

GOVERNMENT NOTICE NO. 27

COMPANIES ACT
(ACT NO 15 OF 2013)

COMPANIES (SHAREHOLDER'S CODE OF CONDUCT) ORDER, 2016

IN EXERCISE of the powers conferred by section 73 and 74 of the Companies Act, 2013, I, JOSEPH MWANAMVEKHA, Minister of Industry, Trade and Tourism, make the following Order—

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| 1. This Order may be cited as the Companies (Shareholder's Code of Conduct) Order, 2016. | Citation |
| 2. This Order prescribes codes of conduct for shareholders of a private and public companies under sections 73 and 74. | Scope of the Order |
| 3.—(a) The code of conduct for shareholders of a private company shall be as prescribed in Part A of the Schedule to this Order. | Codes of conduct for shareholders |
| (b) The shareholder's code of conduct for public company shall be as prescribed in Part B of the Schedule to this Order. | |

SCHEDULE

(para. 3)

PART A

CODE OF CONDUCT FOR SHAREHOLDERS OF A PRIVATE COMPANY

THIS CODE IS APPLICABLE TO ALL PRIVATE COMPANIES

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| 1. Any term used in this Code, and which has been defined in the Act has the meaning ascribed to that term under the Act. | Interpretation |
| 2. A private company need not hold an annual general meeting. | Exemption from holding an annual general meeting |
| 3.—(1) Where a private company elects to hold an annual general meeting, the procedures relating to meetings under the Act shall apply accordingly. | Resolution of a private company to comply with the Act |
| (2) A resolution of a private company shall be validly passed at a general meeting if— | |
| (a) a notice of the meeting and of the resolution is given to the members; and | |
| (b) the meeting is held and conducted in accordance with the provisions of this Act and the company's constitution. | |

Circulation of resolutions and related expenses

4.—(1) A private company shall, where requested, send a copy of its resolutions to every eligible member—

- (a) by hard copy to the member's last known address; or
- (b) in electronic format to a member's electronic address.

(2) The expenses of a company in complying with subsection (1) shall be met by the members who request the circulation of the resolution unless the company resolves otherwise.

(3) Electronic address means any address or number used for the purposes of sending or receiving documents or information by electronic means.

Resolution deemed an ordinary resolution unless specified

5. Where in the provisions of this Code a reference is made to a resolution of a company which is not specified, the resolution shall be deemed to be an ordinary resolution unless the company's constitution require a higher majority or unanimity, in which case it shall be a special resolution.

Ordinary resolution

6.—(1) An ordinary resolution means a resolution passed by a simple majority of votes cast by such members of the company, as being entitled to do so, voting in person or by proxy at a general meeting, or such higher majority as is required by the company's resolution.

(2) Anything that may be done by ordinary resolution may also be done by special resolution.

Special resolutions

7.—(1) A special resolution means a resolution passed by a majority of seventy five per cent or, if a higher majority is required by a company's constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the matter which is the subject of the resolution.

(2) The notice for a meeting to pass a special resolution shall include the text of the resolution and specify the intention to propose the resolution as a special resolution.

(3) At any meeting at which a special resolution is passed, a declaration by the chairperson that the resolution is so passed, shall, unless a poll is demanded, be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

(4) All special resolutions under this Code may be rescinded only by a special resolution except where the resolution relates to the liquidation of the company.

Voting to be by show of hands or poll

8.—(1) The manner of voting in a meeting of a private company shall be by the show of hands.

(2) A declaration by a chairperson of a meeting that a resolution is carried by the requisite majority shall be conclusive evidence of that fact unless a poll is demanded.

(3) A poll may be demanded either before or after a vote is taken on a resolution by—

(a) a shareholder or shareholders representing not less than ten percent of the total voting rights of all shareholders having the right to vote at a meeting;

(b) a shareholder or shareholders holding shares in a company that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than ten per cent of the total amount paid up on all shares that confer that right; or

(c) a chairperson of the meeting.

(4) The Chairperson may withdraw a poll.

(5) A poll shall be taken in such manner as the chairperson directs and the result shall be deemed to be the resolution of the meeting at which the poll is demanded.

(6) With a poll, votes shall be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

(7) A chairperson of a shareholders' meeting shall not be entitled to a casting vote.

9.—(1) A shareholder may exercise the right to vote by being present in person or by appointing a proxy or by voting electronically.

Proxies and electronic voting

(2) A proxy form shall be sent with each notice calling a meeting of the company.

(3) A proxy for a shareholder may attend and be heard at a meeting of shareholders as if the proxy was the shareholder.

(3) A proxy shall be appointed by notice in writing signed by the shareholder and the notice shall state whether the appointment is for a particular meeting or a specified term.

(4) No proxy shall be effective in relation to a meeting unless—

(a) a copy of the notice of appointment is produced before the start of the meeting; and

(b) any power of attorney, or other authority under which the proxy is signed, is produced.

(5) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorized in writing or, in the case of a company, under the hand of an officer or of an agent duly authorized.

(6) An instrument appointing a proxy shall be in the following form—

I/We of, being shareholders of the above named company, hereby appoint or failing him/her, of as my/our proxy to vote for me/us at the meeting of the company to be held on..... and at any adjournment of the meeting.

Signed this day of, 20.....

(7) A constitution of a company may provide that the instrument appointing a proxy shall not be effective unless it is produced by a specified time before the start of a meeting where the time specified is not earlier than twenty four hours before the start of the meeting.

(8) Where a company sets up an electronic interface in the conduct of its meetings, any member absent who follows the proceedings by way of such electronic communication shall also vote accordingly.

Votes of joint holders of shares

10.—(1) In the case of joint holders of shares of a company, only a vote of a senior holder who votes, or any proxies duly authorized by him, may be counted by the company.

(2) For the purposes of this section, a senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to any provision of the company’s constitution.

Determination of the entitlement to vote in the constitution

11. Nothing in this section shall affect—

(a) any of the provisions of a company’s constitution—

(i) requiring an objection to a person’s entitlement to vote on a resolution to be made in accordance with the constitution; and

(ii) for the determination of any such objection to be final and conclusive; or

(b) the grounds on which such a determination may be questioned in legal proceedings.

Duty to keep records of meetings and or resolutions

12.—(1) A company shall cause to be kept, as part of its records, the minutes of all its meetings as well as resolutions that are passed in those meetings in electronic or hard copy format.

(2) All the records of the company shall be kept for at least ten years from the time when they are created.

(3) This section shall apply notwithstanding any contrary provision in any constitution adopted by a company.

PART B

CODE OF CONDUCT FOR SHAREHOLDERS OF A PUBLIC COMPANY

THIS CODE IS APPLICABLE TO ALL PUBLIC COMPANIES

Interpretation

1. Any term used in this Code, and which has been defined in the Act, has the meaning ascribed to that term in the Act.

Annual general meeting

2.—(1) Every public company shall in each year hold an annual general meeting in addition to any other meetings held in that year.

(2) If a company fails to comply with subsection (1), the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5(2) of the Act.

<p>3. A resolution of the members of a company shall be deemed to be validly passed at a general meeting if—</p>	<p>(a) a notice of the meeting and of the resolution is given; and</p> <p>(b) the meeting is held and conducted in accordance with the provisions of this Part and the company’s constitution.</p>	<p>Resolutions at general meetings</p>
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<p>4. A director of a public company shall have power to call a general meeting of the company for the better carrying into effect the provisions of this Code and for the conduct of the company’s business.</p>	<p>Director may call for a general meetings</p>
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<p>5.—(1) The members of a company may requisition a general meeting of the company from the directors.</p> <p>(2) The members required to requisition a meeting pursuant to subsection (1) shall include—</p>	<p>Members may requisition for a general meeting</p>
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(a) in the case of a company having share capital, members representing at least ten per cent of such of the paid-up capital of the company as carries the right of voting at general meetings of the company; or

(b) in the case of a company not having a share capital, members who represent at least ten per cent of the total voting rights of all the members having a right to vote at general meetings.

(3) A requisition for a meeting under this section shall—

(a) state the general nature of the business to be dealt with at the meeting; and

(b) may include the text of a resolution that may properly be moved and is intended to be passed at the meeting, provided that such resolution—

- (i) shall not be inconsistent with any enactment or the company’s constitution;
- (ii) shall not be defamatory of any person; or
- (iii) shall not be frivolous or vexatious.

(4) A requisition for a meeting under this section—

- (a) may be in electronic or hard copy format; and
- (b) shall be signed by the person or persons making it.

<p>6.—(1) Once the members of a company have requisitioned for a general meeting—</p>	<p>Directors to call for meetings requisitioned by members</p>
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(a) the directors of the company shall call for the general meeting of the company within twenty one days from the date of receipt of the requisition; and

(b) the meeting shall be held on a date not more than twenty eight days after the date of the notice convening the meeting.

(2) Where a requisition involves a resolution proposed to be passed at a meeting, such resolution shall be included in a notice of the meeting.

(3) Where a proposed resolution is intended to be a special resolution, the

directors shall comply with the required notice for such meeting as may be provided in this Code or in the company's constitution.

Members to call for meetings where directors are in default

7.—(1) Where directors of a company fail or neglect to call for a general meeting as provided in sections 5 and 6, the members who requisitioned for the meeting or any of them representing more than one half of the total voting rights of all of them, may themselves call for a general meeting.

(2) A general meeting called under this section shall be on a date not more than three months after the date on which the directors received the requisition to call for the meeting.

(3) A general meeting under this section shall be called in the same manner as, and as nearly as possible to, that in which meetings are required to be called by the directors.

(4) A company shall reimburse all reasonable expenses incurred by the members who call for the meeting by reason of the failure of the directors to so call.

Power of court to order for a company meeting

8.—(1) A court may on its own motion or on the application—

(a) of a director of the company; or

(b) of a member of the company who would be entitled to vote at the meeting,

order for a meeting of a company to be called, held and conducted in any manner that the court shall deem fit.

(2) The power of the a court under this section shall be exercised where, for any reason it is impracticable—

(a) to call for a meeting of a company in any manner in which meetings of that company may be called; or

(d) to conduct a meeting in the manner prescribed by the company's constitution or this Code.

(3) A meeting called, held and conducted in accordance with an order under the powers referred to in this section shall, for all intents and purposes, be deemed to be a meeting of the company duly called, held and conducted.

Notice of meetings

9.—(1) Notice of a general meeting of a company shall be given either—

(a) in hard copy format; or

(b) in electronic format.

(2) The notice of a general meeting of a company shall among others state—

(a) the time and date of the meeting;

(b) the place of the meeting; and

(c) the general nature of the business to be dealt with at the meeting.

(3) Subsection (2) shall have effect subject to the provisions of the company's constitution.

Receipt of notice of meetings

10.—(1) It shall be the right of—

(a) every member of the company; and

(b) every director,

to receive the notices of all the meetings of the company.

(2) A member under this section includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, where the company has been notified of such entitlement.

(3) This section has effect subject to the provisions of the company’s constitution as well as the other written laws.

11.—(1) Where a special notice of a resolution is required, the resolution shall not be effective unless notice of the intention to move it has been given to the company at least twenty eight days before the meeting at which it is moved.

Resolutions requiring special notice

(2) The company shall, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where the notice under subsection (2) is not practicable, the company shall give its members a notice of at least fourteen days before the meeting—

(a) by advertisement in a newspaper of wide circulation; or

(b) in any other manner as provided by the company’s constitution.

(4) If, after notice of the intention to move a resolution under this section has been given to a company, a meeting is called for a date twenty eight days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required.

12.—(1) Where a company gives notice of—

(a) a general meeting; or

(b) a resolution intended to be moved at a general meeting,

any accidental failure to give notice to one or more persons shall be disregarded for the purpose of determining whether notice of the meeting or resolution, as the case may be, is duly given.

Accident failure to give notice of resolution or meeting

13.—(1) Members of a company may require the company to circulate to members of the company entitled to receive notice of a general meeting a statement of not more than one thousand words with respect to—

Members’ power to requisition for statements

(a) a matter referred to in a proposed resolution to be dealt with at that meeting; or

(b) other business to be dealt with at that meeting.

(2) A company shall circulate a statement once it has received requests to do so from members representing at least five percent of the total voting rights of all the members who have a relevant right to vote.

(3) In subsection (2), a “relevant right to vote” means—

(a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at a meeting to which the request relates; and

(b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request under this section—

(a) may be in hard copy or in electronic format;

(b) shall identify a statement to be circulated;

(c) shall be authenticated by a person or persons making it; and

(d) shall be received by the company at least one week before the meeting to which it relates.

Duty of a company to circulate statement

14.—(1) A company that is required under this section to circulate a statement shall send a copy of it to each member of the company entitled to receive a notice of the meeting—

(a) in the same manner as the notice of the meeting; and

(b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 16 and 17.

(3) If a company fails to comply with this section, the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

Expenses of circulating statements

15.—(1) Expenses of a company in complying with section 14 need not be paid by the members who requested the circulation of the statement if—

(a) the meeting to which the requests relates is an annual general meeting of a public company; and

(b) sufficient requests to require the company to circulate the statement are received before the end of the financial year preceding the meeting.

(2) In any other cases—

(a) the expenses of the company in complying with that section 14 shall be paid by members who requested the circulation of the statement unless the company resolves otherwise; and

(b) unless the company has previously so resolved, it is not bound to comply with paragraph 14 unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Application not to circulate members' statement

16. A company shall not circulate a members' statement where, on an application by the company or another person who claims to be aggrieved, a court is satisfied that a statement has been properly circulated.

Quorum at meetings

17.—(1) Subject to the provisions of the company's constitution, three persons present at a meeting shall form a quorum, unless—

(a) each person is only present because he is authorized to act as the representative of a company in relation to the meeting, and they are representatives of the same company; or

(b) each is only present because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

(2) For the purposes of this section, a “person” means—

- (a) an individual who is a member of the company;
- (b) a person authorized to act as a representative of a company in relation to the meeting; or
- (c) a person appointed as proxy of a member in relation to the meeting.

18.—(1) A member may be elected to be a chairperson of a general meeting by a resolution of the company passed at the meeting.

Chairperson of a general meeting

(2) Subsection (1) is subject to any provision of the company’s constitution that states who may or may not be a chairperson.

19.—(1) On a vote on a resolution at a meeting on a show of hands, a declaration by a chairperson that the resolution—

Voting by show of hands

- (a) has or has not been passed; or
 - (b) has passed with a particular majority,
- is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of a declaration under this section in minutes of the meeting is conclusive evidence of that fact.

(3) This section shall not have effect if a poll is demanded in respect of a resolution and the demand is not subsequently withdrawn.

20.—(1) A provision of a company’s constitution is void insofar as it purports to exclude a right to demand a poll at a general meeting on any question other than—

Right to demand a poll

- (a) election of a chairman of the meeting; or
- (b) an adjournment of the meeting.

(2) A provision of a company’s constitution is void insofar as it purports to make ineffective a demand for a poll on any such question which is made—

- (a) by not less than five members having the right to vote on the resolution; or
- (b) by a member or members representing not less than ten per cent of the total voting rights of all the members having the right to vote on the resolution, excluding any voting rights attached to any shares in the company held as treasury shares; or
- (c) by a member or members holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than ten per cent of the total sum paid up on all the shares conferring that right, excluding shares in the company conferring a right to vote on the resolution which are held as treasury shares.

Voting on a
poll

21. On a poll taken at a general meeting of a company, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Representation
of company at
meetings

22.—(1) If a company is a member of another company, it may, by a resolution of its directors or other governing body, authorize a person or persons to act as its representative or representatives at any meeting of the company.

(2) Where a company authorizes only one person under subsection (1), the authorized person is entitled to exercise the same powers on behalf of the company as the company would exercise if it were an individual member of the other company.

(3) Where a company authorizes more than one person under subsection (1), any one of them is entitled to exercise the same powers on behalf of the company as the company would exercise if it were an individual member of the other company.

(4) Where a company authorizes more than one person and more than one of them purport to exercise a power under subsection (3)—

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way; and

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Appointment
of proxies

23.—(1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

Notice of
meeting to
contain
statement of
rights

24.—(1) Every notice calling a meeting of a company shall contain, with reasonable prominence, a statement informing the member of—

(a) his rights to appoint proxies; and

(b) any more extensive rights conferred by the company's constitution to appoint more than one proxy.

(2) Failure to comply with this section shall not affect the validity of the meeting or of anything done at the meeting.

(3) If a company fails to comply with subsection (1), the company and every officer of the company in default shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

Company-
sponsored
invitations to
appoint proxies

25.—(1) If for the purposes of a meeting there are issued at the company's expense invitations to members to appoint as proxy a specified person or a number of specified persons, the invitations shall be issued to all members entitled to vote at the meeting.

(2) Subsection (1) shall be considered to be complied with if—

(a) there is issued to a member, at his request, a form of appointment naming the proxy or a list of persons willing to act as proxy; and

(b) the form or list referred to in paragraph (a) is available on request to all members entitled to vote at the meeting.

(3) If subsection (1) is contravened in relation to a meeting, every officer of the company who is in default commits an offence.

(4) A company and every officer of a company, who contravenes subsection (1), commit an offence and shall be liable to a fine in accordance with the prevailing schedule of penalties prescribed under section 5 of the Act.

26.—(1) This section applies to—

(a) appointment of a proxy; and

(b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

Notice required of appointment of proxy

(2) Any provision of a company’s constitution is void insofar as it purports to require an appointment of a proxy to be made or a document to be received by the company or another person earlier than the following time—

(a) in the case of a meeting or adjourned meeting, forty eight hours before the time for holding the meeting or adjourned meeting;

(b) in the case of a poll taken more than forty eight hours after it was demanded, twenty four hours before the time appointed for the taking of the poll; and

(c) in the case of a poll taken not more than forty eight hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2), no account shall be taken of any part of a day that is not a working day.

27.—(1) A proxy may be elected to be a chairperson of a general meeting by a resolution of the company passed at the meeting.

Chairing meetings

(2) Subsection (1) is subject to any provision of the company’s constitution that states who may or who may not be a chairperson.

28.—(1) The appointment of a proxy to vote on a matter at a meeting of a company authorizes the proxy to demand, or join in demanding, a poll on that matter.

A proxy may demand a poll

(2) A demand by a proxy counts for the purposes of paragraph (1)—

(a) as a demand by the member;

(b) as a demand by a member representing the voting rights that the proxy is authorized to exercise; and

(c) as a demand by a member holding the shares to which those rights are attached.

29.—(1) This section applies to a notice that the authority of a person to act as proxy is terminated (in this Code otherwise referred to as the “notice of termination”).

Notice for termination of a proxy’s authority

(2) The termination of the authority of a person to act as a proxy shall not affect—

(a) whether he counts in deciding whether there is a quorum at a meeting;

(b) the validity of anything he does as a chairman of a meeting; or

(c) the validity of a poll demanded by him at a meeting, unless the company receives notice of the termination before commencement of the meeting.

(3) Termination of authority of a person to act as a proxy shall not affect the validity of a vote given by that person, unless the company receives notice of the termination—

(a) before commencement of a meeting or adjourned meeting at which the vote is given; or

(b) in the case of a poll taken more than forty eight hours after it is demanded, before the time appointed for taking the poll.

(4) If a company's constitution requires or permits members to give notice of termination to a person other than the company, the references in this section to the company receiving notice have the effect as if they were or, as the case may be, include a reference to that person.

(5) Subject to subsection (6), the applicability of subsections (2) and (3) is subject to any provision of the company's constitution which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections.

(6) Any provision of the company's constitution is void insofar as it purports to require notice of termination to be received by the company or another person earlier than the following time—

(a) in the case of a meeting or adjourned meeting, forty eight hours before the time for holding the meeting or adjourned meeting;

(b) in the case of a poll taken more than forty eight hours after it was demanded, twenty four hours before the time appointed for the taking of the poll; and

(c) in the case of a poll taken not more than forty hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods mentioned in subsections (3)(b) and (6), no account shall be taken of any part of a day that is not a working day.

Resolution passed at adjourned meeting

30. Where a resolution is passed at an adjourned meeting of a company, the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.

Sending documents relating to meetings in electronic

31.—(1) Where a company has given an electronic address in a notice calling a meeting, it agrees that any document or information relating to proceedings at the meeting may be sent by electronic means to that address subject to any conditions or limitations specified in the notice.

(2) Where a company has given an electronic address—

(a) in an instrument of proxy sent out by the company in relation to the meeting; or

(b) in an invitation to appoint a proxy issued by the company in relation to the meeting,

it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the notice.

(3) In subsection (2), documents relating to proxies include—

(a) the appointment of a proxy in relation to a meeting;

(b) any document necessary to show validity of, or otherwise relating to, the appointment of a proxy; and

(c) notice of the termination of the authority of a proxy.

(4) In this section “electronic address” means any address or number used for the purposes of sending or receiving documents or information by electronic means.

32.—(1) The provisions of this Code apply, with any necessary modifications, and subject to subsections (2) and (3), in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.

Application to class meetings

(2) Sections 6 to 9 of this Code do not apply in relation to a meeting of holders of a class of shares—

(3) The following provisions, in addition to those mentioned in subsection (2), shall not apply to a meeting in connection with the variation of rights attached to a class of shares (a “variation of class rights meeting”)—

(a) section 18; and

(b) section 21.

(4) A quorum for a variation of class rights meeting is—

(a) for a meeting other than an adjourned meeting, two persons present holding at least one-third of the issued shares of the class in question, excluding any shares of that class held as treasury shares; and

(b) for an adjourned meeting, one person present holding shares of the class in question.

(5) For the purposes of subsection (4), where a person is present by a proxy or proxies, he is treated as holding only the shares in respect of which those proxies are authorized to exercise voting rights.

(6) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(7) For the purposes of this section—

(a) any amendment of a provision contained in a company’s constitution for the variation of the rights attached to a class of shares, or the insertion of any such provision into the constitution is itself to be treated as a variation of those rights; and

(b) a reference to variation of rights attached to a class of shares shall include reference to their abrogation.

Duty to keep records of meetings and resolutions

33.—(1) Every company shall keep records in electronic or hard copy format comprising—

(a) copies of all resolutions of members passed otherwise than at general meetings; and

(b) minutes of all proceedings of general meetings.

(2) The records shall be kept for at least ten years from the date of the resolution, meeting or decision as appropriate.

Made this 1st day of June, 2016.

JOSEPH MWANAMVEKHA
*Minister of Industry,
Trade and Tourism*

(FILE NO. INV/22)

GOVERNMENT NOTICE NO. 28

COMPANIES ACT
(ACT NO. 15 OF 2013)

COMPANIES (PANEL ON TAKEOVERS AND MERGERS) RULES, 2016

IN EXERCISE of the powers conferred by section 298 (1) of the Companies Act 2013, I, JOSEPH MWANAMVEKHA, Minister of Industry, Trade and Tourism, make the following Rules—

PART I—PRELIMINARY

Citation

1. These Rules may be cited as the Companies (Panel on Take-Overs and Mergers) Rules, 2016.

Interpretation

2. In these Rules, unless the context otherwise requires—

Cap. 48:09

“Commission” means the Competition and Fair Trading Commission established by section 4 of the Competition and Fair Trading Act;

“custodian” means a person who, in the ordinary course of business, holds securities directly or indirectly on behalf of the beneficial owner of the securities;

“dissenting shareholder” means a shareholder who has not assented to the offer and a shareholder who has failed or refused to transfer his shares to the offeror in accordance with the terms of the offer;

“effective control” means the holding of securities by any person, either individually or together with a person acting in concert, which will result in that person, either individually or together with a person acting in concert, having the right to exercise, or control the exercise of, more than thirty per cent of the rights attached to the voting shares of a

company;

“engaging in conduct” means doing or refusing to do an act, and includes—

(a) omitting to do an act; or

(b) making it known that an act will or will not be done;

“exchange of securities offer” means an offer in which the consideration includes securities of the offeror;

“firm intention” means a communication in writing, as referred to in rule 10;

“independent adviser” means an adviser whom the Panel considers as independent and who is approved by the Panel for the purposes of these Rules;

“offer” means an offer to which these Rules apply for voting securities and any other securities to which the offer is required to extend under these Rules;

“offeree” means—

(a) before an offer is made, a person who holds securities in a target company that has received a takeover notice relating to those securities; or

(b) after an offer is made, a person to whom an offer is made;

“offeror” means the person by or on whose behalf the offer is made or is to be made;

“offer document” means the offer document as referred to in rule 14;

“offer period” means the period from the time the offer document has been communicated to a shareholder of an offeree pursuant to rule 18 until the lapse of the offer or the closing date pursuant to rule 20;

“offer price” means the price per share offered by the offeror to the shareholder of the offeree;

“person acting in concert” means individuals who, or companies which, pursuant to an agreement or understanding, whether formal or informal, cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company;

“reply document” means the reply document of the offeree as referred to in rule 19;

“reporting issuer” has the same meaning as in the Act;

“target company” means a company—

(a) whose voting securities are the subject of an offer; or

(b) that has received a takeover notice; and

“voting right” means a currently exercisable right to cast a vote at

meetings of shareholders of a company or security holders of another body corporate, not being a right to vote that is exercisable only in one or more of the following circumstances—

(a) during a period in which a payment or distribution or part of a payment or distribution in respect of the security that confers the voting right is in arrears or some other default exists;

(b) on a proposal that affects rights attached to the security that confers the voting right;

(c) on a proposal to put the company or body corporate into liquidation or voluntary administration;

(d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company or body corporate;

(e) during liquidation or voluntary administration of the company or body corporate;

(f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company or body corporate.

Application of
these Rules

3.—(1) These Rules apply to a company that—

(a) is a party to a listing agreement with a registered exchange and that has securities that confer voting rights quoted on the registered exchange's securities market; or

(b) was within paragraph (a) at any time during the period of twelve months before a date or the occurrence of an event referred to in these Rules; or

(c) has ten or more shareholders and ten or more share parcels;

(2) These Rules shall continue to apply to a transaction or an event regulated under these Rules even if a company that previously satisfied subparagraph (1)(c) ceases to have ten or more shareholders and ten or more share parcels.

(3) These Rules shall apply despite any provision to the contrary in any agreement, constitution of a company or similar document relating to another body corporate, resolution of the security holders of a company or of any other body corporate, deed, or otherwise.

(4) In this rule, shareholder means a shareholder holding a security that confers a voting right.

PART II—DESIGNATION OF THE PANEL ON TAKEOVERS AND MERGERS

Competition
and Fair
Trading
Commission to
be Panel

4. For the purpose of section 297 of the Act, the Commission shall perform the functions of the Panel on Takeovers and Mergers and shall exercise all the functions and powers conferred on the Panel under the Act, until such a date as the Minister shall, by notice published in the *Gazette*, appoint for the Commission to cease to perform such functions.

PART III—GENERAL

5.—(1) An offeror shall provide equal and fair treatment to all shareholders of the same class of an offeree, whether in relation to the consideration to be paid for their shares, the information to be supplied to them pursuant to these Rules, or otherwise.

Equality of treatment to shareholders

(2) An offeree shall make available all information about companies involved in an offer to all shareholders at the same time and in the same manner.

(3) An offeree shall give all shareholders full, complete and timely information to enable them to make an informed decision concerning the merits or demerits of an offer.

(4) The obligations of an offeror towards shareholders of an offeree shall, for the purposes of these Rules, be no less than its obligations towards its own shareholders.

6. Directors of an offeree shall, at all times when advising or informing the shareholders about a takeover—

Duties and responsibilities of directors

(a) act only in their capacity as directors without regard to any personal or family interests;

(b) have regard only to the interests of the shareholders, employees and creditors; and

(c) act in good faith.

7.—(1) A person who issues a document or a statement in relation to a firm intention or an offer or during an offer period shall satisfy the highest standard of accuracy and the information given shall be adequately and fairly presented.

Standard of care and responsibility

(2) The standard required by subrule (1) shall apply whether the document is issued by the offeror or the offeree, or by an adviser on its behalf, or by any other person in relation to an offer.

8.—(1) All documents issued in connection with a takeover by an offeror or an offeree shall contain a statement signed by all the respective directors.

Joint and several responsibility of directors

(2) The statement in subrule (1) shall contain—

(a) an undertaking by the directors that they jointly and severally accept full responsibility for the accuracy of the information contained in the that they jointly and severally accept full responsibility for the accuracy of the information contained in the documents;

(b) a confirmation by the directors that having made all reasonable inquiries and to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration; and

(c) confirmation that there are no other facts omitted from the document, which omission would make any statement in the document misleading.

Duty of confidentiality 9. A person involved in an offer shall take such measures as are necessary to prevent the creation of a false market in the shares of either the offeror or the offeree and ensure that confidentiality is maintained at all times until a public announcement is made in accordance with these Rules.

PART IV—CONDUCT OF OFFER

Firm intention to the board of the offeree 10. The offeror shall communicate its firm intention to make an offer to the board of the offeree, to the Panel and to the relevant securities exchange, as the case may be.

Contents of a firm intention 11.—(1) A firm intention shall contain—

- (a) the proposed terms of the offer;
- (b) the identity of the offeror or any person acting in concert;
- (c) a confirmation by the board of the offeror that sufficient financial resources are available to satisfy the acceptance of the offer and where the offer includes non-cash consideration, that all reasonable measures have been taken to secure full payment of the shares acquired;
- (d) details of any existing holding of shares by the offeror in the offeree, including—
 - (i) shares which are owned or controlled by the offeror; and
 - (ii) shares which are owned or controlled by any person acting in concert with the offeror;
- (e) details of any agreement which exists between the offeree and the offeror or any person acting in concert in relation to the relevant shares, irrespective of whether or not any dealings have taken place; and
- (f) all conditions which relate to the acceptances to which the offer is to be subject.

(2) Notwithstanding subrule (1), the Panel may request any other information which shall be communicated to the offeree.

No defensive tactics 12.—(1) Where a firm intention of an offer has been communicated to the board of an offeree or where the board of an offeree has reason to believe that an offer may be imminent, the board of the offeree or any member thereof shall not engage in any action in relation to the offeree's affairs which may directly or indirectly result in—

- (a) the offer being frustrated; or
- (b) the shareholders of the offeree being denied an opportunity to decide on the merits of an offer.

(2) Notwithstanding subrule (1), the board of an offeree may, with the approval of the shareholders of the offeree in a meeting—

- (a) issue shares;
- (b) issue or grant options in respect of any unissued shares;
- (c) create, issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for the shares of the offeree;

(d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of a material amount, or otherwise than in the ordinary course of business;

(e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(f) cause the offeree, any of its subsidiaries or associated companies to purchase or redeem any shares in the offeree or provide financial assistance for any such purchase.

13.—(1) A public announcement is required to be published forthwith—

Public announcement

(a) by a board of an offeree, when a firm intention is made;

(b) by a board of an offeree, when there is undue movement in its share price or in the volume of shares traded, whether or not there is a firm intention;

(c) by an offeror where, before a firm intention has been made under rule 10, there is undue movement in its share price or in the volume of share turnover, and the Panel has reasonable cause to believe that it is the offeror’s action which has led to the situation;

(d) by an offeror, upon an acquisition that gives rise to an obligation to make an offer under rule 33;

(e) by a board of an offeree, when an offeror has withdrawn its offer; or

(f) by an offeror or a board of the offeror upon direction being given by the Panel.

(2) The public announcement shall contain details as specified in rule 11.

(3) The public announcement shall be made—

(i) in the case of a company listed on an exchange in the manner required by that exchange for immediate public release after receiving the approval from the Panel; or

(ii) in any other case, in newspapers of general circulation in Malawi.

14. An offer document shall contain the information specified in the First Schedule to these Rules together with any other relevant information that may enable shareholders of the offeree to reach an informed decision.

Offer document

15.—(1) An offeror shall determine an offer price.

Pricing mechanism

(2) Where an offeree is listed on a securities exchange, an offer price shall be the sum of any premium and of the highest of—

(a) a price paid by an offeror or a person acting in concert with the offeror for any acquisition, including by way of allotment in a public issue, if any, during the six months period prior to the date of public announcement;

(b) a price paid by an offeror under a preferential allotment made to him or to a person acting in concert at any time during the twelve months period up to the date of closure of the offer; or

(c) an average of the weekly high and low of the closing prices of the shares of the offeree as listed on the securities exchange where the shares of the offeree are most frequently traded during the six months preceding the date of public announcement.

(3) Where an offeree is not listed on a securities exchange, the offer document shall contain information as to the means by which the offeror has determined the offer price.

(4) An offeror shall ensure that the means referred to in subrule (3), shall be fair and reasonable.

Upward
revision of
price

16.—(1) Where an offeror or any person acting in concert with the offeror purchases shares in an offeree during an offer period at a price higher than an offer price, the offeror shall increase the offer to not less than the highest price paid for any shares so acquired.

(2) An offeror shall make a public announcement immediately following an acquisition giving rise to an obligation under subrule (1) stating the number of shares acquired

Filing of the
offer document

17. Where a decision to make an offer has been made, an offeror shall file a copy of the offer document with the Panel and the relevant securities exchange and shall pay the relevant fee to the Panel as specified in the Second Schedule to these Rules.

Communication
of the offer
document to
shareholders

18. Except where the Panel otherwise directs, an offeror shall, within fourteen days of filing a copy of an offer document with the Panel and relevant securities exchange, communicate a copy of the offer document by registered post or by any other expedient means of delivery to the shareholders of an offeree.

Reply
document of
an offeree

19. The board of an offeree shall communicate to its shareholders, within twenty one days of the date of the posting by an offeror of an offer document, a reply document containing—

(a) and information set out in the Third Schedule to these Rules;

(b) any other information that it considers relevant to enable its shareholders to reach an informed decision.

Communication
to the Panel
and
publications

20.—(1) An offeror shall immediately inform the Panel and the securities exchange when an offer—

(a) has been revised or extended; or

(b) has expired,

and shall, within five days of informing the Panel, make a public announcement to that effect in at least two daily newspapers of general circulation in Malawi.

(2) The public announcement referred to in subrule (1), shall state the number of shares which the offeror or any person acting in concert with the offeror has or controls before the offer period, the number of shares for which acceptance of the offer has been received, and the number of shares otherwise acquired by the offeror and any person acting in concert with him during the offer period.

(3) The public announcement made under this rule shall specify the percentages of the relevant classes of share capital, and the percentages of rights attached to voting shares, represented by the numbers.

21.—(1) Subject to subrule (2), an offer shall be open for at least thirty five days and shall not exceed sixty days following the date of communication of the offer document to the shareholders pursuant to rule 18. Offer period

(2) The Panel may, upon application and payment of the fee prescribed in the Second Schedule to these Rules, provide for an extension of the offer period as it deems fit.

PART V—INDEPENDENT ADVISER

22.—(1) Following communication of the offer document pursuant to rule 18, a board of an offeree shall, in the interests of its shareholders, appoint an independent adviser, who shall be qualified and have the competence and experience necessary to— Appointment of an independent adviser

(a) understand the type of arrangement proposed;

(b) evaluate consequences of the arrangement;

(c) assess effects of the arrangement on the value of securities and on rights and interests of a holder of any securities, or a creditor of the company; and

(d) express opinion, exercise judgment and make decisions impartially.

(2) An independent adviser shall not—

(a) have any relationship with the company or with a proponent of the arrangement, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised;

(b) have had any relationship contemplated in paragraph (a) within the immediately preceding two years; or

(c) be related to a person who has or has had a relationship contemplated in paragraph (a) or (b) above.

(3) Where a board of an offeree has appointed an independent adviser, it shall, within four days of such appointment, notify the Panel of the appointment.

(4) The Panel may, if it deems fit, direct the board of an offeree to remove any person appointed as independent adviser.

23.—(1) An independent adviser shall—

(a) advise a board of an offeree as to whether the offer is fair and reasonable; Functions of an independent adviser

(b) carry out or cause to be carried out a valuation of an offeree; and

(c) submit a report to board of the offeree, which report shall be in the Form prescribed in the Fourth Schedule to these Rules.

(2) The report submitted by an independent adviser pursuant to subrule (1) (c) shall be in writing and shall contain the advice, the valuation and the method of valuation used, including reasons and assumptions made.

(3) A summary of the report, submitted by an independent adviser pursuant to subrule (1) (c), shall be attached to a reply document as specified in rule 19.

(4) A full report and any summary of a report of an independent adviser shall include—

(a) a statement of qualifications and expertise of the independent adviser;

(b) a statement that the independent adviser has no conflict of interest that might affect his ability to provide an unbiased report; and

(c) a statement that the summary of the report is fair and not misleading, where applicable.

(5) Notwithstanding paragraph (b) of subrule (1), a Panel may direct a board of the offeree to appoint an independent valuer.

Consultation of the report by shareholders

24. The report of the independent adviser shall be kept at the registered office of the offeree and be made available for consultation upon request by any shareholder or by any person authorized in writing by a shareholder.

Recommendation of directors to shareholders

25.—(1) Directors of an offeree shall consider a report of an independent adviser and make a recommendation in good faith to the shareholders.

(2) Where there is a divergence of views among directors of an offeree as on the merits of an offer, a statement of the divergent views shall be attached to the reply document.

PART VI—RESTRICTIONS ON DEALINGS

Restrictions on dealings before an offer

26.—(1) No dealings of any kind in the shares of the offeree shall be made by any person who has confidential and price sensitive information concerning the offer between the time when there is reason to believe that an offer or a revised offer is contemplated, on the one hand, and the public announcement of the offer or revised offer, or of the termination of the takeover discussions, on the other hand.

(2) A restriction under subrule (1) shall not apply to an offeror, or a person acting in concert with the offeror, if such dealings are made for the purposes of an offer, unless the offeror or the person acting in concert with the offeror is a director or employee of the offeree.

Restrictions on dealings during the offer period

27. An offeror or a person acting in concert with the offeror shall not enter into any agreement relating to the purchase or sale of shares of an offeree at any time during offer period.

Restrictions on dealings by offeror during non-cash offers

28. Where consideration offered for shares of an offeree consists only of shares of an offeror which are traded on a securities exchange, the offeror, or any person acting in concert with the offeror shall not engage in any purchase of the shares of the offeror for the duration of offer period unless the

offeror declines to proceed with the offer.

29. Except with the prior approval of the Panel, any offer, which has been made in accordance with these Rules, shall not be withdrawn.

No withdrawal of offer without approval

PART VII—VARIATION OF AN OFFER

30.—(1) Subject to prior approval of the Panel, an offer may be varied in terms of the consideration offered for the shares proposed to be acquired where—

Variation of offer

- (a) a cash sum is offered, by increasing the amount of that sum;
- (b) shares are offered, by increasing the number of those shares;
- (c) debentures are offered, by increasing the rate of interest payable under those debentures or by increasing the amount of those debentures;
- (d) an option to acquire unissued shares is offered, by increasing the number of unissued shares that may be acquired under that option; and
- (e) a combination of any of the above is offered, by increasing the amount or value of any component of the offer.

(2) Where the consideration offered for the shares to be acquired under an offer is varied under subrule (1), all the shareholders of the offeree shall be entitled to receive the consideration as so varied.

(3) Subject to the prior approval of the Panel and pursuant to rule 20, an offeror may vary an offer by extending the period during which it remains open.

(4) In the event of a variation of an offer, the offeror shall give to the offeree and its shareholders notice of the variation by post or by any other expedient means.

(5) Subject to rule 20, the revised offer shall remain open for at least fourteen days from the day of the notice of the variation.

(6) An offeror shall vary an offer not later than seven days after the communication of the reply document by the board of the offeree to the shareholders of the offeree pursuant to rule 18.

PART VIII—CONDITIONAL AND UNCONDITIONAL OFFERS

31.—(1) Except with the prior approval of the Panel, a voluntary offer to acquire all voting shares shall be conditional upon the offeror having received acceptances in respect of voting shares which, together with voting shares acquired or agreed to be acquired before or during the takeover offer, will result in the offeror and any person acting in concert with the offeror, holding more than fifty per cent of the voting shares of an offeree.

Conditional and unconditional offers

(2) If an offer under subrule (1) is conditional, an offer document shall specify the last date when the offeror can declare the takeover offer unconditional.

Period for acceptance when an offer becomes or is declared unconditional

32. Upon a conditional offer becoming or being declared unconditional, it shall remain open for acceptance for not less than fourteen days thereafter.

PART IX—MANDATORY OFFER

Mandatory offer

33.—(1) A person shall make an offer under subrule (2) where—

(a) before the commencement of these Rules, that person, either individually or together with a person acting in concert with him—

(i) holds more than thirty per cent of rights attached to voting shares of a company; and

(ii) acquires or contracts to acquire additional voting shares of the company;

(b) that person, either individually or together with a person acting in concert with him, acquires effective control of a company; or

(c) following a dealing in securities of a company, that person, either individually or together with a person acting in concert with him, acquires the right to exercise, or control the exercise of, more than fifty per cent of rights attached to the voting shares of the company.

(2) Subject to subrule (1), a person shall make an offer in accordance with these Rules, on all voting shares of the offeree not already held by the offeror.

(3) Where a person makes an offer under subrule (2), he shall immediately make a public announcement pursuant to rule 13.

(4) The Panel and the relevant securities exchange shall be notified of any public announcement made under subrule (3).

Waiver of a mandatory offer

34.—(1) The requirement to make a mandatory offer, pursuant to rule 33, may be waived by Panel—

(a) upon a change in control as a result of a restructuring of the offeree;

(b) where the Panel deems that an offer is unfair or contradictory to the market's interests; or

(c) in any other case as the Commission may deem fit.

(2) The Panel shall consider an application for waiver under subrule (1) subject to payment of the relevant fee as specified in the Second Schedule to these Rules.

Mandatory offer to be unconditional

35. Notwithstanding rule 31, a mandatory offer shall not be subject to any condition.

PART X—DELAY BEFORE SUBSEQUENT OFFER

Delay

36.—(1) Except with the prior approval of the Panel and subject to the payment of the relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in

concert with that person, has made an offer and the offer has been withdrawn, that person, or a person acting in concert with him, shall not, within twelve months of the date on which such offer is withdrawn or lapses, make a subsequent offer to an offeree.

(2) Except with the prior approval of the Panel and subject to the payment of relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in concert with that person, has or is deemed to have effective control of a company, that person shall not, within six months of the closure of any previous offer made by him to the offeree which became or was declared unconditional, make a subsequent offer to the offeree.

PART XI—DISSENTING SHAREHOLDERS

37.—(1) For the purposes of this Part, an offer means an offer to acquire all voting shares in a company other than voting shares that at the date of the offer are already held by an offeror.

Notice to dissenting shareholders

(2) When an offeror has, by virtue of acceptance of an offer, acquired or contracted to acquire not less than ninety per cent of the voting shares to which the offer relates, he may give notice to any dissenting shareholder that he intends to acquire his voting shares.

(3) A notice under subrule (2) may be given within twenty eight days from the last day on which the offer shall be accepted and shall be in the manner prescribed in the Fifth Schedule to these Rules.

(4) Where an offeror has not issued a notice pursuant to subrule (2), he shall within twenty eight days from the last day on which the offer shall be accepted, inform any dissenting shareholder of his rights provided under rule 41.

(5) At the time when an offeror is giving a notice under subrule (2), he shall furnish to the offeree a copy of the notice.

38.—(1) Any dissenting shareholder may request a statement in writing from the offeror within fourteen days of giving notice under rule 37.

Request for statement

(2) A statement requested under subrule (1), shall contain details of other dissenting shareholders as shown in the shareholders' register.

(3) An offeror shall, within fourteen days of the request under subrule (1), provide a statement in writing to the dissenting shareholder.

39. Unless there is an application to court under rule 40, an offeror shall acquire the shares of any dissenting shareholder on the same terms as for the approving shareholders within twenty days of issue once of a notice.

Compulsory acquisition

40. Where a notice is given under rule 37, any dissenting shareholder may make an application by motion to court for an order within twenty one days of the date on which the notice was given.

Application to court

41. Where an offeror, by virtue of acceptance of an offer, has acquired or contracted to acquire not less than ninety per cent of the rights attached to voting shares to which the offer relates, any dissenting shareholder may

Protection of minority shareholders

require the offeror to acquire his shares, within twenty eight days from the day after which the dissenting shareholder has been informed under rule 37.

PART XII—EXEMPTIONS

Exemptions from these Rules

42 The Panel may, subject to such terms and conditions, grant an exemption from any requirement of these Rules where it is satisfied that such an exemption would be appropriate in the circumstances.

Application for exemptions

43.—(1) An offeror may apply to the Panel for exemption under rule 42.

(2) The application shall contain details of the proposed acquisition and the grounds on which the exemption is being sought.

(3) The offeror shall, along with the application referred to in subrule (2), pay the relevant fee as specified in the Second Schedule to these Rules.

Communication of the decision of the Panel

44.—(1) The Panel shall notify the applicant of its decision within fourteen days of the date of its decision.

(2) The Panel may grant exemptions or impose any terms and conditions to the exemptions as it deems fit.

(3) The Chief Executive Officer of the Panel may publish a decision by notice, where he is satisfied on reasonable grounds, that it is urgent and necessary to do so.

PART XIII—ENFORCEMENT

Panel’s powers in respect of compliance with these Rules

45.—(1) The Panel may at any time, if it considers that a person has not acted or is not acting or intends not to act in violation of the Act or these Rules, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding seven days, hold a meeting for the purpose of determining whether to exercise its powers under these Rules.

(2) Where the Panel gives a notice under subrule (1), it may make a temporary restraint order to expire on the close of Government business on the second day after the date for which the meeting was convened.

(3) For the purposes of this Part “contravene the Act or these Rules or not acting in compliance with the Act or these Rules” includes—

(a) a contravention of the Act or these Rules or a term or condition of an exemption from these Rules;

(b) an attempt to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(c) aiding, abetting, counselling, or procuring any other person to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(d) inducing, or attempting to induce, any other person, whether by threats or promises or otherwise, to contravene the Act or these Rules or a term or condition of an exemption from these Rules; or

(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of these Rules or a term or condition of an exemption from these Rules; or

(f) conspiring with any other person to contravene these Rules or a term or condition of an exemption from these Rules.

46.—(1) Following the meeting specified in rule 45, the Panel may make a determination whether it is satisfied that a person has acted or is acting or intends to act in compliance with the Act or these Rules. Determination
ns

(2) If the Panel makes a determination under subrule (1), the Panel shall, as soon as it is reasonably practicable, give written notice of its reasons for the determination to the person the determination concerns.

(3) Where the Panel makes a determination on reasonable grounds under subrule (1)(b), the Panel may, at any time before the close of the second day after the date for which the meeting was convened—

(a) make a temporary restraint order relating to the non-compliance with the Act and these Rules that shall expire on the close of such day as shall be specified in the order, not being a day that is later than twenty one days after the date on which the temporary restraining order is made;

(b) make an order continuing any temporary restraining order relating to the non-compliance with the Act and these Rules made under rule 45(2) until the close of such day as may be specified in the order, not being a day that is later than twenty one days after the date on which the temporary restraining order is made:

(c) make a permanent compliance order relating to the non-compliance with the Act and these Rules;

(d) if it makes any order under this subrule, also make an order extending, for a reasonable time, the period for which a takeover offer must remain open.

(4) If the Panel makes an order under this rule, the Panel—

(a) shall immediately give written notice to the person to whom the order is directed of the terms and conditions of the order; and

(b) shall, as soon as is reasonably practicable, also give that person written notice of the reasons for the order; and

(c) may also give notice to any other person of those matters.

(5) An order made under this rule may be made on any terms and conditions that the Panel thinks fit.

47.—(1) The Panel may vary an order in the same way as it may be made under rule 46. Variations,
revocation
and
suspension

(2) The Panel may revoke or suspend an order on the terms and conditions it thinks fit.

48. For the purposes of rules 45 and 46, a temporary restraining order is an order for one or more of the following purposes— Temporary
restraining
orders

(a) restraining a person from acquiring securities in the target company concerned or any interest in or rights relating to such securities;

(b) restraining a person from disposing of securities in the target company concerned or any interest in or rights relating to such securities;

(c) restraining a person from exercising the right to vote attaching to securities in the target company concerned or any other right relating to such securities;

(d) restraining a person from taking any action, including from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of these Rules;

(e) directing the target company concerned not to make any payments in respect of any securities;

(f) directing the target company concerned not to register the transfer or transmission of any securities;

(g) directing the target company concerned not to issue or allot securities to any person; or

(h) securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

Permanent compliance orders

49. For the purposes of rules 45 and 46, a permanent compliance order is an order for one or more of the following purposes—

(a) prohibiting or restricting a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the Act or rules;

(b) directing a person to disclose in accordance with the order information for the purpose of securing compliance with the Act or these Rules;

(c) directing a person to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in or are to be determined in accordance with the order; or

(d) securing compliance with any of those orders, an order directing a person to do or refrain from doing a specified act.

Witnesses and counsel to have privileges of witnesses and counsel in court

50.—(1) A person shall have the same privileges in relation to providing information and documents to, and answering questions before, the Panel, a member, officer, or employee of the Panel, or a person authorized by the Panel, as witnesses have in proceedings before a court.

(2) A person appearing as counsel before the Panel, or a member, officer, or employee of the Panel, shall have the same privileges as counsel have in proceedings before a court.

(3) A person has the same privileges in relation to providing information and documents to the Registrar, as witnesses have in proceedings before a court.

PART XIV—PROCEDURES OF THE PANEL

51.—(1) The Panel may receive evidence through a member, officer, or employee of the Panel, or any two or more of them. Receiving evidence

(2) If a person who is summoned to give evidence requests that the evidence be received at a meeting of the Panel, then subrule (1) shall not apply, and the evidence must be received at a meeting of the Panel.

52. The Panel may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that, in the opinion of the person receiving it, may assist the Panel in dealing effectively with any matter before it. Admissibility of evidence

53.—(1)The Panel may receive evidence— Manner of giving evidence

(a) given on oath;

(b) if the person receiving the evidence thinks it is appropriate, given by a written statement verified on oath; or

(c) given by audio-visual communication, if the Panel and the person giving the evidence agree.

(2) A member, officer, or an employee of the Panel may administer an oath for the purpose of a person giving evidence on oath.

54.—(1) A member of the Panel may issue a summons to a person requiring that person to appear before the Panel, or a member, officer, or employee of the Panel, in relation to any matter before the Panel and to do any of the following— Power to summon witnesses

(a) give evidence; or

(b) provide any documents or information that are in the person’s possession or control and that are relevant to the matter:

Provided that in the case of a body corporate, the body corporate shall appear by its authorized representative.

(2) The summons must be in writing, signed by a member of the Panel, and state—

(a) the date and time when, and the place where, the person must attend; and

(b) the documents or information that a person is required to provide, either generally, specifically, or by class, nature, content, or effect; and

(c) the person’s right to request that the person do give evidence at a meeting of the Panel; and

(d) the penalty for failing to attend.

(3) A summons may be served,—

(a) in the case of a natural person, by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least twenty four hours before his attendance is required; or

(b) in the case of a body corporate, by leaving it at the body corporate’s usual place of business at least twenty four hours before its attendance is required.

Witness’s expenses

55.—(1) If a person has appeared as a witness, whether summoned or not, the Panel may, if it thinks fit, order any sum to be paid to that witness for his expenses.

(2) That sum payable under subrule (1) shall not exceed the amount that would be payable to the witness if his attendance had been as a witness for the State in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the State in criminal cases.

Panel may accept undertakings

56.—(1) A Panel may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the Panel is exercising any of its powers or performing any of its functions under the Act or these Rules.

(2) A person may withdraw or vary the undertaking with the consent of the Panel.

Enforcement of undertakings

57.—(1) If the Panel considers that a person who has given an undertaking under rule 56 has breached a term of that undertaking, the Panel may apply to the court for an order under subrule (2) below—

(2) A court may make any of the following orders if it is satisfied that a person has breached a term of the undertaking—

(a) an order directing a person to comply with that term;

(b) an order directing a person to pay an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach; or

(d) an order for any consequential relief that the court thinks appropriate.

Panel may hear proceedings in private

58. The Panel may decide whether to hold any meeting or any part of a meeting in public or in private.

Power to make confidentiality orders

59.—(1) The Panel may, on its own initiative or on the application of any person, make an order prohibiting—

(a) the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry or other proceedings of the Panel; or

(b) the giving of evidence involving any such information, document, or evidence.

(2) The Panel may make an order under subrule (1) on the terms and conditions, that it thinks fit.

(3) An order under subrule (1) may be expressed to have effect from the

commencement of any inquiry or other proceedings of the Panel to the end of that inquiry or proceedings.

PART XV—MISCELLANEOUS

60.—(1) Where an offeree is listed on a securities exchange, consideration for the shares shall be paid in accordance with any enactment, the rules of the relevant securities exchange and the rules of the relevant clearing and settlement facility. Transfer of shares and settlement of consideration

(2) Where an offeree is not listed on a securities exchange, transfer of the shares shall be made in accordance with the provisions of any enactment and consideration for the shares shall be paid within three days from the receipt of the duly signed acceptance and transfer.

61. The fees set out in the Second Schedule to these Rules shall be paid to the Panel. Fees

62. The Panel may require payment to it of the costs incurred by it in holding any meeting under rules 45 and 46. Costs

63. The Panel may recover any money payable as a civil debt by a party responsible for payment under these Rules for any fees payable. Civil debt

FIRST SCHEDULE (rule 14)

INFORMATION TO BE CONTAINED IN AN OFFER DOCUMENT

The offer document shall contain the following statements in a prominent position—
“OFFER MADE BY OFFEROR TO THE SHAREHOLDERS OF OFFEREE”

Offer document on the takeover scheme proposed by the offeror for the shareholders of offeree whereby the offeror offers to the shareholders of the offeree to purchase their shares in offeree for a cash consideration of K per share or alternatively in the case of non-cash consideration, the exchange of share ratio.

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

(i) “If you are in doubt as to any aspect of this offer, you should consult a professional adviser.”

(ii) The shareholders of an offeree shall be registered at the close of business on a date, to be eligible for the offer.

(iii) An Acceptance and Transfer Form is attached with respect to your shareholding in offeree. To signify your acceptance, please sign the form and return it to the offeror, through the address of offeror at latest, by[date].

(iv) Last date for acceptance of the offer is[date]

DISCLAIMER

This offer document is not a prospectus. This offer document sets out the terms of the offer made by the offeror and has been prepared in compliance with the laws of Malawi.

PANEL ON TAKEOVERS DISCLAIMER

The no objection of the Panel for circulation of this offer document shall not in any way imply that the Panel has conveyed its approval, or otherwise, vouched for the financial soundness, accuracy or opinion expressed in this offer document with regards to this offer.

DIRECTORS STATEMENT

The board of the offeror accepts full responsibility for the correctness of the information contained in the offer document, and having made all reasonable enquiries, states that to the best of its knowledge and belief, there is no material fact, the omission of which would make any statement herein, whether of fact or opinion, misleading.

DOCUMENTS AVAILABLE FOR INSPECTION

The original of the offer document is available for inspection during the normal business hours at the registered office of the offeror at an address of the offeror. The document shall include the following information, along with any further information which may be necessary and relevant to enable the shareholders to make an informed decision—

1. The Offeror

The name and address of the offeror, any adviser or any other person who may be acting for the offeror, and any person acting in concert with the offeror. If either the offeror or any person acting in concert with the offeror is a company, the names and addresses of its directors and controlling shareholders.

2. Other parties related to the offer

The names and addresses of the parties to any agreement, arrangement or understanding for the transfer of any shares to any other persons pursuant to the offer, together with particulars of all shares held by such persons in the offeree, or a statement that no such shares are held.

3. Offer date and closing date

The date the offer is open for acceptance, its duration and the date and time of the closing of the offer.

4. Intention of the offeror

- (a) The offeror's intention regarding the continuation of the business of the offeree;
- (b) The offeror's intention regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree;
- (c) The long-term commercial justification for the proposed offer;
- (d) The offeror's intention with regard to the continued employment of the employees of the offeree and of its subsidiaries; and
- (e) The object and purpose of the acquisition of shares and future plans, including disclosures of intended disposal of any assets in the succeeding two years except in the ordinary course of business and details about implementation of future plans.

5. Shareholdings and dealings

- (a) The shareholdings of the offeror in the offeree.
- (b) The shareholdings of the directors of the offeror in the offeree.

- (c) The shareholdings of any person acting in concert in the offeree.
- (d) The shares in the offeror and in the offeree owned or controlled by a person with whom the offeror or any person acting in concert has any arrangement, or any other agreement or understanding, formal or informal, of whatever nature, which might be an inducement to deal or refrain from dealing.

If in any of the above categories, there is no shareholding, this fact shall be expressly stated.

Details including dates and prices of any dealing in shares made by any person, mentioned within the above categories taking place during the period beginning six months prior to the offer period until the communication of the offer document.

If no such dealings have taken place, this fact shall be expressly stated.

6. Dividend entitlement

Precise particulars of the shares in respect of which the offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

7. Offer price of offeree's shares

Detailed explanation of the mechanisms through which the offer price was reached.

8. Cash resources for offer

Where the offer is in cash, or includes an element of cash, the offer document shall include a confirmation by an adviser that the resources available to the offeror are sufficient to satisfy full acceptance of the offer.

9. Exchange of securities offer

- (a) In the case of an exchange of securities offer the following information about the offeror—
 - (i) for the last three financial years, turnover, net profit or loss before and after taxation, the charge for tax, exceptional items, minority interests, dividends, earnings per share and dividends per share;
 - (ii) a statement of the assets and liabilities shown in the last published audited accounts;
 - (iii) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (iv) details relating to the items referred to in (i) above in respect of any interim statement or preliminary public announcement made since the last published audited accounts; and
 - (v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.
- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be stated.
- (c) The Panel may require that the offer document contains a description of the financing arrangements, if any.

10. Arrangements in connection with offer

- (a) Details of any benefit which will be given to any director of the offeree as compensation for loss of office or otherwise in connection with the offer.
- (b) Details of any agreement or arrangement between the offeror and any of the directors of the offeree or any person which is conditional on the outcome of the offer or otherwise connected with the offer.

11. Regulatory obligations

A statement of the obligations of the offeror and the rights of the shareholders of the offeree under these Rules and any other relevant enactments.

12. Further information in cases of exchange of securities offers

The following additional information shall be given by the offeror when it is offering its securities in exchange for the securities of the offeree—

- (a) the nature and particulars of its business;
- (b) the date and country of its incorporation;
- (c) the address of its registered office in Malawi;
- (d) the stated capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting;
- (e) whether or not the shares being offered will rank in *pari passu* with the existing issued shares of the company, and if not, a precise description of how the shares will rank for dividends and capital;
- (f) the number of shares issued since the end of the last financial year of the company;
- (g) the highest and lowest closing market prices in respect of the offeror's shares with the relevant dates during the period commencing six months preceding the commencement of the offer period and ending on the day prior to the posting of the offer document;
- (h) details of any restructuring of capital during the two financial years preceding the date of the offer;
- (i) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, security interests, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;
- (j) details of any litigation to which the company is, or may become, a party;
- (k) details of every material contract entered into by the offeror and its subsidiaries not more than two years before the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company;
- (l) how and when the documents of title to the securities will be issued; and
- (m) whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree or by any other associated transaction. If there will be no effect, this fact shall be expressly stated.

13. Disclaimer

- (1) The offeror shall in clear terms include, in the offer document, the following

statement “to the best of my/our knowledge and belief, after making proper enquiry, the information contained in or accompanying the takeover notice of the offer document is, in all material respect true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Companies (Panel of Takeover and Mergers) Rules, 2016.

- (2) Where the offeror is a company or corporate body, the statement under paragraph (1) shall be signed by at least two directors.

SECOND SCHEDULE (rules 17, 21(2), 34(2), 43(3), and 61)

PRESCRIBED FEES PAYABLE TO THE PANEL

Activity	Fee payable
	K
1. Filing of the offer document with Panel	0.25 of the value of the the offer subject to a maximum of K500 000
2. Extension of the offer period	50 000.00
3. Waiver of the mandatory offer	100 000.00
4. Application for making a subsequent offer	100 000.00
5. Application for exemptions	100 000.00

THIRD SCHEDULE (rule 19)

INFORMATION TO BE CONTAINED IN THE REPLY DOCUMENT

The reply document of the offeree shall include the following information, along with any other information which may be necessary and relevant to enable the shareholders to make an informed decision—

- 1. Views of offeree’s board
 - (a) Whether the directors of the offeree recommend that the shareholders shall accept or reject the offer, with reasons for the recommendation.
 - (b) The summary of the report of the independent adviser as to whether the offer is fair and reasonable and the reasons thereof.
 - (c) Whether the directors and any person dealing directly on their behalf intends to accept the offer.
- 2. Directors’ interests in the offeree
 - (a) The aggregate shareholdings in the offeror and in the offeree in which the directors of the offeree have an interest shall be stated.
 - (b) If any securities in the offeree have been purchased or sold by the directors of the offeree within six months prior to the public announcement of the offer, details of the

numbers, prices and dates shall be given.

3. Shareholdings in the offeror

- (a) The shareholdings of the offeree, the offeree's holding company or any of its subsidiaries in the offeror shall be disclosed.
- (b) If any shares in the offeror have been purchased or sold by such persons within six months before the public announcement of the offer, details of the numbers, prices and dates shall be given.

4. Stated capital of offeree

- (a) The stated capital and the rights of the shareholders in respect of capital, dividends and voting.
- (b) The number of shares issued since the end of the last financial year of the offeree.
- (c) If any of the securities of the offeree are not listed on a securities exchange, any information available as to the number and price of transactions which have taken place during the period commencing six months preceding the commencement of the offer period shall be stated.

5. Financial information

- (a) The following information about the offeree—
 - (i) audited financial statements for the last three years;
 - (ii) all material changes in the financial or trading position or prospects of the company subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (iii) any interim statement or preliminary public announcement made since the last published audited accounts; and
 - (iv) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.
- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be stated.

6. Material contracts

Details of every material contract entered into by the offeree and its subsidiaries more than two years before the date of the offer, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the company.

7. Arrangements affecting directors

- (a) Details of any benefit to be given to any director of the offeree as compensation for loss of office or otherwise in connection with the offer.
- (b) Details of any agreement between any director of the offeree and any other person that is conditional on the outcome of the offer or otherwise connected with the offer.
- (c) Details of any material contract entered into by the offeror in which any director of the offeree has any interest.

8. Directors’ service agreement

Details of any existing service contracts between the offeree or any of its subsidiaries or associated companies and directors of the offeree which have more than twelve months to terminate, or which have been entered into or amended within six months before the public announcement of the offer.

FOURTH SCHEDULE

(rule 23(1)(c))

INFORMATION THAT MUST BE CONTAINED IN THE REPORT OF THE INDEPENDENT ADVISER

1. Identity of adviser

The name of the adviser.

2. Adviser’s qualifications and expertise

A statement of the adviser’s qualifications and expertise.

3. No conflict of interest

A statement that the adviser has no conflict of interest that could affect the adviser’s ability to provide an unbiased report.

4. Statement in relation to rule 23 report and further rule 23 report

(1) This clause applies to a report that is required under rule 23 (a rule 23 report) or a further rule 23 report obtained under rule 30 (a further rule 23 report).

(2) A rule 23 report must contain the following statement in a prominent position at the front of the report—

“Purpose of report

“1 This report is not a report on the merits of the offer.

“2 This report has been obtained by the offeror.

“3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

“4 A separate independent adviser’s report on the merits of the offer, commissioned by the directors of [name of target company], must accompany [name of target company]’s target company statement.

“5 The offer should be read in conjunction with this report and the separate independent adviser’s report on the merits of the offer.”

(3) A further rule 23 report must contain the following statement in a prominent position at the front of the report—

“Purpose of report

“1 This report is not a report on the merits of the offer as varied by the variation notice dated [date of variation notice].

“2 This report has been obtained by [name of offeror] in connection with the variation to the offer.

“3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

“4 The offer should be read in conjunction with this report and the separate independent adviser’s report on the merits of the offer (which you will have received with [name of target company]’s target company statement).”

“5 Explanation for further rule 23 report if the report is a further rule 23 report, an explanation of why the further rule 23 report is required in addition to the rule 23 report.

FIFTH SCHEDULE

(rule 37 (3))

NOTICE TO DISSENTING SHAREHOLDER

To

An offer was made on the day of 20..... by.....

.....

.....

..... (the offeror)

for K..... per share in.....

.....

.....

(the offeree).

(the offeror) has, within the relevant time period specified in rule 37 of the Companies

(Panel on Takeovers and Mergers) Rules, 2016 satisfied the conditions contained in Part XI

of the Companies (Panel on Takeovers and Mergers) Rules, 2016.(the

offeror) gives notice that he now intends to exercise his right under Part X of the Companies

(Panel on Takeovers and Mergers) Rules, 2016 to acquire shares held by you in

.....(the offeree). If you do not make application to court (see below)

.....(the offeror) will acquire your shares on the following terms:

.....

.....

.....

Note: You are entitled under rule 40 of the Companies (Panel on Takeover and Mergers)

Rules, 2016 to make application to court within twenty one days of the date of this notice

for an order stating that either (the offeror)

shall not be entitled and bound to acquire your shares or that different terms to those of the

offer shall apply to the acquisition. If you are contemplating such an action you may wish

to seek legal advice.

Signed..... Date.....

Made this 1st day of June, 2016.

JOSEPH MWANAMVEKHA
Minister of Industry,
Trade and Tourism

GOVERNMENT NOTICE NO. 00

COMPANIES ACT
(ACT NO 15 OF 2013)

COMPANIES (CORPORATE GOVERNANCE) REGULATIONS, 2016

IN EXERCISE of the powers conferred by section 382 (1) of the Companies Act, 2013, I, JOSEPH MWANAMVEKHA, Minister of Industry, Trade and Tourism, make the following Regulations—

- 1. These Regulations may be cited as the Companies (Corporate Governance) Regulations, 2016. Citation
- 2. In these Regulations— Interpretation
 - “Malawi Code II” means the Code of Best Practice in Corporate Governance launched on 1st June 2010 by the Institute of Directors (Malawi) and where applicable includes sector specific guidelines such as the incorporated Micro Small and Medium Enterprises guidelines, listed companies guidelines, parastatal organizations guidelines, member based organizations guidelines unless inconsistent with the Act or any Regulations made under the Act.
- 3. The Malawi Code II as set out in the Schedule to these Regulations shall apply. Application of the Malawi

SCHEDULE (reg. 3)

1. Owners

The owners of an organization shall be understood as those who constitute the supreme authority of the organization, for example, Government, shareholders, holding or parent organization, and others. There may be a sole owner of the organization. The shareholders or the members might exercise their ownership role in the annual general meeting (or general assembly). The owners may entrust trustees to take on the ownership role on their behalf, or there may be another ownership arrangement appropriate to the type of organization.

2. Boards

The board, often called board of directors, is a body of elected or appointed members who jointly oversee and direct the affairs of an organization. The body sometimes has a different name, such as board of trustees, board of governors, board of managers, governing board, governing council, board of commissioners, and others. It is often simply referred to as the “board.”

A board's activities are determined by the powers, duties, and responsibilities delegated to or conferred on it by the owners of the organization and/or as specified by laws and regulations applicable to the type of organization. While the “owners” constitute the supreme authority of the organization, they confer the supreme governing role to the board. The board therefore is the main governing body situated between the owners and the executive management of the organization.

3. Member of the board

A member of the board shall be understood as any individual elected to or appointed as member of, the board as defined in paragraph 2, such as directors, members of governing councils, and others.

4. Private, public and not for profit sectors

Private sector is that part of the economy which is both run for private profit and is not controlled by the state. It includes family owned businesses, private companies, micro, ÇMKsmall and medium Enterprises, as well as the informal sector.

Public sector, sometimes referred to as the state sector, is a part of the state that deals with the production, delivery and allocation of goods and services by and for the government or its citizens, whether national, regional or local/municipal. It includes state owned enterprises, parastatal and public authorities or commissions.

Not for profit sector is that part of the economy where organizations are not for profit and are not part of the government. This sector is also called the third sector, in reference to the private sector and the public sector, or the civic sector emphasizing the sector's relationship to civil society. It includes non-governmental organizations (NGOs), community based organizations and other related organizations.

1. COMPLIANCE WITH THE MALAWI CODE II

- 1.1 The Malawi Code II is concerned with the establishment of an environment conducive to enabling organizations to grow, thrive, survive and create sustainable development for Malawi, whilst acting as good corporate citizens.
- 1.2 These overarching provisions (OPs) should thus be applied in all organizations be they large, medium or small, in the private, public or not for profit sector.
- 1.3 Organizations in their annual or directors reports should state whether the Malawi Code II has been adhered to or, if not, explain with reasons in what respects it has not been adhered to.

2. OWNERS

The owners of the organization shall—

- 2.1 Jointly and severally protect, preserve and actively exercise the supreme authority of their organization.
- 2.2 Ensure that only competent and reliable persons with appropriate knowledge, skills and experience are elected or appointed to the board.
- 2.3 Decide the term to be served by non-executive members of the board and ensure that the board is refreshed on a regular basis; bringing new and unbiased viewpoints into discussions and decision-making.
- 2.4 Foster constructive relationships with the board in order to facilitate the success and sustainability of the organization.
- 2.5 Ensure that the board is constantly held accountable and responsible for the efficient and effective governance of the organization.
- 2.6 Change the chairman and/or the composition of a board that does not perform to expectations or in accordance with the mandate of the organization.

- 2.7 Ensure that their organization acts as a good corporate citizen, and in a sustainable manner, taking into consideration, as appropriate, the views of stakeholders.
- 2.8 Comply with all applicable pieces of legislation.
- 2.9 Respect the fiduciary duties of the members of the board.
- 2.10 Ensure that the level of remuneration for members of the board and top management is sufficient to attract and retain the quality and calibre of individuals needed to run the organization successfully.
- 2.11 The majority of owners and the members of the board should appropriately respect the rights of minority owners. The organization's affairs may not be conducted in a manner which is unfairly prejudicial to the interests of minority owners and/or to the purpose of the organization.

3. BOARD STRUCTURE

- 3.1 The unitary (or one tier) board structure, comprising executive and nonexecutive directors, rather than the dual (or two tier) board structure adopted in some countries, is considered appropriate for Malawi as it provides greater interaction among all board members when dealing with matters such as strategic planning, performance, standards of conduct, resource allocation and communication with stakeholders.
- 3.2 While the size of the board shall be determined by the organization, and shall vary from organization to organization, the size should be such that it ensures that the organization operates effectively.

4. THE ROLE OF THE BOARD

The board shall—

- 4.1 Ensure that the organization complies with all relevant laws, regulations and codes, including the Malawi Code II, and, if appropriate, ask executive management to report periodically on such compliance.
- 4.2 Exercise leadership, enterprise, integrity and sound judgment in directing the organization; so as to achieve sustainable success for the organization.
- 4.3 Determine the organization's mission, values and objectives and ensure that a strategy is in place to achieve these and hold management accountable for its implementation.
- 4.4 Ensure that appropriate procedures and practices, to protect the organization's assets, resources and reputation, are in place and are effective.
- 4.5 Develop a board charter, based on the organization's constitution, articles of association, and the laws and regulations that apply to the organization, in which roles and responsibilities are clearly defined.
- 4.6 Retain full and effective control over the organization.
- 4.7 Ensure that decisions on material matters are in the hands of the board. The board shall have a definition of materiality on matters such as the acquisition and disposal of assets, investments, capital projects and authority levels. The level or definition of materiality is a matter for each organization to decide.
- 4.8 Define the responsibilities of, and requirements for, reporting by executive management and monitor their performance.

- 4.9 Ensure that plans are in place for orderly succession of members of the board and of the chief executive officer.
- 4.10 Ensure that every member of, the board is able to play a full and constructive role in the affairs of the organization.
- 4.11 Develop policies and processes to avoid or minimize conflict of interest.
- 4.12 As part of its decision making process, take into consideration wider societal interests and other circumstances affecting how the organization fulfils its license to operate.
- 4.13 Ensure that a dialogue, based on mutual understanding of the objectives of the organization, exists between the board itself and the owners of the organization.
- 4.14 Ensure that it acts in the best interests of the organization and that in doing so it meets the organization's purpose.
- 4.15 Meet regularly. Each board should decide how regularly it needs to meet to discharge its duties, having regard to the organization's own circumstances.
- 4.16 On the appointment and throughout the duration of tenure of its members ensure that the members are able to devote sufficient time to their responsibilities as members of the board.
- 4.17 Ensure that its members have among them the right mix of expertise, experience, skills and knowledge appropriate to the organization;
- 4.18 Ensure that it is adequately informed and where necessary invite executive management to clarify and/or provide additional information;
- 4.19 Ensure that its members are of sufficient calibre to bring independent judgment to bear on issues of strategy, performance, resources, standards of conduct, and evaluation of performance.
- 4.20 Ensure that the integrated reporting by the organization is accurate and truthful, at the time of disclosure.
- 4.21 Consider the use of alternative dispute resolution as a method of resolving disputes arising both within the organization and between the organization and other parties. Alternative dispute resolution comprises, among others, open communication, win-win arrangements, negotiations, mediation and arbitration.

5. BOARD EVALUATION

- 5.1 It is good practice for boards to evaluate annually the mix of skills and experience of their members as well as the board's performance and processes. The level of evaluation would depend on the type of organization. Large organizations may also consider evaluating the chairman, other members of the board, board sub-committees and the chief executive officer.
- 5.2 organizations should agree in advance the type of evaluation suitable for their organization and how to measure and report it in the organization's directors or annual report.

6. BOARD SUB-COMMITTEES

- 6.1 Boards may find it useful to establish board sub-committees to deal with matters that can best be dealt with in a small forum. The number and nature of sub-committees will

depend on the type of organization. All sub-committees when established should be given, in writing, clear terms of reference.

- 6.2 Decisions of each sub-committee should be communicated to the board as recommendations for its further consideration.
- 6.3 When constituting sub-committees, the board shall ensure that the subcommittees members have the appropriate balance of skills, experience, independence and knowledge of the organization and the sub-committees' terms of reference to discharge their duties and responsibilities effectively.
- 6.4 Sub-committees shall also be provided with sufficient and appropriate resources to undertake their duties.

7. THE CHAIRMAN

- 7.1 The chairman should preferably be non-executive.
- 7.2 The roles of the chairman and the chief executive officer shall preferably be separate, but where they are combined, it is important that the chairman encourages proper deliberation of all matters requiring the board's attention and obtains optimum input from all members of the board.
- 7.3 The chairman shall ensure that all board members are as fully informed as possible on any issue on which a decision is to be made and afford each board member a reasonable opportunity to contribute to the board's deliberations.
- 7.4 It is the responsibility of the chairman, following a board evaluation, to recommend to the owners the removal of board members who do not contribute effectively to the board.
- 7.5 Where the chairman is appointed by the board, the members of the board should ensure that only a person that can add value is appointed to the position. The organization should determine the length of service of the chairman.
- 7.6 Where the chairman is required to exercise a casting vote, he shall use it objectively.

8. MEMBERS OF THE BOARD

In carrying out their functions, members of the board shall—

- 8.1 Exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent person with—
 - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of a member of the board of the organization; and
 - (b) the general knowledge, skill and experience that the member has.
- 8.2 Both during and after their tenure of office, avoid using privileged information for their own personal benefit or that of other people associated with them.
- 8.3 Ensure that they devote sufficient time to their responsibilities.
- 8.4 Be diligent in discharging their duties to the organization, endeavour to attend meetings regularly and be prepared and able where necessary, to express disagreement with colleagues on the board including the chairman and the chief executive officer.

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- 8.5 Be truthful and disclose all the information at their disposal to enable the board to make an informed decision.
- 8.6 At the expense of the organization, be entitled to seek independent professional advice about the affairs of the organization. Before seeking independent professional advice, however, the member concerned shall discuss and clear the matter with the chairman or the company secretary. If to approach either of them is inappropriate in the circumstances of the matter, the board member must act within the best interests of the organization.
9. NON-EXECUTIVE MEMBERS OF THE BOARD
- Non-executive members of the board shall—
- 9.1 Be independent in character and judgment, even where there are relationships or circumstances which are likely to affect, or could appear to affect the judgment of the members of the board.
- 9.2 Not take part in the day-to-day management of the organization.
- 9.3 Not have any benefits from the organization other than their fees and other approved expenses. All sitting allowances are deemed to be part of fees.
- 9.4 Not undertake any advisory work for the organization unless that work has been approved in advance by the board and is limited in scope and time in order not to compromise the non-executive status of that member and to avoid any conflict of interest.
- 9.5 Be of sufficient calibre to bring independent judgment to bear on issues of strategy, performance, resources, standards of conduct, and evaluation of performance.
- 9.6 Constructively challenge and contribute to the development of strategy.
- 9.7 Scrutinize the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance.
- 9.8 Satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and sound.
- 9.9 Be responsible for ensuring that plans are in place to ensure the long term sustainability of the organization. In this regard, they may have a role in appointing and, where necessary, removing senior management and determining their levels of remuneration.
10. APPOINTMENT OF MEMBERS OF THE BOARD
- 10.1 The appointment of the board shall be appropriate for the organization taking into account good governance and the requirements for the organization to meet its goals and to ensure its long-term sustainability.
- 10.2 appointments to the board should be planned with strategic considerations and objectives of the organization in mind.
- 10.3 The selection process must be managed by considering a balanced mix of experience and skills needed to add value to the strategic role of the board. Depending on the type of organization, the selection process may also consider appropriate diversity of gender and / or social and economic background.

- 10.4 An organization shall make appointments to the board on merit.
- 10.5 The term served by both executive and non-executive members of the board should be decided by the organization; taking into account the period that could reasonably be perceived to materially interfere with the member's ability to act in the best interest of the organization's goals and long-term sustainability.
- 10.6 Where appointments to the board are done at an annual general meeting or general assembly, Owners should be provided with a list of candidates from whom to elect members of the board.

11. REMUNERATION OF MEMBERS OF THE BOARD

- 11.1 Remuneration of members of the board shall be appropriate to the organization and should take into account the long term sustainability of the organization.
- 11.2 There shall be a formal and transparent process for determining remuneration of members of the board and of top management.
- 11.3 Non-executive members of the board shall receive fees at levels that reflect time invested commitment, performance and responsibilities. Organizations may however choose for an arrangement where members of the board are fully committed to the mission of the organization and therefore agree to work pro bono.
- 11.4 An organization shall disclose, at least on an aggregate basis, in its director's or annual report, the remuneration, bonuses and other benefits received by members of the board. What is to be disclosed shall represent the total cost to the organization.
- 11.5 When considering appointing executive members of the board, the Board should seek proper legal advice in relation to termination clauses to avoid the risk of paying excessive amounts on termination of service.

12. TRAINING AND DEVELOPMENT OF MEMBERS OF THE BOARD

- 12.1 Members of the board need proper knowledge of the organizations for which they are responsible. They should acquire a broad knowledge of—
 - 12.1.1 The business of the organization so that they can provide meaningful direction to it;
 - 12.1.2 The statutory and regulatory requirements affecting the direction of the organization and the environment in which the organization operates; and
 - 12.1.3 Their role, duties, responsibilities, and obligations as well as board practices and procedures.
- 12.2 The board, in developing training needs, should take into account any training needs identified during a Board Evaluation.
- 12.3 The board shall ensure that new members undergo a tailored induction programme, particularly if the new Members have no previous board experience.
- 12.4 Every member of the board shall keep abreast of both practical and theoretical developments affecting the environment in which the organization operates as well as to ensure that their expertise and experience remain relevant to the board and to the organization. Members of the board shall be regularly exposed to matters relevant to legal reforms, corporate governance, changing corporate environment, risks, opportunities and other matters that may be of interest in the execution of their duties.

12.5 Executive members of the board shall be encouraged by their organization to take non-executive appointments in other organizations. However, the number of non-executive appointments shall not be such that the member's executive responsibilities to their own organization are adversely affected.

13. THE COMPANY SECRETARY

13.1 All organizations, where required by law, shall ensure that they have access to a competent company secretary to render company secretarial services to the organization. The appointment and removal of the company secretary shall be a matter for the board as a whole.

13.2 The company secretary shall among other duties, be responsible for advising the chairman and the board on the implementation of the Malawi Code II.

13.3 All members of the board shall have access to advice and services of the company secretary.

13.4 The company secretary shall be responsible for ensuring effective information flows between the board and top management and between the board and its sub-committees.

13.5 Wherever possible, the role of the chief executive officer and that of the company secretary shall be separated.

14. RELATED PARTY TRANSACTIONS

14.1 Organizations shall identify, manage and document related party transactions.

14.2 The following are related parties—

- (a) a member of the board or of the key management personnel of the organization;
- (b) any other person that significantly controls or influences the organization;
- (c) any close member of the family (such as the individual's domestic partner and children, children of the individual's domestic partner and other dependants of the individual or of the individual's domestic partner) of any individual referred to in (a) or (b);
- (d) any entity controlled or significantly influenced by the organization or by any individual referred to in (a) or (b);
- (e) any entity under joint control with the organization; or
- (f) any entity that significantly controls or influences the organization.

14.3 A related party transaction shall be understood as a transfer of resources, services or obligations between related parties and the organization, regardless of whether or not a price is charged. This includes, among others, purchases or sales of goods, property and other assets; rendering or receiving of services, leases, transfers of research and development; transfers under licence agreements, financial arrangements (including loans and equity contributions in cash or in kind), provision of guarantees or collateral, commitments to do something if a particular event occurs or does not occur in the future, including executory contracts, among other things.

14.4 Owners shall be informed of any related party transaction that may significantly affect the current and or future financial position, the performance, the capacity, the opportunities and/or the risks of the organization. Such disclosure shall explain what the nature of the transactions is and how the potential conflicts of interest or other risks

for the organization are being avoided and/or mitigated.

15. RISK MANAGEMENT AND INTERNAL CONTROLS

- 15.1 The board shall be responsible for the governance of risk.
- 15.2 The board should regularly review the organization's risks, risk appetite and tolerance, and ensure that it has endeavoured to put in place measures to minimize or avert any identified risks. The board shall also regularly review the appropriateness of these measures.
- 15.3 The board of an organization that relies heavily on information technology (computer) systems shall ensure that appropriate back-up measures are adopted and that measures are put in place to safeguard all information stored by the organization.

16. ETHICS

Organizations shall—

- 16.1 ensure that they act ethically; and
- 16.2 consider developing a code of ethics aimed at fostering an ethical culture within their organization.
- Where adopted, a code of ethics shall—
- 16.2.1 commit the organization to the highest standards of behaviour;
- 16.2.2 be developed with the full participation of all parties expected to abide by it;
- 16.2.3 receive total commitment from the board and the chief executive officer of the organization; and
- 16.2.4 be sufficiently detailed as to give a clear guide to the expected standards of behaviour of all employees.
- 16.3 Allow African “umunthu” values to thrive within the ethical framework of the organization. Relationships within the organization and with its stakeholders shall therefore also be guided by the following concepts: thoroughly valuing others and, in doing so, valuing ourselves, cooperation, kinship and belonging within the community.

17. GOOD CITIZENSHIP

- 17.1 An organization as well as being an economic entity is also a citizen of Malawi and as such has a moral and social standing within Malawian society, with all the responsibilities attached to that status. As such, when making decisions, an organization shall consider the impact of its decisions on its stakeholders (both internal and external), the environment and society as a whole.

18. SUSTAINABILITY

- 18.1 Organizations shall conduct their operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs. It means having regard to the impact that the organizations' operations have on the environment, economic and social life of the community in which it operates. This shall include its supply chain, that is to say, access to the resources and raw materials it needs to carry out its operations.

18.2 Organizations shall report on how they have both positively and negatively impacted on the environment and on the economic and social life of the community in which they operate and how they believe they can improve the positive and eradicate or lessen the negative aspects in the coming year.

19. EXTERNAL COMMUNICATIONS

19.1 Society is currently demands greater transparency, accountability and responsibility from organizations. Organizations should consider making regular, timely, balanced and understandable statements about their activities, performance and future prospects.

19.2 Organizations shall, where it is in their best interests, disclose publicly their reasons for making decisions which may appear compromised due to a perceived conflict of interest of the members making the decision.

20. INTEGRATED REPORTING AND AUDITING

20.1 Organizations shall produce financial statements appropriate to them. To the extent possible the financial statements should be prepared in accordance with nationally recognized standards.

20.2 Where there is a requirement for auditing the financial statements, the audit shall be done by an independent external auditor, who is provided with the opportunity to raise matters directly with the board.

20.3 Sustainability reporting and disclosure shall be integrated with the organization's financial reporting.

20.4 The financial statements of the organization shall also comply with any obligation to disclose related party transactions, as is, for their type of organization, specified in laws, regulations, directives or guidelines.

Made this 1st day of June, 2016.

JOSEPH MWANAMVEKHA
*Minister of Industry,
Trade and Tourism*

(FILE NO. INV/22)

GOVERNMENT NOTICE NO. 29

COMPANIES ACT
(ACT NO 15 OF 2013)

COMPANIES (MODEL ARTICLES AND MEMORANDA) REGULATIONS, 2016

IN EXERCISE of the powers conferred by section 382 of the Act, I, JOSEPH MWANAMVEKHA, Minister of Industry, Trade and Tourism, make the following Regulations—

PART I—PRELIMINARIES

Citation 1. These Regulations may be cited as the Companies (Model Articles and Memoranda) Regulations, 2016.

PART II—MODEL ARTICLES AND MEMORANDA

- 2. The articles of association of a private company limited by shares shall be in accordance with Table A in the Schedule to these Regulations. Model articles of a private company limited by shares
Schedule

- 3. The articles of association of a public company shall be in accordance with Table B in the Schedule to these Regulations. Model articles of a public company
Schedule

- 4. The articles of association of a company limited by guarantee shall be in accordance with Table C in the Schedule to these Regulations. Model articles of a company limited by guarantee
Schedule

- 5. The memorandum of association of a company limited by shares shall be in accordance with Table D in the Schedule to these Regulations. Model memorandum of a company limited by shares
Schedule

- 6. The memorandum of association for a company limited by guarantee shall be in accordance with the form in Table E in the Schedule to these Regulations. Model memorandum of a company limited by guarantee
Schedule

SCHEDULE

TABLE A

(reg. 2)

MODEL ARTICLES OF A PRIVATE COMPANY LIMITED BY SHARES

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- 2. Liability of members

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PART I—PRELIMINARY

1.—(1) In these Articles, unless the context requires otherwise—

Interpretation

“articles” means the company’s articles of association;

“bankruptcy” includes individual insolvency proceedings;

“chairman” has the meaning given in article 12;

“chairman of the meeting” has the meaning given in article 39;

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“distribution recipient” has the meaning given in article 31;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

“holder” in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

“instrument” means a document in hard copy form;

“ordinary resolution” has the meaning given in section 2 of the Act;

“paid” means paid or credited as paid;

“participate”, in relation to a directors’ meeting, has the meaning given in article 10;

“proxy notice” has the meaning given in article 45;

“shareholder” means a person who is the holder of a share;

“shares” means shares in the company;

“special resolution” has the meaning given in section 2 of the Act;

“subsidiary” has the meaning given in section 2 of the Act;

“transmittee” means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

Liability of members

2. Liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART II—DIRECTOR’S POWERS AND RESPONSIBILITIES

Director’s general authority

3. Subject to the articles, a director shall be responsible for the management of the company’s business, for which purpose he may exercise all the powers of the company.

Shareholder’s reserve power

4.—(1) A shareholder may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) A special resolution passed pursuant to paragraph (1) shall not invalidate anything which the directors have done before the passing of the resolution.

Delegation by a director

5.—(1) A director may delegate any of the powers which are conferred on him under these articles—

- (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 he thinks fit.

(2) Where a director specifies in writing, any delegation of powers under this article may authorize further delegation of the director’s powers by any person to whom they are delegated.

(3) A director may revoke any delegation of powers made under this article, in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which a director delegates any of his powers shall

follow procedures which are based, insofar as they are applicable, on provisions of these articles that govern the taking of decisions by directors.

(2) Directors of a company may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

7.—(1) The general rule about decision-making by directors is that any decision of the directors shall be either a majority decision at a meeting or a decision taken in accordance with article 8.

Collective decisions by directors

(2) The general rule under this article shall not apply, if—

(a) the company only has one director; and

(b) no provision of the articles requires it to have more than one director.

(3) Where the general rule does not apply as envisaged in paragraph (2), the director may take decisions without regard to any of the provisions of the articles relating to directors’ decision-making

8.—(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.

Unanimous decisions

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors’ meeting.

(4) 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.

9.—(1) Any director may call a directors’ meeting by giving a notice of the meeting to the directors or by authorizing the company secretary, if any, to give such notice.

Calling of a directors’ meeting

(2) Notice of any directors’ meeting shall indicate—

(a) its proposed date and time;

(b) where it shall take place; and

(c) 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.

(3) Notice of a directors’ meeting shall be given to each director, but need not be in writing.

(4) 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 seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at the

meeting.

Participation in directors' meetings

10.—(1) 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 these articles; and

(b) the directors can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, the location of a particular director and the mode which the directors communicate to each other is irrelevant.

(3) If all the directors participating in a meeting are not at the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

Quorum for Directors' Meetings

11.—(1) At a directors' meeting, unless a quorum is participating, no proposal shall be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it shall be two.

(3) If the total number of directors for the time being is less than the quorum required, the directors shall 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 shareholders to appoint further directors.

Chairing of directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(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 shall appoint one of themselves to chair the meeting.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) Paragraph (1) shall 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.

Conflict of interest

14.—(1) Subject to paragraph (2), where a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director shall not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) A director who is interested in an actual or proposed transaction or

arrangement with the company shall be counted as participating in the decision-making process for quorum and voting purposes when—

(a) the company, by an ordinary resolution, excludes the application of the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director’s interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director’s conflict of interest arises from a permitted cause.

(3) For the purpose of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(4) For the purpose of this article, references to proposed decisions and decision-making processes include any directors’ meeting or part of a directors’ meeting.

(5) Subject to paragraph (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting, or part of the meeting, for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(6) If any question as to the right to participate in the meeting, or part of the meeting, arises in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting, or that part of the meeting, for voting or quorum purposes.

15. The directors shall ensure that the company keeps a record, in writing, for at least ten years from the date of recording the decision, of every unanimous or majority decision taken by the directors.

Records of decisions to be kept

16. Subject to the articles, the directors may make any rule which they think fit about how they make decisions, and about how such rules are to be recorded or communicated to directors.

Directors may make rules

17.—(1) 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—

Methods of appointing directors

(a) by ordinary resolution; or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where two or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

18. 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 Act or is prohibited from being a director by law;

(b) a bankruptcy order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(f) a 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.

19.—(1) Directors may undertake any services for the company that the directors decide.

(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.

(3) A director's remuneration may take any form and may 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.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(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.

20. 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 the holders of any class of shares or of 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 III—SHARES AND DISTRIBUTIONS

21.—(1) No share shall be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue. All shares to be fully paid up

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

22.—(1) Without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution. Powers to issue different classes of share

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

23. Except as required by any written law or these articles— Company not bound by less than absolute interests

(a) no person shall be recognized by the company as holding any share upon any trust; and

(b) the company is not in any way to be bound by or recognize any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

24.—(1) The company shall issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds. Share certificates

(2) Every share certificate shall specify—

(a) in respect of how many shares, of what class, it is issued;

(b) the nominal value of those shares;

(c) that the shares are fully paid; and

(d) any distinguishing numbers assigned to them.

(3) No share certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one share certificate may be issued in respect of it.

(5) A share certificates shall—

(a) have affixed to them the company's common seal; or

(b) be otherwise executed in accordance with the Act.

Replacement
of share
certificates

- 25.—(1) If a certificate issued in respect of a shareholder's shares is—
- (a) damaged or defaced; or
 - (b) said to be lost, stolen or destroyed, the shareholder shall be entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A shareholder exercising the right to be issued with a replacement certificate under this article—
- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
 - (b) shall return the certificate which shall be replaced to the company if it is damaged or defaced; and
 - (c) shall comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors may decide.

Share transfers

- 26.—(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.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer which is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- (5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer shall be returned to the transferee with the notice of refusal, unless they suspect that the proposed transfer may be fraudulent.

Transmission
of shares

- 27.—(1) If title to a share passes to a transferee, the company may recognize the transferee only as having title to that share.
- (2) A transferee who produces such evidence of entitlement to shares as the directors may properly require—
- (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
 - (b) pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) A transferee shall not have a right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which he is entitled, by reason of the holder's death or bankruptcy or otherwise, unless he becomes the holder of those shares.

Exercise of
transferees'
rights

- 28.—(1) A transferee who wishes to become a holder of shares to which he has become entitled, shall notify the company in writing of that wish.
- (2) If the transferee wishes to have a share transferred to another person, the transferee shall execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article shall be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

29. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee’s name has been entered in the register of members.

Transmittees bound by prior notices

30.—(1) The company may, by ordinary resolution, declare dividends, and the directors may decide to pay interim dividends.

Procedure for declaring dividends

(2) A dividend shall not be declared unless the directors have made a recommendation as to its amount. Such a dividend shall not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders’ respective rights.

(4) Unless a shareholders’ resolution to declare, or directors’ decision to pay, a dividend, or the terms on which shares are issued, specify otherwise, it shall be paid by reference to each shareholder’s holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company’s share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If 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 shares with deferred or non-preferred rights.

31.—(1) Where a dividend or other sum, which is a distribution, is payable in respect of a share, it shall be paid by one or more of the following means—

Payment of dividends and other distributions

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient’s registered address, if the distribution recipient is a holder of the share, or in any other case, to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In these Articles, “distribution recipient” means, a share in respect of which a dividend or other sum is payable—

(a) to the holder of the share; or

(b) if the share has two or more joint holders, to whichever of them is named first in the register of members; or

(d) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, to the transmittee.

No interest on distributions

32. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued; or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

33.—(1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) Payment of any dividends or other sum into a separate account shall not make the company a trustee in respect of it.

(3) A distribution recipient is no longer entitled to a dividend or other sum and consequently the dividend ceases to remain owing by the company if—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment; and

(b) the distribution recipient has not claimed the dividend.

Non-cash distributions

34.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value, including, without limitation, shares or other securities in any company.

(2) For the purposes of paying non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets;

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(c) vesting any assets in trustees.

35. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

Waiver of distributions

(a) the share has more than one holder; or

(b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise, the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

36.—(1) The directors may, if they are so authorized by an ordinary resolution—

Authority to capitalize and appropriation of capitalized sums

(a) decide to capitalize any profits of the company, whether or not they are available for distribution, which are not required for paying a preferential dividend, or any sum standing to the credit of the company’s share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalize (a “capitalized sum”) to the persons who would have been entitled to it if it were distributed by way of dividend (the “persons entitled”) and in the same proportions.

(2) Capitalized sums shall be applied—

(a) on behalf of the persons entitled; and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalized sum may be applied in paying up new shares of a nominal amount equal to the capitalized sum which are then allotted and credited as fully paid to the persons entitled or as they may direct.

(4) A capitalized sum which has been appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted and credited as fully paid to the persons entitled or as they may direct.

(5) The directors may—

(a) apply capitalized sums in accordance with paragraphs (3) and

(4) partly in one way and partly in another;

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article, including the issuing of fractional certificates or the making of cash payments; and

(c) authorize any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

Attendance and speaking at general meetings

37.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(b) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at the meeting.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending meeting are at the same place.

(5) Two or more persons who are not at the same place attend a general meeting if their circumstances are such that if they have, or were to have, rights to speak and vote at that meeting, they are, or would be able, to exercise them.

Quorum for a general meeting

38. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings

39.—(1) If the directors have appointed a chairman, the chairman shall preside at general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) if no directors are present, the meeting, shall appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as “the chairman of the meeting”.

Attendance and speaking by directors and non-shareholders

40.—(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company; or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

41.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum,

or if during a meeting a quorum ceases to be present, the chairman of the meeting shall adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

- (a) the meeting consents to an adjournment, or
- (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

- (a) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and
- (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) Where the continuation of an adjourned meeting is to take place more than fourteen days after it was adjourned, the company shall give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

- (a) to the same persons to whom notice of the company's general meetings is required to be given; and
- (b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

42. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Voting;
General

43.—(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

Errors and
disputes

(2) Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.

44.—(1) A poll on a resolution may be demanded—

Poll votes

- (a) in advance of the general meeting where it shall be put to the vote; or
- (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

- (2) A poll may be demanded by—
- (a) the chairman of the meeting;
 - (b) the directors;
 - (c) two or more persons having the right to vote on the resolution;
- or
- (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—
- (a) the poll has not yet been taken; and
 - (b) the chairman of the meeting consents to the withdrawal.

(4) Polls shall be taken immediately and in such manner as the chairman of the meeting directs.

Content of
proxy notices

45.—(1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—

- (a) states the name and address of the shareholder appointing the proxy;
- (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them shall vote or that the proxy is to abstain from voting on one or more resolutions.

- (4) Unless a proxy notice indicates otherwise, it shall be treated as—
- (a) giving the person appointed under it as a proxy discretion on how to vote on any ancillary or procedural resolutions put to the meeting; and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of
proxy notices

46.—(1) A person who is entitled to attend, speak or vote either on a show of hands or on a poll at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment shall only take effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

47.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

Amendment to resolutions

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty eight hours before the meeting shall take place or such later time as the chairman of the meeting may determine; and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman’s error does not invalidate the vote on that resolution.

PART V—ADMINISTRATIVE ARRANGEMENTS

48.—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the company.

Means of communication to be used

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the making of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty eight hours.

49.—(1) Any common seal may only be used by the authority of the directors.

Company seals

(2) The directors may decide by what means and in what form any common seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

- (4) For the purposes of this article, an authorized person shall be—
 - (a) any director of the company;
 - (b) the company secretary, if any; or
 - (c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

50. Except as provided by any written law or authorized by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company’s accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

51. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

52.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company’s assets against—

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;
- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; or
- (c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorize any indemnity which would be prohibited or rendered void by any provision of the Act or by any other written law.

(3) In this article—

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
- (b) a “relevant director” means any director or former director of the company or an associated company.

Insurance

53.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

- (a) a “relevant director” means any director or former director of the company or an associated company,

(b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’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

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

TABLE B

(reg. 3)

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PART I—Preliminary

1.—(1) In these Articles, unless the context requires otherwise— Interpretation

“alternate” or “alternate director” has the meaning given in article 25;

“appointor” has the meaning given in article 25;

“articles” means the company’s articles of association;

“bankruptcy” includes individual insolvency proceedings;

“call” has the meaning given in article 54;

“call notice” has the meaning given in article 54;

“certificate” means a paper certificate (other than a share warrant) evidencing a person’s title to specified shares or other securities;

“certificated” in relation to a share, means that it is not an uncertificated share or a share in respect of which a share warrant has been issued and is current;

“chairman” has the meaning given in article 12;

“chairman of the meeting” has the meaning given in article 31;

“company’s lien” has the meaning given in article 52;

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“distribution recipient” has the meaning given in article 72;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“fully paid” in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

“holder” in relation to shares means the person whose name is entered in the register of members as the holder of the shares, or, in the case of a share in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

“instrument” means a document in hard copy form;

“lien enforcement notice” has the meaning given in article 53;

“member” has the meaning given in section 2 of the Act;

“ordinary resolution” has the meaning given in section 2 of the Act;

“paid” means paid or credited as paid;

“participate”, in relation to a directors’ meeting, has the meaning given in article 9;

“partly paid” in relation to a share means that part of that share’s nominal value or any premium at which it was issued has not been paid to the company;

“proxy notice” has the meaning given in article 38;

“securities seal” has the meaning given in article 47;

“shares” means shares in the company;

“special resolution” has the meaning given in section 2 of the Act;

“subsidiary” has the meaning given in section 2 of the Act;

“transmittee” means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law;

“uncertificated” in relation to a share means permitting title to shares to be evidenced and transferred without a certificate, and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

PART II—DIRECTORS, POWERS AND RESPONSIBILITIES

3. 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. Directors’ general authority

4.—(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action. Members’ reserve power

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles— Delegation by directors

- (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.

(2) If the directors so specify, any such delegation may authorize further delegation of the directors’ powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

6.—(1) Committees to which the directors delegate any of their powers shall follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors. Committees

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

7. Decisions of the directors may be taken— Directors to take decisions collectively
(a) at a directors’ meeting; or
(b) in the form of a directors’ written resolution.

8.—(1) Any director may call a directors’ meeting. Calling a directors’ meeting

(2) The company secretary shall call a directors’ meeting if a director so requests.

(3) A directors’ meeting shall be called by giving notice of the meeting to the directors.

(4) Notice of any directors’ meeting shall indicate—

- (a) its proposed date and time;
- (b) where it shall take place; and
- (c) 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.

(5) Notice of a directors' meeting shall be given to each director, but need not be in writing.

(6) 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 seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

9.—(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 these 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.

(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.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

Quorum for directors' meetings

10.—(1) At a directors' meeting, unless a quorum is participating, no proposal shall be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it is two.

Meetings where total number of directors less than quorum

11.—(1) This article applies where the total number of directors for the time being is less than the quorum for directors' meetings.

(2) If there is only one director, the director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

(3) If there is more than one director—

(a) a directors' meeting may take place, if it is called in accordance with the articles and at least two directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so, and

(b) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

Chairing directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may appoint other directors as deputy or assistant chairmen to chair directors' meetings in the chairman's absence.

(4) The directors may terminate the appointment of the chairman, deputy or assistant chairman at any time.

(5) If neither the chairman nor any director appointed generally to chair directors' meetings in the chairman's absence is participating in a meeting within ten minutes of the time at which it was to start, the participating directors shall appoint one of themselves to chair it.

13.—(1) Subject to these Articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

Voting at directors' meeting: general rules

(2) Subject to these Articles, each director participating in a directors' meeting shall have one vote.

(3) Subject to these Articles, if a director has an interest in an actual or proposed transaction or arrangement with the company—

(a) the director and the director's alternate may not vote on any proposal relating to it:

Provided that this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

14.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting shall have a casting vote.

Chairman's casting vote at directors' meetings

(2) Paragraph (1) shall 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.

15. A director who is also an alternate director has an additional vote on behalf of each appointor who is—

Alternates voting at directors' meetings

(a) not participating in a directors' meeting; and

(b) would have been entitled to vote if they were participating in it.

16.—(1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, the director shall not be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes.

Conflicts of interest

(2) Where paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company shall be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.

(3) This paragraph shall apply when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) Subject to paragraph (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(6) Where any question as to the right to participate in the meeting or part of the meeting arises in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman shall not be counted as participating in the meeting or that part of the meeting for voting or quorum purposes.

Proposing
directors'
written

17.—(1) Any director may propose a directors' written resolution.

(2) The company secretary shall propose a directors' written resolution if a director so requests.

(3) A directors' written resolution shall be proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution shall indicate—

(a) the proposed resolution; and

(b) the time by which it is proposed that the directors should adopt it.

(5) Notice of a proposed directors' written resolution shall be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution shall be taken reasonably in good faith.

Adoption of
directors'
written
resolutions

18.—(1) A proposed directors' written resolution shall be adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it shall be treated as if it had been a decision taken at a directors' meeting in accordance with these Articles.

(4) A company secretary shall ensure that the company keeps a record, in writing, of all directors' written resolutions for at least ten years from the date of their adoption.

19. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

Directors' discretion to make further rules

20. 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—

Methods of appointing directors

- (a) by ordinary resolution; or
- (b) by a decision of the directors.

21.—(1) At the first annual general meeting of a company, all directors shall retire from office.

Retirement of directors by rotation

- (2) At every subsequent annual general meeting any directors—
- (a) who have been appointed by the directors since the last annual general meeting; or
 - (b) who were not appointed or reappointed at one of the preceding two annual general meetings,

shall retire from office and may offer themselves for reappointment by the members.

22. 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 Act or is prohibited from being a director by law;
 - (b) a bankruptcy order is made against that person;
 - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
 - (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
 - (f) notification is received by the company from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.

Termination of directors' appointment

23.—(1) A director may undertake any services for the company that the directors decide.

Directors' remuneration

(2) A director shall be 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.

(3) Subject to these 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.

(4) Unless the directors decide otherwise, directors’ remuneration accrues from day to day.

(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.

Directors’ expenses

24. 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 the holders of any class of shares or of 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.

Appointment and removal of alternates

25.—(1) Any director (the “appointor”) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—

- (a) exercise that director’s powers; and
- (b) carry out that director’s responsibilities, in relation to the taking of decisions by the directors in the absence of the alternate’s appointor.

(2) Any appointment or removal of an alternate shall be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

(3) The notice shall—

- (a) identify the proposed alternate; and
- (b) 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.

Rights and responsibilities of alternate directors

26.—(1) An alternate director has the same rights, in relation to any directors’ meeting or directors’ written resolution, as the alternate’s appointor.

(2) Except as the articles specify otherwise, alternate directors—

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;

- (c) are subject to the same restrictions as their appointors; and
- (d) are not deemed to be agents of or for their appointors.

(3) A person who is an alternate director but not a director—

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

(b) may sign a written resolution (but only if it is not signed or to be signed by that person’s appointor) and no alternate may be counted as more than one director for such purposes.

(4) An alternate director 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.

27. An alternate director’s appointment as an alternate terminates—

Termination of alternate directorship

(a) when the alternate’s appointor revokes the appointment by notice to the company in writing specifying when it shall terminate;

(b) 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;

(c) on the death of the alternate’s appointor; or

(d) when the alternate’s appointor’s appointment as a director terminates, except that an alternate’s appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

PART III—DECISION MAKING

28. Where—

Members can call general meeting if not enough directors

(a) the company has fewer than two directors; and

(b) the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so,

then two or more members may call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

29.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

Attendance and speaking at general meetings

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person’s vote can be taken into account in determining

whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for
general
meetings

30. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing
general
meetings

31.—(1) Where the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) Where the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) if no directors are present, the meeting,

shall appoint a director or member to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as “the chairman of the meeting”.

Attendance
and speaking
by directors
and
non-members

32.—(1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairman of the meeting may permit other persons who are not—

(a) members of the company; or

(b) otherwise entitled to exercise the rights of members in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

33.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or

ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

(a) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting shall take place more than fourteen days after it was adjourned, the company must give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

34. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Voting:
general

35.—(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

Errors and
disputes

(2) Any such objection shall be referred to the chairman of the meeting whose decision shall be final.

36.—(1) A poll on a resolution may be demanded—

Demanding a
poll

(a) in advance of the general meeting where it shall be put to the vote, or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(a) the chairman of the meeting;

(b) the directors;

(c) two or more persons having the right to vote on the resolution;

or

(d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) the poll has not yet been taken; and

(b) the chairman of the meeting consents to the withdrawal.

Procedure on a
poll

37.—(1) Subject to the articles, polls at general meetings shall be taken when, where and in such manner as the chairman of the meeting directs.

(2) The chairman of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll shall be declared.

(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

(4) A poll on—

(a) the election of the chairman of the meeting, or

(b) a question of adjournment, shall be taken immediately.

(5) Other polls shall be taken within thirty days of their being demanded.

(6) A demand for a poll shall not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.

(7) No notice need be given of a poll not taken immediately if the time and place at which it shall be taken are announced at the meeting at which it is demanded.

(8) In any other case, at least seven days' notice shall be given specifying the time and place at which the poll shall be taken.

Content of
proxy notices

38.—(1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—

(a) states the name and address of the member appointing the proxy;

(b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

(c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) A proxy notice may specify how the proxy appointed under it shall vote or that the proxy is to abstain from voting on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it shall be treated as—

(a) giving the person appointed under it as a proxy discretion on

how to vote on any ancillary or procedural resolutions put to the meeting; and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

39.—(1) Any notice of a general meeting shall specify the address or addresses (“proxy notification address”) at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

Delivery of proxy notice

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(3) Subject to paragraphs (4) and (5), a proxy notice shall be delivered to a proxy notification address not less than forty eight hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than forty eight hours after it is demanded, the notice shall be delivered to a proxy notification address not less than twenty four hours before the time appointed for the taking of the poll.

(5) In the case of a poll not taken during the meeting but taken not more than forty eight hours after it was demanded, the proxy notice shall be delivered—

(a) in accordance with paragraph (3); or

(b) at the meeting at which the poll was demanded to the chairman, secretary or any director.

(6) An appointment under a proxy notice may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered before—

(a) the start of the meeting or adjourned meeting to which it relates, or

(b) in the case of a poll not taken on the same day as the meeting or adjourned meeting the time appointed for taking the poll to which it relates.

(8) Where a proxy notice is not signed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

40.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

Amendments to resolutions

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty eight hours before the meeting is to take place or such later time as the chairman of the meeting may determine; and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman’s error shall not invalidate the vote on that resolution.

No voting of shares on which money owed to company

41. No voting rights attached to a share may be exercised at any general meeting, at any adjournment of it, or on any poll called at or in relation to it, unless all amounts payable to the company in respect of that share have been paid.

Class meetings

42. The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

PART IV—SHARES AND DISTRIBUTIONS

Powers to issue different classes of shares

43.—(1) Subject to these Articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Payment of commissions on subscription for shares

44.—(1) The company may pay any person a commission in consideration for that person—

(a) subscribing, or agreeing to subscribe, for shares, or

(b) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid—

(a) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other, and

(b) in respect of a conditional or an absolute subscription.

Company not bound by less than absolute interests

45. Except as required by law, a person shall not be recognized by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company shall not in any way be bound by or recognize any interest in a share other than the holder’s absolute ownership of it and all the rights attaching to it.

46.—(1) The company shall issue each member with one or more certificates in respect of the shares which that member holds.

Certificates to be issued except in certain cases

(2) This article does not apply to—

- (a) uncertificated shares;
- (b) shares in respect of which a share warrant has been issued; or
- (c) shares in respect of which the Act permits the company not to issue a certificate.

(3) Except as otherwise specified in these Articles, all certificates shall be issued free of charge.

(4) No certificate may be issued in respect of shares of more than one class.

(5) If more than one person holds a share, only one certificate may be issued in respect of it.

47.—(1) Every certificate shall specify—

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) the amount paid up on them; and
- (d) any distinguishing numbers assigned to them.

Contents and execution of share certificates

(2) Every certificate shall—

- (a) have affixed to it the company’s common seal or an official seal which is a facsimile of the company’s common seal with the addition on its face of the word “Securities” (a “securities seal”); or
- (b) be otherwise executed in accordance with the Act.

48.—(1) Where a member’s holding of shares of a particular class increases, the company may issue that member with—

Consolidated share certificates

- (a) a single, consolidated certificate in respect of all the shares of a particular class which that member holds; or
- (b) a separate certificate in respect of only those shares by which that member’s holding has increased.

(2) When a member’s holding of shares of a particular class is reduced, the company shall ensure that the member is issued with one or more certificates in respect of the number of shares held by the member after that reduction. But the company need not, in the absence of a request from the member, issue any new certificate if—

- (a) all the shares which the member no longer holds as a result of the reduction; and
- (b) none of the shares which the member retains following the reduction were, immediately before the reduction, represented by the same certificate.

(3) A member may request the company, in writing, to replace—
 (a) the member’s separate certificates with a consolidated certificate; or

(b) the member’s consolidated certificate with two or more separate certificates representing such proportion of the shares as the member may specify.

(4) When the company complies with such a request it may charge such reasonable fee as the directors may decide for doing so.

(5) A consolidated certificate shall not be issued unless any certificates which it shall replace have first been returned to the company for cancellation.

Replacement
share
certificates

49.—(1) Where a certificate issued in respect of a member’s shares is—
 (a) damaged or defaced; or
 (b) said to be lost, stolen or destroyed,

the member is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A member exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates;

(b) shall return the certificate which shall be replaced to the company if it is damaged or defaced; and

(c) shall comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

Uncertificated
shares

50.—(1) In this article, the “relevant rules” means—

(a) any applicable provision of the Act about the holding, evidencing of title to, or transfer of shares other than in certificated form; and

(b) any applicable legislation, rules or other arrangements made under or by virtue of such provision.

(2) The provisions of this article have effect subject to the relevant rules.

(3) Any provision of the articles which is inconsistent with the relevant rules shall be disregarded, to the extent that it is inconsistent, whenever the relevant rules apply.

(4) Any share or class of shares of the company may be issued or held on such terms, or in such a way, that—

(a) title to it or them is not, or shall not be, evidenced by a certificate; or

(b) it or they may or shall be transferred wholly or partly without a certificate.

(5) The directors have power to take such steps as they think fit in relation to—

(a) the evidencing of and transfer of title to uncertificated shares (including in connection with the issue of such shares);

(b) any records relating to the holding of uncertificated shares;

(c) the conversion of certificated shares into uncertificated shares;
or

(d) the conversion of uncertificated shares into certificated shares.

(6) The company may, by notice to the holder of a share, require the share—

(a) if it is uncertificated, to be converted into certificated form; and

(b) if it is certificated, to be converted into uncertificated form, to enable it to be dealt with in accordance with the articles.

(7) Where—

(a) the articles give the directors power to take action, or require other persons to take action, in order to sell, transfer or otherwise dispose of shares; and

(b) uncertificated shares are subject to that power, but the power is expressed in terms which assume the use of a certificate or other written instrument, the directors may take such action as is necessary or expedient to achieve the same results when exercising that power in relation to uncertificated shares.

(8) In particular, the directors may take such action as they consider appropriate to achieve the sale, transfer, disposal, forfeiture, re-allotment or surrender of an uncertificated share or otherwise to enforce a lien in respect of it.

(9) Unless the directors otherwise determine, shares which a member holds in uncertificated form shall be treated as separate holdings from any shares which that member holds in certificated form.

(10) A class of shares shall not be treated as two classes simply because some shares of that class are held in certificated form and others are held in uncertificated form.

51.—(1) The directors may issue a share warrant in respect of any fully paid share.

Share
warrants

(2) A share warrant shall be—

(a) issued in such form; and

(b) executed in such a manner as the directors may decide.

(3) A share represented by a share warrant may be transferred by delivery of the warrant representing it.

(4) The directors may make provision for the payment of dividends in respect of any share represented by a share warrant.

(5) Subject to these Articles, the directors may decide the conditions on which any share warrant is issued. In particular, they may—

(a) decide the conditions on which new warrants are to be issued in place of warrants which are damaged or defaced, or said to have been lost, stolen or destroyed;

(b) decide the conditions on which bearers of warrants are entitled to attend and vote at general meetings;

(c) decide the conditions subject to which bearers of warrants may surrender their warrant so as to hold their shares in certificated or uncertificated form instead; and

(d) vary the conditions of issue of any warrant from time to time, and the bearer of a warrant is subject to the conditions and procedures in force in relation to it, whether or not they were decided or specified before the warrant was issued.

(6) Subject to the conditions on which the warrants are issued from time to time, bearers of share warrants have the same rights and privileges as they would if their names had been included in the register as holders of the shares represented by their warrants.

(7) The company shall not in any way be bound by or recognize any interest in a share represented by a share warrant other than the absolute right of the bearer of that warrant to that warrant.

Company's
lien over
partly paid
shares

52.—(1) The company shall have a lien (“the company’s lien”) over every share which is partly paid for any part of—

(a) that share’s nominal value; and

(b) any premium at which it was issued, which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company’s lien over a share—

(a) takes priority over any third party’s interest in that share; and

(b) extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

(3) The directors may at any time decide that a share which is or would otherwise be subject to the company’s lien shall not be subject to it, either wholly or in part.

Enforcement of
the company’s
lien

53.—(1) Subject to the provisions of these Articles, if—

(a) a lien enforcement notice has been given in respect of a share; and

(b) the person to whom the notice was given has failed to comply with it,

the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice—

(a) may only be given in respect of a share which is subject to the

company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed;

(b) shall specify the share concerned;

(c) shall require payment of the sum payable within fourteen days of the notice;

(d) shall be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, bankruptcy or otherwise; and

(e) shall state the company's intention to sell the share if the notice is not complied with.

(3) Where shares are sold under this article—

(a) the directors may authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(b) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

(4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) shall be applied—

(a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice; and

(b) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—

(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

54.—(1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a member requiring the member to pay the company a specified sum of money (a "call") which is payable in respect of shares which that member holds at the date when the directors decide to send the call notice.

Call notices

(2) A call notice—

(a) may not require a member to pay a call which exceeds the total sum unpaid on that member's shares, whether as to the share's nominal value or any amount payable to the company by way of premium;

(b) shall state when and how any call to which it relates shall be paid; and

(c) may permit or require the call to be paid by installments.

(3) A member shall comply with the requirements of a call notice, but no member is obliged to pay any call before fourteen days have passed since the notice was sent.

(4) Before the company has received any call due under a call notice, the directors may—

(a) revoke it wholly or in part; or

(b) specify a later time for payment than is specified in the notice, by a further notice in writing to the member in respect of whose shares the call is made.

Liability to
pay calls

55.—(1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.

(2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

(3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—

(a) to pay calls which are not the same; or

(b) to pay calls at different times.

When call
notice need
not be issued

56.—(1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share, whether in respect of nominal value or premium—

(a) on allotment;

(b) on the occurrence of a particular event; or

(c) on a date fixed by or in accordance with the terms of issue.

(2) Where the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned shall be treated in all respects as having failed to comply with a call notice in respect of that sum, and shall be liable to the same consequences as regards the payment of interest and forfeiture.

Failure to
comply with
call notice:
automatic
consequences

57.—(1) Where a person is liable to pay a call and fails to do so by the call payment date—

(a) the directors may issue a notice of intended forfeiture to that person; and

(b) until the call is paid, the person shall pay the company interest on the call from the call payment date at the relevant rate.

(2) For the purposes of this article—

(a) the “call payment date” is the time when the call notice states

that a call is payable, unless the directors give a notice specifying a later date, in which case the “call payment date” is that later date;

(b) the “relevant rate” is—

(i) the rate fixed by the terms on which the share in respect of which the call is due was allotted;

(ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or

(iii) if no rate is fixed in either of these ways, five per cent per annum.

(3) The relevant rate shall not exceed by more than five percentage points the base lending rate most recently set by the Reserve Bank of Malawi.

(4) The directors may waive any obligation to pay interest on a call wholly or in part.

58. A notice of intended forfeiture—

Notice of intended forfeiture

(a) may be sent in respect of any share in respect of which a call has not been paid as required by a call notice;

(b) shall be sent to the holder of that share or to a person entitled to it by reason of the holder’s death, bankruptcy or otherwise;

(c) shall require payment of the call and any accrued interest by a date which is not less than fourteen days after the date of the notice;

(d) shall state how the payment shall be made; and

(e) shall state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

59. If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given be forfeited, and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

Directors’ power to forfeit shares

60.—(1) Subject to these Articles, the forfeiture of a share extinguishes—

Effects of forfeiture

(a) all interests in that share, and all claims and demands against the company in respect of it; and

(b) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.

(2) Any share which is forfeited in accordance with the articles—

(a) is deemed to have been forfeited when the directors decide that it is forfeited;

(b) is deemed to be the property of the company; and

(c) may be sold, re-allotted or otherwise disposed of as the directors think fit.

(3) Where a person’s shares have been forfeited—

(a) the company shall send the person notice that forfeiture has occurred and record it in the register of members;

(b) the person ceases to be a member in respect of those shares;

(c) the person shall surrender the certificate for the shares forfeited to the company for cancellation;

(d) that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest, whether accrued before or after the date of forfeiture ; and

(e) the directors may waive payment of such sums 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.

(4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.

Procedure following forfeiture

61.—(1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer.

(2) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been forfeited on a specified date-

(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

(3) A person to whom a forfeited share is transferred shall not be bound to see to the application of the consideration, if any, nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.

(4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which—

(a) was, or would have become, payable; and

(b) had not, when that share was forfeited, been paid by that person in respect of that share:

Provided that no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.

Surrender of shares

62.—(1) A member may surrender any share—

(a) in respect of which the directors may issue a notice of intended forfeiture;

(b) which the directors may forfeit; or

(c) which has been forfeited.

(2) The directors may accept the surrender of any such share.

(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.

(4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.

63.—(1) Certificated 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—

Transfers of certificated shares

(a) the transferor; and

(b) if any of the shares is partly paid, the transferee.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a certificated share until the transferee’s name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a certificated share if—

(a) the share is not fully paid;

(b) the transfer is not lodged at the company’s registered office or such other place as the directors have appointed;

(c) the transfer is not accompanied by the certificate for the shares to which it relates, or such other evidence as the directors may reasonably require to show the transferor’s right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor’s behalf;

(d) the transfer is in respect of more than one class of share; or

(e) the transfer is in favour of more than four transferees.

(6) Where the directors refuse to register the transfer of a share, the instrument of transfer shall be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

64. A transfer of an uncertificated share shall not be registered if it is in favour of more than four transferees.

Transfer of uncertificated shares

65.—(1) Where title to a share passes to a transferee, the company may only recognize the transferee as having any title to that share.

Transmission of shares

(2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share solely or jointly held by that member.

66.—(1) A transferee who produces such evidence of entitlement to shares as the directors may properly require—

Transferees’ rights

(a) may, subject to these Articles, choose either to become the holder of those shares or to have them transferred to another person; and

(b) subject to these Articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(2) A transmittee shall not have the right to attend or vote at a general meeting in respect of shares to which they are entitled, by reason of the holder’s death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transmittees’ rights

67.—(1) Transmittees who wish to become the holders of shares to which they have become entitled shall notify the company in writing of that wish.

(2) If the share is a certificated share and a transmittee wishes to have it transferred to another person, the transmittee shall execute an instrument of transfer in respect of it.

(3) If the share is an uncertificated share and the transmittee wishes to have it transferred to another person, the transmittee shall—

(a) procure that all appropriate instructions are given to effect the transfer; or

(b) procure that the uncertificated share is changed into certificated form and then execute an instrument of transfer in respect of it.

(4) Any transfer made or executed under this article shall be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

68. If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee’s name has been entered in the register of members.

Procedure for disposing of fractions of shares

69.—(1) This article applies where—

(a) there has been a consolidation or division of shares; and

(b) as a result, members are entitled to fractions of shares.

(2) The directors may—

(a) sell the shares representing the fractions to any person including the company for the best price reasonably obtainable;

(b) in the case of a certificated share, authorize any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and

(c) distribute the net proceeds of sale in due proportion among the holders of the shares.

(3) Where any holder’s entitlement to a portion of the proceeds of sale amounts to less than a minimum figure determined by the directors, that member’s portion may be distributed to an organization which is a charity for the purposes of any written laws.

(4) A person to whom the shares are transferred shall not be obliged to ensure that any purchase money is received by the person entitled to the

relevant fractions.

(5) The transferee's title to the shares shall not be affected by any irregularity in or invalidity of the process leading to their sale.

70.—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

Procedure for
declaring
dividends

(2) A dividend shall not be declared unless the directors have made a recommendation as to its amount. Such a dividend shall not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with members' respective rights.

(4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it shall be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If 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 shares with deferred or non-preferred rights.

71.—(1) Except as otherwise provided by these Articles or the rights attached to shares, all dividends shall be—

Calculation of
dividends

(a) declared and paid according to the amounts paid up on the shares on which the dividend is paid; and

(b) 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.

(2) If any share is issued on terms providing that it ranks for dividend as from a particular date that share ranks for dividend accordingly.

(3) For the purposes of calculating dividends, no account shall be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

72.—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it shall be paid by one or more of the following means—

Payment of
dividends
and other
distributions

(a) transfer to a bank account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered

address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, “the distribution recipient” means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share;

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

Deductions
from
distributions in
respect of sums
owed to the
company

73.—(1) If—

(a) a share is subject to the company’s lien; and

(b) the directors are entitled to issue a lien enforcement notice in respect of it,

they may, instead of issuing a lien enforcement notice, deduct from any dividend or other sum payable in respect of the share any sum of money which is payable to the company in respect of that share to the extent that they are entitled to require payment under a lien enforcement notice.

(2) The sums of money deducted under paragraph (1), shall be used to pay any of the sums payable in respect of that share.

(3) The company shall notify the distribution recipient in writing of—

(a) the fact and amount of any such deduction;

(b) any non-payment of a dividend or other sum payable in respect of a share resulting from any such deduction; and

(c) how the money deducted has been applied.

No interest on
distributions

74. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued; or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed
distributions

75.—(1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable, may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account shall not make the company a trustee in respect of it.

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment; and

(b) the distribution recipient has not claimed it,

the distribution recipient shall no longer be entitled to that dividend or other sum and it shall cease to remain owing by the company.

76.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value including, without limitation, shares or other securities in any company.

Non-cash distributions

(2) If the shares in respect of which such a non-cash distribution is paid are uncertificated, any shares in the company which are issued as a non-cash distribution in respect of them shall be uncertificated.

(3) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets;

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(c) vesting any assets in trustees.

77. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

Waiver of distributions

(a) the share has more than one holder; or

(b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

78.—(1) The directors may, if so authorized by an ordinary resolution—

Authority to capitalize and appropriation of capitalized sums

(a) decide to capitalize any profits of the company whether or not they are available for distribution, which are not required for paying a preferential dividend, or any sum standing to the credit of the company’s share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalize (a “capitalized sum”) to the persons who would have been entitled to it if it were distributed by way of dividend (the “persons entitled”) and in the same proportions.

(2) The sums capitalized under paragraph (1), shall be applied—

(a) on behalf of the persons entitled; and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalized sum may be applied in paying up new shares of a nominal amount equal to the capitalized sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalized sum which was appropriated from profits available for distribution may be applied—

(a) in or towards paying up any amounts unpaid on existing shares held by the persons entitled; or

(b) in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to these Articles, the directors may—

(a) apply capitalized sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article including the issuing of fractional certificates or the making of cash payments; and

(c) authorize any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART V—MISCELLANEOUS PROVISIONS

Means of communication to be used

79.—(1) Subject to these Articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act, provides for documents or information which are authorized or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to these Articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty eight hours.

Failure to notify contact details

80.—(1) If—

(a) the company sends two consecutive documents to a member over a period of at least twelve months; and

(b) each of those documents is returned undelivered, or the

company receives notification that it has not been delivered, that member ceases to be entitled to receive notices from the company.

(2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive such notices again by sending the company—

- (a) a new address to be recorded in the register of members; or
- (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

81.—(1) Any common seal may only be used by the authority of the directors. Company seals

(2) The directors may decide by what means and in what form any common seal or securities seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person is—

- (a) any director of the company;
- (b) the company secretary; or
- (c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

(5) If the company has an official seal for use abroad, it may only be affixed to a document if its use on that document, or documents of a class to which it belongs, has been authorized by a decision of the directors.

(6) If the company has a securities seal, it may only be affixed to securities by the company secretary or a person authorized to apply it to securities by the company secretary.

(7) For the purposes of these Articles, references to the securities seal being affixed to any document include the reproduction of the image of that seal on or in a document by any mechanical or electronic means which has been approved by the directors in relation to that document or documents of a class to which it belongs.

82.—(1) The company shall be entitled to destroy—

(a) all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entries are made in the register of members, from six years after the date of registration;

(b) all dividend mandates, variations or cancellations of dividend mandates, and notifications of change of address, from two years after they have been recorded;

(c) all share certificates which have been cancelled from one year after the date of the cancellation;

Destruction
of documents

(d) all paid dividend warrants and cheques from one year after the date of actual payment; and

(e) all proxy notices from one year after the end of the meeting to which the proxy notice relates.

(2) If the company destroys a document in good faith, in accordance with the articles, and without notice of any claim to which that document may be relevant, it is conclusively presumed in favour of the company that—

(a) entries in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed were duly and properly made;

(b) any instrument of transfer so destroyed was a valid and effective instrument duly and properly registered;

(c) any share certificate so destroyed was a valid and effective certificate duly and properly cancelled; and

(d) any other document so destroyed was a valid and effective document in accordance with its recorded particulars in the books or records of the company.

(3) This article shall not impose on the company any liability which it would not otherwise have if it destroys any document before the time at which this article permits it to do so.

(4) In this article, references to the destruction of any document include a reference to its being disposed of in any manner.

No right to inspect accounts and other records

83. Except as provided by any written law or authorized by the directors or an ordinary resolution of the company, no person shall be entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

Provision for employees on cessation of business

84. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director, in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Indemnity

85.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; and

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article shall not authorize any indemnity which would be

prohibited or rendered void by any provision of the Act or by any other law.

(3) In this article—

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

(b) a “relevant director” means any director or former director of the company or an associated company.

86.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss. Insurance

(2) In this article—

(a) a “relevant director” means any director or former director of the company or an associated company;

(b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’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

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

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PART I—PRELIMINARY

Interpretation

- 1.—(1) In these Articles, unless the context requires otherwise—
- “articles” means the company's articles of association;
 - “bankruptcy” includes individual insolvency proceedings;
 - “chairman” has the meaning given in article 12;
 - “chairman of the meeting” has the meaning given in article 25;

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“member” has the meaning given in section 2 of the Act;

“ordinary resolution” has the meaning given in section 2 of the Act,;

“participate”, in relation to a directors’ meeting, has the meaning given in article 10;

“proxy notice” has the meaning given in article 31;

“special resolution” has the meaning given in section 2 of the Act;

“subsidiary” has the meaning given in section 2(5) of the Act; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act, as in force on the date when these articles become binding on the company.

2. The liability of each member is limited to the amount, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for—

Liability of members

(a) payment of the company’s debts and liabilities contracted before he ceases to be a member;

(b) payment of the costs, charges and expenses of winding up; and

(c) adjustment of the rights of the contributories among themselves.

PART II—DIRECTORS, DIRECTORS’ POWERS AND RESPONSIBILITIES

3. 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.

Director’s general authority

4.—(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

Members’ reserve power

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

5.—(1) Subject to these Articles, the directors may delegate any of the powers which are conferred on them under these Articles—

Delegation by directors

- (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;

(2) If the directors so specify, any such delegation may authorize further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which the directors delegate any of their powers shall follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

DECISION MAKING BY DIRECTORS

Director to
take decisions
collectively

7.—(1) The general rule about decision-making by directors is that any decision of the directors shall be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

(a) the company only has one director; and

(b) no provision of the articles requires it to have more than one director,

the general rule shall not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous
decisions

8.—(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.

(2) A decision referred to in paragraph (1) may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) 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.

9.—(1) Any director may call a directors’ meeting by giving notice of the meeting to the directors or by authorizing the company secretary, if any, to give such notice.

Calling a directors’ meeting

(2) Notice of any directors’ meeting shall indicate—

(a) its proposed date and time;

(b) where it shall take place; and

(c) 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.

(3) Notice of a directors’ meeting shall be given to each director, but need not be in writing.

(4) 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 seven days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that shall not affect the validity of the meeting, or of any business conducted at it.

10.—(1) Subject to these Articles, directors participate in a directors’ meeting, or part of a directors’ meeting, when—

Participation in directors’ meeting

(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.

(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.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting shall be treated as taking place wherever any of them is.

11.—(1) At a directors’ meeting, unless a quorum is participating, no proposal shall to be voted on, except a proposal to call another meeting.

Quorum for directors’ meeting

(2) The quorum for directors’ meetings may be fixed from time to time by a decision of the directors, but it shall never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the directors shall 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.

12.—(1) The directors may appoint a director to chair their meetings.

Chairing of directors’ meetings

(2) The person so appointed for the time being shall be known as the

chairman.

(3) The directors may terminate the chairman's appointment at any time.

(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 shall appoint one of themselves to chair it.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting shall have a casting vote.

(2) Paragraph (1) shall 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.

Conflicts of interest

14.—(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director shall not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) Where paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company shall be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting or part of the meeting for voting or quorum purposes, the question

may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman shall be final and conclusive.

(7) If any question as to the right to participate in the meeting or part of the meeting should arise in respect of the chairman, the question shall be decided by a decision of the directors at that meeting, for which purpose the chairman shall not be counted as participating in the meeting or that part of the meeting for voting or quorum purposes.

15. The directors shall ensure that the company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Records of decisions to be kept

16. Subject to these Articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

Directors' discretion to make further rules

17.—(1) 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—

Methods of appointing directors

(a) by ordinary resolution; or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no members and no directors, the personal representatives of the last member to have died shall have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where two or more members die in circumstances rendering it uncertain who was the last to die, a younger member is deemed to have survived an older member.

18. A person shall cease to be a director as soon as—

Termination of director's appointment

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(b) a bankruptcy order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

(f) 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.

19.—(1) Directors may undertake any services for the company that the directors decide.

Directors' remuneration

(2) Directors shall be 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.

(3) Subject to these 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.

(4) Unless the directors decide otherwise, directors’ remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors shall not be 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.

Directors’ expenses

20. 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 the holders of 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 III—MEMBERS, BECOMING AND CEASING TO BE A MEMBER

Applications for membership

21. A person shall not become a member of the company unless—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

Termination of membership

22.—(1) A member may withdraw from membership of the company by giving seven days’ notice to the company in writing.

- (2) Membership shall not be transferable.
- (3) A person’s membership terminates when that person dies or ceases to exist.

Attendance and speaking at general meetings

23.—(1) A person shall be able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person shall be able to exercise the right to vote at a general meeting when—

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have or were to have rights to speak and vote at that meeting, they are (or would be) able to exercise them.

24. No business other than the appointment of the chairman of the meeting shall be transacted at a general meeting if the persons attending it do not constitute a quorum.

Quorum for general meetings

25.—(1) Where the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

Chairing general meetings

(2) Where the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) if no directors are present, the meeting, shall appoint a director or member to chair the meeting, and the appointment of the chairman of the meeting shall be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article shall be referred to as “the chairman of the meeting”.

26.—(1) Directors may attend and speak at general meetings, whether or not they are members.

Attendance and speaking by directors and non-members

(2) The chairman of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

27.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting shall adjourn it.

Adjournment

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting shall adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting shall—

(a) either specify the time and place to which it is adjourned or state that it shall continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than fourteen days after it was adjourned, the company shall give at least seven clear days' notice of it, excluding the day of the adjourned meeting and the day on which the notice is given—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) Business may not be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

Voting: general

28. A resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

29.—(1) An objection may not be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection shall be referred to the chairman of the meeting whose decision is final.

Poll votes

30.—(1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it shall be put to the vote; or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(a) the chairman of the meeting;

(b) the directors;

(c) two or more persons having the right to vote on the resolution;

or

(d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

- (a) the poll has not yet been taken; and
- (b) the chairman of the meeting consents to the withdrawal.

(4) A poll shall be taken immediately and in such manner as the chairman of the meeting directs.

31.—(1) A proxy may only validly be appointed by a notice in writing (a “proxy notice”) which—

Content of proxy notices

- (a) states the name and address of the member appointing the proxy;
- (b) identifies the person appointed to be that member’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) A proxy notice may specify how the proxy appointed under it shall vote or that the proxy shall abstain from voting on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it shall be treated as—

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

32.—(1) A person who is entitled to attend, speak or vote, either on a show of hands or on a poll, at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

Delivery of proxy notices

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) Where a proxy notice is not executed by the person appointing the proxy, it shall be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

33.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

Amendments to resolutions

- (a) notice of the proposed amendment is given to the company in

writing by a person entitled to vote at the general meeting at which it shall be proposed not less than forty eight hours before the meeting shall take place, or such later time as the chairman of the meeting may determine; and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution shall be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error shall not invalidate the vote on that resolution.

PART IV—ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

34.—(1) Subject to these Articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorized or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty eight hours.

Company seals

35.—(1) A common seal of a company may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal shall be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document shall also be signed by at least one authorized person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorized person is—

(a) any director of the company;

(b) the company secretary, if any; or

(c) any person authorized by the directors for the purpose of signing documents to which the common seal is applied.

36. Except as provided by law or authorized by the directors or an ordinary resolution of the company, a person shall not be entitled to inspect any of the company’s accounting or other records or documents merely by virtue of being a member.

No right to inspect accounts and other records

37. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, other than a director or former director or shadow director, in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

Provision for employees on cessation of business

38.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company’s assets against—

Indemnity

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme; or

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article shall not authorize any indemnity which would be prohibited or rendered void by any provision of the Act or by any other written law.

(3) In this article—

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

(b) a “relevant director” means any director or former director of the company or an associated company.

39.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

Insurance

(2) In this article—

(a) a “relevant director” means any director or former director of the company or an associated company;

(b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’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

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

TABLE D

A MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1. The name of the company is..... Limited
2. The business which the company is authorized to carry on is restricted as follows—
Or [The business which the company is authorized to carry on is unrestricted]
3. The liability of the members is limited.
4. The capital of the company is
5. The company is a public company.
[The company is a private company and accordingly—
 - (a) the number of members of the company (exclusive of persons who are bona fide in the employment of the company and persons who, having been formerly bonafide in the employment of the company, were while in that employment, and have continues after the employment to be, members of the company) is limited to fifty
 - (b) the company is prohibited from making any invitation to the public to acquire any of its shares or debentures; and
 - (c) the right to transfer shares in the company is restricted by its articles of association.]

We the several persons whose names and addresses are subscribed, wish to be formed into a company in pursuance of this memorandum of association.

<i>Name of each subscriber</i>	<i>Authentication by each subscriber</i>

Date:.....

TABLE E

MEMORANDUM OF ASSOCIATION OF COMPANY LIMITED BY GUARANTEE

1. The name of the company is
2. The objects for which the company is established are—
 - (a).....
 - (b).....
 - (c)....., etc.,

3. The income and property of the company shall be applied solely towards the promotion of the object of the company, and no portion thereof paid or transferred directly or indirectly to the members of the company except as may be permitted by law.

4. The liability of the members is limited.

5. Each member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member for the payment of debts and liabilities of the company and of the costs of winding up and for the adjustment of the rights of members among themselves such amount as may be required not exceeding Kwacha.

6. If upon the winding up or dissolution of the company there remains after the discharge of all its debts and liabilities any property of the company, such property shall not be distributed among the members but shall be transferred to some other company limited by guarantee having objects similar to the objects to the object of the company or applied to some charitable object, such other company or charity to be determined by an ordinary resolution of members in general meeting prior to the dissolution.

<i>Name of each subscriber</i>	<i>Authentication by each subscriber</i>

Date:.....

Made the 1st day of June, 2016.

JOSEPH MWANAMVEKHA
*Minister of Industry,
Trade and Tourism*

(FILE NO. INV/22)