

Company number  
05137980

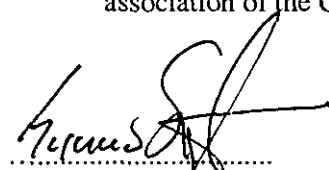
THE COMPANIES ACT 1985  
COMPANY LIMITED BY SHARES  
WRITTEN RESOLUTIONS  
OF  
GIANT TOPCO LIMITED  
(the Company)

UNDER ARTICLE 54 OF THE COMPANY'S ARTICLES OF ASSOCIATION

By a written resolution dated 28 October 2005, all of the members of the Company for the time being entitled to receive notice of, attend and vote at General Meetings, agreed to the following resolutions being passed in accordance with the article 54 of the articles of association of the Company:

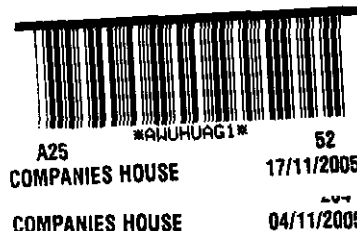
That:

1. the total authorised share capital of the Company be reduced by £22,750 to £225,000 by the cancellation of 2,275,000 unissued B ordinary shares of one pence each;
2. the total authorised share capital of the Company as reduced by resolution 1 above be subsequently increased by £285,800,000 to £286,025,000 by the creation of 10,000,000 A preference shares of £1.00 each, 1,004,218 B preference shares of £1.00 each, 1,358,649 C preference shares of £1.00 each and 273,437,133 D preference shares of £1.00 each having the rights set out in the articles of association to be adopted pursuant to resolution 3 below;
3.
  - (a) the directors be generally and unconditionally authorised, in accordance with section 80 of the Companies Act 1985, to exercise all powers of the Company to allot relevant securities (as defined for the purposes of that section) up to a maximum nominal amount of £285,913,000;
  - (b) this authority shall expire on the day five years after the passing of this resolution;
  - (c) the Company may, before this authority expires, make an offer or agreement which would or might require relevant securities to be allotted under this authority after it expires; and
  - (d) all previous unutilised authorities under section 80 of the Companies Act 1985 shall cease to have effect (save to the extent that the same may have been exercised by reason of any offer or agreement made prior to the date of this resolution which would or might require relevant securities to be allotted on or after that date); and
4. the regulations set out in the printed document attached hereto and initialled, for the purposes of identification, by the members of the Company for the time being, be adopted as the articles of association of the Company in substitution for and to the exclusion of all existing articles of association of the Company.



Director/Secretary

Date: 28/10/2005



*Handwritten signature and initials*  
*under Part A*

**THE COMPANIES ACT 1985**  
**A PRIVATE COMPANY LIMITED BY SHARES**

**NEW ARTICLES OF ASSOCIATION**  
**OF**

**GIANT TOPCO LIMITED**  
Registered in England and Wales with No. 05137980

(adopted by special resolution passed on 28 October 2005)

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COMPANY NUMBER

05137980

THE COMPANIES ACT 1985

A PRIVATE COMPANY LIMITED BY SHARES

NEW

ARTICLES OF ASSOCIATION

OF

GIANT TOPCO LIMITED

(adopted on 2005)

PRELIMINARY

1. Table A not to apply

None of the regulations contained or incorporated in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985, as amended, shall apply to the Company.

2. Interpretation

(a) In these articles unless the contrary intention appears:

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

**address** in relation to electronic communications, includes any number or address used for the purposes of such communications;

**Approved EBT** means any Employee Benefit Trust which has been approved by the Super Majority A Holders;

**Asset Sale** means the sale of all or substantially all of the business and assets of the Group;

**Asset Sale Proceeds** means the proceeds received by the members of the Group from an Asset Sale, after deduction of (i) any costs and expenses incurred by any member of the Group in connection with such sale and (ii) all tax payable by any member of the Group on such proceeds, which are distributed;

**A Preference Shares** means the A preference shares of £1 each in the capital of the Company and **A Preference Shareholder** means a holder of any of them;

**A Shares** means A1 Shares and A2 Shares and **A Shareholder** means a holder of any of them;

**A1 Shares** means the A1 ordinary shares of one pence each in the capital of the Company and **A1 Shareholder** means a holder of any of them;

**A2 Shares** means the A2 ordinary shares of one pence each in the capital of the Company and **A2 Shareholder** means a holder of any of them;

**B Preference Shares** means the B preference shares of £1 each in the capital of the Company and **B Preference Shareholder** means a holder of any of them;

**Baugur Consent** means the consent or approval of one of the Baugur Directors given in writing or given at a meeting of the Board (or of a committee of the Board) or, if there is only one appointed at the time, of that sole Baugur Director, given in writing or given at a meeting of the Board (or of a

committee of the Board) and in each case specifically referred to as representing Baugur Consent (so that a Baugur Director may consent to a matter in his capacity as a director, without that consent representing consent under this definition unless he specifically indicates it as being so);

**Baugur Directors** means those directors of the Company appointed under article 71 (Appointment and removal of Baugur Directors) (or their respective alternates);

**Baugur Group** means BG Holding ehf and its Permitted Transferees;

**Board** means the board of directors of the Company;

**B Shares** means the B ordinary shares of one pence each in the capital of the Company and **B Shareholder** means a holder of any of them;

**Burdaras Group** means Straumur Burdaras Fjarfestingarbanki hf and its Permitted Transferees;

**C Preference Shares** means the C preference shares of £1 each in the capital of the Company and **C Preference Shareholder** means a holder of any of them;

**Charles Wilson** means Charles Wilson who was appointed as a director of the Company on or about the date of adoption of these articles;

**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;

**Co-Investor Majority** means the holders of more than 66 per cent. of the A Shares in issue not held by the Baugur Group;

**communication** means the same as in the Electronic Communications Act 2000;

**Corporate Group** in relation to a company, means that company, all its subsidiaries, all holding companies of which it is a subsidiary and all other subsidiaries of each of those holding companies;

**D Preference Shares** means the D preference shares of £1 each in the capital of the Company and **D Preference Shareholder** means a holder of any of them;

**Drag Along Notice** has the meaning ascribed to it in article 32 (Drag Along Rights);

**electronic communication** means the same as in the Electronic Communications Act 2000;

**Employee Benefit Trust** means any employee benefit trust for the benefit of employees of members of the Group;

**Employees** means employees, secondees, consultants, contractors and directors (other than the Investor Directors or the Independent Director) and the terms **Employed** and **Employment** shall be construed accordingly;

**Equity Shares** means the A Shares and the B Shares and the term **Equity Shareholder** shall be construed accordingly

**Executed** includes any mode of execution;

**Fair Price** means:

- (i) the price which such firm of accountants (being one of PricewaterhouseCoopers, KPMG, Deloitte & Touche or Ernst & Young or their respective successors in business) as the Baugur Directors (or, if there are none, a majority of the non-executive directors of the Company) may nominate for the purpose (**Valuers**) state in writing (such firm acting as experts and not as arbiters and whose decision shall, except in the case of manifest error, be final and binding) to be in their opinion the market value of the shares concerned on a sale as between a willing seller and a willing purchaser (assuming an arms' length sale by private treaty for cash payable in full on completion) and in determining such market value, the Valuers shall be instructed in particular:
  - (A) to have regard to the rights and restrictions attached to such shares in respect of income and capital (including pursuant to articles 114 and 115) but to disregard any other special rights or restrictions attached to such shares;
  - (B) to disregard whether such shares represent a minority or a majority interest;



- (C) at their discretion, to take into account the value of any bona fide offer which may have been received to purchase the shares in question or any imminent Listing; and
- (D) if the Company is then carrying on business as a going concern, to assume that it will continue to do so;

but being, in the case of the B Preference Shares and the C Preference Shares, not less than £1 per share; or

- (ii) such other price as may be agreed between the transferor and the Remuneration Committee with Baugur Consent

**Family Trust** means a trust (whether arising under a settlement, declaration of trust, testamentary disposition or on an intestacy) under which no immediate beneficial interest in the shares in question is for the time being or may in future be vested in any person other than the person establishing the trust and his Relations;

**Finance Agreements** shall have the same meaning as in article 113;

**Group** means the Company and its subsidiaries from time to time and **Group Company** means any of them;

**Group Employees** means Employees of the Group;

**HBOS Group** means Uberior Investments plc and its Permitted Transferees (including, for the avoidance of doubt, HBOS plc and each of its subsidiary undertakings);

**HBOS Observer** means an HBOS Observer appointed pursuant to article 76 (Appointment and removal of Observers);

**holder** in relation to shares in the Company, means the member whose name is entered in the Company's register of members as the holder of the shares;

**Indemnity Deed** means any deed of tax undertaking entered into, inter alia, between any member of the HBOS Group, any member of the Kaupthing Group, any member of the Baugur Group and any B Shareholder, in relation to tax and/or national insurance payable on the issue of B Shares;

**Independent Director** means the director of the Company appointed pursuant to article 73 (Appointment and removal of Independent Director) or his duly appointed alternate;

**Initial B Shareholder** means any B Shareholder who has been allotted B Shares on or about the date of adoption of these articles;

**Intercreditor Agreement** shall have the same meaning as in article 114;

**Investor Directors** means any director of the Company appointed under article 72 (Appointment and removal of Investor Director) or their respective duly appointed alternates;

**Kaupthing Group** means Kaupthing Bank hf, its subsidiaries, its holding companies and any subsidiaries of any such holding company;

**Kaupthing Observer** means a Kaupthing Observer appointed pursuant to article 76;

**Listing** means the admission to listing of any of the Equity Shares in the Company on any recognised investment exchange (as defined in the Financial Services and Markets Act 2000);

**Listing Shares** means, on a Listing, the issued equity share capital of the Company (excluding any equity share capital to be subscribed and issued on such Listing other than new shares to be paid up by way of capitalisation of reserves or arising from any sub-division, consolidation or conversion of shares in issue at such time);

**Majority A Holders** means the holders of more than 50 per cent. of the A Shares in issue;

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

**Ordinary Shares** means the A Shares and the B Shares and **Ordinary Shareholder** means an A Shareholder or B Shareholder;

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

**Permitted B Share Number** means such number of B Shares as results in the Relevant B Shareholder holding in his own name and for his own benefit (other than under the terms of any trust) at least 51% of the aggregate of the B Shares (i) allotted to that Relevant B Shareholder and/or (ii) acquired by such Relevant B Shareholder (other than from his Permitted Transferees);

**Permitted Transferee** in relation to a person means any other person to whom that first person may transfer shares pursuant to article 21(a) to 21(f) (inclusive), 21(i) and 21(j) (Permitted transfers of Shares);

**Preference Shares** means together the A Preference Shares, the B Preference Shares, the C Preference Shares and the D Preference Shares and a **Preference Shareholder** means a holder of any of them;

**Realisation** means any of the following events:

- (a) a Listing; or
- (b) the entering into of an agreement or agreements for a Sale where the agreement or agreements in question either is or are unconditional in all respects or (if originally conditional in any respect) is or are or has or have become unconditional in all respects; or
- (c) a Winding-Up;
- (d) a Refinancing; or
- (e) an Asset Sale.

**Refinancing** means any refinancing (other than as part of, or in connection with, any other Realisation) of any of the indebtedness provided at the relevant date to the Group under the Finance Documents (including any borrowings obtained for the purpose of the Company making a purchase of its own shares) by members of the HBoS Group and the Kaupthing Group and/or any syndicatees pursuant to the terms of any such Finance Documents, by funding being provided to the Group by either (i) a third party bank or other financial institution or (ii) members of the HBOS Group and/or members of the Kaupthing Group;

**Relation** in relation to an individual means his spouse, brother or sister, child or remoter issue;

**Relevant Agreement** means any agreement entered into in relation to the Company between, inter alia:

- (a) the holders of the A Shares at the date of adoption of these articles;
- (b) the Company; and
- (c) any Relevant B Shareholder who was a Relevant B Shareholder at or about the date that the relevant agreement was entered into;

**Relevant B Share Consent** means the consent (given either (i) in writing or (ii) by resolution of any class meeting of the holders of the B Shares) of either:

- (i) any Relevant B Shareholder; or
- (ii) if there is no Relevant B Shareholder, the holders of at least one fifth in nominal value of the issued B Shares;

**Relevant B Shareholder** means any holder of B Shares who (together with his Permitted Transferees) holds either (a) more than 30,000 B Shares or (b) more than 70% of the issued B Shares from time to time;

**Remuneration Committee** means the remuneration committee of the Board;

**Sale** means the completion of any transaction whereby any persons or group of persons acting in concert (as defined in the City Code on Takeovers and Mergers) purchases the entire issued share capital of the Company (including following the service of a Drag Along Notice (as defined in article 32));

**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;

**Senior Agreement** means the senior facilities agreement originally dated 17 December 2004 and made between, inter alia, the Company (1), The Governor and Company of the Bank of Scotland (as Senior Agent) (2) and the Lenders (as such term is defined therein) (3) as amended and restated on 24 February 2005 and as further amended and restated on or about the date of adoption of these articles;

**Senior Employee** means a Group Employee:

- (a) who is or reports directly to a director of the Company; or
- (b) whose aggregate remuneration (excluding benefits in kind and bonuses) exceeds £50,000 per annum;

**Shares** means together the Ordinary Shares and the Preference Shares and the term Shareholder shall be construed accordingly;

**Specified Price** has the meaning ascribed to it in article 30 (Pre-emption procedure);

**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, the amount paid up upon that share plus the amount of any premium at which that share was issued, to the extent the same has not been distributed by way of bonus issue or repayment of capital in respect of that share;

**Super Majority A Holders** means the holders of more than 85 per cent. of the A Shares in issue;

**Talden Group** means Talden Holding SA and its Permitted Transferees;

**TBH Group** means TBH Trading Limited and its Permitted Transferees;

**TB Hunter** means Thomas Blane Hunter, c/o Marathon House, Olympic Business Park, Drybridge Road, Dundonald, Ayrshire KA2 9BD;

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

**Total Shareholder Proceeds** means:

- (I) in the event of a Realisation, other than an Asset Sale, the value of the issued Ordinary Shares and the Preference Shares (which shall include any shares deriving therefrom since their date of issue, including shares deriving therefrom following any capital reorganisation effected prior to any Realisation) calculated as follows and on the basis that the relevant Realisation has been effected in accordance with its terms:
  - (A) in the event of a Sale:
    - (a) if the Shares are to be sold by private treaty (as distinct from a public offer) and the consideration for the Shares is a fixed cash sum payable in full on completion of the Sale, the total amount of such cash sum;
    - (b) if a written offer has been made for a cash consideration or, if the Sale is pursuant to any other public cash offer or public offer accompanied by a full cash alternative, the total cash consideration or full cash alternative price for all the Shares for which the offer is made;
    - (c) if the Sale is by private treaty or public offer and the whole or part of the consideration for the Shares is the issue of securities (not accompanied by a full cash alternative for such shares):
      - (i) if the securities will rank pari passu with a class of securities already admitted to trading on a recognised investment exchange (in the case of a sale by private treaty), the value attributed to such consideration in the related sale agreement setting out the terms of such sale or, (in the case of a Sale following a public offer or failing any such attribution in the sale agreement) the value of such consideration determined by reference to the average middle market quotation of such securities over the period of 5 Business

Days ending 3 days prior to the day on which the Sale is completed; or

- (ii) if the securities are not of such a class, the value of the relevant consideration as agreed between (ii)(a) the holders of not less than eighty five per cent (85%) in nominal value of the Ordinary Shares (ii)(b) the holders of not less than eighty five per cent (85%) in nominal value of the Preference Shares together with the Relevant B Share Consent or, in the absence of such agreement prior to the Sale, such value as is reported on by the Valuers, in a report obtained for the purpose and addressed to the holders of the Ordinary Shares and the Preference Shares (the cost of such report to be borne by the holders of the Shares in proportion to the share of the proceeds of any Sale which they receive);

and any fixed cash sum (excluding any amount which represents a cash alternative) payable in full on completion;

- (d) to the extent that the Sale includes an element of contingent and/or deferred consideration, such contingent and/or deferred consideration shall (initially) be excluded from the calculation of Total Shareholders Proceeds and the respective distributions of the Total Shareholder Proceeds under article 114, unless and until such time as such contingent and/or deferred consideration is received by or is available to be paid or delivered to the shareholders of the Company, at which point the calculation of Total Shareholder Proceeds and its distribution in accordance with article 114, shall be recalculated including such additional consideration, and the further payments accordingly required pursuant to article 114 shall be made; and
  - (e) if and to the extent that (a) to (d) above are not applicable, the value of the relevant consideration for the shares as agreed between (i) the holders of not less than eighty five per cent (85%) in nominal value of the Ordinary Shares and (ii) the holders of not less than eight five per cent (85%) of the Preference Shares, together with the Relevant B Share Consent or, in the absence of such agreement prior to the Sale, such value as is reported on by the Valuers, in a report obtained for the purpose and addressed to the holders of the Ordinary Shares and the Preference Shares (the cost of such report to be borne by the holders of the Shares in proportion to the share of the proceeds of any Sale which they receive);
- (B) in the event of a Winding-Up, the amounts to be distributed by the Company to the holders of the Shares in respect of such holdings as part of such Winding-Up after payment of all costs and expenses incurred by the Company and/or any member of the Group in connection with any such Winding-Up, any taxation payable by the Group and all indebtedness of the Group;
  - (C) in the event of a Listing, the market value of the Listing Shares determined by reference to the price per share at which the shares in the issued share capital of the Company are to be offered for sale, placed or otherwise marketed pursuant to the arrangements relating to the Listing, all as determined by the merchant bank or, if none, the broker appointed by the Board to advise in connection with the Listing; and
  - (D) in the event of a Refinancing, the cash to be paid to the holders of the Shares in respect of their Shares as a result of the implementation of the Refinancing, but excluding for the avoidance of doubt:
    - (i) any amounts which are to be paid to the holders of the Shares or any member of their respective Corporate Groups by way of repayment of any indebtedness (other than share capital) provided by such Corporate Group (whether under the Finance Documents or otherwise); and
    - (ii) any amounts which are, as a condition of the relevant Refinancing, required to be reinvested by the relevant holder of Shares in (i) the Company (ii) any

other member of the Group (iii) any holding company of the Company from time to time or (iv) any subsidiary of any such holding company.

(II) in the event of an Asset Sale, the Asset Sale Proceeds calculated as follows and on the basis that the relevant Asset Sale has been effected in accordance with its terms:

- (A) if the consideration is a fixed cash sum payable in full on completion of the relevant Asset Sale, the total amount of such cash sum;
- (B) if the whole or part of the consideration is the issue of securities (not accompanied by a full cash alternative):
  - (i) if the securities will rank *pari passu* with a class of securities already admitted to trading on a recognised investment exchange, the value attributed to such consideration in the related sale agreement setting out the terms of such Asset Sale or failing any such attribution in the sale agreement) the value of such consideration determined by reference to the average middle market quotation of such securities over the period of 5 Business Days ending 3 days prior to the day on which the Asset Sale is completed; or
  - (ii) if the securities are not of such a class, the value of the relevant consideration as agreed between (ii)(a) the holders of not less than eighty five per cent (85%) in nominal value of the Ordinary Shares (ii)(b) the holders of not less than eighty five per cent (85%) in nominal value of the Preference Shares together with the Relevant B Share Consent or, in the absence of such agreement prior to the Asset Sale, such value as is reported on by the Valuers, in a report obtained for the purpose and addressed to the holders of the Ordinary Shares and the Preference Shares (the cost of such report to be borne by the Company);

and any fixed cash sum (excluding any amount which represents a cash alternative) payable in full on completion;

- (C) to the extent that the Asset Sale includes an element of contingent and/or deferred consideration, such contingent and/or deferred consideration shall (initially) be excluded from the calculation of amount of the Asset Sale Proceeds available for distribution unless and until such time as such contingent and/or deferred consideration is received by or is available to be paid or delivered to the Company, at which point the calculation of Asset Sale Proceeds shall be recalculated including such additional consideration; and
- (D) if and to the extent that (A) to (C) above are not applicable, the value of the relevant consideration available for distribution as agreed between (i) the holders of not less than eighty five per cent (85%) in nominal value of the Ordinary Shares and (ii) the holders of not less than eighty five per cent (85%) of the Preference Shares, together with the Relevant B Share Consent or, in the absence of such agreement prior to the Asset Sale, such value as is reported on by the Valuers, in a report obtained for the purpose and addressed to the holders of the Ordinary Shares and the Preference Shares (the cost of such report to be borne by the Company);

For the avoidance of doubt, save where in accordance with the terms of the relevant transaction there is the ability to make an election, all Shareholders will receive consideration of the same asset class being cash or, alternatively, securities;

**Transfer Notice** has the meaning ascribed to it in article 30 (Pre-emption procedure);

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

**Valuers** has the meaning ascribed to it in the definition of Fair Price; and

**Winding Up** means (i) the winding up of the Company or (ii) any other return of capital, other than (a) a dividend or other distribution dealt with in accordance with article 100 or (ii) a Sale.

- (b) Unless the context otherwise requires:

- (i) 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;
  - (ii) references in these articles to the transfer of a share include the disposal of any interest in that share (including the creation of any security interest or other third party right over any interest in that share and any renouncement in favour of another person of any right to the allotment or transfer of that share);
  - (iii) a person shall be deemed connected with another if that person is connected with that other within the meaning of section 839 of the Income and Corporation Taxes Act 1988 (as in force at the date when these articles become binding on the Company) and **connected person** shall be construed accordingly.
- (c) The headings in these articles are inserted for convenience only and shall not affect construction.

## **SHARE CAPITAL**

### **3. Authorised share capital**

The authorised share capital of the Company at the date of adoption of these articles is £286,025,000 divided into 11,200,000 A1 Shares, 11,200,000 A2 Shares, 100,000 B Shares, 10,000,000 A Preference Shares, 1,004,218 B Preference Shares, 1,358,649 C Preference Shares and 273,437,133 D Preference Shares.

### **4. Power to issue shares with differing rights**

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. Power to issue redeemable shares**

Subject to the provisions of the Act, shares may be issued which are, subject to article 113 (Subordination), 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. Power to pay commission**

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. Trusts not recognised**

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. Disapplication of statutory pre-emption rights**

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**

### **9. Power to increase, consolidate, sub-divide and cancel shares**

- (a) The Company may by ordinary resolution:
- (i) increase its share capital by new shares of such amount as the resolution prescribes;
  - (ii) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (iii) 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

- (iv) 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.
- (b) 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 existing member (or, subject to the provisions of the Act, the Company) and distribute the net proceeds of sale in due proportion among those members whose entitlements to fractions of a share have been sold, and the directors may authorise some person to execute an instrument of transfer of the shares to 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.

#### **10. Power to reduce capital**

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.

#### **11. Power to purchase own shares**

Subject to the provisions of the Act and the terms of these articles, 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.

### **VARIATION OF SHARE RIGHTS**

#### **12. Variation of rights**

- (a) 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:
  - (i) in the case of any class of shares other than the B Shares, 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 the relevant class of shares; and
  - (ii) in the case of the B Shares, notwithstanding any other provisions of these articles, with the Relevant B Share Consent.
- (b) All the provisions of these articles relating to general meetings of the Company or to the proceedings at general meetings shall (save as provided in article 12(a)) apply, *mutatis mutandis*, to every such separate general meeting, except that:
  - (i) other than where either:
    - (i)(a) there is only one holder of all of the issued shares in a class, the necessary quorum at any such meeting (other than an adjourned meeting or a meeting of the holders of the B Shares) shall be the persons holding or representing by proxy at least one-third in nominal amount of the issued shares of the class; or
    - (i)(b) in the case of the B Shares, the necessary quorum of any such meeting (other than an adjourned meeting) shall be any person or persons who can give the Relevant B Shareholder Consent
  - (ii) at an adjourned meeting the necessary quorum shall be one person holding shares of the class or his proxy;
  - (iii) every holder of shares of the class shall, on a poll, have one vote in respect of every shares of the class held by him; and
  - (iv) a poll may be demanded by any holder of shares of the class whether present in person or by proxy.

- (c) 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:
  - (i) the creation or issue of further shares ranking *pari passu* with them; or
  - (ii) any alteration to these articles made conditional upon, or otherwise in connection with, a Listing which does not adversely affect any income, voting or capital rights attaching to them or to implement article 114(d).
- (d) For the purposes of this article 12, each of the B Preference Shares, the C Preference Shares and the D Preference Shares shall be regarded as one class save in relation to any resolution to amend (or which has the effect of amending) any of articles 12, 13, 15, 21(o), 100, 114 or 115 when they shall be regarded as separate classes for the purposes of this article 12.
- (e) For so long as they respectively hold more than 10% of the Preference Shares, the consent of each of The Governor and Company of the Bank of Scotland and Kaupthing Bank hf respectively shall, in addition to any other consent or approval which may be required, be required for any variation to the provisions of article 15.
- (f) The B Shares shall be deemed to have no class rights other than in relation to any resolution to amend (or which has the effect of amending) any of articles 12, 13, 14(f), 16, 21, 22, 30, 31, 32, 33, 100, 114 and 115 in each case in a manner which adversely affects the B Shares. For the avoidance of doubt, any B Shares held by B Shareholder(s) who could constitute (i) the Relevant B Shareholder Consent or (ii) an Initial B Shareholder, shall not in either case constitute a separate class of shares from any other B Shares whether for the purpose of these articles or otherwise.

#### **INCOME, CAPITAL AND VOTING: SPECIAL RIGHTS AND RESTRICTIONS**

##### **13. Capital**

On a Winding-Up, the Total Shareholder Proceeds shall be applied in accordance with article 114.

##### **14. Rights attaching to A Shares/B Shares**

- (a) Each holder of A1 Shares shall be entitled to cast one vote on a show of hands at general meetings of the Company. Each A1 Share shall entitle its holder to cast one vote in respect of each such share on a poll at general meetings of the Company.
- (b) Each A2 Share shall entitle its holder to receive notice of and to attend but not to speak or vote (either on a show of hands or on a poll) at general meetings of the Company.
- (c) At any time a holder of A1 Shares may submit a request to the Company that some or all of those shares be converted into A2 Shares.
- (d) At any time a holder of A2 Shares may submit a request to the Company that some or all of those shares be converted into A1 Shares.
- (e) Subject to article 14 (f) below, following receipt of a request pursuant to articles (c) or (d) (inclusive) above, the relevant A1 Shares shall be automatically converted into A2 Shares (or vice versa) without any further action being required.
- (f) If the result of any proposed conversion requested by a shareholder under articles (c) or (d) (inclusive) above would be that the Company would become an associate of either (i) Icebox Holdings Limited (Registered in England and Wales with company number 5275660), any of its subsidiaries, any of its holding companies or any subsidiary of any such holding company or (ii) Giant Property Consortium Limited (Registered in England and Wales with company number 5274313) any of its subsidiaries, any of its holding companies or any subsidiary of any such holding company, then neither the shareholders nor the directors shall approve, register or otherwise implement any such conversion and such conversion shall not take place.
- (g) For the purposes of this article 14, a person shall be an **associate** of another if that person is an associate of that other within the meaning of section 435 of the Insolvency Act 1986.
- (h) Each holder of B Shares shall be entitled in respect of such holding to receive notice of and to attend but (without prejudice to the provisions of article 12(f)) not to speak or vote (either on a show of hands or on a poll) at general meetings of the Company.



**15. Rights attaching to Preference Shares**

- (a) The Preference Shares shall not entitle the holders to receive any dividends or other distributions in respect of such shares, except as set out in articles 13, 15, 100, 114 and 115.
- (b) The Company may, by serving notice on the holders of the relevant Preference Shares, subject to the Intercreditor Agreement, redeem at any time, subject to article 113, some but not all of the Preference Shares, provided that:
  - (i) no D Preference Shares, C Preference Shares or B Preference Shares shall be redeemed pursuant to this article 15(b) whilst any A Preference Shares are in issue; and
  - (ii) any redemption of B Preference Shares, C Preference Shares or D Preference Shares pursuant to this article 15(b):
    - (a) will be made amongst the holders of such classes of Preference Shares pro-rata to their holdings of such classes of Preference Shares; and
    - (b) cannot result in there being either no issued B Preference Shares or no issued C Preference Shares.
- (c) The amount payable on each Preference Share redeemed pursuant to article (b) will be a sum equal to:
  - (i) in the case of the A Preference Shares, £1.50;
  - (ii) in the case of the B Preference Shares, the C Preference Shares and the D Preference Shares, £1 per share;(in each case the **Redemption Monies**).
- (d) Subject to article 15(e), the redemption date for any redemption will be in the case of a redemption pursuant to article 15(b), the date specified in the notice served pursuant to that article.
- (e) If the Company is unable lawfully to redeem out of distributable profits any of the Preference Shares due to be redeemed on any redemption date referred to in article 15(d), it will effect such redemption as soon afterwards as it is lawfully able to so redeem them and "redemption date" shall be construed accordingly.
- (f) On each redemption date (whether pursuant to this article 15 or as part of any allocation of Total Shareholder Proceeds):
  - (i) the monies due on redemption (to the extent that they do not already constitute the same) will become a debt due and payable by the Company to the relevant Preference Shareholders;
  - (ii) each of the Preference Shareholders whose shares are to be redeemed will deliver to the Company the share certificate(s) for such shares and the Company will cancel the same;
  - (iii) the Company, subject to receipt of the relevant share certificate or an indemnity in lieu of the share certificate in a form reasonably satisfactory to the Company (acting reasonably), will pay without delay the monies due on redemption to the relevant Preference Shareholders; and
  - (iv) any redemption of some but not all of any class of the Preference Shares will be made amongst their holders pro rata as nearly as possible to their respective holdings of such class of the Preference Shares.
- (g) Without prejudice to the provisions of Article 12 and any consent or sanction required under that article, each holder of Preference Shares shall be entitled in respect of such holding to receive notice of and to attend but not to speak or vote (either on a show of hands or on a poll) at annual general meetings and extraordinary general meetings of the Company.

**TRANSMISSION OF SHARES**

**16. Transmission on death**

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 in these articles shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.

**17. Election of person entitled by transmission**

- (a) Subject to article 33 (Leaver provisions), a person becoming entitled to a share in consequence of the death or bankruptcy of a member 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.
- (b) 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.
- (c) All the provisions of these 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.

**18. Rights of person entitled by transmission**

A person becoming entitled to a share in consequence of the death or bankruptcy of a member 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.

**TRANSFERS OF SHARES: GENERAL PROVISIONS**

**19. Refusal to register a transfer**

- (a) The directors shall refuse to register a proposed transfer not made under or permitted by these articles.
- (b) The directors may refuse to register a transfer of a share which is not fully paid to a person of whom they do not approve and they 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:
- (c) 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;
- (d) it is in respect of only one class of shares; and
- (e) it is in favour of not more than four transferees.
- (f) 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. Other general transfer provisions**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

**PERMITTED TRANSFERS**

**21. Permitted transfers of Shares**

The following transfers:

- (i) of Preference Shares;
- (ii) other than pursuant to paragraph (o), of A Shares; and
- (iii) pursuant to paragraph (a) or (b) only, of B Shares, by a Relevant B Shareholder and in respect

of the number of B Shares equal to such Relevant B Shareholders' Permitted B Share Number may be made free of the restrictions in article 30 (Pre-emption procedure):

- (a) a transfer by an individual to a Relation or to the trustees of a Family Trust established by that individual, provided that no B Shares or Preference Shares may be transferred pursuant to this article 21(a) if the proposed transfer would result in more than 49 per cent. or more of the respective aggregate number of B Shares or Preference Shares issued to or acquired by the proposed transferor, being held by Relations of such proposed transferor and/or the trustees of Family Trusts of such proposed transferor; or
- (b) a transfer by the trustees of a Family Trust of shares held by them in that capacity to any new trustees of that Family Trust, to a person who has an immediate beneficial interest under that Family Trust or to the settlor; or
- (c) a transfer of shares to a person who is to hold those shares as the nominee of the transferor; or
- (d) a transfer of shares by a nominee to the beneficial owner of those shares or to another nominee of the same beneficial owner; or
- (e) a transfer of shares by a body corporate to another member of its Corporate Group; or
- (f) a transfer of shares held by or on behalf of an investment fund (including investment trusts, limited partnerships, unit trusts and co-investment schemes) to:
  - (i) any person to hold on behalf of that same investment fund (whether as nominee, trustee, custodian, general partner or otherwise); or
  - (ii) by way of a distribution in kind or otherwise under the documentation or laws governing that fund to any of the participants in that fund or their nominees; or
  - (iii) to, or to any person to be held on behalf of, any other investment fund which has the same manager or investment adviser; or
- (g) a transfer by Uberior Investments plc to a third party who is participating in any syndication or securitisation by any member of the HBOS Group, provided that Uberior Investments plc may not transfer its Ordinary Shares or Preference Shares pursuant to this subparagraph (g) to more than three different third parties; or
- (h) a transfer by BG Holding ehf, provided that (i) following such transfer, members of the Baugur Group continue to hold (1) A Shares in the Company representing more than twenty five per cent. of the A Shares in issue and (2) Preference Shares representing more than 20 per cent of the D Preference Shares in issue and (ii) Uberior Investments plc has in any such case approved the transferee; or
- (i) a transfer by a Permitted Transferee of BG Holding ehf to a member of the Baugur Group;
- (j) a transfer of shares by any member of the TBH Group to:
  - (i) the Hunter Foundation (a Scottish Charity with registered number SC27532); or
  - (ii) any partnership in which TB Hunter owns not less than a 75% economic and voting interest (a **TBH Partnership**); or
  - (iii) any company controlled by TB Hunter or a TBH Partnership at the relevant time; or
  - (iv) any trust of which TB Hunter or any person referred to in 21(j)(v) is a beneficiary; or
  - (v) any parent, spouse or life partner (or widow) or child or grandchild of TB Hunter; or
- (k) a transfer made with Baugur Consent and with the consent of a Co-Investor Majority by or to the trustees (acting in that capacity) of a trust established for the benefit of Group Employees; or
- (l) a transfer made following the issue of a Drag Along Notice or pursuant to a Tag Along Offer; or
- (m) a compulsory transfer made in accordance with articles 22 (Cessation of Family Trust) to 24 (Consequences of prohibited transfer) or 33 (Leaver provisions); or

- (n) any other transfer made with the consent of the Super Majority A Holders; or
  - (o) a transfer of Preference Shares by one Preference Shareholder to another Preference Shareholder or a member of a Preference Shareholder's Corporate Group,
- but paragraphs (a) and (e) shall not apply to transfers of shares by a trustee or nominee.

#### **COMPULSORY TRANSFERS: GENERAL PROVISIONS**

##### **22. Cessation of Family Trust or Connection**

If any Family Trust whose trustees hold Ordinary Shares and/or Preference Shares ceases to be a Family Trust, the trustees shall without delay notify the Company that such event has occurred and, *unless the Board with Baugur Consent otherwise resolves or the shares are transferred to another Family Trust of the relevant settlor, any of his Relations or to the settlor (in each case within 14 days),* they shall be deemed to have served the Company with a Transfer Notice in respect of those shares. If any party to which Ordinary Shares and/or Preference Shares have been transferred by a shareholder (**Original Transferor**) pursuant to article 21(i) (Permitted transfers of Ordinary Shares and Preference Shares) ceases to be a party to whom such Ordinary Shares and/or Preference Shares could have been transferred as a Permitted Transfer, the person then holding those shares shall without delay notify the Company that such event has occurred and, unless the Board with Baugur Consent otherwise resolves or such shares are transferred to the Original Transferor or to a party to whom the Original Transferor could have transferred them under article 21(i) (in each case within 14 days), it shall be deemed to have served the Company with a Transfer Notice in respect of those shares.

##### **23. Cessation of Group**

If a body corporate to which Ordinary Shares and/or Preference Shares have been transferred under article 21(e) (Permitted transfers of Ordinary Shares and Preference Shares) ceases to be a member of the same Corporate Group as the original transferor (a **Cessation**), the person then holding those shares shall without delay notify the Company that such event has occurred and, unless the Board with Baugur Consent otherwise resolves, it shall be deemed to have served the Company with a Transfer Notice in respect of those shares unless such holder transfers within fourteen days of the Cessation occurring those shares to a member of the same Corporate Group as the original transferor.

##### **24. Change in control of shareholder**

If there is a change in the controller (or, if more than one, any of them) of a body corporate that is beneficially interested in Ordinary Shares and/or Preference Shares, or of any holding company of such a body corporate (excluding, in each case, (i) Uberior Investments plc or any other member of the HBOS Group and (ii) any change in the controller of Straumur Budaras Fjarfestingarbanki hf or Landsbanki Islands hf arising following the acquisition of publicly listed shares in Straumur Budaras Fjarfestingarbanki hf or Landsbanki Islands hf by a third party), then the person holding those shares shall notify the Company that such event has occurred and, unless the Board with Baugur Consent otherwise resolves, it shall be deemed to have served the Company with a Transfer Notice in respect of those Ordinary Shares and/or Preference Shares (as the case may be). For the purposes of this paragraph a person is the **controller** of a body corporate if he has the power or ability to direct the management or the policies of the body corporate, whether through the ownership of voting capital, by contract or otherwise. For the avoidance of doubt, a change in the controller of a body corporate shall not have occurred if that body corporate or any holding company of that body corporate completes a listing of its shares on a public exchange.

##### **25. Consequences of prohibited transfer**

If a person at any time attempts or purports to transfer a share otherwise than in accordance with these articles, the holder of that share shall, unless the Board with Baugur Consent resolves otherwise, be deemed immediately before the attempt to have served the Company with a Transfer Notice in respect of it.

##### **26. Procedure on issue of deemed Transfer Notice**

If a Transfer Notice is deemed to have been served on the Company:

- (a) the provisions of article 30 (Pre-emption procedure) (other than articles 30(l) and 30(m)) shall apply to the relevant shares and any other Transfer Notice previously issued in respect of the shares in question shall immediately be cancelled;
- (b) the Specified Price shall be, (i) in the case of the Equity Shares, the B Preference Shares and the C Preference Shares, the respective Fair Price of each such shares as at the date on which the Transfer Notice is deemed to have been served on the Company; (ii) in the case of the A Preference Shares, £1.50 per A Preference Share and (iii) in the case of the D Preference Shares, £1 per D Preference Share; and
- (c) the Company shall give notice under article 30(b) (Pre-emption procedure) as soon as the Specified Price is ascertained.

**27. Shareholders to ensure they are empowered to sell**

Every holder of shares in the Company (whether or not he is the beneficial owner of those shares) shall ensure that he is at all times able and empowered to transfer with full title guarantee the shares held by him if so required by these articles, and any transfer of shares made following the issue or deemed issue of a Transfer Notice or required pursuant to article 33 (Leaver provisions) shall be made on that basis.

**28. Delegation of authority to sell**

As security for his obligations under these articles, each holder of Ordinary Shares and each holder of Preference Shares hereby irrevocably appoints, jointly and severally, the Company and such person as may be nominated for the purpose by the Majority A Holders or the Drag Along Sellers (as defined in article 32 (Drag Along Rights)) as his duly appointed agent to do such things in his name (including the completion, execution and delivery of documents) as are required to effect any transfer of shares held by that holder required:

- (a) pursuant to article 30 (Pre-emption procedure) where those shares are Offered Shares and have been allocated to Purchasers pursuant to article 30(j) (Pre-emption procedure);
- (b) following the issue to him of a Drag Along Notice; or
- (c) pursuant to article 33 (Leaver provisions).

**29. Basis of Valuers' engagement**

Where Valuers are to determine the Fair Price under these articles, their charges shall be borne as to 50 per cent. by the Company and as to 50 per cent. by the shareholder(s) whose shares are being valued, they shall be considered to act as experts not as arbitrators and their decision shall, in the absence of manifest error, be final and binding.

## **PRE-EMPTION RIGHTS**

**30. Pre-emption procedure**

- (a) Except as otherwise provided in article 21 (Permitted transfers of Ordinary Shares and Preference Shares) and subject to article 30(n), no person shall be entitled to transfer his Ordinary Shares and/or Preference Shares without the shares having first been offered pursuant to this article. The offer may be in respect of all or part only of the proposing transferor's Ordinary Shares and/or Preference Shares and shall be made by the holder of those shares (who, if not the proposing transferor, shall act as his agent) by notice in writing to the Company (a **Transfer Notice**). If any Shareholder gives a Transfer Notice in respect of any A Shares, such Shareholder (and the members of their Corporate Group) must (in aggregate) simultaneously also give Transfer Notice(s) in respect of the same percentage of their aggregate total holding of Preference Shares, as the percentage of the A Shares the subject of the relevant Transfer Notice represents of such shareholder's and its Corporate Group's aggregate total holding of A Shares.
- (b) The Transfer Notice shall specify the proposed transferee(s) (the **Proposed Transferee(s)**), the shares offered (the **Offered Shares**) and the price at which they are offered (the **Specified Price**). The Transfer Notice shall constitute the Company as the agent for the sale of the Offered Shares at the Specified Price in accordance with this article 30. The Transfer Notice may contain a provision that, unless all the Offered Shares are sold under this paragraph, none shall be sold. The Transfer Notice may not be revoked unless the Board with Baugur Consent otherwise decides.

- (c) On receipt by the Company of the Transfer Notice the Company shall as soon as practicable by notice in writing offer the Offered Shares for sale at the Specified Price to the persons specified in Column (B) of the Table (other than the Retiring Shareholder and any other Shareholder who has served or is deemed to have served a Sale Notice in respect of his entire holding of Shares pursuant to which the sale of such Shares has not then been concluded) entitled to first refusal thereof in accordance with article 30(h) ("**First Offer**");
- (d) The First Offer shall specify that the persons to whom the shares are offered will have a period of 15 Business Days from the date of such notice within which to apply for some or all of the Offered Shares
- (e) Following the application of article 30(j), the Company shall by notice in writing offer any remaining Offered Shares which have not been accepted pursuant to the First Offer to the persons specified in Column (C) of the Table in accordance with article 30(h) at the Specified Price ("**Second Offer**"); Any such Second Offer shall be made within 10 Business Days of the date on which the First Offer expires or, if earlier, the date on which all persons entitled to accept the First Offer have indicated the maximum number of Sale Shares they wish to accept and shall specify that such Second Offer must be accepted within 10 Business Days or in default will lapse.
- (f) Following the application of article 30(j), the Company shall by notice in writing offer any remaining Offered Shares which have not been accepted pursuant to the First Offer or the Second Offer to the persons specified in Column (D) of the Table in accordance with article 30(h) at the Specified Price ("**Third Offer**");
- (g) Any such Third Offer shall be made within 10 Business Days of the date on which the Second Offer expires or, if earlier, the date on which all persons entitled to accept the Second Offer have indicated the maximum number of Sale Shares they wish to accept and shall specify that such Third Offer must be accepted within 10 Business Days or in default will lapse.
- (h) It will be a further term of the First Offer, the Second Offer and the Third Offer that, if there is competition within any class(es) of Shareholder for the Offered Shares offered to those class(es) pursuant to the First Offer, the Second Offer or the Third Offer (as the case may be), such Offered Shares will be treated as offered among the holders of such class(es) to whom the relevant offer has been made in proportion (as nearly as possible) to their existing holdings of Shares of such class(es) ("**Proportionate Entitlement**"). The offer will also invite the offerees to indicate in their application for Sale Shares, whether they would be willing to buy Shares in excess of their Proportionate Entitlement should any such Shares be available and, if so, how many ("**Extra Shares**").
- (i) The Table shall be as follows

| (A)                 | (B)<br>First Offer        | (C)<br>Second Offer   | (D)<br>Third Offer   |
|---------------------|---------------------------|---|--|
| A Preference Shares | A Preference Shareholders | B Preference Shareholders, C Preference Shareholders and D Preference Shareholders (pro-rata to their respective holdings of such classes of Preference Shares) | A Shareholders (pro-rata to their respective holdings of A Shares) |
| B Preference Shares | B Preference Shareholders | A Preference Shareholders, C Preference Shareholders and D Preference Shareholders (pro rata to their respective holdings of such classes of Preference Shares) | A Shareholders (pro rata to their respective holdings of A Shares) |
| C Preference Shares | C Preference Shareholders | A Preference Shareholders, B Preference Shareholders and D Preference Shareholders (pro-rata to their respective holdings of such classes of                    | A Shareholders (pro-rata to their respective holdings of A Shares) |

|                     |  |   |  |
|---------------------|--|---|--|
|                     |  | Preference Shares)  |  |
| D Preference Shares | D Preference Shareholders  | A Preference Shareholders, B Preference Shareholders and C Preference Shareholders (pro-rata to their respective holdings of such classes of Preference Shares) | A Shareholders (pro-rata to their respective holdings of A Shares)   |
| A Shares            | A Shareholders   | B Shareholders (pro-rata to their respective holdings of B Shares)  | A Preference Shareholders, B Preference Shareholders, C Preference Shareholders and D Preference Shareholders pro-rata to their respective holdings of Preference Shares |
| B Shares            | persons nominated in accordance with articles 33(b)(ii) or 33(d)(ii) | B Shareholders (pro-rata to their respective holdings of B Shares)  | A Shareholders (pro-rata to their respective holdings of A Shares)   |

If the Transfer Notice (other than a deemed Transfer Notice) states that the proposing transferor is not willing to transfer part only of the Offered Shares, no allocation will be made unless all the Offered Shares are allocated.

- (j) After the expiry of the relevant offer period specified in article 30(c) to (g), the Board will within 14 days allocate the Offered Shares (or the balance of the Offered Shares (as the case may be)) as follows:
- (i) if the total number of Offered Shares applied for pursuant to the relevant offer (including Extra Shares) is equal to or less than the available number of Offered Shares, each offeree will be allocated the number applied for in accordance with his application; or
  - (ii) if the total number of Offered Shares applied for pursuant to the relevant offer is greater than the available number of Offered Shares, each offeree will be allocated his Proportionate Entitlement, or, if less, the number of Offered Shares which he has applied for; and
  - (iii) applications for Extra Shares will be allocated in accordance with such applications or, in the event of competition within any relevant classes of Shareholder, among the Shareholders of those classes applying for Extra Shares in such proportions as equal (as nearly as possible) the proportions of all the Shares of the same classes held by such offerees.
- (k) On the allocation being made, the Company shall give details of the allocation in writing to the holder of the Offered Shares and each Purchaser and, on the fourteenth day after such details are given, the Purchasers to whom the allocation has been made shall be bound to pay the purchase price for, and to accept or join in a transfer of, the Offered Shares allocated to them respectively and the holder of the Offered Shares (acting, if applicable, as agent of the proposing transferor) shall be bound, on payment of the purchase price, to transfer the Offered Shares to the respective Purchasers to whom the allocation has been made.
- (l) If following the making of the Third Offer and the expiry of the 14 day period referred to in paragraph (j) above in respect of the Third Offer, any of the Offered Shares have not been allocated under that paragraph, the proposing transferor may (subject to paragraph (m) below and the provisions of article 31 (Tag Along Rights)) at any time within a period of 90 days after the expiry of the 14 day period transfer the Offered Shares not allocated to the Proposed Transferee(s) at any price (being not less than the Specified Price) provided that:
- (a) if the Transfer Notice contained a provision that, unless all the Offered Shares are sold under this paragraph, none shall be sold, he shall not be entitled to transfer any of the Offered Shares unless all the Offered Shares are so transferred; and

- (b) the Company may require to be satisfied that those shares are being transferred under a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance to the purchaser and, if not so satisfied, may refuse to approve or register the transfer.
- (m) If any corporate shareholder (an **Objecting Shareholder**) who, together with its Permitted Transferees, holds more than five per cent. of the A Shares in issue can, acting reasonably and in good faith, demonstrate that the transfer of the Offered Shares to a Proposed Transferee would result in a material adverse effect on the reputation of the corporate group of which the Objecting Shareholder is a member, then the Objecting Shareholder may issue the proposing transferor and the Company with an **Objection Notice**. If an Objection Notice is served by an Objecting Shareholder prior to the expiry of the 14 day period referred to in paragraph (l) above, the proposing transferor may not transfer any Offered Shares to the Proposed Transferee unless the proposing transferor procures that the Proposed Transferee or a third party first acquires all of the Ordinary Shares and Preference Shares (if any) of the Objecting Shareholder (and each member of its Corporate Group) at:
  - (a) in the case of the Ordinary Shares, the B Preference Shares and the C Preference Shares, the respective Fair Price of each such shares;
  - (b) in the case of the A Preference Shares £1.50 per A Preference Share; and
  - (c) in the case of the D Preference Shares, £1 per D Preference Share;
 or in each case, such other price as the Objecting Shareholder may agree in writing. An Objection Notice may not be served if the Proposed Transferee is a private equity or venture capital firm or fund which in either case, is a member of the BVCA or the EVCA (or a company in which such firm or fund holds a majority of the voting shares), a bank or other financial institution regulated by the Financial Services Authority.
- (n) No Transfer Notice may be served by any B Shareholder in respect of their holding of B Shares pursuant to this article 30 (other than a deemed transfer notice deemed given in accordance with article 33) and no B Shares may be transferred pursuant to this article 30, other than pursuant to any deemed Transfer Notice deemed served by the relevant B Shareholder in accordance with article 33

## TAG ALONG

### 31. Tag Along Rights

No person shall transfer any shares in the Company if that transfer would result in either (I) BG Holding ehf and its Permitted Transferees ceasing to hold shares representing more than 25 per cent. of both (a) the A Shares in issue and (b) the Preference Shares in issue or (II) a person (other than BG Holding ehf and its Permitted Transferees) together with any parties acting in concert with it and /or its connected persons obtaining or increasing either (a) a holding of 30% or more of the A Shares or (b) at least 30% of the Preference Shares in issue (the **Proposed Transfer**), unless:

- (a) the Proposed Transfer is made following the issue of a Drag Along Notice; or
- (b) offers (together a **Tag Along Offer**) has been made to all the other holders of Ordinary Shares and Preference Shares to acquire all of their Ordinary Shares and all of their Preference Shares (as separate and independent offers) on terms no less favourable than those applying to the Proposed Transfer and in any event which provides an offer price of at least:
  - (i) in the case of the A Preference Shares, £1.50 per A Preference Share;
  - (ii) in the case of the B Preference Shares, the C Preference Shares and the D Preference Shares, £1 per share; and
  - (iii) in the case of the B Shares, such price per B Share as equals the
 
$$\left( \frac{\text{Relevant B Percentage}}{100} \times \text{Total Shareholder Proceeds} \right) \div \text{Number of B Shares in issue at that date}$$

where:

- (i) the Relevant B Percentage shall be calculated in accordance with article 115 as if the transfer giving rise to the obligation to make the Tag Along Offer was the relevant Realisation; and



- (ii) the Total Shareholder Proceeds means the total price payable for the Shares (a) whose proposed transfer has given rise to the obligation to make the Tag Along Offer and (b) in respect of which acceptances of the Tag Along Offer is received.

which Tag Along Offer:

- (iii) is expressed to be open for acceptance (insofar as it is made to the B Shareholders) for at least 21 days and (insofar as it is made to the holders of Shares (other than the B Shares)) for at least 28 days; and
- (iv) contains an undertaking in favour of the offerees that neither the offeror or its connected persons nor any person acting by agreement or understanding with any of them has, during the previous six months, acquired or agreed to acquire either Ordinary Shares and/or Preference Shares respectively on more favourable terms than those respectively offered under the Tag Along Offer;

and the Proposed Transfer shall not be registered unless the Tag Along Offer has been made and (aa) subject to the provisions of paragraph (bb) below, all the shareholders who submitted acceptances within the time period specified by the Tag Along Offer have received the consideration payable under the Tag Along Offer in respect of their shares or (bb) if the transfers of Shares (i) the subject of the Proposed Transfer and (ii) pursuant to acceptances of the Tag Along Offer give rise to the right to serve a Drag Along Notice, which right is exercised in accordance with article 32, article 32(b) shall govern the allocation of the consideration payable for the Shares so transferred (and any Shares transferred pursuant to the Drag Along Notice so served).

#### **DRAG ALONG**

#### **32. Drag Along Rights**

- (a) If the holders of more than 50 per cent. of the A Shares excluding any A Shares held by the Transferee (the **Drag Along Sellers**), propose to transfer all of their shares of that class to any person who is a bona fide third party (the **Transferee**), all the other holders of shares whether of that class or otherwise (including any persons who become shareholders upon exercise of any rights of subscription or conversion) (the **Compulsory Sellers**) shall, subject to sub-paragraph (b) below, if so required by the Drag Along Sellers or the Transferee by notice given to the Compulsory Sellers at any time before the proposed transfer or within six weeks after the proposed transfer (a **Drag Along Notice**), transfer (on such date, being no earlier than the date of the transfer by the Drag Along Sellers of their shares and no later than six weeks after that date, as may be specified by the Drag Along Sellers or the Transferee in the Drag Along Notice) all of their shares to the Transferee with full title guarantee.
- (b) Notwithstanding article 32(a), the proceeds of the sale of the Shares both by the Drag Along Sellers and the Compulsory Sellers shall be allocated among the holders of the shares in accordance with article 114 and the Drag Along Sellers and the Compulsory Sellers shall comply with the provisions thereof.
- (c) A Compulsory Seller shall not be required to transfer their holding of Preference Shares or A Shares to the Transferee pursuant to a Drag Along Notice if:
  - (a) the value of the consideration offered by the Transferee for the shares held by the Compulsory Sellers is less than £0.675 per Preference Share or A Share (before calculating the amount of any such consideration payable to the holders of the B Shares pursuant to articles 32(b) and 114(b)(i)); or
  - (b) the form of the consideration offered by the Transferee for the shares held by the Compulsory Seller is not cash or securities listed on any of:
    - (i) the Official List of the London Stock Exchange; or
    - (ii) the Frankfurt Stock Exchange; or
    - (iii) the New York Stock Exchange; or
    - (iv) the Paris Stock Exchange; or

- (c) shareholders of the Company (or persons connected or acting in concert with such shareholders) as at the dates of the proposed transfer, hold, in aggregate, 33 per cent. or more the issued share capital of the Transferee.

#### LEAVER PROVISIONS

#### 33. Leaver provisions

- (a) For the purposes of this article:

**Bad Leaver** means a Leaver who is not a Good Leaver;

**Good Leaver** means a Leaver whose cessation of Employment occurs:

- (i) in respect of any Initial B Shareholder, other than due to a Termination for Cause or a Resignation Without Good Reason; and
- (ii) in the case of any other B Shareholder
  - (A) a subsidiary of the Company ceasing to be a subsidiary of the Company;
  - (B) death, incapacity or retirement at normal retirement age; or
  - (C) redundancy;

**Leaver** means:

- (i) other than in relation to any Initial B Shareholder, any person who is at the date of adoption of these articles or who later becomes a Group Employee and who subsequently ceases to be a Group Employee (or who gives or receives notice of such cessation); and
- (ii) in relation to any Initial B Shareholder, such person ceasing prior to 31 March 2008 to be a Group Employee as a result of a Termination for Cause or a Resignation Without Good Reason; and

**Leaver's Shares** means at the date a person becomes a Leaver:

- (i) shares in the Company held by the Leaver and any of his Permitted Transferees or in which they have a beneficial interest;
- (ii) shares in the Company which have been transferred by the Leaver to any of his Permitted Transferees (irrespective of whether still held by that or another Permitted Transferee) (but excluding any shares transferred to an A Shareholder in accordance with the provisions of these articles) (**Transferred Shares**); and
- (iii) shares in the Company which have been allotted in respect of Transferred Shares by way of rights, bonus or otherwise;

**Termination for Cause** means termination of employment by the Company or any other member of the Group for:

- (i) any act or omission or series of acts or omissions by the relevant employee that, when taken together or alone, constitute a repudiatory breach of his terms and conditions of employment;
- (ii) unlawful or illegal conduct or any serious or gross misconduct by an employee in connection with the performance of his duties as an employee; or
- (iii) committing any act involving dishonesty or fraud;

**Resignation Without Good Reason** means a resignation, other than because of:

- (i) a material reduction in the position of the employee below that at which he is appointed; or
- (ii) a material diminution of the employee's key responsibilities;

- (b) Upon a person becoming a Leaver:

- (i) unless the Remuneration Committee resolves otherwise, any Transfer Notice previously issued or deemed issued in relation to the Leaver's Shares shall immediately be cancelled (unless all the shares subject to it have already been sold) and no further Transfer Notice shall be issued or deemed issued in respect of the Leaver's Shares (except under paragraph (ii)

below) and the Leaver's Shares shall not entitle the holder to be offered shares or other rights pursuant to article 30 (Pre-emption procedure) or to any other right of pre-emption unless and until the 120 day period referred to in paragraph (i) below shall have expired with no resolution of the Remuneration Committee having been passed thereunder or, if such a resolution has been so passed, until the provisions of this article 33 have been complied with; and

- (ii) if the Remuneration Committee within 120 days so resolves, each person holding Leaver's Shares shall in the case of any Leaver's Shares which are Ordinary Shares, transfer the Leaver's Shares held by him (or such of them as the Remuneration Committee may resolve) to such persons (being Group Employees or prospective Group Employees or persons who intend to transfer those shares to Group Employees (including the trustees of any Employee Benefit Trust)) as the Remuneration Committee (having complied with the provisions of any Relevant Agreement) may nominate within 60 days of such resolution.
- (c) The price per share applying to any transfer under paragraph (b)(ii) above shall be determined as follows:
  - (i) if the Leaver is a Good Leaver, the price shall be in the case of any Ordinary Shares, the Fair Price; or
  - (ii) if the Leaver is a Bad Leaver, the price shall be in the case of any Ordinary Shares, the lower of the Subscription Price and the Fair Price, unless the transferor and the Remuneration Committee agree some other price; and
  - (iii) the Fair Price shall be calculated as at the date the Leaver becomes a Leaver or such later date as the Remuneration Committee may resolve.
- (d) If, having become a Leaver, that Leaver or any of his Permitted Transferees acquires any shares (**Relevant Shares**) by virtue of any rights held by that Leaver, the following provisions shall, if the Remuneration Committee (having complied with the provisions of any Relevant Agreement) so resolves at any time, apply:
  - (i) any Transfer Notice previously issued or deemed issued in relation to any of the Relevant Shares shall immediately be cancelled (unless all the shares subject to it have already been sold);
  - (ii) each holder of Relevant Shares shall transfer the Relevant Shares held by him (or such of them as the Remuneration Committee may resolve) to such persons (being Group Employees or prospective Group Employees or persons who intend to transfer those shares to Group Employees (including the trustees of any Employee Benefit Trust)) as the Remuneration Committee (having complied with the provisions of any Relevant Agreement) may nominate within 60 days of the resolution; and
  - (iii) the price shall be determined in accordance with paragraph (c) above.

#### **SHARE CERTIFICATES**

##### **34. Issue of share certificates**

- (a) 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.
- (b) 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 on those shares.
- (c) 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.

##### **35. Charge for and replacement of certificates**

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**

**36. Lien on partly paid shares**

- (a) 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.
- (b) 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.

**37. Enforcement of lien**

- (a) 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.
- (b) 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.
- (c) 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**

**38. Calls**

- (a) 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 under it, be revoked in whole or part and payment of a call may be postponed in whole or part.
- (b) 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.
- (c) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
- (d) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.

**39. Interest on calls**

*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.*

**40. Sums treated as calls**

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.

**41. Power to differentiate**

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.

**42. Notice of unpaid calls**

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.

**43. Forfeiture on non-compliance with notice**

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.

**44. Disposal of forfeited shares**

(a) 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.

(b) 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.

**45. Arrears to be paid notwithstanding forfeiture**

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.

**GENERAL MEETINGS**

**46. Extraordinary general meetings**

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

**47. Convening of general meetings**

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

**48. General meetings by telephone or other communication device**

(a) 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:

(b) to hear each of the other participating members addressing the meeting; and

- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) References in this article to members shall include their duly appointed proxies and, in the case of corporate members, their duly authorised representatives.

**49. Length and form of notice**

- (a) 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:
- (b) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and
- (c) 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.
- (d) 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.
- (e) 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.

**50. Quorum**

- (a) No business shall be transacted at any meeting or any adjourned meeting unless a quorum is present.
- (b) Three members entitled to vote upon the business to be transacted present in person or by proxy or (in the case of a corporation) by a duly authorised representative, of whom at least two shall be or represent an A Shareholder, shall be a quorum.
- (c) 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 and if a quorum is not present at such adjourned meeting, the meeting shall be dissolved.

**51. Chairman to preside**

- (a) 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.
- (b) 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.

**52. Right of director to attend and speak**

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. Adjournment**

- (a) 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.
- (b) 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 provided that the time and place of the adjourned meeting is announced at the meeting being adjourned.

**54. Method of voting and procedure for polls**

- (a) Subject to article 48 (General meetings by telephone or other communication device), a resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:
  - (b) by the chairman; or
  - (c) by at least two members having the right to vote at the meeting; or
  - (d) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (e) by a member or members holding shares conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right;and a demand by a person as proxy for a member shall be the same as a demand by the member.
- (f) 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.
- (g) The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman 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.
- (h) 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.
- (i) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a casting vote in addition to any other vote he may have.
- (j) Any 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.
- (k) 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.

## VOTES OF MEMBERS

### 55. Written resolutions

A resolution in writing executed or signed 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.

### 56. Voting rights

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 a proxy appointed under section 372 of the Act or (being a corporation) is present by a duly authorised representative or by a proxy appointed under section 372 of the Act, shall if such member holds any A1 Shares 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 such member shall have one vote for every A1 Share of which he is the holder.

### 57. Voting rights of joint holders

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.

### 58. Voting rights of members incapable of managing their affairs

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 article 63(b) (Receipt of appointment of proxy) 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.

### 59. Voting rights of joint holders

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.

### 60. Objections to admissibility of votes

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.

### 61. Proxies

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.

### 62. Appointment of proxies

- (a) The appointment of a proxy shall be 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):

"[ ] 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 [ ], [ ], and at any adjournment thereof.

Signed on [ ], 20[ ]."

- (b) Where it is desired to afford members an opportunity of instructing the proxy how he shall act, the appointment of 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):

"[ ] 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 [ ], 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 [ ]."

### 63. Receipt of appointment of proxy

The appointment of 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) in the case of an instrument in writing:
- (b) 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
- (c) 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
- (d) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications;
- (e) in the notice convening the meeting; or
- (f) in any instrument of proxy sent out by the Company in relation to the meeting; or
- (g) in any invitation contained in an electronic communication to appoint a proxy issued by the Company in relation to the meeting,  
be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote; or
- (h) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as specified in article 63(b) or (d) above after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (i) 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,

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

**64. Notice of revocation of authority**

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 or, where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received 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**

**65. Number of directors**

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall be not more than eight and shall be not less than two.

**ALTERNATE DIRECTORS**

**66. Alternate directors**

- (a) A Baugur Director, an Investor Director or an Independent Director may appoint any person and any other director may appoint:

(a) any other director; or

(b) any other person approved by a resolution of the directors,

who is willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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**

**67. General powers of the Board to manage the Company's business**

- (a) 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.
- (b) 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.

**68. Power to appoint an agent or attorney**

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**

**69. Power to delegate to a committee**

The directors may delegate any of their powers to any committee consisting of one or more directors. They may also 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, REMOVAL AND DISQUALIFICATION OF DIRECTORS**

**70. The Board's power to appoint directors**

Subject to article 65 (Number of Directors) and allowing for appointments to be made under articles 71 (Appointment and removal of Baugur Directors) to 74 (Appointment and Removal of Executive Directors), the directors may appoint any person who is willing to act to be a director, either to fill a casual vacancy or as an additional director.

**71. Appointment and removal of Baugur Directors**

- (a) The relevant person may appoint one person as a director of the Company and remove from office any such director and, if desired, appoint another in his place. Any Director so appointed shall be a Baugur Director. For the purposes of this paragraph the relevant person, for so long as any member of the Baugur Group is a holder of A Shares in the Company representing more than five per cent. of the A Shares in issue, is BG Holding ehf, but otherwise the relevant person is the Majority A Holders.
- (b) If and for so long as members of the Baugur Group hold A Shares in the Company representing more than 25 per cent. of the A Shares in issue, BG Holding ehf may appoint any one person as a second director of the Company and remove from office any such director and, if desired, appoint another in his place. Any director so appointed shall also be a Baugur Director.
- (c) If BG Holding ehf ceases to be entitled to appoint a Baugur Director pursuant to articles (a) or (b) above, BG Holding ehf shall procure that any person it has previously appointed as a Baugur Director pursuant to the relevant article shall resign as a director of the Company and confirm that he has no claim against the Company.

**72. Appointment and removal of Investor Directors**

- (a) If and for so long as members of the TBH Group hold A Shares in the Company representing more than five per cent. of the A Shares in issue, then TBH Trading Limited may appoint any one person as a director of the Company and remove from office any such director and, if desired, appoint another in his place. Any director so appointed shall be an Investor Director.
- (b) If TBH Trading Limited ceases to be entitled to appoint an Investor Director pursuant to this article 72, TBH Trading Limited shall procure that any person it has previously appointed as an Investor Director pursuant to this article 72 shall resign as a director of the Company and confirm that he has no claim against the Company.
- (c) If and for so long as members of the Talden Group hold A Shares in the Company representing more than five per cent. of the A Shares in issue, then Talden Holding SA may appoint any one person as a director of the Company and remove from office any such director and, if desired, appoint another in his place. Any director so appointed shall also be an Investor Director.
- (d) If Talden Holding SA ceases to be entitled to appoint an Investor Director pursuant to this article 72, Talden Holding SA shall procure that any person it has previously appointed as an Investor Director pursuant to this article 72 shall resign as a director of the Company and confirm that he has no claim against the Company.

- (e) If and for so long as members of the Burdaras Group hold A Shares in the Company representing more than five per cent. of the A Shares in issue, then Straumur Burdaras Fjarfestingarbanki hf may appoint any one person as a director of the Company and remove from office any such director and, if desired, appoint another in his place. Any director so appointed shall also be an Investor Director.
- (f) If Straumur Burdaras Fjarfestingarbanki hf ceases to be entitled to appoint an Investor Director pursuant to this article 72, Straumur Burdaras Fjarfestingarbanki hf shall procure that any person it has previously appointed as an Investor Director pursuant to this article 72 shall resign as a director of the Company and confirm that he has no claim against the Company

**73. Appointment and removal of Independent Director**

- (a) If and for so long as members of the HBOS Group hold A Shares representing more than five per cent. of the A Shares in issue, then Uberior Investments plc may appoint any one person as a director of the Company and remove from office any such director and, if desired, appoint another in his place. Any director so appointed shall be an Independent Director.
- (b) If Uberior Investments plc ceases to be entitled to appoint an Independent Director pursuant to this article 73 Uberior Investments plc shall procure that any person it has previously appointed as an Independent Director pursuant to this article 73 shall resign as a director of the Company and (where he is an employee of the HBOS Group) confirm that he has no claim against the Company.

**74. Appointment and Removal of Executive Directors**

The holders of a majority of the A Shares may appoint up to two Senior Employees as directors of the Company and (subject to any restrictions in any Relevant Agreement) may remove from office any person so appointed and, if desired, appoint another in his place. Any Director so appointed shall be an Executive Director.

**75. Appointment and removal of chairman**

The relevant person (as defined in article 71(a)) may appoint one of the Baugur Directors to hold office as chairman, and remove from office such person and appoint another in his place.

**76. Appointment and removal of Observers**

- (a) If and for so long as members of the HBOS Group hold A Shares representing more than five per cent. of the A Shares in issue, Uberior Investments plc may appoint any one person as an HBOS Observer and remove such person from that position and, if desired, appoint another in his place. Any HBOS Observer so appointed shall be entitled to receive notice of and attend and speak at, but not to vote at, board meetings of the Company.
- (b) If and for so long as members of the Kaupthing Group hold A Shares representing more than five per cent. of the A Shares in issue, Kaupthing Bank hf may appoint any one person as a Kaupthing Observer and remove such person from that position and, if desired, appoint another in his place. Any Kaupthing Observer so appointed shall be entitled to receive notice of and attend and speak at, but not to vote at, board meetings of the Company.

**77. Formalities of appointment**

Every appointment or removal under articles 70 (The Board's power to appoint directors) to 76 (Appointment and removal of Observers) shall be made in writing signed by or on behalf of the relevant shareholders (as the case may be) and shall take effect on and from the date on which the note of appointment or removal is lodged at the registered office of the Company or produced at a meeting of the directors.

**78. No retirement or special notice of appointment of director required by reason of age**

- (a) 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.
- (b) 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 AND REMOVAL OF DIRECTORS**

### **79. Vacation of office of director**

The office of a director shall be vacated if:

- (a) he is removed from office in accordance with any of the provisions of these articles; or
- (b) 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
- (c) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (d) he is, or may be, suffering from mental disorder and either:
- (e) he is admitted to hospital in pursuance of an application for admission for treatment under applicable law (including Wales) the Mental Health Act 1983 or the Mental Health (Scotland) Act 1960; or
- (f) 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
- (g) he resigns his office by notice to the Company; or
- (h) he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period (provided the notice provisions set out in these articles have been complied with in respect of each such meeting) and the directors resolve that his office be vacated.

## **REMUNERATION OF DIRECTORS**

### **80. Remuneration of directors**

The directors (other than any director who for the time being holds an executive office or employment with the Company) may be paid out of the funds of the Company by way of remuneration for their services as directors such fees and on such terms as the shareholders may agree. 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.

## **DIRECTORS' EXPENSES**

### **81. Expenses**

The directors may be paid all reasonable 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' APPOINTMENTS AND INTERESTS**

### **82. Appointment of managing director**

Subject to the provisions of the Act, the directors may appoint one or more of the Executive Directors to the office of managing director or to any other executive office under the Company and may 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 Remuneration Committee 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.

### **83. Directors' interests in contracts**

- (a) 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:
  - (i) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

- (ii) 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
  - (iii) 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.
- (b) For the purposes of this article:
- (i) 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
  - (ii) 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**

##### **84. Pensions and other benefits**

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**

##### **85. Directors to regulate proceedings**

- (a) Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- (b) A director may, and the secretary at the request of a director shall, call a meeting of the directors.
- (c) Notices of meetings of the directors shall be given to all directors and to any alternate directors appointed by them.
- (d) Questions arising at a meeting shall be decided by a majority of votes. The Baugur Directors present at any meeting shall each be entitled to cast two votes and each other director shall be entitled to cast one vote. In the case of an equality of votes, the chairman shall not have a second or casting vote.

##### **86. Quorum**

- (a) The quorum for the transaction of the business of the directors shall be three directors present throughout the meeting of whom at least one is a Baugur Director (if any) appointed under article 71 (Appointment and removal of Baugur Directors) (unless otherwise agreed in writing by the Baugur Director(s) so appointed) and at least one of whom is an Investor Director (if any) appointed under article 72 (Appointment and removal of Investor Directors) or an Independent Director (if any) appointed under article 73 (Appointment and removal of Independent Director)..
- (b) 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 no more than ten 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.

##### **87. Power to act notwithstanding vacancies**

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 in accordance with article 70 (The Board's power to appoint directors) or of calling a general meeting.

**88. Chairman to preside**

Unless he is unwilling to do so, the chairman appointed pursuant to article 75 (Appointment and removal of chairman) 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.

**89. Validity of acts of directors in spite of a formal defect**

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.

**90. Written resolutions of directors**

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.

**91. Meetings by telephone or other communication device**

- (a) 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:
    - (b) to hear each of the other participating directors addressing the meeting; and
    - (c) 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.
- (d) 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, subject to the provisions of article 92 (Directors ability to vote where he is interested).
  - (e) 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.

**92. Directors ability to vote where he is interested**

Provided that he has disclosed to the directors the nature and extent of any interest of his, 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.

**93. Ability to consider appointment of two or more directors separately**

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.

**94. Determination of a director's eligibility to vote**

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 (other than in the case of the chairman) the chairman of the meeting (or, in the case of the chairman, to the longest serving member of the board other than the chairman) and his ruling in relation to any director other than himself shall be final and conclusive.

#### **SECRETARY**

##### **95. Secretary**

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**

##### **96. Minutes**

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, 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**

##### **97. Seal**

- (a) 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.
- (b) The directors shall provide for the safe custody of every seal which the Company may have.
- (c) 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.
- (d) 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.
- (e) Unless otherwise decided by the directors:
- (f) certificates for shares, debentures or other securities of the Company to which a seal is applied need not be signed; and
- (g) 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**

##### **98. Declaration of dividends by the Company**

Subject to the provisions of the Act and the other provision of these articles (including but not limited to article 113 (Subordination)), 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.

##### **99. Interim dividends**

Subject to the provisions of the Act and the other provisions of these articles (including but not limited to articles 100 (Distribution of dividends and) 113 (Subordination)), 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 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.

**100. Distribution of dividends**

- (a) Any dividend or other distribution of the Asset Sale Proceeds shall:
  - (a) only be declared, paid or made either (aa) with the prior consent of (i) the Super Majority A Holders and (ii) the Relevant B Share Consent or (ab) if the Relevant B Percentage (as defined in article 115) applicable to such dividend or other distribution would be 25; and
  - (b) be allocated among the holders of the Shares in accordance with article 114;
- (b) Any other dividend or distribution paid prior to a Sale (other than on a Realisation) shall:
  - (a) only be declared, paid or made either (aa) with the prior consent of (i) the Super Majority A Holders and (ii) the Relevant B Share Consent or (ab) if the Relevant B Percentage (as defined in article 115) applicable to such dividend or other distribution would be 25; and
  - (b) be allocated amongst the holders of the Shares such that the B Shareholders receive such percentage of such total dividend that they would have received had the dividend constituted Total Shareholder Proceeds from a Refinancing.
- (c) 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.

**101. Dividends *in specie***

A general meeting of the shareholders 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 (having regard to the provisions of article 100) and in particular (having regard to the provisions of article 100) 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.

**102. Method of payment**

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.

**103. Dividends not to bear interest**

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.

**104. Unclaimed dividends**

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**

**105. Inspection of the Company's books**

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 or as provided by the terms of any agreement between, inter alia, the

Company and a member.

## CAPITALISATION OF PROFITS

### 106. Capitalisation of profits

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.

## NOTICES

### 107. Form of notices

Any notice to be given to or by any person pursuant to these articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.

### 108. Method of giving notices

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 or by giving it using electronic communications to an address for the time being notified to the Company by the member. 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.

### 109. Where notice is deemed given

- (a) 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.
- (b) Proof that:
  - (i) an envelope containing a notice was properly addressed, prepaid and posted (by airmail or first class post, where available); or
  - (ii) an electronic communication was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators,  
  
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 or, in the case of a notice contained in an electronic communication, at the expiration of 24 hours after the time it was sent.
- (c) 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.

**110. Notice to person entitled by transmission**

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 articles 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.

**WINDING UP**

**111. Power to distribute *in specie***

Except as otherwise provided for in these articles, 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, subject to the other terms of these articles, with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

**INDEMNITY**

**112. Indemnity of officers**

Subject in each case to the provisions of and only to the extent permitted by the Statutes:

- (a) every director or other officer (excluding an auditor) of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses and other liabilities 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 including without prejudice to the foregoing against any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted or where the proceeds are withdrawn or settled on terms which do not include a finding or admission of a breach of duty by him or in connection with any application under the Statutes in which relief is granted to him by any court; and
- (b) the Company may purchase or maintain for any such director or other officer insurance against any such liability.

**RELATIONSHIP TO FINANCE DOCUMENTS/REALISATION**

**113. Subordination**

Notwithstanding any other provision of these articles, no payment to a member in respect of his shares in the Company, including without limitation any dividend, distribution in specie or reduction of share capital involving a repayment or redemption, may be made by the Company to the extent prohibited by the terms of any financing document between, amongst others, Giant Bidco Limited, and the Governor and Company of the Bank of Scotland and/or Kaupthing Bank hf, as such agreement may be amended, varied, novated, supplemented or restated from time to time ("**Finance Agreements**").

**114. Realisation**

- (a) On a Sale, a Winding-Up or a Refinancing, the shareholders shall (unless otherwise agreed by (i) the Super Majority A Holders (ii) the holders of 85% of the issued Preference Shares and (iii) the Relevant B Share Consent), pay (in the case of a Sale) the proceeds thereof (to the extent they comprise cash) and (in the case of a Winding-Up) their return on their Shares and (in the case of a Refinancing) the cash received by the shareholders (as is interpreted in accordance with paragraph (D) of the definition of Total Shareholder Proceeds), in each case after making all payments due under any Finance Agreements (as defined in article 113 above) or any other document under which secured debt is provided to the Group), into an account at a UK clearing bank nominated immediately prior to the Sale, Winding Up or Refinancing by the Co-Investor Majority (or in the case of any such proceeds or returns

which are not cash, to be held by the Company as trustee on behalf of the Shareholders entitled to such proceeds or returns as provided for in this article 114). Such proceeds or returns, whether paid into such nominated account or not, being the Total Shareholder Proceeds, shall be allocated and/or paid (as appropriate) by distributing the Total Shareholder Proceeds so as to allocate the Total Shareholder Proceeds amongst the holders of the Shares in the proportions set out in article 114(b) below.

- (b) The Total Shareholder Proceeds on (i) a Sale, a Winding-Up or (ii) Refinancing or (iii) a dividend or other distribution of the Asset Sale Proceeds, shall (whether in the form of cash or securities) be allocated as follows:

- (i) first, in paying to each of the B Shareholders:

$$\left[ \left( \frac{\text{Relevant B Percentage}}{100} * \text{Total Shareholder Proceeds} \right) * \frac{L}{100,000} \right] * \frac{N}{P}$$

where:

L= the lower of (i) 100,000 and (ii) the number of B Shares in issue at the date of the relevant Realisation;

N= the number of B Shares held by the relevant B Shareholder; and

P= the number of B Shares in issue;

in each case after deduction of (A) any amounts due by such B Shareholder under any Indemnity Deed to any other party to any such Indemnity Deed and (B) to the extent not already deducted under paragraph (A), any income tax or employees national insurance contributions deductible through the Pay As You Earn system which is or will become payable by any member of the Group in respect of any payment to such B Shareholder pursuant to this article 114(b)(i).

- (ii) secondly, in paying to the A Preference Shareholders, £1.50 per A Preference Share remaining in issue immediately prior to the relevant Realisation;
- (iii) thirdly, in paying to the holders of the B Preference Shares, the C Preference Shares and the D Preference Shares (pro-rata as if they constituted one class), £1 per Preference Share remaining in issue immediately prior to the relevant Realisation, provided always that on any Realisation other than a Sale at least one B Preference Share and one C Preference Share shall not be redeemed and on a Sale such final B Preference Share and C Preference Share shall only be redeemed when all payments due on such B Preference Share and C Preference Share under paragraph (iv) below have been paid;
- (iv) fourthly, in paying the remaining balance of the Total Shareholder Proceeds as follows:

- (a) in paying to each of the A Shareholders:

$$\left( Z * \left[ \frac{11,200,000}{13,562,869} \right] \right) * \frac{Y}{W}$$

where:

W = the number of A Shares in issue;

Y = the number of A Shares held by the relevant A Shareholder; and

Z = is the balance of the Total Shareholder Proceeds after the distribution of the amounts distributable pursuant to articles 114(b)(i) to (iii);

- (b) in paying to each of the B Preference Shareholders:

$$\left( Z * \left[ \frac{1,004,218}{13,562,869} \right] \right) * \frac{T}{V}$$

where:

T = the number of B Preference Shares held by the relevant B Preference

Shareholder;

V = the number of B Preference Shares in issue; and

Z = the balance of the Total Shareholder Proceeds after the distribution of the amounts distributable pursuant to articles 114(b)(i) to (iii); and

(c) in paying to each of the C Preference Shareholders:

$$\left( Z * \left[ \frac{1,358,649}{13,562,869} \right] \right) * \frac{R}{S}$$

where:

R = the number of C Preference Shares held by the relevant C Preference Shareholder;

S = the number of C Preference Shares in issue; and

Z = the balance of the Total Shareholder Proceeds after the distribution of the amounts distributable pursuant to articles 114(b)(i) to (iii).

(d) Immediately prior to and conditionally upon a Listing the holders of Shares shall enter into such reorganisation of the share capital of the Company as they may agree (or in default of agreement, as (i) the Super Majority A Holders (ii) the holders of 85% of the issued Preference Shares and (iii) the Relevant B Share Consent shall determine) to ensure that the Total Shareholder Proceeds are reallocated between the members in the same proportions as the preceding provisions of these articles would provide on a Winding-Up with such Total Shareholder Proceeds.

(e) In the event that the application of any provision of this article 114 cannot be agreed between the members of the Company, any such matters in dispute shall be referred to the Auditors (or if they are unable or unwilling to act, the Independent Accountants) whose costs shall be borne as he may direct and whose decision shall be final and binding on all members of the Company (save in the case of manifest error).

#### 115. Further Definitions:

For the purposes of article 114:

(a) **Relevant B Percentage** means:

(i) in the case of a Sale:

(a) if the relevant Sale is being carried out with the prior written consent of each of (aa) TBH Trading Limited (ab) BG Holding ehf, (ac) Charles Wilson and (ad) BOS or Uberior Investments plc, the Relevant B Percentage is 25;

(b) if the relevant Sale is being carried out without the consent of any of (a) TBH Trading Limited, (b) BG Holding ehf (c) Charles Wilson and (d) BOS or Uberior Investments plc, the Relevant B Percentage is:

(aa) If the Equity Value is less than £150,000,000, the Relevant B Percentage equals:

$$15 + \left( \frac{\text{thelesserof (i) } 150,000,000 \text{ and (ii) the Equity Value}}{150,000,000} \times 10 \right)$$

(bb) If the Equity Value is equal to or greater than £150,000,000, the Relevant B Percentage equals 25.

(ii) in the case of a Winding-Up or a Refinancing:

(aa) If the Equity Value is less than £150,000,000, the Relevant B Percentage equals:

$$15 + \left( \frac{\text{the lesser of (i) 150,000,000 and (ii) the Equity Value}}{150,000,000} \times 10 \right)$$

- (bb) If the Equity Value is equal to or greater than £150,000,000, the Relevant B Percentage equals 25.
- (b) **Equity Value** means as at the date of the relevant Realisation:
- (i) (5\*EBITDA); minus
  - (ii) the aggregate of:
    - (aa) the Relevant Deductible Liabilities;
    - (bb) the Relevant Add Backs;
- (c) **EBITDA** means EBITDA as defined in the Senior Agreement;
- (d) **Relevant Deductible Liabilities** means the aggregate of:
- (iii) the Senior Debt;
  - (iv) the Mezzanine Debt;
  - (v) the Relevant RCF Debt and any other secured indebtedness of the Group; and
  - (vi) the Relevant Pensions Liability;
- (e) **Relevant Add Backs** means any amount of the Senior Debt or the Mezzanine Debt (in each case as defined in the Intercreditor Agreement) or any other secured indebtedness of the Group, which has been repaid prior to the relevant Realisation by the Company or any of its subsidiaries out of any claims under any insurance policies or any litigation which do not arise in the ordinary course of trading of the Group or any other exceptional non-trading items;
- (e) **Senior Debt** means the outstanding Senior Debt (as defined in the Intercreditor Agreement) excluding any RCF Utilisation, in each case as at the date of the relevant Realisation;
- (f) **RCF Utilisation** means all amounts outstanding under any Utilisation of Facility B (as such terms are defined in the Senior Agreement) calculated as at the date of the relevant Realisation;
- (g) **Mezzanine Debt** means the outstanding Mezzanine Debt (as defined in the Intercreditor Agreement) as at date of the relevant Realisation;
- (h) **Relevant RCF Debt** means the average of the amounts drawn down under any RCF Utilisation on the five business days during the 12 months preceding the relevant Realisation, calculated by reference to the five business days during such period on which the lowest such amounts were drawn down;
- (i) **Relevant Pensions Liability** means the amount of the pensions deficit of the Group's final salary pension scheme calculated on the basis set out in Financial Reporting Standard 17 as shown by the latest audited accounts published by the Group prior to the relevant Realisation (calculated prior to any payment of the PPF Levy which is paid by the Group during the period to which such audited accounts relate).
- (j) **Intercreditor Agreement** means any intercreditor agreement entered into between (inter alia) (1) BoS and Kaupthing and (2) the Company prior to the date hereof, which is amended and restated on or about the date of adoption of these articles;
- (k) **Auditors** means the auditors from time to time of the Company;
- (l) **Independent Accountant** means such firm of chartered accountants (other than the Auditors) acting as experts and not as an arbitrator as may be agreed between the relevant parties or, in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales (or any successor body thereto) at the request of any of the relevant parties;
- (m) **PPF Levy** shall have the same meaning as in the Senior Agreement.