

5388228

**THE COMPANIES ACTS 1985 TO 1989
PRIVATE COMPANY LIMITED BY SHARES
WRITTEN RESOLUTION**

of

MSOMS LIMITED (the "Company")

(Registered in England and Wales under company number 5388288)

dated 28th March 2006

We, the undersigned, being all the members of the Company entitled to attend and vote at a general meeting of the Company, pass the following resolution as a written resolution to have effect as if passed as a special resolution at a general meeting of the Company pursuant to 381A Companies Act 1985 (as amended) and hereby consent to the matters referred to therein:-

Special Resolution

1 Adoption of New Articles

the regulations contained in the document attached hereto be and are hereby approved and adopted as the new Articles of Association of the Company in substitution for and to the exclusion of the existing Articles of Association of the Company;

2 the authorised share capital of the Company is increased to £10,500;

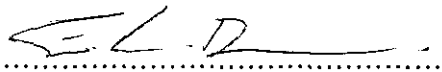
3 the authorised share capital of the Company be split into 5010 "A" ordinary shares of £1 each, 4,990 "B" ordinary shares of £1 each and 500 deferred shares of £1 each, having the rights set out in the new Articles of Association;

4 the current issued ordinary shares be redesignated as "B" ordinary shares, save for 419 ordinary shares held by Jamie MacLeod which shall be converted into deferred shares having the rights set out in the new Articles of Association;

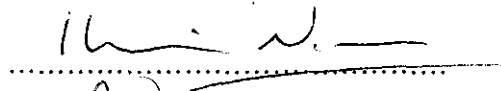
5 the allotment and issue of 419 "B"ordinary shares to Jamie MacLeod credited as partly paid; and

6 the allotment of 2004 "A" ordinary shares to InterCapital plc credited as partly paid.





Simon Brown



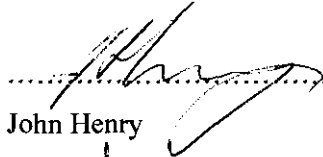
Kevin Noles



Jamie MacLeod



Henry Prentis



John Henry



Alexia Constantine



The Companies Acts 1985 to 1989

Articles of Association of MSOMS Limited

Company Limited by Shares

(Incorporated on 10 March 2005)

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(No. 5388228)

The Companies Acts 1985 to 1989

Articles of Association of MSOMS Limited

Company Limited by Shares
(Adopted by special resolution on 28 March 2006)

1. DEFINITIONS, INTERPRETATION AND TABLE A

1.1 In these Articles unless there is something in the subject or context inconsistent therewith:

"A' Director" means a director appointed by the holders of the 'A' Shares in accordance with Article 10.2;

"A' Shares" means the 'A' Shares of £1 each in the capital of the Company;

"A' Shareholder" means, in respect of any 'A' Shares, the person or persons for the time being registered as the holder(s) of all of the 'A' Shares;

"Acts" means the Companies Act 1985 and the Companies Act 1989 and (in either case) includes any statutory modification, amendment, variation or re-enactment thereof for the time being in force;

"Articles" means the articles of association of the Company for the time being in force;

"B' Director" means a director appointed by the holders of the 'B' Shares in accordance with Article 10.3;

"B' Shares" means the 'B' Shares of £1 each in the capital of the Company;

"B' Shareholder" means, in respect of any 'B' Shares, the person or persons for the time being registered as the holder(s) of all of the 'B' Shares ;

"Board" means the board of directors of the Company for the time being or, as the context may admit, any duly authorised committee thereof;

"Company" means MSOMS Limited;

"corporation" means any body corporate or association of persons whether or not a company within the meaning of the Acts;

"Deferred Shares" means the non voting and non income bearing shares of £1 each in the capital of the Company;

"Deferred Shareholder" means, in respect of any Deferred Shares, the person or persons for the time being registered as the holder(s) of all of such shares;

"dividend" includes any distribution whether in cash or in kind;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000;

"Financial Year" means a financial year for the purposes of the Companies Act 1985;

"holder" in relation to shares in the capital of the Company, means the person(s) entered in the register of members of the Company as the holder of the shares;

"Issue Price" means in respect of a share in the capital of the Company, the aggregate of the amount paid up (or credited as paid up) in respect of the nominal value thereof and any share premium thereon;

"officer" means and includes a director, manager or the secretary of the Company;

"Ordinary Shares" means the 'A' Shares and the 'B' Shares;

"Profitable" means in respect of the Company a situation where the Company's profit and loss account indicates a net profit position;

"Regulation" means a regulation in Table A;

"Retention Period" has the meaning given in Article 3;

"Share" means any share in the Company of whatever class and includes any interest in any such share;

"Shareholders" means the holders of the 'A' Shares, the holders of the 'B' Shares and the holders of the Deferred Shares together (and the expressions **"'A' Shareholder"**, **"'B' Shareholder"**, **"Deferred Shareholder"** and **"Shareholder"** shall be construed accordingly);

"Shareholders' Agreement" means a shareholders' agreement made between the Company, Intercapital plc, Jamie MacLeod, Simon Brown, Kevin Noles, Henry Prentis, Alexia Constantine and John Henry in respect of the Company; and

"Table A" means the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No.805) as amended by the Company (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No.1052).

- 1.2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meanings as in the Acts as in force on the date of adoption of these Articles.

1.3 In these Articles:

- (a) headings are included for convenience only and shall not affect the construction of these Articles;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting one gender include each gender and all genders; and
- (d) references to persons are deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations and to trusts (in each case whether having separate legal personality).

1.4 Unless otherwise specifically provided and save in the case of an electronic communication, where any notice, resolution or document is required by these Articles to be signed by any person, the reproduction of the signature of such person by means of facsimile shall suffice, provided that confirmation by first class letter is despatched by the close of business on the next following business day, in which case the effective notice, resolution or documents shall be that sent by facsimile, not the confirmatory letter.

1.5 The regulations contained in Table A shall apply to the Company save in so far as they are excluded or modified by these Articles. In particular:

- (a) Regulations 2, 24, 54, 72 to 81 (inclusive), the third and fifth sentence of Regulations 88, Regulations 89 to 91 (inclusive) and Regulations 101 and 118 and shall not apply to the Company;
- (b) Regulations 62(a) and 62(aa) relating to the depositing of proxies shall be amended by the deletion of the words "not less than 48 hours" and Regulation 62(b) relating to a poll shall be amended by the deletion of the words "not less than 24 hours";
- (c) the lien conferred by Regulation 8 of Table A shall attach also to fully paid-up shares and to all shares registered in the name of any person indebted or under liability to the Company whether he shall be the sole registered holder thereof or shall be one of two or more joint holders; and
- (d) Regulation 37 relating to requisition by members of an extraordinary general meeting shall be amended by replacing the words "eight weeks" with the words "28 days" or such earlier date as may be specified in the notice subject to obtaining any necessary consents to the meeting being held on short notice.

2. **AUTHORISED SHARE CAPITAL**

The authorised share capital of the Company at the date of the adoption of these Articles is £10,500 divided into 5010 'A' Shares of £1 each, 4990 'B' Shares of £1 each and 500 Deferred Shares of £1 each. The 'A' Shares and 'B' Shares shall be separate classes of Ordinary Shares but, save as hereinafter expressly provided or provided in any Shareholders' Agreement, shall rank *pari passu* in all respects.

3. **INCOME**

3.1 Subject to Article 3.2 below, the Shareholders shall exercise their powers in relation to the Company to procure so far as by the exercise of such power they can so procure and the Company undertakes to each of the Shareholders that (subject to any requirement of law) unless the Shareholders otherwise agree in writing:

- (a) the Company shall retain all earnings for a period of six consecutive calendar months following the month in which the Company first becomes Profitable (the "**Retention Period**"). For these purposes, the Retention Period shall exclude the month in which the Company first becomes Profitable;
 - (b) following expiry of the Retention Period insofar as the Company has profits available for distribution, all dividends in respect of the Shares shall be paid (or, in respect of final dividends, recommended) at the sole discretion of the Board;
 - (c) the method and timing of distribution of profits shall take into account the interests of the Shareholders in minimising taxation liabilities.
- 3.2 The Deferred Shares shall not entitle the holder thereof to any dividends or, save as set out in Article 4.1(d) below, any other distributions from the Company.
- 3.3 All distributions made pursuant to Article 3.1 above shall be subject to the Board determining that there are sufficient profits available for distribution after retaining such portion of these profits as it considers prudent.
- 4. **CAPITAL**
- 4.1 In the event of a winding-up of the Company or return of capital on liquidation, reduction of capital or otherwise, other than a purchase by the Company of its own Shares, the assets of the Company available for distribution to holders remaining after payment of all other debts and liabilities of the Company (and of the costs, charges and expenses of any such winding-up) shall be applied in the following manner and order of priority:
 - (a) first, in paying to the 'A' Shareholder the Issue Price of all issued 'A' Shares;
 - (b) second, in paying to Jamie MacLeod the Issue Price of all issued 'B' Shares he holds at such time;
 - (c) third, in paying to the 'B' Shareholders other than JM, the Issue Price of all issued 'B' Shares held by them;
 - (d) fourth, in paying to the Deferred Shareholders the Issue Price of all Deferred Shares held by them; and
 - (e) finally, any surplus assets shall be distributed amongst the holders of the 'A' Shares and 'B' Shares pro rata to the number of each 'A' Share and 'B' Share held.
- 4.2 For the purpose of Article 4.1, any payment to the holders of shares of a particular class shall be made in proportion to the numbers of shares of the relevant class held by each of them.

5. **VARIATION OF RIGHTS**

Whenever the share capital of the Company is divided into different classes of shares, the special rights attached to any such class may only be varied or abrogated (either whilst the Company is a going concern or during or in contemplation of a winding-up) either (a) with the consent in writing of the holders of more than three-quarters of the nominal value of the issued shares of that class; or (b) with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of that class. To every such separate general meeting all the provisions of these Articles relating to general meetings of the Company (and to the proceedings at such general meetings) shall, mutatis mutandis, apply, except that (i) the necessary quorum shall be two persons, present in person or by proxy or by duly authorised representative (if a corporation), who together hold or represent at least one-third in nominal value of the issued shares of the relevant class (unless all the shares of that class are registered in the name of a single

holder, in which case the quorum shall be that holder, his proxy or his duly authorised representative (if a corporation), but so that if, at any adjourned meeting of such holders, such a quorum is not present, then those holders who are present (in person or by proxy or by duly authorised representative (if a corporation) shall be a quorum, (ii) any holder of shares of the relevant class present in person or by proxy or by duly authorised representative (if a corporation) may demand a poll; and (iii) the holders of shares of the relevant class shall, on a poll, have one vote in respect of every share of that class held by him.

6. FURTHER ISSUES OF ORDINARY SHARES

- 6.1 Save as set out in the Shareholders' Agreement or as the majority of the holders of the 'A' Shares and the majority of the holders of the 'B' Shares shall otherwise agree in writing all new Ordinary Shares created upon any increase of Ordinary Share capital and any issue of unissued Ordinary Shares shall consist of such numbers of 'A' Shares and 'B' Shares as are necessary to maintain the current 50.1:49.9 per cent. proportions of 'A' Shares to 'B' Shares comprising the total issued share capital of the Company and currently held by the 'A' Shareholders and the 'B' Shareholders respectively.
- 6.2 Save as set out in the Shareholders' Agreement or as the majority of the holders of the 'A' Shares and the majority of the holders of the 'B' Shares shall otherwise agree in writing: (i) only the holders of the 'A' Shares in issue at the date of the adoption of these Articles (or its nominee) may subscribe for additional 'A' Shares and (ii) only the holders of the 'B' Shares in issue at the date of the adoption of these Articles may subscribe for additional 'B' Shares .
- 6.3 The pre-emption provisions of section 89(1) of the Companies Act 1985 shall not apply to the Company.

7. TRANSFERS

- 7.1 The directors shall register a transfer made pursuant to the written agreement of all the members for the time being or otherwise in accordance with the provisions of the Shareholders' Agreement.
- 7.2 Subject to the provisions of Article 7.1 the directors may in their absolute discretion and without assigning any reason therefore decline to register any transfer of any share.

8. RESOLUTIONS

Any such resolution in writing as is referred to in Regulation 53 may consist of several documents in the like form each signed by one or more of the members (or their duly authorised representatives) referred to in that Regulation.

9. APPOINTMENT, REMOVAL AND PROCEEDINGS OF DIRECTORS

- 9.1 The number of directors of the Company shall be not less than two.
- 9.2 The holders of a majority of the 'A' Shares for the time being issued shall be entitled by notice in writing signed by them and left at or sent by registered post to the registered office for the time being of the Company to appoint two directors and by like notice to remove any director so appointed and at any time and from time to time by like notice to appoint any other person to be a director in the place of the director so removed or in the place of any director vacating office in any way and originally so appointed by them. Any director so appointed shall be an 'A' Director.
- 9.3 The holders of a majority of the 'B' Shares for the time being issued shall be entitled by notice in writing signed by them and left at the registered office for the time being of the Company to appoint three directors and by like notice to remove any director so

appointed and at any time and from time to time by like notice to appoint any other person to be a director in the place of the director so removed or in the place of any director vacating office in any way and originally so appointed by them. Any director so appointed shall be a 'B' Director.

- 9.4 Any notice given pursuant to Articles 9.2 or 9.3 shall take effect immediately upon delivery to the registered office of the Company.
- 9.5 Every director appointed pursuant to this Article 9 shall hold office until he is either removed or dies or vacates office pursuant to Article 9.14 and (subject to the provisions of section 303 of the Act) neither the Company in general meeting nor the directors shall have power to fill any such vacancy but the provisions of this Article may be relaxed or varied to any extent by agreement in writing between the holders of a majority of the 'A' Shares for the time being issued and the holders of a majority of the 'B' Shares for the time being issued.
- 9.6 Any director appointed pursuant to this Article 9 shall be at liberty from time to time to make such disclosures to the shareholder (and where such shareholder is a corporation to its holding company or any of the subsidiary companies of such holding company) appointing him as to the business and affairs of the Company as he shall in his absolute discretion determine.
- 9.7 Notwithstanding any rule of law or equity to the contrary, a director of the Company who has been appointed pursuant to this Article 9 shall not be taken to be in breach of his fiduciary duty to act in the best interests of the Company by reason only that in the performance of his duties and the exercise of his powers, he has regard to the interests and acts upon the wishes of the holders of a majority of the class of members that appointed him unless no honest and reasonable director could have formed the view that in so doing, the director was also promoting the interests of the Company as a whole.
- 9.8 The holders of all the 'A' Shares and all the 'B' Shares may jointly from time to time by notice in writing signed by them and left at or sent by registered post to the registered office for the time being of the Company appoint full time employees of the Company as directors and by like notice remove any director so appointed and at any time and from time to time by like notice appoint any other person to be a director in place of the director so removed or in the place of or in addition to any director appointed under this Article 9.8. Any director appointed under this Article shall be an executive director for the purposes of Article 9.23.
- 9.9 A director need not hold any shares of the Company to qualify him as a director but he shall be entitled to receive notice of and attend at all general meetings of the Company and at all separate general meetings of the holders of any class of shares in the capital of the Company.
- 9.10 If any director shall be called upon to perform extra services or to make special exertions for any of the purposes of the Company the Company may remunerate the director so doing either by a fixed sum or by a percentage of profits or otherwise as may be determined by a resolution passed at a board meeting of the directors of the Company, and such remuneration may be either in addition to or in substitution for any other remuneration to which he may be entitled as a director.
- 9.11 The directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property and uncalled capital and to issue debentures, debenture stock and other securities as security for any debt, liability or obligation of the Company or of any third party.
- 9.12 A director entitled to vote may vote as a director in regard to any contract or arrangement in which he is interested, or upon any matter arising thereout, and if he does so vote his

vote shall be counted and he shall be reckoned in estimating a quorum when any such contract or arrangement is under consideration and Regulation 94 shall be modified accordingly.

- 9.13 The directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the Company or on his death to his widow or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
- 9.14 The office of director shall be vacated if the director:
- (a) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (b) becomes prohibited from being a director by reason of any order made under the provisions of the Company Directors Disqualification Act 1986; or
 - (c) in the opinion of all his co-directors becomes incapable by reason of mental disorder of discharging his duties as director; or
 - (d) resigns his office by notice in writing to the Company; or
 - (e) if having previously entered into an employment contract with the Company, is no longer employed by the Company; or
 - (f) is removed from office under Articles 9.2, 9.3 or 9.8.
- 9.15 Any director may by writing under his hand appoint any other person to be his alternate and every such alternate shall (subject to his giving to the Company an address within the United Kingdom at which notices may be served on him) be entitled to receive notices of all meetings of the directors and, in the absence from the board of the director appointing him, to attend and vote at meetings of the directors and to exercise all the powers, rights, duties and authorities of the director appointing him. A director may at any time revoke the appointment of an alternate appointed by him, and subject to such approval as aforesaid appoint another person in his place, and if a director shall die or cease to hold the office of director the appointment of his alternate shall thereupon cease and determine. An alternate director shall not be counted in reckoning the maximum number of directors allowed by the Articles for the time being. A director acting as alternate shall have an additional vote at meetings of directors for each director for whom he acts as alternate but he shall count as only one for the purpose of determining whether a quorum be present.
- 9.16 Every person acting as an alternate director shall be an officer of the Company, and shall alone be responsible to the Company for his own acts and defaults, and he shall not be deemed to be the agent of or for the director appointing him. The remuneration of any such alternate director shall be payable out of the remuneration payable to the director appointing him, and shall consist of such portion of the last-mentioned remuneration as shall be agreed between the alternate and the director appointing him.
- 9.17 The quorum necessary for the transaction of the business of the directors shall be two directors comprising one 'A' Director and one 'B' Director present at the commencement and throughout the whole of the meeting. A meeting of the directors at which a quorum is present shall be competent to exercise all powers and discretions for the time being exercisable by the directors. If a quorum is not present within half an hour of the time fixed for the meeting the meeting shall stand adjourned until the same day in the next week at the same time and place.

- 9.18 Any such resolution in writing as is referred to in Regulation 93 may consist of several documents in the like form each signed or approved by letter telex or cable by one or more of the directors for the time being entitled to vote at a meeting of the directors and Regulation 93 shall be modified accordingly.
- 9.19 The first chairman of the board shall be nominated by the holders of a majority of the 'A' Shares.
- 9.20 The directors may delegate any of their powers to committees upon which both the 'A' Directors and 'B' Directors shall be represented. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed by the directors. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or without exclusion of their own powers and may be revoked or altered.
- 9.21 The meetings and proceedings of any committee of the directors formed pursuant to Article 9.20 shall be governed by the provisions of these Articles regulating the meetings and proceedings of the directors, so far as the same are applicable and are not superseded by any regulations made by the directors pursuant to Article 9.20.
- 9.22 Any director or alternate director or member of a committee of the directors may participate in a meeting of the directors or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 9.23 The directors may from time to time appoint one or more of their body to hold any executive office in the management of the business of the Company including the office of chief executive or managing or joint managing or deputy or assistant managing director as the directors may decide for such fixed term or without limitation as to period and on such terms as they think fit and a director appointed to any executive office shall (without prejudice to any claim for damages for breach of any service contract between him and the Company) if he ceases to hold the office of director from any cause ipso facto and immediately cease to hold such executive office.
- 9.24 Questions arising at any meeting of directors shall be determined by a majority of votes, whether such majority shall consist of a whole or a fraction of a vote. For this purpose fractions of a vote shall be taken into account and in the case of an equality of votes the chairman of the board of directors shall not have a second or casting vote. Regulation 88 shall be modified accordingly. On each occasion of the directors exercising their votes the 'A' Directors shall have 50.1 votes and the 'B' directors shall have 49.9 votes such votes to be divided equally between such 'A' Directors and 'B' Directors respectively as are present and voting at the board meeting.
- 9.25 The following proviso shall be added to paragraph (b) of Regulation 110: "provided that the resulting shares distributed to the holders of the 'A' Shares shall be 'A' Shares and those distributed to the holders of the 'B' Shares shall be 'B' Shares and provided further that all new Ordinary Shares shall be issued in accordance with Article 8".
10. **PROCEEDINGS AT GENERAL MEETINGS**
- 10.1 No business shall be transacted at any general meeting unless a quorum is present at the commencement and throughout the whole of the meeting. Two members present (of whom one shall be or represent a holder of 'A' Shares and one shall be or represent a holder of 'B' Shares) shall be a quorum for all purposes.

- 10.2 In Regulation 41 the following words are to be added at the end: "and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting shall stand dissolved".
- 10.3 It shall not be necessary to give any notice of an adjourned meeting and Regulation 45 shall be construed accordingly.
- 10.4 A poll may be demanded by any member present in person or by proxy and Regulation 46 shall be modified accordingly.
- 10.5 Subject to Article 10.6 below, every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as otherwise provided in these Articles) have one vote for every share of which he is the holder save that any holder of Deferred Shares shall not be entitled to any votes in respect of such shares.
- 10.6 Notwithstanding (i) whether any vote at a general meeting is undertaken by way of a show of hands or by a poll and (ii) the proportions of issued 'A' and 'B' Shares at the time of such meeting, the holders or representative(s) of the holders of the 'A' Shares present at such meeting shall be entitled to 50.1 per cent. of the vote and the holders or representative(s) of the holders of the 'B' Shares present at such meeting shall be entitled to 49.9 per cent. of the vote.
- 10.7 The chairman of a general meeting shall not be entitled to a second or casting vote.

11. CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

- 11.1 Any one of the directors or the secretary for the time being of any corporation which is a member of the Company, or any other person appointed by resolution of the directors or other governing body of such corporation, may (subject to the articles of association of that corporation) act as its representative at any meeting of the Company or any class of members of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.
- 11.2 Any one of the directors or the secretary for the time being of the Company or any other person appointed by resolution of the directors or other governing body of the Company may act as its representative at any meeting of any corporation of which the Company is a member or of any class of members of such corporation and the person so authorised shall be entitled to exercise the same powers on behalf of the Company as the Company could exercise if it were an individual member of that corporation.

12. THE SEAL

- 12.1 If the Company has a seal it shall only be used with the authority of the directors or of a committee of directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or a second director. The obligation under Regulation 6 relating to the sealing of share certificates shall apply only if the Company has a seal.
- 12.2 The Company may exercise the powers conferred by section 39 of the Companies Act 1985 with regard to having an official seal for use abroad, and such powers shall be vested in the directors.

13. INDEMNITY

Subject to the provisions of the Acts, every director or other officer of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of the duties of

his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by any court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. No director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. This Article 13 shall only have effect in so far as its provisions are not avoided by section 310 of the Companies Act 1985. The Board shall have power to purchase and maintain for any director or other officer of the Company insurance against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.