vacate his office as an alternate director if the director by whom he has been appointed ceases to be a director or removes him or on the happening of any event which, if he is or were a director, causes or would cause him to vacate that office.
- (5) An alternate director shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of the director appointing him.
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- (6) Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.

POWERS OF DIRECTORS

- 86 Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.
87. Without prejudice to any other of their powers, the directors may exercise any of the powers conferred by the Statutes to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer to any person of the whole or part of the undertaking of the Company or any of its subsidiaries.
88. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

DELEGATION OF DIRECTORS' POWERS

89. The directors may delegate any of their powers to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered.

COMMITTEES

90. The directors may establish committees for such purposes in relation to the business of the Company as the directors may think fit. Any such committee shall consist of not less than one director and (if thought fit) one or more other named person or persons to be co-opted as provided below. The directors may delegate any of their powers to any such committee. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Any such committee shall in the exercise of its powers conform to any conditions imposed by the directors from time to time. Any such conditions may provide for or authorise the co-option to the committee of persons other than directors and may provide for members who are not directors to have voting rights as members of the committee. The directors may, at any time, revoke or vary any such conditions and discharge any committee wholly or in part. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.
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DIRECTORS' INTERESTS

91. Provided that he has disclosed to the directors the nature and extent of any material interest of his, a director may vote as a director on a resolution concerning any matter in which he has, directly or indirectly, an interest or duty and, if he votes, his vote shall be counted and he shall be counted in the quorum when that resolution or matter is under consideration.
92. Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
 - (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and
 - (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
93. For the purposes of articles 91 and 92:
- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
 - (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

PROCEEDINGS OF DIRECTORS

94. 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 shall, call a meeting of the directors. At least seven clear days' notice of any meeting of the directors (or such shorter period of notice as all the directors or their alternate directors may agree) shall be given to all directors and to any alternate directors appointed by them. Questions arising at a meeting of directors shall be decided by a majority of votes. In the case of an equality of votes at any meeting of the directors, the chairman of the meeting shall not have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
95. The quorum for a meeting of the directors shall be five directors present throughout the meeting. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
96. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the
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continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

97. The directors appointed by HubCo may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.
98. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
99. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held. The resolution may be contained in one document or in several documents each stating the terms of the resolution accurately and signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity. For the purposes of this article, "signed" shall include approved by letter or facsimile.
100. (1) 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 is able:
- (a) to hear each of the other participating directors addressing the meeting; and
 - (b) if he so wishes, to address all of the other participating directors simultaneously,
- whether directly, by conference telephone or by any other form of communications equipment (whether in use when these articles are adopted or not) or by a combination of those methods.
- (2) A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of directors required to form a quorum.
- (3) A meeting held in this way is deemed to take place at the place where the largest group of participating directors is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates.
101. Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested the proposals may be divided and considered in relation to each director separately and (provided he is not for another reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
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102. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.

EXECUTIVE DIRECTORS

103. (1) The directors may appoint one or more of their number to any executive office in the Company, (including, but without limitation, that of chairman, deputy chairman, chief executive, managing director or joint managing director) for such period and on such terms as they think fit, and may revoke or terminate any appointment so made without prejudice to any claim for damages for breach of any agreement between the director and the Company.
- (2) The remuneration of any director appointed to any executive office shall be fixed by the directors and may be by way of salary, commission, participation in profits and either in addition to or inclusive of his remuneration as a director.

SECRETARY

104. Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

MINUTES

105. The directors shall cause minutes to be made in books kept for the purpose-
- (a) of all appointments of officers made by the directors; and
 - (b) of all proceedings at meetings of the Company, or the holders of any class of shares in the Company, and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

SEAL

106. (1) The Company may exercise the powers conferred by the Statutes with regard to having official seals and those powers shall be vested in the directors.
- (2) The directors shall provide for the safe custody of every seal, which the Company may have.
- (3) A seal shall be used only by the authority of the directors or a duly authorised committee but that authority may consist of an instruction or approval given by letter, facsimile, telegram, telex or telephone by a majority of the directors or of the members of a duly authorised committee.
- (4) The directors may determine who shall sign any instrument to which a seal is applied, either generally or in relation to a particular instrument or type of instrument, and may also determine, either generally or in any particular case, that such signatures shall be dispensed with or affixed by some mechanical means.
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- (5) Unless otherwise decided by the directors:
- (a) certificates for shares, debentures or other securities of the Company to which a seal is applied need not be signed; and
 - (b) every other instrument to which a seal is applied shall be signed by at least one director and the secretary or by at least two directors.
- (6) Certificates for shares, debentures or other securities of the Company need not be sealed with the seal but may be signed on behalf of the Company by at least one director and the secretary or by at least two directors or by such other person or persons as may be authorised by the directors for that purpose.

DIVIDENDS

107. Subject to the provisions of the Act and these articles, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.
108. Subject to the provisions of the Act and these articles, the directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the directors may (subject to the provisions of these articles) pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear. The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.
109. Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid; but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.
110. A general meeting declaring a dividend may, upon the recommendation of the directors, direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same and in particular may issue fractional certificates and fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the footing of the value so fixed in order to adjust the rights of members and may vest any assets in trustees.
111. Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may in writing direct,
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provided that, if requested by any holder of any shares, the Company shall pay any dividend or other moneys payable in respect of such shares by telegraphic transfer to a bank account specified by such holder. Every cheque shall be made payable to the order of the person or persons entitled or to such other person as the person or persons entitled may in writing direct and payment of the cheque shall be a good discharge to the Company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share.

112. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.
113. Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.

ACCOUNTS

114. No member shall (as such) have any right of inspecting any accounting records or other book or document of the Company except as conferred by statute or authorised by the directors or by ordinary resolution of the Company.

CAPITALISATION OF PROFITS

115. The directors may with the authority of an ordinary resolution of the Company:
- (a) subject as hereinafter provided, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the Company's share premium account or capital redemption reserve;
 - (b) appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other: but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this article, only be applied in paying up unissued shares to be allotted to members credited as fully paid;
 - (c) make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this article in fractions; and
 - (d) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members.
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NOTICES

116. Any notice to be given to or by any person pursuant to these articles shall be in writing except that a notice calling a meeting of the directors need not be in writing.
117. In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of members in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders.
118. (1) Any notice or other document may (if it is to be sent to an address outside the United Kingdom) be delivered by internationally recognised courier, or (if it is to be sent to an address in the United Kingdom) be sent by first class post or delivered by hand, or be sent by facsimile process to the member to be served at its address and facsimile number appearing in the register of members or such other address and facsimile number as it may have notified to the Company for the giving of notices.
- (2) A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by these for the giving of notice to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description at the address, if any, supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.
- (3) Any notice or document shall be deemed to have been served:
- (a) if delivered, at the time of delivery; or
 - (b) if posted from a place in the United Kingdom to an address in the United Kingdom, at 10.00 a.m. on the second business day after it was put into the post; or
 - (c) if sent by facsimile process, at the time a transmission report is produced by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the member as it may notify the Company, provided that if such time is not on a Business Day or is after 3.00pm (local time at the destination) on a Business Day, then the notice or document shall be deemed to have been served at 10.00 a.m. (local time at the destination) on the Business Day following the date of despatch..
- (4) In proving service of a notice or document it shall be sufficient to prove that delivery was made or (if the notice or document was to be served from a place in the United Kingdom to an address in the United Kingdom) that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched as the case may be.
119. A member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
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120. Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been duly given to a person from whom he derives his title.

WINDING UP

121. If the Company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the Act, divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

INDEMNITY

122. Subject to the provisions of and to the extent permitted by the Statutes, every director or other officer (excluding an auditor) of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, but:
- (a) this indemnity shall not apply to any liability to the extent that it is recovered from any other person; and
 - (b) the indemnity is subject to such officer taking all reasonable steps to effect such recovery, so that the indemnity shall not apply to the extent that an alternative right of recovery is capable of being enforced.
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