

# FILE COPY



## CERTIFICATE OF INCORPORATION OF A PRIVATE LIMITED COMPANY

Company Number **12867366**

The Registrar of Companies for England and Wales, hereby certifies that

**SEALY UNITED KINGDOM LIMITED**

is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in England and Wales

Given at Companies House, Cardiff, on **9th September 2020**



\* N12867366Q \*



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



Companies House

# IN01<sub>(ef)</sub>

**Application to register a company**



Received for filing in Electronic Format on the: **08/09/2020**

X9D54WUA

*Company Name in full:*

**SEALY UNITED KINGDOM LIMITED**

*Company Type:*

**Private company limited by shares**

*Situation of Registered Office:*

**England and Wales**

*Proposed Registered Office Address:*

**SHIP CANAL HOUSE 98 KING STREET  
MANCHESTER  
ENGLAND M2 4WU**

*Sic Codes:*

**31090**

## ***Proposed Officers***

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### ***Company Director***      ***1***

***Type:***                      **Person**

***Full Forename(s):***        **MR SIMON JOHN**

***Surname:***                **DYER**

***Former Names:***

***Service Address:***        **recorded as Company's registered office**

***Country/State Usually***    **AUSTRALIA**

***Resident:***

***Date of Birth:***    **\*\*/08/1958**                      ***Nationality:***    **AUSTRALIAN**

***Occupation:***    **MANAGING  
DIRECTOR**

***The subscribers confirm that the person named has consented to act as a director.***

## *Company Director*      2

*Type:*                                      **Person**

*Full Forename(s):*                      **MR GEORGE ANTHONY**

*Surname:*                                **DYER**

*Former Names:*

*Service Address:*                      **recorded as Company's registered office**

*Country/State Usually*                **AUSTRALIA**

*Resident:*

*Date of Birth:*    **\*\*/11/1988**

*Nationality:*      **AUSTRALIAN**

*Occupation:*    **CHIEF  
FINANCIAL  
OFFICER**

*The subscribers confirm that the person named has consented to act as a director.*

## *Company Director*      3

*Type:*                                      **Person**

*Full Forename(s):*                      **MR HUGH CLIFFORD**

*Surname:*                                **BUSTER III**

*Former Names:*

*Service Address:*                      **recorded as Company's registered office**

*Country/State Usually  
Resident:*                                **UNITED STATES**

*Date of Birth:*    **\*\*/09/1969**                                      *Nationality:*    **AMERICAN**

*Occupation:*    **EXECUTIVE  
VICE  
PRESIDENT**

*The subscribers confirm that the person named has consented to act as a director.*

## *Company Director*      **4**

*Type:*                                      **Person**

*Full Forename(s):*                      **MR DAVID**

*Surname:*                                **MONTGOMERY**

*Former Names:*

*Service Address:*                      **recorded as Company's registered office**

*Country/State Usually  
Resident:*                                **ENGLAND**

*Date of Birth:*    **\*\*/10/1960**                                      *Nationality:*    **BRITISH**

*Occupation:*    **EXECUTIVE  
VICE  
PRESIDENT**

*The subscribers confirm that the person named has consented to act as a director.*

## ***Statement of Capital (Share Capital)***

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<i>Class of Shares:</i>	<b>A- CLASS ORDINARY</b>	<i>Number allotted</i>	<b>50</b>
		<i>Aggregate nominal value:</i>	<b>50</b>
<i>Currency:</i>	<b>GBP</b>		
<i>Prescribed particulars</i>			

**EACH SHARE IS ENTITLED TO ONE VOTE IN ANY CIRCUMSTANCES. EACH SHARE IS EQUALLY ENTITLED TO A DISTRIBUTION OF DIVIDENDS. EACH SHARE IS EQUALLY ENTITLED TO A DISTRIBUTION OF CAPITAL.**

<i>Class of Shares:</i>	<b>B-CLASS ORDINARY</b>	<i>Number allotted</i>	<b>50</b>
		<i>Aggregate nominal value:</i>	<b>50</b>
<i>Currency:</i>	<b>GBP</b>		
<i>Prescribed particulars</i>			

**EACH SHARE IS ENTITLED TO ONE VOTE IN ANY CIRCUMSTANCES. EACH SHARE IS EQUALLY ENTITLED TO A DISTRIBUTION OF DIVIDENDS. EACH SHARE IS EQUALLY ENTITLED TO A DISTRIBUTION OF CAPITAL.**

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### **Statement of Capital (Totals)**

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<i>Currency:</i>	<b>GBP</b>	<i>Total number of shares:</i>	<b>50</b>
		<i>Total aggregate nominal value:</i>	<b>50</b>
		<i>Total aggregate unpaid:</i>	<b>0</b>
<i>Currency:</i>	<b>GBP</b>	<i>Total number of shares:</i>	<b>50</b>
		<i>Total aggregate nominal value:</i>	<b>50</b>
		<i>Total aggregate unpaid:</i>	<b>0</b>

## ***Initial Shareholdings***

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*Name:* **MADAD UNITED KINGDOM  
PTY LTD**

*Class of Shares:* **A-CLASS ORDINARY**

*Address* **1299 BOUNDARY ROAD  
WACOL  
QUEENSLAND  
AUSTRALIA  
4076**

*Number of shares:* **50**  
*Currency:* **GBP**  
*Nominal value of each  
share:* **1**  
*Amount unpaid:* **0**  
*Amount paid:* **1**

*Name:* **TEMPUR-PEDIC  
MANAGEMENT LLC**

*Class of Shares:* **B-CLASS ORDINARY**

*Address* **1000 TEMPUR WAY  
LEXINGTON  
KY  
UNITED STATES  
40511**

*Number of shares:* **50**  
*Currency:* **GBP**  
*Nominal value of each  
share:* **1**  
*Amount unpaid:* **0**  
*Amount paid:* **1**

## ***Persons with Significant Control (PSC)***

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### **Statement of no PSC**

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**The company knows or has reason to believe that there will be no registerable Person with Significant Control or Relevant Legal Entity (RLE) in relation to the company**

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## ***Statement of Compliance***

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*I confirm the requirements of the Companies Act 2006 as to registration have been complied with.*

*Name:* **MADAD UNITED KINGDOM PTY LTD**

*Authenticated* **YES**

*Name:* **TEMPUR-PEDIC MANAGEMENT LLC**

*Authenticated* **YES**

---

## ***Authorisation***

*Authoriser Designation:* **subscriber**

*Authenticated* **YES**

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# COMPANY HAVING A SHARE CAPITAL

## Memorandum of Association of SEALY UNITED KINGDOM LIMITED

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share.

Name of each subscriber	Authentication
MADAD UNITED KINGDOM PTY LTD	Authenticated Electronically
TEMPUR-PEDIC MANAGEMENT LLC	Authenticated Electronically

Dated: 08/09/2020

# Articles of Sealy United Kingdom Ltd

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A Company limited by shares  
Incorporated in England and Wales

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**The Companies Act 2006**  
A company limited by shares  
incorporated in England and Wales  
**Articles of Association**  
of  
Sealy United Kingdom Ltd

## General

### 1. Definitions

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**"A" Director** has the meaning given to that term in Article 56(a);

**"A" Holding Company** means Dyer Holdings Pty Ltd;

**"A" Shareholder** means Madad United Kingdom Pty Ltd and any other holder of "A" class shares;

**"Act"** the Companies Act 2006;

**"Articles"** the Company's articles of association for the time being in force;

**"B" Director** has the meaning given to that term in Article 56(b);

**"B" Holding Company** means Tempur Sealy International Inc.;

**"B" Shareholder** means Tempur-Pedic Management LLC and any other holder of "B" class shares;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) during which banks in London are open for normal business;

**Company** means Sealy UK Limited;

**Country** means England and Wales;

**Permitted Reconstruction** means a reconstruction of a body corporate or an amalgamation of a body corporate with another body corporate where the body corporate involved or arising following the reconstruction or amalgamation and which holds the shares in the Company is beneficially owned solely by a body corporate which was the ultimate holding company of the body corporate prior to the reconstruction or amalgamation or any wholly owned subsidiary of such ultimate holding company.

**Prescribed Rate** means the base rate charged by the Company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of £100,000 calculated on a daily basis and a year of 365 days.

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**Related Corporation** means a body corporate wholly owned, directly or indirectly, by “B” Holding Company or the Dyer Family of Brisbane, Australia;

**Seal** means the common seal of the Company and includes any official seal of the Company;

**Secretary** means any person appointed to perform the duties of a secretary of the Company;

## 2. Interpretation

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- (a) Except so far as a contrary intention appears in these Articles, an expression has, in a provision of these Articles that deals with a particular provision of the Act, the same meaning as in that provision of the Act.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (c) A reference to **pounds** and **£** is to British pound sterling.
- (d) A “subsidiary” shall include a reference to a “subsidiary” and a “subsidiary undertaking” (each as defined in the Act) and a reference to a “holding company” shall include a reference to a “holding company” and a “parent undertaking” each as defined in the Act)

## 3. Exclusion Of Replaceable Rules

---

- (a) No regulations or articles set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies (including the regulations in the Companies (Model Articles) Regulations 2008 shall apply as the articles of the Company. The following shall be the articles of association of the Company.

## 4. Proprietary Company Provisions

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- (a) The Company is a company limited by shares.
  - (b) The number of members of the Company is limited to 50 (counting joint holders of shares as one person and not counting a person who is employed by the Company or any of its subsidiaries or a person who was, while so employed, and afterwards has continued to be, a member of the Company).
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- (c) Any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company is prohibited.
  - (d) Any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest, is prohibited.
  - (e) The right to transfer shares is restricted as provided by these Articles.

## Share Capital

### 5. Capital

---

The capital of the Company at the date of adoption of these Articles is:

- (a) 50 "A" class shares; and
- (b) 50 "B" class shares;

### 6. Power of Directors to Issue Shares and Options; Right of First Refusal on New Issues

---

- (a) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to the Act, shares or options over shares in the Company may be issued by the directors where contemplated by any agreement in writing between the shareholders.

Any such share may be issued with such preferred, deferred, or other special rights or such restrictions, whether with regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any resolution of the Company, may decide.

- (b) Subject to Article 6(a), whenever the directors determine that any shares shall be allotted or issued, they shall (unless all holders for the time being of all issued shares otherwise agree in writing) offer those shares in the first instance to the holders for the time being of the "A" class shares and "B" class shares in proportion to the numbers of the shares for the time being held by them.
  - (c) If any holder of shares of a particular class rejects an offer made to him under Article 6(b), the shares in respect of which that offer was rejected shall be offered progressively to all holders of shares of that same class who did not reject the immediately preceding offer, in proportion to the numbers of the shares of that same class held by them on the original offer date (as that term is defined in Article 6(g)(ix)).
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- (d) If, after all offers made to holders of shares of a particular class under Articles 6(b) and 6(c) have been made, any of the shares in respect of which those offers were made remain undisposed of, those remaining shares shall be offered in the manner specified in Article 6(c) to those of the holders of the shares of the other class who did not reject offers made to them under Article 6(b).
- (e) The shares offered under Article 6(b) shall be divided into "A" class and "B" class shares in the same proportion as the number of the relevant class of shares on issue immediately prior to the offer bears to the total number of shares of both classes then on issue; the shares of any class so offered shall be offered to the holders of that class in proportion to the number of the shares of that class held by them. The shares shall not be reclassified on any subsequent offer under this Article following a rejection of shares in the first instance.
- (f) If, after all offers required by the provisions of this Article have been made, there remain any shares undisposed of the directors shall not allot or issue those shares unless pursuant to a further series of offers made in accordance with this Article.
- (g) For the purposes of this Article:
- (i) every offer shall be in writing and shall be embodied in a notice given to shareholders in any manner permitted by these Articles;
  - (ii) every offer shall be capable of acceptance as to the whole or any part of the shares to which it relates;
  - (iii) an offer shall remain open for acceptance for 30 days from the date on which it is deemed by these Articles to have been served on the shareholder to whom it is made;
  - (iv) an offer which is accepted in respect of less than the whole of the shares offered shall, to the extent only that it is not accepted, be deemed to have been rejected;
  - (v) an offer which is not accepted within the period for which it is open or which is expressly declined in writing shall be deemed to have been rejected;
  - (vi) an offer may be accepted only in writing;
  - (vii) a notice conveying acceptance (in whole or in part) of an offer or declining an offer shall take effect when it is received at the registered office of the Company;
  - (viii) in determining the proportions in which shares are held or are to be offered, fractions of a share shall not be disregarded; where a member becomes entitled to a fraction of a share the directors shall provide for the issue of fractional certificates; and
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- (ix) the expression “the original offer date” means, in respect of entitlements to offers under the provisions of this article, the date on which the offers under Article 6(b) which gave rise to those offers were made.
  - (h) In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to the Company.

## **7. Preference Shares**

---

- (a) Subject to the Act and to the issue being authorised under Article 6(a), the Company may issue preference shares that are, or at the option of the Company are to be, liable to be redeemed.
- (b) The rights conferred on the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be taken to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

## **Capital - General**

## **8. Brokerage and Commission**

---

- (a) The Company may exercise the powers to pay brokerage or commission conferred by the Act in the manner provided by the Act.
- (b) The brokerage or commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **9. Recognition of Third Party Interests**

---

- (a) Except as required by law, or as ordered by a court of competent jurisdiction, the Company shall not recognise a person as holding a share on any trust.
  - (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these Articles or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.
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## **10. Share Certificates**

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- (a) A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share in accordance with the Act but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.
- (b) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

## **Lien on Shares**

### **11. Lien on Shares**

---

- (a) The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (b) The Company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his or her estate to the Company.
- (c) The directors may at any time exempt a share wholly or in part from the provisions of this Article.
- (d) The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

### **12. Exercise of Lien**

---

- (a) Subject to Article 12(b), the Company may sell, in such manner as the directors think fit, any shares on which the Company has a lien.
  - (b) A share on which the Company has a lien shall not be sold unless:
    - (i) a sum in respect of which the lien exists is presently payable; and
    - (ii) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
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### **13. Completion of Sale**

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- (a) For the purpose of giving effect to a sale pursuant to Article 12, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company shall register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

### **14. Application of Proceeds of Sale**

---

The proceeds of a sale mentioned in Article 12 shall be applied by the Company in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue (if any) shall (subject to any like lien for sums not presently payable that existed on the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

## **Calls on Shares**

### **15. Directors' Power to Make Calls**

---

- (a) The directors may make calls on the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times.
- (b) Each member shall, on receiving at least 14 days notice specifying the time or place of payment, pay to the Company at the time or times and place so specified the amount called on his shares.
- (c) The directors may revoke or postpone a call.

### **16. When Made and Instalments**

---

- (a) A call shall be taken to have been made at the time when the resolution of the directors authorising the call was passed.
- (b) A call may be required to be paid by instalments.

### **17. Liability of Joint Holders for Calls**

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The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

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## **18. Interest on Unpaid Amounts**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding the Prescribed Rate as the directors determine, but the directors may waive payment of that interest wholly or in part.

## **19. Fixed Sums Deemed to be Called**

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal amount of the share or by way of premium, shall for the purposes of these Articles be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable and, in case of non-payment, all the relevant provisions of these Articles as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

## **20. Differentiation between Holders**

The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **21. Prepayments of Calls**

- (a) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (b) The directors may authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Rate, as is agreed on between the directors and the member paying the sum.

# **Transfer of Shares**

## **22. Pre-Emptive Rights upon Transfer of Shares**

- (a) No member may sell, transfer, mortgage, charge or otherwise dispose of or deal with the legal or beneficial ownership of any of the member's shares in the capital of the Company or any interest in those shares or any rights attaching to those shares, except pursuant to this Article or Article 26 or if all members have otherwise agreed in writing.
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- 
- (b) A member proposing to transfer shares (the **Proposing Transferor**) shall give written notice (the **Transfer Notice**) to the Company and the other member (the **Option Holder**) that the Proposing Transferor wishes to transfer shares. The Transfer Notice must specify:
- (i) the number of shares which the Proposing Transferor wishes to transfer which may not be less than all the shares held by the Proposing Transferor (the **Transfer Shares**);
  - (ii) the price in United States currency at which the Proposing Transferor wishes to sell the Transfer Shares, based on the fair value of the Proposing Transferor's shareholding in the Company, being a fixed amount of money and not a formula (the **Transfer Price**, subject to Article 22(f));
  - (iii) any other material terms which are to apply to the transfer of the Transfer Shares.
- (c) The Transfer Notice shall constitute the Company the Proposing Transferor's agent for the sale of all of the Transfer Shares to members of the Company.
- (d) The Option Holder shall have first option to purchase the shareholding of the Proposing Transferor provided that:
- (i) within 30 days of receipt by the Option Holder of the Transfer Notice, the Option Holder confirms in writing to the Proposing Transferor that it intends to purchase all of the Transfer Shares; and
  - (ii) the Option Holder provides in writing the price in United States currency at which the Option Holder wishes to purchase the Transfer Shares, based on the Option Holder's estimate of the fair value of the Proposing Transferor's shareholding in the Company, being a fixed amount of money and not a formula.
- (e) If the Option Holder fails to confirm to the Proposing Transferor that it intends to purchase the Proposing Transferor's shareholding in the Company in accordance with the terms of Article 22(d)(i), the Proposing Transferor may sell to a third party purchaser.
- (f) The Transfer Price shall be determined in accordance with the following procedure:
- (i) If the difference between the value provided by the Proposing Transferor in the Transfer Notice and the value provided by the Option Holder in accordance with Article 22 (d)(ii) is not more than 10% of the lower value, then the agreed Transfer Price of the shares in the Company shall be the midpoint between the two values.
  - (ii) If the difference between the two values is more than 10% of the lower value, the Proposing Transferor and the Option
-

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Holder agree to discuss the matter in an attempt to resolve their differences.

- (iii) If the Proposing Transferor and the Option Holder cannot resolve their differences within 60 days, the valuation of the shares to be sold shall be referred to an Independent Expert, agreed on by the Proposing Transferor and the Option Holder, whose decision shall be final and binding on the parties.
  - (iv) The Independent Expert appointed in accordance with any agreement in writing between the shareholders shall assess the market value (as defined under the International Valuation Standards) of all shares in the Company, pro-rated in accordance with each Shareholder's shareholding, on the following assumptions and bases:
    - (i) If the Company establishes additional entities that operate in other countries within the Territory (as defined in any agreement in writing between the shareholders), the valuation of the Company shall be determined on a country-by-country basis, with final valuation of the Company being the "sum of the parts";
    - (ii) The Independent Expert (as defined in any agreement in writing between the shareholders) may use a variety of valuation methodologies and techniques it deems appropriate that are customarily used for similar companies in the jurisdiction(s) in which such entity operates to determine the valuation of the Company, taking into account new developments in the relevant market(s) at the time of valuation; and
    - (iii) The Independent Expert must take into account all factors it considers to be relevant for its valuation, including, but not limited to:
      - (1) the future capitalised earnings of the Company, calculated on the basis of a five year forecast, prepared in accordance with any agreement in writing between the shareholders, commencing in the financial year in which the option is to be exercised (including all assumptions and bases for the Territory (as defined in any agreement in writing between the shareholders) as well as the investment and capital costs necessary to meet any projected growth or future needs);
      - (2) the prior three (3) years of historical financial performance of the Company, or if there are not three years of historical performance, the
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- financial performance for all of the years of the Company's operation, (the parties agree that while historical financial performance is an important facet for valuation, the emphasis in the assessment will be on future capitalized earning in paragraph (1) above);
- (3) any abnormal factors, non-recurring items or non-arm's length transactions shall be adjusted;
  - (4) that the provision of the product development and marketing expertise, and the right to use the Sealy Brand trade marks under any agreement in writing between the shareholders will continue on the same basis after the sale;
  - (5) in the case of a sale by the B Shareholder, taking into account the increased royalty to be payable pursuant to any agreement in writing between the shareholders; and
  - (6) Notwithstanding the above, the valuation of the business of the Company (and accordingly, the Transfer Shares) in the event of a transfer to the "B" Shareholder, shall not include the cost of the royalty to the business (thus increasing the ultimate implied EBITDA for calculation purposes).
- (v) The members, the directors and Secretary must use reasonable endeavours to procure that the Independent Expert determines the Transfer Price within 21 days of being requested to do so.
  - (g) Within 21 days of the determination of the Transfer Price in accordance with Article 22(f), the Proposing Transferor will be bound to sell the shares to the Option Holder, and the Option Holder will be bound to purchase the shares from the Proposing Transferor at the Transfer Price.
  - (h) Subject to this Article, where either member wishes to transfer all or any part of its shareholding in the Company to a Related Corporation, the transaction shall be free of the requirements of Articles 22(a) to 22(f) inclusive.
    - (i) The member proposing to transfer shares to a Related Corporation (the **Relevant Member**) and the Related Corporation proposing to receive the Shares must execute in favour of the other member a Deed of Assumption and Covenant complying with this Article and that is reasonably satisfactory to the other member.
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- (ii) The Deed of Assumption and Covenant to be executed under this Article must contain the following:
    - (1) covenants by the Relevant Member and the Related Corporation that if the Related Corporation ceases to be a Related Corporation, the Relevant Member shall ensure that the Related Corporation will immediately take all necessary action to re-transfer the Shares to the Relevant Member without consideration and free of any cost to the other parties.
    - (2) a covenant by the Related Corporation to be bound by all the provisions of these Articles as though it were a member; and
    - (3) a covenant by the Relevant Member that it will ensure that the Related Corporation discharges or will on its behalf discharge every obligation that, were it not for the transaction, would be an obligation of the Relevant Member.
  - (i) Every instrument of transfer shall be in writing in any usual or common form as the directors approve and shall be executed by or on behalf of both the transferor and the transferee and shall show the jurisdiction of incorporation of the Company. A transferor of shares remains the holder of shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

## **23. Registration of Transfers**

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The instrument of transfer must be left for registration at the registered office of the Company together with the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer.

## **24. Restriction on Transferability**

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- (a) The directors shall decline to register any transfer of shares:
    - (i) (not being a transfer resulting from an offer made or deemed to be made under Article 26) unless the person requesting registration produces such evidence as may from time to time properly be required by the directors in order to establish that the transfer was not effected in contravention of the provisions of Article 22; and
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- (ii) unless the transferee has become a party to any agreement in writing between the shareholders (except to the extent that the directors consider any of the terms and conditions inappropriate) by an instrument of assumption in a form approved by the directors,

but otherwise, subject to Article 24(b), shall register a properly executed transfer.

- (b) The directors may in their absolute discretion refuse to register any transfer of shares and may decline to give their reasons for doing so.
- (c) Where the directors resolve to refuse to register a transfer of shares, the directors shall notify the transferee not later than 2 months after the date on which the transfer was lodged with the Company.

## **25. Suspension of Registration**

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The registration of transfers may be suspended at such times and for such periods as the directors from time to time decide, not exceeding in aggregate 30 days in any year.

# **Compulsory Disposal of Shares**

## **26. Compulsory Disposal of Shares**

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- (a) Where:
  - (i) a person becomes entitled to any share in consequence of the winding up of a member other than pursuant to a Permitted Reconstruction;
  - (ii) a person becomes entitled to any share by operation of law;
  - (iii) a person, namely "A" Shareholder, is the member holding the "A" class shares and "A" Holding Company ceases to be the ultimate holding company of that person;
  - (iv) a person, namely "B" Shareholder, is the member holding the "B" class shares and "B" Holding Company ceases to be the parent undertaking of that person,

that person or member shall, if requested so to do by any other member and in any case within 90 days of becoming aware of the event, give to the Company a Transfer Notice under Article 22 in respect of all shares to which that person or member is entitled (in the same manner as if that person or member desired to transfer the whole of those shares) and, subject to Article 26(b), all provisions of Article 22 shall apply in relation to the offer of those shares.

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- (b) If any entity required to give a Transfer Notice pursuant to this Article defaults in giving a Transfer Notice, the chair of directors for the time being, or failing him or her one of the directors duly nominated by the directors for that purpose or failing him or her any member, shall be deemed to be the duly appointed attorney of that entity with full power to execute, complete and deliver in the name and on behalf of the entity the Transfer Notice. The Transfer Notice shall specify as the price for the sale the price to be certified by an Independent Expert in writing under his or her hand to be in his or her opinion the fair value of the shares based on the fair value of the Company on a going-concern basis, such value being as at the date of receipt by the Company of the Transfer Notice.

## **Transmission of Shares**

### **27. Entitlement to Shares on Death**

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In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his or her interest in the shares, but this Article does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

### **28. Registration of Persons Entitled**

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- (a) A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, on such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.
- (b) If the person becoming entitled elects to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
- (c) If he elects to have another person registered, he shall execute a transfer of the share to that other person.
- (d) All the limitations, restrictions and provisions of these Articles relating to the right to transfer, and the registration of a transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
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## **29. Dividends and Other Rights**

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- (a) Where the registered holder of a share dies or becomes bankrupt, his or her personal representative or the trustee of his or her estate, as the case may be, is, on the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.
- (b) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of these Articles, be taken to be joint holders of the share.

## **Forfeiture of Shares**

### **30. Liability to Forfeiture**

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- (a) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time afterwards, during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- (b) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

### **31. Power to Forfeit**

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- (a) If the requirements of a notice served under Article 30 are not complied with, any share in respect of which the notice has been given may at any time afterwards, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
- (b) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

### **32. Powers of Directors**

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Subject to the Act, a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time

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before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

### **33. Consequences of Forfeiture**

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A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and shall surrender the certificate for such shares to the Company for cancellation, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including interest at the rate of 20% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his or her liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.

### **34. Prima Facie Evidence of Forfeiture**

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A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

### **35. Transfers after Forfeiture and Sale**

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- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

### **36. Fixed Amounts taken to be Calls**

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The provisions of these Articles as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

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## General Meetings

### 37. Power of Directors to Convene

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Any director may whenever he thinks fit convene a general meeting.

### 38. Notices of Meeting

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A notice of a general meeting shall specify the place, the day and the hour of meeting and shall state the general nature of the business to be transacted at the meeting.

### 39. Quorum

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- (a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Two members present shall be a quorum, except that no quorum shall be constituted unless one member holding "A" class shares and one member holding "B" class shares are present.
- (b) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as attorney for a member, or as a representative of a corporation that is a member, shall be deemed to be a member holding the shares of the first-mentioned member.

### 40. If Quorum not Present

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If within 60 minutes after the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other later day time and place as the member or members present may by notice to the members appoint. Notice shall be given to all members of the day, time and place of such adjourned meeting not less than two Business Days before the day of the meeting. If at such adjourned meeting a quorum is not present that member or those members present shall be a quorum and may transact the business for which the meeting was called.

### 41. Chair of Meetings

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- (a) If the directors have elected one of their number as chair of their meetings, he shall preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) a chair has not been elected as provided by Article 41(a); or

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- (ii) the chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chair of the meeting.

## **42. Adjournments**

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- (a) The chair may with the consent of any 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 any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned, notice of the adjourned meeting shall be given as in the case of an original meeting.

## **43. Voting at General Meetings**

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- (a) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
    - (i) by the chair;
    - (ii) by at least two members present in person or by proxy, representative or attorney;
    - (iii) by a member or members present in person or by proxy, representative or attorney and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
    - (iv) by a member or members present in person or by proxy, representative or attorney holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
  - (b) Unless a poll is so demanded, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
  - (c) The demand for a poll may be withdrawn.
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#### **44. Procedure for Polls**

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- (a) If a poll is properly demanded, it shall be taken in such manner and, subject to Article 44(b), either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chair or on a question of adjournment shall be taken forthwith.

#### **45. No Casting Vote by Chair**

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In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his or her deliberative vote (if any), shall not have a second or casting vote.

#### **46. Representation of Members**

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Subject to any rights or restrictions for the time being attached to any class of shares:

- (a) at meetings of members or classes of members each member entitled to vote may vote in person (including by a representative appointed under the Act) or by proxy or attorney; and
- (b) on a show of hands every person present who is a member or a representative of a member or an attorney for a member has one vote and on a poll has one vote for each share held by the member.

#### **47. Joint Holders**

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In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by representative or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and seniority of joint holders shall be decided by the order in which the names stand in the register of members.

#### **48. Members of Unsound Mind**

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If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his or her committee or trustee or such other person as properly has the management of his or her estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

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#### **49. Restriction on Voting Rights - Unpaid Shares**

A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the Company have been paid.

#### **50. Objections to Qualification to Vote**

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection shall be referred to the chair of the meeting, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

#### **51. Number of Proxies**

- (a) A member may appoint not more than 2 proxies. A proxy need not be a member.
- (b) An appointment of 2 proxies shall be of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.
- (c) If a member appoints 2 proxies, neither proxy shall be entitled to vote on a show of hands. Otherwise, a proxy is entitled to vote on a show of hands.

#### **52. Proxies**

- (a) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
  - (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument but may vote as he thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
  - (c) An instrument appointing a proxy shall be taken to confer authority to demand or join in demanding a poll.
  - (d) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the
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circumstances allow or in such other form as the directors shall accept:

I/We,

\_\_\_\_\_

of

\_\_\_\_\_

being a member/members of the abovenamed company, hereby appoint

\_\_\_\_\_

of

\_\_\_\_\_

or in his or her absence,

\_\_\_\_\_

of

\_\_\_\_\_

as my/our proxy to vote for me/us on my/our behalf at the general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment of that meeting.

\*\*This form is to be used [\*in favour of/\*against] the resolution.

Signed this \_\_\_\_\_ day of \_\_\_\_\_.

\*Strike out whichever is not desired.

\*\*To be inserted if desired.

- (e) Notwithstanding Article 47, where an instrument of proxy is signed by all of the joint holders of any shares, the votes of the proxy so appointed shall be accepted in respect of those shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.
  - (f) No instrument appointing a proxy shall be treated as invalid merely because it does not contain the address of the appointor or of a proxy or is not dated or does not contain in relation to any or all resolutions an indication of the manner in which the proxy is to vote and, in any case where the instrument does not contain the name of a proxy, the instrument shall not for that reason be invalid and shall be taken to be given in favour of the chairman of the meeting.
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### **53. Lodgement of Proxies**

An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 24 hours (or such lesser period as the directors may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and, in the case of a poll, not less than 24 hours (or such lesser period as the directors may permit) before the time appointed for the taking of the poll, at the registered office of the Company or at such other place within Australia as is specified for that purpose in the notice convening the meeting.

### **54. Validity of Proxies**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **Directors**

### **55. Number of Directors**

The number of directors shall be four.

### **56. Appointment of Directors**

- (a) The member or members holding the majority of the "A" class shares shall have the right to appoint two directors of the Company, each such director being called an "A" Director.
  - (b) The member or members holding the majority of the "B" class shares shall have the right to appoint two directors of the Company, each such director being hereinafter called a "B" Director.
  - (c) A member or members for the time being entitled to appoint a particular number of directors shall have the right to remove from office any director or directors appointed by such member or members or its or their predecessor in title and, subject to these regulations, to fill vacancies in the office of directors appointed by such member or members.
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- (d) Every appointment and removal of a director by a member or members shall take effect when written notice of that appointment or removal duly executed by that member or those members is received at the registered office of the Company (accompanied, in the case of an appointment, by the written consent of the appointee to act as director) or at such later time as is specified in that written notice.

## **57. Remuneration and Expenses of Directors**

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- (a) The directors shall be paid such remuneration as is from time to time agreed by the directors.
- (b) Subject to Article 58(a), the directors' and members' travelling and other expenses incurred by them in attending and returning from any meeting of the directors, any committee of the directors, or general meetings of the Company or otherwise in connection with the business of the Company shall be borne by the relevant member.

## **58. Vacation of Office**

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In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (b) resigns his or her office by notice in writing to the Company.

# **Powers and Duties of Directors**

## **59. Powers of Directors**

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- (a) Subject to the Act, any agreement in writing between the shareholders and to any other provisions of these Articles, the business of the Company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act, by any agreement in writing between the shareholders or by these Articles, required to be exercised by the Company in general meeting.
  - (b) Without limiting the generality of Article 59(a), the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security
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for a debt, liability or obligation of the Company or of any other person.

#### **60. Power to use Seals**

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The directors may exercise all the powers of the Company in relation to any official seal, any duplicate common seal and any branch register.

#### **61. Appointment of Attorneys**

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- (a) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

#### **62. Negotiable Instruments**

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All cheques, promissory notes, bankers drafts, bills of exchange, and other negotiable instruments shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such persons and in such manner as the directors may decide and, unless so decided, by any two directors.

### **Proceedings of Directors**

#### **63. Convening Meetings**

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Subject to any agreement in writing between the shareholders:

- (a) the directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit; and
- (b) a director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

#### **64. Meetings of Directors**

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- (a) For the purposes of the Act, each director, on becoming a director (or on the adoption of these Articles), consents to the use of the following technology for calling or holding a directors meeting:
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- (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each director to communicate with every other director; or
  - (v) any combination of the technologies described in the above paragraphs.

A director may withdraw the consent given under this Article in accordance with the Act.

- (b) Where the directors are not all in attendance at one place and are holding a meeting using technology and each director can communicate with the other directors:
  - (i) the participating directors shall, for the purpose of every provision of these Articles concerning meetings of the directors, be taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

## **65. Quorum at Meetings**

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- (a) At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is two, except that no quorum shall be constituted at a meeting unless at least one "A" Director and one "B" Director are present at the meeting. However, if a quorum is not present within 60 minutes from the time appointed for the meeting, the meeting shall stand adjourned to the day five Business Days later at the same time and place or to such other later day, time and place as the directors present may determine. At the adjourned meeting a quorum shall be constituted by any two directors provided that each "A" Director and each "B" Director has been notified (including by telephone) of the day, time and place of such adjourned meeting at least two Business Days before the day of the meeting.
  - (b) Each "A" Director participating in the meeting has a vote equal to the shareholding percentage of the "A" Shareholder. If more than one "A" Director is present, they shall share the votes equally.
  - (c) Each "B" Director participating in the meeting has a vote equal to the shareholding percentage of the "B" Shareholder. If more than one "B" Director is present, they shall share the votes equally.
  - (d) The fact that a director is in any way, directly or indirectly, interested in any matter arising for decision at a meeting of
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directors does not prevent that director being counted in a quorum.

## **66. Chair of Meetings**

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- (a) The directors shall elect one of their number as chair of their meetings and may decide the period for which he is to hold office.
- (b) Where a meeting is held and:
  - (i) a chair has not been elected as provided by Article 66(a); or
  - (ii) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act,the directors present shall elect one of their number to be chair of the meeting.

## **67. Proceedings At Meetings**

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Subject to these Articles, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be taken to be a decision of the directors.

## **68. No Casting Vote by Chair**

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In case of an equality of votes, the chair of the meeting, in addition to his or her deliberative vote, shall not have a casting vote.

## **69. Disclosure Of Interests**

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- (a) Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the company:
    - (i) 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;
    - (ii) shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
    - (iii) shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
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- (iv) 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;
  - (v) 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 in which the Company is otherwise (directly or indirectly) interested; and
  - (vi) shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.
- (b) The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest (**Conflict**).
- (c) Any authorisation under this Article 69 will be effective only if:
- (i) to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;
  - (ii) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other interested director; and
  - (iii) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other interested director's vote had not been counted.
- (d) Any authorisation of a Conflict under this Article 69 may (whether at the time of giving the authorisation or subsequently):
- (i) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - (ii) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
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- (iii) provide that the Interested Director shall or shall not be an eligible director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
  - (iv) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
  - (v) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose that information to the company, or to use it in relation to the company's affairs where to do so would amount to a breach of that confidence; and
  - (vi) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the directors to the extent they relate to such matters.
- (e) Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
  - (f) The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.
  - (g) A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## **70. Vacancies**

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In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act if there are sufficient to constitute a quorum.

## **71. Appointment of Alternate Directors**

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- (a) Each director may appoint any person (including another director) to be his or her alternate and may at his or her discretion remove
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an alternate director so appointed. Any appointment or removal of an alternate director must be by written notice delivered to the registered office of the Company or at an address specified by the Company for the purposes of communication by electronic means or tendered at a meeting of directors or in any other manner approved by the directors. The appointment requires the approval of the directors unless it has been previously approved or the appointee is another director.

- (b) An alternate director must provide the particulars, and sign any form for public filing required by the Act relating to his or her appointment.
  - (c) Every alternate director is (subject to his or her giving to the Company an address within the United Kingdom at which notices may be served on him or her (and, if applicable, an address in relation to which electronic communications may be received)) entitled to receive notice of all directors meetings and all committees of which his or her appointor is a member and, in the appointor's absence, to attend and vote at such meetings and to exercise all the powers, rights, duties and authorities of the appointor. Each person acting as an alternate director shall have a separate vote at directors meetings for each director for whom that person acts as alternate director in addition to his or her own vote if also a director, but shall count as only one for the purpose of determining whether a quorum is present.
  - (d) Signature by an alternate director of any resolution in writing of the directors or a committee will, unless the notice of appointment provides otherwise, be as effective as signature by his or her appointor.
  - (e) Each person acting as an alternate director will be an officer of the Company, will alone be responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the director appointing them.
  - (f) An alternate director is entitled to contract and be interested in and benefit from contracts or arrangements with the Company, to be repaid expenses and to be indemnified to the same extent as if he or she were a director. However, no alternate director is entitled to receive from the Company any fees for his or her services as alternate, except such part (if any) of the fee payable to the alternate's appointor as such appointor may by written notice to the Company direct.
  - (g) An alternate director will cease to be an alternate director:
    - (i) if the alternate's appointor revokes his or her appointment; or
    - (ii) if the alternate resigns his or her office by notice in writing to the Company; or
    - (iii) if the alternate's appointor ceases for any reason to be a director, provided that if any director retires but is re-
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appointed or deemed to be re-appointed at the same meeting, any valid appointment of an alternate director which was in force immediately before his or her retirement shall remain in force; or

- (iv) if any event happens in relation to the alternate which, if the alternate were a director otherwise appointed, would cause him or her to vacate office.

## **72. Delegations To Committees**

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- (a) The directors may delegate any of their powers to a committee or committees (constituted as either special purpose or standing committees) consisting of two directors (one appointed by each member) and may delegate to any such committee the power to examine, report and make recommendations to the directors on any matter including without limitation remuneration, compliance and audit.
- (b) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be taken to have been exercised by the directors.
- (c) The members of such a committee may elect one of their number as chair of their meetings.
- (d) Where such a meeting is held and:
  - (i) a chair has not been elected as provided by Article 72(c); or
  - (ii) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act,the members present may elect one of their number to be chair of the meeting.
- (e) A committee may meet and adjourn as it thinks fit.
- (f) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (g) In the case of an equality of votes, the chair, in addition to his or her deliberative vote, shall not have a casting vote.

## **73. Circular Resolutions**

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- (a) If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the directors (excluding each director, if any, who would not be entitled to vote on that resolution at a meeting of the directors), a resolution in those terms shall be taken to have been passed at a meeting of the
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directors held on the day on which and at the time at which the document was last signed by a director.

- (b) For the purposes of Article 73(a)
  - (i) two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be taken to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents;
  - (ii) a telex, telegram or facsimile message which is received by the Company and is expressed to have been sent by a director shall be taken to be a document signed by that director at the time of receipt of the telex, telegram or facsimile message by the Company.

#### **74. Defects In Appointments**

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Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or a member of a committee, or to act as a director, or that a person so appointed was disqualified, all acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

### **Managing Director**

#### **75. Power To Appoint Managing Director**

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- (a) The “A” Shareholder and the “B” Shareholder may from time to time appoint one of the directors to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) A managing director's appointment shall automatically terminate if he ceases for any reason to be a director.

#### **76. Remuneration and Expenses of Managing Director**

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- (a) A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors decide.
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- (b) All expenses properly incurred by the managing director in performing his or her executive responsibilities as managing director of the Company shall be reimbursed by the Company.

## **77. Delegation of Powers To Managing Director**

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- (a) The directors may, on such terms and conditions and with such restrictions as they think fit, confer on a managing director any of the powers exercisable by them.
- (b) Subject to Article 77(c), any powers so conferred may be concurrent with the powers of the directors.
- (c) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

## **Secretary and other Officers**

### **78. Secretary**

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A secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the directors decide. The directors may at any time terminate the appointment of a secretary.

### **79. Other Officers**

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The directors may from time to time create any other position or positions in the Company (including but not limited to the offices of President and Vice President) with such powers and responsibilities as the directors may from time to time confer and the directors may appoint any person, whether or not a director, to any such position or positions. The directors may at any time terminate the appointment of a person holding such a position and may abolish the position.

## **Seals and Executing Documents**

### **80. Seals and their use**

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- (a) The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal.
  - (b) A Seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by:
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- (i) 2 directors, one of whom shall be an “A” Director and one of whom shall be a “B” Director; or
  - (ii) a director and a secretary (or another person appointed by the directors to countersign that document or a class of documents in which that document is included).
  - (c) This Article does not limit the ways in which the Company may execute a document.

## Inspection of Records

### 81. Inspection of Records

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The directors shall decide whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members (other than those who are also directors).

### 82. Rights of Members

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A member other than a director does not have the right to inspect any document of the Company except as provided by law or authorised by the directors or by the Company in general meeting.

## Dividends and Reserves

### 83. Power to Declare Dividends

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- (a) Subject to the Act, the Company in general meeting may from time to time declare dividends to be paid to members, but no dividend shall exceed that recommended by the directors.
- (b) The directors may authorise payment by the Company to the members of such interim or final dividends as appear to the directors to be justified by the profits of the Company.

### 84. Differential Dividends

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- (a) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, every dividend shall:
    - (i) be paid in respect of all shares;
    - (ii) be paid according to the amounts paid or credited as paid on the shares in respect of which it is to be paid; and
    - (iii) be apportioned and paid proportionately to the amounts paid or credited as paid on the shares in respect of which the
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dividend is to be paid during any part or parts of the period in respect of which the dividend is paid.

- (b) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of Article 84(a) to be paid or credited as paid on the share.
- (c) In Article 84(a), dividend includes interim dividend.

## **85. Reserves**

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- (a) The directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied.
- (b) Pending any such application the reserves may, at the discretion of the directors, either be employed in the business of the Company or be invested in such investments (other than shares in the Company) as the directors may from time to time think fit.
- (c) The directors may without placing them to reserve carry forward any profits which they may think prudent not to divide.

## **86. Deduction of Unpaid Amounts**

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The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by the member to the Company on account of calls or otherwise in relation to shares in the Company.

## **87. Distributions in Specie**

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- (a) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the directors shall give effect to such a resolution.
  - (b) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.
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## **88. Payment of Distributions**

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- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
  - (i) the address of the holder as shown in the register of members or, in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
  - (ii) to such other address as the holder or joint holders in writing directs or direct.
- (b) Any one of two or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

## **Capitalisation of Profits**

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## **89. Capitalisation of Profits**

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- (a) Subject to Article 89(b), the Company in general meeting may resolve that it is desirable to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in Article 89(c), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.
- (b) The Company shall not pass a resolution as mentioned in Article 89(a) unless the resolution has been recommended by the directors.
- (c) The ways in which a sum may be applied for the benefit of members under Article 89(a) are:
  - (i) in paying up any amounts unpaid on shares held by members;
  - (ii) in paying up in full unissued shares or debentures to be issued to members as fully paid; or
  - (iii) partly as mentioned in paragraph 89(c)(i) and partly as mentioned in paragraph 89(c)(ii).

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## **90. Powers of Directors**

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The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may:

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- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
  - (b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf 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 an authority referred to in paragraph (b) is effective and binding on all the members concerned.

## Notices

### 91. Notices Generally

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- (a) A notice may be given by the Company to any member either by serving it on him personally or by sending it by post to him at his or her address as shown in the register of members or the address supplied by him to the Company for the giving of notices to him.
  - (b) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
  - (c) A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.
  - (d) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.
  - (e) Without limiting the effectiveness of a notice served under Article 91(e) when a notice is being sent by post to an address outside Australia and the member has notified the Company of a telex or facsimile number or electronic address of that member overseas, the Company shall on the same day by telex, facsimile or electronic transmission to that member notify that member that a notice has been given and repeat the terms of the notice.
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## **92. Notices of General Meeting**

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- (a) Notice of every general meeting shall be given in the manner authorised by Article 91 to:
  - (i) every member;
  - (ii) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his or her death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (iii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

## **Winding Up**

### **93. Winding Up**

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- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair on any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.
- (c) If the Company is wound up, the rights and interests of the members in the capital and in any surplus assets shall be in proportion to the amounts paid or credited as paid on the shares held by them respectively at the commencement of the winding up.

## **Indemnity**

### **94. Indemnity**

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- (a) To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a director, executive officer or secretary of the Company against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity:
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- (i) incurred at any time whether before or after the time this Article comes into effect to any person (other than the Company or a Related Corporation), whether or not arising from a prior contingent liability, which does not arise out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
    - (ii) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or in connection with any application in relation to such proceedings in which the court grants relief to the person under the Act.
  - (b) The Company need not indemnify a person as provided for in paragraph (a) in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.
  - (c) To the extent permitted by law and without limiting the powers of the Company, the board of directors may authorise the Company to, and the Company may enter into any:
    - (i) documentary indemnity in favour of; or
    - (ii) insurance policy for the benefit of,a person who is, or has been, a director, executive officer, secretary, auditor, employee or other officer of the Company or of a subsidiary of the Company, which indemnity or insurance policy may be in such terms as the board of directors approves and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy;
  - (d) The benefit of each indemnity given in paragraph 94(a) continues, even after its terms or the terms of this paragraph 94(d) are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.
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