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**THE COMPANIES ACT 1985**  
**COMPANY LIMITED BY SHARES**  
**NEW ARTICLES OF ASSOCIATION**

of

**BIRCH PLC**

(adopted by Special Resolution on 20th July 1995 and amended by Special Resolution passed on 21st January 1998)

**Preliminary**

1. In these articles:-
  - 1.1 'the Act' means the Companies Act 1985 and every statutory modification or re-enactment thereof for the time being in force.
  - 1.2 'Table A' means Table A in the Companies (Tables A - F) Regulations 1985 as amended by the Companies (Tables A - F) (Amendment) Regulations 1985.
- 2.1 The regulations contained in or incorporated in Table A shall apply to the Company save insofar as they are excluded or varied hereby or are inconsistent herewith and such regulations (save as so excluded varied or inconsistent) and the articles hereinafter contained shall be the regulations of the Company.
- 2.2 Regulations 54, 73-80 (inclusive), 85, 86, 94-98 (inclusive) and 118 of Table A shall not apply to the Company.

**Share capital**

3. The share capital of the Company is £4,650,000 divided into 2,800,000 'A' Preference Shares of £1 each 850,000 'B' Preference Shares of £1 each 267,858 'A' Ordinary Shares of 10p each and 9,732,142 Ordinary Shares of 10p each.

The rights attaching to the respective classes of shares shall be as follows:-

**3.1 Income**

The profits of the Company available for distribution shall be applied as follows:-

- 3.1.1 first in paying to the holders of the 'A' Preference Shares a fixed cumulative preferential net cash dividend (hereinafter in these articles referred to as "the 'A' Preference Dividend") of 9 pence ~~per annum~~ on

each share all such dividends to be payable half-yearly on the 1st April and the 1st October.

- 3.1.2 second in paying to the holders of the 'B' Preference Shares a fixed cumulative preferential net cash dividend (hereinafter in these articles referred to as "the 'B' Preference Dividend") of 9 pence per annum on each share all such dividends to be payable half-yearly on 1st April and 1st October.
- 3.1.3 third in paying to the holders of the "A" Ordinary Shares a fixed cumulative preferential net cash dividend (hereinafter in these articles referred to as 'the Fixed Dividend') of 8.5 per cent per annum of the subscription price (being the aggregate of the amount paid up or credited as paid up in respect of the nominal value of the share and any share premium thereon) paid on each share in respect of the period from the date of adoption of these Articles of Association to 30th September 1996, and 9 per cent per annum of the subscription price (being the aggregate of the amount paid up or credited as paid up in respect of the nominal value of the share and any share premium thereon) paid on each share thereafter all such dividends to be payable half yearly on the 1st April and the 1st October.
- 3.1.4 fourth with effect from 1st October 1997 in paying to the holders of the "A" Ordinary Shares as a class in respect of each financial year of the Company a cumulative preferential net cash dividend (hereinafter in these articles referred to as 'the Participating Dividend') of a sum which when added to the total of the Fixed Dividend payable in respect of that year is equal to 5% in respect of the period from 1st October 1997 to 30th September 1998, 6% in respect of the period from 1st October 1998 to 30th September 1999 and 7% thereafter of the Net Profit (calculated as hereinafter provided) of the Company and its subsidiaries for the relevant financial year. The Participating Dividend (if any) shall be paid not later than 4 months after the end of each successive accounting reference period of the Company or not later than 14 days after the audit report on the accounts of the Company for such period is signed by the Company's auditors, whichever is earlier.

For the purpose of calculating the Participating Dividend, the expression 'Net Profit' shall mean the net profit of the Company and its subsidiaries calculated on the historical cost accounting basis and shown in the audited consolidated profit and loss account of the Company and its subsidiaries for the relevant financial year (to the nearest £1):-

- 3.1.4.1 before any payment or provision is made for any dividend on any share in the capital of the Company or any of its subsidiaries or for any other distribution or for the transfer of any sum to reserve and before

making any provision for writing off goodwill or charging or crediting exceptional or extraordinary items;

3.1.4.2 before deducting any corporation tax (or any other tax levied upon or measured by reference to profits or gains) on the profits earned and gains realised by the Company and its subsidiaries;

3.1.5 No dividend shall be declared or paid to the holders of Ordinary Shares in respect of any financial year of the Company unless and until the 'A' Preference Dividend the 'B' Preference Dividend the Fixed Dividend and the Participating Dividend (if any) has been paid in full in respect of that financial year and in respect of all previous financial years of the Company and all 'A' Preference Shares and all 'B' Preference Shares which have fallen due for redemption have been redeemed but subject thereto the profits which the Company may determine to distribute in respect of any financial year shall be applied:-

3.1.5.1 first in paying to the holders of the Ordinary Shares a dividend for such year of an amount not exceeding 1/5.8th (ie 17.2413%) of the gross profits available for distribution;

3.1.5.2 second with the prior written consent of the "A" Ordinary Shareholders in distributing the balance of such profits amongst the holders of the "A" Ordinary Shares and the Ordinary Shares (pari passu) as if the same constituted one class of share

3.1.6 Every dividend shall be distributed to the appropriate shareholders pro-rata according to the amounts paid up or credited as paid up on the shares held by them respectively and shall accrue on a daily basis.

3.1.7 Unless the Company has insufficient profits available for distribution and the Company is thereby prohibited from paying dividends by the Act the 'A' Preference Dividend the 'B' Preference Dividend the Fixed Dividend and the Participating Dividend shall (notwithstanding regulations 102 to 108 inclusive contained in Table A or any other provision of these articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting) be paid immediately on the due date and if not then paid shall be a debt due by the Company and be payable in priority to any other dividend provided that if due to delays in the preparation of the audited accounts of the Company the Participating Dividend cannot be calculated by the date it is due for payment then there shall be paid forthwith an interim dividend in respect of the

Participating Dividend of a sum equal to the last Participating Dividend payable.

- 3.1.8 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the 'A' Preference Dividend the 'B' Preference Dividend the Fixed Dividend and the Participating Dividend.

### 3.2 Capital

On a return of assets on liquidation or capital reduction or otherwise, the assets of the Company remaining after the payment of its liabilities shall be applied as follows:-

- 3.2.1 first in paying to the holders of the 'A' Preference Shares £1 per share together with a sum equal to any arrears or accruals of the 'A' Preference Dividend calculated down to the date of the return of capital;
- 3.2.2 second in paying to the holders of the 'B' Preference Shares £1 per share together with a sum equal to any arrears or accruals of the 'B' Preference Dividend calculated down to the date of the return of capital;
- 3.2.3 third in paying to the holders of the "A" Ordinary Shares £1 per share together with a sum equal to any arrears, deficiency or accruals of the dividends on the "A" Ordinary Shares calculated down to the date of the return of capital;
- 3.2.4 fourth in paying to the holders of Ordinary Shares per share a sum equal to the amount of capital paid on each "A" Ordinary Share; and
- 3.2.5 the balance of such assets shall be distributed amongst the holders of the "A" Ordinary Shares and Ordinary Shares (pari passu as if the same constituted one class of share) in proportion to the amounts paid up or credited as paid up on the "A" Ordinary Shares and Ordinary Shares held by them respectively.

### 3.3 CONVERSION

The holders of the "A" Ordinary Shares may at any time convert the whole of their "A" Ordinary Shares into a like number of Ordinary Shares and the following provisions shall have effect:-

- 3.3.1 the conversion shall be effected by notice in writing given to the Company signed by the holders of a 75% majority of the "A" Ordinary

Shares and the conversion shall take effect immediately upon the date of delivery of such notice to the Company;

- 3.3.2 forthwith thereafter the holders of the Ordinary Shares resulting from the conversion shall send to the Company the certificates in respect of their respective holdings of "A" Ordinary Shares and the Company shall issue to such holders respectively certificates for the Ordinary Shares resulting from the conversion;
- 3.3.3 the Ordinary Shares resulting from the conversion shall rank from the date of conversion *pari passu* in all respects with the remaining Ordinary Shares in the capital of the Company;
- 3.3.4 on the date of conversion the Company shall pay a dividend to the holders of the "A" Ordinary Shares of a sum equal to any arrears, deficiency or accruals of the dividends on the "A" Ordinary Shares calculated on a daily basis to the date of conversion and the Participating Dividend shall be calculated *pro rata* according to the profits of the Company and its subsidiaries for the relevant financial year down to the date of such conversion such profits to be calculated by the Company on a basis acceptable to the holders of the "A" Ordinary Shares.

#### 3.4 Redemption

- 3.4.1 Subject to the provisions of the Act the 'A' Preference Shares shall be redeemed in the proportions and on the dates set out below:-

<u>Redemption Date</u>	<u>Number of 'A' Preference Shares redeemable</u>
1st October 2000	900,000
1st October 2001	900,000
1st October 2002	<u>1,000,000</u>
	2,800,000

and subject to the redemption of all the 'A' Preference Shares the 'B' Preference Shares shall be redeemed on 1st October 2002. Any shares not redeemed upon the due date shall be redeemed forthwith upon redemption becoming permissible under the Act.

- 3.4.2 Subject to the provisions of the Act the Company may with the prior written consent of the holders of 75% of the 'A' Preference Shares in multiples of 50,000 shares redeem any or all of the 'A' Preference Shares or the 'B' Preference Shares in advance of the due date for redemption and in the absence of any contrary agreement between such holders and the Company any partial early redemption shall be deemed

to relate to the shares falling due for redemption in inverse order of maturity.

- 3.4.3 Subject to the provisions of the Act all of the 'A' Preference Shares and all of the 'B' Preference Shares shall (unless the holders of 75% of the 'A' Preference Shares give notice in writing to the Company to the contrary) be redeemed immediately upon any of the following dates:-
- 3.4.3.1 the date upon which any of the Equity Shares (as hereinafter defined in Article 9.1) of the Company is admitted to the Official List of the Stock Exchange or permission for any of the Equity Shares of the Company to be dealt in on the Alternative Investment Market or any other recognised investment exchange (as defined in Section 207 of the Financial Services Act 1986) or other approved exchange becomes effective; or
- 3.4.3.2 the date upon which a successful offer to purchase 50% or more of the issued Equity Shares of the Company (or 50% or more of all such capital including any already held by the offeror) is completed.
- 3.4.4 On the dates fixed for any redemption the Company shall pay to each registered holder of 'A' Preference Shares or 'B' Preference Shares (as appropriate) the amount payable in respect of such redemption and upon receipt of that amount each such holder shall surrender to the Company the certificate for his shares which are to be redeemed in order that they may be cancelled provided that if any certificate so surrendered includes any shares not redeemable at that time the Company shall issue a fresh certificate for the balance of the shares not redeemable to the holder.
- 3.4.5 The Company shall pay on each of the 'A' Preference Shares or 'B' Preference Shares (as appropriate) so redeemed the sum of £1 and shall contemporaneously pay any arrears or accruals of the 'A' Preference Dividend or 'B' Preference Dividend (as appropriate) calculated to the date of redemption and in the absence of any direction to the contrary by the holder of the relevant 'A' Preference Share or 'B' Preference Share (as appropriate) any moneys paid on redemption of such share shall relate first to the said arrears and accruals of the 'A' Preference Dividend or 'B' Preference Dividend (as appropriate). The 'A' Preference Dividend or 'B' Preference Dividend (as appropriate) shall cease to accrue from the date of payment of the appropriate redemption moneys.
- 3.4.6 The Company shall procure that each of its subsidiaries which has profits available for distribution shall from time to time declare and

pay to the Company such dividends as are necessary to permit lawful and prompt redemption by the Company of the 'A' Preference Shares or 'B' Preference Shares (as appropriate).

#### Class Rights

4. Whenever the capital of the Company is divided into different classes of shares the special rights attached to any class may be varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding up, only with the consent in writing of the holders of a 75% majority of the issued shares of that class. Without prejudice to the generality of this article, the special rights attached to the "A" Ordinary Shares shall be deemed to be varied:-
  - 4.1 by the calling of a meeting of the Company (which in these articles shall include the issue by the Company of a written resolution pursuant to regulation 53 of Table A) for the purpose of effecting any alteration or increase or reduction or sub-division or consolidation of the authorised or issued capital of the Company or of any of its subsidiaries, or any variation of the rights attached to any of the shares for the time being in the capital of the Company or of any of its subsidiaries; or
  - 4.2 by the disposal of the undertaking of the Company or of any of its subsidiaries or any substantial part thereof or by the disposal of any share in the capital of any subsidiary of the Company; or
  - 4.3 by the acquisition of any interest in any share in the capital of any company by the Company or any of its subsidiaries; or
  - 4.4 by the application by way of capitalisation of any sum in or towards paying up any debenture or debenture stock of the Company; or
  - 4.5 by any alteration of the restrictions on the powers of the directors of the Company and its subsidiaries to borrow give guarantees or create charges; or
  - 4.6 by the calling of a meeting of the Company for the purpose of winding up the Company; or
  - 4.7 by the calling of a meeting of the Company to approve the redemption of any of the Company's shares or a contract by the Company to purchase any of its shares; or
  - 4.8 by the calling of a meeting of the Company for the purpose of amending the Company's memorandum or amending or adopting new articles of association of the Company; or
  - 4.9 by any alteration of the Company's accounting reference date; or

- 4.10 by the entering into of a written service agreement with any director or connected person (as defined by section 839 Income and Corporation Taxes Act 1988) or the material variation of any such existing service agreement with any such person.

#### **Further Issue of Shares**

5. Notwithstanding any other provisions of these articles the directors shall be bound to offer to Royal Bank Investments Limited such a proportion of any shares forming part of the equity share capital of the Company which the directors determine to issue as the aggregate nominal value of shares in the equity share capital of the Company for the time being held by such investor bears to the total issued equity share capital of the Company immediately before the issue of the shares. Any shares issued to such investor pursuant to such offer shall be issued upon no less favourable terms and conditions than those issued to any other person.

#### **Lien**

6. The lien conferred by regulation 8 of Table A shall apply to all shares of the Company whether fully paid or not and to all shares registered in the name of any person indebted or under liability to the Company whether he be the sole registered holder thereof or one of several joint holders.

#### **Calls**

7. The liability of any member in default in respect of a call shall be increased by the addition at the end of the first sentence of regulation 18 in Table A of the words 'and all reasonable expenses that may have been incurred by the Company by reason of such non-payment.'

#### **Transfer of Shares**

8. The directors shall refuse to register any transfer of shares made in contravention of the provisions of articles 9 and 11 but shall not be entitled to refuse to register any transfer of shares made under article 10 or any transfer to which the consent in writing of all the members for the time being is given.

- 9.1 For the purposes of these articles:-

9.1.1 "Privileged Relation" in relation to a member means the spouse or widow or widower of the member and the member's children and grandchildren (including step and adopted children and their issue) and step and adopted children of the member's children and brother or sister of the member;

9.1.2 "Family Trust" in relation to any member means a trust which does not permit any of the settled property or the income therefrom to be



applied otherwise than for the benefit of that member and/or a Privileged Relation of that member and under which no power of control is capable of being exercised over the votes of any shares which are the subject of the trust by any person other than the trustees of such member or his Privileged Relations;

- 9.1.3 "Settlor" includes a testator or an intestate in relation to a Family Trust arising respectively under a testamentary disposition or an intestacy of a deceased member.
- 9.2.1 Notwithstanding any other provision in these articles any member may at any time transfer (or by will bequeath or otherwise dispose of on death) all or any shares held by him to a Privileged Relation or to trustees to be held upon a Family Trust provided that any transfer of shares to a Privileged Relation or to trustees to be held upon a Family Trust made during the lifetime of such member may only be made with the prior written consent of the holders of 75% of the "A" Ordinary Shares.
- 9.2.2 Where the consent of a holder of "A" Ordinary Shares is requested to a transfer to a Privileged Relation or to the trustees of a Family Trust such consent shall be given when the holder is satisfied:-
- 9.2.2.1 that the proposed transfer will not result in 50% or more in the aggregate of the proposed transferor's shareholding in the Company at the date hereof (taking into account shares already held by a Privileged Relation or held by trustees of a Family Trust) being held by that and any other Privileged Relation or by trustees of that and any other trusts;
- 9.2.2.2 with the terms of the trust instrument and in particular with the powers of the trustees;
- 9.2.2.3 with the identity of the proposed trustees;
- 9.2.2.4 that no costs incurred in connection with the setting up or administration of the Family Trust in question are to be paid by the Company;
- 9.3 Where any shares are held by trustees upon a Family Trust:-
- 9.3.1 on any change of trustees such shares may be transferred to the new trustees of that Family Trust;
- 9.3.2 such shares may be transferred at any time to the settlor or to another Family Trust of the settlor or to any Privileged Relation of the settlor;
- 9.4.1 If and whenever any such shares cease to be held by a Privileged Relation or upon a Family Trust (otherwise than in consequence of a transfer to the settlor

or to another Family Trust of the settlor or to any Privileged Relation of the settlor) a Transfer Notice (as hereinafter defined) shall be deemed to have been given in respect of relevant shares (as hereinafter defined) by the holders thereof and such shares may not otherwise be transferred.

9.4.2 For the purposes of this article the expression "relevant shares" means and includes the shares originally transferred to the Privileged Relation or the trustees and any additional shares issued or transferred to the Privileged Relation or to the trustees by virtue of the holding of the relevant shares or any of them.

9.5 Save as otherwise provided in these articles every member who desires to transfer any shares (hereinafter called "the Vendor") shall give to the Company notice in writing of such desire (hereinafter called a "Transfer Notice"). Subject as hereinafter mentioned a Transfer Notice shall constitute the Company the Vendor's agent for the sale of the shares specified therein (hereinafter called "the Sale Shares") in one or more lots at the discretion of the directors to all the holders of "A" Ordinary and Ordinary Shares in the Company other than the Vendor at the Sale Price. The Sale Price shall be a price agreed by the Vendor and the directors or if the Vendor and the directors are unable to agree a price within 28 days of the Transfer Notice being given or if the Transfer Notice is a deemed Transfer Notice the price which a chartered accountant (acting as an expert and not as an arbitrator) nominated by agreement between the Vendor and the Company or in default of such agreement by the President for the time being of the Institute of Chartered Accountants in England and Wales shall by writing under his hand certify to be in his opinion a fair value thereof on a going concern basis as between a willing seller and a willing buyer ignoring any reduction in value which may be ascribed to the Sale Shares by virtue of the fact that they represent a minority interest and on the assumption that the Sale Shares are capable of transfer without restriction and after having regard to written representations of the Shareholders. Save for shares sold pursuant to a deemed Transfer Notice the Transfer Notice may contain a provision that unless all the shares comprised therein are sold by the Company pursuant to this article none shall be sold and any such provision shall be binding on the Company.

9.6 If a chartered accountant is asked to certify the fair value as aforesaid his certificate shall be delivered to the Company and as soon as the Company receives the certificate it shall furnish a certified copy thereof to the Vendor and save for shares sold pursuant to a deemed Transfer Notice the Vendor shall be entitled by notice in writing given to the Company within ten days of the service upon him of the certified copy to cancel the Company's authority to sell the Sale Shares. The cost of obtaining the certificate shall be borne by the Company unless the Vendor shall give notice of cancellation as aforesaid in which case the Vendor shall bear the cost.

9.7 Upon the price being fixed as aforesaid and provided the Vendor shall not give valid notice of cancellation the Company shall forthwith by notice offer the Sale Shares:-

- (i) where and to the extent such Sale Shares consist of Ordinary Shares first to the holders for the time being of the Shares of the same class (other than the Vendor) pro rata as nearly as may be in proportion to the existing number of Ordinary Shares held by such members giving details of the number and the Sale Price of such Sale Shares and next (if and insofar as not accepted following such offer) to the holders for the time being of "A" Ordinary Shares (other than, if he is such a holder, the Vendor) pro rata as nearly as may be in proportion to the existing numbers of "A" Ordinary Shares held by such members giving details of the number and the Sale Price of such Sale Shares; and
- (ii) where and to the extent such Sale Shares consist of "A" Ordinary Shares, first to the holders for the time being of the shares of the same class (other than the Vendor) pro rata as nearly as may be in proportion to the existing numbers of "A" Ordinary Shares held by such members giving details of the number and the Sale Price of such Sale Shares and next (if and insofar as not accepted following such offer) to the holders for the time being of Ordinary Shares (other than, if he is such a holder, the Vendor) pro rata as nearly as may be in proportion to the existing numbers of Ordinary Shares held by such members giving details of the number and the Sale Price of such Sale Shares.

The Company shall invite each such member as aforesaid to state in writing within twenty-one days from the date of the notice whether he is willing to purchase any of the Sale Shares so offered to him and if so the maximum thereof which he is willing to purchase.

- 9.8 If the Company shall pursuant to the above provisions of this article find a member or members of the Company willing to purchase all or any of the Sale Shares the Vendor shall be bound upon receipt of the Sale Price to transfer the Sale Shares (or such of the same for which the Company shall have found a purchaser or purchasers) to such persons. If the Vendor shall make default in so doing the Company shall if so required by the person or persons willing to purchase such Sale Shares receive and give a good discharge for the purchase money on behalf of the Vendor and shall authorise some person to execute transfers of the Sale Shares in favour of the purchasers and shall enter the names of the purchasers in the Register of Members as the holder of such of the Sale Shares as shall have been transferred to them as aforesaid.
- 9.9 If the directors shall not have found a member or members of the Company willing to purchase all of the Sale Shares pursuant to the foregoing provisions of this article the Vendor shall at any time within six months after the final offer by the Company to its members be at liberty to sell and transfer such of the Sale Shares as have not been so sold to any person at a price being no less than the Sale Price.

- 9.10 Unless the Company in general meeting by a special resolution otherwise resolves within the 28 day period hereinafter referred to, forthwith upon the expiration of 28 days after the date upon which a member who is for the time being a Director or an employee of the Company ceases to be a Director or an employee of the Company (or, if such a person is both an employee and a Director of the Company, the date upon which he ceases to be either an employee or a Director of the Company) shall be bound to give the Company a transfer notice in respect of a deemed proposed sale of all the Ordinary Shares registered in his name (save where the shares are registered in his name in his capacity as a trustee) and (in the absence of such a special resolution by the Company in general meeting) if he fails to give such a transfer notice a transfer notice shall be deemed to have been given at the expiration of such period and there shall be deemed to have been given by any Privileged Relation on the date of such cessation a Transfer Notice in respect of all shares then held by them whether such Shares were transferred to them by a member or issued to them by the Company and the provisions of Article 9 shall mutatis mutandis apply;
- 9.11 Unless the Company in general meeting by a special resolution otherwise resolves within the 28 day period hereinafter referred to, upon the expiration of 28 days after the date on which a person who is the beneficial owner of shares in the Company which are registered in the name of a trustee or nominee for him ceases to be a Director or an employee of the Company (or, if such person is both an employee and a Director of the Company, the date on which he ceases to be either an employee or a Director of the Company) such trustee or nominee shall be bound to give the Company a transfer notice in respect of a deemed proposed sale of all the Ordinary Shares registered in his name and (in the absence of such a special resolution by the Company in general meeting) if he fails to give such a transfer notice a transfer notice shall be deemed to have been given at the expiration of such period and the provisions of Article 9 shall mutatis mutandis apply.
10. Notwithstanding any other provisions of these articles a transfer of any shares in the Company held by Royal Bank Investments Limited may be made to another company within the group of companies of which it is a member without restriction as to price or otherwise and any such transfer shall be registered by the directors. In the event that any such transferee leaves the group of companies of which Royal Bank Investments Limited is a member at the date hereof then it shall immediately prior thereto transfer such shares to another company which is a member of such group.

#### **Limitation on transfer of control**

- 11.1 No sale or transfer of the legal or beneficial interest in any shares in the Company may be made or validly registered without the previous written consent of a 75% majority of the holders of the "A" Ordinary Shares if as a result of such sale or transfer and registration thereof a Controlling Interest (as hereinafter defined) is obtained in the Company:-

11.1.1 by a company (other than a company to which paragraph 11.1.2 applies) or a person or persons (other than a company) who was or were not a member or members of the Company on the date of adoption of these articles of association unless the proposed transferee or transferees or his or their nominees are independent third parties acting in good faith and has or have offered to purchase all the "A" Ordinary Shares at the Specified Price (as hereinafter defined) and (if not redeemed) all the 'A' Preference Shares and all the 'B' Preference Shares at a price per share of at least £1 plus a sum equal to any arrears or accruals of the 'A' Preference Dividend or 'B' Preference Dividend (as appropriate) grossed up at the rate of corporation tax then in force calculated down to the date of sale or transfer; or

11.1.2 by a company in which one or more of the members of the Company or persons acting in concert (which expression shall have the meaning ascribed to it in the January 1988 Edition of the City Code on Takeovers and Mergers) with any member of the Company has or as a result of such sale or transfer will have a Controlling Interest.

11.2 For the purpose of this article:-

11.2.1 the expression 'a Controlling Interest' shall mean an interest (within the meaning of Schedule 13 Part I and Section 324 of the Act) in shares in a company conferring in the aggregate 50% or more of the total voting rights conferred by all the issued shares in that company;

11.2.2 the expressions 'transfer' and 'transferee' shall include respectively the renunciation of a renounceable letter of allotment and the renounee under any such letter of allotment; and

11.2.3 the expression 'the Specified Price' shall mean the higher of:-

11.2.3.1 a price per share of £1 plus a sum equal to any arrears, deficiency or accruals of the dividends on such share grossed up at the rate of corporation tax then in force calculated down to the date of sale or transfer; and

11.2.3.2 a price per share (plus a sum equal to any arrears, deficiency or accruals of the dividends on such share grossed up at the rate of corporation tax then in force calculated down to the date of sale or transfer) at least equal to that offered or paid or payable by the proposed transferee or transferees or his or their nominees for any other shares in the Company plus an amount equal to the relevant proportion of any other consideration (in cash or otherwise) received or receivable by the holders of such other shares which having regard to the substance of the transaction as a

whole can reasonably be regarded as an addition to the price paid or payable for such other shares provided that if any part of the price per share is payable otherwise than by cash the holders of the "A" Ordinary Shares may at their option elect to take a price per share of such cash sum as may be agreed by them having regard to the substance of the transaction as a whole;

and in the event of disagreement the calculation of the Specified Price shall be referred to an umpire (acting as expert and not as arbitrator) nominated by the parties concerned (or in the event of disagreement as to nomination, appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) whose decision shall be final and binding;

- 11.3 All other regulations of the Company relating to the transfer of shares and the right to registration of transfers shall be read subject to the provisions of this article.

#### **Voting**

- 12.1 Subject to any special rights or restrictions as to voting attached to any shares by or in accordance with these articles, on a show of hands every member who (being an individual) is present in person or (being a corporation) is present by a representative not being himself a member, shall have one vote, and on a poll every member who is present in person or by proxy or (being a corporation) is present by a representative or by proxy shall (except as hereinafter provided) have one vote for every £1 in nominal amount of shares in the capital of the Company of which he is the holder.

- 12.2 The holders of the 'A' Preference Shares or the 'B' Preference Shares shall be entitled to receive notice of all general meetings but shall not by reason of such holding be entitled to attend or vote thereat.

#### **Appointment of Directors**

13. The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director.

#### **Proceedings of Directors**

14. Notice of every meeting of the directors shall be given to each director at any address supplied by him to the Company for that purpose whether or not he be present in the United Kingdom provided that any director may waive notice of any meeting either prospectively or retrospectively and if he shall do so it shall be no objection to the validity of such meeting that notice was not given to him.

15.1 Subject to the provisions of the Act and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:-

15.1.1 may be a party to or otherwise interested in any transaction or arrangement with the Company or in which the Company is in any way interested;

15.1.2 may be a director or other officer of or employed or a party to any transaction or arrangement with or otherwise interested in any body corporate promoted by the Company or in which the Company is in any way interested;

15.1.3 may or any firm or Company of which he is a member or director may act in a professional capacity for the Company or any body corporate in which the Company is in any way interested;

15.1.4 shall not by reason of his office be accountable to the Company for any benefit which he derives from such office service or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and

15.1.5 shall be entitled to vote and be counted in the quorum on any matter concerning paragraphs 15.1.1 to 15.1.4 above

15.2 For the purposes of this article:-

15.2.1 a general notice to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

15.2.2 an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

15.2.3 an interest of a person who is for any purpose of the Act (excluding any statutory modification not in force when these articles were adopted) connected with a director shall be treated as an interest of the director and in relation to an alternate director an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

**Investor Director**

16. Notwithstanding any other provisions of these articles Royal Bank Investments Limited shall be entitled to appoint as a Director of the Company any person (herein referred to as 'an Investor Director') approved by the directors (whose approval shall not be unreasonably withheld) and to remove from office any person so appointed and (subject to such approval) to appoint another person in his place. The remuneration and reasonable expenses to be paid in respect of an Investor Director shall be payable by the Company. Upon request by Royal Bank Investments Limited the Company shall also procure that an Investor Director be appointed a director to any subsidiary of the Company.

**Directors' Borrowing Powers**

17. Subject as hereinafter provided the directors may exercise all the powers of the Company (whether express or implied):-

17.1 of borrowing or securing the payment of money;

17.2 of guaranteeing the payment of money and the fulfilment of obligations and the performance of contracts; and

17.3 of mortgaging or charging the property assets and uncalled capital of the Company and (subject to section 80 of the Act) of issuing debentures

but so that:-

17.4 the directors of the Company shall procure that the aggregate amounts for the time being remaining undischarged by virtue of any of the foregoing operations by the Company or any subsidiary of the Company and by virtue of any like operations by the Company or any subsidiary of the Company (including any liability (whether ascertained or contingent) under any guarantee for the time being in force and including amounts due under any hire purchase, credit sale, conditional sale or leasing agreements (other than leases of real or heritable property) as can in accordance with current accounting practice be attributed to capital but excluding inter-company loans, mortgages and charges) shall not without the previous sanction of the "A" Ordinary shareholders exceed a sum which is twice the aggregate of the nominal amount of the share capital of the Company for the time being issued and paid up or credited as paid up and the amounts for the time being standing to the credit of the capital and revenue reserves and the share premium account of the Company and all its subsidiaries (excluding any amounts arising from the writing up of the book values of any capital assets any amounts attributable to goodwill and minority interests and any amounts set aside for future taxation) all as shown by the then latest audited consolidated balance sheet of the Company;

17.5 no such sanction shall be required to the borrowing of any sum of money intended to be applied in the repayment (with or without premium) of any



moneys then already borrowed and outstanding, notwithstanding that the same may result in such limit being exceeded;

- 17.6 no lender or other person dealing with the Company shall be concerned to see or enquire whether the limit imposed by this article is observed and no debt or liability incurred in excess of such limit shall be invalid and no security given for the same shall be invalid or ineffectual except in the case of express notice to the lender or recipient of the security or person to whom the liability is incurred at the time when the debt or liability was incurred or the security given that the limit hereby imposed has been or was thereby exceeded;
- 17.7 except with the previous sanction of the holders of the "A" Ordinary shares no mortgage or charge shall be created on any part of the undertaking property or assets of the Company or any subsidiary of the Company except for the purpose of securing moneys borrowed from bankers with interest thereon and bank charges.

#### Indemnity

18. Subject to the provisions of the Act but without prejudice to any indemnity to which a director may otherwise be entitled, every director or other officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, charges, losses, expenses and liabilities incurred by him in the execution of his duties or in relation thereto including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which 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.