

THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

- of -

THE FOUNDATION AND FRIENDS OF THE ROYAL BOTANIC GARDENS, KEW

(Incorporating all amendments since 11 February 2009, passed by special resolution on 19 March 2013, 4 July 2017 and 11 October 2022.)

INTERPRETATION

1. None of the articles in the model articles for a private company limited by guarantee set out in Schedule 1 to the Companies (Model Articles) Regulations 2008 or regulations in Table C in the Schedule to the Companies (Tables A to F) Regulations 1985, as amended shall apply to the Company.

2. In these Articles:

"the Acts" means the Companies Act 1985 and the Companies Act 2006 as in force from time to time

"the Articles" means these Articles of Association as originally adopted or as from time to time altered

"the Auditors" means the Auditors of the Company as provided in these Articles

"the Board" means the Board of Trustees of the Company as a body or the quorum of the Trustees at a meeting of the Board

"the Byelaws" means byelaws of the Company made by the Board pursuant to the powers in that behalf conferred upon it by the Articles

"the CA 06" means the Companies Act 2006 as in force from time to time

"the Company" means The Foundation and Friends of the Royal Botanic Gardens, Kew, registered number 2499006

"the Friends of the Royal Botanic Gardens, Kew" means any class or classes of membership established in accordance with Article 9 whose members shall not be Members of the Company for the purpose of the Acts and "Friend" shall mean any member of such class or classes

"Independent Trustee" means a Trustee appointed under Article 36(b)

"the Members" means the members of the Company for the purposes of the Acts as defined in the Articles

"the Office" means the Registered Office for the time being of the Company

"the Register" means the Register of Members of the Company kept pursuant to the CA 2006

"RBG Kew" means the Board of Trustees of the Royal Botanic Gardens, Kew, a body established under the National Heritage Act 1983

"the Seal" means the Common Seal of the Company

"the Secretary" means the Secretary of the Company as provided in the Articles

"the Statutes" means the Acts and every other Act, statutory instrument, regulation, or order for the time being in force concerning the Company

"the Trustees" means the members of the Board of the Company as provided in the Articles who are, for the avoidance of doubt, the directors of the Company for the purposes of the Acts.

Unless the context otherwise requires or the contrary intention appears:

- (a) Expressions referring to writing shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.
- (b) Words importing the singular number only shall include the plural number and vice versa and words importing the masculine gender only shall include the feminine gender.
- (c) Words or expressions contained in the Articles shall bear the same meaning as in the Acts or any statutory modification or re-enactment thereof at the date of which the Articles become binding on the Company.

OBJECTS

- 3. The Company is established for the public benefit for the object of supporting such of the purposes of Royal Botanic Gardens, Kew and in such manner as the Company shall from time to time think fit.

POWERS

- 4. The Company in carrying out the said object shall have and may exercise (but only to the extent to which the same may lawfully be exercised by a company having exclusively charitable objects) all or any of the following powers:
 - (a) to establish, authorise the formation of, maintain, control and manage both nationwide and local groups in the United Kingdom and elsewhere to be known individually and collectively as "The Foundation and Friends of the Royal Botanic Gardens, Kew" for the purpose of promoting the objects of the Company and from time to time to determine the constitution, special benefits, obligations and duties of such groups, and if thought fit to modify and dissolve the same;

- (b) to provide a means whereby companies, organisations or persons resident in the United Kingdom and elsewhere, may have the opportunity of making financial and other contributions to, and providing other support for the objects of the Company;
- (c) to hold educational conferences, meetings, lectures and exhibitions for the consideration and discussion of matters concerning or affecting or incidental to the objects of the Company and to employ all other suitable means to further public knowledge of the objects of the Company;
- (d) to issue reports of proceedings of conferences and meetings and generally to collect, collate, exchange and publish information and advice in furtherance of the objects of the Company;
- (e) to organise and finance education and training courses concerned with the objects of the Company including without limiting the generality of the foregoing seminars, study groups, discussions, courses and the reading of learned papers concerned with matters related or incidental to the objects of the Company;
- (f) to advertise in such manner as may be thought fit with a view to promoting the objects of the Company;
- (g) to prepare, edit, print, publish, issue, acquire and circulate (or to assist in the same) books, papers, periodicals, gazettes, circulars and other literary undertakings and films and other visual or audio aids;
- (h) to establish and maintain a library and collection of literature, films, recordings and other materials relating to all things connected with or incidental to the objects of the Company and to afford facilities for the public access to and use of the same;
- (i) to solicit, receive and accept financial assistance, donations, endowments, gifts (both inter vivos and testamentary), devises, bequests and loans of money, rents, hereditaments and other property whatsoever, real or personal, and subject or not to any specific charitable trusts or conditions;
- (j) subject to such consents as may be required by law to borrow or raise any money that may be required by the Company and to secure or discharge any debt or obligation of or binding upon the Company in such manner and upon such terms and subject to such conditions as may be deemed desirable and in particular by mortgage or charge of all or any part of the property of the Company, and to draw, make, accept, indorse, discount, execute and issue negotiable or transferable instruments;
- (k) to invest the funds of the Company not immediately required for its purposes in or upon such investments, securities or property as may be thought fit, and from time to time to transpose, vary and realise such investments subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as herein provided;
- (l) subject to such consents as may be required by law so far as the law may from time to time allow to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges and to construct, erect, alter, improve and maintain any building which may be required from time to time by the Company and to manage, provide accommodation and catering facilities in, develop, sell, demise, let, mortgage, dispose of, turn to account or otherwise deal with all or any part of the same;

- (m) to undertake, execute and perform any charitable trusts which may lawfully be undertaken by the Company and may be conducive to any of its objects;
- (n) to grant, continue and pay such salaries and pensions for persons employed at any time by the Company and their widows and dependants;
- (o) to pay all expenses, preliminary or incidental to the establishment of the Company;
- (p) to establish and support or aid in the establishment and support of any charitable associations or institutions and to raise, subscribe or guarantee money for charitable purposes in any way connected with the purposes of the Company or calculated to further its objects;
- (q) to amalgamate or affiliate with (by joining or co-operation or some other means) or to acquire or take over the undertaking of any charitable association or institution having objects altogether or in part similar to those of the Company and not formed for profit and all or any of the assets thereof which the Company may lawfully acquire or take over but so that any steps so taken shall not enlarge the objects of the Company or involve any activity or disbursement of funds not conducive to such objects;
- (r) to do all such other lawful things for the purpose of attaining the above objects or any of them.

Provided that:

- (s) in case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts;
- (t) in case the Company shall take or hold any property subject to the jurisdiction of the Charity Commissioners for England and Wales the Company shall not sell, mortgage, charge or lease the same without such authority, approval or consent as may be required by law, and as regards any such property the Board of the Company shall be chargeable for any such property that may come into their hands and shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of such property in the same manner and to the same extent as they would as such Board have been if no incorporation had been effected, and the incorporation of the Company shall not diminish or impair any control or authority exercisable by the Chancery Division of the High Court of Justice or the Charity Commissioners over such Board but they shall as regards any such property be subject jointly and separately to such control or authority as if the Company were not incorporated.

MEMBERS' AND TRUSTEES' INTERESTS

5. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Members of the Company and no member of its Board shall be appointed to any office of the company paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Company.

Provided that nothing herein shall prevent any payment in good faith by the Company:

- (a) of reasonably and proper remuneration to any member, officer or servant of the Company (not being a member of its Board) for any services rendered to the Company;
- (b) of interest on money lent by any member of the Company or its Board at a rate per annum not exceeding two per cent. less than the minimum lending rate prescribed for the time being by the Bank of England, or three per cent. whichever is the greater;
- (c) of reasonable and proper rent for premises demised or let by any member of the Company or its Board;
- (d) to any member of its Board of out-of-pocket expenses;
- (e) of fees, remuneration or other benefit in money or money's worth to a company of which a member of its Board may be a member holding not more than one hundredth part of the capital of such company; or
- (f) of reasonable and proper professional charges to any member of the Company or its Board or by any firm or company in which such member may be beneficially interested for his, their or its professional services rendered to the Company when instructed by the Board so to act in that capacity on behalf of the Company,

provided in each case that no member of the Board shall be entitled to vote on any resolution providing for or relating to any sum payable to him.

LIMITED LIABILITY

- 6. The liability of the Members is limited.

GUARANTEE

- 7. Every Member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up while he is a Member or within one year after he ceases to be a Member, for payment of the debts and liabilities of the Company contracted before he ceases to be a Member, and of the costs, charges and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.

MEMBERS

- 10. The only Members of the Company shall be the Trustees for the time being. A person's appointment as a Trustee shall automatically carry with it his admission as a Member. A Member shall be entitled to attend and vote at all general meetings of the company.
- 11. Membership of the Company and all rights of a Member shall be personal to him and shall not be transferable and the name of a Member shall be removed from the Register upon his death.
- 12. Every Member shall be bound to further to the best of his ability the objects, interests and influences of the Company and shall observe all Byelaws.
- 13. A Member of the Company shall cease to be a Member:
 - (a) if he resigns by notice in writing of his resignation to the Secretary;

- (b) if he becomes a patient for the purposes of part VII of the Mental Health Act 1983;
- (c) if he becomes bankrupt or makes any arrangement or composition with his creditors generally or (being a company) goes into liquidation other than for the purposes of solvent reconstruction;
- (d) if he ceases for any reason to be a Trustee; or
- (e) if he otherwise resigns, is removed or ceases to qualify as a Member under the Articles.

GENERAL MEETINGS

14. The Company may (but need not) hold in each year a general meeting as its Annual General Meeting. The Annual General Meeting shall be held at such time and place as the Board shall appoint.

NOTICE OF GENERAL MEETINGS

15. An Annual General Meeting shall be called by 14 days' notice in writing at the least, and a meeting of the Company other than an Annual General Meeting shall be called by 14 days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served, and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and, in case of special business, the general nature of that business, and shall contain a statement setting out the rights of Members to appoint a proxy under section 324 of the CA 06, and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are under the Articles entitled to receive such notices from the Company.
16. A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed:
 - (a) in the case of a meeting called as the Annual General Meeting by all the Members entitled to attend and vote thereat; and
 - (b) in the case of any other meeting, by a majority in number of the Members, having a right to attend and vote at the meeting, being a majority together representing not less than 95% of the total voting rights at that meeting of all the Members.
17. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

18. All business shall be deemed special that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts, balance sheets and the reports of the Board and the Auditors and the fixing of the remuneration, if any, of the Auditors.
19. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided the quorum at any general meeting shall be three Members present in person where a majority of those three have also been appointed as Independent Trustees.

20. If within half-an-hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other place as the Chairman shall appoint, and if at such adjourned meeting a quorum is not present within half-an-hour from the time appointed for holding the meeting, the meeting shall be dissolved.
21. The Chairman of the Board shall preside as Chairman at every general meeting of the Company or, if he shall not be present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Vice-Chairman, if any, of the Board shall, if present and willing to act, preside, failing which the Members present shall elect one of their number to be Chairman of the meeting.
22. The Chairman may, with the consent of any meeting (and shall if so decided by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

VOTES OF MEMBERS

23. Every Member shall have one vote.
24. On a poll votes may be cast personally or by proxy.
25. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is, before or upon the declaration of the result of the show of hands, demanded by the Chairman or by at least two Members present in person or by proxy and entitled to vote or by a Member or Members present in person or by proxy and representing at least one-tenth of the total voting rights of all the Members entitled to vote at the meeting. Unless a poll be so demanded a declaration by the Chairman of the meeting that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority or lost or not carried by a particular majority, and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution. The demand for a poll may be withdrawn.
26. Subject to the provisions of the Articles, if a poll be demanded in manner aforesaid, it shall be taken at such time and place, and in such manner, as the Chairman of the meeting shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
27. No poll may be demanded on the election of a Chairman of a meeting, or on any question of adjournment.
28. In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting shall be entitled to a second or casting vote.
29. Subject to the provisions of the Statutes, a resolution in writing signed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the Members entitled to receive notice of and attend and vote at general meetings (which resolution may consist of several documents in the like form each signed by one or more of the said Members) or a resolution to which a simple majority (or in the case of a special resolution by a majority

of not less than 75%) of such Members has signified his approval in writing or by cable, telegram, facsimile transmission or telex shall be as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held.

30. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Member of the Company.
31. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Office or at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
32. An instrument appointing a proxy shall be in the usual common form or in such other form as the Board may accept and shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed.
33. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
34. A vote given in accordance with the terms of an instrument of a proxy shall be valid notwithstanding that the principal may for any reason have ceased to be a Member or that the proxy or the authority under which the proxy was executed may have been revoked unless intimation in writing of such cesser or revocation as aforesaid shall have been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.
35. Any corporation which is a Member of the Company may, by resolution of its directors or other governing body, appoint any person to act as its representative at any general meeting of the Company and such representative shall be entitled to exercise the same powers on behalf of the corporation which he represents as if he had been an individual Member, including power, when personally present, to vote on a show of hands, and to demand or concur in demanding a poll.

TRUSTEES AND THE BOARD

36. The Board shall consist of a minimum of three and a maximum of six Trustees who shall be appointed and shall hold office in accordance with the following provisions:
 - (a) RBG Kew shall be entitled to appoint up to two Trustees, who may be or include:
 - (i) the Chairman of RBG Kew for the time being; and/or
 - (ii) a trustee of RBG Kew (other than the Chairman); and/or
 - (iii) the Director of RBG Kew for the time being (unless he or she is appointed as an executive officer of the Company).
 - (b) A minimum of two and a maximum of four Trustees shall be appointed by the Board as Independent Trustees in addition to the Trustees appointed by RBG Kew under paragraph (a) (if any), provided that no person shall be eligible to be so appointed unless his appointment is approved by at least three quarters of those Trustees who

are present and voting at the meeting of the Board at which the appointment is considered. If at any time the number of Independent Trustees appointed under paragraph (b) is equal to or less than the number of Trustees appointed by RBG Kew under paragraph (a), the Board shall as soon as reasonably practicable exercise its powers in this paragraph to increase the number of Independent Trustees appointed under this paragraph so that it exceeds the number then appointed under paragraph (a).

- (c) Subject to paragraph (d), each Trustee shall hold office for a term of three years and shall then resign. Any Trustee resigning under this paragraph shall be eligible for re-appointment in accordance with the provisions of this Article.
 - (d) Notwithstanding paragraph (c), the Director of RBG Kew and the Chairman of RBG Kew for the time being (if serving) shall not be subject to a term of office of three years but shall serve as Trustees while they hold their respective offices with RBG Kew, and each shall resign on ceasing to hold their respective offices with RBG Kew but shall be eligible for re-appointment in accordance with the provisions of this Article.
 - (e) Any appointment of a Trustee made by RBG Kew under this Article shall be notified by RBG Kew to the Secretary in writing.
 - (f) The Board may at any time remove any Trustee, except the Director of RBG Kew and the Chairman of RBG Kew (if serving), provided that the removal is approved by at least three quarters of the Trustees present and voting at the meeting of the Board at which the removal is considered.
 - (g) RBG Kew shall be entitled to fill any vacancy arising by reason of the resignation, retirement or removal of any Trustee appointed by it under paragraph (a). A Trustee who is appointed under this paragraph shall be deemed for all purposes to have been admitted as a Trustee under paragraph (a).
37. The Board may appoint one of their number to be Chairman or Vice-Chairman of the Board for such period as the Board may think fit but so that, for the avoidance of doubt, any Trustee who ceases to be a Trustee (for whatever reason) shall also cease to be Chairman or Vice-Chairman (as the case may be).
38. The Board may appoint one of their number to be Treasurer of the Board, provided that any Trustee so appointed shall be an Independent Trustee. The appointment shall last for such period as the Board may think fit but so that, for the avoidance of doubt, any Trustee who ceases to be a Trustee (for whatever reason) shall also cease to be Treasurer.
39. The office of a Trustee shall be vacated:
- (a) if he ceases to be a Trustee by virtue of or pursuant to any provision of the Articles or the Acts or he becomes prohibited by law from being a director; or
 - (b) if he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
 - (c) if he becomes a patient for the purposes of part VII of the Mental Health Act 1983; or
 - (d) if he resigns his office by notice to the Secretary; or
 - (e) if he shall for more than six consecutive months have been absent without permission of the Trustees from meetings of Trustees held during that period and the Trustees resolve that his office be vacated.

40. A Trustee may be repaid by the Company travelling, hotel and other expenses reasonably and properly incurred by them in attending to any matter connected with the Company.

BORROWING POWERS

41. The Board may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue bonds, debentures, debenture stock or other securities, whether outright or as security for any debt or obligation of the Company.

POWERS AND DUTIES OF THE BOARD

42. The affairs of the Company shall be managed by the Board, who may exercise all such powers of the Company as are not by the Statutes or by the Articles required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Statutes and the Articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in general meetings, provided that no regulation made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if the regulation had not been made.
43. The Board may delegate all or any of its powers either generally or for a specific purpose to any Trustee or Trustees or to any committee established by the Board (whether consisting of Trustees or of other persons or of both) and subject to such terms and conditions as the Board may think fit, provided that any Trustee or committee exercising delegated powers shall report every such exercise as soon as reasonably possible to the Board, and provided further that no such Trustee or committee shall incur expenditure on behalf of the Company except in accordance with a budget which has been approved by the Board.
44. The Board may from time to time and at any time by power of attorney appoint any corporation, firm or person or body of persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under the Articles and not including any of its powers to make Byelaws) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit.
45. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Board shall from time to time by resolution determine.
46. The Board shall cause minutes to be made in books provided for the purpose:
- (a) of the names of the Trustees present at each meeting of the Board and of any committee established by the Board;
 - (b) of all appointments of officers made by the Board;
 - (c) of all Byelaws made by the Board; and
 - (d) of all standing orders, resolutions and proceedings at all meetings of the Company and of the Board, and of committees.

PROCEEDINGS OF THE BOARD

47. The Board may meet together for the despatch of business, may adjourn, and may regulate its meeting as it shall from time to time think fit. The Secretary on the requisition of the Chairman or of any two or more of the Trustees, shall summon a meeting of the Board by sending a notice thereof to such persons and in such manner as the Board may prescribe. It shall not be necessary to give notice of a meeting of the Board to any Trustee for the time being absent from the United Kingdom.
48. The quorum necessary for the transaction of the business of the Board may be fixed by resolution of the Board but shall be not less than three Trustees where a majority of those three are Independent Trustees. No business shall be transacted at any meeting of the Board unless a quorum is present at the time when the meeting proceeds to business except that, if the number of Trustees for the time being is below the number fixed by or pursuant to the Articles as the quorum of Trustees, the continuing Trustees or Trustee may act for the purpose of increasing the number of Trustees to that number but for no other purpose.
49. The Chairman of the Board shall preside as chairman at every meeting of the Board or if he shall not be present or is unwilling to act the Vice-Chairman shall if present and willing to act preside failing which the Trustees present shall elect one of their number to be chairman of the meeting.
50. All acts done by any meeting of the Board or of a Committee or by an person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Trustee.
51. Questions arising at a meeting shall be determined by a majority of votes of the Trustees present and in the case of an equality of votes the chairman of the meeting shall have a second or casting vote.
52. A resolution in writing signed by all the Trustees entitled to receive notice of a meeting of the Board or of a committee appointed under Article 43 shall be as valid and effectual as if it had been passed at a meeting of Trustees or (as the case may be) that committee duly convened and held. The resolution may be contained in one document or in several documents each stating the terms of the resolution accurately and signed by one or more Trustees or committee members (as the case may be). In this article references to a document being "signed" include it being approved by letter, facsimile or telex.
53. (a) A meeting of the Board may consist of a conference between Trustees some or all of whom are in different places provided that each Trustee who participates is able:
- (i) to hear each of the other participating Trustees addressing the meeting; and
 - (ii) if he so wishes, to address all of the other participating Trustees simultaneously;
- whether directly, by conference telephone or by any other form of communications equipment (whether in use when these Articles are adopted or not) or be a combination of those methods.
- (b) A quorum is deemed to be present if those conditions are satisfied in respect of at least the number of Trustees required to form a quorum.
- (c) A meeting held in this way is deemed to take place at the place where the largest group of participating Trustees is assembled or, if no such group is readily identifiable, at the place from where the chairman of the meeting participates.

CONFLICTS OF INTEREST

54. (a) A Trustee must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared.
- (b) The Trustees may authorise, to the fullest extent permitted by law:
- (i) any matter which may otherwise result in a Trustee infringing his or her duty under section 175 of the CA 06 to avoid a situation in which he or she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (including a conflict of interest and duty or conflict of duties); and
 - (ii) a Trustee to accept or continue in any office, employment or position in addition to his or her office as a Trustee of the Company; and without prejudice to the generality of paragraph (a) of this article the Trustees may authorise the manner in which a conflict of interest arising out of such office, employment or position may be dealt with, either before or at the time that such a conflict of interest arises;
- subject to Article 54(c), 54(d) and to such terms and conditions, if any, as the Trustees may think fit to impose from time to time, and subject always to its right to vary or terminate such authorisation.
- (c) Where a trustee, solely by virtue of his or her trusteeship of RBG Kew, has a conflict of loyalty concerning a matter that is due to be considered or that arises for consideration during the course of a meeting of the Board, then
- (i) The Trustee shall declare his or her trusteeship of RBG Kew;
 - (ii) If the Independent Trustees consider such interest is not material, then they may authorise the Trustee to remain at the meeting and be entitled to vote and be counted in the quorum, subject always to Article 48;
- In all other cases, the measures set out in Article 54(d) shall apply.
- (d) A Trustee must
- (i) absent himself or herself from any discussion of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Company and any personal interest (including but not limited to any personal financial interest) or any office, employment or position he or she holds in addition to his or her office as a Trustee of the Company;
 - (ii) must not vote, or be counted in the quorum, at any Trustees' meeting at which such matter, or such office, employment or position, is approved; and
 - (iii) exclude himself or herself from information, which will or may relate to that matter, or that office, employment or position.
- (e) If a matter, or office, employment or position, has been authorised by the Trustees in accordance with Articles 54(b) and 54(c) where applicable then (subject to such terms and conditions, if any, as the Trustees may think fit to impose from time to time, and

subject always to its right to vary or terminate such authorisation) the Trustee shall not be required to disclose any confidential information relating to such matter, or such office, employment or position, to the Company if to make such a disclosure would result in a breach of a duty or obligation of confidence owed by him or her in relation to or in connection with that matter, or that office, employment or position.

- (f) Subject to Article 54(g), all acts done by a meeting of Trustees, or of a committee of Trustees, shall be valid notwithstanding the participation in any vote of a Trustee:
- (i) who was disqualified from holding office;
 - (ii) who had previously retired or who had been obliged by these Articles to vacate the office; or
 - (iii) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise

if without:

- (iv) the vote of that Trustee; and
- (v) that Trustee being counted in the quorum;

the decision has been made by a majority of the Trustees at a quorate meeting.

- (g) Article 54(f) does not permit a Trustee to keep any benefit that may be conferred upon him or her by a resolution of the Trustees or of a committee of Trustees if, but for Article 54(f) the resolution would have been void, or if the Trustee has not complied with Article 54(a).

THE SECRETARY

54. Subject to the provision of the Statutes the Board shall from time to time by resolution appoint a person to be the Secretary on such terms consistent with Article 5 as the Board shall think fit.
55. A provision of the Statutes or of these Articles requiring or authorising a thing to be done by or to a Trustee and the Secretary shall not be satisfied by its being done by or to the same person acting both as Trustee and as, or in place of, the Secretary.

HONORARY OFFICES

56. (a) The Board may at any time and from time to time create one or more honorary offices with the title Honorary President, Honorary Vice-President, Honorary Trustee (or such other title as they deem expedient) and may appoint any person they shall deem appropriate to any such honorary office.
- (b) Any such appointment may be made for a fixed term or for life or without specifying the term and a person appointed to such an honorary office may be removed from his appointment by the Board.
- (c) The holder of an honorary office need not be a Trustee and shall not, by reason only of his holding such an honorary office, be deemed to be a Trustee for the purpose of these Articles nor shall he be entitled to attend or vote at any meeting of the Board or at any general meeting.

THE STAFF

57. The Board may appoint such staff as they shall think fit upon such reasonable and proper terms and conditions as the Board shall prescribe.

BYELAWS

58. The Board shall have power to make Byelaws concerning such matters regarding the government and management of the Company and the establishment of such class or classes of membership in accordance with Article 9 as it shall from time to time think fit. The rules of any class or classes so established may provide, without limitation, to any member of such class or his family, relatives or guests, such special benefits in respect of RBG Kew, its publications, merchandising, general or special facilities, education programmes and special events as those rules shall determine. The rules shall also provide for the constitution of such class or classes which shall provide, inter alia, for the annual or other subscription payable, and the frequency of general meetings, provided that no Byelaw shall have effect if and to the extent that it shall be inconsistent with these Articles and in particular the charitable purposes of the Company. Subject as aforesaid all Byelaws made by the Board shall have the like effect as if the same were contained in the Articles save that they may at any time or times be revoked or varied by the Board in like manner as they may be made.

THE SEAL

59. The Board shall provide for the safe custody of the Seal, which shall be used only on the authority of the Board or of a committee authorised by the Board in that behalf, and every instrument to which the Seal shall be affixed shall be signed by a Trustee and shall be countersigned by the Secretary or by a second Trustee or by some other person appointed by the Board for that purpose.

ACCOUNTS

60. The Board shall cause accounting records to be kept in accordance with the provisions of the Statutes.
61. The accounting records shall be kept at the registered office or, subject to the provisions of the Statutes with regard to the keeping of books of account outside the United Kingdom, at such other place or places as the Board think fit, and shall always be open to the inspection of the officers of the Company.
62. The Board shall from time to time, in accordance with the provisions of the Statutes, cause to be prepared and to be laid before the Company in general meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are required by the Statutes.
63. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in general meeting, together with a copy of the Auditors' report and Trustees' report, shall not less than 14 clear days before the date of the meeting be sent to every Member of the Company, to the Auditor for the time being and to any holder of debentures of the Company. This Article shall not require a copy of those documents to be sent to any person of whose address the Company is not aware or to more than one of the joint holders of any debentures.
64. The Trustees must comply with the requirements of the Statutes (including the Charities Act

2011) with regard to the transmission of a copy of the statements of account to the Commission, and preparation of an annual report and of an annual return and the transmission of a copy of both them to the Charity Commission.

AUDIT

65. Auditors shall be appointed and their powers, rights, duties and remuneration regulated in accordance with the Statutes.

NOTICES

66. 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 CA 06 provides for documents or information which are authorised or required by any provision of the CA 06 to be sent or supplied by or to the Company.
67. Subject to the Articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.
68. Any notice to be given to or by any person pursuant to the Articles:
- (b) must be in writing; or
 - (c) must be given in electronic form;
69. The Company may give any notice to a Member either:
- (b) personally; or
 - (c) by sending it by post in a prepaid envelope addressed to the Member at his or her address; or
 - (d) by leaving it at the address of the Member; or
 - (e) by giving it in electronic form to the Member's address; or
 - (f) by placing the notice on a website and providing the person with a notification in writing or in electronic form of the presence of the notice on the website. The notification must be state that it concerns a notice of a Company meeting and must specify the place and date and time of the meeting.
70. A Member present in person at any meeting of the Company shall be deemed to have received notice of the meeting and of the purposes for which it was called.
71. (a) Proof that an envelope containing a notice was properly addressed, pre-paid and posted shall be conclusive evidence that the notice was given.
- (b) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent, in accordance with section 1147 of the CA 06.
 - (c) In accordance with section 1147 of the CA 06 notice shall be deemed to be given 48 hours after the envelope containing it was posted, or in the case of an electronic form of communication, 48 hours after it was sent.

72. Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (b) every Trustee and every Member except those Trustees and Members who (having no registered address within the United Kingdom) have not supplied to the Company an address within the United Kingdom for the giving of notice to them; and
 - (c) the Auditor for the time being of the Company.

No other person shall be entitled to receive notices of general meeting.

SURPLUS ASSETS ON WINDING UP

73. If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of the Company but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the Company under or by virtue of Article 5 hereof, such institution or institutions to be determined by the Members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object.

INDEMNITY OF TRUSTEES AND OFFICERS

74. In the management of the affairs of the Company no Trustee shall be liable for any loss to the property of the Company arising by reason of the improper investment made in good faith (so long as he shall have sought professional advice before making such investment) or fraud of any agent employed by him or by any other Trustee in good faith (provided reasonable supervision shall have been exercised) although the employment of such agent was not strictly necessary or by reason of any mistake or omission made in good faith by any Trustee or by reason of any other matter or thing other than wilful and individual fraud, wrongdoing or wrongful omission on the part of the Trustee who is sought to be made liable.
75. Subject to the provisions of the Acts but without prejudice to any indemnity to which a Trustee may otherwise be entitled, every Trustee or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings whether civil or criminal in which judgment was given in his favour or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company and against all costs, charges, losses, expenses or liabilities incurred by him in the execution and discharge of his duties or in relation thereto.