

Company number SC 286009

PRIVATE COMPANY LIMITED BY SHARES

RESOLUTIONS

of

HALO NURSERIES LIMITED (Company)

The following resolutions were passed as special resolutions by way of written resolutions

on 11th January 2012.

1. **THAT** the authorised share capital of the Company be increased from £1,000 divided into 1,000 Ordinary Shares of £1 each to £251,000 divided into 1000 Ordinary Shares of £1 each and 250,000 7.5% Cumulative Redeemable Preference Shares of £1 each having the rights and being subject to the restrictions set out in the Articles of Association of the Company.

2. **THAT** Clause 5 in the Memorandum of Association of the Company be deleted and the following substituted therefor:

The authorised share capital of the Company is £ 251,000 divided into 1000 Ordinary Shares of £1 each and 250,000 7.5% Cumulative Redeemable Preference Shares of £1 each.

3. **THAT** the Articles of Association of the Company be amended by deleting Article 11 thereof.

4. **THAT** the Articles of Association of the Company be further amended by deleting Articles 2.1 to 2.3 thereof and by adopting the following articles and inserting the same as articles 2.1 to 2.6 and that the remaining articles and article references in the Articles of Association be renumbered accordingly:

“2.1. SHARE CAPITAL

In these Articles the following words have the following meanings:

2006 Act: the Companies Act 2006;

Asset Sale: the sale of the whole or substantially the whole of the undertaking and business of the Company;

Available Profits: the profits available for distribution within the meaning of Part 23 of the 2006 Act;

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Business Day: a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in Scotland;

Listing: the successful application and admission of all or any of the shares in the capital of the Company, or securities representing such shares to the Official List of the UK Listing Authority or on the AIM market operated by the London Stock Exchange plc, or to any recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000 (as amended));

Ordinary Shares: the ordinary shares of £1 each in the capital of the Company;

Preferred Dividends: the cumulative preferential dividend referred to in Article 2.3;

Preference Shares: the cumulative redeemable preference shares of £1 each in the capital of the Company;

Sale: an Asset Sale;

Subsidiary and Subsidiary Undertaking: shall have the meanings given to them in the 2006 Act.

2.2 SHARES

2.2.1 The authorised share capital of the Company at the date of adoption of this Article is £251,000 divided into:

- (a) 250,000 Preference Shares; and
- (b) 1,000 Ordinary Shares.

2.2.2 Unless the context requires otherwise, references in these Articles to shares of a particular class shall include shares created and/or issued after the date of adoption of this Article and ranking pari passu in all respects (or in all respects except only as to the date from which those shares rank for dividend) with the shares of the relevant class then in issue.

2.2.3 Except as provided in these Articles, the Preference Shares and the Ordinary Shares shall rank pari passu in all respects but shall constitute separate classes of shares.

2.3 DIVIDENDS

2.3.1 In any financial year, the Available Profits of the Company shall be used to pay dividends as set out in this Article 2.3.

2.3.2 The Company shall, without resolution of the Board or the Company in general meeting and before application of any Available Profits to reserve or for any other purpose, pay the holders of the Preference Shares a cumulative preferential dividend (**Preferred Dividend**) at the rate of 7.5% per Preference Share which shall be paid annually on 31 March in each year to the persons registered as holders of such shares at such dates and which shall accrue daily and be calculated in respect of the period to such dates assuming a 365 day year. The first payment shall be made on 31 March

2012 for the period from and including the date of issue of the Preference Shares to such date.

- 2.3.3 Once all the Preference Dividends have been paid, any Available Profits remaining in any financial year that the Company determines to distribute shall be applied in paying to the holders of Ordinary Shares a dividend on each Ordinary Share according to the amount paid up or credited as paid up on each such share.
- 2.3.4 Subject to the 2006 Act and these Articles, the Board may pay interim dividends if the Available Profits for the relevant period justify such payment.
- 2.3.5 Each dividend shall be distributed to the appropriate shareholders pro rata according to the number of shares held by them respectively and shall accrue daily (assuming a 365-day year). All dividends are expressed net and shall be paid in cash.
- 2.3.6 If the Company is unable to pay the Preferred Dividend in full on the due date because there are insufficient Available Profits, it shall pay the Preferred Dividend on that date to the extent that it is lawfully able to do so.
- 2.3.7 Unless the Company has insufficient Available Profits, the Preferred Dividend shall be paid immediately on the due date. Such payment shall be made notwithstanding any other provision of these Articles and in particular notwithstanding that there has not been a recommendation of the directors or resolution of the Company in general meeting.

If the Preferred Dividend is not paid on the due date, it shall notwithstanding it is expressed to be cumulative, immediately become a debt due by the Company and shall be payable in priority to any other dividend and shall attract interest at an annual rate of 1% per annum above the Preferred Dividend rate calculated daily assuming a 365-day year from and including the date any sum becomes due to the actual date of payment. Such interest shall accumulate and form part of the Preferred Dividend to which it relates.

- 2.3.8 If the Company is in arrears in paying the Preferred Dividend, the first Available Profits arising shall be applied in the following order of priority:
 - (a) first, in or towards paying off any arrears or unpaid amounts of Preferred Dividend; and
 - (b) second, in or towards redeeming all Preference Shares that have not been redeemed on or by the due date for redemption in accordance with these Articles.
- 2.3.9 The Company shall procure so far as it is able that each of its subsidiaries and subsidiary undertakings which has Available Profits shall from time to time declare and pay to the Company such dividends as are necessary to permit lawful and prompt payment by the Company of the Preferred Dividend and the redemption of any Preference Shares on their due date for redemption.

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2.4. LIQUIDATION: RETURN OF CAPITAL

- 2.4.1 On a return of assets on liquidation, capital reduction or otherwise (other than a conversion, redemption or purchase of shares), the assets of the Company remaining after the payment of its liabilities shall be applied in the following order of priority:

- (a) first, in paying to the holders of the Preference Shares, £1 per Preference Share, together with a sum equal to any arrears and accruals of the Preferred Dividend calculated down to and including the date of the return of capital and, if there is a shortfall of assets remaining to satisfy the entitlements of holders of Preference Shares in full, the proceeds shall be distributed to the holders of the Preference Shares in proportion to the amounts due to each such share held;
- (b) second, in paying to each holder of Ordinary Shares in respect of each Ordinary Share of which he is the holder £1 per share;
- (c) third, the balance of such assets shall be distributed amongst the holders of the Ordinary Shares pro rata.

2.5. REDEMPTION OF PREFERENCE SHARES

- 2.5.1 The Preference Shares shall, subject to the 2006 Act, be redeemed as follows:

- (a) the Company shall redeem:
 - (i) 50,000 of the Preference Shares then in issue, on 31 March 2013;
 - (ii) 50,000 of the Preference Shares then in issue, on 31 March 2014; and
 - (iii) 50,000 of the Preference Shares then in issue on 31 March 2015; and
 - (iv) 50,000 of the Preference Shares then in issue on 31 March 2016;
 - (v) all of the remaining Preference Shares in issue on 31 March 2017.
- (b) the Company shall redeem all the Preference Shares then in issue immediately prior to either a Sale or a Listing and a Sale or Listing shall be conditional on such redemption in full together with payment of all accruals and arrears of Preferred Dividend;

- 2.5.2 Where Preference Shares are to be redeemed in accordance with Article 2.5.1, the Company shall give to the holders of the Preference Shares falling to be redeemed prior notice in writing of the redemption (Company Redemption Notice). The Company Redemption Notice shall specify the particular Preference Shares to be redeemed and the date fixed for redemption (which, in the case of a redemption pursuant to Article 2.5.1(b), shall be the expected date for redemption) and shall be given not less than 20 nor more than 28 Business Days prior to the date fixed for redemption. In the case of a redemption pursuant to Article 2.5.1(b), the Company Redemption Notice shall be conditional on such Sale or Listing occurring within one month of the date fixed for redemption, failing which the Company Redemption Notice shall be revoked.
- 2.5.3 Notwithstanding Article 2.5.1, the holders of the Preference Shares may require the Company, by serving on it a notice (Shareholder Redemption Notice), to redeem such number of Preference Shares as is specified in the Shareholder Redemption Notice if, at any time:
- (a) the Company has not redeemed any Preference Shares in accordance with the requirements of these Articles within 30 Business Days of the due date (irrespective of whether such redemption would be unlawful);
 - (b) there has been proposed a resolution for the winding-up of the Company, a resolution for a reduction in the capital of the Company or a resolution varying any of the rights attaching to the Preference Shares.
- 2.5.4 The holders of the Preference Shares shall be entitled to withdraw the Shareholder Redemption Notice if they serve the Company with written notice to that effect before the redemption takes place.
- 2.5.5 Where a Shareholder Redemption Notice has been duly given, the Company shall be obliged, subject to having sufficient Available Profits with which to redeem the same, to redeem the Preference Shares specified in the Shareholder Redemption Notice on the first Business Day following the receipt of such notice (which day shall be the date fixed for redemption).
- 2.5.6 If the Company is unable, because of having insufficient Available Profits, to redeem in full the relevant number of Preference Shares on the date fixed for redemption, the Company shall redeem as many of such Preference Shares as can lawfully and properly be redeemed and the Company shall redeem the balance as soon as it is lawfully and properly able to do so.
- 2.5.7 If the Company is at any time redeeming fewer than all the Preference Shares from time to time in issue, the number of Preference Shares to be redeemed shall (subject to any contrary requirement in a Shareholder Redemption Notice) be apportioned between those holders of the Preference Shares then in issue *pro rata* according to the number of Preference Shares held by them respectively at the date fixed for redemption.

2.5.8 On the date fixed for redemption, each of the holders of the Preference Shares falling to be redeemed shall be bound to deliver to the Company, at the Company's registered office, the certificate(s) for such Preference Shares (or an indemnity, in a form reasonably satisfactory to the Board, in respect of any lost certificate) in order that the same may be cancelled. Upon such delivery, the Company shall pay to the holder (or, in the case of any joint holders, to the holder whose name stands first in the Company's register of members in respect of such Preference Shares) the amount due in respect of such redemption against delivery of a proper receipt for the redemption monies.

2.5.9 If any certificate delivered to the Company pursuant to Article 2.5.8 includes any Preference Shares not falling to be redeemed on the date fixed for redemption, a new certificate in respect of those shares shall be issued to the holder(s) thereof as soon as practicable thereafter (and, in any event, within 20 Business Days thereafter).

2.5.10 There shall be paid on the redemption of each Preference Share an amount equal to:

(a) £1; and

(b) all accruals and/or unpaid amounts of Preferred Dividend in respect thereof, calculated down to and including the date of actual payment

and such aggregate amount shall, subject to the Company having Available Profits or other monies which may be lawfully applied for such redemption, at that time become a debt due from and immediately payable by the Company to the holders of such Preference Shares.

2.5.11 If the Company is unable to pay the amounts referred to in Article 2.5.10 in full on a date fixed for redemption by reason of having insufficient Available Profits or not having other monies which may be lawfully applied for such redemption, then the amount so unpaid shall be increased by an amount equal to the interest which would have accrued had interest on the unpaid amount been charged at 1% per annum above the Preferred Dividend rate in respect of the period from and including the due date down to and including the date of actual payment and shall be paid as soon thereafter as, and to the extent that, Available Profits or other monies that may lawfully be applied for such redemption have arisen.

2.5.12 If the Company fails or is unable to redeem any of the Preference Shares in full on the date due for redemption for any reason whatsoever, all Available Profits (or other monies which may lawfully be applied for the purpose of redeeming shares) shall be applied in the order of priority specified in Article 2.3.8.

2.6. VOTING

2.6.1 Subject to any other provisions in these Articles concerning voting rights, shares in the Company shall carry votes as follows:

- (a) the Ordinary Shares shall confer on each holder of Ordinary Shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company, and each Ordinary Share shall carry one vote per share;
- (b) the Preference Shares shall in the circumstances set out in Article 2.6.2 confer on each holder of such shares the right to receive notice of and to attend, speak and vote at all general meetings of the Company, and each Preference Share shall carry one vote per share until payment or redemption has been effected, or in relation to such resolutions as are referred to in Article 2.6.2.

2.6.2 The Preference Shares shall, subject as herein provided, carry the right to vote:

- (a) if the Company has not paid any Preferred Dividend within 30 Business Days of the due date (irrespective of whether unlawful);
- (b) if the Company has not redeemed any of the Preference Shares within 30 Business Days of the due date (whether or not unlawful);
- (c) if there has been proposed a resolution for the winding up of the Company, reduction in capital of the Company or a resolution varying the class rights of the Preference Shares.

2.6.3 Where shares confer a right to vote, votes may be exercised:

- (a) on a show of hands by every shareholder entitled to vote who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case, each shareholder holding shares with votes shall have one vote); or
- (b) on a poll by every shareholder entitled to vote who (being an individual) is present in person or by proxy or (being a corporation) is present by a representative or by a proxy (in which case, each shareholder holding shares with votes shall have one vote for each such share held)."

5. **THAT** subject to passing of resolutions 1 to 4 the Directors be and they are hereby generally and unconditionally authorised for the purposes of section 551 of the 2006 Act to allot shares in the Company up to an aggregate nominal amount of £ 250,000, provided that this authority shall, unless renewed, varied or revoked by the Company in general meeting, expire on the date falling five years after the date of passing of this resolution but the Company may, before such expiry, make an offer or agreement which would or might require shares to be allotted after such expiry, and the Directors may allot shares in pursuance of such offer or agreement notwithstanding that the authority conferred by this resolution has expired. This authority is in substitution for all previous authorities conferred upon the Directors pursuant to section 80 of the Companies Act 1985 or section 551 of the 2006 Act.

Mhairi Ann Rushforth
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