

Company Number 05998024

COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION

of

VIVERGO FUELS LIMITED (the "Company")

passed on 6 JULY 2010

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the following special resolutions were duly passed as written resolutions of the Company

**SPECIAL RESOLUTIONS**

- 1 That the directors be and they are hereby generally and unconditionally authorised, for the purposes of section 551 of the Companies Act 2006 (the "Act") to exercise all powers of the Company to allot 27,189,188 ordinary shares of £1 each in the Company up to an aggregate maximum nominal amount of £27,189,188 provided that this authority shall, unless renewed, varied or revoked by the Company, expire on the fifth anniversary from the date of the passing of this Resolution save that the Company may, before such expiry, make an offer or agreement which would or might require shares in the Company to be allotted after such expiry and the directors may allot shares in the Company in pursuance of such offer or agreement as if such authority had not expired

This authority is in substitution for all previous authorities conferred on the directors in accordance with section 80 of the Companies Act 1985 or section 551 of the Act but without prejudice to any allotment of shares already made or offered or agreed to be made pursuant to such authorities

- 2 That the articles of association contained in the document attached to these written resolutions be adopted as the articles of association of the Company to the exclusion of, and in substitution for, the existing articles of association of the Company and (for the avoidance of doubt) to the exclusion of, and in substitution for, the relevant provisions of the memorandum of association that would otherwise be treated as provisions of the articles under section 28 of the Companies Act 2006



Company Secretary

AS DULY AUTHORISED ATTORNEY  
OF SHOOSMITHS SECRETARIES LIMITED

TUESDAY



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20/07/2010  
COMPANIES HOUSE

Company Number: 5998024

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION OF VIVERGO FUELS LIMITED**

(Adopted by special resolution passed on 6 JULY 2010)

**PRELIMINARY**

1 The regulations contained in Table A under the Companies (Tables A to F) Regulations 1985 and the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) ("**the Regulations**") shall not apply to the Company but the following shall be the articles of association of the Company

2 In these articles -

"**the Act**" means the Companies Act 2006 including any statutory modification, re-enactment or replacement thereof for the time being in force

"**the articles**" means the articles of the company

"**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**" means the same as in the Electronic Communications Act 2000

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

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

"**office**" means the registered office of the company

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

"**the seal**" means the common seal of the company

"**Relevant Agreement**" means any agreement relating in whole or in part to the management of the company which is binding from time to time on all or some only of the members except for any such agreement which expressly states that it is not a Relevant Agreement for the purposes of these articles

"**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

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

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Unless the context otherwise requires, words or expressions contained in these articles bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the company

## **LIMITATION OF LIABILITY**

2A The liability of the members is limited

## **SHARE CAPITAL**

3 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 special resolution determine

3A The share capital of the company as at the date of these articles is divided into ordinary shares of £1 each and deferred shares of £1 each

3B The deferred shares shall have the following restrictions

a) they shall not entitle their holders to receive notice of or attend or vote at any general meeting of the company,

b) they shall not entitle their holders to participate in the profits of the company or participate in any return of assets of the company on a liquidation or otherwise,

c) the company may at any time when it may lawfully do so at its option redeem all or any of the deferred shares then in issue, at a price not exceeding 1 (one) pence for all of the deferred shares so redeemed giving the registered holder of such shares not less than 20 (twenty) business days notice in writing of its intention to do so fixing a time and date for its redemption

4 Save as authorised from time to time by an ordinary resolution of the shareholders and without prejudice to any authorisation currently in force, the directors shall not exercise any power to allot shares or to grant rights to convert any security into, any shares in the Company In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities made by the company Shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the company or the holder on such terms and in such manner as may be provided by the articles

5 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

6 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 the articles or by law) the company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder

## **SHARE CERTIFICATES**

7 Every member, upon becoming the holder of any shares, shall be entitled without payment to one certificate for all the shares of each class held by him (and, upon transferring a part of his

holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the directors may determine. Every certificate shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon. The company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.

- 8 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**

- 9 The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this article. The company's lien on a share shall extend to any amount payable in respect of it.
- 10 The company may sell in such manner as the directors determine any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.
- 11 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.
- 12 The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

#### **CALLS ON SHARES AND FORFEITURE**

- 13 Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to be made) pay to the company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

- 14 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed
- 15 The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof
- 16 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
- 17 An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid the provisions of the articles shall apply as if that amount had become due and payable by virtue of a call
- 18 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
- 19 If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited
- 20 If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture
- 21 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
- 22 A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the company for cancellation the certificate for the shares forfeited but shall remain liable to the company for all moneys which at the date of forfeiture were presently payable by him to the company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal

- 23 A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity, of the proceedings in reference to the forfeiture or disposal of the share

#### **TRANSFER OF SHARES**

- 24 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
- 25 The directors may refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve and they may refuse to register the transfer of a share on which the company has a lien They may also refuse to register a transfer unless -
- (a) it is lodged at the office or at such other place as the directors may appoint and is accompanied by the certificate for the shares to which it relates or (in the absence of a certificate) an indemnity on terms as the directors may determine and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer,
  - (b) it is in respect of only one class of shares,
  - (c) it is in favour of not more than four transferees, and
  - (d) it is undertaken in accordance with the terms of any Relevant Agreement
- 26 If the directors refuse to register a transfer of a share, they shall as, soon as reasonably practicable and in any event within two months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal
- 27 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
- 28 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

#### **TRANSMISSION OF SHARES**

- 29 A person becoming entitled to a share in consequence of the 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 If he elects to become the holder he shall give notice to the company to that effect If he elects to have another person registered he shall execute an instrument of transfer of the share to that person All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred

- 30 A person becoming entitled to a share in consequence of the 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

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

- 31 The company may by special resolution –
- (a) increase its share capital by new shares of such amount as the resolution prescribes,
  - (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares,
  - (c) subject to the provisions of the Act, sub-divide its shares, or any of them, into shares of smaller amount and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have any preference or advantage as compared with the others, and
  - (d) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled
- 32 Whenever as a result of a consolidation of shares any members would become entitled to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the provisions of the Act, the company) and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale
- 33 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

#### **GENERAL MEETINGS**

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

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

- 36 A general meeting shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of the members

having a right to attend and vote being a majority together holding not less than ninety per cent in nominal value of the shares giving that right

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted

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

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

#### **PROCEEDINGS AT GENERAL MEETINGS**

- 38 No business shall be transacted at any meeting unless a quorum is present Subject to article 39 below, all persons each holding twenty five percent or more of the shares in the company entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum
- 39 If such a quorum is not present within half an hour from the time appointed for the meeting 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 members may determine If at any adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall constitute a quorum
- 40 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
- 41 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
- 42 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
- 43 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted Otherwise it shall not be necessary to give any such notice



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 –

- (a) by the chairman, or
- (b) by at least two members having the right to vote at the meeting, or
- (c) 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
- (d) 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

45 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

46 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

47 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded

48 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made

49 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

50 A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members

- 51 Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy, not being himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he is the holder
- 52 No member shall vote at any general meeting or at any separate meeting of the holders of any class of shares in the company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid
- 53 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
- 54 On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion
- 55 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 thereto as circumstances allow or in any other form which is usual or which the directors may approve) -

56 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 thereto as circumstances allow or in any other form which is usual or which the directors may approve)

Resolution No 1 \*for \*against

Resolution No 2 \*for \*against

\*Strike out whichever is not desired

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

Signed this                      day of                      20[ ] "

57 The appointment of a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may –

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

(b) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications –

(i) in the notice convening the meeting, or

(ii) in any instrument of proxy sent out by the company in relation to the meeting, or

(iii) 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

(c) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll, or

(d) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director,

and an appointment of proxy which is not deposited, delivered or received in a manner so permitted shall be invalid In this regulation and the next, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications

58 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

demanding 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**

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

#### **ALTERNATE DIRECTORS**

- 60 Directors nominated by the same member shall serve as alternate directors of each other, and they shall not be entitled to appoint any other person as alternates
- 61 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, to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a director in his absence but shall not be entitled to receive any remuneration from the company for his services as an alternate director. But it shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom
- 62 An alternate director shall cease to be an alternate director if his appointor ceases to be a director, but, if a director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment
- 63 Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him

#### **POWERS OF DIRECTORS**

- 64 Subject to the provisions of the Act, the articles, any Relevant Agreement 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 articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors
- 65 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**

- 66 The directors may delegate any of their powers to any committee. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject

to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be managed by the directors in such a manner as they think fit.

#### **APPOINTMENT AND REMOVAL OF DIRECTORS**

- 67 A member holding twenty five percent or more of the shares in the company may appoint up to two directors
- 68 The directors shall remain in office until removed by the member who appointed them giving written notice to the secretary, of the company at its registered office or at a meeting of the board of directors of their wish to remove that director and appoint a replacement director

#### **DISQUALIFICATION OF DIRECTORS**

- 69 The office of a director shall be vacated if -
- (a) he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director, or
  - (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally, or
  - (c) he is, or may be, suffering from mental disorder and either –
  - (d) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in Scotland, an application for admission under the Mental Health (Scotland) Act 1960, or
    - (i) 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 bonds, or other person to exercise powers with respect to his property or affairs,
  - (e) he is for more than six consecutive months absent without permission of the board of directors from meetings of the board of directors held during that period, unless he appointed an alternative director who was not similarly absent during such period, or
  - (f) he resigns his office by notice to the company

#### **REMUNERATION OF DIRECTORS**

- 70 The directors shall not be entitled to any remuneration from the company in their capacity as officers of the company

#### **DIRECTORS' EXPENSES**

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

## **DIRECTORS APPOINTMENTS AND INTERESTS**

- 72 Subject to the provisions of the Act, the directors may appoint a person to the office of managing director, finance director or to any other executive office under the company and may enter into an agreement or arrangement with such person for his employment by the company. Subject, to any requisite approval by the members, any such appointment, agreement or arrangement may be made upon such terms as the directors may determine and the directors may remunerate any such person 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. The managing director, finance director and a director holding any other executive office shall not be subject to retirement by rotation.
- 73 Subject to the provisions of the Act, and provided that he has disclosed to the board of directors the nature and extent of any material interest of his, a director notwithstanding his office –
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested,
  - (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the company or in which the company is otherwise interested, and
  - (c) shall not, by reason of his office, be accountable to the company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- 74 For the purposes of article 73 –
- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified, and
  - (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

## **DIRECTORS GRATUITIES AND PENSIONS**

- 75 The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive 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

- 76 Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote in certain circumstances (as shall be agreed between the members pursuant to any Relevant Agreement). A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
- 77 Any director or his alternate may validly participate in a meeting of the board of directors or a committee of the board of directors by conference telephone or other form of communication equipment such that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the largest group of those participants is assembled or, if there is no group which is larger than any other group, where the chairman of the board meeting then is.
- 78 Subject to article 79, the quorum for the transaction of the business of the directors at a meeting shall be one director appointed by each member holding more than twenty five percent of the shares in the company (an “**Active Shareholder**”). A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
- 79 If all of the directors appointed by an Active Shareholder are not permitted to vote or count in the quorum on or in relation to any resolution or other business by virtue of articles 84 and 85 respectively or otherwise (the “**Conflicted Directors**”), the quorum for the passing of such resolution and/or transacting such other business shall be at least one director appointed by each Active Shareholder except the Active Shareholder which the Conflicted Directors represent.
- 80 The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
- 81 The directors will appoint one of their number to be the chairman of the board of directors for each financial year on a rotating basis.
- 82 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.
- 83 Notwithstanding article 84, 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 and may consist of several documents in the like form.

each signed by one or more directors, but a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity

84 Save as otherwise provided by the articles, at a meeting of directors or of a committee of directors a director shall not vote on any resolution or transact any business concerning a matter in which he has direct interest or duty which is material and which conflicts or may conflict with the interests of the company unless his interest or duty arises only because the case falls within one or more of the following paragraphs –

- (a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him for the benefit of, the company or any of its subsidiaries,
- (b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of an obligation of the company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security,
- (c) his interest arises by virtue of his subscribing or agreeing to subscribe for any shares, debentures or other securities of the company or any of its subsidiaries, or by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures, or other securities by the company or any of its subsidiaries for subscription, purchase or exchange, or
- (d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the Commissioners for HM Revenue and Customs for taxation purposes

For the purposes of this regulation, an interest of a person who is, for any purpose of the Act (excluding any statutory modification thereof not in force when this regulation becomes binding on the company), connected with a director shall be treated as an interest of the director and, in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise

85 A director shall not be counted in the quorum in relation to any resolution on which he is not entitled to vote or any business which he is not entitled to transact

86 The company may by special resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors

87 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 If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive

## **SECRETARY**

- 89 The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit Any secretary so appointed may only be removed by them

## **MINUTES**

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

## **THE SEAL**

- 91 The seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or by a second director

## **DIVIDENDS**

- 92 Subject to the provisions of the Act, the company may by special resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors
- 93 Subject to the provisions of the Act and any rights attached to shares, the directors may pay interim dividends if it appears to them that they are justified by the profits of the company available for distribution If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment Provided the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights
- 94 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 A general meeting declaring a dividend may, upon the recommendation of the directors, direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same and in particular may issue fractional certificates and fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the footing of the value so fixed in order to adjust the rights of members and may vest any assets in trustees
- 96 Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may in writing direct. Every cheque shall be made payable to the order of the person or persons entitled or to such other person as the person or persons entitled may in writing direct and payment of the cheque shall be a good discharge to the company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share
- 97 No dividend or other moneys payable in respect of a share shall bear interest against the company unless otherwise provided by the rights attached to the share
- 98 Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the company

## **ACCOUNTS**

- 99 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, authorised by the directors or by ordinary resolution of the company or pursuant to any Relevant Agreement

## **CAPITALISATION OF PROFITS**

- 100 The directors may with the authority of a special resolution of the company –
- (a) subject as hereinafter provided, resolve to capitalise any undivided profits of the company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the company's share premium account or capital redemption reserve,
  - (b) appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the company of a nominal amount equal to that sum, and allot the shares or debentures credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other, but the share premium account, the capital redemption reserve, and any profits which are not

available for distribution may, for the purposes of this regulation, only be applied in paying up unissued shares to be allotted to members credited as fully paid,

- (c) make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this regulation in fractions, and
- (d) authorise any person to enter on behalf of all the members concerned into an agreement with the company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members

## NOTICES

- 101 Any notice to be given to or by any person pursuant to the 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. In this regulation, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications
- 102 The company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by, leaving it at that address, or by giving it using electronic communications to an address for the time being notified to the company by the member. In the case of joint holders of a share, all notices shall be given to the joint holder whose name stands first in the register of members in respect of the joint holding and notice so given shall be sufficient notice to all the joint holders. A member whose registered address is not within the United Kingdom and who gives to the company an address within the United Kingdom at which notices may be given to him or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the company. In this regulation and the next, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications
- 103 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
- 104 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
- 105 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with 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 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent

- 106 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 the 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, within the United Kingdom 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**

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

## **INDEMNITY**

- 108 Subject to the provisions of the Act (but so that this article 108 does not extend to any matter insofar as it would cause this article or any part of it to be void thereunder), the Company
- (a) shall, without prejudice to any indemnity to which the person concerned may otherwise be entitled, indemnify any director or other officer (other than an auditor) of the company and any associated company against all losses and liabilities incurred by him in the actual or purported execution, or discharge, of his duties in relation to
    - (i) the company,
    - (ii) any associated company, and
    - (iii) any occupational pension scheme of which the company or any associated company is a trustee

including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding of any material breach of duty on his part) or in which he is acquitted or in connection with any application in which the court grants him relief from liability for negligence, default, breach of duty or breach of trust in relation to the company, any associated company or any occupational pension scheme of which the company or any associated company is a trustee, and

- (b) may, without prejudice to the provisions of article 108(a), purchase and maintain insurance for any person who is or was a director or officer of the company or any associated company against any loss or liability which he may incur, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust or otherwise in relation to the company, any associated company, any employees' share scheme of the company or of any associated company or any occupational pension scheme of which the company or any associated company is a trustee

where for the purposes of this article 108, an "associated company" shall have the meaning given thereto by Section 256 of the Act

#### **RELEVANT AGREEMENTS**

- 109 In addition to the provisions of these articles, the members shall be obliged (except to the extent, if any, prohibited by law) to act in all respects in relation to, the company so as to give effect to all Relevant Agreements to which they are a party or by which they are otherwise bound and which are for the time being and from time to time in force
- 110 If and to the extent that any Relevant Agreement contains provisions appointing or deeming in any circumstances to be appointed any attorney or attorneys to act on behalf of any member for any purpose in relation to the shares held by that member otherwise in relation to the company, any transferee acquiring shares from that member shall so long as it holds any of those shares be deemed to have appointed the same person or class of persons as its attorney or attorneys for the same purposes