

Company number SC073544  
PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTION  
of  
MCMILLAN HOTELS LIMITED (**Company**)

Date: 25 November 2019  
(the "**Circulation Date**")

Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that:

Resolution 1 is passed as a special resolution and resolution 2 is passed as an ordinary resolution (together the **Resolutions**)

**SPECIAL RESOLUTION**

1. THAT the existing Articles of Association of the Company be and are hereby be replaced in their entirety with the proposed articles of association annexed to these resolutions.

**ORDINARY RESOLUTION**

2. THAT the existing A Ordinary Shares of £1 each in the capital of the Company are hereby re-designated as Ordinary Shares of £1 each having the respective rights and entitlements set down in the new Articles of Association adopted pursuant to Resolution 1 above.

**AGREEMENT**

Please read the notes at the end of this document before signifying your agreement to the Resolutions.

The undersigned, being persons entitled to vote on the Resolutions on 25 November 2019,



SCT 06/12/2019 #70  
COMPANIES HOUSE

hereby irrevocably agree to the Resolutions:

Hamilton C McMillan (signed on his behalf  
under Power of Attorney by Janet McMillan)

*Janet E McMillan*

*25/11/19*

Douglas D McMillan

*Douglas D McMillan*

*25/11/19* Date

Fay Cowan

*Fay Cowan*

*25/11/19* Date

Hamilton M McMillan Jnr

Date

#### NOTES

1. If you agree with the Resolutions, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:

- **By Hand:** delivering the signed copy to Stephen Bradford, Partner, Lockharts Solicitors, 12 Beresford Terrace, Ayr, KA7 2EG
- **Post:** returning the signed copy by post to Stephen Bradford, Partner, Lockharts Solicitors, 12 Beresford Terrace, Ayr, KA7 2EG.

If you do not agree to the Resolutions, you do not need to do anything: you will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolutions, you may not revoke your agreement.

3. Unless, during the period of 28 days beginning with the circulation date, sufficient agreement has been received for the Resolutions to pass, it will lapse. If you agree to the Resolutions, please ensure that your agreement reaches us before or during this date.

4. In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.

5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

McMILLAN HOTELS LIMITED

Company No **SC073544**

**Articles of Association adopted by Special Resolution passed on 25 November 2019**

23 August 2019

ISU/EMK/059963.00001/66496894.1

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**COMPANY NO. SC73544**  
**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**McMILLAN HOTELS LIMITED**

**(Adopted by special resolution passed on 25 November 2019)**

## **Introduction**

### **1. Interpretation**

#### **1.1** *In these Articles, the following words have the following meanings:*

**appointor:** has the meaning given in article 12.1;

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

**Business Day:** a day other than a Saturday, Sunday or public holiday in England or Scotland when banks are open for business;

**CA 2006:** the Companies Act 2006;

**Conflict:** a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company;

**Continuing Shareholder:** has the meaning given in article 18.3;

**Deemed Transfer Notice:** a Transfer Notice that is deemed to have been served under any provisions of these Articles;

**Eligible Director:** any director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of a particular matter);

**Fair Value:** in relation to Shares, as determined in accordance with article 21;

**Family Trust:** means (1) Mrs J.D. McMillan's Trust for Children and (2) as regards any particular individual Shareholder or deceased or former individual Shareholder, trusts (whether arising under a settlement, declaration of trust or other instrument by whomsoever or wheresoever made or under a testamentary disposition or on an intestacy) and whether discretionary, bare or otherwise under which no immediate beneficial interest in any of the Shares in question is for the

time being vested in any person other than the Shareholder and/or Privileged Relations of that Shareholder; and so that for this purpose a person shall be considered to be beneficially interested in a Share if such Share or the income thereof is liable to be transferred or paid or applied or appointed to or for the benefit of such person or any voting or other rights attaching thereto are exercisable by or as directed by such person pursuant to the terms of the relevant trusts or in consequence of an exercise of a power or discretion conferred thereby on any person or persons;

**Interested Director:** has the meaning given in article 8;

**Model Articles:** the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (*SI 2008/3229*) (as amended prior to the date of adoption of these Articles) and reference to a numbered Model Article is a reference to that article of the Model Articles;

**Mrs J.D. McMillan's Trust for Children:** the trust established by Deed of Trust by Mrs Janet Douglas McMillan dated 17<sup>th</sup> September 1990 and registered for preservation in the Books of Council and Session on 26<sup>th</sup> September 1990;

**Permitted Transfer:** a transfer of Shares made in accordance with article 19;

**Permitted Transferee:** in relation to a Shareholder, any of their Privileged Relations or the Trustees of their Family Trust(s);

**Privileged Relation:** the spouse or civil partner of a Shareholder and the Shareholder's children, grandchildren and remoter issue (including step and adopted children, grandchildren and remoter issue);

**Shares:** means shares in the Company;

**Shareholder:** means the holder of any Shares;

**Sale Price:** has the meaning given in article 18.3;

**Sale Shares:** has the meaning given in article 18.1;

**Seller:** has the meaning given in article 18.1;

**Transfer Notice:** a notice in writing given by any Shareholder to the other Shareholder where the first Shareholder desires, or is required by these Articles, to transfer or offer for transfer (or enter into an agreement to transfer) any Shares;

**Trigger Shareholders:** the holders of a combined 75% of more of the Shares in the Company;

**Trustee(s):** in relation to a Shareholder means the trustee or the trustees (to include any future assumed or appointed trustees and any change of the trustees on resignation, death or otherwise) of a Family Trust;

**Valuers:** the auditors for the time being of the Company or, if they decline the instruction, an independent firm of accountants jointly appointed by the Company and the Seller or, in the absence of agreement between the Company and the Seller on the identity of the expert within

20 Business Days of a Shareholder serving details of a suggested expert on the other, an independent firm of accountants appointed by the President, for the time being, of the Institute of Chartered Accountants of Scotland; and

**Writing or written:** the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the CA 2006 shall have those meanings in these Articles.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an article is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Adoption of the Model Articles**

- 2.1 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by these Articles or are inconsistent with these Articles, and, subject to any such modifications, exclusions or inconsistencies, shall together with these Articles constitute the articles of association of the Company to the exclusion of any other articles or regulations set out in any statute or in any statutory instrument or other subordinate legislation.
- 2.2 Model Articles 6(2), 7, 8, 9(1), 11 to 14 (inclusive), 16, 17, 22(2), 26(5), 36, 38, 39, 43, 44(2), 49 and 50 to 53 (inclusive) shall not apply to the Company.
- 2.3 Model Article 20 shall be amended by the insertion of the words "(including alternate directors and the secretary)" before the words "properly incur".



- 2.4 In Model Article 25(2)(c), the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 2.5 Model Articles 31(1)(a) to (c) (inclusive) shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide". Model Article 31(d) shall be amended by the deletion of the words "either" and "or by such other means as the directors decide".

## **Directors**

### **3. Unanimous decisions**

- 3.1 A decision of the directors is taken in accordance with this article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.
- 3.2 Such a decision may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in writing.
- 3.3 A decision may not be taken in accordance with this article if the Eligible Directors would not have formed a quorum at such a meeting.

### **4. Calling a directors' meeting**

- 4.1 Any director may call a directors' meeting by giving not less than 5 Business Days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary (if any) to give such notice.
- 4.2 Notice of a directors' meeting shall be given to each director in writing.

### **5. Quorum for directors' meetings**

- 5.1 Subject to article 5.2, the quorum for the transaction of business at a meeting of directors is any two Eligible Directors.
- 5.2 For the purposes of any meeting (or part of a meeting) held pursuant to article 8 to authorise a director's Conflict, if there is only one Eligible Director in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be one Eligible Director.
- 5.3 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision:

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the Shareholders to appoint further directors.

## **6. Casting vote**

- 6.1 *If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting has a casting vote.*
- 6.2 Article 6.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other director is not an Eligible Director for the purposes of that meeting (or part of a meeting).

## **7. Transactions or other arrangements with the Company**

Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the CA 2006 and provided he has declared the nature and extent of his interest in accordance with the requirements of the CA 2006, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) *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*
- (f) 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 CA 2006)) 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 CA 2006.

## **8. Directors' conflicts of interest**

- 8.1 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 CA 2006 to avoid conflicts of interest (**Conflict**).
- 8.2 Any authorisation under this article 8 will be effective only if:
- (a) to the extent permitted by the CA 2006, 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;
  - (b) in accordance with article 5.2, 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
  - (c) 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.
- 8.3 Any authorisation of a Conflict under this article 8 may (whether at the time of giving the authorisation or subsequently):
- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - (b) 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;
  - (c) 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;
  - (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
  - (e) 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
  - (f) 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.

- 8.4 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.
- 8.5 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.
- 8.6 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.

**9. Records of decisions to be kept**

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

**10. Number of directors**

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum but shall not be less than two.

**11. Appointment of directors**

- 11.1 In any case where, as a result of death or bankruptcy, the Company has no Shareholders and no directors, the transmittee(s) of the last Shareholder to have died or to have a bankruptcy order made against him (as the case may be) have the right, by notice in writing, to appoint a natural person (including a transmittee who is a natural person), who is willing to act and is permitted to do so, to be a director.
- 11.2 Any Shareholder holding 19% or more of the entire issued share capital of the Company shall have the right from time to time to appoint one natural person, who is willing to act and is permitted to do so, to be a director of the Company.

**12. Appointment and removal of alternate directors**

- 12.1 Any director (**appointor**) may appoint as an alternate any other director, or any other person, to:
- (a) exercise that director's powers; and
  - (b) carry out that director's responsibilities,

in relation to the taking of decisions by the directors, in the absence of the alternate's appointor.

12.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company signed by the appointor, or in any other manner approved by the directors.

12.3 The notice must:

- (a) identify the proposed alternate; and
- (b) in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

### **13. Rights and responsibilities of alternate directors**

13.1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's appointor.

13.2 Except as the Articles specify otherwise, alternate directors:

- (a) are deemed for all purposes to be directors;
- (b) are liable for their own acts and omissions;
- (c) are subject to the same restrictions as their appointors; and
- (d) are not deemed to be agents of or for their appointors

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

13.3 A person who is an alternate director but not a director:

- (a) may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);
- (b) may participate in a unanimous decision of the directors (but only if his appointor is an Eligible Director in relation to that decision, but does not participate); and
- (c) *shall not be counted as more than one director for the purposes of this article 13.3.*

13.4 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an Eligible Director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

- 13.5 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as his appointor but shall not be entitled to receive any remuneration from the Company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the Company.

**14. Termination of alternate directorship**

An alternate director's appointment as an alternate terminates:

- (a) when the alternate's appointor revokes the appointment by notice to the Company in writing specifying when it is to terminate;
- (b) on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;
- (c) on the death of the alternate's appointor; or
- (d) when the alternate's appointor's appointment as a director terminates.

**15. Secretary**

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

**Shares**

**16. Purchase of own Shares**

Subject to the CA 2006 but without prejudice to any other provision of these Articles, the Company may purchase its own Shares in accordance with Chapter 4 of Part 18 of the CA 2006, including (without limitation) out of capital up to any amount in a financial year not exceeding the lower of:

- (a) £15,000; and
- (b) the nominal value of 5% of the Company's fully paid share capital at the beginning of each financial year of the Company.

**17. Share transfers: general**

- 17.1 In these Articles, reference to the transfer of a Share includes the transfer, assignation or other disposal of a beneficial or other interest in that Share, or the creation of a trust or encumbrance over that Share, and reference to a Share includes a beneficial or other interest in a Share.

17.2 No Shareholder shall transfer any Share except:

- (a) in accordance with article 18;
- (b) in accordance with article 19;
- (c) in accordance with article 20; or
- (d) in accordance with article 22.

17.3 Subject to article 17.2, the directors must register any duly stamped or certified exempt transfer made in accordance with these Articles and shall not have any discretion to register any transfer of Shares which has not been made in compliance with these Articles.

17.4 Any transfer of Shares by way of a sale under these Articles shall be deemed to include a warranty that the transferor sells the Shares with full title guarantee.

17.5 Any Transfer Notice served in respect of the transfer of any Shares which has not completed before the date of service of a Deemed Transfer Notice shall automatically be revoked by the service of the Deemed Transfer Notice.

## 18. Pre-emption rights on the transfer of Shares

18.1 Except where the provisions of article 19, article 20 or article 22 apply, a Shareholder (**Seller**) wishing to transfer all or some of its Shares (**Sale Shares**) must give a Transfer Notice to the Company giving details of the proposed transfer including:

- (a) the number of Shares being transferred;
- (b) the identity of the proposed buyer(s); and
- (c) the price (in cash) at which it proposes to sell the Sale Shares.

18.2 A Transfer Notice once given or deemed to have been given under these Articles constitutes the Company as the agent of the Seller for the sale of the Sales Shares and may not be withdrawn or cancelled.

18.3 As soon as reasonably practical following receipt or deemed receipt of a Transfer Notice and agreement/determination of the Sale Price, the directors shall offer the Sale Shares for sale to all the Shareholders (other than the transferor) (the **Continuing Shareholder(s)**) inviting them to notify the Company in writing within 20 Business Days from the date of such offer (**Offer Period**) confirming their interest in purchasing the Sale Shares at the Sale Price and stating the maximum number of Sale Shares they wish to purchase (**Purchase Notice**). The **Sale Price** shall be the price per Sale Share agreed between the relevant Seller and the directors within 30 Business Days after receipt or deemed receipt of the Transfer Notice or, failing such agreement, the Fair Value determined by the Valuers pursuant to article 21.

- 18.4 If, at the end of the Offer Period, the number of Sale Shares applied for is equal to or exceeds the number of Sale Shares, the directors shall allocate the Sale Shares to each Continuing Shareholder who has applied for Sale Shares in the proportion which their existing holding of Shares bears to the total number of Shares held by those Continuing Shareholders who have applied for Sale Shares. Fractional entitlements shall be rounded to the nearest whole number.
- 18.5 If, at the end of the Offer Period, the total number of Sale Shares applied for is less than the number of Sale Shares, the directors shall allocate the Sale Shares to the Continuing Shareholders in accordance with their applications. The balance (**Surplus Shares**) shall be dealt with under the provisions of article 18.7.
- 18.6 Where the Continuing Shareholder(s) has/have given the Company a Purchase Notice, those Continuing Shareholders will be bound to purchase the Seller's Sale Shares at the Sale Price in accordance with article 18.4 or 18.5 (as the case may be) within 6 calendar months of the date when they give a Purchase Notice to the Company under article 18.2.
- 18.7 Subject to article 22 (where applicable), if, at the expiry of the Offer Period, there are any Surplus Shares in respect of which the Continuing Shareholder(s) has/have not given a Purchase Notice, then the Seller may transfer any Surplus Shares to the buyer(s) identified in the Transfer Notice at a price not less than the Sale Price and provided the sale is completed within 3 months of the expiry of the Offer Period.
- 18.8 If the Seller fails to complete a transfer of Sale Shares as required under this article 18, the directors are irrevocably authorised to appoint any person they nominate for the purpose as agent to transfer the Sale Shares on the Seller's behalf and to do anything else that the directors may reasonably require to complete the sale, and the Company may receive the Sale Price in trust for the Seller (without any obligation to pay interest), giving a receipt that shall discharge the Continuing Shareholder(s) and/or any third party purchaser(s).

## **19. Permitted Transfers**

- 19.1 Subject to article 19.2;
- (a) a Shareholder may transfer up to 100% of the issued Shares held by that Shareholder to any of their Permitted Transferees;
  - (b) Trustees may transfer up to 100% of the issued Shares held by them to any new or remaining Trustees upon any change of Trustees or to any beneficiary of the relevant trust who is a Privileged Relation of the settlor of the Family Trust; and
  - (c) The trustees of Mrs J.D. McMillan's Trust for Children may transfer up to 100% of the issued shares held by them to any new or remaining Trustees upon any change of Trustees or to any beneficiary of that trust; and



- (d) so long as either or both of Hamilton Coats McMillan and Janet Douglas McMillan remain a Shareholder then he or she, or their respective executors or testamentary Trustees, shall be entitled to transfer up to 100% of the Shares held by them to his or her spouse, any of his or her child or children, grandchildren or remoter issue or to the Trustees acting under a deed of trust or other settlement wholly or mainly for the benefit of any such persons,

without: (i) any price or other restriction; or (ii) being required to follow the steps set out in article 18.

19.2 A Shareholder may only transfer Shares to the Trustees of a Family Trust if the directors are satisfied:

- (a) with the terms of the Family Trust;
- (b) with the identity of the Trustees; and
- (c) that no costs (including any liability to tax) incurred in connection with the setting up or administration of that Family Trust are to be paid by the Company.

19.3 Subject to article 19.2, any Shareholder holding Shares as a result of a Permitted Transfer made by a Shareholder in accordance with this article 19 may, at any time, transfer the Shares back to that Shareholder or to another Permitted Transferee of such Shareholder, without: (i) any price or other restriction; or (ii) being required to follow the steps set out in article 18.

19.4 If a Permitted Transfer has been made to a Privileged Relation of a Shareholder, that Privileged Relation shall within 20 Business Days of ceasing to be a Privileged Relation of the relevant Shareholder (whether by reason of divorce, dissolution of a civil partnership or otherwise but not by reason of death) execute and deliver to the Company a transfer(s) of the Shares held by him to the relevant Shareholder or to any Permitted Transferee of the relevant Shareholder without: (i) any price or other restriction; or (ii) being required to follow the steps set out in article 18, failing which he shall be deemed on the expiry of the 20 Business Days to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.2.

19.5 Except as provided for in article 19.1(d), on the death of a Shareholder, his personal representatives shall within 90 Business Days after the grant of probate/confirmation execute and deliver to the Company a transfer(s) of the Shares held by him to any Permitted Transferee of the Shareholder without: (i) any price or other restriction; or (ii) being required to follow the steps set out in article 18, failing which the personal representatives shall be deemed on the expiry of the 90 Business Days to have given a Transfer Notice in respect of the Shares in accordance with article 18 and article 20.2.

## **20. Compulsory transfers**

- 20.1 On the bankruptcy (or equivalent procedure in any jurisdiction outside Scotland) of a Shareholder, that Shareholder or a person(s) entitled to Shares in consequence of the bankruptcy of that Shareholder shall be deemed at such time as the directors may determine to have served a Transfer Notice in respect of those Shares under article 18 and article 20.2.
- 20.2 A Deemed Transfer Notice has the same effect as a Transfer Notice in accordance with article 18, except that:
- (a) the Deemed Transfer Notice shall be deemed to have been received one Business Day after deemed service and shall take effect on the basis that it does not identify a proposed buyer or state a price for the Sale Shares;
  - (b) the Sale Price for the Sale Shares for the purposes of article 18 shall be the aggregate Fair Value of those shares determined by the Valuers in accordance with article 21;
  - (c) in the event that, at the expiry of the Offer Period, there are any Surplus Shares in respect of which the Continuing Shareholder(s) has/have not given a Purchase Notice, then, in the case of a Deemed Transfer Notice, the provisions of article 18.7 will not apply and the directors may transfer any Surplus Shares to a third party at a price not less than the Sale Price and provided the sale is completed within 3 months of the expiry of the Offer Period; and
  - (d) references to the **Seller** in article 18 and article 21 shall include the personal representatives of the Shareholder and/or a person(s) entitled to Shares in consequence of the bankruptcy of the Shareholder in the case of a Deemed Transfer Notice.

## **21. Valuation**

- 21.1 The Valuers shall be requested to determine the Fair Value within 20 Business Days of their appointment and to notify the Company and the Seller in writing of their determination.
- 21.2 The Fair Value for any Sale Share shall be the price per share determined in writing by the Valuers on the following bases and assumptions:
- (a) valuing each of the Sale Shares as a proportion of the total value of all the issued Shares in the capital of the Company without any premium or discount being attributable to the percentage of the issued share capital of the Company which they represent or for the rights or restrictions applying to the Sale Shares;
  - (b) if the Company is then carrying on business as a going concern, on the assumption that it will continue to do so;
  - (c) the sale is to be on arms' length terms between a willing seller and a willing buyer;

- (d) the Sale Shares are sold free of all encumbrances;
- (e) the sale is taking place on the date the Valuers were requested to determine the Fair Value; and
- (f) taking account of any other factors that the Valuers reasonably believe should be taken into account.

21.3 The Shareholders and/or the Seller are entitled to make submissions to the Valuers and will provide (or procure that the Company provides) the Valuers with such assistance and documents as the Valuers reasonably require for the purpose of reaching a decision, subject to the Valuers agreeing to give such confidentiality undertakings as the Shareholders and/or the Seller may reasonably require.

21.4 To the extent not provided for by this article 21, the Valuers may, in their reasonable discretion, determine such other procedures to assist with the valuation as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their valuation.

21.5 The Valuers shall act as expert and not as arbitrator and their written determination shall be final and binding on the Shareholders and the Seller in the absence of manifest error or fraud.

21.6 The cost of obtaining the Valuers' valuation shall be borne by the Company and the Seller equally or in such other proportions as the Valuers direct.

## **22. Drag along**

22.1 If the Trigger Shareholders wish to transfer all (but not some only) of their respective Shares to a bona fide purchaser on arm's length terms (**Proposed Buyer**), the Trigger Shareholders may require all other holders of Shares in the Company to sell and transfer their Shares (**Called Shares**) to the Proposed Buyer (or as the Proposed Buyer directs) in accordance with the provisions of this article (**Drag Along Option**).

22.2 The Trigger Shareholders may exercise the Drag Along Option by giving written notice to that effect to the Shareholders of the Called Shares (**Called Shareholder(s)**) (**Drag Along Notice**) at any time before the transfer of the Trigger Shareholders' Shares to the Proposed Buyer. The Drag Along Notice shall specify:

- (a) that the relevant Called Shareholder is required to transfer all of his Called Shares pursuant to this article 22;
- (b) the person to whom the Called Shares are to be transferred;

- (c) the purchase price payable for the Called Shares which shall, for each Called Share, be an amount at least equal to the price per share offered by the Proposed Buyer for the Trigger Shareholders' Shares; and
  - (d) the proposed date of the transfer and completion.
- 22.3 Once issued, a Drag Along Notice shall be irrevocable. However, a Drag Along Notice shall lapse if, for any reason, the Trigger Shareholders have not sold their respective Shares to the Proposed Buyer within 20 Business Days of serving the Drag Along Notice. The Trigger Shareholders may serve further Drag Along Notices following the lapse of any particular Drag Along Notice.
- 22.4 No Drag Along Notice shall require the Called Shareholder(s) to agree to any terms except those specifically set out in this article 22.
- 22.5 Completion of the sale of the Called Shares shall take place on the Completion Date, the Completion Date being the date proposed for completion in the Drag Along Notice unless:
  - (a) the Trigger Shareholders and the Called Shareholder agree otherwise in which case the Completion Date shall be the date agreed in writing by them; or
  - (b) that date is less than 20 Business Days after the date on which the Drag Along Notice is served, in which case the Completion Date shall be the 20 Business Day after service of the Drag Along Notice.
- 22.6 Neither the proposed sale of the Trigger Shareholders' Shares to the Proposed Buyer nor the sale of the Called Shares by the Called Shareholders shall be subject to the rights of pre-emption set out in article 18.
- 22.7 On or before the Completion Date, the Called Shareholders shall execute and deliver a stock transfer form(s) for the Called Shares, together with the relevant share certificate(s) (or a suitable indemnity for any lost share certificate(s)) to the Company. On the Completion Date, the Company shall pay the Called Shareholders, on behalf of the Proposed Buyer, the amounts due pursuant to article 22.2 to the extent that the Proposed Buyer has put the Company in the requisite funds. The Company's receipt for the price shall be a good discharge to the Proposed Buyer. The Company shall hold the amounts due to the Called Shareholders in trust for the Called Shareholders without any obligation to pay interest.
- 22.8 To the extent that the Proposed Buyer has not, on the Completion Date, put the Company in funds to pay the purchase price due in respect of the Called Shares, the Called Shareholders shall be entitled to the return of the stock transfer form(s) and share certificate(s) (or suitable indemnity) for the relevant Called Shares and the Called Shareholders shall have no further rights or obligations under this article 22 in respect of their Shares.

- 22.9 If any Called Shareholder does not, on or before the Completion Date, execute and deliver (in accordance with article 22.7) transfer(s) in respect of all of the Called Shares held by him, that Called Shareholder shall be deemed to have irrevocably appointed any person nominated for the purpose by the Trigger Shareholders to be his agent to execute all necessary transfer(s) on his behalf, against receipt by the Company (on trust for such holder) of the purchase price payable for the Called Shares, and to deliver such transfer(s) to the Proposed Buyer (or as he may direct) as the holder thereof. After the Proposed Buyer (or its nominee) has been registered as the holder of the Called Shares, the validity of such proceedings shall not be questioned by any such person. Failure to produce a share certificate shall not impede the registration of Shares under this article 22.9.

### **Decision making by Shareholders**

#### **23. Poll votes**

- 23.1 A poll may be demanded at any general meeting by a qualifying person (as defined in section 318 of the CA 2006) present and entitled to vote at the meeting.
- 23.2 Model Article 44(3) shall be amended by the insertion of the words "A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made" as a new paragraph at the end of that article.

#### **24. Proxies**

- 24.1 Model Article 45(1)(d) shall be deleted and replaced with the words "is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of general meeting (or adjourned meeting) to which they relate".
- 24.2 Model Article 45(1) shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid" as a new paragraph at the end of that article.

### **Administrative arrangements**

#### **25. Means of communication to be used**

- 25.1 Subject to article 25.2, any notice, document or other information shall be deemed received by the intended recipient:
- (a) if delivered by hand, on signature of a delivery receipt;

- (b) if sent by pre-paid first class post or other next working day delivery service providing proof of postage, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- (c) if sent by fax or email, at the time of transmission; or
- (d) if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

25.2 If deemed receipt under article 25.1 would occur outside Usual Business Hours (as defined below), the notice, document or other information shall be deemed to have been received when Usual Business Hours next recommence. For the purposes of this article, **Usual Business Hours** means 9.00 am to 5.30 pm local time on any day which is not a Saturday, Sunday or public holiday in the place of receipt of the notice, document or other information (which, in the case of service by fax or email shall be deemed to be the same place as is specified for service of notices, documents or other information on the relevant recipient by hand or post).

25.3 To prove service, it is sufficient to prove that:

- (a) if delivered by hand, the notice was delivered to the correct address;
- (b) if sent by post the envelope containing the notice was properly addressed, paid for and posted;
- (c) if sent by fax, a transmission notice was received confirming that the notice was successfully transmitted to the correct fax number; or
- (d) if sent by email, the notice was properly addressed and sent to the email address of the recipient.

25.4 In proving that any notice, document or information was properly addressed, it will suffice to show that the notice, document or information was addressed to an address permitted for the purpose by the CA 2006.

## **26. Indemnity and insurance**

26.1 Subject to article 26.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

- (a) each relevant officer of the Company shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:
  - (i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and

- (ii) in relation to the Company's activities as a trustee of any occupational pension scheme (as defined in section 235(6) of the CA 2006),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's affairs; and

- (b) the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 26.1(a) and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

26.2 This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the CA 2006 or by any other provision of law and any such indemnity is limited accordingly.

26.3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

26.4 In this article:

- (a) a "relevant officer" means any director or other officer or former director or other officer of the Company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the CA 2006), but excluding in each case any person engaged by the Company as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor; and
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or any associated company.

## **27. Insurance**

27.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

27.2 In this article:

- (a) a "relevant officer" means any director or other officer or former director or other officer of the Company or an associated company (including any company which is a trustee of

an occupational pension scheme (as defined by section 235(6) of the CA 2006), but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor;

- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## **28. Share classification and rights**

- 28.1 The Shares in the Company shall be designated as Ordinary Shares of £1 each. Each Share shall have full voting rights and shall participate equally in any dividend or distribution of profits.
- 28.2 The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them