

Company number: 5643814

**AIR BERLIN PLC**  
(the *Company*)

**SHAREHOLDERS RESOLUTION**

**Passed on 14 June 2017**

At an annual general meeting of the Company duly convened and held at Park Inn Hotel & Conference Centre London Heathrow, Bath Road, Heathrow, Middlesex UB7 0DU on 14 June 2017 at 11:00 a.m. (the **AGM**), the following resolution was duly passed as a special resolution.

**Special Resolution**

That with effect from the end of the AGM, the articles of association produced to the AGM and initialled for the purpose of identification by the Chairman of the AGM be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.



Michelle Johnson  
Company Secretary, Air Berlin PLC

Air Berlin PLC  
C/O Browne Jacobson LLP  
6 Bevis Marks, Bury Court  
London, EC3A 7BA  
Registered in England,  
No. 5643814

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COMPANIES HOUSE

COMPANIES ACT 2006

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A PUBLIC COMPANY LIMITED BY SHARES

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ARTICLES OF ASSOCIATION

OF

AIR BERLIN PLC

(as adopted by special resolution on 14 June 2017)

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PRELIMINARY

Table A

1. The regulations in Table A in the schedule to the Companies (Table A to F) Regulations 1985 as in force at the date of the incorporation of the Company shall not apply to the Company.

Definitions

2. In these Articles, except where the subject or context otherwise requires:

*A Shares* means redeemable shares of £1.00 each in the capital of the Company, having the rights set out in Article 13;

*Act* means the Companies Act 2006 including any modification or re-enactment of it for the time being in force;

*address*, includes a number or address used for the purposes of sending or receiving documents or information by electronic means;

*Articles* means these articles of association as altered from time to time by special resolution;

*auditors* means the auditors of the Company;

*the board* means the directors or any of them acting as the board of directors of the Company;



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**certificated share** means a share in the capital of the Company that is not an uncertificated share and references in these Articles to a share being held in certificated form shall be construed accordingly;

**CI** means an interest in the ordinary shares in the capital of the Company traded and settled through Clearstream;

**CI Holder** means the holder of a CI;

**CI Record Date** shall have the meaning given to it in Article 73;

**CI Register** means the electronic register of CI Holders to be established and maintained by the Company;

**CI Voting Instructions** shall have the meaning given in Article 116;

**CI Voting Instruction Receipt Time** shall have the meaning given to it in Article 117;

**CI Voting Notice** shall have the meaning given in Article 117;

**clear days** in relation to the sending of a notice means the period excluding the day on which a notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

**Clearstream** means the Cascade electronic clearing and settlement system operated by Clearstream Banking AG facilitating the trading, clearing and settlement of securities traded on the FSE and any successor to such system;

**Clearstream Nominee** means Clearstream AG and/or any other entity or entities which hold(s) legal title to ordinary shares in the capital of the Company to which the CI Holders are beneficially entitled;

**Clearstream Nominee's Overall Holding** means the aggregate of the ordinary shares for the time being registered in the name of the Clearstream Nominee;

**Clearstream Rules** means the terms and conditions under which the Company's ordinary shares clear and settle in Clearstream;

**Companies Acts** has the meaning given by section 2 of the Act and includes any enactment passed after those Acts which may, by virtue of that or any other such enactment, be cited together with those Acts as the "Companies Acts" (with or without the addition of an indication of the date of any such enactment);

**Company** means Air Berlin PLC (company number 5643814);

**director** means a director of the Company;

**dividend** means dividend or bonus;

**EEA State** means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 (as it has effect from time to time);

**electronic form** and **electronic means** have the meanings given to them by section 1168 of the Act;

**employees' share scheme** has the meaning given by section 1166 of the Act;

**entitled by transmission** means, in relation to a share in the capital of the Company, entitled as a consequence of the death or bankruptcy of the holder or otherwise by operation of law;

**FSA** means the United Kingdom Financial Services Authority;

**FSE** means the Frankfurt Stock Exchange;

**hard copy** and **hard copy form** have the meanings given to them by section 1168 of the Act;

**holder** in relation to a share in the capital of the Company means the member whose name is entered in the Register as the holder of that share;

**member** means a member of the Company;

**Member Voting Record Date** shall have the meaning given to it in Article 72;

**office** means the registered office of the Company;

**ordinary shares** means ordinary shares of €0.25 each in the capital of the Company as consolidated or subdivided from time to time;

**paid** means paid or credited as paid;

**Redemption Date** shall have the meaning given to it in Article 13;

**Redemption Notice** shall have the meaning given to in Article 13;

**Register** means the register of members of the Company;

**seal** means the common seal of the Company and includes any official seal kept by the Company by virtue of section 49 or 50 of the Act;

**secretary** means the secretary of the Company and includes a joint, assistant, deputy or temporary secretary and any other person appointed to perform the duties of the secretary;

**shareholders** means the holders of the ordinary shares in the Company (and for the avoidance of doubt, excludes the holders of A Shares);

*treasury shares* has the meaning given by the Act, as amended by The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003 and The Companies (Acquisition of Own Shares) (Treasury Shares) No 2 Regulations 2003;

*United Kingdom* means Great Britain and Northern Ireland;

*working day* has the meaning given by section 1173 of the Act.

Construction

3. References to a document or information being *sent*, *supplied* or *given* to or by a person mean such document or information, or a copy of such document or information, being sent, supplied, given, delivered, issued or made available to or by, or served on or by, or deposited with or by that person by any method authorised by these Articles, and *sending*, *supplying* and *giving* shall be construed accordingly.

References to *writing* mean the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether in electronic form or otherwise, and *written* shall be construed accordingly.

Words denoting the singular number include the plural number and vice versa; words denoting the masculine gender include the feminine gender; and words denoting persons include corporations.

Words or expressions contained in these Articles which are not defined in Article 2 but are defined in the Act have the same meaning as in the Act (but excluding any modification of the Act not in force at the date these Articles took effect) unless inconsistent with the subject or context.

Subject to the preceding paragraph, references to any provision of any enactment or of any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) include any modification or re-enactment of that provision for the time being in force.

Headings and marginal notes are inserted for convenience only and do not affect the construction of these Articles.

In these Articles, (a) powers of delegation shall not be restrictively construed but the widest interpretation shall be given to them; (b) the word *board* in the context of the exercise of any power contained in these Articles includes any committee consisting of one or more directors, any director, any other officer of the Company and any local or divisional board, manager or agent of the Company to which or, as the case may be, to whom the power in question has been delegated; (c) no power of delegation shall be limited by the existence or, except where expressly provided by the terms of delegation, the exercise of that or any other power of delegation; and (d) except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under these Articles or under another delegation of the power.

## SHARE CAPITAL AND LIMITED LIABILITY

- Limited liability** 4. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.
- Shares with special rights** 5. Subject to the provisions of the Companies Acts and without prejudice to any rights attached to any existing shares or class of shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine or, subject to and in default of such determination, as the board shall determine.
- Section 551 authority** 6. In place of all authorities in existence at the date of adoption of these Articles, but without prejudice to any allotment of shares or grant of rights to subscribe for or to convert any security into shares in the Company already made or offered or agreed to be made pursuant to such authorities, the directors are hereby generally and unconditionally authorised pursuant to section 551 of the Act to allot shares in the Company or to grant rights to subscribe for or to convert any security into shares in the Company up to an aggregate nominal amount of €100,000,000 for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) five years after the date of adoption of these Articles.
- Section 561 disapplication** 7. In accordance with section 570 of the Act, for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) five years after the date of adoption of these Articles, the board is generally empowered to allot equity securities (as defined in section 560 of the Act) pursuant to the authority conferred by Article 6 as if section 561(1) of the Act did not apply to any such allotment. This Article 7 applies in relation to a sale of shares which is an allotment of equity securities by virtue of section 560(3) of the Act as if in this Article 7 the words "pursuant to the authority conferred by Article 6" were omitted.
- Allotment after expiry** 8. Before the expiry of the authority conferred by Article 6 or of the power given pursuant to Article 7, the Company may make an offer or agreement which would or might require shares to be allotted, or rights to subscribe for or convert any security into shares to be granted. The board may allot shares, or grant rights to subscribe for or convert any security into shares in pursuance of that offer or agreement as if the authority or power pursuant to which that offer or agreement was made had not expired.
- Residual allotment powers** 9. Subject to the provisions of the Companies Acts relating to authority, pre-emption rights or otherwise and of any resolution of the Company in general meeting passed pursuant to those provisions, and, in the case of redeemable shares, the provisions of Article 10:
- (a) all shares for the time being in the capital of the Company shall be at the disposal of the board; and
  - (b) the board may reclassify, allot (with or without conferring a right of renunciation), grant options over, or otherwise dispose of them to such persons on such terms and conditions and at such times as it thinks fit.

**Redeemable  
shares**

10. Subject to the provisions of the Companies Acts, and without prejudice to any rights attached to any existing shares or class of shares, shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder. The board may determine the terms, conditions and manner of redemption of shares provided that it does so before the shares are allotted.

**Commissions**

11. The Company may exercise all powers of paying commissions or brokerage conferred or permitted by the Companies Acts. Subject to the provisions of the Companies Acts, any such commission or brokerage may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.

**Trusts not  
recognised**

12. Except as required by law, the Company shall recognise no person as holding any share on any trust and (except as otherwise provided by these Articles or by law) the Company shall not be bound by or recognise any interest in any share (or in any fractional part of a share) except the holder's absolute right to the entirety of the share (or fractional part of the share).

**Rights attaching  
to A Shares**

13. The rights attaching to the A Shares are as follows:

- (a) on a distribution of assets of the Company among its members on a winding up or other return of capital (other than a redemption or purchase by the Company of its own shares), holders of A Shares shall be entitled, in priority to any of the shareholders, to receive an amount equal to the aggregate of the capital paid up or credited as paid up on each A Share;
- (b) save as provided in Article 13(a), holders of A Shares shall not be entitled to any participation in the profits or assets of the Company;
- (c) holders of A Shares have no right to receive notice of, and do not have the right to attend, any general meeting of the Company, subject to the following exceptions:
  - (i) if it is proposed at the meeting to consider any resolution approving the winding up of the Company, holders of A Shares shall be entitled to attend such a meeting but not to speak or vote; or
  - (ii) if it is proposed at the meeting to consider any resolution which abrogates or adversely varies or otherwise directly adversely affects the special rights and privileges attaching to the A Shares, holders of A Shares shall have the right to attend such a meeting and to speak and vote only on such resolution or any motion for adjournment of the meeting before such resolution is voted on;
- (d) if entitled to vote at a general meeting of the Company, every holder of A Shares present in person or by proxy (or, being a corporation, by a duly authorised representative) shall have one vote for every 25,000 A Shares held by him;

- (e) notwithstanding the rights of holders of A Shares under Article 13(a), the written consent of holders of three-quarters in nominal value of the issued A Shares or the sanction of a special resolution passed at a separate general meeting of holders of A Shares is required if the special rights and privileges attaching to the A Shares are to be abrogated, or adversely varied or otherwise directly adversely affected in any way. The creation, allotment or issue of shares or securities which rank in priority to or equally with the A Shares (or any right to call for the allotment or issue of such shares or securities) is for these purposes not to be deemed an abrogation or variation, or to have an effect on the rights and privileges attaching to A Shares;
- (f) all provisions of the Articles relating to general meetings of the Company shall apply mutatis mutandis to every general meeting of holders of A Shares;
- (g) subject to the Act, the Company shall have the right at any time to redeem any such A Share by giving to the registered holder not less than 7 clear days written notice of its intention to do so (the *Redemption Notice*);
- (h) the Redemption Notice must specify the number of A Shares to be redeemed, the amount payable on redemption and the time (*Redemption Date*) and place at which:
  - (i) the share certificates in respect of the A Shares must be delivered to the Company for cancellation; and
  - (ii) the Company shall pay to the registered holders of the A Shares to be redeemed the redemption money in respect of such A Shares and the holders of the A Shares to be redeemed shall be bound by the Redemption Notice;
- (i) the amount to be paid on redemption of each A Share shall equal the amount credited as paid up on it (excluding any share premium) and in the case of a partial redemption proportionately in respect of each holding of A Shares, and if, in accordance with the Act, the A Shares shall not on any such date be capable of being redeemed by the Company, such redemption shall be effected as soon as is possible after the A Shares shall have become capable of being redeemed;
- (j) if any holder of an A Share to be redeemed fails or refuses to surrender the share certificate(s) or indemnity for such A Share (or fails or refuses to accept the redemption money payable in respect of it), the Company shall retain such money and hold it on trust for such holder without interest, but, nevertheless, the A Shares shall be redeemed and cancelled by the Company and the Company shall have no further obligation whatsoever to the holder of an A Share;
- (k) no A Share shall be redeemed otherwise than out of distributable profits or the proceeds of a fresh issue of shares made for the purposes of the redemption or out of capital to the extent permitted by the Act; and



- (l) no A Share redeemed by the Company shall be capable of re-issue and on redemption of any A Shares the directors may convert the authorised share capital created as a consequence of such redemption into shares of any other class of share capital into which the authorised share capital of the Company is or may at that time be divided of a like nominal amount (as nearly as may be) as the shares of such class then in issue or into unclassified shares of the same.

#### VARIATION OF RIGHTS

**Method of  
varying rights**

14. Subject to the provisions of the Companies Acts, if at any time the capital of the Company is divided into different classes of shares, the rights attached to any class may (unless otherwise provided by the terms of allotment of the shares of that class) be varied or abrogated, whether or not the Company is being wound up, either:

- (a) with the written consent of the holders of three-quarters in nominal value of the issued shares of the class (excluding any shares of that class held as treasury shares), which consent shall be in hard copy form or in electronic form sent to such address (if any) for the time being specified by or on behalf of the Company for that purpose, or in default of such specification to the office, and may consist of several documents, each executed or authenticated in such manner as the board may approve by or on behalf of one or more holders, or a combination of both; or
- (b) with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class,

but not otherwise.

**When rights  
deemed to be  
varied**

15. For the purposes of Article 14, if at any time the capital of the Company is divided into different classes of shares, unless otherwise expressly provided by the rights attached to any share or class of shares, those rights shall be deemed to be varied by:

- (a) the reduction of the capital paid up on that share or class of shares otherwise than by a purchase or redemption by the Company of its own shares; and
- (b) the allotment of another share ranking in priority for payment of a dividend or in respect of capital or which confers on its holder voting rights more favourable than those conferred by that share or class of shares,

but shall not be deemed to be varied by:

- (c) the creation or issue of another share ranking equally with, or subsequent to, that share or class of shares or by the purchase or redemption by the Company of its own shares.

#### SHARE CERTIFICATES

**Members' rights  
to certificates**

16. Every member, on becoming the holder of any share shall be entitled, without payment, to one certificate for all the shares of each class held by him (and, on

transferring a part of his holding of shares of any class, to a certificate for the balance of his holding of shares). He may elect to receive one or more additional certificates for any of his shares if he pays a reasonable sum determined from time to time by the board for every certificate after the first. Every certificate shall:

- (a) be executed under the seal or otherwise in accordance with Article 193 or in such other manner as the board may approve; and
- (b) specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up on the shares.

The Company shall not be bound to issue more than one certificate for certificated shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them. Shares of different classes may not be included in the same certificate.

**Replacement  
certificates**

17. If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of any exceptional out-of-pocket expenses reasonably incurred by the Company in investigating evidence and preparing the requisite form of indemnity as the board may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.

**LIEN**

**Company to  
have lien on  
shares**

18. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys payable to the Company (whether presently or not) in respect of that share. The board may at any time (generally or in a particular case) waive any lien or declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien on a share shall extend to any amount (including without limitation dividends) payable in respect of it.

**Enforcement of  
lien by sale**

19. The Company may sell, in such manner as the board determines, any share on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within 14 clear days after notice has been sent to the holder of the share, or to the person entitled to it by transmission, demanding payment and stating that if the notice is not complied with the share may be sold.

**Giving effect to  
sale**

20. To give effect to that sale the board may authorise any person to execute an instrument of transfer in respect of the share sold to, or in accordance with the directions of, the buyer. The buyer shall not be bound to see to the application of the purchase money and his title to the share shall not be affected by any irregularity in or invalidity of the proceedings in relation to the sale.

**Application of  
proceeds**

21. The net proceeds of the sale, after payment of the costs, shall be applied in or towards payment or satisfaction of so much of the sum in respect of which the lien exists as is presently payable. Any residue shall on surrender to the Company for cancellation of the certificate in respect of the share sold and subject to a like lien for any moneys not presently payable as existed on the share before the sale) be paid to the person entitled to the share at the date of the sale.

## CALLS ON SHARES

- |                                    |   |
|------------------------------------|---|
| <b>Power to make calls</b>         | 22. Subject to the terms of allotment, the board may from time to time make calls on the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium). Each member shall (subject to receiving at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company the amount called on his shares as required by the notice. A call may be required to be paid by instalments. A call may be revoked in whole or part and the time fixed for payment of a call may be postponed in whole or part as the board may determine. A person on whom a call is made shall remain liable for calls made on him even if the shares in respect of which the call was made are subsequently transferred. |
| <b>Time when call made</b>         | 23. A call shall be deemed to have been made at the time when the resolution of the board authorising the call was passed.  |
| <b>Liability of joint holders</b>  | 24. The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.   |
| <b>Interest payable</b>            | 25. If a call or any instalment of a call remains unpaid in whole or in part after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid. Interest shall be paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, the rate determined by the board, not exceeding 15 per cent. per annum, or, if higher, the appropriate rate (as defined in the Act), but the board may in respect of any individual member waive payment of such interest wholly or in part.   |
| <b>Deemed calls</b>                | 26. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and notified and payable on the date so fixed or in accordance with the terms of the allotment. If it is not paid the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call duly made and notified.   |
| <b>Differentiation on calls</b>    | 27. Subject to the terms of allotment, the board may make arrangements on the issue of shares for a difference between the allottees or holders in the amounts and times of payment of calls on their shares.   |
| <b>Payment of calls in advance</b> | 28. The board may, if it thinks fit, receive from any member all or any part of the moneys uncalled and unpaid on any share held by him. Such payment in advance of calls shall extinguish the liability on the share in respect of which it is made to the extent of the payment. The Company may pay on all or any of the moneys so advanced (until they would but for such advance become presently payable) interest at such rate agreed between the board and the member not exceeding (unless the Company by ordinary resolution otherwise directs) 15 per cent. per annum or, if higher, the appropriate rate (as defined in the Act).   |

## FORFEITURE AND SURRENDER

### Notice requiring payment of call

29. If a call or any instalment of a call remains unpaid in whole or in part after it has become due and payable, the board may give the person from whom it is due not less than 14 clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.

### Forfeiture for non-compliance

30. If that notice is not complied with, any share in respect of which it was sent may, at any time before the payment required by the notice has been made, be forfeited by a resolution of the board. The forfeiture shall include all dividends or other moneys payable in respect of the forfeited share which have not been paid before the forfeiture. When a share has been forfeited, notice of the forfeiture shall be sent to the person who was the holder of the share before the forfeiture. Where the forfeited share is held in certificated form, an entry shall be made promptly in the Register opposite the entry of the share showing that notice has been sent, that the share has been forfeited and the date of forfeiture. No forfeiture shall be invalidated by the omission or neglect to send that notice or to make those entries.

### Sale of forfeited shares

31. Subject to the provisions of the Companies Acts, a forfeited share shall be deemed to belong to the Company and may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the board determines, either to the person who was the holder before the forfeiture or to any other person. At any time before sale, re-allotment or other disposal, the forfeiture may be cancelled on such terms as the board thinks fit. Where for the purposes of its disposal a forfeited share held is to be transferred to any person, the board may authorise any person to execute an instrument of transfer of the share to that person. The Company may receive the consideration given for the share on its disposal and may register the transferee as holder of the share.

### Liability following forfeiture

32. A person shall cease to be a member in respect of any share which has been forfeited and shall surrender the certificate for any forfeited share to the Company for cancellation. The person shall remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of that share with interest on that amount at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at the rate determined by the board, not exceeding 15 per cent. per annum or, if higher, the appropriate rate (as defined in the Act), from the date of forfeiture until payment. The board may waive payment wholly or in part or enforce payment without any allowance for the value of the share at the time of forfeiture or for any consideration received on its disposal.

### Surrender

33. The board may accept the surrender of any share which it is in a position to forfeit on such terms and conditions as may be agreed. Subject to those terms and conditions, a surrendered share shall be treated as if it had been forfeited.

**Extinction of rights**

34. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the person whose share is forfeited and the Company, except only those rights and liabilities expressly saved by these Articles, or as are given or imposed in the case of past members by the Companies Acts.

**Evidence of forfeiture or surrender**

35. A statutory declaration by a director or the secretary that a share has been duly forfeited or surrendered on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share. The declaration shall (subject if necessary to the execution of an instrument of transfer or transfer by means of the relevant system, as the case may be) constitute a good title to the share. The person to whom the share is disposed of shall not be bound to see to the application of the purchase money, if any, and his title to the share shall not be affected by any irregularity in, or invalidity of, the proceedings in reference to the forfeiture, surrender, sale, re-allotment or disposal of the share.

**TRANSFER OF SHARES AND CIs**

**Form and execution of transfer of certificated share**

36. Without prejudice to any power of the Company to register as shareholder a person to whom the right to any share has been transmitted by operation of law, the instrument of transfer of a share or CI may be in any usual form or in any other form which the board may approve. An instrument of transfer shall be signed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee. An instrument of transfer need not be under seal.

**Particulars required**

37. (a) The directors shall not register any person as a holder of any share or CI in the Company unless such person has furnished to the directors a declaration (in such form as the directors may from time to time prescribe) signed by him or on his behalf (or, in the case of a corporation, sealed by the corporation or signed on its behalf by an attorney or duly authorised officer of the corporation), together with such evidence as the directors may require of the authority of any signatory on behalf of such person, stating (a) the name and nationality of any person who has an Interest in any such share or CI and (if such declaration or the directors so require) the nature and extent of the Interest of each such person; and/or (b) such other information as the directors may from time to time determine.

The directors shall, in any case where they may consider it appropriate, require such person to provide such evidence or give such information as to the matters referred to in the declaration as they think fit. The directors shall decline to register any person as a holder of a share or CI if such further evidence or information is not provided or given. The directors shall, so long as they act reasonably and in good faith, be under no liability to the Company or to any other person if they register any person as the holder of a share or CI on the basis of a declaration or other evidence or information provided pursuant to this Article 37(a) which declaration, evidence or information appears on its face to be correct. Nothing in this Article 37(a) shall in any way restrict the exercise by the directors of their powers pursuant to Article 50.

- (b) For the purpose of this Article 37, the expression Interest shall have the meaning set out in Article 44.

**Transfers of  
partly paid  
certificated  
shares**

38. The board may, in its absolute discretion and without giving any reason, refuse to register the transfer of a share or CI which is not fully paid, provided that the refusal does not prevent dealings in shares or CIs in the Company from taking place on an open and proper basis.

**Invalid transfers  
of certificated  
shares**

39. The board may also refuse to register the transfer of a share unless the instrument of transfer:

- (a) is lodged, duly stamped (if stampable), at the office or at another place appointed by the board accompanied by the certificate for the share to which it relates and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer;
- (b) is in respect of only one class of shares; and
- (c) is in favour of not more than four transferees.

**Notice of refusal  
to register**

40. If the board refuses to register a transfer of a share or CI, it shall send the transferee notice of its refusal within two months after the date on which the instrument of transfer was lodged with the Company.

**No fee payable  
on registration**

41. No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to a share or CI.

**Retention of  
transfers**

42. The Company shall be entitled to retain an instrument of transfer which is registered, but an instrument of transfer which the board refuses to register shall be returned to the person lodging it when notice of the refusal is sent.

#### **LIMITATIONS ON OWNERSHIP**

**Ownership**

43. The purpose of Articles 43 to 58 is to ensure that so long as and to the extent that the holding or enjoyment by the Company or any subsidiary of the Company of any Operating Right (as defined in Article 44 below) is conditional on the Company being to any degree owned or controlled by German nationals or by nationals of Member States, the Company is so owned and controlled.

**Definitions**

44. In Articles 43 to 58:

*Affected Interest* means any CI which shall be treated as such pursuant to Article 46(b);

*Affected Interest Disposal* means a disposal or disposals of Interests in an Affected Interest such that the CI ceases to be an Affected Interest;

*Affected Interest Notice* means a notice in writing served in accordance with the provisions of Article 47;

**business day** means a day upon which dealings in domestic securities may take place on and with the authority of the FSE;

**EU Citizen** means any national of a Member State;

**Exempted Interest** means any CI which is at the material time held by (or by a nominee or custodian trustee for) a trustee (acting in its capacity as such) of any employees' share scheme established by the Company or any other scheme or arrangement (including any Member State pension scheme) principally for the benefit of employees of the Company and/or its subsidiaries which has been approved by the Company in general meeting;

**German Citizen** means any national of the Federal Republic of Germany;

In Article 37 and Articles 43 to 58, a person shall be deemed to have an **Interest**, in relation to CIs, if:

- (a) such person has an interest which would (subject as provided below) be taken into account, or which he would be taken as having, in determining for the purposes of Part VI of the Companies Act 1985 whether a person has a notifiable interest; or
- (b) he has any such interest as is referred to in section 209(1)(a), (b) or (e) of the Companies Act 1985,

but shall not be deemed to have an Interest in any CIs in which his spouse or any infant child or stepchild (or, in Scotland, any child or step-child under the age of 18 years) of his is interested by virtue of his relationship with the spouse, infant child or stepchild or any CIs which he holds as a bare or custodian trustee under the laws of England or as a simple trustee under the laws of Scotland, and interested shall be construed accordingly;

**Intervening Act** means the refusal, withholding, suspension or revocation of any Operating Right applied for, granted to or enjoyed by the Company or any subsidiary of the Company, or the imposition of any conditions or limitations upon any such Operating Right which materially inhibit the exercise thereof, in either case by any state, authority or person in reliance upon any provision or by reason of any matter or circumstance relating to the nationality of persons owning or controlling (however described) the Company;

**Member State** means any state that from time to time is, or is deemed to be, a Member State for the purposes of Council Regulation (EEC) No. 2407/92 of 23 July 1992 (as amended or readopted) on licensing of air carriers, including (for the avoidance of doubt) any state that is from time to time a member state of the European Community and/or the European Economic Area and any other country which has an agreement with the EU within the meaning of Article 4(2) of Council Regulation (EEC) No. 2407/92;

**Operating Right** means all or any part of any authority, permission, licence or privilege, whether granted or enjoyed pursuant to any air services agreement or otherwise, which enables an air service to be operated;

**Permitted Maximum** means, if at any time the directors have specified a maximum under Article 46(b)(iii) or Article 55, that aggregate number of CIs which they have so specified as the maximum aggregate permitted number of Relevant Non-EU Interests or, as the case may be, Relevant Non-German Interests;

**Relevant Interest** means a Relevant Non-EU Interest or, as the case may be, a relevant Non-German Interest;

**Relevant Non-EU Interest** means any CI, other than an Exempted Interest or a CI to which Article 45(f) applies, in which a Relevant Non-EU Person has an Interest or which is declared by the directors to be a Relevant Non-EU Interest pursuant to Article 45(e);

**Relevant Non-German Interest** means any CI, other than an Exempted Interest or a CI to which Article 45(f) applies, in which a Relevant Non-German Person has an Interest or which is declared by the directors to be a Relevant Non-German Interest pursuant to Article 45(e);

**Relevant Non-EU Person** means:

- (a) any individual who is not an EU Citizen;
- (b) any body corporate other than a body corporate which is incorporated under the laws of any part of, and which has its principal place of business and central management and control in, a Member State and is majority owned and effectively controlled by EU Citizens;
- (c) a government or governmental department, agency or body, otherwise than of a Member State or any part thereof;
- (d) any municipal, local, statutory or other authority or any undertaking or body formed or established in any country other than a Member State; and/or
- (e) any other undertaking or body which is not majority owned and effectively controlled by EU Citizens;

**Relevant Non-German Person** means:

- (a) any individual who is not a German Citizen;
- (b) any body corporate other than a body corporate which is incorporated under the laws of any part of, and which has its principal place of business and central management and control in, the Federal Republic of Germany and is majority owned and effectively controlled by German Citizens;
- (c) a government or governmental department, agency or body, otherwise than of the Federal Republic of Germany or any part thereof;



- (d) any municipal, local, statutory or other authority or any undertaking or body formed or established in any country other than the Federal Republic of Germany; and/or
- (e) any other undertaking or body which is not majority owned and effectively controlled by German Citizens;

**Relevant Person** means a Relevant Non-EU Person or, as the case may be, a Relevant Non-German Person;

**Separate Non-EU Register** means a register of CIs drawn up in accordance with Article 45(a);

**Separate Non-German Register** means a register of CIs drawn up in accordance with Article 45(b); and

**Separate Register** means the Separate Non-EU Register or, as the case may be, the Separate Non-German Register.

Separate Non-EU Register and Separate Non-German Register

45. (a) The directors shall maintain the CI Register in a fashion such that it is readily possible to draw up, on the basis of the CI Register, a Separate Non-EU Register, in which shall be included particulars of any CI which:

- (i) has been acknowledged by the holder (or by any one of joint holders), whether pursuant to a declaration made in accordance with Article 37 or sub-paragraph (d) below or otherwise, to be a Relevant Non-EU Interest; or
- (ii) has been declared to be a Relevant Non-EU Interest pursuant to sub-paragraph (e) below;

and in either case which has not ceased to be a Relevant Non-EU Interest.

(b) The directors shall maintain, the CI Register in a fashion such that it is readily possible to draw up, on the basis of the CI Register, a Separate Non-German Register, in which shall be entered particulars of any CI which:

- (i) has been acknowledged by the holder (or by any one of joint holders), whether pursuant to a declaration made in accordance with Article 37 or sub-paragraph (d) below or otherwise, to be a Relevant Non-German Interest; or
- (ii) has been declared to be a Relevant Non-German Interest pursuant to sub-paragraph (e) below;

and in either case which has not ceased to be a Relevant Non-German Interest.

(c) The particulars entered on the CI Register in respect of any CI shall comprise, in addition to the identity of the holder or joint holders, such information as has been requested by and supplied to the directors (regarding, where appropriate, the name and nationality of any person having an Interest in such

CI and the nature and extent of the Interest of each such person) pursuant to a declaration made in accordance with Article 37 or sub-paragraph (d) below or otherwise or, if no such information has been supplied, such information as the directors consider appropriate. The directors may from time to time (if they so determine) cause to be classed as a Relevant Interest in the CI Register any CI in respect of which the holder or any joint holder has not made a declaration as to whether or not the CI is a Relevant Interest (and any number so specified may from time to time be varied by the directors).

- (d) Each registered holder of a CI which has not been acknowledged to be a Relevant Interest who becomes aware that such CI is or has become a Relevant Interest shall forthwith notify the Company accordingly, specifying whether such CI is or has become a Relevant Non-EU Interest or a Relevant Non-German Interest.
- (e) Whether or not a section 793 notice or a Disclosure Notice pursuant to Article 103 has been given, the directors may, and if at any time it appears to the directors that a CI which has not been classed as a Relevant Interest in the CI Register is likely to be a Relevant Interest shall, give notice in writing to the registered holder thereof or to any other person who appears to them to be interested in that CI, requiring such person to show to their satisfaction that such a CI is not a Relevant Interest. Any person on whom such notice has been served and any other person who is interested in such CI may within twenty-one days thereafter (or such longer period as the directors may consider reasonable) make representations to the directors as to why such CI should not be treated as a Relevant Interest but if, after considering such representations and such other information as seems to them relevant, the directors are not so satisfied, the directors shall declare such CI to be a Relevant Interest and it shall thereupon be treated as such.
- (f) The directors shall ensure that no CI is classed as a Relevant Interest if there has been furnished to them a declaration (in such form as the directors may from time to time prescribe) by the holder of such CI, together with such other evidence as the directors may require, which satisfies the directors either that such CI is not or is no longer a Relevant Interest or that, by reason of the fact that an Interest in such CI is held by a person who is not a Relevant Person or the nature of the Interest of the Relevant Person, such CI should not be treated as a Relevant Interest.

**Intervening Act** 46. (a) The provisions of sub-paragraph (b) below shall apply where the directors determine that it is necessary or desirable to take steps in order to protect any Operating Right of the Company or any subsidiary of the Company or the status of the Company or such subsidiary as an airline by reason of the fact that:

- (i) an Intervening Act has taken place;
- (ii) an Intervening Act is contemplated, threatened or intended;

- (iii) the aggregate number of Relevant Interests particulars of which would appear in either of the Separate Registers if such Separate Register were drawn up is such that an Intervening Act may occur or be contemplated, threatened or intended; or
- (iv) the ownership or control of the Company is otherwise such that an Intervening Act may occur or be contemplated, threatened or intended,

in the case of each of (iii) and (iv) above, taking into account (inter alia) the likelihood of further increases in the aggregate number of Relevant Interests and/or other changes in the ownership or control of the Company.

- (b) Where a determination has been made under sub-paragraph (a) of this Article, the chairman (or any director duly acting in place of the chairman) or the directors, as the case may be, shall take such of the following steps, either immediately upon such determination being made or at any time or times thereafter, as seems to him or them necessary or desirable to overcome, prevent or avoid an Intervening Act or the risk of an Intervening Act:

- (i) the chairman (or any director duly acting in place of the chairman) may remove any director before the expiration of his term of office;
- (ii) the directors may seek to identify, in accordance with Article 49 below, those CIs or Relevant Interests (whether Relevant Non-EU Interests or Relevant Non-German Interests) the interests in which gave rise or contributed to the determination, or would in their sole opinion, if relevant details thereof had been entered on the CI Register at the relevant time, have given rise to a determination, and to deal with such CIs as Affected Interests; and/or
- (iii) the directors may specify a Permitted Maximum of Relevant Non-EU Interests and/or a Permitted Maximum of Relevant Non-German Interests or vary any Permitted Maximum previously specified, provided that at no time shall any Permitted Maximum be less than 25 per cent. of the aggregate number of CIs and, at any time when the aggregate number of Relevant Non-EU Interests and/or Relevant Non-German Interests of which particulars are entered in the CI Register exceeds any Permitted Maximum applying for the time being, the directors may deal with such of the Relevant Non-EU Interests and/or Relevant Non-German Interests as they decide are in excess of such Permitted Maximum as Affected Interests.

**Affected Interest  
Notice**

47. The directors shall give an Affected Interest Notice to the registered holder of any CI which they determine to deal with as an Affected Interest and to any other person who appears to them to be interested in that CI and shall state which of the provisions of Article 48 (all of which shall be set out in the Affected Interest Notice) are to be applied forthwith in respect of such Affected Interest. The directors shall be entitled from time to time to serve further Affected Interest Notices in respect of any Affected Interest applying further provisions of Article 48. The registered holder of a CI in respect of which an Affected Interest Notice has been served or any other person

on whom an Affected Interest Notice in respect of that CI has been served may make representations to the directors as to why such CI should not be treated as an Affected Interest and if, after considering such representations and such other information as seems to them relevant, the directors consider that the CI should not be treated as an Affected Interest they shall forthwith withdraw the Affected Interest Notice served in respect of such CI and the provisions of Article 48 shall no longer apply to it. For the avoidance of doubt, any CI which the directors determine to deal with as an Affected Interest shall continue to be an Affected Interest unless and until the directors withdraw the Affected Interest Notice relating thereto.

**Effect of  
Affected Interest  
Notice**

48. (a) A registered holder of an Affected Interest upon whom an Affected Interest Notice has been served shall not (if such Affected Interest Notice specifies that the provisions of this sub-paragraph (a) are to apply thereto) be entitled, in respect of such Affected Interest, to attend or to speak at any general meeting of the Company or any meeting of the holders of any class of shares or to vote at any such meeting and the rights to attend (whether in person or by proxy), to speak and to demand and vote on a poll which, but for the provisions of this sub-paragraph (a), would have attached to the Affected Interest shall vest in the chairman of such meeting. The manner in which the chairman exercises or refrains from exercising any such rights shall be entirely at his discretion. The chairman of any such meeting as aforesaid shall be informed by the directors of any CI becoming or being deemed to be an Affected Interest.

- (b)
- (i) The persons on whom an Affected Interest Notice has been served shall (if such Affected Interest Notice specifies that the provisions of this sub-paragraph (b) are to apply thereto), within ten (10) business days of receiving such Affected Interest Notice (or such longer period as may in such Affected Interest Notice be prescribed by the directors), make an Affected Interest Disposal so that no Relevant Non-EU Person has an Interest in that CI and, upon such Affected Interest Disposal being made to the satisfaction of the directors, such Affected Interest shall cease to be a Relevant Non-EU Interest. The provisions of Article 50 shall apply to any transfer in connection with an Affected Interest Disposal under this sub-paragraph if as a consequence of the transfer such CI would continue, or be capable of continuing, to be an Affected Interest.
  - (ii) If, after ten (10) business days from the date of service on the registered holder of an Affected Interest of an Affected Interest Notice specifying that the provisions of this sub-paragraph (b) are to apply (or such longer period as the directors may have prescribed), the directors are not satisfied that an Affected Interest Disposal has been made of, or in relation to, the Affected Interest the subject thereof, the directors may arrange for the sale of the Affected Interest on behalf of the registered holder so that it ceases to be or to be capable of being treated as an Affected Interest at the best price reasonably obtainable at the relevant time. The manner, timing and terms of any such Affected Interest Disposal made or sought to be made by the directors (including but not limited to the price or prices at which the same is

made) shall be such as the directors determine, based upon advice from any bankers, brokers or other appropriate persons consulted by them for the purpose, to be reasonably practicable having regard to all the circumstances (including but not limited to the number of CIs to be disposed of) and the directors shall not be liable to any person for any of the consequences of reliance on such advice.

- (c) (i) The persons on whom an Affected Interest Notice has been served shall (if such Affected Interest Notice specifies that the provisions of this sub-paragraph (c) are to apply thereto), within ten (10) business days of receiving such Affected Interest Notice (or such longer period as may in such Affected Interest Notice be prescribed by the directors), make an Affected Interest Disposal so that no Relevant Non-German Person has an Interest in that CI and, upon such Affected Interest Disposal being made to the satisfaction of the directors, such Affected Interest shall cease to be a Relevant Non-German Interest. The provisions of Article 50 shall apply to any transfer in connection with an Affected Interest Disposal under this sub-paragraph if as a consequence of the transfer such CI would continue, or be capable of continuing, to be an Affected Interest.
- (ii) If, after ten (10) business days from the date of service on the registered holder of an Affected Interest of an Affected Interest Notice specifying that the provisions of this sub-paragraph (c) are to apply (or such longer period as the directors may have prescribed), the directors are not satisfied that an Affected Interest Disposal has been made of, or in relation to, the Affected Interest the subject thereof, the directors may arrange for the sale of the Affected Interest on behalf of the registered holder so that it ceases to be or to be capable of being treated as an Affected Interest at the best price reasonably obtainable at the relevant time. The manner, timing and terms of any such Affected Interest Disposal made or sought to be made by the directors (including but not limited to the price or prices at which the same is made) shall be such as the directors determine, based upon advice from any bankers, brokers or other appropriate persons consulted by them for the purpose, to be reasonably practicable having regard to all the circumstances (including but not limited to the number of CIs to be disposed of) and the directors shall not be liable to any person for any of the consequences of reliance on such advice.

Determination  
to treat as  
Affected  
Interests

49. In deciding which CIs are to be dealt with as Affected Interests the directors shall, where applicable, be entitled to have regard to the Interests in Relevant Interests which in their sole opinion have directly or indirectly caused or contributed to the determination under sub-paragraph (a) of Article 48 but subject thereto shall, so far as practicable, have regard to the chronological order in which particulars of Relevant Interests have been, or are to be, classed as Relevant Interests (and accordingly treat as Affected Interests those Relevant Interests which have been acquired, or which have been classed as Relevant Interests, most recently) save in circumstances where the application of such criterion would in the sole opinion of the directors be

inequitable or would in the sole opinion of the directors be likely to result for any reason in the exercise of the directors' powers under Articles 43 to 58 being illegal or unenforceable, in which event the directors shall apply such other criterion or criteria as they may, in their absolute discretion, consider appropriate.

**Transfers of  
Affected  
Interests**

50. The transfer of any CI shall be subject to the approval of the directors if, in the opinion of the directors, such CI would upon transfer become, or would be capable of being treated as, or would continue or be capable of continuing to be capable of being treated as, an Affected Interest and the directors may refuse to register the transfer of any such CI.

51. Subject to the Clearstream Rules, the directors may for the purpose of a sale under Article 48(b)(ii) or 48(c)(ii), require the transfer of a CI and may enter the transferee in respect of the transferred CI in the CI Register and such transfer shall be effective as if it had been undertaken by the registered holder and title of the transferee shall not be affected by any irregularity of invalidity in the proceedings relating thereto. The net proceeds of sale of an Affected Interest shall be received by the Company (whose receipt shall be a good discharge for the purchase money), shall be converted into euros (if necessary) and shall be held on trust for and paid (together with interest at such rate as the directors deem appropriate) to the former registered CI Holder upon production by him of evidence which in the opinion of the directors establishes him as the relevant CI Holder. When an Affected Interest has been sold as aforesaid the directors shall notify the former registered holder of the CI and inform him that the net proceeds of sale of the CI will be paid to him upon production of evidence which establishes him as the relevant CI Holder.

**Director's  
Assumptions**

52. Subject to the provisions of Articles 43 to 58 the directors shall, unless any director has reason to believe otherwise, be entitled to assume without enquiry that all CIs are neither Relevant Interests (other than those CIs which would appear in either Separate Register if such Separate Register were drawn up) nor CIs which would be or be capable of being treated as Affected Interests if a determination under sub-paragraph (a) of Article 46 were to be made.

**Service of  
notices**

53. (a) The directors shall not be obliged to serve any notice required under Articles 43 to 58 upon any person if they do not know either his identity or address. The absence of service in such circumstances as aforesaid and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this Article shall not prevent the implementation of or invalidate any procedure under this Article.

(b) The provisions of Articles 211 to 223 shall apply, *mutatis mutandis*, to the service of notices upon any member pursuant to Articles 43 to 58. Any notice required by Articles 43 to 58 to be served upon a person who is not a member or to a person who is a member but to whom Article 212 applies shall be deemed validly served if it is sent through the post in a pre-paid cover addressed to that person at the address (or if more than one, at one of the addresses), if any, at which the directors believe him to be resident or carrying on business. Service shall in such a case be deemed to be effected at the expiration of twenty-four hours after the time when the cover containing the

same is posted and in proving such service it shall be sufficient to prove that such cover was properly addressed, stamped and posted.

**Exercise of discretion by directors**

54. Any resolution or determination of, or any decision or the exercise of any discretion or power by, the directors or any one of them or by the chairman of the Company (including any other director duly acting in place of the chairman) under this Article or under Articles 43 to 58 or 122 shall be final and conclusive and neither he nor they shall be obliged to give any reasons therefor. Any disposal or transfer made, or other thing done, by or on behalf, or on the authority, of the directors or any of them pursuant to the foregoing provisions of this Article or under Articles 43 to 58 or 122 shall be conclusive and binding on all persons concerned and shall not be open to challenge on any ground whatsoever. For the avoidance of doubt any powers, rights or duties conferred by this Article or by Articles 43 to 58 or 122 on the directors can be exercised by a duly authorised committee of the directors.

**Publication of notice of Permitted Maximum**

55. Notwithstanding the provisions of Article 46(b)(iii), the directors may, in their absolute discretion and at any time, resolve to specify a Permitted Maximum of Relevant Non-EU Interests and/or Relevant Non-German Interests. At any time when the directors have resolved to specify a Permitted Maximum or deal with any CIs as Affected Interests, they shall publish notice of any Permitted Maximum which has been specified or determination which has been made under sub-paragraph (a) of Article 46, together with a statement of the provisions of Articles 43 to 58 which can apply to Affected Interests and the name of the person or persons who will answer enquiries relating to Affected Interests on behalf of the Company, within two business days of the making of any such determination, in such manner as is prescribed for the making of announcements under the rules and regulations of each stock exchange on which CIs or securities evidencing the right to receive CIs are, at the instigation of the Company, listed, quoted or dealt in as at the date of making of such determination. At other times the directors shall from time to time so publish information as to the number of CIs particulars of which would appear in each Separate Register if such Separate Register were drawn up.

**Inspection of Separate Non-EU Register, Separate Non-German Register**

56. The directors shall not be required to draw up and make either or both Separate Registers available for inspection by any person but shall provide persons who make enquiries which the directors determine in their sole discretion to be bona fide with information as to the aggregate number of CIs of which particulars from time to time would appear in either or both Separate Registers if such Separate Register were drawn up.

**Enquiries into status of CIs**

57. If, at any time when a determination under sub-paragraph (a) of Article 46 has been made and not withdrawn, any person enquires of the directors whether the aggregate number of Relevant Non-EU Interests or Relevant Non-German Interests exceeds any Permitted Maximum applying for the time being, or whether any CIs in the Company which such person proposes to purchase or in which such person proposes to acquire an Interest would in the opinion of the directors upon such purchase or acquisition become or be capable of becoming or being treated as Affected Interests, whether by reason of any Permitted Maximum being exceeded or otherwise, the directors shall, on sufficient information being given to them to enable them to answer the enquiry, notify the enquirer whether in their opinion the CIs would

become or be capable of becoming Affected Interests if he were to purchase them or acquire an Interest in them. Notwithstanding the foregoing, any such notification shall not be binding on the directors or the Company and shall not prevent such CIs being subsequently identified as Affected Interests, and the directors and the Company shall not (in the absence of fraud) be liable in any way if such CIs subsequently become Affected Interests.

Withdrawal of  
determination  
under Article 46

58. (a) The provisions of sub-paragraph (b) of Article 46 shall apply until such time as the directors have resolved that grounds for the making of a determination under sub-paragraph (a) of Article 46 have ceased to exist and the directors shall thereupon withdraw such determination.

(b) On withdrawal of the determination under sub-paragraph (a) of Article 46, the directors shall cease to act pursuant to such determination and may remove any Permitted Maximum that they may have specified (or, in their absolute discretion, leave such Permitted Maximum in place) and shall inform every person on whom an Affected Interest Notice has been served in respect of an Affected Interest which has not yet been transferred or sold by the Company in accordance with Article 46 that the provisions of Article 46 no longer apply in respect of such CI (which on such withdrawal shall cease to be an Affected Interest) and that the provisions of Article 48(a) no longer apply to such CIs. However, the withdrawal of such a determination shall not affect the validity of any action taken by the chairman (or any director duly acting as such) or the directors, as the case may be, under Articles 43 to 58 whilst that determination remained in effect and such actions shall not be open to challenge on any ground whatsoever. The directors shall publicise the withdrawal of any determination the existence of which has been publicised under Article 55 in the same manner as they are required to publicise its existence under such Article 55.

(c) The chairman and the directors shall, so long as they act reasonably and in good faith, be under no liability to the Company or to any other person for failing to treat any CI as an Affected Interest or any person as a Relevant Person in accordance with the provisions of Articles 43 to 58 and neither shall the chairman nor any director be liable to the Company or any other person if, having acted reasonably and in good faith, they determine erroneously that any CI is an Affected Interest, or that any person is a Relevant Person, or on the basis of such determination or any other determination or resolution, they perform or exercise (or purport to perform or exercise) their duties, powers, rights or discretions under Articles 43 to 58 in relation to such CIs or person or perform or exercise (or purport to perform or exercise) their duties, powers, rights or discretions under Articles 43 to 58 and 122.

#### TRANSMISSION OF SHARES

Transmission

59. If a member dies, the survivor or survivors where he was a joint holder, and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to



his interest. Nothing in these Articles shall release the estate of a deceased member (whether a sole or joint holder) from any liability in respect of any share held by him.

**Elections permitted**

60. A person becoming entitled by transmission to a share may, on production of any evidence as to his entitlement properly required by the board, elect either to become the holder of the share or to have another person nominated by him registered as the transferee. If he elects to become the holder he shall send notice to the Company to that effect. If he elects to have another person registered, he shall execute an instrument of transfer of the share to that person. If he elects to have himself or another person registered he shall take any action the board may require (including without limitation the execution of any document) to enable himself or that person to be registered as the holder of the share. All the provisions of these Articles relating to the transfer of shares apply to that notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member or other event giving rise to the transmission had not occurred.

**Elections required**

61. The board may at any time send a notice requiring any such person to elect either to be registered himself or to transfer the share. If the notice is not complied with within 60 days, the board may after the expiry of that period withhold payment of all dividends or other moneys payable in respect of the share until the requirements of the notice have been complied with.

**Rights of persons entitled by transmission**

62. A person becoming entitled by transmission to a share shall, on production of any evidence as to his entitlement properly required by the board and subject to the requirements of Article 60, have the same rights in relation to the share as he would have had if he were the holder of the share, subject to Article 204. That person may give a discharge for all dividends and other moneys payable in respect of the share, but he shall not, before being registered as the holder of the share, be entitled in respect of it to receive notice of, or to attend or vote at, any meeting of the Company or to receive notice of, or to attend or vote at, any separate meeting of the holders of any class of shares in the capital of the Company.

#### **ALTERATION OF SHARE CAPITAL**

**New shares subject to these Articles**

63. All shares created by increase of the Company's share capital, by consolidation, division or sub-division of its share capital shall be:

- (a) subject to all the provisions of these Articles, including without limitation provisions relating to payment of calls, lien, forfeiture, transfer and transmission; and
- (b) unclassified, unless otherwise provided by these Articles, by the resolution creating the shares or by the terms of allotment of the shares.

**Fractions arising**

64. Whenever any fractions arise as a result of a consolidation or sub-division of shares, the board may on behalf of the members deal with the fractions as it thinks fit. In particular, without limitation, the board may sell shares representing fractions to which any members would otherwise become entitled to any person (including, subject to the provisions of the Companies Acts, the Company) and distribute the net proceeds of sale in due proportion among those members. Where the shares are to be

sold the board may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the buyer. The buyer shall not be bound to see to the application of the purchase moneys and his title to the shares shall not be affected by any irregularity in, or invalidity of, the proceedings in relation to the sale.

#### GENERAL MEETINGS

**Annual general meetings** 65. The board shall convene and the Company shall hold general meetings as annual general meetings in accordance with the requirements of the Companies Acts.

**Class meetings** 66. All provisions of these Articles relating to general meetings of the Company shall, mutatis mutandis, apply to every separate general meeting of the holders of any class of shares in the capital of the Company, except that:

- (a) the necessary quorum shall be one person holding or representing by proxy at least one-third in nominal value of the issued shares of the class (excluding any shares of that class held as treasury shares) but the meeting shall not proceed to business unless there are present at least two holders or two persons acting as proxies or corporate representatives for a holder or holders or, at any adjourned meeting of such holder(s), one holder present in person or by proxy, whatever the amount of his holding, who shall be deemed to constitute a meeting;
- (b) any holder of shares of the class present in person or by proxy may demand a poll; and
- (c) each holder of shares of the class shall, on a poll, have one vote in respect of every share of the class held by him.

For the purposes of this Article, where a person is present by proxy or proxies, he is treated only as holding the shares in respect of which those proxies are authorised to exercise voting rights.

**Convening general meetings** 67. The board may call general meetings whenever and at such times and places as it shall determine. On the requisition of members pursuant to the provisions of the Companies Acts, the board shall promptly convene a general meeting in accordance with the requirements of the Companies Acts. If there are insufficient directors in the Federal Republic of Germany to call a general meeting any director of the Company may call a general meeting, but where no director is willing or able to do so, any two members of the Company may summon a meeting for the purpose of appointing one or more directors.

#### NOTICE OF GENERAL MEETINGS

**Period of notice** 68. An annual general meeting shall be called by at least 21 clear days' notice. Subject to the provisions of the Companies Acts, all other general meetings may be called by at least 14 clear days' notice.

Recipients of notice	69. Subject to the provisions of the Companies Acts, to the provisions of these Articles and to any restrictions imposed on any shares, the notice shall be sent to every member, every CI Holder and every director. The auditors are entitled to receive all notices of, and other communications relating to, any general meeting which any member is entitled to receive. The Company may determine that the members entitled to receive a notice of a general meeting of the Company are the members on the Register at the close of business on a day determined by the Company, which day may not be more than 21 days before the day that notices of the meeting are sent.
Contents of notice: general	70. Subject to the provisions of the Companies Acts the notice shall specify the time, date and place of the meeting (including without limitation any satellite meeting place arranged for the purposes of Article 75, which shall be identified as such in the notice) and the general nature of the business to be dealt with.
Contents of notice: additional requirements	71. In the case of an annual general meeting, the notice shall specify the meeting as such. In the case of a meeting to pass a special resolution, the notice shall specify the intention to propose the resolution as a special resolution.
Record time for shareholders	72. For the purpose of determining whether a person is entitled as a member to attend or vote at a meeting and how many votes such person may cast, the Company may specify in the notice of the meeting a time (the <i>Member Voting Record Time</i> ) not more than 48 hours (taking no account of any day which is not a working day) before the time fixed for the meeting, by which a person who holds shares in registered form must be entered on the Register in order to have the right to attend or vote at the meeting or to appoint a proxy to do so.
Record time for CI Holders	73. For the purpose of determining whether a person is entitled as a CI Holder to: <ul style="list-style-type: none"> <li>(a) exercise the rights conferred by Article 116; and</li> <li>(b) receive a CI Voting Notice in accordance with Article 117; and</li> <li>(c) in cases where the Company has made arrangements to pay dividends directly to CI Holders, be paid dividends,</li> </ul> <p>and, where relevant, the number of CIs in respect of which he is so entitled, the Company may determine that the CI Holders so entitled shall be the persons entered on the CI Register at the close of business on any date specified for the particular purpose (each, a <i>CI Record Date</i>).</p>
Article 77 arrangements	74. The notice shall include details of any arrangements made for the purpose of Article 77 (making clear that participation in those arrangements will not amount to attendance at the meeting to which the notice relates).
General meetings at more than one place	75. The board may resolve to enable persons entitled to attend a general meeting to do so by simultaneous attendance and participation at a satellite meeting place anywhere in the world. The members present in person or by proxy at satellite meeting places shall be counted in the quorum for, and entitled to vote at, the general meeting in question, and that meeting shall be duly constituted and its proceedings

valid if the chairman of the general meeting is satisfied that adequate facilities are available throughout the general meeting to ensure that members attending at all the meeting places are able to:

- (a) participate in the business for which the meeting has been convened;
- (b) hear and see all persons who speak (whether by the use of microphones, loudspeakers, audio-visual communications equipment or otherwise) in the principal meeting place and any satellite meeting place; and
- (c) be heard and seen by all other persons so present in the same way.

The chairman of the general meeting shall be present at, and the meeting shall be deemed to take place at, the principal meeting place.

Interruption or  
adjournment  
where facilities  
inadequate

76. If it appears to the chairman of the general meeting that the facilities at the principal meeting place or any satellite meeting place have become inadequate for the purposes referred to in Article 75, then the chairman may, without the consent of the meeting, interrupt or adjourn the general meeting. All business conducted at that general meeting up to the time of that adjournment shall be valid. The provisions of Article 88 shall apply to that adjournment.

Other  
arrangements  
for viewing and  
hearing  
proceedings

77. The board may make arrangements for persons entitled to attend a general meeting or an adjourned general meeting to be able to view and hear the proceedings of the general meeting or adjourned general meeting and to speak at the meeting (whether by the use of microphones, loudspeakers, audio-visual communications equipment or otherwise) by attending at a venue anywhere in the world not being a satellite meeting place. Those attending at any such venue shall not be regarded as present at the general meeting or adjourned general meeting and shall not be entitled to vote at the meeting at or from that venue. The inability for any reason of any member present in person or by proxy at such a venue to view or hear all or any of the proceedings of the meeting or to speak at the meeting shall not in any way affect the validity of the proceedings of the meeting.

Controlling level  
of attendance

78. The board may from time to time make any arrangements for controlling the level of attendance at any venue for which arrangements have been made pursuant to Article 77 (including without limitation the issue of tickets or the imposition of some other means of selection) it in its absolute discretion considers appropriate, and may from time to time change those arrangements. If a member, pursuant to those arrangements, is not entitled to attend in person or by proxy at a particular venue, he shall be entitled to attend in person or by proxy at any other venue for which arrangements have been made pursuant to Article 77. The entitlement of any member to be present at such venue in person or by proxy shall be subject to any such arrangement then in force and stated by the notice of meeting or adjourned meeting to apply to the meeting.

Change in place  
and/or time of  
meeting

79. If, after the sending of notice of a general meeting but before the meeting is held, or after the adjournment of a general meeting but before the adjourned meeting is held (whether or not notice of the adjourned meeting is required), the board decides that it is impracticable or unreasonable, for a reason beyond its control, to hold the

meeting at the declared place (or any of the declared places, in the case of a meeting to which Article 75 applies) and/or time, it may change the place (or any of the places, in the case of a meeting to which Article 75 applies) and/or postpone the time at which the meeting is to be held. If such a decision is made, the board may then change the place (or any of the places, in the case of a meeting to which Article 75 applies) and/or postpone the time again if it decides that it is reasonable to do so. In either case:

- (a) no new notice of the meeting need be sent, but the board shall, if practicable, advertise the date, time and place of the meeting in at least two newspapers having a national circulation in the Federal Republic of Germany and shall make arrangements for notices of the change of place and/or postponement to appear at the original place and/or at the original time; and
- (b) a proxy appointment in relation to the meeting may, if by means of a document in hard copy form, be delivered to the office or to such other place within the Federal Republic of Germany as may be specified by or on behalf of the Company in accordance with Article 123(a) or, if in electronic form, be received at the address (if any) specified by or on behalf of the Company in accordance with Article 123(b) at any time not less than 48 hours before the postponed time appointed for holding the meeting, provided that the board may specify, in any case, that in calculating the period of 48 hours, no account shall be taken of any part of a day that is not a working day.

**Meaning of  
participate**

80. For the purposes of Articles 75, 76, 77, 78 and 79, the right of a member to participate in the business of any general meeting shall include without limitation the right to speak, vote on a show of hands, vote on a poll, be represented by a proxy and have access to all documents which are required by the Companies Acts or these Articles to be made available at the meeting.

**Accidental  
omission to send  
notice etc.**

81. The accidental omission to send a notice of a meeting or resolution, or to send any notification where required by the Companies Acts or these Articles in relation to the publication of a notice of meeting on a website, or to send a form of proxy where required by the Companies Acts or these Articles, or to send a CI Voting Notice, to any person entitled to receive it, or the non-receipt for any reason of any such notice or resolution or notification or form of proxy or CI Voting Notice, or the non-receipt by the Company of a completed form of proxy, or of completed CI Voting Instructions, in each case whether or not the Company is aware of such omission or non-receipt, shall not invalidate the proceedings at that meeting.

**Security**

82. The board and, at any general meeting, the chairman may make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property and the restriction of items that may be taken into the meeting place. The board and, at any general meeting, the chairman are entitled to refuse entry to a person who refuses to comply with these arrangements, requirements or restrictions.

## PROCEEDINGS AT GENERAL MEETINGS

### Quorum

83. No business shall be dealt with at any general meeting unless a quorum is present, but the absence of a quorum shall not preclude the choice or appointment of a chairman, which shall not be treated as part of the business of the meeting. Save as otherwise provided by these Articles, one qualifying person present at a meeting and entitled to vote on the business to be dealt with is a quorum, but the meeting shall only proceed to business if there are present at least two qualifying persons, unless:

- (a) each is a qualifying person only because he is authorised under the Companies Acts to act as a representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or
- (b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

For the purposes of this Article a "qualifying person" means (i) an individual who is a member of the Company, (ii) a person authorised under the Companies Acts to act as a representative of the corporation in relation to the meeting, or (iii) a person appointed as proxy of a member in relation to the meeting.

### If quorum not present

84. If such a quorum is not present within five minutes (or such longer time not exceeding 30 minutes as the chairman of the meeting may decide to wait) from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting, if convened on the requisition of members, shall be dissolved, and in any other case shall stand adjourned to such time and place as the chairman of the meeting may, subject to the provisions of the Companies Acts, determine. The adjourned meeting shall be dissolved if a quorum is not present within 15 minutes after the time appointed for holding the meeting.

### Chairman

85. The chairman, if any, of the board or, in his absence, any deputy chairman of the Company or, in his absence, some other director nominated by the board, shall preside as chairman of the meeting. If neither the chairman, deputy chairman nor such other director (if any) is present within five minutes after the time appointed for holding the meeting or is not willing to act as chairman, the directors present shall elect one of their number to be chairman. If there is only one director present and willing to act, he shall be chairman. If no director is willing to act as chairman, or if no director is present within five minutes after the time appointed for holding the meeting, the members present in person or by proxy and entitled to vote, and the persons authorised to act as a representative of a corporation in relation to the meeting, shall choose a member or a proxy of a member or a person authorised to act as a representative of a corporation in relation to the meeting to be chairman.

### Directors entitled to speak

86. A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the capital of the Company.

### Adjournment: chairman's powers

87. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place. No business shall be dealt with at an adjourned meeting other

than business which might properly have been dealt with at the meeting had the adjournment not taken place. In addition (and without prejudice to the chairman's power to adjourn a meeting conferred by Article 76), the chairman may adjourn the meeting to another time and place without such consent if it appears to him that:

- (a) it is likely to be impracticable to hold or continue that meeting because of the number of members wishing to attend who are not present; or
- (b) the unruly conduct of persons attending the meeting prevents or is likely to prevent the orderly continuation of the business of the meeting; or
- (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.

**Adjournment:  
procedures**

88. Any such adjournment may, subject to the provisions of the Companies Acts; be for such time and to such other place (or, in the case of a meeting held at a principal meeting place and a satellite meeting place, such other places) as the chairman may, in his absolute discretion determine, notwithstanding that by reason of such adjournment some members may be unable to be present at the adjourned meeting. Any such member may nevertheless appoint a proxy for the adjourned meeting either in accordance with Article 123 or by means of a document in hard copy form which, if delivered at the meeting which is adjourned to the chairman or the secretary or any director, shall be valid even though it is given at less notice than would otherwise be required by Article 123(a). When a meeting is adjourned for 30 days or more or for an indefinite period, notice shall be sent at least seven clear days before the date of the adjourned meeting specifying the time and place (or places, in the case of a meeting to which Article 75 applies) of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to send any notice of an adjournment or of the business to be dealt with at an adjourned meeting.

**Amendments to  
resolutions**

89. If an amendment is proposed to any resolution under consideration but is in good faith ruled out of order by the chairman, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling. With the consent of the chairman, an amendment may be withdrawn by its proposer before it is voted on. No amendment to a resolution duly proposed as a special resolution may be considered or voted on (other than a mere clerical amendment to correct a patent error). No amendment to a resolution duly proposed as an ordinary resolution may be considered or voted on (other than a mere clerical amendment to correct a patent error) unless either:

- (a) at least 48 hours before the time appointed for holding the meeting or adjourned meeting at which the ordinary resolution is to be considered, (which, if the board so specifies, shall be calculated taking no account of any part of a day that is not a working day) notice of the terms of the amendment and the intention to move it has been delivered in hard copy form to the office or to such other place as may be specified by or on behalf of the Company for that purpose, or received in electronic form at such address (if any) for the time being specified by or on behalf of the Company for that purpose; or

- (b) the chairman in his absolute discretion decides that the amendment may be considered and voted on.

**Methods of voting**

90. A resolution put to the vote of a general meeting shall be decided on a show of hands unless before, or on the declaration of the result of, a vote on the show of hands, or on the withdrawal of any other demand for a poll, a poll is duly demanded. Subject to the provisions of the Companies Acts, a poll may be demanded by:

- (a) the chairman of the meeting; or
- (b) (except on the election of the chairman of the meeting or on a question of adjournment) at least five members or CI Holders present in person or by proxy having the right to vote on the resolution; or
- (c) any member or members present in person or by proxy representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution (excluding any voting rights attached to any shares held as treasury shares); or
- (d) any member or members present in person or by proxy holding shares conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right (excluding any shares conferring a right to vote on the resolution which are held as treasury shares).

The appointment of a proxy to vote on a matter at a meeting authorises the proxy to demand, or join in demanding, a poll on that matter. In applying the provisions of this Article, a demand by a proxy counts (i) for the purposes of paragraph (b) of this Article, as a demand by the member or CI Holder, (ii) for the purposes of paragraph (c) of this Article, as a demand by a member representing the voting rights that the proxy is authorised to exercise, and (iii) for the purposes of paragraph (d) of this Article, as a demand by a member holding the shares to which those rights are attached.

**Declaration of result**

91. Unless a poll is duly demanded (and the demand is not withdrawn before the poll is taken) a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**Withdrawal of demand for poll**

92. The demand for a poll may be withdrawn before the poll is taken, but only with the consent of the chairman. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made. If the demand for a poll is withdrawn, the chairman or any other member entitled may demand a poll.

**Conduct of poll**

93. Subject to Article 94, a poll shall be taken as the chairman directs and he may, and shall if required by the meeting, appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.



**When poll to be taken** 94. A poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either at the meeting or at such time and place as the chairman directs not being more than 30 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

**Notice of poll** 95. No notice need be sent of a poll not taken at the meeting at which it is demanded if the time and place at which it is to be taken are announced at the meeting. In any other case notice shall be sent at least seven clear days before the taking of the poll specifying the time and place at which the poll is to be taken.

**Effectiveness of special resolutions** 96. Where for any purpose an ordinary resolution of the Company is required, a special resolution shall also be effective.

#### VOTES OF MEMBERS

**Right to vote on a show of hands** 97. Subject to any rights or restrictions attached to any shares, on a vote on a resolution on a show of hands:

- (a) every member who is present in person (or in the case of a corporation is present by a duly authorised representative) shall have one vote;
- (b) subject to paragraph (c), every proxy present who has been duly appointed by one or more members entitled to vote on the resolution has one vote;
- (c) a proxy has one vote for and one vote against the resolution if:
  - (i) the proxy has been duly appointed by more than one member entitled to vote on the resolution, and
  - (ii) the proxy has been instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it.

**Right to vote on a poll** 98. Subject to any rights or restrictions attached to any shares, on a vote on a resolution on a poll every member present in person or by proxy shall have one vote for every share of which he is the holder.

**Votes of joint holders** 99. In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. For this purpose seniority shall be determined by the order in which the names of the holders stand in the Register.

**Member under incapacity** 100. A member in respect of whom an order has been made by a court or official having jurisdiction (whether in the Federal Republic of Germany or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised for that purpose

appointed by that court or official. That receiver, curator bonis or other person may, on a show of hands or on a poll, vote by proxy. The right to vote shall be exercisable only if evidence satisfactory to the board of the authority of the person claiming to exercise the right to vote has been delivered to the office, or another place specified in accordance with these Articles for the delivery of proxy appointments, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised, provided that the Company may specify, in any case, that in calculating the period of 48 hours, no account shall be taken of any part of a day that is not a working day.

**Calls in arrears** 101. No member shall be entitled to vote at a general meeting or at a separate meeting of the holders of any class of shares in the capital of the Company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid.

**Disclosure of interests in shares**

102. The directors may by notice in writing (a *Disclosure Notice*) require any member or other person appearing to be interested or appearing to have been interested in the shares or CIs of the Company to disclose to the Company in writing such information as the directors shall require relating to the ownership of or Interests in the shares or CIs in question as lies within the knowledge of such member or other person (supported if the directors so require by a statutory declaration and/or by independent evidence) including (without prejudice to the generality of the foregoing):

- (a) any information which the Company is entitled to seek pursuant to section 793 of the Act (a *section 793 notice*); and
- (b) any information which the directors shall deem necessary or desirable in order to determine whether any Interest is a Relevant Interest (as defined in Article 44) or are capable of being Affected Interests (as defined in Article 44) or whether it is necessary to take steps in order to protect an Operating Right (as defined in Article 44) of the Company or any subsidiary of the Company or otherwise in relation to the application or potential application of Article 45.

The directors may give a Disclosure Notice pursuant to this Article at any time and the directors may give one or more than one such notice to the same member or other person in respect of the same shares or CIs.

**Restrictions if in default**

103. If at any time the board is satisfied that any member, or any other person appearing to be interested in shares held by such member, has been duly served with a section 793 notice or a Disclosure Notice and is in default for the prescribed period in supplying to the Company the information thereby required, or, in purported compliance with such a notice, has made a statement which is false or inadequate in a material particular, then the board may, in its absolute discretion at any time thereafter by notice (a *direction notice*) to such member direct that:

- (a) in respect of the shares in relation to which the default occurred (the *default shares*, which expression includes any shares issued after the date of the section 793 notice or Disclosure Notice in respect of those shares) the member shall not be entitled to attend or vote either personally or by proxy at a general

meeting or at a separate meeting of the holders of that class of shares or on a poll; and

- (b) where the default shares represent at least  $\frac{1}{4}$  of one per cent. in nominal value of the issued shares of their class (excluding any shares of that class held as treasury shares), the direction notice may additionally direct that in respect of the default shares:

(i) no payment shall be made by way of dividend and no share shall be allotted pursuant to Article 202;

(ii) no transfer of any default share shall be registered unless:

(A) the member is not himself in default as regards supplying the information requested and the transfer when presented for registration is accompanied by a certificate by the member in such form as the board may in its absolute discretion require to the effect that after due and careful enquiry the member is satisfied that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer; or

(B) the transfer is an approved transfer.

**Copy of notice  
to interested  
persons**

104. The Company shall send the direction notice to each other person appearing to be interested in the default shares, but the failure or omission by the Company to do so shall not invalidate such notice.

**When  
restrictions  
cease to have  
effect**

105. Any direction notice shall cease to have effect not more than seven days after the earlier of receipt by the Company of:

- (a) a notice of an approved transfer, but only in relation to the shares transferred; or
- (b) all the information required by the relevant section 793 notice, in a form satisfactory to the board.

**Board may  
cancel  
restrictions**

106. The board may at any time send a notice cancelling a direction notice.

107. For the purposes of this Article and Articles 103, 104, 105 and 106:

**Supplementary  
provisions**

- (a) a person shall be treated as appearing to be interested in any shares if the member holding such shares has sent to the Company a notification under section 793 of the Act or the Disclosure Notice which either (i) names such person as being so interested or (ii) fails to establish the identities of all those interested in the shares, and (after taking into account the said notification and any other relevant section 793 notification) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares;

- (b) the prescribed period is 14 days from the date of service of the section 793 notice or the Disclosure Notice; and
- (c) a transfer of shares is an approved transfer if:
  - (i) it is a transfer of shares pursuant to an acceptance of a takeover offer (within the meaning of section 974 of the Act); or
  - (ii) the board is satisfied that the transfer is made pursuant to a sale of the whole of the beneficial ownership of the shares the subject of the transfer to a party unconnected with the member and with any other person appearing to be interested in the shares; or
  - (iii) the transfer results from a sale made through a recognised investment exchange as defined in the Financial Services and Markets Act 2000 or any other stock exchange outside the United Kingdom on which the Company's shares are normally traded.

**Section 794 of the Act** 108. Nothing contained in Articles 103, 104, 105 and 106 or 107 limits the power of the Company under section 794 of the Act.

**Errors in voting** 109. If any votes are counted which ought not to have been counted, or might have been rejected, the error shall not vitiate the result of the voting unless it is pointed out at the same meeting, or at any adjournment of the meeting, and, in the opinion of the chairman, it is of sufficient magnitude to vitiate the result of the voting.

**Objection to voting** 110. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting or poll at which the vote objected to is tendered. Every vote not disallowed at such meeting shall be valid and every vote not counted which ought to have been counted shall be disregarded. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

**Voting: additional provisions** 111. On a poll, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

#### **PROXIES AND CORPORATE REPRESENTATIVES**

**Appointment of proxy: form** 112. The appointment of a proxy shall be made in writing and shall be in any usual form or in any other form which the board may approve. Subject thereto, the appointment of a proxy may be:

- (a) in hard copy form; or
- (b) in electronic form, to the electronic address provided by the Company for this purpose.

**Execution of proxy** 113. The appointment of a proxy, whether made in hard copy form or in electronic form, shall be executed in such manner as may be approved by or on behalf of the Company from time to time. Subject thereto, the appointment of a proxy shall be executed by the appointor or any person duly authorised by the appointor or, if the

appointor is a corporation, executed by a duly authorised person or under its common seal or in any other manner authorised by its constitution.

**Proxies: other provisions**

114. The board may, if it thinks fit, but subject to the provisions of the Companies Acts, at the Company's expense send hard copy forms of proxy for use at the meeting and issue invitations in electronic form to appoint a proxy in relation to the meeting in such form as may be approved by the board. The appointment of a proxy shall not preclude a member from attending and voting in person at the meeting or poll concerned. A member may appoint more than one proxy to attend on the same occasion, provided that each such proxy is appointed to exercise the rights attached to a different share or shares held by that member.

115. The Clearstream Nominee can appoint more than one person to be its proxy.

**CI voting and proxy arrangements**

116. Subject to Article 122, at every general meeting of the Company each person who is a CI Holder at the relevant CI Record Date shall have the right, in respect of the number of CIs held by them at the relevant CI Record Date to direct the Clearstream Nominee:

- (a) as to how it should vote with respect to resolutions described in a notice of general meeting;
- (b) to appoint him as its proxy; or
- (c) to appoint as its proxy a person nominated by him,

each a *CI Voting Instruction*.

**Notices in relation to CI Voting**

117. The Company shall send a notice (a *CI Voting Notice*) to each CI Holder on the CI Register at the relevant CI Record Date informing them of their rights under Article 116 and of the time by which CI Voting Instructions must be received by the Company (*CI Voting Instruction Receipt Time*). Any CI Voting Instruction received after the CI Voting Instruction Receipt Time shall be void.

**Same rights**

118. Subject to these Articles, a proxy appointed by the Clearstream Nominee shall have the same rights (and be subject to the same restrictions) as a proxy appointed by any other member.

**Effect of voting instructions**

119. Where CI Voting Instructions are received by the CI Voting Instruction Receipt Time, then:

- (a) in the case where a CI Holder has given directions pursuant to Article 116(a), the number of votes that shall be cast by the Clearstream Nominee on a poll on their behalf shall be equal to the number of CIs in respect of which that direction has been given or, if less, the number of CIs standing to the name of that CI Holder in the CI Register at the relevant CI Record Date; and
- (b) in the case where a CI Holder has given a direction in accordance with Articles 116(b) or (c) to the effect that he or (as the case may be) some other person should be appointed as a proxy of the Clearstream Nominee, the

Clearstream Nominee shall appoint the person so nominated as its proxy and the number of votes that may be cast by that proxy on a poll shall be equal to the number of CIs in respect of which the direction has been given or, if less, the number of CIs standing to the name of that CI Holder in the CI Register at the relevant CI Record Date.

Adjustment to  
votes

120. If it appears in relation to a particular resolution at a particular meeting that the aggregate number of votes cast by or on behalf of the Clearstream Nominee would without an adjustment exceed the Clearstream Nominee's Overall Holding at the relevant Member Voting Record Time then such adjustments shall be made to the aggregate number of votes cast for or against the resolution so that the total number of votes cast by or on behalf of the Clearstream Nominee does not exceed that Clearstream Nominee's Overall Holding at the Member Voting Record Time. The chairman of the meeting has discretion to make such adjustments as are fair and equitable and any such adjustments made in good faith shall be conclusive and binding on all persons interested.

For the avoidance of doubt votes cast by or on behalf of the Clearstream Nominee shall include votes cast by any proxy appointed by it.

Determination  
of questions  
relating to CIs

121. Subject and without prejudice to the Clearstream Rules, and the provisions of Articles 65 and 116, if in any circumstances other than those provided for in those Articles any question shall arise as to whether any person has been validly appointed to vote (or exercise any other right) in respect of a holding of CIs or as to the number of CIs in respect of which he is entitled to do so, then:

- (a) if such question arises at or in relation to a general meeting it shall be determined by the chairman of the meeting or in such other manner as may have been prescribed by regulations or procedures made or established by the board under Article 130; and
- (b) if it arises in any other circumstances it shall be determined by the board and any such determination if made in good faith shall be final and conclusive and binding on all persons interested.

Indication of  
Relevant Non-  
EU Interests or  
Relevant Non-  
German  
Interests

122. The directors may, at any time and from time to time, determine such means of identifying the way votes are being cast in respect of the shares or not as they may, in their absolute discretion, consider appropriate. In making such identification, the Company shall (without limitation) be entitled to require shareholders or CI Holders to indicate, on any instrument appointing a proxy and/or on any form used to cast a vote on any poll, whether the votes attaching to those shares are being cast for or against each relevant resolution. The directors may, subject to any other evidence that they may in their absolute discretion consider relevant to their determination and without limitation to the generality of this provision, deem any shares or CIs to be Relevant Non-EU Interests or Relevant Non-German Interests to the extent that no response is made to such a request for information.

Delivery/receipt  
of proxy  
appointment

123. Without prejudice to Article 79(b) or to the second sentence of Article 88, the appointment of a proxy shall:

- (a) if in hard copy form, be delivered by hand or by post to the office or such other place within the Federal Republic of Germany and by such time as may be specified by or on behalf of the Company for that purpose:

- (i) in the notice convening the meeting; or
- (ii) in any form of proxy sent by or on behalf of the Company in relation to the meeting;

provided that:

- (iii) the time so specified may not be earlier than 48 hours before the time appointed for holding the meeting or adjourned meeting (or any postponed time appointed for holding the meeting pursuant to Article 79) at which the person named in the appointment proposes to vote; and
- (iv) if no time is specified, the appointment of a proxy shall be delivered not less than 48 hours before the time appointed for holding the meeting or adjourned meeting (or any postponed time appointed for holding the meeting pursuant to Article 79) at which the person named in the appointment proposes to vote; or

- (b) if in electronic form, be received at any address to which the appointment of a proxy may be sent by electronic means pursuant to a provision of the Companies Acts or to any other address and by such time as may be specified by or on behalf of the Company for the purpose of receiving the appointment of a proxy in electronic form:

- (i) in the notice convening the meeting; or
- (ii) in any form of proxy sent by or on behalf of the Company in relation to the meeting; or
- (iii) in any invitation to appoint a proxy issued by the Company in relation to the meeting; or
- (iv) on a website that is maintained by or on behalf of the Company and identifies the Company;

provided that:

- (v) the time so specified may not be earlier than 48 hours before the time appointed for holding the meeting or adjourned meeting (or any postponed time appointed for holding the meeting pursuant to Article 79) at which the person named in the appointment proposes to vote; and
- (vi) if no time is specified, the appointment of a proxy shall be received not less than 48 hours before the time appointed for holding the meeting or

adjourned meeting (or any postponed time appointed for holding the meeting pursuant to Article 79) at which the person named in the appointment proposes to vote; or

- (c) in either case, where a poll is taken more than 48 hours after it is demanded, be delivered or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (d) if in hard copy form, where a poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director.

In calculating the periods mentioned in this Article, the board may specify, in any case, that no account shall be taken of any part of a day that is not a working day.

**Authentication  
of proxy  
appointment not  
made by holder**

124. Subject to the provisions of the Companies Acts, where the appointment of a proxy is expressed to have been or purports to have been made, sent or supplied by a person on behalf of the holder of a share:

- (a) the Company may treat the appointment as sufficient evidence of the authority of that person to make, send or supply the appointment on behalf of that holder; and
- (b) that holder shall, if requested by or on behalf of the Company at any time, send or procure the sending of reasonable evidence of the authority under which the appointment has been made, sent or supplied (which may include a copy of such authority certified notarially or in some other way approved by the board), to such address and by such time as may be specified in the request and, if the request is not complied with in any respect, the appointment may be treated as invalid.

**Validity of  
proxy  
appointment**

125. A proxy appointment which is not delivered or received in accordance with Article 123 shall be invalid. When two or more valid proxy appointments are delivered or received in respect of the same share for use at the same meeting, the one that was last delivered or received shall be treated as replacing or revoking the others as regards that share, provided that if the Company determines that it has insufficient evidence to decide whether or not a proxy appointment is in respect of the same share, it shall be entitled to determine which proxy appointment (if any) is to be treated as valid. Subject to the Companies Acts, the Company may determine at its discretion when a proxy appointment shall be treated as delivered or received for the purposes of these Articles.

**Rights of proxy**

126. A proxy appointment shall be deemed to entitle the proxy to exercise all or any of the appointing member's rights to attend and to speak and vote at a meeting of the Company in respect of the shares to which the proxy appointment relates. The proxy appointment shall, unless it provides to the contrary, be valid for any adjournment of the meeting as well as for the meeting to which it relates.

127. The Company shall not be required to check that a proxy or corporate representative votes in accordance with any instructions given by the member by



whom he is appointed. Any failure to vote as instructed shall not invalidate the proceedings on the resolution.

**Corporate  
representatives**

128. Any corporation which is a member of the Company (in this Article the *grantor*) may, by resolution of its directors or other governing body, authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the Company or at any separate meeting of the holders of any class of shares. A director, the secretary or other person authorised for the purpose by the secretary may require all or any of such persons to produce a certified copy of the resolution of authorisation before permitting him to exercise his powers. Such person is entitled to exercise (on behalf of the grantor) the same powers as the grantor could exercise if it were an individual member of the Company. Where a grantor authorises more than one person:

- (a) on a vote on a resolution on a show of hands at a meeting of the Company, each authorised person has the same voting rights as the grantor would be entitled to; and
- (b) where paragraph (a) does not apply and more than one authorised person purports to exercise a power in respect of the same shares:
  - (i) if they purport to exercise the power in the same way as each other, the power is treated as exercised in that way; and
  - (ii) if they do not purport to exercise the power in the same way as each other, the power is treated as not exercised.

**Revocation of  
authority**

129. The termination of the authority of a person to act as a proxy or duly authorised representative of a corporation does not affect:

- (a) whether he counts in deciding whether there is a quorum at a meeting;
- (b) the validity of anything he does as chairman of a meeting;
- (c) the validity of a poll demanded by him at a meeting; or
- (d) the validity of a vote given by that person,

unless notice of the termination was either delivered or received as mentioned in the following sentence at least three hours before the start of the relevant meeting or adjourned meeting or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll. Such notice of termination shall be either by means of a document in hard copy form delivered to the office or to such other place within the Federal Republic of Germany as may be specified by or on behalf of the Company in accordance with Article 123(a) or in electronic form received at the address (if any) specified by or on behalf of the Company in accordance with Article 123(b), regardless of whether any relevant proxy appointment was effected in hard copy form or in electronic form.

Verification  
procedures of  
proxies

130. From time to time the directors may (consistently with the Companies Acts and the Articles) make such regulations and establish such procedures as they consider appropriate to receive and verify the appointment or revocation of a proxy. Any such regulations may be general, or specific to a particular meeting. Without limitation, any such regulations may include provisions that the directors (or some person or persons appointed by them) may conclusively determine any matter or dispute relating to:

- (a) the appointment or revocation, or purported appointment or revocation, of a proxy; and/or
- (b) any instruction contained or allegedly contained in any such appointment,

and any such regulations may also include rebuttable or conclusive presumptions of any fact concerning those matters. The directors may from time to time modify or revoke any such regulations as they think fit, provided that no subsisting valid appointment or revocation of a proxy or any vote instruction shall thereby be rendered invalid.

Limitation of  
liabilities in  
connection with  
proxies

131. To the extent permitted by law, each of the directors, the secretary and each person employed or, directly or indirectly, retained or used by the Company in the processes of receiving and validating the appointment and revocation of proxies or otherwise dealing with CI Voting Instructions shall not be liable to any persons other than the Company in respect of any acts or omission (including negligence) occurring in the execution or purported execution of his tasks relating to such processes, provided that he shall have no such immunity in respect of any act done or omitted to be done in bad faith.

#### ESTABLISHMENT OF CI REGISTER; TREATMENT OF CI HOLDERS

Establishment of  
CI Register

132. The board shall establish and (for so long as the Company remains listed on the FSE) maintain the CI Register.

Legal  
framework  
governing CIs

133. For so long as the Company remains listed on the FSE, the provisions of these Articles and the Clearstream Rules shall govern the relationship between CI Holders and the Company. Notwithstanding any provisions of these Articles, the board shall be authorised to vary or depart from any provision of these Articles concerning the holding of CIs if and to the extent necessary to comply with the Clearstream Rules.

No recognition  
of trusts etc.

134. Except as required by law, no CI Holder shall be recognised by the Company as holding any interest in CIs upon any trust and the Company shall be entitled to treat any person entered in the CI Register as the only person (other than the Clearstream Nominee) who has any interest in the CIs standing to the name of that CI Holder.

#### NUMBER OF DIRECTORS

Limits on  
number of  
directors

135. Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall be not less than two but shall not be subject to any maximum in number, provided that at all times the majority of directors on the board must be EU Citizens (as defined in Article 44).

## APPOINTMENT AND RETIREMENT OF DIRECTORS

### Number of directors to retire

136. Any director who has at the start of the annual general meeting been in office for five years or more since his last appointment or re-appointment, shall retire at that annual general meeting save that, if more than one third of the board would be required to retire at the same general meeting, only such number as would amount to one third (or if their number is not three or a multiple of three, the number nearest to one-third) shall be required to retire. Subject to the provisions of the Companies Acts and these Articles, if more than one third of the directors are due to retire, the directors to retire shall be, first, those who wish to retire and not be re-appointed to office, and, second, those who have been longest in office since their last appointment or re-appointment. As between persons who became or were last re-appointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. The directors to retire on each occasion (both as to number and identity) shall be determined by the composition of the board at the date of the notice convening the annual general meeting. No director shall be required to retire or be relieved from retiring or be retired by reason of any change in the number or identity of the directors after the date of the notice but before the close of the meeting

### When director deemed to be re-appointed

137. If the Company does not fill the vacancy at the meeting at which a director retires, the retiring director shall, if willing to act, be deemed to have been re-appointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the re-appointment of the director is put to the meeting and lost.

### Eligibility for election

138. No person other than a director retiring by reason of Article 136 shall be appointed a director at any general meeting unless:

- (a) he is recommended by the board; or
- (b) not less than seven nor more than 42 days before the date appointed for the meeting, notice by a member qualified to vote at the meeting (not being the person to be proposed) has been received by the Company of the intention to propose that person for appointment stating the particulars which would, if he were so appointed, be required to be included in the Company's register of directors, together with notice by that person of his willingness to be appointed.

### Separate resolutions on appointment

139. Except as otherwise authorised by the Companies Acts, a motion for the appointment of two or more persons as directors by a single resolution shall not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.

### Additional powers of the Company

140. Subject as aforesaid, the Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director. The appointment of a person to fill a vacancy or as an additional director shall take effect from the end of the meeting.

**Appointment by board** 141. The board may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director and in either case whether or not for a fixed term. Irrespective of the terms of his appointment, a director so appointed shall hold office only until the first annual general meeting notice of which is first given after his appointment (unless his appointment has been approved at a general meeting held prior to the annual general meeting). If not re-appointed at the general meeting where his re-appointment is proposed, he shall vacate office at its conclusion.

**Position of retiring directors** 142. A director who retires at an annual general meeting may, if willing to act, be re-appointed. If he is not re-appointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so, until the end of the meeting.

**No share qualification** 143. A director shall not be required to hold any shares in the capital of the Company by way of qualification.

#### **ALTERNATE DIRECTORS**

**Power to appoint alternates** 144. Any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the board and willing to act, to be an alternate director, and may remove from office an alternate director so appointed by him, provided that, where a director is an EU Citizen (as defined in Article 44), such director can only appoint another EU Citizen to be an alternate director.

**Alternates entitled to receive notice** 145. An alternate director shall be entitled to receive notice of all meetings of the board and of all meetings of committees of the board of which his appointor is a member, to attend and vote at any such meeting at which his appointor is not personally present, and generally to perform all the functions of his appointor (except as regards power to appoint an alternate) as a director in his absence. It shall not be necessary to send notice of such a meeting to an alternate director who is absent from the Federal Republic of Germany.

**Alternates representing more than one director** 146. A director or any other person may act as alternate director to represent more than one director, provided that, where a director is an EU Citizen (as defined in Article 44), such director can only be represented by another EU Citizen, and any such alternate director shall be entitled at meetings of the board or any committee of the board to one vote for every director whom he represents (and who is not present) in addition to his own vote (if any) as a director, but he shall count as only one for the purpose of determining whether a quorum is present.

**Expenses and remuneration of alternates** 147. An alternate director may be repaid by the Company such expenses as might properly have been repaid to him if he had been a director but shall not be entitled to receive any remuneration from the Company in respect of his services as an alternate director except such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice to the Company from time to time direct. An alternate director shall be entitled to be indemnified by the Company to the same extent as if he were a director.

**Termination of appointment** 148. An alternate director shall cease to be an alternate director:

- (a) if his appointor ceases to be a director; but, if a director retires but is re-appointed or deemed to have been re-appointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his re-appointment; or
- (b) on the happening of any event which, if he were a director, would cause him to vacate his office as director; or
- (c) if he resigns his office by notice to the Company.

Method of  
appointment  
and revocation

149. Any appointment or removal of an alternate director shall be by notice to the Company by the director making or revoking the appointment and shall take effect in accordance with the terms of the notice (subject to any approval required by Article 144) on receipt of such notice by the Company which shall, be in hard copy form or in electronic form sent to such address (if any) for the time being specified by or on behalf of the Company for that purpose.

Alternate not an  
agent of  
appointor

150. Except as otherwise expressly provided in these Articles, an alternate director shall be deemed for all purposes to be a director. Accordingly, except where the context otherwise requires, a reference to a director shall be deemed to include a reference to an alternate director. An alternate director shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

#### POWERS OF THE BOARD

Business to be  
managed by  
board

151. Subject to the provisions of the Act and these Articles and to any directions given by special resolution, the business of the Company shall be managed by the board which may pay all expenses incurred in forming and registering the Company and may exercise all the powers of the Company, including without limitation the power to dispose of all or any part of the undertaking of the Company. No alteration of the Articles and no such direction shall invalidate any prior act of the board which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the board by these Articles. A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.

Exercise by  
Company of  
voting rights

152. The board may exercise the voting power conferred by the shares in any body corporate held or owned by the Company in such manner in all respects as it thinks fit (including without limitation the exercise of that power in favour of any resolution appointing its members or any of them directors of such body corporate, or voting or providing for the payment of remuneration to the directors of such body corporate).

#### DELEGATION OF POWERS OF THE BOARD

Committees of  
the board

153. The board may delegate any of its powers to any committee consisting of one or more directors. The board may also delegate to any director holding any executive office such of its powers as the board considers desirable to be exercised by him. Any such delegation shall, in the absence of express provision to the contrary in the terms

of delegation, be deemed to include authority to sub-delegate to one or more directors (whether or not acting as a committee) or to any employee or agent of the Company all or any of the powers delegated and may be made subject to such conditions as the board may specify, and may be revoked or altered. The board may co-opt on to any such committee persons other than directors, who may enjoy voting rights in the committee.

Subject to any conditions imposed by the board, the proceedings of a committee with two or more members shall be governed by these Articles regulating the proceedings of directors so far as they are capable of applying.

Local boards  
etc.

154. The board may establish local or divisional boards or agencies for managing any of the affairs of the Company, either in the Federal Republic of Germany or elsewhere, and may appoint any persons to be members of the local or divisional boards, or any managers or agents, and may fix their remuneration. The board may delegate to any local or divisional board, manager or agent any of the powers, authorities and discretions vested in or exercisable by the board, with power to sub-delegate, and may authorise the members of any local or divisional board, or any of them, to fill any vacancies and to act notwithstanding vacancies. Any appointment or delegation made pursuant to this Article may be made on such terms and subject to such conditions as the board may decide. The board may remove any person so appointed and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation shall be affected by it.

Agents

155. The board may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in the board) and on such conditions as the board determines, including without limitation authority for the agent to delegate all or any of his powers, authorities and discretions, and may revoke or vary such delegation.

Offices  
including title  
"director"

156. The board may appoint any person to any office or employment having a designation or title including the word "director" or attach to any existing office or employment with the Company such a designation or title and may terminate any such appointment or the use of any such designation or title. The inclusion of the word "director" in the designation or title of any such office or employment shall not imply that the holder is a director of the Company, and the holder shall not thereby be empowered in any respect to act as, or be deemed to be, a director of the Company for any of the purposes of these Articles.

#### **BORROWING POWERS**

Power to  
borrow

157. The board may exercise all the powers of the Company to borrow money, to guarantee, to indemnify, to mortgage or charge its undertaking, property, assets (present and future) and uncalled capital, and to issue debentures and other securities whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

## DISQUALIFICATION AND REMOVAL OF DIRECTORS

### Disqualification as a director

158. A person ceases to be a director as soon as:
- (a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;
  - (b) a bankruptcy order is made against that person;
  - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - (d) he becomes insolvent (unable to pay his debts as they become due), threatens to become insolvent or makes any arrangement or composition with his creditors generally or shall apply to the court for the commencement of insolvency proceedings pursuant to section 13 of the German Insolvency Act (*Insolvenzordnung*);
  - (e) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
  - (f) notification is received by the Company from the director that the director is resigning or retiring from office, and such resignation or retirement has taken effect in accordance with its terms, or his office as a director is vacated pursuant to Article 141;
  - (g) that person has been absent for more than six consecutive months without permission of the board from meetings of the board held during that period and his alternate director (if any) has not attended in his place during that period and the board resolves that his office be vacated; or
  - (h) that person receives notice signed by not less than three quarters of the other directors stating that that person should cease to be a director. In calculating the number of directors who are required to give such notice to the director, (i) an alternate director appointed by him acting in his capacity as such shall be excluded; and (ii) a director and any alternate director appointed by him and acting in his capacity as such shall constitute a single director for this purpose, so that notice by either shall be sufficient.

### Power of Company to remove director

159. The Company may, without prejudice to the provisions of the Companies Acts, by ordinary resolution remove any director from office (notwithstanding any provision of these Articles or of any agreement between the Company and such director, but without prejudice to any claim he may have for damages for breach of any such agreement). No special notice need be given of any resolution to remove a director in accordance with this Article and no director proposed to be removed in accordance with this Article has any special right to protest against his removal. The Company may, by ordinary resolution, appoint another person in place of a director removed from office in accordance with this Article. In default of such appointment

the vacancy arising on the removal of a director from office may be filled as a casual vacancy.

#### **NON-EXECUTIVE DIRECTORS**

**Arrangements  
with non-  
executive  
directors**

160. Subject to the provisions of the Companies Acts, the board may enter into, vary and terminate an agreement or arrangement with any director who does not hold executive office for the provision of his services to the Company. Subject to Article 161 and 162, any such agreement or arrangement may be made on such terms as the board determines.

**Ordinary  
remuneration**

161. The ordinary remuneration of the directors who do not hold executive office for their services (excluding amounts payable under any other provision of these Articles) shall not exceed in aggregate €750,000 per annum or such higher amount as the Company may from time to time by ordinary resolution determine. Subject thereto, each such director shall be paid a fee for their services (which shall be deemed to accrue from day to day) at such rate as may from time to time be determined by the board.

**Additional  
remuneration  
for special  
services**

162. Any director who does not hold executive office and who performs special services which in the opinion of the board are outside the scope of the ordinary duties of a director, may (without prejudice to the provisions of Article 161) be paid such extra remuneration by way of additional fee, salary, commission or otherwise as the board may determine.

#### **DIRECTORS' EXPENSES**

**Directors may  
be paid expenses**

163. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of the board or committees of the board, general meetings or separate meetings of the holders of any class of shares or of debentures of the Company or otherwise in connection with the discharge of their duties.

#### **EXECUTIVE DIRECTORS**

**Appointment to  
executive office**

164. Subject to the provisions of the Companies Acts, the board may appoint one or more of its body to be the holder of any executive office (except that of auditor) in the Company and may enter into an agreement or arrangement with any such director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made on such terms, including without limitation terms as to remuneration, as the board determines. The board may revoke or vary any such appointment but without prejudice to any rights or claims which the person whose appointment is revoked or varied may have against the Company because of the revocation or variation.

**Termination of  
appointment to  
executive office**

165. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any rights or claims which he may have against the Company by reason of such cessation. A director appointed to an



executive office shall not cease to be a director merely because his appointment to such executive office terminates.

Emoluments to be determined by the board

166. The emoluments of any director holding executive office for his services as such shall be determined by the board, and may be of any description, including without limitation admission to, or continuance of, membership of any scheme (including any share acquisition scheme) or fund instituted or established or financed or contributed to by the Company for the provision of pensions, life assurance or other benefits for employees or their dependants, or the payment of a pension or other benefits to him or his dependants on or after retirement or death, apart from membership of any such scheme or fund.

#### DIRECTORS' INTERESTS

Authorisation under s175 of the Act

167. For the purposes of section 175 of the Act, the board may authorise any matter proposed to it in accordance with these Articles which would, if not so authorised, involve a breach of duty by a director under that section, including, without limitation, any matter which relates to a situation in which a director has, or can have, an interest which conflicts, or possibly may conflict, with the interests of the Company. Any such authorisation will be effective only if:

- (a) any requirement as to quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and
- (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

The board may (whether at the time of the giving of the authorisation or subsequently) make any such authorisation subject to any limits or conditions it expressly imposes but such authorisation is otherwise given to the fullest extent permitted. The board may vary or terminate any such authorisation at any time.

For the purposes of the Articles, a conflict of interest includes a conflict of interest and duty and a conflict of duties, and interest includes both direct and indirect interests.

Director may contract with the Company and hold other offices etc.

168. Provided that he has disclosed to the board the nature and extent of his interest (unless the circumstances referred to in section 177(5) or section 177(6) of the Act apply, in which case no such disclosure is required), a director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- (b) may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;

- (c) may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate:
  - (i) in which the Company is otherwise (directly or indirectly) interested as shareholder or otherwise; or
  - (ii) with which he has such a relationship at the request or direction of the Company.

**Remuneration, benefits etc.**

169. A director shall not, by reason of his office, be accountable to the Company for any remuneration or other benefit which he derives from any office or employment or from any transaction or arrangement or from any interest in any body corporate:

- (a) the acceptance, entry into or existence of which has been approved by the board pursuant to Article 167 (subject, in any such case, to any limits or conditions to which such approval was subject); or
- (b) which he is permitted to hold or enter into by virtue of paragraph (a), (b) or (c) of Article 168;

nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

**Notification of interests**

170. Any disclosure required by Article 168 may be made at a meeting of the board, by notice in writing or by general notice or otherwise in accordance with section 177 of the Act.

**Duty of confidentiality to another person**

171. A director shall be under no duty to the Company with respect to any information which he obtains or has obtained otherwise than as a director of the Company and in respect of which he owes a duty of confidentiality to another person. However, to the extent that his relationship with that other person gives rise to a conflict of interest or possible conflict of interest, this Article applies only if the existence of that relationship has been approved by the board pursuant to Article 167. In particular, the director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 of the Act because he fails:

- (a) to disclose any such information to the board or to any director or other officer or employee of the Company; and/or
- (b) to use or apply any such information in performing his duties as a director of the Company.

**Consequences of authorisation**

172. Where the existence of a director's relationship with another person has been approved by the board pursuant to Article 167 and his relationship with that person gives rise to a conflict of interest or possible conflict of interest, the director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 of the Act because he:

- (a) absents himself from meetings of the board at which any matter relating to the conflict of interest or possible conflict of interest will or may be discussed or from the discussion of any such matter at a meeting or otherwise; and/or
- (b) makes arrangements not to receive documents and information relating to any matter which gives rise to the conflict of interest or possible conflict of interest sent or supplied by the Company and/or for such documents and information to be received and read by a professional adviser,

for so long as he reasonably believes such conflict of interest or possible conflict of interest subsists.

Without  
prejudice to  
equitable  
principles or  
rule of law

173. The provisions of Articles 171 and 172 are without prejudice to any equitable principle or rule of law which may excuse the director from:

- (a) disclosing information, in circumstances where disclosure would otherwise be required under these Articles; or
- (b) attending meetings or discussions or receiving documents and information as referred to in Article 172, in circumstances where such attendance or receiving such documents and information would otherwise be required under these Articles.

#### GRATUITIES, PENSIONS AND INSURANCE

Gratuities and  
pensions

174. The board may (by establishment of, or maintenance of, schemes or otherwise) provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any past or present director or employee of the Company or any of its subsidiary undertakings or any body corporate associated with, or any business acquired by, any of them, and for any member of his family (including a spouse, a civil partner, a former spouse and a former civil partner) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

Insurance

175. Without prejudice to the provisions of Article 239, the board may exercise all the powers of the Company to purchase and maintain insurance for or for the benefit of any person who is or was:

- (a) a director, officer or employee of the Company, or any body which is or was the holding company or subsidiary undertaking of the Company, or in which the Company or such holding company or subsidiary undertaking has or had any interest (whether direct or indirect) or with which the Company or such holding company or subsidiary undertaking is or was in any way allied or associated; or
- (b) a trustee of any pension fund in which employees of the Company or any other body referred to in paragraph (a) of this Article are or have been interested,

including without limitation insurance against any liability incurred by such person in respect of any act or omission in the actual or purported execution or discharge of his duties or in the exercise or purported exercise of his powers or otherwise in relation to his duties, powers or offices in relation to the relevant body or fund.

Directors not  
liable to account

176. No director or former director shall be accountable to the Company or the members for any benefit provided pursuant to these Articles. The receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company.

Section 247 of  
the Act

177. The board may make provision for the benefit of any persons employed or formerly employed by the Company or any of its subsidiaries in connection with the cessation or the transfer of the whole or part of the undertaking of the Company or any subsidiary. Any such provision shall be made by a resolution of the board in accordance with section 247 of the Act.

#### PROCEEDINGS OF THE BOARD

Convening  
meetings

178. Subject to the provisions of these Articles, the board may regulate its proceedings as it thinks fit. A director may, and the secretary at the request of a director shall, call a meeting of the board by giving notice of the meeting to each director. Notice of a board meeting shall be deemed to be given to a director if it is given to him personally or by word of mouth or sent in hard copy form to him at his last known address or such other address (if any) as may for the time being be specified by him or on his behalf to the Company for that purpose, or in electronic form to such address (if any) for the time being specified by him or on his behalf to the Company for that purpose. A director absent or intending to be absent from the Federal Republic of Germany may request the board that notices of board meetings shall during his absence be sent in hard copy form or in electronic form to such address (if any) for the time being specified by him or on his behalf to the Company for that purpose, but such notices need not be sent any earlier than notices sent to directors not so absent and, if no such request is made to the board, it shall not be necessary to send notice of a board meeting to any director who is for the time being absent from the Federal Republic of Germany. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. Any director may waive notice of a meeting and any such waiver may be retrospective. Any notice pursuant to this Article need not be in writing if the board so determines and any such determination may be retrospective.

Central and  
Effective  
Management

179. The place of central and effective management of the Company is to be Berlin, Germany.

Quorum

180. The quorum for the transaction of the business of the board may be fixed by the board and unless so fixed at any other number shall be two. A person who holds office only as an alternate director may, if his appointor is not present, be counted in the quorum. Any director who ceases to be a director at a board meeting may continue to be present and to act as a director and be counted in the quorum until the termination of the board meeting if no director objects.

**Powers of directors if number falls below minimum**

181. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

**Chairman and deputy chairman**

182. The board may appoint one of their number to be the chairman of the board (provided such person is an EU Citizen (as defined in Article 44)), and one or more of their number to be a deputy chairman of the board (provided that, if only one director holds the office of deputy chairman at any given time, such person is an EU Citizen (as defined in Article 44) and provided that, if more than one director holds the office of deputy chairman at any given time, at least one of the directors holding such office is an EU Citizen (as defined in Article 44), and may at any time remove any of them from such office. Unless he is unwilling to do so, the director appointed as chairman, or in his stead the director appointed as deputy chairman, shall preside at every meeting of the board at which he is present. In the event the chairman does not preside at any such meeting and there is more than one deputy chairman, the deputy chairman with the longest tenure as deputy chairman shall preside. If neither the chairman nor the deputy chairman or, where there is more than one deputy chairman holding office, the deputy chairman with the longest tenure, is willing to preside or is present within five minutes after the time appointed for the meeting, then, if there is more than one deputy chairman holding office, any other deputy chairman holding office may preside and, if no deputy chairman is present and willing to preside, the directors present may appoint one of their number to be the chairman of the meeting.

**Validity of acts of the board**

183. All acts done by a meeting of the board, or of a committee of the board, or by a person acting as a director or alternate director, shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or any member of the committee or alternate director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or, as the case may be, an alternate director and had been entitled to vote.

**Resolutions in writing**

184. A resolution in writing agreed to by all those entitled to vote at a meeting of the board or of a committee of the board shall be as valid and effectual as if it had been passed at a meeting of the board or (as the case may be) a committee of the board duly convened and held.

For this purpose:

- (a) a director signifies his agreement to a proposed written resolution when the Company receives from him a document indicating his agreement to the resolution authenticated in the manner permitted by the Companies Acts for a document in the relevant form;
- (b) the director may send the document in hard copy form or in electronic form to such address (if any) for the time being specified by the Company for that purpose;

- (c) if an alternate director signifies his agreement to the proposed written resolution, his appointor need not also signify his agreement; and
- (d) if a director signifies his agreement to the proposed written resolution, an alternate director appointed by him need not also signify his agreement in that capacity.

Meetings by  
telephone etc.

185. Without prejudice to the first sentence of Article 178, a person entitled to be present at a meeting of the board or of a committee of the board shall be deemed to be present for all purposes if he is able (directly or by electronic means) to speak to and be heard by all those present or deemed to be present simultaneously. A director so deemed to be present shall be entitled to vote and be counted in a quorum accordingly. Such a meeting shall be deemed to take place where it is convened to be held or (if no director is present in that place) where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is (such location of the meeting to be at the discretion of the directors). The word *meeting* in these Articles shall be construed accordingly.

Directors'  
power to vote on  
contracts in  
which they are  
interested

186. Except as otherwise provided by these Articles, a director shall not vote at a meeting of the board or a committee of the board on any resolution of the board concerning a matter in which he has an interest (other than by virtue of his interests in shares or debentures or other securities of, or otherwise in or through, the Company) which can reasonably be regarded as likely to give rise to a conflict with the interests of the Company, unless his interest arises only because the resolution concerns one or more of the following matters:

- (a) the giving of a guarantee, security or indemnity in respect of money lent or obligations incurred by him or any other person at the request of or for the benefit of, the Company or any of its subsidiary undertakings;
- (b) the giving of a guarantee, security or indemnity in respect of a debt or obligation of the Company or any of its subsidiary undertakings for which the director has assumed responsibility (in whole or part and whether alone or jointly with others) under a guarantee or indemnity or by the giving of security;
- (c) a contract, arrangement, transaction or proposal concerning an offer of shares, debentures or other securities of the Company or any of its subsidiary undertakings for subscription or purchase, in which offer he is or may be entitled to participate as a holder of securities or in the underwriting or sub-underwriting of which he is to participate;
- (d) a contract, arrangement, transaction or proposal concerning any other body corporate in which he or any person connected with him is interested, directly or indirectly, and whether as an officer, shareholder, creditor or otherwise, if he and any persons connected with him do not to his knowledge hold an interest (as that term is used in sections 820 to 825 of the Act) representing one per cent. or more of either any class of the equity share capital (excluding

any shares of that class held as treasury shares) of such body corporate (or any other body corporate through which his interest is derived) or of the voting rights available to members of the relevant body corporate (any such interest being deemed for the purpose of this Article to be likely to give rise to a conflict with the interests of the Company in all circumstances);

- (e) a contract, arrangement, transaction or proposal for the benefit of employees of the Company or of any of its subsidiary undertakings which does not award him any privilege or benefit not generally accorded to the employees to whom the arrangement relates; and
- (f) a contract, arrangement, transaction or proposal concerning any insurance which the Company is empowered to purchase or maintain for, or for the benefit of, any directors of the Company or for persons who include directors of the Company.

For the purposes of this Article, 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.

187. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these Articles prohibiting a director from voting at a meeting of the board or of a committee of the board.

**Division of proposals**

188. Where proposals are under consideration concerning the appointment (including without limitation fixing or varying the terms of appointment) of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each director separately. In such cases each of the directors concerned shall be entitled to vote in respect of each resolution except that concerning his own appointment.

**Decision of chairman final and conclusive**

189. If a question arises at a meeting of the board or of a committee of the board as to the entitlement of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive except in a case where the nature or extent of the interests of the director concerned have not been fairly disclosed. If any such question arises in respect of the chairman of the meeting, it shall be decided by resolution of the board (on which the chairman shall not vote) and such resolution will be final and conclusive except in a case where the nature and extent of the interests of the chairman have not been fairly disclosed.

**SECRETARY**

**Appointment and removal of secretary**

190. Subject to the provisions of the Companies Acts, the secretary shall be appointed by the board for such term, at such remuneration and on such conditions as it may think fit. Any secretary so appointed may be removed by the board, but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

## MINUTES

Minutes  
required to be  
kept

191. The board shall cause minutes to be recorded for the purpose of:
- (a) all appointments of officers made by the board; and
  - (b) all proceedings at meetings of the Company, the holders of any class of shares in the capital of the Company, the board and committees of the board, including the names of the directors present at each such meeting.

Conclusiveness  
of minutes

192. Any such minutes, if purporting to be authenticated by the chairman of the meeting to which they relate or of the next meeting, shall be sufficient evidence of the proceedings at the meeting without any further proof of the facts stated in them.

## THE SEAL

Authority  
required for  
execution of  
deed

193. The seal shall only be used by the authority of a resolution of the board. The board may determine who shall sign any document executed under the seal. If they do not, it shall be signed by at least one director and the secretary or by at least two directors. Any document may be executed under the seal by impressing the seal by mechanical means or by printing the seal or a facsimile of it on the document or by applying the seal or a facsimile of it by any other means to the document. A document executed, with the authority of a resolution of the board, by a director and the secretary or by two directors or by a director in the presence of a witness who attests the signature and expressed (in whatever form of words) to be executed by the Company has the same effect as if executed under the seal. For the purpose of the preceding sentence only, "secretary" shall have the same meaning as in the Act and not the meaning given to it by Article 2.

Certificates for  
shares and  
debentures

194. The board may by resolution determine either generally or in any particular case that any certificate for shares or debentures or representing any other form of security may have any signature affixed to it by some mechanical or electronic means, or printed on it or, in the case of a certificate executed under the seal, need not bear any signature.

## REGISTERS

Overseas and  
local registers

195. Subject to the provisions of the Companies Acts, the Company may keep an overseas or local or other register of members in any place, and the board may make, amend and revoke any regulations it thinks fit about the keeping of that register of members.

Authentication  
and certification  
of copies and  
extracts

196. Any director or the secretary or any other person appointed by the board for the purpose shall have power to authenticate and certify as true copies of and extracts from:
- (a) any document comprising or affecting the constitution of the Company, whether in hard copy form or electronic form;



- (b) any resolution passed by the Company, the holders of any class of shares in the capital of the Company, the board or any committee of the board, whether in hard copy form or electronic form; and
- (c) any book, record and document relating to the business of the Company, whether in hard copy form or electronic form (including without limitation the accounts).

If certified in this way, a document purporting to be a copy of a resolution, or the minutes or an extract from the minutes of a meeting of the Company, the holders of any class of shares in the capital of the Company, the board or a committee of the board, whether in hard copy form or electronic form, shall be conclusive evidence in favour of all persons dealing with the Company in reliance on it or them that the resolution was duly passed or that the minutes are, or the extract from the minutes is, a true and accurate record of proceedings at a duly constituted meeting.

#### **DIVIDENDS**

**Declaration of dividends**

197. Subject to the provisions of the Companies Acts, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the board.

**Interim dividends**

198. Subject to the provisions of the Companies Acts, the board may pay interim dividends if it appears to the board that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the board may:

- (a) pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividends as well as on shares which confer preferential rights with regard to dividends, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear; and
- (b) pay at intervals settled by it any dividend payable at a fixed rate if it appears to the board that the profits available for distribution justify the payment.

If the board acts in good faith it shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

**Declaration and payment in different currencies**

199. Dividends may be declared and paid in any currency or currencies that the board shall determine. The board may also determine the exchange rate and the relevant date for determining the value of the dividend in any currency.

**Apportionment of dividends**

200. Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid; but no amount paid on a share in advance of the date on which a call is payable shall be treated for the purpose of this Article as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is

paid; but, if any share is allotted or issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

**Dividends in specie**

201. A general meeting declaring a dividend may, on the recommendation of the board, by ordinary resolution direct that it shall be satisfied wholly or partly by the distribution of assets, including without limitation paid up shares or debentures of another body corporate. The board may make any arrangements it thinks fit to settle any difficulty arising in connection with the distribution, including without limitation (a) the fixing of the value for distribution of any assets, (b) the payment of cash to any member on the basis of that value in order to adjust the rights of members, and (c) the vesting of any asset in a trustee.

**Scrip dividends: authorising resolution**

202. The board may, if authorised by an ordinary resolution of the Company (the **Resolution**), offer any holder of shares the right to elect to receive shares, credited as fully paid, instead of cash in respect of the whole (or some part, to be determined by the board) of all or any dividend specified by the Resolution. The offer shall be on the terms and conditions and be made in the manner specified in Article 203 or, subject to those provisions, specified in the Resolution.

**Scrip dividends: procedures**

203. The following provisions shall apply to the Resolution and any offer made pursuant to it and Article 202.

- (a) The Resolution may specify a particular dividend, or may specify all or any dividends declared within a specified period.
- (b) Each holder of shares shall be entitled to that number of new shares as are together as nearly as possible equal in value to (but not greater than) the cash amount (disregarding any tax credit) of the dividend that such holder elects to forgo (each a **new share**). For this purpose, the value of each new share shall be:
  - (i) equal to the **average quotation** for the Company's ordinary shares, that is, the average of the middle market quotations for those shares on the Frankfurt Stock Exchange on the day on which such shares are first quoted *ex* the relevant dividend and the four subsequent dealing days; or
  - (ii) calculated in any other manner specified by the Resolution,

but shall never be less than the par value of the new share.

A certificate or report by the auditors as to the value of a new share in respect of any dividend shall be conclusive evidence of that value.

- (c) On or as soon as practicable after announcing that any dividend is to be declared or recommended, the board, if it intends to offer an election in respect of that dividend, shall also announce that intention. If, after determining the basis of allotment, the board decides to proceed with the offer, it shall notify the holders of shares of the terms and conditions of the right of election offered to them, specifying the procedure to be followed and place at

which, and the latest time by which, elections or notices amending or terminating existing elections must be delivered in order to be effective.

- (d) The board shall not proceed with any election unless the board has authority to allot shares and sufficient reserves or funds that may be appropriated to give effect to it after the basis of allotment is determined.
- (e) The board may exclude from any offer any holders of shares where the board believes the making of the offer to them would or might involve the contravention of the laws of any territory or that for any other reason the offer should not be made to them.
- (f) The dividend (or that part of the dividend in respect of which a right of election has been offered) shall not be payable in cash on shares in respect of which an election has been made (the *elected shares*) and instead such number of new shares shall be allotted to each holder of elected shares as is arrived at on the basis stated in paragraph (b) of this Article. For that purpose the board shall appropriate out of any amount for the time being standing to the credit of any reserve or fund (including without limitation the profit and loss account), whether or not it is available for distribution, a sum equal to the aggregate nominal amount of the new shares to be allotted and apply it in paying up in full the appropriate number of new shares for allotment and distribution to each holder of elected shares as is arrived at on the basis stated in paragraph (b) of this Article.
- (g) The new shares when allotted shall rank equally in all respects with the fully paid shares of the same class then in issue except that they shall not be entitled to participate in the relevant dividend.
- (h) No fraction of a share shall be allotted. The board may make such provision as it thinks fit for any fractional entitlements including without limitation payment in cash to holders in respect of their fractional entitlements, provision for the accrual, retention or accumulation of all or part of the benefit of fractional entitlements to or by the Company or to or by or on behalf of any holder or the application of any accrual, retention or accumulation to the allotment of fully paid shares to any holder.
- (i) The board may do all acts and things it considers necessary or expedient to give effect to the allotment and issue of any share pursuant to this Article or otherwise in connection with any offer made pursuant to this Article and may authorise any person, acting on behalf of the holders concerned, to enter into an agreement with the Company providing for such allotment or issue and incidental matters. Any agreement made under such authority shall be effective and binding on all concerned.
- (j) The board may, at its discretion, amend, suspend or terminate any offer pursuant to this Article.

**Permitted deductions and retentions**

204. The board may deduct from any dividend or other moneys payable to any member in respect of a share any moneys presently payable by him to the Company in respect of that share. Where a person is entitled by transmission to a share, the board may retain any dividend payable in respect of that share until that person (or that person's transferee) becomes the holder of that share.

**Procedure for payment to holders and others entitled**

205. Any dividend or other moneys payable in respect of a share may be paid:

- (a) in cash; or
- (b) by cheque or warrant made payable to or to the order of the holder or person entitled to payment; or
- (c) by any direct debit, bank or other funds transfer system to the holder or person entitled to payment or, if practicable, to a person designated by notice to the Company by the holder or person entitled to payment; or
- (d) by any other method approved by the board and agreed (in such form as the Company thinks appropriate) by the holder or person entitled to payment.

**Joint entitlement**

206. If two or more persons are registered as joint holders of any share, or are entitled by transmission jointly to a share, the Company may:

- (a) pay any dividend or other moneys payable in respect of the share to any one of them and any one of them may give effectual receipt for that payment; and
- (b) for the purpose of Article 205, rely in relation to the share on the written direction, designation or agreement of, or notice to the Company by, any one of them.

**Payment by post**

207. A cheque or warrant may be sent by post:

- (a) where a share is held by a sole holder, to the registered address of the holder of the share; or
- (b) if two or more persons are the holders, to the registered address of the person who is first named in the Register; or
- (c) if a person is entitled by transmission to the share, as if it were a notice to be sent under Article 223; or
- (d) in any case, to such person and to such address as the person entitled to payment may direct by notice to the Company.

**Discharge to Company and risk**

208. Payment of a cheque or warrant by the bank on which it was drawn or the transfer of funds by the bank instructed to make the transfer shall be a good discharge to the Company. Every cheque or warrant sent or transfer of funds made by the relevant bank in accordance with these Articles shall be at the risk of the holder or person entitled. The Company shall have no responsibility for any sums lost or delayed in the course of payment by any method used by the Company in accordance with Article 205.

Interest not payable

209. No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

Forfeiture of unclaimed dividends

210. Any dividend which has remained unclaimed for 12 years from the date when it became due for payment shall, if the board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other moneys payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect of it. The Company shall be entitled to cease sending dividend warrants and cheques by post or otherwise to a member if those instruments have been returned undelivered to, or left uncashed by, that member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the member's new address. The entitlement conferred on the Company by this Article in respect of any member shall cease if the member claims a dividend or cashes a dividend warrant or cheque.

#### CAPITALISATION OF PROFITS AND RESERVES

Power to capitalise

211. The board may with the authority of an ordinary resolution of the Company:
- (a) subject to the provisions of this Article, resolve to capitalise any undistributed profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or other fund, including without limitation the Company's share premium account and capital redemption reserve, if any;
  - (b) appropriate the sum resolved to be capitalised to the members or any class of members on the record date specified in the relevant resolution who would have been entitled to it if it were distributed by way of dividend and in the same proportions;
  - (c) apply that sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full shares, debentures or other obligations of the Company of a nominal amount equal to that sum but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this Article, only be applied in paying up shares to be allotted to members credited as fully paid;
  - (d) allot the shares, debentures or other obligations credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other;
  - (e) where shares or debentures become, or would otherwise become, distributable under this Article in fractions, make such provision as they think fit for any fractional entitlements including without limitation authorising their sale and transfer to any person, resolving that the distribution be made as nearly as practicable in the correct proportion but not exactly so, ignoring fractions altogether or resolving that cash payments be made to any members in order to adjust the rights of all parties;

(f) authorise any person to enter into an agreement with the Company on behalf of all the members concerned providing for either:

- (i) the allotment to the members respectively, credited as fully paid, of any shares, debentures or other obligations to which they are entitled on the capitalisation; or
- (ii) the payment up by the Company on behalf of the members of the amounts, or any part of the amounts, remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under that authority shall be binding on all such members;

(g) generally do all acts and things required to give effect to the ordinary resolution; and

(h) for the purposes of this Article, unless the relevant resolution provides otherwise, if the Company holds treasury shares of the relevant class at the record date specified in the relevant resolution, it shall be treated as if it were entitled to receive the dividends in respect of those treasury shares which would have been payable if those treasury shares had been held by a person other than the Company.

#### **RECORD DATES**

Record dates for dividends etc.

212. Notwithstanding any other provision of these Articles, the Company or the board may fix any date as the record date for any dividend, distribution, allotment or issue, which may be on or at any time before or after any date on which the dividend, distribution, allotment or issue is declared, paid or made.

#### **ACCOUNTS**

Rights to inspect records

213. No member shall (as such) have any right to inspect any accounting records or other book or document of the Company except as conferred by statute or authorised by the board or by ordinary resolution of the Company or order of a court of competent jurisdiction.

Sending of annual accounts

214. Subject to the Companies Acts, a copy of the Company's annual accounts and reports for that financial year shall, at least 21 clear days before the date of the meeting at which copies of those documents are to be laid in accordance with the provisions of the Companies Acts, be sent to every member and to every holder of the Company's debentures, and to every other person who is entitled to receive notice of meetings from the Company under the provisions of the Companies Acts or of these Articles or, in the case of joint holders of any share or debenture, to one of the joint holders. Copies need not be sent to a person for whom the Company does not have a current address.

Strategic report  
and  
supplementary  
material

215. Subject to the Companies Acts, the requirements of Article 214 shall be deemed satisfied in relation to any person by sending to the person, instead of such copies, a *strategic report with supplementary material, which shall be in the form and containing the information prescribed by the Companies Acts and any regulations made under the Companies Acts.*

## COMMUNICATIONS

When notice  
required to be in  
writing

216. Any notice to be sent to or by any person pursuant to these Articles (other than a notice calling a meeting of the board) shall be in writing.

Methods of  
Company  
sending notice

217. Subject to Article 216 and unless otherwise provided by these Articles, the Company shall send or supply a document or information that is required or authorised to be sent or supplied to a member or any other person by the Company by a provision of the Companies Acts or pursuant to these Articles or to any other rules or regulations to which the Company may be subject in such form and by such means as it may in its absolute discretion determine provided that the provisions of the Act which apply to sending or supplying a document or information required or authorised to be sent or supplied by the Companies Acts shall, the necessary changes having been made, also apply to sending or supplying any document or information required or authorised to be sent by these Articles or any other rules or regulations to which the Company may be subject.

Methods of  
member etc.  
sending  
document or  
information

218. Subject to Article 216 and unless otherwise provided by these Articles, a member or a person entitled by transmission to a share shall send a document or information pursuant to these Articles to the Company in such form and by such means as it may in its absolute discretion determine provided that:

- (a) the determined form and means are permitted by the Companies Acts for the purpose of sending or supplying a document or information of that type to a company pursuant to a provision of the Companies Acts; and
- (b) unless the board otherwise permits, any applicable condition or limitation specified in the Companies Acts, including without limitation as to the address to which the document or information may be sent, is satisfied.

Unless otherwise provided by these Articles or required by the board, such document or information shall be authenticated in the manner specified by the Companies Acts *for authentication of a document or information sent in the relevant form.*

Notice to joint  
holders

219. In the case of joint holders of a share, any document or information shall be sent to the joint holder whose name stands first in the Register in respect of the joint holding and any document or information so sent shall be deemed for all purposes sent to all the joint holders.

Registered  
address outside  
EEA

220. A member whose registered address is not within an EEA State and who sends to the Company an address within an EEA State at which a document or information may be sent to him shall be entitled to have the document or information sent to him at that address (provided that, in the case of a document or information sent by electronic means, including without limitation any notification required by the

Companies Acts that the document or information is available on a website, the Company so agrees, which agreement the Company shall be entitled to withhold in its absolute discretion including, without limitation, in circumstances in which the Company considers that the sending of the document or information to such address using electronic means would or might infringe the laws of any other jurisdiction) but otherwise:

- (a) no such member shall be entitled to receive any document or information from the Company; and
- (b) without prejudice to the generality of the foregoing, any notice of a general meeting of the Company which is in fact sent or purports to be sent to such member shall be ignored for the purpose of determining the validity of the proceedings at such general meeting.

**Deemed receipt of notice**

221. A member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the capital of the Company shall be deemed to have been sent notice of the meeting and, where requisite, of the purposes for which it was called.

**Terms and conditions for electronic communications**

222. The board may from time to time issue, endorse or adopt terms and conditions relating to the use of electronic means for the sending of notices, other documents and proxy appointments by the Company to members or persons entitled by transmission and by members or persons entitled by transmission to the Company.

**Notice to persons entitled by transmission**

223. A document or information may be sent or supplied by the Company to the person or persons entitled by transmission to a share by sending it in any manner the Company may choose authorised by these Articles for the sending of a document or information to a member, addressed to them by name, or by the title of representative of the deceased, or trustee of the bankrupt or by any similar description at the address (if any) in the Federal Republic of Germany as may be supplied for that purpose by or on behalf of the person or persons claiming to be so entitled. Until such an address has been supplied, a document or information may be sent in any manner in which it might have been sent if the death or bankruptcy or other event giving rise to the transmission had not occurred.

**Transferees etc. bound by prior notice**

224. Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the Register, has been sent to a person from whom he derives his title, provided that no person who becomes entitled by transmission to a share shall be bound by any direction notice sent under Article 103 to a person from whom he derives his title.

**Proof of sending/when notices etc. deemed received by post**

225. Proof that a document or information was properly addressed, prepaid and posted shall be conclusive evidence that the document or information was sent or supplied. A document or information sent by the Company to a member by post shall be deemed to have been received:

- (a) if sent by special delivery post from an address in the Federal Republic of Germany or another country to another address in the Federal Republic of



Germany or, as the case may be, that other country, on the day following that on which the document or information was posted;

- (b) if sent by airmail from an address in the Federal Republic of Germany to an address outside the Federal Republic of Germany, or from an address in another country to an address outside that country (including without limitation an address in the Federal Republic of Germany), on the third day following that on which the document or information was posted; and
- (c) in any other case, on the second day following that on which the document or information containing it was posted.

When notices  
etc. deemed sent  
by hand

226. A document or information sent by the Company to a member by hand shall be deemed to have been received by the member when it is handed to the member or left at his registered address or an address notified to the Company in accordance with Article 196.

Proof of  
sending/when  
notices etc.  
deemed sent by  
electronic means

227. Proof that a document or information sent or supplied by electronic means was properly addressed shall be conclusive evidence that the document or information was sent or supplied. A document or information sent or supplied by the Company to a member in electronic form shall be deemed to have been received by the member on the day following that on which the document or information was sent to the member. Such document or information shall be deemed to have been received by the member on that day notwithstanding that the Company becomes aware that the member has failed to receive the relevant document or information for any reason and notwithstanding that the Company subsequently sends a hard copy of such document or information by post to the member.

When notices  
etc. deemed sent  
by website

228. A document or information sent or supplied by the Company to a member by means of a website shall be deemed to have been received by the member:

- (a) when the document or information was first made available on the website; or
- (b) if later, when the member is deemed by Article 225, 226 or 227 to have received notice of the fact that the document or information was available on the website. Such a document or information shall be deemed received by the member on that day notwithstanding that the Company becomes aware that the member has failed to receive the relevant document or information for any reason and notwithstanding that the Company subsequently sends a hard copy of such document or information by post to the member.

No entitlement  
to receive notice  
etc if Company  
has no current  
address

229. A member shall not be entitled to receive any document or information that is required or authorised to be sent or supplied to him by the Company by a provision of the Companies Acts or pursuant to these Articles or to any other rules or regulations to which the Company may be subject if documents or information sent or supplied to that member by post in accordance with the Articles have been returned undelivered to the Company:

- (a) on at least two consecutive occasions; or

- (b) on one occasion and reasonable enquiries have failed to establish the member's address.

Without prejudice to the generality of the foregoing, any notice of a general meeting of the Company which is in fact sent or purports to be sent to such member shall be ignored for the purpose of determining the validity of the proceedings at such general meeting.

Subject to Article 220, a member to whom this Article applies shall become entitled to receive such documents or information when he has given the Company an address to which they may be sent or supplied.

Notice during  
disruption of  
services

230. Subject to the Companies Acts, if at any time the Company is unable effectively to convene a general meeting by notices sent through the post in the Federal Republic of Germany as a result of the suspension or curtailment of postal services, notice of general meeting may be sufficiently given by advertisement in the Federal Republic of Germany. Any notice given by advertisement for the purpose of this Article shall be advertised in at least one newspaper having a national circulation. If advertised in more than one newspaper, the advertisements shall appear on the same date. Such notice shall be deemed to have been sent to all persons who are entitled to have notice of meetings sent to them on the day when the advertisement appears. In any such case, the Company shall send confirmatory copies of the notice by post, if at least seven days before the meeting the posting of notices to addresses throughout the Federal Republic of Germany again becomes practicable.

#### DESTRUCTION OF DOCUMENTS

Power of  
Company to  
destroy  
documents

231. The Company shall be entitled to destroy:

- (a) all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entry is made in the Register, at any time after the expiration of six years from the date of registration;
- (b) all dividend mandates, variations or cancellations of dividend mandates, and notifications of change of address at any time after the expiration of two years from the date of recording;
- (c) all share certificates which have been cancelled at any time after the expiration of one year from the date of the cancellation;
- (d) all paid dividend warrants and cheques at any time after the expiration of one year from the date of actual payment;
- (e) all proxy appointments which have been used for the purpose of a poll at any time after the expiration of one year from the date of use; and
- (f) all proxy appointments which have not been used for the purpose of a poll at any time after one month from the end of the meeting to which the proxy appointment relates and at which no poll was demanded.

Presumption in relation to destroyed documents

232. It shall conclusively be presumed in favour of the Company that:
- (a) every entry in the Register purporting to have been made on the basis of an instrument of transfer or other document destroyed in accordance with Article 231 was duly and properly made;
  - (b) every instrument of transfer destroyed in accordance with Article 231 was a valid and effective instrument duly and properly registered;
  - (c) every share certificate destroyed in accordance with Article 231 was a valid and effective certificate duly and properly cancelled; and
  - (d) every other document destroyed in accordance with Article 231 was a valid and effective document in accordance with its recorded particulars in the books or records of the Company,

but:

- (e) the provisions of this Article and Article 231 apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties) to which the document might be relevant;
- (f) nothing in this Article or Article 231 shall be construed as imposing on the Company any liability in respect of the destruction of any document earlier than the time specified in Article 231 or in any other circumstances which would not attach to the Company in the absence of this Article or Article 231; and
- (g) any reference in this Article or Article 231 to the destruction of any document includes a reference to its disposal in any manner.

#### UNTRACED SHAREHOLDERS

Power to dispose of shares of untraced shareholders

233. The Company shall be entitled to sell, at the best price reasonably obtainable, the shares of a member or the shares to which a person is entitled by transmission if:
- (a) during the period of 12 years before the date of the publication of the advertisements referred to in paragraph (b) of this Article (or, if published on different dates, the first date) (the *relevant period*) at least three dividends in respect of the shares in question have been declared and all dividend warrants and cheques which have been sent in the manner authorised by these Articles in respect of the shares in question have remained uncashed;
  - (b) the Company shall as soon as practicable after expiry of the relevant period have inserted advertisements both in a national daily newspaper and in a newspaper circulating in the area of the last known address of such member or other person giving notice of its intention to sell the shares; and
  - (c) during the relevant period and the period of three months following the publication of the advertisements referred to in paragraph (b) of this Article

(or, if published on different dates, the first date) the Company has received no indication either of the whereabouts or of the existence of such member or person.

**Transfer on sale** 234. To give effect to any sale pursuant to Article 233, the board may authorise any person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the buyer.

**Effectiveness of transfer** 235. An instrument of transfer executed by that person in accordance with Article 234 shall be as effective as if it had been executed by the holder of, or person entitled by transmission to, the shares. The transferee shall not be bound to see to the application of the purchase money, and his title to the shares shall not be affected by any irregularity in, or invalidity of, the proceedings in reference to the sale.

**Proceeds of sale** 236. The net proceeds of sale shall belong to the Company which shall be obliged to account to the former member or other person previously entitled for an amount equal to the proceeds. The Company shall enter the name of such former member or other person in the books of the Company as a creditor for that amount. In relation to the debt, no trust is created and no interest is payable. The Company shall not be required to account for any money earned on the net proceeds of sale, which may be used in the Company's business or invested in such a way as the board from time to time thinks fit.

#### WINDING UP

**Liquidator may distribute in specie** 237. If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Insolvency Act 1986:

- (a) divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members;
- (b) vest the whole or any part of the assets in trustees for the benefit of the members; and
- (c) determine the scope and terms of those trusts,

but no member shall be compelled to accept any asset on which there is a liability.

**Disposal of assets by liquidator** 238. The power of sale of a liquidator shall include a power to sell wholly or partially for shares or debentures or other obligations of another body corporate, either then already constituted or about to be constituted for the purpose of carrying out the sale.

## INDEMNITY

Indemnity to  
directors and  
officers

239. Subject to the provisions of the Companies Acts, but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every director or other officer of the Company (other than any person (whether an officer or not) engaged by the Company as auditor) shall be indemnified out of the assets of the Company against any liability incurred by him for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company, provided that this Article 239 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Article 239, or any element of it, to be treated as void under the Act or otherwise under the Companies Acts.

**COMPANY NO. 5643814**

**COMPANIES ACT 2006**

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**A PUBLIC COMPANY LIMITED BY SHARES**

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**ARTICLES OF ASSOCIATION**

**OF**

**AIR BERLIN PLC**

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