

Company no. 05988581

**THE COMPANIES ACTS 1985 AND 1989**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**WRITTEN RESOLUTIONS**  
**of**  
**CASTLE TOPCO LIMITED**  
**("Company")**

WEDNESDAY



A16 \*A921BPSE\* 23/05/2007 60  
COMPANIES HOUSE

We, the undersigned, each being duly authorised signatories for and on behalf of all the members of the Company entitled to receive notice and attend and vote at a general meeting of the Company, hereby **resolve**, pursuant to section 381A of the Companies Act 1985 ("Act"), that the following resolutions be and are hereby passed as written resolutions of the Company

- 1 That each of the 2 authorised and issued ordinary shares of £1 in the capital of the Company be and are hereby subdivided into 20 ordinary shares of 10 pence each
- 2 That each of the existing 998 authorised but as yet unissued ordinary shares of £1 each in the capital of the Company be and are hereby subdivided into 9,980 ordinary shares of 10 pence each
- 3 That each of the 10,000 ordinary shares of 10 pence each in the capital of the Company referred to in resolutions 1 and 2 above be and are hereby redesignated as 10,000 A ordinary shares of 10 pence each, such shares having the rights and being subject to the restrictions as set out in the articles of association to be adopted by the Company pursuant to resolution 8 below
- 4 That the authorised share capital of the Company be increased from £1,000 to £10,100,000 by the creation of
  - 4 1 99,990,000 A ordinary shares of 10 pence each, and
  - 4 2 1,000,000 B ordinary shares of 10 pence each,such shares having the rights and being subject to the restrictions set out in the articles of association of the Company proposed to be adopted by resolution 8 below
5. That pursuant to section 80 of the Act and in substitution for all existing authorities under that section, the directors be and are generally and unconditionally authorised to exercise all powers of the Company to allot relevant securities (within the meaning of section 80 of the Act) up to a maximum amount of £10,100,000 provided that (unless previously revoked, varied or renewed) this authority shall expire on the fifth anniversary of the date of this resolution, save that the Company may make an offer or agreement before the expiry of this authority which would or might require relevant securities to be allotted after such expiry and the directors may allot relevant securities pursuant to any such offer or agreement as if the authority conferred by this resolution had not expired,
- 6 That the directors be generally empowered pursuant to section 95 of the Act to allot equity securities (within the meaning of section 94 of the Act) for cash pursuant to the authority conferred by resolution 5 above up to an aggregate nominal amount of £10,100,000 as if section 89(1) of the Act did not apply to such allotment provided that such power shall expire on the fifth anniversary of the date of this resolution, save that the Company may make an offer or agreement before such expiry which would or might require equity securities to be allotted after such expiry and the directors may allot equity securities pursuant to any such offer or agreement as if the power conferred by this resolution had not expired.

- 7 That, pursuant to section 165 of the Act, the terms of the proposed contingent purchase contract ("Contract"), a copy of which is attached to these resolutions, for the purchase by the Company in certain circumstances of the shares in the Company held by any member of the group of companies forming part of the HBOS Plc Group (as defined in the Contract) be and are hereby approved and the Company be and is hereby authorised to enter into the Contract
- 8 That the draft regulations attached and initialled by each of us on behalf of all the members of the Company for identification be adopted as the articles of association of the Company in substitution for and to the exclusion of the existing articles of association of the Company



Signed by  
duly authorised for and behalf of  
Uberior Ventures Limited

7 March 2007.  
Dated



Signed by Paul Davidson  
duly authorised for and behalf of  
Pacific Shelf 1410 Limited

7 March 2007.  
Dated

Company number: 5988581

THE COMPANIES ACT 1985  
A PRIVATE COMPANY LIMITED BY SHARES  
NEW  
ARTICLES OF ASSOCIATION  
OF  
CASTLE TOPCO LIMITED (the "Company")

**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) Regulation 1985, as amended, shall apply to the Company

**2. Interpretation**

2.1 In these articles unless the contrary intention appears

"**A Ordinary Shares**" means the A Ordinary Shares of £0.10 in the capital of the Company, having the rights and being subject to the restrictions set out in these articles,

"**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,

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

"**B Ordinary Shares**" means the B Ordinary Shares of £0.10 in the capital of the Company, having the rights and being subject to the restrictions set out in these articles,

"**Board**" means the board of directors of the Company,

"**BoS**" means The Governor and Company of the Bank of Scotland;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England and Wales,

"**BVCA**" means the British Venture Capital Association,

"**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,

"**Communication**" has the same meaning as in the Electronic Communications Act 2000,

"**Change of Control**" means the acquisition whether by disposal, transfer, purchase, subscription, renunciation or otherwise by any person who is not a shareholder of the Company on the date of adoption of these Articles and who is not a Permitted Transferee of a shareholder ("**Third Party Purchaser**") of any interest in any Shares if, upon completion of that acquisition, the Third Party Purchaser, together with persons acting in concert or connected with him, would hold Shares carrying (or which may at the option of the holder carry) the right to exercise more than 50% of the total number of votes which may be cast on a poll at general meetings of the Company's shareholders on all or substantially all matters

"**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 any of those holding companies,

**"Disposal"** means the disposal, transfer, purchase, assignment or otherwise of all or effectively all of the business, undertaking and assets of the Company whether through a single transaction or a series of transactions,

**"Drag Along Notice"** has the meaning ascribed to it in article 29,

**"Electronic Communication"** has the same meaning as in the Electronic Communications Act 2000,

**"Employees"** means employees, secondees, consultants, contractors and directors (other than the Uberior Directors or the West Coast Directors) and the terms **"Employed"** and **"Employment"** shall be construed accordingly,

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

**"Executed"** includes any mode of execution,

**"EVCA"** means the European Private Equity and Venture Capital Association,

**"Exit Events"** means a Disposal, Sale, or Listing,

**"Fair Price"** means

- (a) such price as may be agreed between the transferor and the Remuneration Committee, or
- (b) failing agreement pursuant to (a) above, 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 Uberior Directors and West Coast Directors (acting unanimously)(or, if there are none, a majority of the non-executive directors) 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
  - (i) to have regard to the rights and restrictions attached to such Shares in respect of income and capital, but to disregard any other special rights or restrictions attached to such Shares,
  - (ii) to disregard whether such Shares represent a minority or a majority interest,
  - (iii) 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
  - (iv) if the Company is then carrying on business as a going concern, to assume that it will continue to do so,

**"Facilities Agreements"** means each of the Senior Facilities Agreement and the Mezzanine Facility Agreement,

**"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 the future be vested in any person other than the person establishing the trust and his Relations,

**"Finance Agreements"** means the Facilities Agreements and all Finance Documents (as defined in the Facilities Agreements),

**"Financial Services Authority"** means the Financial Services Authority of the UK in its capacity as the competent authority for the purposes of Part VI of the Financial Services and Markets Act 2000 (as amended),

**"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 and each of 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 70,

**"HBOS plc"** means HBOS plc (registered in Scotland with company number SC218813),

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

**"Independent Director"** means the director of the Company appointed under article 69 (or his alternate),

**"Investors"** means each of BoS, Uberior and West Coast,

**"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 as amended),

**"Loan Notes"** means the £230 000,000 Castle Midco Limited Series A Loan Notes 2014 to be constituted by the Loan Note Instrument,

**"Loan Note Instrument"** means the loan note instrument dated on or around the date of adoption of these Articles constituting £230,000,000 Castle Midco Limited Series A Loan Notes 2014,

**"Majority Ordinary Holders"** means the holders of more than 50% of the A Ordinary Shares in issue,

**"Mezzanine Facility Agreement"** means the mezzanine facility agreement dated on or around the date of adoption of these articles and made between the Parent (1), the Intermediate Parent (2), the Company (3), the Original Guarantors (4), BoS as the Arranger (5), the Original Lenders (6), the LNG Bank (7), the Agent (8) and the Security Agent (9) (as each such term is defined therein),

**"Office"** means the registered office of the Company,

**"Ordinary Shares"** means the A ordinary shares of £0 10 each in the capital of the Company and the B ordinary shares of £0 10 each in the capital of the Company, and

**"Ordinary Shareholder"** shall be construed accordingly,

**"Paid Up"** includes credited as paid up,

**"Permitted Syndicatee"** means any of

- (a) any member from time to time of the British Venture Capital Association or the European Venture Capital Association (or a company in which such firm or fund holds a majority of the voting shares),
- (b) a company resident in the United Kingdom,
- (c) a partnership, each member of which is a company resident in the United Kingdom,
- (d) a company not resident in the United Kingdom, but which non-resident company is entitled to the payment of interest (without deduction) and brings it into account in computing its profits chargeable to the United Kingdom corporation tax, and

- (e) any bank, building society, insurance company or industrial provident or friendly society or any subsidiary undertaking of any of the foregoing and any co-investment scheme in relation to any of the foregoing,

**"Permitted Transferee"** in relation to a person means any other person to whom that first person may transfer Shares pursuant to articles 19.1 to 19.8 (inclusive) and article 19.11 of the Articles.

**"PIK Notes"** means the Castle Midco Series A PIK Notes 2014 to be constituted by the PIK Note Instrument,

**"PIK Note Instrument"** means the instrument dated on or around the date of adoption of these Articles constituting the Castle Midco Series A PIK Notes 2014,

**"Relation"** in relation to an individual means his spouse, child or remoter issue,

**"Relevant Agreement"** means an agreement made between the Company and the Investors in relation to, inter alia, the operation of the Company and if more than one agreement, the first in time shall have priority,

**"Remuneration Committee"** means the remuneration committee of the Board,

**"Sale"** means the disposal, transfer, purchase, subscription or renunciation of any part of the share capital of the Company such that it gives rise to a Change of Control, whether through a single transaction or a series of transactions and for the purposes of this definition "disposal" shall mean (1) a sale, transfer, assignment or other disposition whereby a person ceases to (i) be the absolute beneficial owner of the share in question or (ii) hold the voting rights attached thereto, or (2) an agreement to enter into such disposal,

**"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 Facilities Agreement"** means the senior facilities agreement dated on or around the date of adoption of these articles and made between the Parent (1), the Intermediate Parent (2), the Company (3), the Original Borrowers (4), the Original Guarantors (5), BoS as the Arranger (6), the Original Lenders (7), the Agent (8), the LNG Bank (9), BoS as an Issuing Bank (10), the Facility D Agent (11) and the Security Agent (12) (as each such term is defined therein),

**"Shares"** means the Ordinary Shares and **"Share"** shall be construed accordingly,

**"Specified Price"** has the meaning ascribed to it in article 27,

**"Special Dividend"** shall have the meaning set out in article 13.1.1

**"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 Ordinary Holders"** means the holders of more than 85% of the A Ordinary Shares in issue,

**"Super Majority Reserved Matters"** means any of the matters set out in schedule 4 part 1 of the Subscription and Shareholders Agreement between the Company, Uberior and West Coast dated on or around the date of adoption of these Articles,

**"TB Hunter"** means Thomas Blane Hunter, c/o Marathon House, Olympic Business Park, Drybridge Road, Donald, Ayrshire, KA2 9AE,

**"Transfer Notice"** has the meaning ascribed to it in article 27,

**"Uberior"** means Uberior Ventures Limited, a company registered in Scotland under company number SC235067,

**"Uberior Consent"** means the consent or approval of one of the Uberior 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 Uberior Director, given in writing or given at a meeting of the Board (or of a committee of the Board) and duly minuted and in each case specifically referred to as representing Uberior Consent (so that a Uberior 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),

**"Uberior Directors"** means those directors of the Company appointed under article 67 (or their respective alternates),

**"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,

**"West Coast"** means Pacific Shelf 1410 Limited, a company incorporated in Scotland with registered number SC314564,

**"West Coast Group"** means West Coast and its Permitted Transferees, and

**"West Coast Directors"** means those directors of the Company appointed under article 68 (or their respective alternates),

2 2 Unless the context otherwise requires

2 2 1 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 are adopted,

2 2 2 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),

2 2 3 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 are adopted)

2 3 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 £10,100,000 divided into 100,000,000 A Ordinary Shares of £0 10 each and 1,000,000 B Ordinary Shares of £0 10 each

### **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 107, 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**

9.1 The Company may by ordinary resolution

9.1.1 increase its share capital by new shares of such amount as the resolution prescribes,

9.1.2 consolidate and divide all or any of its share capital into shares of larger amount than its existing shares,

9.1.3 subject to the provisions of the Act, sub-divide its shares, or any of them, into shares of a 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

9.1.4 cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.

9.2 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 to article 107, 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**

12.1 Whenever the capital of the Company is divided into different classes of shares, all or any of the rights for the time being attached to any class of shares in issue may from time to time (whether or not the Company is being wound up) be varied with the consent in writing of the holders of three-fourths in nominal value of the issued



shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of those shares

12.2 All the provisions of these Articles relating to general meetings of the Company or to the proceedings at general meetings shall apply, *mutatis mutandis*, to every such separate general meeting, except that

12.2.1 the necessary quorum at any such meeting (other than an adjourned meeting) shall be two persons holding or representing by proxy at least one-third in nominal amount of the issued shares of the class,

12.2.2 at an adjourned meeting the necessary quorum shall be one person holding shares of the class or his proxy,

12.2.3 every holder of shares of the class shall, on a poll, have one vote in respect of every share of the class held by him, and

12.2.4 a poll may be demanded by any holder of shares of the class whether present in person or by proxy

12.3 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

12.3.1 the creation or issue of further shares ranking *pari passu* with them, or

12.3.2 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

### INCOME, CAPITAL AND VOTING RIGHTS

## 13.

### 13.1 Dividend

13.1.1 On the thirteenth day after the date of adoption of these Articles, the Company will automatically declare, without further resolution or decision of the Board, and pay in cash (subject to the Company being able to lawfully pay the same) a dividend to the holders of A Ordinary Shares, in proportion to the number of A Ordinary Shares held by them, of 13 pence per share, being in aggregate sum of £13,000,000 ("**Special Dividend**")

13.1.2 If and to the extent that the Company (for whatever reason) cannot pay the Special Dividend on the due date, such amounts as remain due and payable will become a debt due from the Company to the member or members to whom it is payable and the Company will pay on account of any outstanding balance such amount as can lawfully be paid by it from time to time and in priority to any other distribution or dividend by the Company

13.1.3 Subject to article 107 and the consent of the Super Majority Holders and provided that the such amount of the Special Dividend as is due and payable has been paid in full, the Ordinary Shareholders shall be entitled to be paid in proportion to their holdings of Ordinary Shares in respect of each financial year of the Company out of profits available for distribution and from time to time resolved to be distributed, such dividend as the Board shall recommend and shall be declared by the Company in general meeting

### 13.2 Capital

On a return of capital whether on liquidation or capital reduction or otherwise (other than a redemption or purchase of shares in accordance with these Articles), the surplus assets of the Company remaining after the payment of its liabilities shall be applied first in paying any and all arrears or accruals of dividends declared but not

paid (including but not limited to the Special Dividend) and thereafter pro rata amongst the holders of the Ordinary Shares

**13.3 Voting**

The voting rights of the Ordinary Shares are as set out in article 52

**13.4 Transfer**

The Ordinary Shares shall be transferable in accordance with the provisions of these Articles

**TRANSMISSION OF SHARES**

**14. 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

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

15 1 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

15 2 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

15 3 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

**16. 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**

**17. Refusal to register a transfer**

17 1 The directors shall refuse to register a proposed transfer not made under or permitted by these Articles

17 2 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

17 2 1 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,

17 2 2 it is in respect of only one class of shares, and

17 2 3 it is in favour of not more than four transferees

17 3 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

**18. Other general transfer provisions**

- 18 1 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
- 18 2 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
- 18 3 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
- 18 4 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**

**19. Permitted-transfers of Shares**

The following transfers of Shares may be made free of the restrictions in article 27 (Pre-emption procedure)

- 19 1 a transfer by an individual (other than a nominee or a trustee of a Family Trust) to a Relation or to the trustees of a Family Trust established by that individual, or
- 19 2 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 settler, or
- 19 3 a transfer of Shares to a person who is to hold those Shares as the nominee of the transferor, or
- 19 4 a transfer of Shares by a nominee to the beneficial owner of those Shares or to another nominee of the same beneficial owner, or
- 19 5 a transfer of Shares by a body corporate (other than a nominee or a trustee of a Family Trust) to another member of its Corporate Group, or
- 19 6 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
  - 19 6 1 any person to hold on behalf of that same investment fund (whether as nominee, trustee, custodian, general partner or otherwise), or
  - 19 6 2 to any person to be held on behalf of, any other investment fund which has the same manager or investment adviser, or
- 19 7 subject to any restrictions imposed by any Relevant Agreement, a transfer of Shares by a member of the HBOS Group or the West Coast Group to a Permitted Syndicatee, or
- 19 8 a transfer of Shares by any member of the West Coast Group to
  - 19 8 1 the Hunter Foundation (a Scottish Charity with registered number SC27532), or
  - 19 8 2 any partnership in which TB Hunter owns not less than a 75% economic and voting interest (a TBH Partnership), or
  - 19 8 3 any company controlled by TB Hunter or a TBH Partnership at the relevant time, or
  - 19 8 4 any trust of which TB Hunter or any person referred to in article 19 8 5 is a beneficiary or
  - 19 8 5 any parent, spouse or life partner (or widow) or child or grandchild of TB Hunter. or

- 19 9 a transfer of Shares made following the issue of a Drag Along Notice or pursuant to a Tag Along Offer, or
- 19 10 a compulsory transfer of Shares made in accordance with articles 20 to 22, or
- 19 11 any other transfer of Shares made with the consent of the Super Majority Ordinary Holders

## **COMPULSORY TRANSFERS: GENERAL PROVISIONS**

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

If any Family Trust whose trustees hold Shares ceases to be a Family Trust, the trustees shall without delay notify the Company that such event has occurred and, unless the Majority Ordinary Holders otherwise resolve, they shall be deemed to have served the Company with a Transfer Notice in respect of those Shares. If any party to which Shares have been transferred pursuant to article 19 ceases to be a party to whom such 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 Majority Ordinary Holders otherwise resolve, it shall be deemed to have served the Company with a Transfer Notice in respect of those Shares.

### **21. Cessation of Group/Change in control of Shareholder**

21 1 If a body corporate to which Shares have been transferred under article 19 5 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 Majority Ordinary Holders otherwise resolve, 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.

21 2 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 Shares, or of any holding company of such a body corporate (excluding, in each case, Uberior or any other member of the HBOS Group), then the person holding those Shares shall notify the Company that such event has occurred and, unless the Majority Ordinary Holders otherwise resolve, it shall be deemed to have served the Company with a Transfer Notice in respect of those Shares. 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 any recognised investment exchange (as defined in the Financial Services and Markets Act 2000 as amended).

### **22. 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 Majority Ordinary Holders resolve otherwise, be deemed immediately before the attempt to have served the Company with a Transfer Notice in respect of it.

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

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

- 23 1 the provisions of article 27 (other than articles 27 6 and 27 7) shall apply to the relevant Shares and any other Transfer Notice previously issued in respect of the Shares in question shall immediately be cancelled,
- 23 2 the Specified Price shall be the Fair Price as at the date on which the Transfer Notice is deemed to have been served on the Company, and
- 23 3 the Company shall give notice under article 27 2 as soon as the Specified Price is ascertained

**24. 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 shall be made on that basis

**25. Delegation of authority to sell**

As security for his obligations under these Articles, each holder of Shares hereby irrevocably appoints, jointly and severally, the Company and such person as may be nominated for the purpose by the Majority Ordinary Holders or the Drag Along Sellers (as defined in article 29) 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

25 1 pursuant to article 27 5 where those Shares are Offered Shares and have been allocated to Purchasers pursuant to article 27 4, or

25 2 following the issue to him of a Drag Along Notice

**26. Basis of Valuers' engagement**

Where Valuers are to determine the Fair Price under these Articles, their charges shall be borne as to 50% by the Company and as to 50% 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**

**27. Pre-emption procedure**

27 1 Except as otherwise provided in article 19, no person shall be entitled to transfer any of his Ordinary Shares without the Ordinary 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 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**")

27 2 The Transfer Notice shall specify the proposed transferee(s) ("**Proposed Transferee(s)**"), the Shares offered ("**Offered Shares**") and the price at which they are offered ("**Specified Price**") The Transfer Notice shall constitute the Company as the agent for the sale of the Offered Shares to the other holders of Ordinary Shares at the Specified Price. The Transfer Notice (other than a deemed 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, otherwise decides

27 3 On receipt by the Company of the Transfer Notice the Company shall as soon as practicable give notice to all the holders of Ordinary Shares (the "**Recipients**") of the identity of the Proposed Transferees, the number and description of the Offered Shares and the Specified Price. The notice shall invite each of the Recipients to state in writing to the Company within 14 days whether he is willing to purchase any, and if so what maximum number, of the Offered Shares. The Company shall at the same time give a copy of the notice to the holder of the Offered Shares. A person who expresses a willingness to purchase Offered Shares is referred to below as a Purchaser

27 4 On the expiration of the 14 day period the Company shall allocate the Offered Shares to or amongst the Purchasers and such allocation shall be made so far as practicable as follows

27 4 1 Offered Shares shall be allocated firstly to Purchasers who hold Shares of the same class as the Offered Shares (and in the case of competition shall be allocated amongst such Purchasers pro rata to the number of Shares of the same class as the Offered Shares held by them),

- 27 4 2 to the extent that any Offered Shares remain unallocated after satisfaction of the requests of the Purchasers who are holders of Shares of the same class as the Offered Shares, those remaining Offered Shares shall be allocated to any other Purchasers (and in the case of competition shall be allocated amongst those Purchasers pro rata to the number of Ordinary Shares in the Company held by them), and
- 27 4 3 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
- 27 5 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
- 27 6 If following the expiry of the 14 day period referred to in paragraph 27 4 above any of the Offered Shares have not been allocated under that paragraph, the proposing transferor may (subject to paragraph 27 7 below and the provisions of article 28) 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
- 27 6 1 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,
- 27 6 2 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
- 27 7 If any corporate shareholder ("**Objecting Shareholder**") who, together with its Permitted Transferees, holds more than 5% of the A Ordinary 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 27 4 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 Shares of the Objecting Shareholder (and each member of its Corporate Group) at the Fair Price of such Shares. 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, a bank or other financial institution regulated by the Financial Services Authority

#### **TAG ALONG**

#### **28. Tag Along Rights**

No person shall transfer any Shares if that transfer would result in a person other than (a) Uberior and its Permitted Transferees or (b) West Coast and its Permitted Transferees, obtaining or increasing a Controlling Interest (the "**Proposed Transfer**") unless

- 28 1 the Proposed Transfer is made following the issue of a Drag Along Notice, or

28 2 an offer (a "**Tag Along Offer**") has been made to all the other holders of A Ordinary Shares to acquire

28 2 1 all of their Shares and on terms no less favourable than those applying to the Proposed Transfer, and

28 2 2 the Article 28 Percentage of the aggregate nominal value of any PIK Notes and Loan Notes which they hold, at par value,

which offer

28 2 3 is expressed to be open for acceptance for at least 21 days,

28 2 4 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 Shares on more favourable terms, and

28 2 5 the transfer requiring such Tag Along Offer to be made shall not be registered unless the Tag Along Offer has been made and 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, Loan Notes and PIK Notes,

28 3 For the purposes of this article

28 3 1 a "**Controlling Interest**" in relation to a person means the ownership by that person and his connected persons of Shares carrying (or which may at the option of the holder carry) the right to exercise more than 50% of the total number of votes which may be cast on a poll at general meetings of the Company's shareholders on all, or substantially all, matters, and

28 3 2 "**Article 28 Percentage**" means Z% where

Z =  $N/P \times 100$ ,

N = the nominal amount of the Loan Notes and (if any) PIK Notes (in aggregate) being transferred by the transferor under the Proposed Transfer to the transferee under such transfer (or any connected persons of such transferee), and

P = the nominal amount of the Loan Notes and (if any) PIK Notes (in aggregate) held by the transferor pursuant to the Proposed Transfer,

#### **DRAG ALONG**

#### **29. Drag Along Rights**

29 1 If the holders of more than 50% of the A Ordinary Shares excluding any Shares held by the Transferee ("**Drag Along Sellers**") propose to transfer all of their Shares to any person who is a bona fide third party ("**Transferee**"), all the other holders of Ordinary Shares (including any persons who become shareholders upon exercise of any rights of subscription or conversion) (the "**Compulsory Sellers**") shall, subject to paragraph 29 2 below, if so required by the Drag Along Sellers by notice given to the Compulsory Sellers at any time before the proposed transfer or within six weeks after the proposed transfer ("**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 in the Drag Along Notice) all of their Shares to the Transferee on terms no less favourable than those applying to the transfer by any of the Drag Along Sellers

provided that if the terms applying to the transfer by the Drag Along Sellers provide for the payment or reimbursement by the Transferee or some other person of the out-of-pocket costs and expenses of the Drag Along Sellers incurred in connection with the transfer, that term shall be disregarded in establishing whether the terms applying to the transfer by the Compulsory Sellers are less favourable than those applying to the transfer by the Drag Along Sellers

29 2 A Compulsory Seller shall not be required to transfer their Shares to the Transferee pursuant to a Drag Along Notice

29 2 1 if

29 2 1 1 the total value of the consideration offered by the Transferee for the Shares held by the Compulsory Seller is less than the total Subscription Price of those Shares, or

29 2 1 2 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

(a) the Official List of the London Stock Exchange, or

(b) the Frankfurt Stock Exchange, or

(c) the New York Stock Exchange, or

(d) the Paris Stock Exchange, and

29 2 2 unless

29 2 2 1 the Transferee has also offered in the Drag Along Notice to purchase the Loan Notes and the PIK Notes held by the Drag Along Sellers in each case at their par value (including all accrued interest) ("LN Offer"), such offer to be open for acceptance for at least 10 Business Days, and

29 2 2 2 any transfer of the Shares pursuant to a Drag Along Notice is completed simultaneously with the transfer of any Loan Notes and/or PIK Notes pursuant to any acceptance of the LN Offer

## SHARE CERTIFICATES

### 30. Issue of share certificates

30 1 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

30 2 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

30 3 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



**31. 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**

**32. Lien on partly paid shares**

32 1 The Company shall have a first and paramount lien on every share (not being a fully paid share) for all monies (whether presently payable or not) payable at a fixed time or called in respect of that share

32 2 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

**33. Enforcement of lien**

33 1 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 14 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

33 2 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

33 3 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 monies 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**

**34. Calls**

34 1 Subject to the terms of allotment, the directors may make calls upon the members in respect of any monies unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least 14 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

34 2 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

34 3 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed

34 4 The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it

**35. 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

**36. 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 instrument 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

**37. 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

**38. 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 14 Clear Days' notice requiring payment of the amount unpaid together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with, the shares in respect of which the call was made will be liable to be forfeited

**39. 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 monies payable in respect of the forfeited shares and not paid before the forfeiture

**40. Disposal of forfeited shares**

40 1 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

40 2 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

**41. 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 monies 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 monies 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**

**42. Extraordinary general meetings**

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

**43. Convening of general meetings**

- 43 1 The directors 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
- 43 2 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

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

- 44 1 A general meeting or a meeting of any class of members of the Company may consist of a conference between members some or all of whom are in different places provided that each member who participates is able
- 44 1 1 to hear each of the other participating members addressing the meeting, and
- 44 1 2 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
- 44 2 A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of members required to form a quorum
- 44 3 A meeting held in this way is deemed to take place at the place where the largest group of participating members is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates
- 44 4 A resolution put to the vote of a meeting shall be decided by each member indicating to the chairman (in such manner as the chairman may direct) whether the member votes in favour of or against the resolution or abstains
- 44 5 References in this article to members shall include their duly appointed proxies and, in the case of corporate members, their duly authorised representatives

**45. Length and form of notice**

- 45 1 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 21 Clear Days' notice. All other extraordinary general meetings shall be called by at least 14 Clear Days' notice but a general meeting may be called by shorter notice if it is so agreed
- 45 1 1 in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting, and
- 45 1 2 in the case of any other meeting by a majority in number of the members having a right to attend and vote being a majority together holding not less than 95%, in nominal value of the shares giving that right
- 45 2 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
- 45 3 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 the auditors

**46. Quorum**

- 46 1 No business shall be transacted at any meeting or any adjourned meeting unless a quorum is present

- 46 2 Two members, of which one shall be a holder of A Ordinary Shares, 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, shall be a quorum
- 46 3 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

**47. Chairman to preside**

- 47 1 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
- 47 2 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

**48. 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

**49. Adjournment**

- 49 1 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
- 49 2 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

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

- 50 1 Subject to article 44, 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
- 50 1 1 by the chairman, or
- 50 1 2 by at least two members having the right to vote at the meeting, or
- 50 1 3 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
- 50 1 4 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
- 50 2 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

- 50 3 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
- 50 4 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need to 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
- 50 5 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
- 50 6 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
- 50 7 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**

### **51. 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

### **52. Voting rights**

- 52 1 Subject to any rights or restrictions attached to any shares, on a show of hands every holder of Ordinary Shares 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 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 holder of Ordinary Shares shall have one vote for every share of which he is the holder
- 52 2 Any Super Majority Reserved Matter shall not be approved by the shareholders of the Company, without the consent of the Super Majority Ordinary Holders. To the extent that any Super Majority Reserved Matter requires approval of the Company by way of an extraordinary or special resolution, the Super Majority Ordinary Holders shall be entitled to cast such votes at a general meeting of the Company as would enable them to pass such a resolution with the requisite majority

### **53. 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

**54. 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 59 | 1 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.

**55. 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 monies presently payable by him in respect of that share have been paid.

**56. 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.

**57. Proxies**

57.1 On a poll votes may be given either personally or by proxy.

57.2 A member may appoint more than one proxy to attend on the same occasion.

**58. Appointment of proxies**

58.1 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/own 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 [ ], 200[ ] "

58.2 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 [                      ] "

**59. 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

59 1     in the case of an instrument in writing

59 1 1     be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or

59 1 2     be deposited at the place where the meeting or adjourned meeting is to be held at any time before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or

59 2     in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving communications

59 2 1     in the notice convening the meeting, or

59 2 2     in any instrument of proxy sent out by the Company in relation to the meeting, or

59 2 3     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

59 3     in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as specified in 59 1 1 or 59 1 2 above after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll, or

59 4     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

**60. 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**

**61. Number of directors**

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

## **ALTERNATE DIRECTORS**

### **62. Alternate directors**

- 62 1 A Superior Director or a West Coast Director may appoint any person and any other director may appoint
- 62 1 1 any other director, or
- 62 1 2 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
- 62 2 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
- 62 3 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 so a director, but he shall count as only one for the purpose of determining whether a quorum is present
- 62 4 Any person appointed as an alternate director shall vacate his office as an alternate director if the director by whom he has been appointed ceases to be a director or removes him or on the beginning of any event which, if he were a director, causes or would cause him to vacate that office
- 62 5 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
- 62 6 An alternate director shall be responsible for his acts and defaults and shall not be deemed to be the agent of the director appointing him

## **POWERS OF DIRECTORS**

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

- 63 1 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
- 63 2 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

### **64. 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**

### **65. Power to delegate to a committee**

- 65 1 Subject to the terms of any Relevant Agreement, the directors may delegate any of their powers to any committee consisting of one or more directors They may so 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
- 65 2 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



- 65 3 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**

##### **66. The Board's power to appoint directors**

Subject to article 61 and allowing for appointments to be made under articles 67 to 68, 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 Unless and until otherwise determined by ordinary resolution of the Company, the number of directors of the Company shall not exceed eight

##### **67. Appointment and removal of Uberior Directors**

- 67 1 If and for so long as any members of the HBOS Group hold any A Ordinary Shares, Uberior may appoint up to any two persons in aggregate as directors 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 Uberior Director
- 67 2 If Uberior ceases to be entitled to appoint Uberior Directors pursuant to article 67 1 above, Uberior shall procure that any person it has previously appointed as a Uberior Director pursuant to the relevant article shall resign as a director of the Company and confirm that he has no claim against the Company
- 67 3 Subject to section 303 of the Act, on any resolution to remove a Uberior Director, the A Ordinary Shares held by or on behalf of Uberior will together carry one vote in excess of fifty per cent of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such Uberior Director is removed pursuant to section 303 of the Act or otherwise, Uberior may reappoint him or any other person as an Uberior Director

##### **68. Appointment and removal of West Coast Directors**

- 68 1 If and for so long as any members of the West Coast Group hold any A Ordinary Shares, West Coast may appoint up to two persons in aggregate as directors 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 West Coast Director
- 68 2 If West Coast ceases to be entitled to appoint West Coast Directors pursuant to article 68 1, West Coast shall procure that any person it has previously appointed as a West Coast Director pursuant to this article 68 shall resign as a director of the Company and confirm that he has no claim against the Company
- 68 3 Subject to section 303 of the Act, on any resolution to remove a West Coast Director, the A Ordinary Shares held by or on behalf of West Coast will together carry one vote in excess of fifty per cent of all the other votes exercisable at the general meeting at which such resolution is to be proposed, and if any such West Coast Director is removed pursuant to section 303 of the Act or otherwise, West Coast may reappoint him or any other person as a West Coast Director

##### **69. Appointment and removal of chairman**

In addition to its rights under Articles 67 and 68, Uberior (for so long as any member of the HBOS Group holds any A Ordinary Shares) and West Coast (for so long as any member of the West Coast Group holds any A Ordinary Shares) may (acting unanimously) appoint a further person as a director of the Company and to hold office as Chairman of the Board and remove from office any such director and if desired, appoint another in his place Any director so appointed pursuant to this Article 69 shall be an Independent Director

##### **70. Appointment and removal of HBOS Observer**

If and for so long as members of the HBOS Group hold any Ordinary Shares, Uberior or its Permitted Transferee 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

**71. Formalities of appointment**

Every appointment or removal under articles 66 to 70 shall be made in writing signed by or on behalf of or 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

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

72 1 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

72 2 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**

**73. Vacation of office of director**

The office of a director shall be vacated if

73 1 he is removed from office in accordance with any of the provisions of these Articles, or

73 2 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

73 3 he becomes bankrupt or makes any arrangement or composition with his creditors generally, or

73 4 he is, or may be, suffering from mental disorder and either

73 4 1 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

73 4 2 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

73 5 he resigns his office by notice to the Company, or

73 6 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**

**74. Remuneration of directors**

Any directors appointed pursuant to Articles 67 or 68 (other than any director who for the time being holds an executive office or employment with the Company) shall not be entitled to receive any fees or other payment by way of remuneration for their services as directors

**DIRECTORS' EXPENSES**

**75. Expenses**

75 1 An Independent Director 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

75 2 Any directors appointed pursuant to Articles 67 or 68 shall not be paid for any expenses incurred by them in connection with their attendance at meetings of the

directors or committees of the 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**

**76. Appointment of managing director**

Subject to the provisions of the Act, the directors may appoint one or more of the 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, subject to the terms of any Relevant Agreement, be made upon such terms as the Board 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.

**77. Directors' interests in contracts**

77 1 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

77 1 1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested,

77 1 2 may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested, and

77 1 3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit

77 2 For the purposes of this article

77 2 1 a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified, and

77 2 2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge, shall not be treated as an interest of his

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

**78. 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 (other than any director appointed pursuant to Articles 67 or 68) 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

### 79. Directors to regulate proceedings

- 79 1 Subject to the provisions of these Articles, the directors may regulate their proceedings as they think fit
- 79 2 A director may, and the secretary at the request of a director shall, call a meeting of the directors
- 79 3 Notices of meetings of the directors shall be given to all directors and to any alternate directors appointed by them
- 79 4 Questions arising at a meeting shall be decided by a majority of votes
- 79 5 In the case of an equality of votes, the chairman shall not have a second or casting vote

### 80. Quorum

- 80 1 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 Uberior Director (if any) appointed under article 67 (unless otherwise agreed in writing by the Uberior Director(s) so appointed) and at least one of whom is a West Coast Director (if any) appointed under article 68 (unless otherwise agreed in writing by the West Coast Director(s) so appointed)
- 80 2 If a quorum is not present at the time for which the meeting was called or ceases to be present thereafter, the meeting (the first meeting) shall be adjourned to a day 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

### 81. 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 66 or of calling a general meeting

### 82. Chairman to preside

Unless he is unwilling to do so, the chairman appointed pursuant to article 69 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

### 83. Validity of acts of directors in spite of a form 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

### 84. 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 so 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

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

85 1 A meeting of the directors may consist of a conference between directors some or all of whom are in different places, provided that each director who participates is able

85 1 1 to hear each of the other participating directors addressing the meeting, and

85 1 2 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

85 2 A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of directors required to form a quorum, subject to the provisions of article 86

85 3 A meeting held in this way is deemed to take place at the place where the largest group of participating directors is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates

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

Provided that he has disclosed to the directors the nature and extent of any material interest of his, a director may vote as a director on 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

**87. 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

**88. 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**

**89. 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**

**90. Minutes**

The directors shall cause minutes to be made in books kept for the purpose

90 1 of all appointments of officers made by the directors, and

90 2 of all proceedings at general 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

### 91. Seal

- 91 1 The Company may exercise the powers conferred by the Statutes with regard to having official seals and those powers shall be vested in the directors
- 91 2 The directors shall provide for the safe custody of every seal which the Company may have
- 91 3 A seal shall be used only by the authority of the directors or a duly authorised committee but that authority may consist of an instruction or approval given by letter, facsimile, telegram, telex or telephone by a majority of the directors or of the members of a duly authorised committee
- 91 4 The directors may determine who shall sign any instrument to which a seal is applied, either generally or in relation to a particular instrument or type of instrument, and may so determine, either generally or in any particular case, that such signatures shall be dispensed with or affixed by some mechanic means
- 91 5 Unless otherwise decided by the directors
- 91 5 1 certificates for shares, debentures or other securities of the Company to which a seal is applied need not be signed, and
- 91 5 2 every other instrument to which a seal is applied shall be signed by at least one director and the secretary or by at least two directors

## DIVIDENDS

### 92. Declaration of dividends by the Company

Subject to the provisions of the Act and the other provisions of these Articles (including but not limited to article 107), 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

### 93. Interim dividends

Subject to the provisions of the Act and the other provisions of these Articles (including but not limited to article 107), 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 so 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

### 94. Calculation of dividends

Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly

### 95. Dividends in specie

A general meeting declaring a dividend may, upon the recommendation of the directors, direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same and in particular may issue fraction 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

**96. Method of payment**

96 1 Any dividend or other monies 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

96 2 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 monies payable in respect of the share

**97. Dividends not to bear interest**

No dividend or other monies payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share

**98. Unclaimed dividends**

Any dividend which has remained unclaimed for 12 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**

**99. 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**

**100. Capitalisation of profits**

The directors may with the authority of an ordinary resolution of the Company

100 1 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,

100 2 appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those members, or as they may direct in those proportions, or partly in one way and partly in the other but the share premium account, the capital redemption reserve and any profits which are not available for distribution may, for the purposes of this article, only be applied in paying up unissued shares to be allotted to members credited as fully paid,

100 3 make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this article in fractions, and

100 4 authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon

such capitalisation, any agreement made under such authority being binding on all such members

## NOTICES

### 101. 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

### 102. Method of giving notices

102 1 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

102 2 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

### 103. Where notice is deemed given

103 1 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

#### 103 2 Proof that

103 2 1 an envelope containing a notice was properly addressed, prepaid and posted (by airmail or first class post, where available), or

103 2 2 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

103 3 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

### 104. 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

### 105. Power to distribute in specie

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 be with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability



## **INDEMNITY**

### **106. Indemnity of officers**

Subject to the provisions of and to the extent permitted by the Statutes, every director or other officer (excluding an auditor) of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office, but

106 1 this indemnity shall not apply to any liability to the extent that it is recovered from any other person, and

106 2 the indemnity is subject to such officer taking all reasonable steps to effect such recovery, so that the indemnity shall not apply to the extent that an alternative right of recovery is capable of being enforced

## **RELATIONSHIP TO FINANCE AGREEMENTS**

### **107. Subordination**

Notwithstanding any other provision of these Articles and save for payment of the Special Dividend, 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 of the Finance Agreements (as any such agreement may be amended, varied, novated, supplemented or restated from time to time)