

COMPANY NUMBER: 07336195

THE COMPANIES ACT 2006

A PRIVATE COMPANY LIMITED BY SHARES

THE ARTICLES OF ASSOCIATION OF:

REGAL HEALTHCARE HOLDINGS LIMITED

(as adopted by written special resolution passed on 1 October 2019)

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REGAL HEALTHCARE HOLDINGS LIMITED

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INTRODUCTION

1. INTERPRETATION

1.1 In these Articles, unless the context otherwise requires:

A Assets: the business, assets and undertaking, technology, intellectual property and real estate of Country Retirement and Nursing Homes (Holdings) Limited, Country Retirement and Nursing Homes (Investments) Limited, Country Retirement and Nursing Homes Ltd and any of their respective subsidiaries from time to time;

A Shares: the A shares of £1 each in the capital of the Company, and each having the rights set out in Article 22;

Act: means the Companies Act 2006;

Appointor: has the meaning given in article 12.1;

Articles: means the Company's articles of association for the time being in force;

B Assets: the business, assets and undertaking, technology, intellectual property and real estate of Regal Investment Holdings Limited and Regal Healthcare Properties Limited and their respective subsidiaries from time to time;

B Shares: the B shares of £1 each in the capital of the Company, and each having the rights set out in Article 22;

Business Day: means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;

Conflict: has the meaning given in article 8.1;

Eligible Director: means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter); and

Model Articles: means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (S/2008/3229) as amended prior to the date of adoption of these Articles;

Ordinary Shares: means the ordinary shares of £1 each in the capital of the Company and each having the rights, subject to the restriction set out in Article 22;

Redeemable Preference Shares: the redeemable preference shares of £1 each in the capital of the Company, and each having the rights, subject to the restrictions set out in Article 23;

Shares: means (unless the context does not so admit) shares in the capital of the Company (or whatever class);

Shareholder: means a holder of Shares in the Company from time to time;

Subsidiary: has the meaning set out in section 1159 of the Act.

- 1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
  - 1.5.1 any subordinate legislation from time to time made under it; and
  - 1.5.2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.6 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms,

- 1.7 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles.
- 1.8 Articles 8, u (2) and (3), 13, 14(1), (2), (3) and (4), 17(2), 30(3) 44(2), 52 and 53 of the Model Articles shall not apply to the Company.
- 1.9 Article 7 of the Model Articles shall be amended by:
- 1.9.1 the insertion of the words "for the time being" at the end of article 7(2)(a); and
- 1.9.2 the insertion in article 7(2) of the words "(for so long as he remains the sole director)" after the words "and the director may".
- 1.10 Article 20 of the Model Articles shall be amended by the insertion of the words "(including alternate directors) and the secretary" before the words "properly incur".
- 1.11 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 1.12 Article 27(3) of the Model Articles shall be amended by the insertion of the words " , subject to article 10," after the word "But".
- 1.13 Article 29 of the Model Articles shall be amended by the insertion of the words " , or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2)," after the words "the transmittee's name".
- 1.14 Articles 31(a) to (d) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide".

## SHARES

### 2. FURTHER ISSUES OF SHARES: AUTHORITY

- 2.1 The share capital of the Company is comprised of A Shares of "1 .00 each, B Shares of £1 .00 each, Ordinary Shares of £1 .00 each and Redeemable Preference Shares of £1.00 each.
- 2.2 Subject to the remaining provisions of this Article 2 and to Article 3, the directors are generally and unconditionally authorised, for the purposes of section 551 (1) of the Act of the 2006 Act and generally, to exercise any power of the Company to:
- (a) offer or allot;

- (b) grant rights to subscribe for or convert any security into;
- (c) otherwise deal in, or dispose of,

shares of the class(es) described in Article 2.1 above to any person, at any time and subject to any terms and conditions as the directors think proper.

### 3. FURTHER ISSUES OF SHARES: PRE-EMPTION RIGHTS

3.1 Unless otherwise determined by special resolution, if the Company proposes to allot any Shares (other than any Shares to be held under an employees' share scheme), those Shares shall not be allotted to any person unless the Company has first offered them to all shareholders on the date of the offer on the same terms, and at the same price, as those Shares are being offered to other persons on a pari passu and pro rata basis to the number of shares held by those holders (as nearly as possible without involving fractions). The offer:

- (a) shall be in writing, shall be open for acceptance for a period of 21 business days from the date of the offer and shall give details of the number and subscription price of the relevant Shares; and
- (b) shall stipulate that any shareholder who wishes to subscribe for a number of Shares in excess of the proportion to which he is entitled shall, in his acceptance, state the number of excess Shares (Excess Shares) for which he wishes to subscribe.

Provided that this Article shall not apply in the event that the Company wishes to allot ordinary shares for non-cash consideration in which case the written approval of at least 75% of the Shareholders, or a special resolution of the Company, must be obtained.

3.2 Any Shares not accepted by shareholders pursuant to the offer made to them in accordance with Article 3.1 shall be used for satisfying any requests for Excess Shares made pursuant to Article 3.1. If there are insufficient Excess Shares to satisfy such requests, the Excess Shares shall be allotted to the applicants pro rata to the number of shares held by the applicants immediately before the offer was made to ordinary shareholders in accordance with Article 3.1 (as nearly as possible without involving fractions or increasing the number of Excess Shares allotted to any shareholder beyond that applied for him). After that allotment, any Excess Shares remaining shall be offered to any other person as the directors may determine, at the same price and on the same terms as the offer to the shareholders.

## DIRECTORS

### 4. UNANIMOUS DECISIONS

- 4.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter. Where there is only one director such decision is taken when that director comes to a view on the matter.
- 4.2 Such a decision may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing.
- 4.3 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

### 5. QUORUM FOR DIRECTORS' MEETINGS

- 5.1 Unless the Company has only one director and subject to article 5.2, the quorum for the transaction of business at a meeting of directors is any two eligible directors.
- 5.2 For the purposes of any meeting (or part of a meeting) held pursuant to article 8 to authorise a director's conflict, if there is only one eligible director in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be one eligible director.
- 5.3 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision:
  - 5.3.1 to appoint further directors; or
  - 5.3.2 to call a general meeting so as to enable the Shareholders to appoint further directors.

### 6. CASTING VOTE

- 6.1 If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting has a casting vote.
- 6.2 Article 6.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other director is not an eligible director for the purposes of that meeting (or part of a meeting).

## 7. TRANSACTIONS OR OTHER ARRANGEMENTS WITH THE COMPANY

- 7.1 A director who is in any way, whether directly or indirectly interested in a proposed transaction or arrangement with the Company shall declare the nature and extent of his interest to the other directors before the Company enters into the transaction or arrangement in accordance with the Act.
- 7.2 A director who is in any way, whether directly or indirectly interested in a transaction or arrangement that has been entered into by the Company shall declare the nature and extent of his interest to the other directors as soon as is reasonably practicable in accordance with the Act unless the interest has already been declared in accordance with Article 7.1 above.
- 7.3 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts and articles 7.1 and 7.2, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
- 7.3.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
  - 7.3.2 shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such contract or proposed contract in which he is interested;
  - 7.3.3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such contract or proposed contract in which he is interested;
  - 7.3.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director,
  - 7.3.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested;
  - 7.3.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act; and

7.3.7 A directors need not declare an interest under clause 7.1 and clause 7.2 as the case may be:

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) of which the director is not aware, although for this purpose a director is treated as being aware of matters of which he ought reasonably to be aware;

(c) if, or to the extent that, the other directors are already aware of it, and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware; or

(d) if, or to the extent that it concerns the terms of his service contract that have been, or are to be, considered at a board meeting.

## 8. DIRECTORS CONFLICTS OF INTEREST

8.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director breaching his duty under section 175 of the Act to avoid conflicts of interest (Conflict).

8.2 Any authorisation under this article will be effective only if:

8.2.1 the matter in question shall have been proposed by any director for consideration at a meeting of directors in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;

8.2.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question; and

8.2.3 the matter was agreed to without his voting or would have been agreed to if his vote had not been counted.

8.3 Any authorisation of a Conflict under this article may (whether at the time of giving the authorisation or subsequently):

8.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised;

8.3.2 be subject to such terms and for such duration, or impose such limits or conditions as the directors may determine; and

8.3.3 be terminated or varied by the directors at any time.

This will not affect anything done by the director prior to such termination or variation in accordance with the terms of the authorisation.



8.4 In authorising a Conflict the directors may decide (whether at the time of giving the authorisation or subsequently) that if a director has obtained any information through his involvement in the Conflict otherwise than as a director of the Company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:

8.4.1 disclose such information to the directors or to any director or other officer or employee of the Company; or

8.4.2 use or apply any such information in performing his duties as a director, where to do so would amount to a breach of that confidence.

8.5 Where the directors authorise a Conflict they may (whether at the time of giving the authorisation or subsequently) provide, without limitation, that the director:

8.5.1 is excluded from discussions (whether at meetings of directors or otherwise) related to the Conflict;

8.5.2 is not given any documents or other information relating to the Conflict; and

8.5.3 may or may not vote (or may or may not be counted in the quorum) at any future meeting of directors in relation to any resolution relating to the Conflict.

8.6 Where the directors authorise a Conflict:

8.6.1 the director will be obliged to conduct himself in accordance with any terms imposed by the directors in relation to the Conflict; and

8.6.2 the director will not infringe any duty he owes to the Company by virtue of sections 171 to 177 of the Act provided he acts in accordance with such terms, limits and conditions (if any) as the directors impose in respect of its authorisation.

8.7 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## 9. RECORDS OF DECISIONS TO BE KEPT

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

## 10. NUMBER OF DIRECTORS

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

## 11. APPOINTMENT OF DIRECTORS

In any case where, as a result of death or bankruptcy, the Company has no shareholders and no directors, the transmittee(s) of the last shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person), who is willing to act and is permitted to do so, to be a director.

## 12. APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS

12.1 Any director (appointor) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:

12.1.1 exercise that director's powers; and

12.1.2 carry out that director's responsibilities, in relation to the taking of decisions by the directors, in the absence of the alternate's appointor.

12.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

12.3 The notice must:

12.3.1 identify the proposed alternate; and

12.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

## 13. RIGHTS AND RESPONSIBILITIES OF ALTERNATE DIRECTORS

13.1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's appointor.

13.2 Except as the Articles specify otherwise, alternate directors:

13.2.1 are deemed for all purposes to be directors;

13.2.2 are liable for their own acts and omissions;

13.2.3 are subject to the same restrictions as their appointors; and

13.2.4 are not deemed to be agents of or for their appointors

and, in particular (without limitation), each 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.

13.3 A person who is an alternate director but not a director:

13.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);

13.3.2 may participate in a unanimous decision of the directors (but only if his appointor is an eligible director in relation to that decision, but does not participate); and

13.3.3 shall not be counted as more than one director for the purposes of articles 13.3.1 and 13.3.2.

13.4 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an eligible director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

13.5 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as his appointor but shall not be entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

#### 14. TERMINATION OF ALTERNATE DIRECTORSHIP

An alternate director's appointment as an alternate terminates:

14.1.1 when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;

14.1.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

14.1.3 on the death of the alternate's appointor; or

14.1.4 when the alternate's appointor's appointment as a director terminates.

#### 15. SECRETARY

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

## 16. POLL VOTES

- 16.1 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 16.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

## 17. PROXIES

- 17.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles 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 accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".
- 17.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article.

## ADMINISTRATIVE ARRANGEMENTS

## 18. MEANS OF COMMUNICATION TO BE USED

- 18.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
  - 18.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
  - 18.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - 18.1.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
  - 18.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.
- 18.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.

For the purposes of this article, no account shall be taken of any part of a day that is not a working day.

## 19. INDEMNITY

19.1 Subject to article 19.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

19.1.1 each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

19.1.1.1 in the actual or purported execution and/or discharge of his duties, or in relation to them; and

19.1.1.2 in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act), including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

19.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

19.3 In this article:

19.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

19.3.2 a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

## 20. INSURANCE

20.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer, in respect of any relevant loss.

20.2 In this article:

20.2.1 a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act), but excluding in each case any person engaged by the Company (or

associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor);

20.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and

20.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## 21. TRANSFER OF SHARES

21.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor;

21.2 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share;

21.3 The Company may retain any instrument of transfer which is registered;

21.4 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holders of it;

21.5 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

## 22. CAPITAL

22.1 The share capital of the Company at the date of adoption of these Articles is divided into A Shares, B Shares, Ordinary Shares and Redeemable Preference Shares. The rights attaching to the respective classes of share are as follows:-

### 22.1.1 *Creation of separate funds*

(a) the undertakings and assets of the Company will consist, in part, of the A Assets and, as to the remainder, of the B Assets;

(b) immediately following the adoption of these Articles there shall be established in the books of the Company a separate fund called the "A Fund". Initially the A Fund shall be credited with all the A Assets and shall be debited with the existing liabilities of the Company (including contingent and prospective liabilities) in respect of the A Assets;

(c) immediately following the adoption of these Articles there shall also be established in the books of the Company a separate fund called the "B Fund". Initially the B Fund shall be credited with all the B Assets and shall be debited with the existing liabilities of the Company (including contingent and prospective liabilities) in respect of the B Assets;

- (d) the A Fund and the B Fund shall at all times be kept separate. The expression "Fund" shall mean the A Fund or the B Fund;
- (e) assets or rights immediately purchased with money for the time being credited to the A Fund or acquired in exchange or substitution for or otherwise in right of assets so credited shall be credited to the A Fund and there shall also be credited to the A Fund any profits, distributions, receipts or other accretions, whether of an income or capital nature, which are attributable to assets so credited. Expenses and other liabilities of the Company directly or solely attributable to the cost of operating the A Fund (including taxation and other liabilities arising in relation to the ownership of or any realisation of or other dealing with an asset credited to the A Fund) shall be debited to the A Fund;
- (f) the provisions of sub-clause (e) above shall apply mutatis mutandis in relation to the B Fund with the substitution for the letter "A" of the letter "B";
- (g) expenses and other liabilities of the Company not directly or solely attributable to the cost of operating the A Fund as such or the B Fund as such shall be apportioned among (and deemed to be directly attributable to the cost of operating the A Fund as such or the B Fund as such) and debited to the Funds in accordance with the amounts paid up (including credited as paid up) on the shares designated as A Shares and the shares designated as B Shares respectively or if the apportionment falls to be made after the auditors have issued their first certificate in accordance with sub-clause (j) below in accordance with the respective values of the said Funds as shown in the latest certificate so issued immediately prior to the date on which such expense or liability becomes due and payable;
- (h) as among the Shareholders and the Company, all monies borrowed from time to time by the Company shall be borrowed on behalf of one or other of the said Funds, shall be debited to the Fund concerned, may be secured on assets credited to the Fund concerned) but shall not be secured on assets credited to the other Fund;
- (i) in this sub-clause (i) the expressions "debt" and "liability" shall (in the case of a debt or liability being apportioned among both of the Funds) mean in relation to each of the Funds concerned the portion attributable thereto in accordance with the provisions of this sub-clause. No assets credited to one Fund shall be applied in or towards payment of a debt or liability debited or attributed to the other Fund except in accordance with the following provisions of this sub-clause:
  - (i) in the event of any debt or liability of the Company debited or attributable to one Fund (the "Debtor Fund") being recovered by the creditor concerned in whole or in part by means of execution or other legal process from assets credited to the other Fund (the "Depleted Fund") then the Board shall transfer for no consideration from the Debtor Fund to the Depleted Fund assets which in its opinion bear a market value (after deduction of any

tax or other liability due thereon or on realisation thereof) equal to the market value of the assets taken by the creditor out of the Depleted Fund PROVIDED that no assets shall be transferred from the Debtor Fund which are charged to secure the repayment of monies borrowed on behalf of that Fund;

(ii) in the event that there shall be insufficient assets credited to the Debtor Fund (and available for transfer) to enable the Board to make good any depletion in the Depleted Fund such as is referred to in paragraph (i) above there shall be debited to the Debtor Fund and credited to the Depleted Fund for no consideration a sum equal to the amount which the Board considers (in its absolute discretion) to be the market value of the assets taken by the creditor out of the Depleted Fund or (as the case may be) the amount by which such market value exceeds what it considers (in its absolute discretion) to be the market value of the assets which it was able to transfer.

(j) when the auditors make their report in accordance with section 495 of the Act they shall certify in writing what they consider to be the net value of each Fund taking into account all assets and liabilities (Of whatever nature) of the Company at the figures at which they appear in the balance sheet of the Company and also taking into account any sums credited or debited in accordance with subclause (i) above and their certificate shall be conclusive and binding on all of the Shareholders.

#### 22.1.2 *Distribution of profits and creation of reserves*

(a) the Company shall not make any distribution of income in respect of any financial year unless and until the auditors shall certify in writing to the Board the proportions of such income attributable to the A Fund and the B Fund or either of them as the case may be (such income if any as so certified being hereinafter referred to as the "A Fund Income" and the "B Fund Income" respectively) and, in calculating the A Fund Income and the B Fund Income, the auditors shall make such deductions for the management charges and other expenses, outgoings and liabilities of the Company (including taxation) as they reasonably consider appropriate;

(b) the A Shares shall carry the exclusive right to the amount of the A Fund Income which the Company may determine to distribute in respect of any financial year and no share of any other class shall carry any right to participate therein. Any undistributed balance of A Fund Income shall be carried to a reserve (the "A Reserve") and the Funds represented by the A

Reserve shall be credited exclusively to the A Fund and become part of the A Fund subject to the provisions of this Article applicable thereto;

(c) any assets amount which falls to be credited to reserves in the books of the Company as a result of the writing up or the sale or realisation of or other dealing with an asset credited to the A Fund shall be credited to the A Reserve;



- (d) the A Shares shall carry the exclusive right to any income or profits standing to the credit of the A Reserve which the Company may determine to distribute by way of dividend and no shares of any Other class shall carry any right to participate therein;
- (e) for the avoidance of doubt it is hereby declared that the Company shall be entitled to determine to distribute among the holders of the A shares all or part of the A Fund Income or of the A Reserve without distributing any part of the Fund Income or Reserve attributed to the other classes of shares in the capital of the Company;
- (f) the provisions of sub-clauses (b) to (e) above (inclusive) shall apply mutatis mutandis in relation to the B shares and the B Fund Income (and so that the reserve called the "B Reserve" shall be established and be applicable accordingly) with the substitution for the letter "A" of the letter "B";
- (g) any sum standing to the credit of reserves in the books of the Company or which ought to be so credited in accordance with the provisions of this Article, but which does not fall to be credited to one or other of the Reserves established in accordance with this Article shall be apportioned among the ordinary shareholders in accordance with the amounts paid up (including credited as paid up) on the shares designated as Ordinary Shares;
- (h) any amount which falls to be debited to reserves in the books of the Company as a result of the writing down or the sale or realisation of or other dealing with an asset credited to one or other of the Funds shall be debited to the Reserve established in relation to the Fund concerned. If any sum falls to be debited to reserves O for any other reason such sum shall be apportioned amongst the Reserves established in accordance with this Article in such proportions as the auditors shall certify to be in their opinion appropriate having regard to the circumstances in which such sum falls to be so debited. If the amount to be debited to a Reserve shall exceed the sum standing to the credit of that Reserve (or if that Reserve shall already be in debit) then the amount of such excess (or the amount to be so debited) shall be reflected in a debit balance in respect of the Reserve concerned (or shall carry that Reserve further into debit);
- (i) the holders of the Ordinary Shares shall not confer any entitlement to participate in any distribution by way of dividend or in respect of the profits of the Company in respect of any part of the A Assets and A Fund or B Assets and B Fund. The holders of the Ordinary Shares shall carry the exclusive right to the amount of any distribution in respect of any financial year by way of dividend or in respect of the profits of the Company which does not relate to the A Assets, A Fund, B Assets and B Fund.

#### 22.1.3 *Rights in a winding-up*

- (a) the holders of the A Shares shall be entitled to receive the amount received or receivable by the Company on realisation of the A Fund and so that such amount shall be calculated by deducting from the aggregate of the

proceeds of realisation of the assets credited to the A Fund and any sum credited to the A Fund in accordance with paragraph (ii) of sub-clause (i) of Article 22.1.3:

- (i) any liabilities (including portions of liabilities) of the Company debited or attributable to the A Fund in accordance with the provisions of this Article;
  - (ii) all costs charges and expenses and taxation (including interest) (if any) payable in respect of the realisation of the assets credited to the A Fund; and
  - (iii) any sum debited to the A Fund in accordance with paragraph (ii) of sub-clause (i) of Article 22.1.3.
- (b) the amount which the holders of the A shares are entitled to receive as provided in sub-clause (a) above shall be distributed among such holders rateably provided that the liquidator may, with the sanction of a special resolution of the holders of the A Shares:
  - (i) dispense with the realisation of the whole or any part of the assets credited to the A Fund which are not required to discharge or otherwise provide for the sums set out in paragraphs (i) to (iii) inclusive of sub-clause (a) above; and
  - (ii) divide the assets representing the whole or such part of the A Fund amongst the holders of the A Shares in specie or kind; and
  - (iii) for such purpose set such value thereon as the auditors shall certify in their opinion to be appropriate, but so that no such shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

The liquidator may with the sanction of a special resolution of the Company and with the consent of the holders of all such shares transfer or sell the A Fund or all or any of the assets comprised in the A Fund in the manner provided in section of the Insolvency Act 1986;

- (c) the provisions of sub-clauses (a) and (b) above shall apply mutatis mutandis in relation to the B Shares and the B Fund with the substitution for the letter "A" of the letter "B";
- (d) the holders of the Ordinary Shares shall not be entitled to participate in any distributions of A Assets or B Assets on a winding up or return of capital but shall be entitled to participate in any distributions of assets which do not relate to the A Assets or B Assets.

#### 22.1.4 *The auditors*

- (a) if any question shall arise as to whether a credit or debit should be made (or should have been made) to one or other of the Funds or to one or

other of the Reserves or as to the calculation of the amount receivable by the Company on realisation of a Fund or the value to be set upon any part thereof in accordance with Article 23.1.3 above, the question shall be decided by the auditors;

- (b) in deciding any question in accordance with sub-clause (a) above or giving any certificate in accordance with sub-clause (j) of Article 23.1.1 above or sub-clause (a) of Article 23.1.2 above the auditors shall be deemed to be acting as experts and not as arbitrators and their decision or certificate (as the case may be) shall (save for manifest error) be final and conclusive and binding on all of the Members;
- (c) if in relation to any matter which falls to be decided or certified by the auditors they shall be unable or unwilling to act the matter shall be referred by the Board to an independent firm of chartered accountants appointed for that purpose by the President for the time being of the Institute of Chartered Accountants in England and Wales whose decision or certificate (as the case may be) shall be of the same force and effect as if made by the auditors in accordance with this Article.

#### 22.1.5 *General*

- (a) except with the sanction of the holders of each class of shares in the capital of the Company given in accordance with the Act the Company may not alter any of the provisions of this Article;
- (b) in exercising the powers of the Company in relation to the A Fund, the A Fund Income and the A Reserve, the Board shall have regard primarily to the interests of the holders of the A Shares as a single class;
- (c) the provisions of sub-clause (b) above shall apply mutatis mutandis in relation to the powers of the Board in relation to the B Fund, the B Fund Income, the B Reserve and the B Shares as though there were substituted for the letter "A" the letter "B";
- (d) the provisions of this Article 22 shall have overriding effect and all other provisions of these Articles shall take effect subject to the provisions of this Article to the intent that if there shall be any doubt or inconsistency the provisions of this Article shall prevail;
- (e) any alteration of any of the provisions of this Article shall be deemed to be an alteration of rights belonging separately to each class of shares in the capital of the Company.

#### 22.1.6 *Voting*

- (a) the A Shares shall confer on their holders the right to receive notice of, to be present at, to vote either in person or by proxy at any general meeting of the Company or by way of written resolution if:

- (i) any resolution is proposed for the winding up of the company, in which case the holders may only then vote at the general meeting on the election of a chairman and any motion for adjournment and the resolution for winding up, or
- (ii) the meeting is convened to consider the purchase by the company of any of its own shares, or a reduction of the capital of, the company, or
- (iii) the proposition to be submitted to the meeting abrogates or varies or otherwise directly affects the special rights and privileges attaching to the A Shares, or
- (iv) any resolution is proposed in relation to the A Assets, the A Fund or the A Reserve.

On a show of hands every holder of A Shares present in person shall have one vote, and on a poll every such holder present or by proxy shall have one vote for every A Share held by him.

Save as aforesaid the A Shares shall confer no further rights to vote in respect of the assets and affairs (including, but not limited to B Assets, B Fund and B Reserve) of the Company.

- (b) the B Shares shall confer on their holders the right to receive notice of, to be present at, to vote either in person or by proxy at any general meeting of the Company or by way of written resolution if:

- (i) any resolution is proposed for the winding up of the company, in which case the holders may only then vote at the general meeting on the election of a chairman and any motion for adjournment and the resolution for winding up, or
- (ii) the meeting is convened to consider the purchase by the Company of any of its own shares, or a reduction of the capital of, the Company, or
- (iii) the proposition to be submitted to the meeting abrogates or varies or otherwise directly affects the special rights and privileges attaching to the B Shares, or
- (iv) any resolution is proposed in relation to the B Assets, the B Fund or the B Reserve.

On a show of hands every holder of B Shares present in person shall have one vote, and on a poll every such holder present or by proxy shall have one vote for every B Share held by him.

Save as aforesaid the B Shares shall confer no further rights to vote in respect of the assets and affairs (including, but not limited to A Assets, A Fund and A Reserve) of the Company.

- (c) the Ordinary Shares shall confer on their holders full rights to receive notice of, to be present at, to vote either in person or by proxy at any general meeting of the Company or by written resolution save to the extent any proposed resolution relating to any of the A Assets, B Assets, A Fund, B Fund or abrogates or varies or otherwise directly affects the rights or privileges attaching to the A Shares or B Shares. On a show of hands every holder of Ordinary Shares present in person shall have one vote and on a poll every such holder present or by proxy shall have one vote for every Ordinary Share held by him.

## 23. PREFERENCE SHARES

23.1 That the Redeemable Preference Shares shall confer on their holders the following rights:

23.1.1 as to capital, the right on a winding up or other return of capital, to repayment, in priority to any payment to the holders of any other shares in the capital of the Company, or

- (i) the amounts paid up on the Redeemable Preference Shares owned by them; and

- (ii) any arrears or accruals of the fixed dividend on the Redeemable Preference Shares held by them, whether declared or earned, or not, calculated down to the date of such repayment; and

23.1.2 as to voting, the right to receive notice of, be present at, to vote, either in person or by proxy, at any general meeting of the Company or by way of written resolution if:

- (i) any resolution is proposed for the winding up of the Company, in which case the holders may only then vote at the general meeting on the election of a chairman and any motion for adjournment and the resolution for winding up, or

- (ii) the meeting is convened to consider the purchase by the Company of any of its own shares or a reduction of the share capital of the Company, or

- (iii) the proposition to be submitted to the meeting abrogates or varies or otherwise directly affects the special rights and privileges attaching to the Redeemable Preference Shares

On a show of hands, every holder of Redeemable Preference Shares present in person shall have one vote, and on a poll every such holder present or by proxy shall have one vote for every Redeemable Preference Share held by him.

Save as aforesaid, the Redeemable Preference Shares shall confer no further right to vote or to participate in the profits or the assets of the Company.

23.1.3 as to redemption, the right for the holder of any Redeemable Preference Shares to serve 3 months written notice on the Company at its registered office requesting that the Company redeems at par the number of Redeemable Preference Shares specified in the notice within 28 days of receipt of such notice SUBJECT TO the following restrictions:

- (i) no Redeemable Preference Shares will be redeemed by the Company within 6 months of the date on which such share was issued;
- (ii) no holder of Redeemable Preference Shares may give notice for the redemption of fewer than 10,000 shares; and
- (iii) the maximum number of Redeemable Preference Shares which may be redeemed by a single holder in any calendar year is 250,000 unless by agreement with the Company and with the prior consent of the Ordinary Shareholders of the Company.