

Company number  
4132693

THE COMPANIES ACT 1985



A PRIVATE COMPANY LIMITED BY SHARES

**MEMORANDUM OF ASSOCIATION**

**OF**

**BROMLEY PROPERTY HOLDINGS LIMITED**

*(Incorporating all amendments to 10th March 2001)*

1. The Company's name is "Bromley Property Holdings Limited"<sup>1</sup>.
2. The Company's registered office is to be situated in England and Wales.
3. The Company's objects are<sup>2</sup>:
  - (1) to acquire and hold any kind of interest in, or to provide any form of capital for, any person or undertaking of any kind, to carry on business as a holding and investment company and to co-ordinate and manage the activities of, and to provide finance, services and facilities to, any person or undertaking controlled directly or indirectly by the Company or in which the Company is interested, whether as a shareholder or otherwise and whether directly or indirectly;
  - (2) to carry on business as a general commercial company;
  - (3) to carry on any trade or business whatsoever;
  - (4) to do all such things as are, in the opinion of the directors, incidental or conducive to the carrying on of any trade or business by it;
  - (5) to do all such things as the directors consider to be desirable or for the benefit of the Company;
  - (6) to borrow or raise money by any method and to obtain any form of credit or finance;
  - (7) to secure the payment of any moneys, the discharge of any liabilities and the observance or performance of any kind of obligations by the Company by any charge

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<sup>1</sup> The Company was incorporated under the name of "Alnery No. 2113 Limited" and adopted its present name on 9th February, 2001.

<sup>2</sup> The Company's objects were altered on 9th February, 2001 by the insertion of sub-clause 1 and the resulting re-numbering of the other sub-clauses.

over the whole or any part of the undertaking or assets of the Company;

- (8) to guarantee in any manner, or to enter into any indemnity or other arrangement in relation to, the discharge of any liabilities or the observance or performance of any kind of obligations of any person and to secure any such guarantee, indemnity or arrangement or the discharge of any liabilities or the performance of any such obligations by any charge over the whole or any part of the undertaking or assets of the Company;
- (9) to give any financial assistance that may lawfully be given in connection with the acquisition of shares in the Company or any other company;
- (10) to dispose of all or any part of the undertaking, assets and liabilities of the Company;
- (11) to provide or arrange for pensions, lump sum payments, gratuities, life, health, accident and other insurances and other benefits (pecuniary or otherwise) of every kind to or for the benefit of any individuals who are or have been directors of, or employed by, or who provide or have provided services to or for, the Company or any body corporate which is or has been a subsidiary, holding company or fellow subsidiary of the Company or otherwise connected with the Company or the predecessors in business of the Company or of any such subsidiary, holding or fellow subsidiary or connected company and to or for the benefit of the present or former spouses, children and other relatives and dependants of such individuals and others who have or formerly had with any such individuals any relationship of such a kind as the directors may approve; and for those purposes to establish or participate in any fund or scheme, to effect or contribute to any form of insurance and to enter into any other arrangements of any kind which the directors may approve;
- (12) to support and subscribe to any institution or association which may be for the benefit of the Company or its directors or employees or connected with any town or place where the Company carries on business, to support and subscribe to any charitable or public object whatsoever and to make donations to bodies, associations or causes with political objects;
- (13) to act as trustee, personal representative, director or agent of any kind and for any purpose;
- (14) to exercise any power of the Company for any consideration of any kind or for no consideration;

and it is declared that:

- (a) this clause shall be interpreted in the widest and most general manner and without regard to the *eiusdem generis* rule or any other restrictive principle of interpretation;
- (b) each of the above subclauses shall, unless it expressly provides to the contrary, be deemed to set out a separate, distinct and independent object of the Company and not a power ancillary or incidental to the objects set out in any other subclause;
- (c) subclauses (2) to (13) are without prejudice to the generality of the objects and powers conferred by subclause (1) and no subclause shall be in any way limited or restricted by reference to or inference from any other subclause;

(d) in this clause:

- (i) "**assets**" includes property, rights and interests of every description, whether present or future, actual or contingent and wherever situate and, in the case of the Company, its uncalled capital;
- (ii) "**charge**" includes any mortgage, pledge, lien or other form of security;
- (iii) "**dispose of**", in relation to an asset, includes selling or transferring it or surrendering or extinguishing it, and also creating or granting it or any interest or right out of or in respect of it;
- (iv) "**liabilities**" includes debts and obligations of every description, whether present or future, actual or contingent; and
- (v) "**person**" includes any partnership or other body of persons, whether corporate or unincorporate, and any country, territory, public authority and international organisation.

4. The liability of each member is limited.

5. The Company's share capital is £100 divided into 100 shares of £1 each<sup>3</sup>.

(d) in this clause:

- (i) "**assets**" includes property, rights and interests of every description, whether present or future, actual or contingent and wherever situate and, in the case of the Company, its uncalled capital;
- (ii) "**charge**" includes any mortgage, pledge, lien or other form of security;
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- (v) "**person**" includes any partnership or other body of persons, whether corporate or unincorporate, and any country, territory, public authority and international organisation.

4. The liability of each member is limited.

5. The Company's share capital is £100 divided into 100 shares of £1 each<sup>3</sup>.

I, the subscriber to this memorandum of association, wish to form a company pursuant to this memorandum; and I agree to take the number of shares shown opposite my name.

**Name and address of subscriber**

**Number of shares  
taken by  
subscriber**

Alnery Incorporations No.1 Limited  
9 Cheapside  
London EC2V 6AD

1

D.W. Stewart  
for and on behalf of  
Alnery Incorporations  
No.1 Limited

Total shares taken

—  
1  
—

Dated: 25th August, 2000.

Witness to the above signature:

C.A.J. Morris  
9 Cheapside  
London EC2V 6AD

THE COMPANIES ACT 1985

A PRIVATE COMPANY LIMITED BY SHARES

NEW  
ARTICLES OF ASSOCIATION  
OF

**BROMLEY PROPERTY  
HOLDINGS LIMITED**

(ADOPTED BY WRITTEN RESOLUTION PASSED ON 10TH MARCH, 2001)

NO. 4132693

**ALLEN & OVERY**

London  
CO:805088.9

Company Number  
4132693

THE COMPANIES ACT 1985  
A PRIVATE COMPANY LIMITED BY SHARES  
**NEW**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**BROMLEY PROPERTY HOLDINGS LIMITED**

*(adopted by written resolution  
passed on 10th March, 2001)*

**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. (1) In these articles:

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

"A Shares" means A ordinary shares of £1 each in the capital of the Company and "A Shareholder" means a holder of any of them;

"Board" or "directors" means the board of directors of the Company;

"B Shares" means B ordinary shares of £1 each in the capital of the Company and "B Shareholder" means a holder of any of them;

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

"**DB**" means WEPLA Beteiligungsgesellschaft mbH, a wholly-owned subsidiary of Deutsche Bank AG;

"**DB Group**" comprises Deutsche Bank AG and any member of its Wholly Owned Group;

"**employees**" shall be deemed to include consultants and directors (other than Investor Directors) and the terms "**employee**" and "**employed**" shall be construed accordingly;

"**equity share**" means any share other than a share which, either as respects dividends or as respects capital, only carries the right to participate up to a specified amount in a distribution;

"**executed**" includes any mode of execution;

"**Flotation**" means the unconditional granting of permission for any of the Ordinary shares to be dealt in on any recognised investment exchange (within the meaning of section 207 of the Financial Services Act 1986);

"**Grainger**" means Grainger Trust p.l.c. (registered number 00125575);

"**Grainger Group**" means Grainger and any member of its Wholly-Owned Group;

"**Group**" means the Company and its subsidiary undertakings from time to time and "**Group Company**" means any of them;

"**holder**" in relation to shares means the member whose name is entered in the register of members as the holder of the shares;

"**Investor Consent**" means:

- (a) the consent or approval of the Investor Directors appointed by each of DB and Grainger given in writing or given at a meeting of the Board (or of a committee of the Board) and accurately recorded (with particulars of any conditions to which the approval is subject) in the minutes of that meeting; or
- (b) if there is no Investor Director, the written approval of the Majority Holders;

"**Investor Directors**" means those directors of the Company appointed under articles 82 and 83 as Investor Directors (or their respective alternates) and "**Investor Director**" means any of them;

"**Investor Group**" means DB and Grainger and "**Investor**" means either of them;

"**Loan Stock**" means the Unsecured Shareholder Loan Stock 2006 constituted by the Loan Stock Instrument as defined in the Shareholders' Agreement (the "**Loan Stock Instrument**");

"**Majority Holders**" means the holders of 75 per cent. or more of the ordinary shares in issue for the time being;



**"office"** means the registered office of the Company;

**"paid up"** includes credited as paid up;

**"seal"** means any common seal of the Company or any official seal or securities seal which the Company may have or be permitted to have under the Statutes;

**"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;

**"Shareholders' Agreement"** means the agreement dated 14th March, 2001 made between the Company, Bromley Property Investments Limited and the Investors (as therein defined) as the same may be amended from time to time;

**"Shareholder"** means a holder of ordinary shares of £1 each in the capital of the Company;

**"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;

**"Subscription Price"** means, in relation to a share, either the amount paid up on that share, plus the amount of any premium at which that share was issued, or any other consideration (whether cash or non-cash) for which the share was allotted to the extent the same has not been distributed by way of bonus issue or repayment of capital in respect of that share;

**"subsidiary"** and **"subsidiary undertaking"** shall have the meanings given in sections 736 and 258 of the Companies Act 1985 respectively;

**"these articles"** means these articles of association, as from time to time altered;

**"United Kingdom"** means the United Kingdom of Great Britain and Northern Ireland; and

**"Wholly-Owned Group"** means in relation to a body corporate, that body corporate and any holding company of which it is a wholly-owned subsidiary and any other wholly-owned subsidiaries of that holding company (including any wholly-owned subsidiary of that body corporate).

- (2) Unless the context otherwise requires, words or expressions contained in these articles bear the same meaning as in the Act but excluding any statutory modification of them not in force when these articles become binding on the Company.
- (3) Unless the contrary intention appears, 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.

## CONTENTS

Clause	Page
Preliminary .....	1
Interpretation .....	1
Share Capital .....	4
Alteration of Share Capital .....	5
Share Rights: General .....	5
Share Rights: Return of Capital .....	6
Share Rights: Permitted Transfers .....	6
Transfer of shares .....	8
Share Certificates .....	9
Lien .....	10
Calls on shares and Forfeiture .....	10
Purchase of Own shares .....	12
General Meetings .....	12
Notice of General Meetings .....	12
Proceedings at General Meetings .....	13
Shareholders' Resolutions .....	14
Votes of Members .....	15
Number of Directors .....	16
Alternate Directors .....	17
Powers of Directors .....	17
Delegation of Directors' Powers .....	18
Appointment and Retirement of Directors .....	18
Removal and Disqualification of Directors .....	18
Remuneration of Directors .....	19
Directors' Appointments and Interests .....	19
Directors' Gratuities and Pensions .....	20
Proceedings of Directors .....	20
Secretary .....	22
Minutes .....	22
Seal .....	22
Dividends .....	23
Accounts .....	24
Capitalisation of Profits .....	24
Notices .....	25
Winding up .....	25
Indemnity .....	25
Relationship to loan stock .....	26

- (4) References in these articles to the transfer of a share include the transfer or other disposal of any beneficial interest in that share.
- (5) Headings to these articles are inserted for convenience only and shall not affect construction.

## SHARE CAPITAL

3. The authorised share capital of the Company at the date of adoption of these articles is £40,000,000 divided into 20,000,000 A Shares and 20,000,000 B Shares.
  4. 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.
  5. 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.
  6. 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.
  7. 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 of it in the holder.
  8. Save with the prior written consent of the Majority Holders:
    - (1) before issuing any equity shares in the Company, or any right to subscribe for or convert securities into equity shares in the Company, the directors shall first offer them for subscription to every person who at the date of the offer holds equity shares (the "Offer");
    - (2) the Offer shall be made by notice in writing stating the number or amount of shares (or rights to shares) being offered, the price at which they are being offered (the "Offer Price") and any other terms of the Offer;
    - (3) the Offer shall remain open for the period (being not less than 21 days) specified in the notice and, if not accepted within that period, the Offer will be deemed to be declined by the holder concerned;
    - (4) the directors shall allot the shares or rights to subscribe or convert to those holders who apply for them in proportion (as far as practicable) to the aggregate nominal value of the equity shares in the Company then held by them respectively, but so that an applicant shall not be allotted more shares or rights than the number for which he has applied;
    - (5) any shares allotted to the holders of A Shares shall (unless the terms of issue otherwise provide) be classified as A Shares and any shares allotted to the holders of
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B Shares shall (unless the terms of issue otherwise provide) be classified as B Shares; and

- (6) any share or right not taken up under the Offer may (at any time up to three months after the expiry of the Offer) be allotted by the directors at such price (being not less than the Offer Price), on such terms (being no less favourable to the Company than the terms of the Offer), in such manner and to such persons as the directors think fit.
9. Section 89(1) of the Act (which regulates the power to allot equity securities, as defined in section 91(1) of the Act) is excluded.

#### **ALTERATION OF SHARE CAPITAL**

10. The Company may with the prior written consent of the Majority Holders and by ordinary resolution:
- (1) increase its share capital by new shares of such amount as the resolution prescribes;
  - (2) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (3) 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
  - (4) 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.
11. 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.
12. Subject to the provisions of the Act, the Company may by special resolution reduce its share capital, any capital redemption reserve and any share premium account in any way.

#### **SHARE RIGHTS: GENERAL**

13. The A Shares and B Shares shall be separate classes of shares and shall carry the rights and be subject to the restrictions set out in these articles but shall rank *pari passu* in all other respects.
14. (1) Whenever the capital of the Company is divided into different classes of shares, all or any of the rights for the time being attached to any class of shares in issue may

from time to time (whether or not the Company is being wound up) be varied with the consent in writing of the holders of three-fourths in nominal value of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of those shares.

- (2) Unless otherwise expressly provided by the terms of their issue the rights attached to any class of shares shall not be deemed to be varied by:
  - (a) the creation or issue of further shares ranking *pari passu* with them or in priority to them; or
  - (b) any alteration to these articles made conditional upon, or otherwise in connection with, a Flotation which does not adversely affect any income, voting or capital rights attaching to them.

#### **SHARE RIGHTS: RETURN OF CAPITAL**

- 15. (1) The special rights, privileges and restrictions relating to capital attached to the A Shares and B Shares are set out below.
- (2) On a return of capital on a winding up but not otherwise the assets of the Company available for distribution to the Shareholders shall be applied in distributing:
  - (a) first, the Subscription Price for the shares rateably between the Shareholders;
  - (b) secondly, the value (as agreed by the Board) of any other additional subscriptions for cash or non cash consideration by the Shareholders rateably between them; and
  - (c) thirdly any surplus assets rateably between the Shareholders.

#### **SHARE RIGHTS: PERMITTED TRANSFERS**

- 16. (1) The following transfers of shares may be made free of the restriction in article 17:
  - (a) a transfer of shares by a corporate member to a person who is to hold such shares as his nominee but any transfer by such nominee shall be subject to the same restrictions as though it was a transfer by the original member itself;
  - (b) a transfer of shares by a nominee to the beneficial owner of such shares or to another nominee of the same beneficial owner;
  - (c) a transfer of shares by a corporate member to another member of its Wholly-Owned Group;
  - (d) a transfer of shares held by or on behalf of a fund to:

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- (i) a nominee or trustee for such fund and any shares held by a nominee or trustee for a fund may be transferred to that fund or to another nominee or trustee for such fund; or
    - (ii) another fund which is managed or advised by the same manager or adviser as that fund or by another member of the same Wholly-Owned Group as the manager or adviser of that fund or, in the case of a manager or adviser which is a member of the DB Group, by any other member of the DB Group respectively, or to a nominee or trustee for such a fund.
  - (2) If a corporate member holding shares transferred to it under paragraph (1)(c) ceases to be a member of the same Wholly-Owned Group or if a fund (or nominee or trustee of a fund) ceases to be managed or advised by the same manager or adviser or by another member of the same Wholly-Owned Group or of the DB Group under paragraph (1)(d)(ii), the corporate member or fund (or nominee or trustee of a fund) then holding those shares shall without delay notify the Company that such event has occurred and, if the Board, with Investor Consent (which, for this purpose shall not require the consent of any interested Investor Director appointed by the relevant Group (or his alternate)), so directs, shall immediately give a Transfer Notice in respect of those shares and, if the corporate member or fund (or nominee or trustee of a fund) then fails to give a Transfer Notice, it shall be deemed on the date of ceasing to be such a member or of ceasing to be managed or advised in accordance with paragraph (1)(d)(ii) to have served the Company with a Transfer Notice in respect of those shares and all the shares and Loan Stock held by it and by other members of the same Wholly-Owned Group of which it has ceased to be a member or to be managed or advised.
  - (3) If a member at any time attempts or purports to transfer a share otherwise than in accordance with these articles it (a **"Defaulting Shareholder"**) shall, unless the Board with Investor Consent shall otherwise resolve, be deemed immediately before the attempt to have served the Company with a Transfer Notice in respect of those shares and all the shares and Loan Stock held by it and by other members of its Wholly Owned Group.
  - (4) If a Transfer Notice is deemed to have been served on the Company the following provisions shall apply to the relevant shares:
    - (a) the members other than the Defaulting Shareholder and members of its Wholly-Owned Group (the **"Non-Defaulting Shareholders"**) shall appoint a reputable investment bank (unaffiliated with any member) to value the shareholding of the Defaulting Shareholder, taking account of whether such shareholding is a minority interest (the **"Shareholding Value"**);
    - (b) the investment bank shall be instructed to present the Shareholding Value and supporting analyses to the Board at a meeting and in writing within ninety (90) days from the date of its engagement (the **"Presentation Date"**);
    - (c) each Non-Defaulting Shareholder holding shares of the other class from those held by the Defaulting Shareholder shall have a pre-emptive right to acquire the shares and Loan Stock of the Defaulting Shareholder and
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members of its Wholly-Owned Group (or the Wholly Owned Group of which it has ceased to be a member or to be managed or advised) at a purchase price equal to 95 per cent. of the Shareholding Value ("the **Default Price**"). Any such Non-Defaulting Shareholder wishing to exercise its pre-emptive right shall notify the Board in writing of such election within forty-five (45) Business Days following the Presentation Date. The exercise of the pre-emptive right may not be subject to any conditions imposed by the prospective purchasing shareholder other than the obtaining of any necessary approvals in general meeting of its shareholders;

- (d) if only one Non-Defaulting Shareholder exercises its pre-emption right, then the shares and Loan Stock shall be sold to such Non-Defaulting Shareholder at the Default Price. If more than one Non-Defaulting Shareholder exercises its pre-emption right, the Board shall work with such Non-Defaulting Shareholders as to the number of Shares and Loan Stock to be purchased by each Non-Defaulting Shareholder. In the event that the Board and the purchasing Non-Defaulting Shareholders fail to reach an agreement, the purchase shall occur on a pro rata basis;
- (e) the sale of the shares and Loan Stock to a Non-Defaulting Shareholder exercising its pre-emptive right shall complete as quickly as reasonably practicable and, in any event, no later than six (6) months after the Presentation Date;
- (f) if no Non-Defaulting Shareholder wishes to purchase the shares and Loan Stock of the Defaulting Shareholder and members of its Wholly-Owned Group such shares and Loan Stock may be sold by the Non-Defaulting Shareholders (with the consent of the majority (by value) of the Non-Defaulting Shareholders) to a third party purchaser at not less than the Default Price; and
- (g) if after becoming bound to transfer any shares and Loan Stock the Defaulting Shareholder and members of its Wholly-Owned Group (or the Wholly Owned Group of which it has ceased to be a member or to be managed or advised) fail to do so, the Company may receive the purchase price and the directors may appoint a person to execute an instrument of transfer of those shares and Loan Stock in favour of the purchaser and shall cause the name of the purchaser to be entered in the register of members of the Company as the holder of the shares and Loan Stock and shall hold the purchase price in trust for the transferor. The receipt of the Company shall be a good discharge to the purchaser and, after his name has been entered in the register of members of the Company under this provision, the validity of the transactions shall not be questioned by any person.

## TRANSFER OF SHARES

- 17. Except as provided in article 16 or as otherwise agreed by the Majority Holders no member shall be entitled to transfer its shares.
  - 18. (1) The directors shall refuse to register a proposed transfer not permitted by these articles.
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- (2) The directors shall also refuse to register an allottee or transferee of shares other than a person who is already a party to the Shareholders' Agreement unless he has executed (in a form satisfactory to the Investor Directors) an undertaking whereby such allottee or transferee undertakes to adhere to and be bound by the provisions of the Shareholders' Agreement unless the Board shall otherwise resolve with Investor Consent.
  - (3) The directors may refuse to register a transfer of a share on which the Company has a lien. They may also refuse to register a transfer unless:
    - (i) 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;
    - (ii) it is in respect of only one class of shares; and
    - (iii) it is in favour of not more than four transferees.
  19. 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.
  20. 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.
  21. A person executing an instrument of transfer of a share is deemed to remain the holder of that share until the name of the transferee is entered in the register of members of the Company in respect of it.
  22. 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 30 days in any year) as the directors may determine.
  23. 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.
  24. 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.

## SHARE CERTIFICATES

25. 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
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amount or respective amounts paid up on those shares. 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.

26. 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.

#### **LIEN**

27. 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, with Investor Consent, 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.
28. The Company may sell, in such manner as the directors, with Investor Consent, 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 14 clear days after notice has been given to the holder of the share, demanding payment and stating that if the notice is not complied with the shares may be sold.
29. To give effect to a sale the directors may authorise some 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.
30. 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**

31. Subject to the terms of allotment, the directors may, with Investor Consent, 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 under it, be revoked in whole or part and payment of a call may be postponed in whole or part, in each case with Investor Consent. 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 of which the call was made.
32. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
33. The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.

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34. 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, with Investor Consent, waive payment of the interest wholly or in part.
  35. 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 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.
  36. Subject to the terms of allotment, the directors may, with the approval of the Majority Holders 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.
  37. 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 14 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.
  38. 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, with Investor Consent, and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
  39. 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, with Investor Consent, 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, with Investor Consent, 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.
  40. 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.
  41. 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
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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.

#### **PURCHASE OF OWN SHARES**

42. Subject to the provisions of the Act and with Investor Consent, the Company may purchase its own shares (including any redeemable shares) and make a payment in respect of the purchase or redemption of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

#### **GENERAL MEETINGS**

43. All general meetings other than annual general meetings shall be called extraordinary general meetings.

44. The directors or any Investor Director may call general meetings and, on the requisition of members pursuant to the provisions of the Act, the directors shall immediately 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.

45. (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 as provided in Article 48.
  - (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.

#### **NOTICE OF GENERAL MEETINGS**

46. 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 least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed:

- (1) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (2) 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 95 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 and to the directors and auditors.

47. 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

48. No business shall be transacted at any meeting unless a quorum is present. Two members, which shall include a representative on behalf of each of DB and Grainger, who are entitled to vote upon the business to be transacted present in person or by proxy or by a duly authorised representative (in the case of a corporation), shall be a quorum.
49. If a quorum is not present at the time for which the meeting was called or ceases to be present thereafter, the meeting (the "**first meeting**") shall be adjourned to a day being not less than three business days from the date of the first meeting at the same time and place. The Company shall give notice to each member who did not attend the first meeting requiring him either to attend the adjourned meeting of the members or to state in writing his views on the matters to be discussed at that meeting. If any member having received such notice fails to attend such adjourned meeting those members (being at least two) who are present at such adjourned meeting shall constitute a quorum.
50. 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.
51. 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.

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52. 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.
  53. 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 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.
  54. A resolution put to the vote of a meeting shall be decided on a poll.
  55. 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.
  56. 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.
  57. In the case of an equality of votes, the chairman shall not be entitled to a casting vote in addition to any other vote he may have.
  58. 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 immediately 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.
  59. No notice need be given of a poll not taken immediately 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.

#### **SHAREHOLDERS' RESOLUTIONS**

60. 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.
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61. Subject to any rights or restrictions attached to any shares, on a poll every member who (being a corporation) is present by a duly authorised representative or by a proxy appointed under section 372 of the Act, shall have one vote for each share held by it.
62. 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.
63. 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.
64. 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.
65. 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.
66. 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 to it as circumstances allow or in any other form which is usual or which the directors may approve):

" \_\_\_\_\_ 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  
\_\_\_\_\_, \_\_\_\_\_, and at any adjournment thereof.

Signed on \_\_\_\_\_, \_\_\_\_\_.

67. 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 to it as circumstances allow or in any other form which is usual or which the directors may approve):

" \_\_\_\_\_ 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.

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 on                      , ."

68. 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:

- (1) 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
- (2) 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
- (3) 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
- (4) where the poll is not taken immediately 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
- (5) where the poll is not taken immediately 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.

69. 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.

#### NUMBER OF DIRECTORS

70. Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum but shall be not less than two.

## ALTERNATE DIRECTORS

71. An Investor Director (other than an alternate director) may appoint one or more persons and any other director (other than an alternate director) may appoint:

- (1) any other director; or
- (2) any other person approved by a resolution of the directors or by a majority of the other directors, in each case with Investor Consent, such consent not to be unreasonably withheld,

who is willing to act, to be an alternate director and may remove from office an alternate director so appointed by him. If more than one person is appointed by a director as his alternate, only one may act as such at any meeting.

72. An alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member and to attend and to vote at any 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 proceedings at that meeting the provisions of these articles shall apply as if he was a director.
73. Every person acting as 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.
74. 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 beginning of any event which, if he were a director, causes or would cause him to vacate that office.
75. 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.
76. An alternate director shall alone be responsible for his acts and defaults and shall not be deemed to be the agent of the director appointing him.

## POWERS OF DIRECTORS

77. Subject to the provisions of the Act, the memorandum and these 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 these 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 these articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.
78. 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.

79. 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**

80. The directors may, with Investor Consent, delegate any of their powers to any committee consisting of one or more directors. They may also, with Investor Consent, delegate 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. 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.

#### **APPOINTMENT AND RETIREMENT OF DIRECTORS**

81. The directors may, with Investor Consent, appoint any person who is willing to act to be a director, either to fill a casual vacancy or as an additional director.
82. For so long as any member holds 50 per cent. or more of the A Shares, it may appoint any one person as an Investor Director and remove from office any such Investor Director and (if desired) appoint another in his place.
83. For so long as any member holds 50 per cent. or more of the B Shares, it may appoint any one person as an Investor Director and remove from office any such Investor Director and (if desired) appoint another in his place.
84. Every appointment or removal under articles 82 or 83 shall be made in writing signed by or on behalf of the relevant Investor and shall take effect on and from the date on which the note of appointment or removal is lodged at the office or produced at a meeting of the directors.
85. 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.
86. 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.

#### **REMOVAL AND DISQUALIFICATION OF DIRECTORS**

87. The office of a director shall be vacated if:
- (1) 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

- (2) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (3) he is, or may be, suffering from mental disorder and either:
  - (a) 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
  - (b) 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
- (4) he resigns his office by notice to the Company; or
- (5) 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; or
- (6) he is removed from office in accordance with articles 82 and 83 above.

#### **REMUNERATION OF DIRECTORS**

88. The directors (other than any director who for the time being holds an executive office or employment with the Company) shall be paid out of the funds of the Company by way of remuneration for their services as directors such fees not exceeding in aggregate £30,000 per annum (or such larger sum as the Company may, by ordinary resolution, determine) as the directors may decide to be divided among them in such proportion and manner as they may agree or, failing agreement, equally. Any fee payable under this article shall be distinct from any remuneration or other amounts payable to a director under other provisions of these articles and shall accrue from day to day.

#### **DIRECTORS' APPOINTMENTS AND INTERESTS**

89. Subject to the provisions of the Act, the directors may, with Investor Consent, appoint one or more of their number to the office of managing director or to any other executive office under the Company and may, with Investor Consent, enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the Company.
90. Subject to the provisions of the Act and, except in the case of an Investor Director, to Investor Consent, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:
- (1) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

- (2) 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
  - (3) 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.
91. For the purposes of article 90:
- (1) 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
  - (2) 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.

#### **DIRECTORS' GRATUITIES AND PENSIONS**

92. 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.

#### **PROCEEDINGS OF DIRECTORS**

93. 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. Notices of meetings of the directors shall be given to all directors and to any alternate directors appointed by them. At least ten Business Days' notice shall be given unless in any particular case a majority of the directors (including one of the Investor Directors appointed under article 82 and one of the Investor Directors appointed under article 83) agrees otherwise. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have no second or casting vote.
94. (1) The quorum for the transaction of the business of the directors shall be two directors present throughout the meeting of whom at least one is appointed under article 82 and another is appointed under article 83 unless otherwise agreed in writing by the Investor Director(s) so appointed.
- (2) If a quorum is not present at the time for which the meeting was called or ceases to be present thereafter, the meeting (the "**first meeting**") shall be adjourned to a day
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being not less than three business days from the date of the first meeting at the same time and place. The Company shall give notice to each director who did not attend the first meeting requiring him either to attend the adjourned meeting of the directors or to state in writing his views on the matters to be discussed at that meeting. If any director having received such notice fails to attend such adjourned meeting those directors (being at least two) who are present at such adjourned meeting shall constitute a quorum.

95. 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 continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
96. The directors with Investor Consent 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. 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.
97. 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.
98. (1) 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.
- (2) In this article references to a document being "signed" include it being "approved by letter, facsimile or telex".
99. (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 under article 94(1), subject to the provisions of article 101.
  - (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.
100. Provided that he has disclosed to the directors the nature and extent of any material interest of his and, unless an Investor Director objects, a director may vote as a director on any 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.
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.
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.

#### SECRETARY

103. 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

104. The directors shall cause minutes to be made in books kept for the purpose:
- (1) of all appointments of officers made by the directors; and
  - (2) of all proceedings at meetings of the Company, of 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

105. 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.
106. The directors shall provide for the safe custody of every seal which the Company may have.
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107. 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.
108. 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.
109. Unless otherwise decided by the directors:
  - (1) certificates for shares, debentures or other securities of the Company to which a seal is applied need not be signed; and
  - (2) 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.

## DIVIDENDS

110. Subject to the provisions of the Act and the other provisions of 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.
  111. Subject to the provisions of the Act, the directors, with Investor Consent, 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 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.
  112. 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.
  113. 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.
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114. 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. 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.
115. 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.
116. 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

117. 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

118. The directors may with the authority of an ordinary resolution of the Company:
- (1) subject as hereinafter provided, resolve to capitalise any undistributed 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;
  - (2) 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;
  - (3) 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
  - (4) 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
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such capitalisation, any agreement made under such authority being binding on all such members.

## NOTICES

119. 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.
120. The Company may give any notice to a member either personally or by sending it by prepaid airmail or first class post at his registered address or by leaving it at that address. 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.
121. 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.
122. 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.
123. Proof that an envelope containing a notice was properly addressed, prepaid and posted (by airmail or first class post, where available) shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 24 hours after the envelope containing it was so posted

## WINDING UP

124. 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

125. Subject to the provisions of and to the extent permitted by the Statutes, every director, other officer or 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:
  - (1) this indemnity shall not apply to any liability to the extent that it is recovered from any other person; and



- (2) the indemnity is subject to such officer or auditor 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.

#### **RELATIONSHIP TO LOAN STOCK**

126. The rights of the Company to pay any sums to members in respect of their shares are subordinated to repayments to the holders of loan stock in accordance with the terms of the Loan Stock Instrument.