

## THE COMPANIES ACT 1985

## PRIVATE COMPANY LIMITED BY SHARES

## ARTICLES OF ASSOCIATION

(As adopted on the 20<sup>th</sup> day of September 2009)

OF

**SAKS HEXHAM LTD.****PRELIMINARY**

A54

25/09/2009

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COMPANIES HOUSE

1. The Regulations contained in Table A in the Schedule to the Companies (Tables A-F) Regulations 1985 ("Table A") (as amended by SI 2007/2541 and SI 2007/2826 and the Companies Act 1985 (Electronic Communications) Order 2000) shall apply to the Company save insofar as they are excluded or varied hereby: that is to say Regulations 2, 3, 8, 12, 23, 24, 31, 35, 38, 41, 45, 62, 67, 76, 77, 78, 79, 81, 84, 85, 86, 93, 94, 95, 96, 97, 98, 101 and 118 of Table A shall not apply to the Company. In addition to the remaining Regulations of Table A, as varied hereby, the following shall be the Articles of the Company.
2. The Company is a private company and accordingly no offer shall be made to the public (whether for cash or otherwise) of any shares in or debentures of the Company and no allotment or agreement to allot (whether for cash or otherwise) shall be made of any shares in or debentures of the Company with a view to all or any of those shares or debentures being offered for sale to the public.

**SHARES**

3. The authorised share capital of the Company as at the date of adoption of these Articles of Association is £1,000 divided into 1,000 ordinary shares of £1.00 each.
4. Subject to any directions which may be given by the Company in general meeting from time to time, the shares shall be under the control of the directors who are authorised in accordance with Section 80 of the Act (as defined in Table A) to allot (within the meaning of that Section), grant options over or otherwise deal with or dispose of any "relevant securities" (as defined by Section 80(2) of the Act) of the Company on such terms as they think fit.
- 5.1 The provisions of Sections 89(1) and 90(1) to (6) inclusive of the Act shall not apply to any allotment or grant of equity securities (as defined in Section 94(2) of the Act) in the Company.

- 5.2 Unless the Company in general meeting shall by special resolution otherwise direct, all shares which the directors propose to issue shall first be offered to the members in proportion as nearly as may be to the number of shares then held by them respectively. The offer shall be made by notice specifying the number of shares offered, and limiting a period (being not less than 14 days) within which the offer, if not accepted, will be deemed to be declined. After the expiration of such period, those shares so deemed to be declined shall be offered in the proportion aforesaid to the persons who have, within the period, accepted all the shares offered to them and such further offer shall be made in like terms in the same manner and limited by a like period as the original offer. Any shares not accepted pursuant to such offer or further offer as aforesaid or not capable of being offered as aforesaid except by way of fractions and any shares released from the provisions of this Article by any such special resolution as aforesaid shall be under the control of the directors, who may allot, grant options over or otherwise dispose of the same to such persons, on such terms, and in such manner as they think fit, provided that, in the case of shares not accepted as aforesaid, such shares shall not be disposed of on terms which are more favourable to the subscribers therefor than the terms on which they were offered to the members. The foregoing provisions of this Article 5.2 shall have effect subject to Section 80 of the Act.
- 6.1 The general authority conferred by Article 4 above shall extend to all relevant securities of the Company from time to time unissued during the currency of such authority. Such general authority shall expire on the fifth anniversary of the date when Article 4 above first has legal effect unless varied or revoked or renewed by the Company in general meeting.
- 6.2 The directors shall be entitled under the general authority conferred by Article 4 above to make at any time before the expiry of such authority any offer or agreement which will or may require securities to be allotted after the expiry of such authority.
7. Subject to the provisions of the Act, the Company may:
- 7.1 issue any shares which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder thereof on such terms and in such manner as may be provided by these Articles;
  - 7.2 purchase its own shares (including any redeemable shares); and
  - 7.3 make a payment in respect of the redemption or purchase under Sections 159, 160 and 161 or (as the case may be) Section 162 of the Act of any of its shares otherwise than out of its distributable profits or the proceeds of a fresh issue of shares.

## **LIEN**

8. The Company shall have a first and paramount lien on every share (including a fully paid share) for all monies (whether presently payable or not) payable at a fixed time or called in respect of that share or otherwise owing to the Company by the holder thereof whether he shall be the sole registered holder thereof or shall be one of several joint holders. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article. The Company's lien (if any) on a share shall extend to all dividends payable thereon.

## **CALLS ON SHARES AND FORFEITURE**

9. Subject to the terms of allotment and except as agreed between the Company and any member in the case of the shares held by him, the directors may make calls upon the members in respect of any monies unpaid on their shares (whether in respect of nominal value or premium) and 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 as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in full or part. A person on whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

## **TRANSFER AND TRANSMISSION OF SHARES**

- 10.1 The instrument of transfer of a share may be in any usual form or in any other form which the directors approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee. The transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register of members in respect thereof.
- 10.2 In the event that the number of members of the Company shall fall to one there shall on the occurrence of that event be entered in the Company's register of members with the name and address of the sole member a statement that the Company has only one member and the date on which the Company became a company having only one member.
- 10.3 If the membership of the Company shall increase from one member to two or more members there shall on the occurrence of that event be entered in the Company's register of members with the name and address of the person who was formerly the sole member a statement that the Company has ceased to have only one member together with the date on which that event occurred.
- 10.4 In the event of the death of the sole member of the Company and who is also the sole director of the Company, any person who becomes, or any two or more persons who together become, entitled to all the shares then in issue in the Company in accordance with Regulation 30 of Table A shall be entitled to exercise all the rights of a sole member of the Company, whether or not he or they shall be registered as a holder or joint holders of such shares.

- 10.5 Any such person or persons who become entitled to any share in the Company in such circumstances as are described in Article 10.4 above shall be entitled to call an extraordinary general meeting of the Company, giving such notice as is required by the Act or these Articles.
11. The directors shall register the transfer or (as the case may be) transmission of a share in the Company if (and only if) first it is a share on which the Company does not have a lien and secondly it is made pursuant to either:
- 11.1 Article 12 below; or
- 11.2 the terms of any agreement entered into from time to time between all the members of the Company.
- 12.1 In any case where a person ("the Transferor") holding shares in the Company wishes to transfer all or any of such shares, he shall give the directors notice in writing of his wish to do so ("the Transfer Notice") which notice shall specify the shares to be transferred ("the Transfer Shares").
- 12.2 The Transfer Notice shall (subject to Articles 12.5 and 12.7 below) constitute irrevocable authority to (and a binding obligation on) the directors (excluding the Transferor) within 30 days of the date of the Transfer Notice or as soon as reasonably possible thereafter to offer the Transfer Shares for sale at their fair value on behalf of the Transferor.
- 12.3 The fair value of the Transfer Shares shall be as fixed by agreement in writing between the Transferor and the directors (excluding the Transferor) or failing agreement shall be such sum as (if the Transferor so agrees) the auditors or reporting accountants of the Company or (if the Transferor does not so agree) an independent chartered accountant who is appointed by the Transferor and the directors (excluding the Transferor) or if they cannot or do not agree upon the appointment who is appointed at the request of either of them by the President (or other senior officer) for the time being of the Institute of Chartered Accountants in England and Wales shall determine and certify in writing to be the fair value thereof (the party making the determination of fair value being hereinafter referred to as "the Valuer").
- 12.4 When the Valuer shall make a determination of fair value for the purposes of this Article 12 he shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1950 (as amended) shall not apply. The Valuer shall determine such fair value on the basis of an arm's length transaction as between a willing vendor and a willing purchaser disregarding the fact if such be the case that the Transfer Shares comprise or the transfer of the Transfer Shares will give rise to a minority or majority holding in the Company and shall have regard to such matters relating to the affairs of the Company as he may in his absolute discretion think fit. The Valuer shall be entitled to appoint such valuers as he may think fit for the purpose of discharging his duties hereunder. The Valuer shall afford the Transferor and the directors an opportunity to make representations to him. The decision of the Valuer shall in the absence of manifest error be final and binding on the Transferor and the directors. The fees and expenses of the Valuer in connection with such certificate shall be borne as to one half by the Transferor and as to the other half amongst the purchasers (if any) of the Transfer Shares in proportion to the number of

Transfer Shares to be purchased by them respectively or if there are no such purchasers or if the Transferor withdraws the Transfer Notice pursuant to Article 12.5 below such other half of such fees and expenses shall be borne by the Transferor.

- 12.5 As soon as practicable after the issue of the Valuer's certificate the directors shall notify the Transferor of the fair value thereby determined and the Transferor shall then be entitled by written notice given to the directors within seven days of receipt of such notification to withdraw his Transfer Notice (which withdrawal shall determine the directors' authority to offer the Transfer Shares for sale).
- 12.6 Save where a Transfer Notice is validly withdrawn pursuant to Article 12.5 above the directors shall within 21 days after the fair value of the Transfer Shares has been fixed by agreement or valuation (as the case may be) offer the Transfer Shares in writing to the members of the Company other than the Transferor in proportion to the number of shares in the Company of the same class as the Transfer Shares then held by them and shall enquire of each member whether he wishes to acquire any Transfer Shares not taken up by the person to whom they are first being offered. Any Transfer Shares not accepted within 30 days (or such extended period not exceeding 60 days in all as the directors (excluding the Transferor) may fix) by the person to whom they were first offered shall then be offered to those members who have expressed an interest in acquiring the same to the intent that no Transfer Shares shall be available for transfer to any person who is not already a member of the Company while any existing member is willing to take up and pay for them and to the further intent that as between members competing for Transfer Shares such shares shall be allocated between them in proportion to the number of Shares in the Company already held by them.
- 12.7 If the directors have not found a purchaser or purchasers ("the Purchasers") for all the Transfer Shares within 90 days after their fair value has been fixed by agreement or by valuation (as the case may be) the directors shall immediately give notice of that fact to the Transferor and shall advise him of the identity of the Purchasers (if any). Within 14 days of such notice the Transferor shall be entitled at his election:
- 12.7.1 to revoke the Transfer Notice in which event all previous offers and acceptances of the Transfer Shares shall be null and void and the directors' authority to offer the same shall be forthwith terminated; or
- 12.7.2 to affirm the sales (if any) of those Transfer Shares for which Purchasers have been found in which event the Transferor may at any time within the ensuing six months transfer the unsold balance of the Transfer Shares to any person whether a member of the Company or not at such price and on such terms as he may think fit Provided that the directors (excluding the Transferor) may in their absolute discretion decline to register such transfer (and in relation thereto the provisions of Section 771 of the Companies Act 2006 shall apply).

If the Transferor fails to give written notice within such 14 day period he shall be deemed to have elected in accordance with Article 12.7.2 above to affirm those sales which the directors have effected on his behalf.

- 12.8 Where the directors have sold any Transfer Shares in accordance with the foregoing procedure (and unless such sales are properly nullified) the Transferor:

12.8.1 hereby warrants to each Purchaser that the relevant shares shall be sold free from all liens, charges, encumbrances and third party rights and interests whatsoever; and

12.8.2 shall transfer such shares to the Purchasers against payment of the fair value and if he neglects or refuses to do so the directors (excluding the Transferor) shall be entitled to and shall authorise some person as the attorney of the Transferor to execute a transfer of the relevant shares to the Purchasers and the directors (excluding the Transferor) may themselves receive and give a good receipt for the purchase price thereof and (subject only to such transfer being duly stamped) shall promptly register the Purchasers as holders of the relevant shares whereupon the Purchasers as holders shall become indefeasibly entitled thereto. In such case the Transferor shall be obliged to deliver up the certificate for the shares so sold against delivery whereof he shall be entitled to receive the purchase price without interest and a balance certificate for the unsold shares (if any) comprised in the certificate so surrendered.

### **NOTICE OF GENERAL MEETINGS**

13. General meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if so agreed by a majority in number of the members having a right to attend and vote being a majority together holding not less than 90 per cent in nominal value of the shares giving that right.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted.

Subject to the provisions of the Acts and to any restrictions imposed on any shares, the notice shall be given to all the members (but subject always to Regulation 112 of Table A), to all persons entitled to a share in consequence of the death or bankruptcy of a member (subject to their having become members of the Company), to the directors and to the auditors.

### **PROCEEDINGS AT GENERAL MEETINGS**

14. If a quorum at a general meeting of the Company is not present within half an hour from the time appointed for the meeting or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting the meeting shall be dissolved.

15. 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, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. It shall not be necessary to give any notice of adjournment or of any business to be transacted at an adjourned meeting notwithstanding the length of such adjournment.

### **VOTES OF MEMBERS**

16. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:
  - 16.1 be deposited at the registered office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote;
  - 16.2 in the case of a poll taken more than 48 hours after it is demanded, be deposited 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
  - 16.3 where the instrument of proxy has not been deposited as aforesaid, be delivered before the close of business of the meeting at which the poll was demanded to the Chairman or to the secretary or to any directorand an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

### **ALTERNATE DIRECTORS**

17. An alternate director shall cease to be an alternate director if his appointor ceases to be a director.
18. The appointment of an alternate director shall not prejudice the right of the appointor to receive notices of and to attend and vote at meetings of the board and the powers of the alternate director shall automatically be suspended during such time as the director appointing him is himself present in person at a meeting of the board.

### **POWERS OF DIRECTORS**

19. Without prejudice to the provisions of Regulation 70 of Table A, the directors may exercise all the powers of the Company to borrow money without limit as to amount and upon such terms and in such manner as they think fit, and, subject (in the case of any security convertible into shares) to Sections 80 and 380 of the 1985 Act, to grant any mortgage, charge or standard security over its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

## **APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 20. The directors shall not be subject to retirement by rotation.
- 21. 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, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the Articles as the maximum number of directors.

## **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

- 22. The office of a director shall be vacated if:
  - 22.1 he resigns his office by notice to the Company;
  - 22.2 he shall for more than six consecutive months have been absent without the permission of the directors from meetings of the directors held during that period, unless he shall have appointed an alternate director who has not been similarly absent during such period, and the directors resolve that his office be vacated;
  - 22.3 he becomes bankrupt or makes any arrangement or composition with his creditors generally;
  - 22.4 he is or may be suffering from mental disorder and either:
    - 22.4.1 he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or (in Scotland) an application for admission under the Mental Health (Scotland) Act 1984; or
    - 22.4.2 an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs;
  - 22.5 he becomes incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
  - 22.6 he ceases to be a director by virtue of any provision of the Acts or becomes prohibited by law from being a director; or
  - 22.7 he is removed from office by ordinary resolution of the Company in general meeting. For the avoidance of doubt the right to remove a director pursuant to this Article 22.7 shall be in addition to the right conferred by Section 168 of the Companies Act 2006 ("the 2006 Act").
- 23. No person shall be disqualified from being or becoming a director of the Company by reason of his attaining or having attained the age of 70 years or any other age.



## **DIRECTORS' APPOINTMENTS AND INTERESTS**

24. Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company and may enter into any agreement or arrangement with any 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 upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. The right of an executive director to remuneration fixed by the directors pursuant to this Article shall be in addition to any remuneration fixed by the Company in general meeting under Regulation 82 of Table A. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim for damages for breach of the contract of service between the director and the Company.
25. Subject to the provisions of the Act and provided he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:
- 25.1 may be a party to, or otherwise interested in, any transaction, contract or arrangement or any proposed transaction, contract or arrangement with the Company or in which the Company is otherwise interested;
  - 25.2 may be a director or other officer of, or employed by, or a party to any transaction, contract or arrangement or any proposed transaction, contract or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested provided always that he may not hold the office of auditor of the Company or any subsidiary thereof;
  - 25.3 shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction, contract or arrangement or from any interest in any such body corporate and no such transaction, contract or arrangement shall be liable to be avoided on the ground of any such interest or benefit; and
  - 25.4 may vote on any matter in which he is interested and may be included for the purpose of a quorum at any meeting at which the same is considered.

For the purposes of this Article:

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

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

### **PROCEEDINGS OF DIRECTORS**

26. In the case of an equality of votes at a meeting of the directors, the chairman shall not have a second or casting vote and Regulation 88 of Table A shall be modified accordingly.
27. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum at meetings of the directors.
28. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors or their alternates in which event the resolution shall be deemed passed upon notification (by any means) of signature to the registered office or the secretary of the Company; but a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.
29. It shall not be necessary for the purpose of the directors' meeting that all participants be present at the same place provided that the directors counted in the quorum are all in contact for the purpose of the meeting whether in person or radio or telephone or other instantaneous means of communication.

### **EXECUTION OF DOCUMENTS**

30. The seal (if any) shall only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or by a second director. Any document signed by a director and the secretary of the Company or by two directors of the Company and expressed (in whatever form of words) to be executed by the Company has the same effect as if executed under the seal of the Company. A document shall only be so signed with the authority of a resolution of the directors or a committee of the directors.

## INDEMNITY

31. Subject to the provisions of the 2006 Act, every director of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in the performance of his duties as a director (the "Indemnity") but only to the extent that such Indemnity is a "qualifying third party indemnity provision" within the meaning of Section 234 of the 2006 Act and the Company may provide a director with funds in accordance with Sections 205 and 206 of the 2006 Act to meet expenditure incurred or to be incurred by him in defending any criminal or civil proceedings or in connection with any application under the provisions mentioned in Section 205(5) of the 2006 Act but so that any provision of funds will become repayable by the director or any liability of the Company under any transaction connected with any provision of funds will become repayable by the director, not later than:
- 31.1 in the event of the director being convicted in the proceedings, the date when the conviction becomes final;
  - 31.2 in the event of judgment being given against him in the proceedings, the date when the judgment becomes final; or
  - 31.3 in the event of the court refusing to grant him relief on the application, the date when the refusal or relief becomes final.
32. The directors shall have power to purchase and maintain at the expense of the Company for the benefit of any director (including an alternate director), officer or auditor of the Company, insurance against any such liability as is referred to in Section 232(2) of the 2006 Act and subject to the provisions of the 2006 Act against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a director (including an alternate director, officer or auditor).