

Company No. 05328138



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COMPANIES HOUSE

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29/06/05

THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

RESOLUTIONS IN WRITING

of

TBG OPCO 1 LIMITED (the "Company")

We, being all the members of the Company who at the date of these resolutions are entitled to attend and vote at a general meeting of the Company, RESOLVE, in accordance with section 381A of the Companies Act 1985, to pass the following as written resolutions:

SPECIAL RESOLUTIONS

1. THAT the Company's authorised share capital be increased from ~~£1,900~~ ^{£300} to £10,000 by the creation of ~~810,000~~ ^{970,000} new ordinary shares of £0.01 each; and
2. THAT the directors be generally and unconditionally authorised, pursuant to section 80 of the Companies Act 1985 (the "Act"), to exercise all powers of the Company to allot relevant securities (within the meaning of that section) up to an aggregate nominal amount of £1,800 for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) on the date falling five years from the date of passing of this resolution but the Company may make an offer or agreement which would be or might require relevant securities to be allotted after expiry of this authority and the directors may allot relevant securities pursuant to that offer or agreement.
3. THAT section 89 of the Act shall not apply to the allotment of equity securities (within the meaning of section 94(2) of the Act) pursuant to the authority conferred by resolution 3.
4. THAT the articles of association in the form of the attached draft be adopted as new articles of association of the Company.

Clifford Chame
Clifford Chame

ORDINARY RESOLUTION

5. THAT the effecting of a dividend in specie with a total cash value of £2059.69 declared by TBG CareCo Holdings Limited by the following means:

- (i) the transfer of the shares in Highfield Care Homes No. 3 Limited, Highfield Holdings Limited, Highfield Care Limited and Highfield Care Homes Limited to the Company;
- (ii) the assumption by the Company of TBG CareCo Holdings Limited's liability to NHP Limited of £43,930,441; and
- (iii) the issue to the members of the Company of ordinary shares of £0.01 each in the Company as set out in the attached Schedule,

be and is hereby approved.

DATED:

8/4/05

[EXECUTION PAGE FOLLOWS]

Executed by

BLACKSTONE REAL ESTATE PARTNERS (ALBERTA) IV L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE HOLDINGS (ALBERTA) IV L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE PARTNERS (ALBERTA) IV.F L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE PARTNERS (ALBERTA) IV.TE.1 L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE PARTNERS (ALBERTA) IV.TE.2 L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE PARTNERS (ALBERTA) IV.TE.3-A L.P.

By: Blackstone Real Estate Associates (Alberta) IV L.P., its general partner

By: Blackstone Real Estate (Cayman) IV Ltd., its general partner

By: *John a Magliano*, Director

Executed by

BLACKSTONE REAL ESTATE PARTNERS INTERNATIONAL I.E L.P.

By: Blackstone Real Estate Associates International L.P., its general partner


By: Blackstone Real Estate Associates International (Delaware) L.L.C., its general partner

By: *John a Magliano*, Authorized Person

Executed by


BLACKSTONE REAL ESTATE PARTNERS INTERNATIONAL I.D L.P.

By: Blackstone Real Estate Associates International L.P., its general partner

By: Blackstone Real Estate Associates International (Delaware) L.L.C., its general partner
By:  , Authorized Person

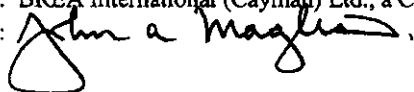
Executed by

BLACKSTONE REAL ESTATE PARTNERS INTERNATIONAL I.D.2 L.P.

By: Blackstone Real Estate Associates International L.P., its general partner
By: Blackstone Real Estate Associates International (Delaware) L.L.C., its general partner
By:  , Authorized Person

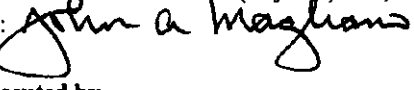
Executed by

BLACKSTONE REAL ESTATE HOLDINGS INTERNATIONAL-B L.P.

By: BREIA International (Cayman) Ltd., a Cayman Islands company, its general partner
By:  , Director

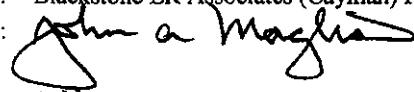
Executed by

BLACKSTONE REAL ESTATE HOLDINGS INTERNATIONAL-A L.P.

By: BREIA International (Cayman) Ltd., a Cayman Islands company, its general partner
By:  , Director

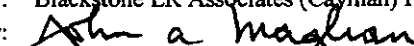
Executed by

BLACKSTONE PARTICIPATION PARTNERSHIP (CAYMAN) IV L.P.

By: Blackstone Management Associates (Cayman) IV L.P., its general partner
By: Blackstone LR Associates (Cayman) IV Ltd., its general partner
By:  , Director


Executed by

BLACKSTONE FAMILY INVESTMENT PARTNERSHIP (CAYMAN) IV-A L.P.

By: Blackstone Management Associates (Cayman) IV L.P., its general partner
By: Blackstone LR Associates (Cayman) IV Ltd., its general partner
By:  , Director


Executed by

BLACKSTONE CAPITAL PARTNERS (CAYMAN) IV-A L.P.

By: Blackstone Management Associates (Cayman) IV L.P., its general partner
By: Blackstone LR Associates (Cayman) IV Ltd., its general partner
By:  , Director

Executed by

BLACKSTONE CAPITAL PARTNERS (CAYMAN) IV L.P.

By: Blackstone Management Associates (Cayman) IV L.P., its general partner
By: Blackstone LR Associates (Cayman) IV Ltd., its general partner
By:  , Director



The Companies Acts 1985 to 1989

Articles of Association of TBG Opco 1 Limited

Company Limited by Shares

(Incorporated on 10 January 2005)

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The Companies Acts 1985 to 1989

Articles of Association of TBG Opco 1 Limited

Company Limited by Shares

(Adopted by special resolution on 8 April 2005)

1. DEFINITIONS, INTERPRETATION AND TABLE A

1.1 In these Articles unless there is something in the subject or context inconsistent therewith:

"Active Division" means the group of companies that comprise the Active Division for the purposes of reporting the financial performance of that division in the management accounts of the Company;

"Acts" means the Companies Act 1985 and the Companies Act 1989 and (in either case) includes any statutory modification, amendment, variation or re-enactment thereof for the time being in force;

"acting in concert" has the meaning set out in the City Code on Takeovers and Mergers;

"Articles" means the articles of association of the Company for the time being in force;

"Associate" means in relation to a specified person, another person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the person specified where the term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through ownership of voting securities, by contract or otherwise;

"Auditors" means the auditors for the time being of the Company;

"Board" means the board of directors of the Company for the time being or, as the context may admit, any duly authorised committee thereof;

"Blackstone" means the Subscribers and any person to whom Blackstone's Shares are transferred under Article 9 and/or their respective general partners, as the context may require;

"Cessation Date" means the date upon which a person becomes a Departing Employee;

"Come Along Notice" has the meaning set out in article 8.2 (Tag Along and Come Along);

"Commencement Date" means

- (a) in respect of an Original Subscriber, 15 September 2004 or, if later, the date on which the relevant holder acquired his first SX Share; or
- (b) in respect of any other person, 11 April or, if later, the date on which the relevant holder acquired his first Ordinary Share;

"Company" means TBG Opco 1 Limited (No. 5328138);

"Compulsory Transfer Notice" has the meaning set out in article 10.1 (Compulsory Transfers);

"connected" in the context of determining whether one person is connected with another, shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988;

"Core Elderly Division" means the group of companies that comprise the Core Elderly division for the purposes of reporting the financial performance of that division in the management accounts of the Company;

"corporation" means any body corporate or association of persons whether or not a company within the meaning of the Acts;

"Departing Employee" means:

- (a) any individual who is an employee or director of one or more Group Companies (other than any Investor Director) who ceases to be so and who does not begin or continue otherwise to provide services to any Group Company; or
- (b) any individual whose services are otherwise provided to any one or more Group Companies and cease to be so and who does not become or continue to be an employee or director of one or more Group Companies;

"Departing Employee's Group" means:

- (a) a Departing Employee;
- (b) the trustees for the time being of a family trust of the Departing Employee or his Family Member;
- (c) any Family Member of that Departing Employee;
- (d) any person designated by the Board for the purpose of article 10.1 (Compulsory Transfers) in relation to the Departing Employee as a condition of any transfer consent given pursuant to article 7.1 (Transfer of Shares); and
- (e) the nominees of any of the persons in the preceding four categories;

"dividend" includes any distribution whether in cash or in kind;

"Market Value" in relation to shares means the value thereof determined in accordance with articles 10.4 and 10.5 (Compulsory Transfers);

"officer" means and includes a director or secretary of the Company;

"Opco Financing Documents" has the same meaning as set out in the Shareholders' Agreement;

"Ordinary Shares" means the ordinary shares of £0.01 each in the capital of the Company;

"Original Agreement" shall have the same meaning as in the Shareholders' Agreement;

"Original Subscriber" means any person who held an SX Share as at the date of the Original Agreement or who acquired an SX Share having executed a deed of adherence to the Original Agreement;

"Regulation" means a regulation in Table A;

"Relevant Securities" has the meaning set out in article 7.4 (Transfer of Shares);

"Remuneration Committee" means the remuneration committee of the Board;

"Rollover Equity" shall have the same meaning as in the Shareholders' Agreement;

"Sale" means the transfer (including any transfer within the meaning of article 7.2 (Transfer of Shares)) (whether through a single transaction or a series of transactions) of shares in the Company as a result of which any person (or persons connected with each other, or persons acting in concert with each other) would have the legal or beneficial ownership over that number of shares in the capital of the Company which in aggregate would confer more than 50 per cent. of the voting rights normally exercisable at general meetings of the Company provided that there shall be no Sale as a result of any transfer pursuant to article 9 (Permitted Transfers) or to a First Shareholder or to any person to whom a First Shareholder could make a permitted transfer pursuant to article 9 (Permitted Transfers);

"Shareholders' Agreement" means the shareholders' agreement of even date with the adoption of these Articles and made between, the Company, TBG Opco 1 Limited, the Managers (as defined therein) and Blackstone;

"Subscribers" shall have the same meaning as in the Shareholders' Agreement;

"SX Share" means an ordinary share in the capital of Southern Cross EquityCo Limited (no. 05221017);

"Table A" means the regulations contained in Table A in the schedule to the Companies (Tables A to F) Regulations 1985 (S.I. 1985 No. 805) as amended by the Company (Tables A to F) (Amendment) Regulations 1985 (S.I. 1985 No. 1052);

"UK Listing Authority" means the Financial Services Authority in its capacity as the competent authority for the purposes of part VI of the FSMA; and

"Ultimate Holding Company" means a company established in connection with the restructuring of the Group for the purposes of facilitating an IPO.

- 1.2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meanings as in the Acts as in force on the date of adoption of these Articles.

1.3 In these Articles:

- (a) headings are included for convenience only and shall not affect the construction of these Articles;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting one gender include each gender and all genders;
- (d) references to persons are deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations and to trusts (in each case whether having separate legal personality).

1.4 Unless otherwise specifically provided and save in the case of an electronic communication, where any notice, resolution or document is required by these Articles to be signed by any person, the reproduction of the signature of such person by means of facsimile shall suffice, provided that confirmation by first class letter is despatched by the close of business on the next following business day, in which case the effective notice, resolution or documents shall be that sent by facsimile, not the confirmatory letter.

1.5 The regulations contained in Table A shall apply to the Company save in so far as they are excluded or modified by these Articles. In particular:

- (a) Regulations 24, 26, 54, 73 to 80 (inclusive), the third sentence of Regulation 88, Regulations 94 to 96 (inclusive) and Regulation 118 shall not apply to the Company;
- (b) Regulation 82 shall not apply to the Company and the remuneration of the directors of the Company shall be determined by the Board upon the recommendation of the Remuneration Committee;
- (c) Regulations 62(a) and 62(aa) relating to the depositing of proxies shall be amended by the deletion of the words "not less than 48 hours" and Regulation 62(b) relating to a poll shall be amended by the deletion of the words "not less than 24 hours";
- (d) Regulation 65 of Table A shall be amended by the addition of the following words:

"No director of the Company designated an Investor Director shall require a resolution of the directors to the appointment by him of any person to be an alternate director in his place.";
- (e) the lien conferred by Regulation 8 of Table A shall attach also to fully paid-up shares and to all shares registered in the name of any person indebted or under liability to the Company whether he shall be the sole registered holder thereof or shall be one of two or more joint holders; and
- (f) Regulation 37 relating to requisition by members of an extraordinary general meeting shall be amended by replacing the words "eight weeks" with the words "28 days" or such earlier date as may be specified in the notice subject to obtaining any necessary consents to the meeting being held on short notice.

2. **AUTHORISED CAPITAL**

The authorised share capital of the Company at the date of the adoption of these Articles is £ divided into Ordinary Shares having attached thereto the rights and restrictions as set out in these Articles.

3. **INCOME**

Each Ordinary Share shall rank equally for any dividends paid thereon.

4. **CAPITAL**

On a return of capital on liquidation, reduction of capital or otherwise, the surplus assets of the Company remaining after payment of its liabilities (including the Loan Notes) shall be distributed amongst the holders of the Ordinary Shares pro rata to the amounts paid-up or credited as paid-up on such shares.

5. **VOTING**

5.1 Subject to article 5.2, every member who is present in person or by proxy or (being a corporation) is present by a duly authorised representative or by proxy shall (except as otherwise provided in these Articles) have one vote for every Ordinary Share of which he is the holder and whether on a show of hands or on a poll.

5.2 Any shares held by a member of a Departing Employee's Group shall, irrespective of whether the Board has served a Compulsory Transfer Notice, cease to confer upon that member the right to be entitled to attend or vote at any general meeting provided that this restriction shall cease in the event that the shares are no longer held by such member (or any other member of the Departing Employee's Group) following a transfer in compliance with these Articles or, if earlier, upon a Sale or an IPO.

6. **FURTHER ISSUES OF SHARES**

6.1 Subject to any direction to the contrary which may be given by ordinary or other resolution of the Company, subject to any agreement between the holders and subject to any statutory provisions, the unissued shares (whether forming part of the present or any increased capital) shall be at the disposal of the Board who are hereby generally and unconditionally authorised for the purposes of section 80 of the Companies Act 1985 to allot relevant securities up to the maximum amount and for the period set out in article 6.2.

6.2 The maximum amount of relevant securities that may be the subject of allotment under such authority shall be the amount by which the nominal amount of the authorised share capital of the Company exceeded the nominal amount of the issued share capital of the Company immediately prior to the adoption of these Articles; unless renewed, such authority shall expire on the date five years from the date immediately preceding that on which the resolution adopting these Articles was passed save that the Company may before such expiry make an offer or agreement which would or might require relevant securities to be allotted after such expiry and the Board may allot the relevant securities in pursuance of such offer or agreement accordingly.

6.3 The pre-emption provisions of section 89(1) of the Companies Act 1985 shall not apply to the Company.

7. **TRANSFER OF SHARES**

7.1 Except as provided in article 8 (Tag Along and Come Along) or article 9 (Permitted Transfers) or as required by article 10 (Compulsory Transfers) and subject to the further provisions of this article 7 (Transfer of Shares), no shares shall be transferred (including any transmission of shares pursuant to Regulations 29, 30 and 31 of Table A) without the prior written consent of Blackstone. Such consent may be given subject to conditions: in particular that the shares to be transferred (and any shares derived therefrom) are to be treated for the purposes of article 10 (Compulsory Transfers) as being held by the Departing Employee's Group (the relevant Departing Employee being named in the consent) and that the Subscribers are to be given a right of first refusal on terms

determined by Blackstone acting reasonably. The Board shall decline to register any transfer not made in accordance with the provisions of these Articles and may decline to register any transfer of shares which are not fully paid or on which the Company has a lien. Any transfer in breach of these Articles shall be void.

7.2 For the purposes of these Articles:

- (a) a change in the constituent membership (including without limitation any change (howsoever implemented) in the legal or beneficial interest of any member) of a partnership which holds shares shall not constitute a transfer of those shares; and
- (b) the following shall be deemed (but without limitation) to be a transfer by a holder of shares:
 - (i) any direction (by way of renunciation or otherwise) by a holder entitled to an allotment or transfer of shares that a share be allotted or issued or transferred to some person other than himself; and
 - (ii) subject to article 7.2(a), any sale or any other disposition (including by way of mortgage, charge or other security interest) of any legal or equitable interest in a share (including any voting right attached to it), (A) whether or not by the relevant holder, (B) whether or not for consideration, and (C) whether or not effected by an instrument in writing.

7.3 To enable the Board to determine whether or not there has been any transfer of shares in breach of these Articles the Board may, and shall if so requested in writing by Blackstone from time to time, require any holder or the legal personal representatives of any deceased holder or any person named as transferee in any transfer lodged for registration or such other person as the Board may reasonably believe to have information relevant to such purpose, to furnish to the Company such information and evidence as the Board may think fit regarding any matter which they deem relevant to such purpose; including (but not limited to) the names, addresses and interests of all persons respectively having interests in the shares from time to time registered in the holder's name. Failing such information or evidence being furnished to enable the Board to determine to its reasonable satisfaction that no such breach has occurred, or that as a result of such information and evidence the Board is reasonably satisfied that such breach has occurred, the Board shall forthwith notify the holder of such shares in writing of that fact and, if the holder fails to remedy such breach within 20 days of receipt of such written notice, then:

- (a) the relevant shares shall cease to confer upon the holder thereof (or any proxy thereof) any rights:
 - (i) to vote (whether on a show of hands or on a poll); or
 - (ii) to receive dividends or other distributions (other than the amount paid up (or credited as paid up) in respect of the nominal value (and any share premium) of the relevant shares upon a return of capital),otherwise attaching to such shares or to any further shares issued in right of such shares or in pursuance of an offer made to the relevant holder; and
- (b) the holder may be required (by notice in writing to such holder from the Board) at any time following such notice to transfer some or all of his shares to such person(s) at a price determined by the Board.

The rights referred to in article 7.3(a) may be reinstated by the Board with the written consent of Blackstone or, if earlier, upon the completion of any transfer referred to in 7.3(b).

7.4 If a holder defaults in transferring shares to be transferred pursuant to article 7.3 or any shares to be transferred pursuant to any other provisions of the articles (the **"Relevant Securities"**):

- (a) the Chairman for the time being of the Company, or failing him one of the directors of the Company or some other person duly nominated by a resolution of the Board for that purpose, shall be deemed to be the duly appointed agent of the holder with full power to execute, complete and deliver in the name and on behalf of the holder all documents necessary to give effect to the transfer of the Relevant Securities to the transferee;
- (b) the Board may receive and give a good discharge for the purchase money on behalf of the holder and (subject to the transfer being duly stamped) enter the name of the transferee in the register of members or other appropriate register as the holder by transfer of the Relevant Securities;
- (c) the Board shall forthwith pay the purchase money into a separate bank account in the Company's name and if and when the holder shall deliver up his certificate or certificates for the Relevant Securities to the Company (or an indemnity in a form reasonably satisfactory to the Board in respect of any lost certificate) he shall thereupon be paid the purchase money, without interest and less any sums owed to the Company by the holder pursuant to these Articles or otherwise; and
- (d) if such certificate shall comprise any Relevant Securities which the holder has not become bound to transfer as aforesaid the Company shall issue to him a balance certificate for such Relevant Securities.

The appointment referred to in article 7.4(a) shall be irrevocable and is given by way of security for the performance of the obligations of the holder under these Articles.

8. TAG ALONG AND COME ALONG

8.1 If the effect of any transfer of any shares (the **"Transfer"**) by one or more holders (the **"Transferring Holders"**) (other than any Transfer pursuant to articles 9.1 to 9.6 (inclusive) and article 9.8) would if made result in there being a Sale, the transfer shall not be made unless the proposed transferee has unconditionally offered to purchase such number of shares from each of the other holders of shares as represents the same percentage of shares held by each such holder as the Transferring Holders' Percentage on the same terms and conditions (including as to price, liability, cost and expense) as those of the Transfer. The offer shall remain open for acceptance for not less than 21 days. No offer shall be required pursuant to this article 8.1 if a Come Along Notice has been served under article 8.2. For the purposes of this article 8.1, **"Transferring Holder's Percentage"** means the number of shares (rounded to the nearest whole number) which the Transferring Holder has offered for sale as a percentage of the total number of shares held by the Transferring Holder.

8.2 If the effect of any bona fide transfer of any shares (the **"Triggering Transfer"**) would result in there being a Sale, the holder thereof (or, if there is more than one holder thereof, any of them) (the **"Calling Shareholders"**) shall have the right to require all the other holders of shares (the **"Called Shareholders"**) to transfer within 10 business days of demand being made by the Calling Shareholders by notice in writing to the Called Shareholders all (but not some only) of their shares. The transfer shall be on the same terms and conditions (including as to price, liability, cost and expense) as shall have been agreed between the Calling Shareholders and the proposed transferee. The right of the Calling Shareholders shall be exercised by the Calling Shareholders giving written notice to the Called Shareholders to that effect (the **"Come Along Notice"**) accompanied by copies of all documents required to be executed by the Called Shareholders to give effect to the required transfer.

- 8.3 If a Called Shareholder makes default in transferring its shares pursuant to article 8.2 the provisions of article 7.4 (Transfer of Shares) (references therein to the holder, Relevant Securities, transferee and documents being construed in accordance with the provisions of this article 8) shall apply to the transfer of such shares mutatis mutandis.
- 8.4 For the avoidance of doubt, "same terms and conditions" for the purposes of articles 8.1 and 8.2 above:
- (a) shall be construed, with reference to any consideration, as meaning the value or worth of the consideration regardless of the form of the consideration; and
 - (b) shall include any offer to subscribe or acquire any share or debt instrument in the capital of any member of the purchasing group made to a holder if:
 - (i) such offer to subscribe or acquire is an alternative (whether in whole or in part) or in addition to the consideration offered; and
 - (ii) the consideration offered to all holders is of itself on arms length terms.

9. **PERMITTED TRANSFERS**

- 9.1 Shares may be transferred by a body corporate or partnership (including Blackstone) (the "**Original Holder**") to a subsidiary or holding company of the Original Holder or another subsidiary of such holding company provided that if the transferee ceases to be in such relationship with the Original Holder the shares in question shall be transferred to the Original Holder.
- 9.2 Any member of the Blackstone Group may transfer any shares to any other member of the Blackstone Group. For the purpose of this article the "**Blackstone Group**" means Blackstone and any other person or company funds of which at the relevant time are advised by The Blackstone Group International Limited or its Associates.
- 9.3 A holder may transfer shares to a nominee or trustee for that holder and any nominee or trustee may transfer shares to any other nominee or trustee or to the beneficiary provided that no beneficial interest in the shares passes by reason of any such transfer.
- 9.4 Any person in its capacity as general partner of an investment fund partnership may transfer any shares held by it to any of the partners in those partnerships or any person with a direct or indirect interest in the assets of those partnerships. In addition any holder of shares which is an investment fund or nominee or trustee for an investment fund may transfer any shares held by it:
- (a) to any unit holder, shareholder, partner or participant or any person having any other interest in any such fund or to the manager or principal adviser to such investment fund or to any employee of such manager or principal adviser; or
 - (b) to any other investment fund managed or advised by the same manager or principal adviser as manages or advises the first mentioned investment fund.
- 9.5 Any holder may transfer shares to a "**Co-Investment Scheme**", being a scheme under which certain officers, employees or partners of a Subscriber or of its adviser or manager are entitled (as individuals or through a body corporate or any other vehicle) to acquire shares which the Subscriber would otherwise acquire. Shares may be transferred in accordance with the rules of a Co-Investment Scheme. A Co-Investment Scheme which holds shares through a body corporate or another vehicle may transfer such shares to:
- (a) another body corporate or another vehicle which holds or is to hold shares for the Co-Investment Scheme; or

- (b) any officer, employee or partner entitled to the shares under the Co-Investment Scheme.
- 9.6 A holder who is an individual (the "**Original Member**") may transfer shares to a Family Member provided always that if such person ceases to be a Family Member, the Original Member shall procure that any shares held by such person are transferred to the Original Member or another Family Member. Any person holding shares transferred to him pursuant to this article 9.6 shall be deemed to have irrevocably appointed the Original Member as his proxy in respect of such shares and no instrument of appointment shall be necessary to be deposited with the Company or any subsidiary of the Company.
- 9.7 Any holder may transfer shares the transfer of which would have the effect described in article 8.1 (Tag along and Come along) provided either an offer has been made and completed in accordance with article 8.1 or a Come Along Notice has been served in accordance with article 8.2. Any holder of shares may transfer shares pursuant to the acceptance of such an offer or pursuant to a Come Along Notice.
- 9.8 An Employee Trust may transfer shares in accordance with the rules of that Employee Trust.

10. **COMPULSORY TRANSFERS OF MANAGERS' SHARES**

- 10.1 The Board shall be entitled (and shall, if so requested by the Investor Director,) either:
- (a) within the period commencing on the Cessation Date and expiring at midnight on the twelve month anniversary of such date (the "**Cessation Period**"); or
 - (b) where the Company is unable to purchase or procure the purchase of such shares during the Cessation Period because of restrictions under any applicable law or regulation or because of the terms of the Opco Financing Documents, within six months of the Cessation Period,

to serve notice (the "**Compulsory Transfer Notice**") on all or any members of the Departing Employee's Group who hold shares. The Compulsory Transfer Notice may require the relevant member(s), within ten days of the Compulsory Transfer Notice, to transfer such number and class of shares held by them to such person(s) and at such prices (subject to the price being not less than that provided for in article 10.2) in each case as are specified in the Compulsory Transfer Notice. If the relevant member(s) of the Departing Employee's Group make(s) default in transferring the shares required to be transferred, the provisions of article 7.4 (Transfer of Shares) shall apply (references therein to the holder, Relevant Securities, transferee and documents being construed in accordance with the provisions of this article 10).

- 10.2 The price at which such shares may be required to be transferred pursuant to article 10.1 shall be determined by the Board and shall be no lower than:
- (a) in respect of any Rollover Equity: Market Value;
 - (b) in respect of the Management Equity:
 - (i) if the Departure Reason is a Bad Reason: the lower of Cost and Market Value;
 - (ii) if the Departure Reason is a Good Reason:
 - (A) in respect of such percentage of all of the Management Equity held by the Departing Employee and/or any member of the Departing Employee's Group set out in the table below opposite the period in which the Cessation Date occurs, Market Value; and

- (B) in respect of the remainder of the Shares held by the Departing Employee and/or any member of the Departing Employee's Group, the lower of Cost and Market Value.

Relevant Period	Percentage of shares for the purposes of article 10.2(b)(ii)
Prior to the first anniversary of the Commencement Date	0%
On or after the first anniversary of the Commencement Date but prior to the second anniversary of the Commencement Date	20%
On or after the second anniversary of the Commencement Date but prior to the third anniversary of the Commencement Date	40%
On or after the third anniversary of the Commencement Date but prior to the fourth anniversary of the Commencement Date	60%
On or after the fourth anniversary of the Commencement Date but prior to the fifth anniversary of the Commencement Date	80%
On or after the fifth anniversary of the Commencement Date	100%

10.3 In article 10.2:

- (a) in the case of Philip Scott, Graham Sizer, Christopher Rutter, John Murphy and William Colvin only (in the case of John Murphy and William Colvin from such time as they become Managers) **"Good Reason"** shall mean any of the following reasons:
- (i) the death of the Departing Employee;
 - (ii) the ill health or permanent disability of the Departing Employee rendering him incapable of continued full-time employment in his current position (or a comparable position at the location he is employed or otherwise provides his services at the Cessation Date) with the Group;
 - (iii) the retirement of the Departing Employee on reaching retirement age in accordance with his terms of employment;
 - (iv) the sale or disposal of the Core Elderly Division or the Active Division; or
 - (v) the service contract of the Departing Employee (or other arrangement pursuant to which his services are provided to a Group Company) being terminated by that Group Company other than in circumstances in which the

Group Company is entitled summarily to terminate such contract without payment of damages or payment in lieu of notice;

- (vi) the redundancy or unfair dismissal of the Departing Employee;
 - (b) in the case of any other Departing Employee, **"Good Reason"** shall mean:
 - (i) the death of the Departing Employee;
 - (ii) the ill health (save where such ill health arises as a result of an abuse of alcohol or drugs) or permanent disability of the Departing Employee *rendering him incapable of continued full-time employment in his current position (or a comparable position at the location he is employed or otherwise provides his services at the Cessation Date) with the Group;* or
 - (iii) the retirement of the Departing Employee on reaching retirement age in accordance with his terms of employment;
 - (c) **"Bad Reason"** shall mean:
 - (i) voluntary resignation by the Departing Employee for a reason other than a Good Reason; or
 - (ii) any other reason which is not a Good Reason;
 - (d) **"Cost"** shall mean the amount paid (by way of purchase or subscription price) for the shares in question by the first member (in point of time) of the Departing Employee's Group who held such shares.
- 10.4 In determining the Market Value of the Ordinary Shares the subject of the Compulsory Transfer Notice:
- (a) in the case of either Philip Scott, Graham Sizer, Christopher Rutter, John Murphy or William Colvin (in the case of John Murphy and William Colvin from such time as they become Managers) (the **"Relevant Departing Employee"**), the Company may propose to the Relevant Departing Employee a price which if accepted by the Relevant Departing Employee shall be deemed to be the Market Value. In the absence of agreement, Market Value shall be determined in accordance with article 10.5; and
 - (b) in the case of any other Departing Employee, Market Value shall be determined by the Remuneration Committee provided that the Remuneration Committee shall, in determining the Fair Market Value, adopt the principle set out in article 10.5 below.
- 10.5 Subject to article 10.4, Market Value of the Ordinary Shares the subject of the Compulsory Transfer Notice (the **"Transferred Shares"**) shall be the market value as at the *Cessation Date of the Transferred Shares as between a willing buyer and a willing seller as certified by the Auditors acting as experts and not arbitrators and whose determination shall be final and binding on the parties concerned.* In arriving at the Market Value of the Transferred Shares, the Auditors shall be instructed to:
- (a) disregard any rights or restrictions attached to the shares and no discount shall be made by reason of such shares constituting a minority;
 - (b) determine the **"Enterprise Value"** which shall mean the price obtainable on a sale of:
 - (i) all of the issued shares of the Company of whatever class; and

- (ii) all the Loan Notes,

together the "**Stapled Equity**" between a willing buyer and a willing seller (on the assumption that the Stapled Equity is being sold for cash), assuming for the purpose of this article 10.5(a) that the Company is free of any indebtedness outstanding under the Opco Financing Documents as at the Cessation Date save that the auditors shall exclude any premium that might arise as a result of the sale of control of the Company;

- (c) deduct from the Enterprise Value an amount equal to such amount which would be required as at the Cessation Date to refinance all amounts (including all arrears and accruals of interest, fees and other costs, and expenses payable) outstanding under the Opco Financing Documents to the extent the terms of the Opco Financing Documents would permit or require refinancing on the Cessation Date, and to the extent they do not, deducting the amount of the indebtedness outstanding under the Opco Financing Documents as at that date on a refinancing together with such further amount which in the opinion of the Auditors would be required to obtain a waiver of such prohibition; and
- (d) deduct from resultant figure the nominal value plus accrued interest of the Loan Notes;
- (e) use the resultant figure as the valuation of the Transferred Shares as between a willing buyer and a willing seller.
- 10.6 The costs and expenses of the Auditors shall be borne by the Company who shall be reimbursed by the Departing Employee unless the value determined by the Auditors is 20 per cent. or more higher than that proposed by the Company, in which case such costs and expenses shall be borne by the Company.

11. **APPOINTMENT AND REMOVAL OF DIRECTORS**

- 11.1 The Company may by ordinary resolution appoint as a director any person who is willing to act as such.
- 11.2 The directors may appoint as a director any person who is willing to act as such.
- 11.3 A person willing to so act may be appointed as a director of the Company at any time by a notice (or notices) in writing to the Company (i) signed by or on behalf of holders accounting for more than 50 per cent. of the Ordinary Shares or (ii) signed by all the then directors of the Company and such appointment shall take effect upon the notice being received at the registered office of the Company or such later date as may be specified in the notice.
- 11.4 Regulation 81 shall be amended by the addition of the following events requiring the office of a director of the Company to be vacated:
- (a) he becomes incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs and the other directors resolve that his office is vacated;
- (b) being a director designated an Investor Director, a notice is served by holders entitled to give such notice on the Company removing him from the office;
- (c) (in the case of an executive director only) he shall, for whatever reason, cease to be employed by or provide services to the Company or any subsidiary of the Company; or

- (d) being a director of the Company, other than one designated as an Investor Director, he is removed by a notice in writing to the Company signed by or on behalf of holders accounting for more than 50 per cent. of the Ordinary Shares and such removal shall take effect upon the notice being received at the registered office of the Company or such later date as may be specified in the notice.

12. PROCEEDINGS OF DIRECTORS

- 12.1 Any director of the Company or member of a committee of the Board may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other and any director or member of a committee participating in a meeting in this manner shall be deemed to be present in person at such meeting.
- 12.2 Provided that he has disclosed to the directors (in accordance with the Acts and Regulation 86) the nature and extent of any such interest, a director shall be entitled to vote (and to be counted in the quorum) in respect of any matter in which he is interested.
- 12.3 Regulation 88 of Table A shall be modified by the deletion of the third sentence and the substitution for it of the following sentences: "Every Investor Director shall receive notice of a meeting, whether or not he is absent from the United Kingdom. A Director may waive the requirement that notice be given to him of a board meeting, either prospectively or retrospectively."
- 12.4 Regulation 91 of Table A shall be modified by the deletion of the first sentence and the substitution for it of the following sentence: "The Investor Directors shall appoint the chairman of the board of directors and may at any time remove him from office".

13. INDEMNITY

Subject to the provisions of the Acts, every director or other officer of the Company shall be indemnified out of the assets of the Company against all costs, charges, expenses, losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise 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 in connection with any application in which relief is granted to him by any court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company. No director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the proper execution of the duties of his office or in relation thereto. This article 16 shall only have effect in so far as its provisions are not avoided by section 310 of the Companies Act 1985. The Board shall have power to purchase and maintain for any director or other officer of the Company insurance against any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

14. RELATIONSHIP TO OPCO FINANCING DOCUMENTS

- 14.1 The provisions of these Articles are subject to the following provisions of this article 14.
- 14.2 Notwithstanding any other provisions of these Articles no payment shall be declared or made by the Company by way of dividend or other distribution, purchase, redemption, reduction or return of shares or capital or by addition to or repayment of any dividend reserve if and to the extent that such payment is prohibited or restricted by the terms of the Opco Financing Documents. No dividends or other distributions payable in respect of shares, whether pursuant to the provisions of these Articles or otherwise shall constitute a debt enforceable against the Company unless permitted to be paid in accordance with the Opco Financing Documents for so long as the same shall remain in full force and effect.

- 14.3 Where any dividend, redemption or other payment is not made because of the provisions of article 14.2 such payment shall be made upon the necessary consent being obtained or the prohibition thereon ceasing to apply.