

## **PART 3 - DIRECTORS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES<sup>i</sup>**

#### **8. Directors' general authority**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

#### **9. Members' reserve power**

9.1 The members may, by special resolution, direct the Directors to take, or refrain from taking, specific action.

9.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **10. Chair**

The Directors may appoint one of their number to be the chair of the Directors for such term of office as they determine and may at any time remove him or her from office.

#### **11. Directors may delegate**

11.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles or the implementation of their decisions or day to day management of the affairs of the Company:

- a) to such person or committee;
- b) by such means (including by power of attorney);
- c) to such an extent;
- d) in relation to such matters or territories; and
- e) on such terms and conditions;

as they think fit.

11.2 If the Directors so specify, any such delegation of this power may authorise further delegation of the Directors' powers by any person to whom they are delegated.

11.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

## **DECISION-MAKING BY DIRECTORS**

### **12. Directors to take decisions collectively**

Any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 18. [In the event of the Company having only one Director, a majority decision is made when that single Director makes a decision.]

### **13. Calling a Directors' meeting**

13.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

13.2 A Directors' meeting must be called by at least seven Clear Days' notice unless either:

- a) all the Directors agree; or
- b) urgent circumstances require shorter notice.

13.3 Notice of Directors' meetings must be given to each Director.

13.4 Every notice calling a Directors' meeting must specify:

- a) the place, day and time of the meeting; and
- b) if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

13.5 Notice of a directors' meeting must be given to each director, but need not be in writing.

13.6 Notice of Directors' meetings may be sent by Electronic Means to an Address provided by the Director for the purpose.

13.7 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### **14. Participation in Directors' meetings**

14.1 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:

- a) the meeting has been called and takes place in accordance with the Articles; and
- b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

14.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.<sup>ii</sup>

14.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

## **15. Quorum for Directors' meetings<sup>iii</sup>**

15.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

15.2 The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors, but it must never be less than two, and unless otherwise fixed it is [two].

15.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:

- a) to appoint further Directors; or
- b) to call a general meeting so as to enable the members to appoint further Directors.

## **16. Chairing of Directors' meetings**

16.1 The directors may appoint a director to chair their meetings.

16.2 The person so appointed for the time being is known as the chairman.

16.3 The directors may terminate the chairman's appointment at any time.

16.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

## **17. Decision-making at meetings**

17.1 Questions arising at a Directors' meeting shall be decided by a majority of votes.

17.2 In all proceedings of Directors each Director must not have more than one vote.<sup>iv</sup>

17.3 In case of an equality of votes, the Chairman or other Director Chairing the meeting has a casting vote.

17.4 But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

## **18. Decisions without a meeting<sup>v</sup>**

18.1 The Directors may take a unanimous decision without a Directors' meeting in accordance with this Article by indicating to each other by any means, including without limitation by Electronic Means, that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Director or to which each Director has otherwise indicated agreement in Writing.

18.2 A decision which is made in accordance with Article 18.1 shall be as valid and effectual as if it had been passed at a meeting duly convened and held, provided the following conditions are complied with:

- a) approval from each Director must be received by one person being either such person as all the Directors have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may, for the avoidance of doubt, be one of the Directors;
- b) following receipt of responses from all of the Directors, the Recipient must communicate to all of the Directors by any means whether the resolution has been formally approved by the Directors in accordance with this Article 18.2;
- c) the date of the decision shall be the date of the communication from the Recipient confirming formal approval;
- d) the Recipient must prepare a minute of the decision in accordance with Article **Error! Reference source not found.**

## **19. Conflicts of interest**

19.1 Whenever a Director finds himself or herself in a situation that is reasonably likely to give rise to a Conflict of Interest, he or she must declare his or her interest to the Directors unless, or except to the extent that, the other Directors are or ought reasonably to be aware of it already.

19.2 If any question arises as to whether a Director has a Conflict of Interest, the question shall be decided by a majority decision of the other Directors.

19.3 Whenever a matter is to be discussed at a meeting or decided in accordance with Article 18 and a Director has a Conflict of Interest in respect of that matter then, subject to Article 20, he or she must:

- a) remain only for such part of the meeting as in the view of the other Directors is necessary to inform the debate;
- b) not be counted in the quorum for that part of the meeting; and
- c) withdraw during the vote and have no vote on the matter.

19.4 When a Director has a Conflict of Interest which he or she has declared to the Directors, he or she shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her.

## **20. Directors' power to authorise a conflict of interest**

20.1 The Directors have power to authorise a Director to be in a position of Conflict of Interest provided:

- a) in relation to the decision to authorise a Conflict of Interest, the conflicted Director must comply with Article 19.3;
- b) in authorising a Conflict of Interest, the Directors can decide the manner in which the Conflict of Interest may be dealt with and, for the avoidance of doubt, they can decide that the Director with a Conflict of Interest can participate in a vote on the matter and can be counted in the quorum;
- c) the decision to authorise a Conflict of Interest can impose such terms as the Directors think fit and is subject always to their right to vary or terminate the authorisation.

20.2 If a matter, or office, employment or position, has been authorised by the Directors in accordance with Article 20.1 then, even if he or she has been authorised to remain at the meeting by the other Directors, the Director may absent himself or herself from meetings of the Directors at which anything relating to that matter, or that office, employment or position, will or may be discussed.

20.3 A Director shall not be accountable to the Company for any benefit which he or she derives from any matter, or from any office, employment or position, which has been authorised by the Directors in accordance with Article 20.1 (subject to any limits or conditions to which such approval was subject).

## **21. Register of Directors' interests**

The Directors shall cause a register of Directors' interests to be kept. A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared.

### **APPOINTMENT AND RETIREMENT OF DIRECTORS<sup>vi</sup>**

## **22. Methods of appointing Directors**

22.1 Those persons notified to the Registrar of Companies as the first Directors of the Company shall be the first Directors.

22.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director by a decision of the Directors.

### **23. Termination of Director's appointment<sup>vii</sup>**

A person ceases to be a Director as soon as:

- a) that person ceases to be a Director by virtue of any provision of the Companies Act 2006, or is prohibited from being a Director by law;
- b) a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
- c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- d) notification is received by the Company from the Director that the Director is resigning from office, and such resignation has taken effect in accordance with its terms (but only if at least two Directors will remain in office when such resignation has taken effect); or
- e) the Director fails to attend three consecutive meetings of the Directors and the Directors resolve that the Director be removed for this reason.
- f) the Director ceases to be a member.

### **24. Directors' remuneration<sup>viii</sup>**

24.1 Directors may undertake any services for the Company that the Directors decide.

24.2 Directors are entitled to such remuneration as the Directors determine:

- a) for their services to the Company as Directors; and
- b) for any other service which they undertake for the Company.

24.3 Subject to the Articles, a Director's remuneration may:

- a) take any form; and
- b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

24.4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day.

24.5 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

**25. Directors' expenses**

25.1 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:

- a) meetings of Directors or committees of Directors;
- b) general meetings; or
- c) separate meetings of any class of members or of the holders of any debentures of the Company,

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

**PART 4 - MEMBERS<sup>ix</sup>**

**BECOMING AND CEASING TO BE A MEMBER<sup>x</sup>**

**26. Becoming a member<sup>xi</sup>**

26.1 The subscribers to the Memorandum are the first members of the Company.

26.2 Such other persons as are admitted to membership in accordance with the Articles shall be members of the Company.

26.3 Each member of the company shall be a Director.

26.4 No person shall be admitted a member of the Company unless he or she is approved by the Directors.

26.5 Every person who wishes to become a member shall deliver to the company an application for membership in such form (and containing such information) as the Directors require and executed by him or her.

**27. Termination of membership<sup>xii</sup>**

27.1 Membership is not transferable to anyone else.

27.2 Membership is terminated if:

- a) the member dies or ceases to exist;
- b) otherwise in accordance with the Articles; or
- c) a member ceases to be a Director.

## DECISION MAKING BY MEMBERS

### 28 Members' meetings<sup>xiii</sup>

- 28.1 The Directors may call a general meeting at any time.
- 28.2 General meetings must be held in accordance with the provisions regarding such meetings in the Companies Acts.<sup>xiv</sup>
- 28.3 A person who is not a member of the Company shall not have any right to vote at a general meeting of the Company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures.<sup>xv</sup>
- 28.4 Article 28.3 shall not prevent a person who is a proxy for a member or a duly authorised representative of a member from voting at a general meeting of the Company.

### 29 Written resolutions

- 29.1 Subject to Article 29.3, a written resolution of the Company passed in accordance with this Article 29 shall have effect as if passed by the Company in general meeting:
- a) A written resolution is passed as an ordinary resolution if it is passed by a simple majority of the total voting rights of eligible members.
  - b) A written resolution is passed as a special resolution if it is passed by members representing not less than 75% of the total voting rights of eligible members. A written resolution is not a special resolution unless it states that it was proposed as a special resolution.
- 29.2 In relation to a resolution proposed as a written resolution of the Company the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution.
- 29.3 A members' resolution under the Companies Acts removing a Director or an auditor before the expiration of his or her term of office may not be passed as a written resolution.
- 29.4 A copy of the written resolution must be sent to every member together with a statement informing the member how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse. Communications in relation to written notices shall be sent to the Company's auditors in accordance with the Companies Acts.
- 29.5 A member signifies their agreement to a proposed written resolution when the Company receives from him or her an authenticated Document identifying the resolution to which it relates and indicating his or her agreement to the resolution.
- a) If the Document is sent to the Company in Hard Copy Form, it is authenticated if it bears the member's signature.

- b) If the Document is sent to the Company by Electronic Means, it is authenticated [if it bears the member's signature] or [if the identity of the member is confirmed in a manner agreed by the Directors] or [if it is accompanied by a statement of the identity of the member and the Company has no reason to doubt the truth of that statement] or [if it is from an email Address notified by the member to the Company for the purposes of receiving Documents or information by Electronic Means].

29.6 A written resolution is passed when the required majority of eligible members have signified their agreement to it.

29.7 A proposed written resolution lapses if it is not passed within 28 days beginning with the circulation date.

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<sup>i</sup> Note that although this model constitution assumes that all Directors are Members and all Members are Directors, and the Directors are given wide powers, under the Articles (and company law more generally) there are still some decisions which Members must make as Members (either in general meeting under the Companies Act 2006 (article 28.2), or by written resolution in accordance with article 29). [See in general the Companies House guidance booklet, "Resolutions" (available online at <http://www.companieshouse.gov.uk/about/gbhtml/gba7.shtml>).].

<sup>ii</sup> Article 14.2 is designed to facilitate the taking of decisions by the directors communicating via telephone or video conference calls. Note the requirement to keep a written record of meetings and decisions (article 32).

<sup>iii</sup> The quorum may be fixed in absolute terms (e.g. "two Directors") or as a proportion of the total number of Directors (e.g. "one third of the total number of Directors"). You may even wish to stipulate that particular named Directors, or Directors representing particular stakeholder interests, must be present to constitute a quorum.

<sup>iv</sup> You may wish to include a provision which gives the chair of the board a casting vote. This will enable the directors to resolve any deadlock at board level.

<sup>v</sup> Article 18 is designed to facilitate the taking of decisions by directors following discussions in the form of, for example, email exchanges copied to all the directors. Note the requirements as to recording the decision in articles 18.2 and 32.

<sup>vi</sup> Private companies are obliged to have at least one director. Provisions can be inserted into the articles providing for a minimum number of directors. Where the company has just one director, that director must be a natural person. Article 12 notes that, where there is only one director, a majority decision is reached when that director makes a decision. In the case of a single director, the quorum provisions (article 15) will need to be amended accordingly.

<sup>vii</sup> The board of directors cannot remove a director other than in accordance with the provisions in article 23 and the Companies Act 2006.

<sup>viii</sup> See the guidance on directors' remuneration in [Part 9] of the Regulator's information and guidance notes.

<sup>ix</sup> See section 112 of the Companies Act 2006. A company's members are (i) the subscribers to its memorandum; and (ii) every other person who agrees to become a member of the company and whose name is entered in its register of members.

<sup>x</sup> There is no need for all those who wish to become Members to subscribe to the Memorandum on incorporation; they can become Members and be entered in the register of Members after the company has been formed. However, since this model constitution assumes that all Members are also Directors, all Members will also have to be validly appointed as Directors under article 22.

<sup>xi</sup> Inclusion of the provisions in article 26 (other than 26.3) is mandatory and reflects paragraphs 2(1)-(4) of Schedule 1 to the Regulations. [Directors should ensure that the information to be included on an application form includes all the information which will be required to fill in Companies House Form [288a] on the appointment of the new Member as a Director (see: <http://www.companieshouse.gov.uk/forms/generalForms/288A.pdf>).] Article 26.3 provides that the Directors are also members of the company.

<sup>xii</sup> Inclusion of the provisions of article 27.1 and 27.2.1 – 27.2.2 (reflecting sub-paragraphs (5) and (6) of paragraph 2 of Schedule 1 to the Regulations), is mandatory.

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<sup>xiii</sup> The Companies Act 2006 has removed the need for private companies to hold annual general meetings and therefore these Articles follow suit; however, if you wish, you can insert an additional provision which obliges the company to hold annual general meetings.

<sup>xiv</sup> Article 28.2 provides that general meetings must be held in accordance with the provisions of the Companies Act 2006. You may insert additional provisions that specify how many Members are required to be present to hold a valid general meeting. The quorum may be fixed in absolute terms (e.g. “four Members”) or as a proportion of the total number of Members (e.g. “three quarters of the Members from time to time”). You may even wish to stipulate that particular named Members, or Members representing particular stakeholder interests, must be present to constitute a quorum. In any event, it is recommended that the quorum should never be less than half of the total number of Members.

<sup>xv</sup> Inclusion of the provisions of article 28.3 (reflecting paragraph 3(1) of Schedule 1 to the Regulations) is mandatory.