

**AMENDED AND RESTATED  
BYE-LAWS  
OF  
GULF KEYSTONE PETROLEUM LIMITED**

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**AMENDED AND RESTATED BYE-LAWS  
OF  
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**INTERPRETATION**

1. 1.1 In these Bye-Laws, unless the context otherwise requires:

**“Bermuda”** means the Islands of Bermuda;

**“Board”** means the Board of Directors of the Company or the Directors present at a meeting of Directors at which there is a quorum;

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

**“Common Shares”** means the shares of par value US\$0.01 each having the rights and being subject to the restrictions set out in these Bye-Laws;

**“the Companies Acts”** means every Bermuda statute from time to time in force concerning companies insofar as the same applies to the Company;

**“Company”** means Gulf Keystone Petroleum Limited, registered in Bermuda with No. 31165, and incorporated in Bermuda on 29 October 2001;

**“CREST”** means the relevant system operated by Crest Co. Limited in terms of the Uncertificated Securities Regulations, which enables title to shares or other securities to be evidenced and transferred without a written instrument;

**“Director”** means such person or persons as shall be appointed to the Board from time to time pursuant to these Bye-Laws;

**“Indemnified Person”** means any Director, Officer, Resident Representative, member of a committee duly constituted under Bye-Law 112 and any liquidator, manager or trustee for the time being acting in relation to the affairs of the Company, and his heirs, executors and administrators;

**“Non Voting Common Shares”** means shares of par value US\$0.01 each having the rights and being subject to the restrictions set out in these Bye-Laws;

**“Officer”** means a person appointed by the Board pursuant to Bye-Law 126 and shall not include an auditor of the Company;

**“paid up”** means paid up or credited as paid up;

**“Preferred Shares”** means the Series A Preferred Shares and any other series of preferred shares of the Company having the rights and being subject to the restrictions as may be imposed in accordance with these Bye-Laws;

**“Proportionate Percentage”** means, with respect to any holder of Common Shares, the fraction, expressed as a percentage, the numerator of which is the total number of Common Shares held by such Shareholder and the denominator of which is the total number of Common Shares outstanding at the time of determination;

**“Register”** means the Register of Shareholders of the Company and, except in Bye-Laws 34 and 35, includes any branch register;

**“Registered Office”** means the registered office for the time being of the Company;

**“Resident Representative”** means (if any) the individual (or, if permitted in accordance with the Companies Acts, the company) appointed to perform the duties of resident representative set out in the Companies Acts and includes any assistant or deputy Resident Representative appointed by the Board to perform any of the duties of the Resident Representative;

**“Resolution”** means a resolution of the Shareholders or, where required, of a separate class or separate classes of Shareholders adopted either in general meeting or by written resolution in accordance with the provisions of these Bye-Laws;

**“Seal”** means the common seal of the Company and includes any authorised duplicate thereof;

**“Secretary”** includes a joint, temporary, assistant or deputy secretary and any person appointed by the Board to perform any of the duties of the Secretary;

**“Series A Preferred Shares”** means the 40,000 Preferred Shares of par value US\$1,000 designated as Series A Preferred Shares each having the rights and being subject to the restrictions set out in these Bye-Laws;

**“share”** means share in the capital of the Company and includes a fraction of a share;

**“Shareholder”** means a shareholder or member of the Company, provided that for the purpose of Bye-Laws 158-164 inclusive it shall also include any holder of notes, debentures or bonds issued by the Company;

**“Specified Place”** means the place (not being in the UK), if any, specified in the notice of any meeting of the Shareholders, or adjourned meeting of the Shareholders, at which the chairman of the meeting shall preside;

**“Subsidiary” and “Holding Company”** have the same meanings as in section 86 of the Companies Act 1981 of Bermuda, except that references in that section to a company shall include any body corporate or other legal entity, whether incorporated or established in Bermuda or elsewhere.

**“these Bye-Laws”** means these Bye-Laws in their present form or as from time to time amended;

**“the Uncertificated Securities Regulations”** means the Uncertificated Securities Regulations 2001 of the United Kingdom in so far as the same apply to the Company and includes (i) any enactment or subordinate legislation which amends or supersedes those Uncertificated Securities Regulations; and (ii) any applicable rules made under those Uncertificated Securities Regulations or any such enactment or subordinate legislation for the time being in force within the United Kingdom.

- 1.2 For the purposes of these Bye-Laws, a corporation shall be deemed to be present in person if its representative duly authorised pursuant to the Companies Acts is present.
- 1.3 Words importing only the singular number include the plural number and vice versa.
- 1.4 Words importing only the masculine gender include the feminine and neuter genders respectively.
- 1.5 Words importing persons include companies or associations or bodies of persons, whether corporate or un-incorporate.
- 1.6 A reference to writing shall include typewriting, printing, lithography, photography and other modes of representing or reproducing words in a legible and non-transitory form.
- 1.7 Any words or expressions defined in the Companies Acts or the Uncertificated Securities Regulations (as the case may be) in force at the date when these Bye-Laws or any part thereof are adopted shall bear the same meaning in these Bye-Laws or such part (as the case may be).
- 1.8 A reference to anything being done by electronic means includes its being done by means of any electronic or other communications equipment or facilities and reference to any communication being delivered or received, or being delivered or received at a particular place, includes the transmission of an electronic or similar communication, and to a recipient identified in such manner or by such means as the Board may from time to time approve or prescribe, either generally or for a particular purpose.
- 1.9 A reference to a signature or to anything being signed or executed include such forms of electronic signature or other means of verifying the authenticity of an electronic or similar communication as the Board may from time to time approve or prescribe, either generally or for a particular purpose.
- 1.10 A reference to any statute or statutory provision (whether in Bermuda or elsewhere) includes a reference to any modification or re-enactment of it for the time being in force and to every rule, regulation or order made under it (or under any such modification or re-enactment) and for the time being in force and any reference to any rule, regulation or order made under any such statute or statutory provision includes a reference to any modification or replacement of such rule, regulation or order for the time being in force.
- 1.11 In these Bye-Laws:

- 1.11.1 powers of delegation shall not be restrictively construed but the widest interpretation shall be given thereto;
  - 1.11.2 the word “Board” in the context of the exercise of any power contained in these Bye-Laws includes any committee consisting of one or more Directors, any Director holding executive office and any local or divisional Board, manager or agent of the Company to which or, as the case may be, to whom the power in question has been delegated;
  - 1.11.3 no power of delegation shall be limited by the existence or, except where expressly provided by the terms of delegation, the exercise of any other power of delegation; and
  - 1.11.4 except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under these Bye-Laws or under another delegation of the powers.
- 1.12 A reference to share in “uncertificated form” means shares, the title to which is recorded in the register of members as being held in such form and which by virtue of the Uncertificated Securities Regulations may be transferred by means of a relevant system and reference to shares in “certificated form” means shares, the title to which is not and may not be so transferred.

#### **REGISTERED OFFICE**

2. The Registered Office shall be at such place in Bermuda as the Board shall from time to time appoint.

#### **SHARE CAPITAL**

3. 3.1 As of the date of adoption of these Bye-Laws, the authorised share capital of the Company is US\$70,000,000 divided into:
- 3.1.1 950,000,000 Common Shares of par value US\$0.01 each;
  - 3.1.2 50,000,000 Non Voting Common Shares of par value US\$0.01 each; and
  - 3.1.3 60,000 Preferred Shares of par value US\$1,000 each of which 40,000 Preferred Shares shall be Series A Preferred Shares having the rights and subject to the restrictions set out herein.
- 3.2 The respective rights and restrictions attached to the Series A Preferred Shares are set forth in these Bye-Laws.
- 3.3 In addition to the Series A Preferred Shares, the Board shall be authorised to issue other Preferred Shares and such shares may be issued from time to time, in one or more series with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as may be designed by the Board prior to the issuance of such series, and the Board is hereby expressly authorised to fix by resolution or resolutions prior to such issuance such

designations, preferences and relative, participating, optional or other special rights, or qualifications, limitations or restrictions, including without limiting the generality of the foregoing, the following:

- 3.3.1 the designation of such series or class;
- 3.3.2 the dividend rate of such series or class, the conditions and dates upon which such dividends will be payable, the relation which such dividends will bear to the dividends payable on any other class or classes of shares or any other series of any class of shares of the Company, and whether such dividends will be cumulative or non-voting;
- 3.3.3 the redemption provisions and times, prices and other terms and conditions of such redemption, if any, for such series or class, which may include provisions that they are to be redeemed on the happening of a specified event or on a given date, that they are liable to be redeemed at the option of the Company or that if authorised by the Memorandum of Association of the Company, that they are liable to be redeemed at the option of the holder;
- 3.3.4 the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series or class;
- 3.3.5 the terms and condition, if any, on which shares of such series or class shall be convertible into, or exchangeable for, shares of the Company or any other securities, including the price or prices, or the rates of exchange thereof;
- 3.3.6 the voting rights, if any;
- 3.3.7 the restrictions, if any, on the issue or reissue of any additional Preferred Shares; and
- 3.3.8 the rights of the holders of such series or class upon the liquidation, dissolution or distribution of assets of the Company.

The designations, preferences and relative, participating, optional or other special rights or qualifications, limitations or restrictions thereof, of each additional series, if any, may differ from those of any or all other series outstanding.

- 3.4 The rights of the Common Shares and Non Voting Common Shares are as follows:

The holders of Common Shares:

- 3.4.1 shall be entitled to one vote per share;
- 3.4.2 shall be entitled to receive notice of, and attend and vote at, general meetings of the Company;
- 3.4.3 shall be entitled to dividends or other distributions;
- 3.4.4 shall, in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for a re-organisation or otherwise or upon



distribution of capital, be entitled to receive the amount of capital paid up on their Common Shares and to participate further in the surplus assets of the Company only after payment of the Series A Liquidation Value (as hereinafter defined in this Bye-Law 3) on the Series A Preferred Shares.

The holders of Non Voting Common Shares shall have the same rights as the holders of Common Shares EXCEPT that they shall not be entitled to receive notice of, or attend and vote at, general meeting of the Company.

Each Non Voting Common Share, automatically and with no further action on the part of the holders thereof, shall be converted into one (1) fully paid and non-assessable Common Share immediately following completion of a Listing (as defined herein). For purposes of this Bye-Law 3, the term "Listing" shall mean EITHER an underwritten initial public offering by the Company of the Common Shares of the Company from which the Company receives gross proceeds of at least US\$30,000,000.00 OR the admission of the Common Shares of the Company to the AIM market of the London Stock Exchange. Following automatic conversion of the Non Voting Common Shares into Common Shares, written notice (the "Non Voting Conversion Notice") shall be given by the Company by mail, postage prepaid, to each holder of record of Non Voting Common Shares (as soon as practicable following the date of closing of the Listing) notifying such shareholder of the conversion and specifying the number of Common Shares into which each Non Voting Common Share has been converted, the place where the certificates evidencing Non Voting Common Shares should be delivered and the procedures that should be followed in delivering the certificates so that certificates evidencing the Common Shares into which each Non Voting Common Share has been converted will be issued to such holder. From and after the time that the Non Voting Common Shares are converted into Common Shares, certificates evidencing the Non Voting Common Shares, until they are delivered to the Company in accordance with the instructions set forth in the Non Voting Conversion Notice, shall evidence the Common Shares into which the Non Voting Common Shares have been converted. Following automatic conversion of the Non Voting Common Shares into Common Shares in accordance with the provisions hereof, the Company shall not issue any more Non Voting Common Shares.

3.5 The rights of the Series A Preferred Shares are as follows:

3.5.1 Payment of Dividends and Distributions

- (a) Subject to Bye-Law 3.5.1(b) and Bye-Law 3.5.2 below, the Company shall pay, and the holders of the Series A Preferred Shares shall be entitled to receive, and to share equally and rateably, share for share (on an as converted basis) with the Common Shares, in such dividends and distributions on the Common Shares as may be declared from time to time on or before 30 June 2003 by the Board of Directors, whether payable in cash, property or securities of the Company. The record date for determining the holders of Series A Preferred Shares entitled to receive dividends and distributions shall be the same as the record date for determining the holders of Common Shares entitled to receive dividends and distributions. Dividends and distributions shall be paid to the holders of Series A Preferred Shares entitled to receive such dividends and distributions at the close of business on the date on

which such dividends and distributions are paid or made by the Company in respect of the Common Shares. All dividends or distributions paid with respect to the Series A Preferred Shares shall be paid pro rata to the holders entitled thereto. Except as otherwise provided in these Bye-Laws the Series A Preferred Shares shall not be entitled to receive any dividends or other distributions of the Company.

- (b) Notwithstanding anything to the contrary set forth herein, the Company may at any time declare and pay a dividend or make a distribution on its Common Shares payable in its Common Shares without being obligated to pay concurrently any dividend with respect to Series A Preferred Shares. In such case, and in the case of a share split, share consolidation or other similar transaction, the Series A Conversion Price (as defined in Bye-Law 3.5.5(a) then in effect) shall be adjusted effective immediately after the record date for payment of such dividend or distribution, or the date of such share split, share consolidation or other similar transaction by multiplying the Series A Conversion Price by a fraction, the numerator of which shall be the number of Common Shares outstanding immediately before giving effect to such dividend or other distribution or share split, share consolidation or other similar transaction, and the denominator of which shall be the number of Common Shares outstanding immediately after giving effect to such dividend or distribution or share split, share consolidation or other similar transaction.
- (c) The Company will take all actions required or permitted under the Companies Acts to permit the payment of dividends on the Series A Preferred Shares to the extent herein provided.

### 3.5.2 Preference on Liquidation

- (a) In the event that the Company shall be liquidated, dissolved or wound up (a "Liquidating Event"), whether voluntarily or involuntarily, after all creditors of the Company shall have been paid in full, the holders of the Series A Preferred Shares, provided they have not converted their Series A Preferred Shares into Common or Non-Voting Common Shares prior to the record date for determining the shareholders entitled to participate in distributions resulting from the Liquidating Event, shall be entitled to receive, out of the assets of the Company legally available for distribution to its shareholders, whether from capital, surplus or earnings, before any amount shall be paid to the holders of any Junior Shares, an aggregate amount equal to US\$1,000.00 in cash per share (the "Base Liquidation Value"). If upon any Liquidating Event, the net assets of the Company shall be insufficient to pay the holders of all outstanding Series A Preferred Shares, and of any shares ranking on a parity with the Series A Preferred Shares with respect to distributions resulting from a Liquidating Event, the full amounts to which they respectively shall be entitled, such assets, or the proceeds thereof, shall be distributed rateably among the holders of the Series A Preferred Shares and of

any shares ranking on a parity with the Series A Preferred Shares. Holders of Series A Preferred Shares shall not be entitled, upon a Liquidating Event, to receive any amounts with respect to such Series A Preferred Shares other than the Base Liquidation Value thereof.

- (b) Notice of the distribution of the assets legally available for distribution to the shareholders following a Liquidating Event shall be given to the holders of the Series A Preferred Shares by mail not less than ten (10) days prior to the record date for determining the shareholders entitled to participate in such distribution and the holders of the Series A Preferred Shares shall be given the opportunity to convert their Series A Preferred Shares into Non Voting Common Shares effective immediately prior to such record date, which right of conversion shall terminate on such record date.
- (c) Neither the purchase nor redemption by the Company of any class of shares in any manner permitted by these Bye-Laws or any amendment hereof, nor the merger or consolidation of the Company with or into any other company or companies, nor a sale, transfer or lease of all or substantially all of the Company's assets shall be deemed to be a Liquidating Event for the purposes of this Bye-Law 3.5.2; provided, however, that any consolidation or merger of the Company in which the Company is not the surviving entity shall be deemed to be a Liquidating Event, within the meaning of this Bye-Law 3.5.2 if (A) in connection therewith, the holders of Common Shares of the Company receive as consideration, whether in whole or in part, for such Common Shares (1) cash, (2) notes, debentures or other evidences of indebtedness or obligations to pay cash or (3) preferred shares of the surviving entity (whether or not the surviving entity is the Company) which ranks on a parity with or senior to the preferred shares received by holders of the Series A Preferred Shares with respect to liquidation or dividends or (B) the holders of the Series A Preferred Shares do not receive preferred shares of the surviving entity with rights, powers and preferences equal to (or more favourable to the holders than) the rights, powers and preferences of the Series A Preferred Shares.

### 3.5.3 Redemption

All outstanding Series A Preferred Shares shall be redeemed in accordance with the requirements of the Companies Acts from funds legally available therefore on December 31, 2005 if such Series A Preferred Shares have not been converted into Non Voting Common Shares or Common Shares (with full voting rights) of the Company pursuant to Bye-Law 3.5.5 (the "Redemption Date"), at a price per share equal to the Base Liquidation Value of such shares on said date (the "Redemption Price"). To the extent there are insufficient funds legally available on the Redemption Date to redeem all outstanding Series A Preferred Shares and all of the outstanding shares of any other series of Preferred Shares that are on a parity with the Series A Preferred Shares as to redemption, the funds that are available shall be allocated pro rata among all holders of such shares. Thereafter, if and as funds become legally available therefore, the remaining outstanding Series A Preferred Shares,

together with the shares of any other series of Preferred Shares on a parity with the Series A Preferred Shares as to such redemption, shall be redeemed following the procedures described herein on a pro rata basis with such funds until all such shares have been fully redeemed.

#### 3.5.4 Redemption Procedure

- (a) A redemption shall be accompanied in the manner and with the effect as set forth in this Section.
- (b) Notice of the redemption of Series A Preferred Shares shall be given to the holders thereof by mail not less than ten (10) days prior to the Redemption Date. In the event such notice is not given in a timely manner, the Redemption Date shall be extended so it is ten (10) days after the date such notice is given. The amount of the Redemption Price shall be deposited on or before the Redemption Date in trust for the account of the holders of Series A Preferred Shares entitled thereto with a bank or trust company in good standing doing business in Bermuda and having capital and surplus of at least US\$100,000,000.00 (the date of such deposit being hereinafter in this Bye-Law 3 referred to as the "Date of Deposit").
- (c) Notice of the date on which, and the name and address of the bank or trust company with which, the deposit has been or will be made shall be included in the notice of redemption. On and after the Redemption Date (unless default shall be made by the Company in providing money for the payment of the Redemption Price pursuant to the notice of redemption), or if the Company shall make such deposit on or before the date specified therefore in the notice of redemption, then on and after the Date of Deposit but not earlier than the date of the notice of redemption and provided notice of redemption has been duly given), notwithstanding that any certificate for Series A Preferred Shares is not surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding and all rights of the holders thereof as shareholders of the Company with respect to such shares shall cease and terminate, except the right to receive the Redemption Price as hereinafter provided.
- (d) At any time on or after the Redemption Date, or if the Company shall deposit the money for such redemption prior to the Redemption Date, then at any time on or after the Date of Deposit, which time shall be specified by the Company in the notice of redemption and which shall not be later than the Redemption Date, the holders of record of the Series A Preferred Shares to be redeemed shall be entitled to receive the Redemption Price upon actual delivery to the bank or trust company with which such deposit shall be made of certificates for the shares to be redeemed, such certificates, if required, to be duly endorsed in blank or accompanied by proper instruments of assignment and transfer duly endorsed in blank. The making of such deposit with any such bank or trust company shall not relieve the Company of liability for payment of the Redemption Price.

- (e) Any money so deposited which shall remain unclaimed by the holders of such Series A Preferred Shares at the end of two (2) years after the Redemption Date or on the earlier liquidation, dissolution or winding up of the Company shall be paid immediately by such bank or trust company to the Company, which shall thereafter, to the extent of the money so repaid to the Company be liable for the payment of the Redemption Price. Any interest accrued on money so deposited shall be paid to the Company from time to time.

### 3.5.5 Conversion

- (a) Each holder of a Series A Preferred Share shall have the right, at the option of the holder, at any time and from time to time after the earlier of (i) June 30, 2003 and (ii) the tenth day immediately prior to the record date (the "Liquidation Record Date") for determining the shareholders entitled to participate in the distribution of the assets legally available for distribution to the shareholders following a Liquidation Event, and until the earlier of (x) December 31, 2005 and (y) the Liquidation Record Date (the "Conversion Period") to convert such share into a number of fully paid and non-assessable Non Voting Common Shares at a conversion rate that is equal to the quotient of (A) the Base Liquidation Value and (B) US\$100.00 (as from time to time adjusted in accordance with Bye-Law 3.5.1(b) (the "Series A Conversion Price")). In order for a holder of a Series A Preferred Share to exercise the conversion option granted by this subsection with respect to any Series A Preferred Share, the holder thereof shall surrender the certificate or certificates therefore to the Company, accompanied by a written notice of the election to convert such Series A Preferred Share or a portion thereof executed on such form as may be prescribed from time to time by the Company.
- (b) Upon any conversion of Series A Preferred Share as provided above, as soon as practicable after the surrender of the certificates evidencing the shares and after compliance with all other procedures relating thereto, the Company shall cause to be issued and delivered, at its office or the office of its transfer agent, to or on the order of the holder of the certificates thus surrendered, a certificate or certificates for the number of full Non Voting Common Shares issuable upon the conversion of such Series A Preferred Shares and, with respect to any fraction of a share otherwise issuable upon such conversion, a dollar amount for such fraction of a share calculated at the conversion price set forth above. Such conversion shall be deemed to have been effected on the date on which the certificate for such Series A Preferred Share has been surrendered and all other actions required to effect such conversion in accordance with the terms set forth herein have been taken, and the person in whose name any certificate or certificates for Non Voting Common Shares are issuable upon such conversion shall be deemed to have become on such date the holder of record of the Non Voting Common Shares represented thereby.

- (c) Notwithstanding anything to the contrary set forth in these terms of the shares, all outstanding Series A Preferred Shares shall be mandatorily and automatically converted, with no further action on the part of the holders thereof, into fully paid and non-assessable Common Shares with full voting rights immediately prior to a Listing (as earlier defined in this Bye-Law 3) at a conversion rate that is equal to the quotient of (A) the Base Liquidation Value and (B) the Series A Conversion Price. Following automatic conversion of the Series A Preferred Shares into Common Shares, written notice (the "Conversion Notice") shall be given by the Company by mail, postage prepaid, to each holder of record of Series A Preferred Share (as soon as practicable following the date of closing of the Listing) notifying such holder of the conversion and specifying the number of Common Shares into which each Series A Preferred Share has been converted, the place where the certificates evidencing Series A Preferred Shares should be delivered and the procedures that should be followed in delivering the certificates so that certificates evidencing the Common Shares into which the Series A Preferred Share has been converted will be issued to such holder. From and after the time that the Series A Preferred Shares are converted into Common Shares, certificates evidencing the Series A Preferred Shares, until they are delivered to the Company in accordance with the instructions set forth in the Conversion Notice, shall evidence the Common Shares into which the Series A Preferred Shares have been converted. Following automatic conversion of the Series A Preferred Shares into Common Shares in accordance with the provisions hereof, the Company shall not issue any more Series A Preferred Shares.
- (d) In the event any Series A Preferred Shares shall be converted pursuant to the provisions hereof, the Series A Preferred Shares so converted shall be cancelled and shall not be re-issuable again as such by the Company.

### 3.5.6 Voting Rights

Except as may be otherwise provided by the Companies Acts, the Series A Preferred Shares shall have no right to receive notice of or attend and vote at general meetings of the Company. Notwithstanding the foregoing, these terms of the Series A Preferred Shares shall not be amended without the consent of the holders of a majority of the Series A Preferred Shares then outstanding. Nothing herein shall preclude the Board from issuing any other series of Preferred Shares including, without limitation, Preferred Shares that are senior in whole or in part to the Series A Preferred Shares with greater or better dividend, liquidation or conversion rights.

### 3.5.7 Shares to be Reserved

The Company will at all times reserve and keep available out of its authorised Common Shares and Non Voting Common Shares solely for the purpose of issuance upon the conversion of the Non Voting Common Shares and/or Series A Preferred Shares as herein provided, such number of Common Shares

and Non Voting Common Shares as shall then be issuable upon such conversion. The Common Shares and/or Non Voting Common Shares which shall be so issued shall be duly and validly issued and fully paid and non-assessable and free from all taxes, liens and charges with respect to the issue thereof.

### 3.5.8 Definitions

The following terms as specifically referred to in this Bye-Law 3 shall have the meanings set forth below:

- (a) “company” shall mean a company, partnership, business trust, unincorporated organisation, company, association, limited liability company or joint stock company.
  - (b) “Junior Shares” shall mean any series or class of the capital shares of the Company now or hereafter authorised or issued by the Company, including any series of Preferred Shares, ranking junior to the Series A Preferred Shares with respect to dividends or distributions or upon the liquidation, distribution of assets, dissolution or winding-up of the Company including without limitation the Common Shares and Non Voting Common Shares.
4. The Board may, at its discretion and without the sanction of a Resolution, authorise the purchase by the Company of its own shares, of any class, at any price (whether at par or above or below par), and any shares to be so purchased may be selected in any manner whatsoever, upon such terms as the Board may in its discretion determine, provided always that such purchase is effected in accordance with the provisions of the Companies Acts. The whole or any part of the amount payable on any such purchase may be paid or satisfied otherwise than in cash, to the extent permitted by the Companies Acts.

### **MODIFICATION OF RIGHTS**

5. Subject to the Companies Acts, all or any of the special rights for the time being attached to any class of shares for the time being issued may, unless otherwise provided in the rights attached to the terms of issue of the shares of that class, from time to time (whether or not the Company is being wound up) be altered or abrogated with the consent in writing of the holders of not less than seventy-five percent of the issued shares of that class or with the sanction of a Resolution passed at a separate general meeting of the holders of such shares voting in person or by proxy. To any such separate general meeting, all the provisions of these Bye-Laws as to general meetings of the Company shall *mutatis mutandis* apply, but so that the necessary quorum shall be two or more persons holding or representing by proxy any of the shares of the relevant class, that every holder of shares of the relevant class shall be entitled on a poll to one vote for every such share held by him; provided, however, that if the Company or a class of Shareholders shall have only one Shareholder, one Shareholder present in person or by proxy shall constitute the necessary quorum.
6. The Special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be altered by the creation or issue of further shares ranking *pari passu* therewith.

## **SHARES**

7. Subject to the provisions of these Bye-Laws, the unissued shares of the Company (whether forming part of the original capital or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may determine.
8. The Board may in connection with the issue of any shares exercise all powers of paying commission and brokerage conferred or permitted by law. Subject to the provisions of the Companies Acts, any such commission or brokerage may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other.
9. Shares may be issued in fractional denominations and in such event the Company shall deal with such fractions to the same extent as its whole shares, so that a share in a fractional denomination shall have, in proportion to the fraction of a whole share that it represents, all the rights of a whole share, including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding-up.
10. Except as ordered by a court of competent jurisdiction or as required by law, no person shall be recognised by the Company as holding any share upon trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or in any fractional part of a share or (except only as otherwise provided in these Bye-Laws or by law) any other right in respect of any share except in absolute right to the entirety thereof in the registered holder.

## **CERTIFICATES**

11. Every person (except a stock exchange nominee in respect of whom the Company is not by law required to complete and have ready for delivery a certificate) whose name is entered as a holder of any shares in the register of members of the Company shall be entitled, without payment, to receive within two months after allotment or lodgment of a transfer to him of the shares in respect of which he is so registered (or within such other period as the terms of issue shall provide) one certificate for all such shares of any one class or several certificates each for one or more of such shares of such class upon payment for every certificate after the first of such reasonable out-of-pocket expenses as the Directors may from time to time determine. In the case of a share held jointly by several persons, delivery of a certificate to one of several joint holders shall be sufficient delivery to all.
12. If a share certificate is defaced, lost or destroyed, it may be replaced without fee but on such terms (if any) as to evidence and indemnity and to payment of the costs and out of pocket expenses of the Company in investigating such evidence and preparing such indemnity as the Board may think fit and, in case of defacement, on delivery of the old certificate to the Company.
13. All certificates for share or loan capital or other securities of the Company (other than letters of allotment, scrip certificates and other like documents) shall, except to the extent that the terms and conditions for the time being relating thereto otherwise provide, be in such form as the Board may determine, issued under the Seal. The Board may by resolution determine, either generally or in any particular case, that any signatures on any such certificates need not be autographic but may be affixed to such certificates by some mechanical means or may be



printed thereon or that such certificates need not be signed by any persons. Or may determine that a representation of the Seal may be printed on any such certificates. If any person holding an office in the Company who has signed, or whose facsimile signature has been used on, any certificate ceases for any reason to hold his office, such certificate may nevertheless be issued as though that person had not ceased to hold such office.

14. Notwithstanding the terms of Bye-Laws 11, 12 and 13 above, where, in accordance with the terms of Bye-Laws 15 and 16, any shares or other securities of the Company are issued, transferred, registered or otherwise dealt with in uncertificated form, any references in these Bye-Laws requiring title to shares or other securities to be evidenced by or transferred by reference to share certificates or any other form of written instrument shall not apply and the holding, transfer, recording of title to and, registration of, uncertificated securities issued by the Company will be governed by reference to the provisions of Bye-Laws 15 and 16.
15. Nothing in these Bye-Laws shall preclude any share or other security of the Company from being issued, held, registered, converted, transferred or otherwise dealt with in an uncertificated form in accordance with the Uncertificated Securities Regulations and any rules or requirements laid down from time to time by CREST or any other relevant system operated pursuant to the Uncertificated Securities Regulations.
16. In relation to any share or other security which is in uncertificated form, these Bye-Laws shall have effect subject to the provisions of the Uncertificated Securities Regulations and (so far as consistent with them) to the following provisions:
  - 16.1 the Company shall not be obliged to issue a certificate evidencing title to shares and all references to a certificate in respect of any shares or securities held in uncertificated form in these Bye-Laws shall be deemed inapplicable to such shares or securities which are in uncertificated form and furthermore shall be interpreted as a reference to such form of evidence of title to uncertificated shares or securities as the Uncertificated Securities Regulations prescribe or permit;
  - 16.2 the registration of title to and transfer of any shares or securities in an uncertificated form shall be effected in accordance with the Uncertificated Securities Regulations and there shall be no requirement for a written instrument of transfer;
  - 16.3 a properly authenticated dematerialised instrument given in accordance with the Uncertificated Securities Regulations shall be given effect in accordance with the Uncertificated Securities Regulations;
  - 16.4 any communication required or permitted by these Bye-Laws to be given by a person to the Company may be given in accordance with and in any manner (whether or not in writing) prescribed or permitted by the Uncertificated Securities Regulations;
  - 16.5 if a situation arises where any provision of these Bye-Laws is inconsistent in any respect with the terms of the Uncertificated Securities Regulations in relation to shares or securities of the Company which are in an uncertificated form then:
    - 16.5.1 the Uncertificated Securities Regulations will be given effect thereto in accordance with their terms;

16.5.2 the Directors shall have power to implement any procedures they may think fit and as may accord with the Uncertificated Securities Regulations for the recording and transferring of title to shares and securities in uncertificated form and for the regulation of those proceedings and the persons responsible for or involved in their operation; and

16.5.3 the Directors shall have the specific powers to elect, without further consultation with the holders of any shares or securities of the Company (except where such shares or securities are constituted by virtue of some other deed, document or other source), that any single or all classes of shares and securities of the Company become capable of being traded in uncertificated form in accordance with the Uncertificated Securities Regulations on CREST or any other operator of a relevant system.

### **LIEN**

17. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all monies, whether presently payable or not, called or payable, at a date fixed by or in accordance with the terms of issue of such share in respect of such share, and the Company shall also have a first and paramount lien on every share (other than a fully paid share) standing registered in the name of a Shareholder, whether singly or jointly with any other person, for all the debts and liabilities of such Shareholder or his estate to the Company, whether the same shall have been incurred before or after notice to the Company of any interest of any person other than such Shareholder, and whether the time for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such Shareholder or his estate and any other person, whether a Shareholder or not. The Company's lien on a share shall extend to all dividends payable thereon. The Board may at any time, either generally or in any particular case, waive any lien that has arisen or declare any share to be wholly or in part exempt from the provisions of this Bye-Law.
18. The Company may sell, in such manner as the Board may think fit, any share on which the Company has a lien but no sale shall be made unless some sum in respect of which the lien exists is presently payable nor until the expiration of fourteen (14) days after a notice in writing, stating and demanding payment of the sum presently payable and giving notice of the intention to sell in default of such payment, has been served on the holder for the time being of the share.
19. The net proceeds of sale by the Company of any shares on which it has a lien shall be applied in or towards payment or discharge of the debt or liability in respect of which the lien exists so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the share prior to the sale) be paid to the person who was the holder of the share immediately before such sale. For giving effect to any such sale, the Board may authorise some person to transfer the share sold (or in the case of a share for the time being in uncertificated form to take such other steps in the name of the holder as may be necessary to transfer the share sold) to the purchaser thereof. The purchaser shall be registered as the holder of the share and he shall not be bound to see to the application of the purchase money, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the sale.

20. 20.1 Whenever any law for the time being of any country, state or place imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any shares registered in any of the Company's registers as held either jointly or solely by any Shareholder or in respect of any dividends, bonuses or other monies due or payable or accruing due or which may become due or payable to such Shareholder by the Company on or in respect of any shares registered as aforesaid or for or on account or in respect of any Shareholder and whether in consequence of:
- 20.1.1 the death of such Shareholder;
  - 20.1.2 the non-payment of any income tax or other tax by such Shareholder;
  - 20.1.3 the non-payment of any estate, probate, succession, death, stamp, or other duty by the executor or administrator of such Shareholder or by or out of his estate;  
or
  - 20.1.4 any other act or thing,
- in every such case (except to the extent that the rights conferred upon holders of any class of shares render the Company liable to make additional payments in respect of sums withheld on account of the foregoing);
- 20.2 The Company shall be fully indemnified by such Shareholder or his executor or administrator from all liability;
- 20.3 The Company shall have a lien upon all dividends and other monies payable in respect of the shares registered in any of the Company's registers as held either jointly or solely by such Shareholder for all monies paid or payable by the Company in respect of such shares or in respect of any dividends or other monies as aforesaid thereon or for or on account or in respect of such Shareholder under or in consequence of any such law together with interest at the rate of fifteen percent (15%) per annum thereon from the date of payment to date of repayment and may deduct or set off against such dividends or other monies payable as aforesaid any monies paid or payable by the Company as aforesaid together with interest as aforesaid;
- 20.4 The Company may recover as a debt due from such Shareholder or his executor or administrator wherever constituted any monies paid by the Company under or in consequence of any such law and interest thereon at the rate and for the period aforesaid in excess of any dividends or other monies as aforesaid then due or payable by the Company;
- 20.5 The Company may, if any such money is paid or payable by its under any such law as aforesaid, refuse to register a transfer of any shares by any such Shareholder or his executor or administrator until such money and interest as aforesaid is set off or deducted as aforesaid, or in case the same exceeds the amount of any such dividends or other monies as aforesaid then due or payable by the Company, until such excess is paid to the Company.

Subject to the rights conferred upon the holders of any class of shares, nothing herein contained shall prejudice or affect any right or remedy which any law may confer or purport to confer on the Company and as between the Company and every such Shareholder as aforesaid, his estate representative, executor, administrator and estate wheresoever constituted or situate, any right or remedy which such law shall confer or purport to confer on the Company shall be enforceable by the Company.

### **CALLS ON SHARES**

21. The Board may from time to time make calls upon the Shareholders in respect of any monies unpaid on their shares (whether on account of the par value of the shares or by way of premium) and not by the terms of issue thereof made payable at a date fixed by or in accordance with such terms of issue, and each Shareholder shall (subject to the Company serving upon him at least fourteen (14) days notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the Board may determine.
22. A call may be made payable by instalments and shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
23. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
24. If a sum called in respect of the share shall not be paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest on the sum from the day appointed for the payment thereof to the time of actual payment at such rate as the Board may determine, but the Board shall be at liberty to waive payment of such interest wholly or in part.
25. Any sum which, by the terms of issue of a share, becomes payable on allotment or at any date fixed by or in accordance with such terms of issue, whether on account of the nominal amount of the share or by way of premium, shall for all the purposes of these Bye-Laws be deemed to be a call duly made, notified and payable on the date on which, by the terms of issue, the same becomes payable and, in case of non-payment, all the relevant provisions of these Bye-Laws as to payment of interest, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
26. The Board may on the issue of shares differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.

### **FORFEITURE OF SHARES**

27. If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof, the Board may at any time thereafter during such time as any part of such 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 which may have accrued.
28. The notice shall name a further day (not being less than thirty (30) days from the date of the notice) on or before which, and the place where, the payment required by the notice is to be made and shall state that, in the event of non-payment on or before the day and at the place appointed, the shares in respect of which such call is made or instalment is payable will be

liable to be forfeited. The Board may accept the surrender of any share liable to be forfeited hereunder, and, in such case, references in these Bye-Laws to forfeiture shall include surrender.

29. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls or instalments and interest due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
30. When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice as aforesaid.
31. A forfeited share shall be deemed to be the property of the Company and may be sold, re-offered or otherwise disposed of either to the person who was, before forfeiture, the holder thereof or entitled thereto or to any other person upon such terms and in such manner as the Board shall think fit, and at any time before a sale, re-allotment or disposition the forfeiture may be cancelled on such terms as the Board may think fit.
32. A person whose shares have been forfeited shall thereupon cease to be a Shareholder in respect of the forfeited shares but shall, notwithstanding the forfeiture, remain liable to pay to the Company all monies which at the date of forfeiture were presently payable by him to the Company in respect of the shares with interest thereon at such rate as the Board may determine from the date of forfeiture until payment, and the Company may enforce payment without being under any obligation to make any allowance for the value of the shares forfeited.
33. An affidavit in writing that the deponent is a Director of the Company or the Secretary and that a share has been duly forfeited on the date stated in the affidavit shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration (if any) given for the share on the sale, re-allotment or disposition thereof and the Board may authorise some person to transfer the share (or in the case of a share for the time being in uncertificated form to take such other steps in the name of the holder as may be necessary to transfer the share) to the person to whom the same is sold, re-allotted or disposed of, and he shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale, re-allotment or disposal of the share.

#### **REGISTER OF SHAREHOLDERS**

34. The Register shall be kept at the Registered Office or at such other place in Bermuda as the Board may from time to time direct, in the manner prescribed by the Companies Acts. Subject to the provisions of the Companies Acts, the Company may keep one or more overseas or branch registers in any place, and the Board may make, amend and revoke any such regulations as it may think fit respecting the keeping of such registers. The Board may authorise any share on the Register to be included in a branch register or any share registered on a branch register to be registered on another branch register, provided that at all times the Register is maintained in accordance with the Companies Acts.

35. The Register or any branch register may be closed at such times and for such period as the Board may from time to time decide, subject to the Companies Acts. Except during such time as it is closed, the Register and each branch register shall be open to inspection in the manner prescribed by the Companies Acts between 10:00 a.m. and 12:00 noon (or between such other times as the Board from time to time determines) on every working day. Unless the Board so determines, no Shareholder or intending Shareholder shall be entitled to have entered in the Register or any branch register any indication of any trust or any equitable, contingent, future or partial interest in any share or any fractional part of a share and if any such entry exists or is permitted by the Board it shall not be deemed to abrogate any of the provisions of Bye-Law 10.

### **REGISTER OF DIRECTORS AND OFFICERS**

36. The Secretary shall establish and maintain a register of the Directors and Officers of the Company as required by the Companies Acts. The register of Directors and Officers shall be open to inspection in the manner prescribed by the Companies Acts between 10:00 a.m. and 12:00 noon in Bermuda on every working day.

### **TRANSFER OF SHARES**

- 37.
- 37.1 Subject to the Companies Acts and to such of the restrictions contained in these Bye-Laws as may be applicable, any Shareholder may transfer all or any of his shares by an instrument of transfer in the usual common form or in any other form which the Board may approve.
- 37.2 Nothing in these Bye-Laws shall require title to any securities of the Company to be evidenced or transferred by a written instrument, the regulations from time to time made under the Companies Acts so permitting. The Board shall have power to implement any arrangements it may think fit for such evidencing and transfer which accord with those regulations.
- 37.3 If any holder of Series A Preferred Shares and/or Non Voting Common Shares (the "Offeror") shall receive a bona fide written offer (an "Offer"), from a Person (a "Proposed Transferee") to purchase all or a portion of the Series A Preferred Shares and/or Non Voting Common Shares then owned by such Offeror (the "Relevant Shares") and such Offeror desires to accept the Offer, such Offeror shall, before accepting the Offer, first advise the Company with details of the Offer and the identity of the Proposed Transferee and the Company shall have the right within 30 days after receipt of all relevant details to purchase the Relevant Shares in accordance with the provisions of the Companies Acts; in the event the Company declines to purchase the Relevant Shares within such 30 day period at the purchase price specified in the Offer, then such Offeror shall deliver simultaneously to each holder who at that time holds any of the outstanding Common Shares, a written notice (the "Notice of Offer"), which shall be irrevocable for a period of 30 days after delivery thereof (the "Offer Period"), offering to such Common Shareholders (the "Offerees") all of the Relevant Shares proposed to be transferred by the Offeror at the purchase price and on the terms specified in the Offer (which Notice of Offer shall include all relevant terms of the Offer). The Offeror shall also furnish to the Offerees such additional information relating to the Offer as each such Offeree may reasonably request. Each Offeree shall have the right and option, during the Offer Period, (x) to accept all or any part of its

Proportionate Percentage of the Relevant Shares so offered at the purchase price and on the terms stated in the Notice of Offer and (y) to offer, in any written notice of acceptance, to purchase any Relevant Shares not accepted by the other Offerees, in which case the Relevant Shares not accepted by the other Offerees shall be deemed , on the same terms and conditions, to be reoffered from time to time during such 30-day period to and accepted by the Offerees who exercised their option under this clause (y) pro rata in accordance with their respective Proportionate Percentages (computed without including the Offerees who have not exercised their option to purchase Relevant Shares under this clause (y)), until all such Relevant Shares are fully purchased or until all such Offerees have purchased all such offered Relevant Shares which they desire to purchase. Transfers of Relevant Shares under the terms of this Bye-Law shall be made at the offices of the Company on a mutually satisfactory Business Day within 15 days after the expiration of the 30-day time period provided for above. Delivery of certificates or instruments of transfer evidencing such Relevant Shares shall be made on such date against payment of the purchase price therefore.

If the Offerees shall not have accepted all of the Relevant Shares offered for sale pursuant to the Notice of Offer, then the Offeror may transfer to the Proposed Transferee all (but not less than all) of the Relevant Shares in accordance with the terms set forth in the Notice of Offer, at any time within 90 days after the expiration of the Offer Period in accordance with the above provisions. In the event the Relevant Shares are not transferred by the Offeror to the Proposed Transferee on such terms during such 90-day period, the restrictions of this Bye-Law 37.3 shall again become applicable to any transfer of Relevant Shares by the Offeror.

- 38      38.1      The instrument of transfer of a share shall be signed by or on behalf of the transferor and where any share is not fully-paid, the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. All instruments of transfer when registered may be retained by the Company. The Board may, in its absolute discretion and without assigning any reason therefore, decline to register any transfer of any share which is not a fully-paid share. The Board may also decline to register any transfer in respect of shares in certificated form unless:
- 38.1.1      the instrument of transfer is duly stamped (if required by law) and lodged with the Company, at such place as the Board shall appoint for the purpose, accompanied by the certificate for the shares (if any has been issued) to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
  - 38.1.2      the instrument of transfer is in respect of only one class of share;
  - 38.1.3      the instrument of transfer is in favour of less than five persons jointly; and
  - 38.1.4      it is satisfied that all applicable consents, authorisations, permissions or approvals of any governmental body or agency in Bermuda or any other applicable jurisdiction required to be obtained under relevant law prior to such transfer have been obtained.
- 38.2      In the case of shares for the time being in uncertificated form transfers shall be registered only in accordance with the terms of the Uncertificated Securities

Regulations but so that the Directors may refuse to register a transfer which would require shares to be held jointly by more than four persons.

- 38.3 Subject to any directions of the Board from time to time in force, the Secretary may exercise the powers and discretions of the Board under this Bye-Law and Bye-Laws 37 and 39.
39. If the Board declines to register a transfer it shall, within three (3) months after the date on which the instrument of transfer was lodged (or in the case of uncertificated shares the CREST-instruction (or other operator-instruction) was received by the Company), send to the transferee notice of such refusal.
40. No fee shall be charged by the Company for registering any transfer, probate, letters of administration, certificate of death or marriage, power of attorney, order of court or other instrument relating to or affecting the title to any share, or otherwise making an entry in the Register relating to any share, except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed on it in connection with such transfer or entry.
41. The registration of transfers of shares or debentures or of any class of shares or debentures may be suspended at such times and for such periods (not exceeding thirty days in any year) as the Directors may determine but so that such a suspension shall only apply to uncertificated shares with the prior consent of CREST (or other operator, as appropriate).

#### **TRANSMISSION OF SHARES**

42. In the case of the death of a Shareholder, the survivor or survivors, where the deceased was a joint holder, and the estate representative, where he was sole holder, shall be the only person recognised by the Company as having any title to his shares; but nothing herein contained shall release the estate of a deceased holder (whether the sole or joint) from any liability in respect of any share held by him solely or jointly with other persons. For the purpose of this Bye-Law, estate representative means the person to whom probate or letters of administration (or their equivalent) has or have been granted in Bermuda or elsewhere or, failing any such person, such other person as the Board may in its absolute discretion determine to be the person recognised by the Company for the purpose of this Bye-Law.
43. Any person becoming entitled to a share in consequence of the death or bankruptcy of a Shareholder or otherwise by operation of applicable law may, subject as hereafter provided and upon such evidence being produced as may from time to time be required by the Board as to his entitlement, either be registered himself as the holder of the share or elect to have some person nominated by him registered as the transferee thereof. If the person so 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. If he shall elect to have his nominee registered, he shall signify his election by signing an instrument of transfer of such share in favour of his nominee. All the limitations, restrictions and provisions of these Bye-Laws relating to the right to transfer and the registration of transfer of shares shall be applicable to any such notice or instrument of transfer as aforesaid as if the death or bankruptcy of the Shareholder or other event giving rise to the transmission had not occurred and the notice or instrument of transfer was an instrument of transfer signed by such Shareholder.



44. A person becoming entitled to a share in consequence of the death of a Shareholder or otherwise by operation of applicable law shall (upon such evidence being produced as may from time to time be required by the Board as to his entitlement) be entitled to receive and may give a discharge for any dividends or other monies payable in respect of the share, but he shall not be entitled in respect of the share to receive notices of or to attend or vote at general meetings of the Company or, save as aforesaid, to exercise in respect of the share any of the rights or privileges of a Shareholder until he shall have become registered as the holder thereof. The Board may at any time give notice requiring such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within sixty days, the Board may thereafter withhold payment of all dividends and other monies payable in respect of the shares until the requirements of the notice have been complied with. Nothing in these Bye-Laws shall preclude the transfer of shares or other securities of the Company in uncertificated form in accordance with the terms of Bye-Laws 15 and 16, and any references contained in these Bye-Laws in relation to the execution of any instrument of transfer or the registration of any transfer of shares or other securities of the Company in uncertificated form shall be read in accordance with the terms of Bye-Laws 15 and 16.
45. Subject to any directions of the Board from time to time in force, the Secretary may exercise the powers and discretions of the Board under Bye-Laws 42, 43 and 44.

#### **INCREASE OF CAPITAL**

46. The Company may from time to time increase its capital by such sum to be divided into shares of such par value as the Company by Resolution shall prescribe.
47. The Company may, by the Resolution increasing the capital, direct that the new shares or any of them shall be offered in the first instance either at par or at a premium or (subject to the provisions of the Companies Acts) at a discount to all the holders for the time being of shares of any class or classes in proportion to the number of such shares held by them respectively or make any other provision as to the issue of the new shares.
48. The new shares shall be subject to all the provisions of these Bye-Laws with reference to lien, the payment of calls, forfeiture, transfer, transmission and otherwise.

#### **ALTERATION OF CAPITAL**

49. The Company may from time to time by Resolution:
- 49.1 divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions;
- 49.2 consolidate and divide all or any of its share capital into shares of larger par value than its existing shares;
- 49.3 sub-divide its shares or any of them into shares of smaller par value than is fixed by its memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- 49.4 make provisions for the issue and allotment of shares which do not carry any voting rights;

- 49.5 cancel shares which, at the date of the passing of the Resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled; and
- 49.6 change the currency denomination of its share capital.

Where any difficulty arises in regard to any division, consolidation, or sub-division under this Bye-Law, the Board may settle the same as it thinks expedient and, in particular, may arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale in due proportion amongst the Shareholders who would have been entitled to the fractions, and for this purpose the Board may authorise some person to transfer (or, in the case of shares for the time being in uncertificated form, to take such other steps in the name of the holder as may be necessary to transfer) the shares representing fractions to the purchaser thereof, who shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

50. Subject to the Companies Acts and to any confirmation or consent required by law or these Bye-Laws, the Company may by Resolution from time to time convert any preference shares into redeemable preference shares.

#### **REDUCTION OF CAPITAL**

51. Subject to the Companies Acts, its memorandum and any confirmation or consent required by law or these Bye-Laws, the Company may from time to time by Resolution authorise the reduction of its issued share capital or any share premium or contributed surplus account in any manner.
52. In relation to any such reduction, the Company may by Resolution determine the terms upon which such reduction is to be effected including, in the case of a reduction of part only of a class of shares, those shares to be affected.

#### **GENERAL MEETINGS AND WRITTEN RESOLUTIONS**

53. The Board shall convene and the Company shall hold general meetings as Annual General Meetings in accordance with the requirements of the Companies Acts at such times and places as the Board shall appoint. The Board may, whenever it thinks fit, and shall, when requisitioned by shareholders pursuant to the provisions of the Companies Acts, convene general meetings other than Annual General Meetings, which shall be called Special General Meetings, at such time and place as the Board may appoint.
54. 54.1 Except in the case of the removal of auditors or Directors, anything which may be done by Resolution in general meeting may, without a meeting and without any previous notice being required, be done by Resolution in writing, signed by all of the Shareholders or any class thereof or their proxies, or in the case of a Shareholder that is a corporation (whether or not a company within the meaning of the Companies Acts) on behalf of such Shareholder, being all of the Shareholders of the Company or class thereof who at the date of the Resolution in writing would be entitled to attend a meeting and vote on the Resolution. Such Resolution in writing may be signed in as many counterparts as may be necessary.

- 54.2 For the purposes of this Bye-Law, the date of the Resolution in writing is the date when the Resolution is signed by, or on behalf of, the last Shareholder to sign and any reference in any enactment to the date of passing of a Resolution is, in relation to a Resolution in writing made in accordance with this section, a reference to such date.
- 54.3 A Resolution in writing made in accordance with this Bye-Law is as valid as if it had been passed by the Company in general meeting or, if applicable, by a meeting of the relevant class of Shareholders of the Company, as the case may be. A Resolution in writing made in accordance with this section shall constitute minutes for the purposes of the Companies Acts and these Bye-Laws.

### **NOTICE OF GENERAL MEETING**

55. An Annual General Meeting shall be called by not less than 21 clear days' notice in writing and a Special General Meeting shall be called by not less than 14 clear days' notice in writing. The notice shall specify the place, day and time of the meeting, (including any satellite meeting place arranged for the purposes of the Bye-Law 59) and, the nature of the business to be considered. Notice of every general meeting shall be given in any matter permitted by Bye-Laws 151, 152 and 153 to all Shareholders other than such as, under the provisions of these Bye-Laws or the terms of issue of the shares they hold, are not entitled to receive such notice from the Company and to each Director, and to any Resident Representative, who or which has delivered a written notice upon the Registered Office requiring that such notice be sent to him or it. Notwithstanding that a meeting of the Company is called by shorter notice than that specified in this Bye-Law, it shall be deemed to have been duly called if it is so agreed:
- 55.1 in the case of a meeting called as an Annual General Meeting, by all the members entitled to attend and vote thereat; and
- 55.2 in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than 95 per cent. in nominal value of the shares giving that right.
56. The accidental omission to give notice of a meeting or (in cases where instruments of proxy are sent out with the notice) the accidental omission to send such instrument of proxy to, or the non-receipt of notice of a meeting or such instrument of proxy by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting.
57. A Shareholder present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
58. The Board may cancel or postpone a meeting of the Shareholders after it has been convened and notice of such cancellation or postponement shall be served in accordance with Bye-Law 151 upon all Shareholders entitled to notice of the meeting so cancelled or postponed setting out, where the meeting is postponed to a specific date, notice of the new meeting in accordance with Bye-Law 55.

## **GENERAL MEETINGS AT MORE THAN ONE PLACE**

59.

59.1 The provisions of this Bye-Law shall apply if any general meeting of the shareholders of the Company is convened at or adjourned to more than one place.

59.2 The notice of any meeting or adjourned meeting may specify the Specified Place and the Board shall make arrangements for simultaneous attendance and participation in a satellite meeting at other places (whether adjoining the Specified Place or in a different and separate place or places altogether or otherwise) by Shareholders. The Shareholders present at any such satellite meeting place in person or by proxy and entitled to vote shall be counted in the quorum for, and shall be entitled to vote at, the general meeting in question if the chairman of the general meeting is satisfied that adequate facilities are available throughout the general meeting to ensure that Shareholders attending at all meeting places are able to:

59.2.1 communicate simultaneously and instantaneously with the persons present at the other meeting place or places, whether by use of microphones, loud-speakers, audio-visual or other communications equipment or facilities; and

59.2.2 have access to all documents which are required by the Companies Acts and these Bye-Laws to be made available at the meeting.

The chairman of the general meeting shall be present at, and the meeting shall be deemed to take place at, the Specified Place. If it appears to the chairman of the general meeting that the facilities at the Specified Place or any satellite meeting place are or become inadequate for the purposes referred to above, then the chairman may, without the consent of the meeting, interrupt or adjourn the general meeting. All business conducted at that general meeting up to the time such adjournment shall be valid.

59.3 The Board may from time to time make such arrangements for the purpose of controlling the level of attendance at any such satellite meeting (whether involving the issue of tickets or the imposition of some means of selection or otherwise) as they shall in their absolute discretion consider appropriate, and may from time to time vary any such arrangements or make new arrangements in place of them, provided that a Shareholder who is not entitled to attend, in person or by proxy, at any particular place shall be entitled so to attend at one of the other places and the entitlement of any Shareholder so to attend the meeting or adjourned meeting at such place shall be subject to any such arrangements as may be for the time being in force and by the notice of meeting or adjourned meeting stated to apply to the meeting.

59.4 If a meeting is adjourned to more than one place, notice of the adjourned meeting shall be given in the manner required by Bye-Law 55.

## **PROCEEDINGS AT GENERAL MEETINGS**

60. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business, but the absence of a quorum shall not preclude the appointment, choice or election of a chairman, which shall not be treated as part of the business of the

meeting. Save as otherwise provided by these Bye-Laws, at least two Shareholders present in person or by proxy and entitled to vote shall be a quorum for all purposes; provided, however, that if the Company or a class of Shareholders shall have only one Shareholder, one Shareholder present in person or by proxy shall constitute the necessary quorum.

61. If within five minutes (or such longer time as the chairman of the meeting may determine to wait) after the time appointed for the meeting, a quorum is not present, the meeting, if convened on the requisition of Shareholders, shall be dissolved. In any other case, it shall stand adjourned to such other day and such other time and place as the chairman of the meeting may determine and at such adjourned meeting two Shareholders present in person or by proxy and entitled to vote shall be a quorum, provided that if the Company or a class of Shareholders shall have only one Shareholder, one Shareholder present in person or by proxy shall constitute the necessary quorum. The Company shall give not less than five clear days' notice of any meeting adjourned through want of a quorum and such notice shall state that the sole Shareholder or, if more than one, two Shareholders present in person or by proxy and entitled to vote shall be a quorum. If at the adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, the meeting shall be dissolved.
62. A meeting of the Shareholders or any class thereof may be held by means of such telephone, electronic or other communication facilities (including, without limiting the generality of the foregoing, by telephone, or by video conferencing) as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting. If it appears to the chairman of a general meeting that the Specified Place is inadequate to accommodate all persons entitled and wishing to attend, the meeting is duly constituted and its proceedings are valid if the chairman is satisfied that adequate facilities are available, whether at the Specified Place or elsewhere, to ensure that each such person who is unable to be accommodated at the Specified Place is able to communicate simultaneously and instantaneously with the persons present at the Specified Place, whether by the use of microphones, loud-speakers, audio-visual or other communications equipment or facilities.
63.
  - 63.1 Subject to the Companies Acts, a Resolution may only be put to a vote at a general meeting of the Company or of any class of Shareholders if:
    - 63.1.1 it is proposed by or at the direction of the Board; or
    - 63.1.2 it is proposed at the direction of the court; or
    - 63.1.3 it is proposed on the requisition in writing of such number of Shareholders as is prescribed by, and is made in accordance with, the relevant provisions of the Companies Acts; or
    - 63.1.4 the chairman of the meeting in his absolute discretion decides that the Resolution may properly be regarded as within the scope of the meeting.
  - 63.2 No amendment may be made to a Resolution, at or before the time when it is put to a vote, unless the chairman of the meeting in his absolute discretion decides that the amendment or the amended Resolution may properly be put to a vote at that meeting.

- 63.3 If the chairman of the meetings rules a Resolution or an amendment to a Resolution admissible or out of order (as the case may be), the proceedings of the meeting or on the Resolution in question shall not be invalidated by any error in his ruling. Any ruling by the chairman of the meeting in relation to a Resolution or an amendment to a Resolution shall be final and conclusive.
64. The Resident Representative, if any, upon giving the notice referred to in Bye-Law 55 above, shall be entitled to attend any general meeting of the Company and each Director shall be entitled to attend and speak at any general meeting of the Company.
65. The Chairman (if any) of the Board or, in his absence, the President shall preside as chairman at every general meeting. If there is no such Chairman or President, or if at any meeting neither the Chairman nor the President is present within five minutes after the time appointed for holding the meeting, or if neither of them is willing to act as chairman, the Directors present shall choose one of their number to act or if only one Director is present he shall preside as chairman if willing to act. If no Director is present, or if each of the Directors present declines to take the chair, the persons present and entitled to vote on a poll shall elect one of their number to be chairman.
66. The chairman of the meeting may, with the consent by Resolution of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time (or sine die) and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. In addition to any other power of adjournment conferred by law, the chairman of the meeting may at any time without consent of the meeting adjourn the meeting (whether or not it has commenced or a quorum is present) to another time and/or place (or sine die) if, in his opinion, it would facilitate the conduct of the business of the meeting to do so, if the number of persons wishing to attend cannot be conveniently accommodated in the Specified Place, the unruly conduct of persons attending the meeting prevents or is likely to prevent the orderly continuation of the business of the meeting or if he is so directed (prior to or at the meeting) by the Board. When a meeting is adjourned sine die, the time and place for the adjourned meeting shall be fixed by the Board. When a meeting is adjourned for three (3) months or more or for an indefinite period, notice of the adjourned meeting shall be given as in the case of the original meeting. Save as expressly provided by these Bye-Laws, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **VOTING**

67. Save where a greater majority is required by the Companies Acts or these Bye-Laws, any question proposed for consideration at any general meeting shall be decided on by a simple majority of votes cast.
68. Subject to Bye-Law 146 and to any rights or restrictions attached to any class of shares, at any meeting of the Company, each Shareholder present in person shall be entitled to one vote on any question to be decided on a show of hands and each Shareholder present in person or by proxy shall be entitled on a poll to one vote for each share held by him.
69. At any general meeting, a Resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands or on the withdrawal of any other demand for a poll) a poll is demanded by:

- 69.1 the chairman of the meeting; or
  - 69.2 at least two Shareholders present in person or represented by proxy; or
  - 69.3 any Shareholder or Shareholders present in person or represented by proxy and holding between them not less than one tenth of the total voting rights of all the Shareholders having the right to vote at such meeting; or
  - 69.4 a Shareholder or Shareholders present in person or represented by proxy holding shares conferring the right to vote at such 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 such shares conferring such right.
70. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made. If the demand for a poll is withdrawn, the chairman or any other Shareholder entitled may demand a poll.
71. Unless a poll is so demanded and the demand is not withdrawn, a declaration by the chairman that a Resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or not carried by a particular majority or lost shall be final and conclusive, and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded for or against such Resolution.
72. If a poll is duly demanded, the result of the poll shall be deemed to be the Resolution of the meeting at which the poll is demanded.
73. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken in such manner and either forthwith or at such time later in the meeting as the chairman shall direct and he may appoint scrutineers (who need not be Shareholders) and fix a time and place for declaring the result of the poll. It shall not be necessary (unless the chairman otherwise directs) for notice to be given of a poll. A poll on any question other than the election of the chairman shall be taken as the chairman directs, including the use of ballot or voting papers or tickets, and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll.
74. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded and it may be withdrawn at any time before the close of the meeting or the taking of the poll, whichever is the earlier.
75. On a poll, votes may be cast either personally or by proxy.
76. A person entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.
77. In the case of an equality of votes at a general meeting, whether on a show of hands or on a poll, the chairman of such meeting shall have a casting vote.

78. In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.
79. A Shareholder who is a patient for any purpose of any statute or applicable law relating to mental health or in respect of whom an order has been made by any Court having jurisdiction for the protection or management of the affairs of persons incapable of managing their own affairs may vote, whether on a show of hands or on a poll, by his receiver, committee, *curator bonis* or other person in the nature of a receiver, committee or *curator bonis* appointed by such Court and such receiver, committee, *curator bonis* or other person may vote on a poll by proxy, and may otherwise act and be treated as such Shareholder for the purpose of general meetings.
80. No Shareholder shall, unless the Board otherwise determines, be entitled to vote at any general meetings unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.
81. If:
- 81.1 any objection shall be raised to the qualification of any voter; or
  - 81.2 any votes have been counted which ought not to have been counted or which might have been rejected; or
  - 81.3 any votes are not counted which ought to have been counted,

the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any Resolution unless the same is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs. Any objection or error shall be referred to the chairman of the meeting and shall only vitiate the decision of the meeting on any Resolution if the chairman decides that the same may have affected the decision of the meeting. The decision of the chairman on such matters shall be final and conclusive.

### **PROXIES AND CORPORATE REPRESENTATIVES**

82. A Shareholder may appoint one or more persons as his proxy, with or without the power of substitution, to represent him and vote on his behalf in respect of all or some only of his shares at any general meeting (including an adjourned meeting). A proxy need not be a Shareholder. The instrument appointing a proxy shall be in writing executed by the appointor or his attorney authorised by him in writing or, if the appointor is a corporation, either under its seal or executed by an officer, attorney or other person authorised to sign the same.
83. A Shareholder which is a corporation may, by written authorisation, appoint any person (or two or more persons in the alternative) as its representative to represent it and vote on its behalf at any general meeting (including an adjourned meeting) and such a corporate representative may exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Shareholder and the Shareholder



shall for the purposes of these Bye-laws be deemed to be present in person at any such meeting if a person so authorised is present at it.

84. Any Shareholder may appoint a proxy or (if a corporation) representative for a specific general meeting, and adjournments thereof, or may appoint a standing proxy or (if a corporation) representative, by serving on the Company at the Registered Office, or at such place or places as the Board may otherwise specify for the purpose, a proxy or (if a corporation) an authorisation. For the purposes of service on the Company pursuant to this Bye-Law, the provisions of Bye-Law 151 as to service on Shareholders shall mutatis mutandis apply to service on the Company. Any standing proxy or authorisation shall be valid for all general meetings and adjournments thereof or Resolutions in writing, as the case may be, until notice of revocation is received at the Registered Office or at such place or places as the Board may otherwise specify for the purpose. Where a standing proxy or authorisation exists, its operation shall be deemed to have been suspended at any general meeting or adjournment thereof at which the Shareholder is present or in respect to which the Shareholder has specially appointed a proxy or representative. The Board may from time to time require such evidence as it shall deem necessary as to the due execution and continuing validity of any standing proxy or authorisation and the operation of any such standing proxy or authorisation shall be deemed to be suspended until such time as the Board determines that it has received the requested evidence or other evidence satisfactory to it.
85. Subject to Bye-Law 84, the instrument appointing a proxy or corporate representative together with such other evidence as to its due execution as the Board may from time to time require, shall be delivered at the Registered Office (or at such place or places as may be specified in the notice convening the meeting or in any notice of any adjournment or, in either case or the case of a written Resolution, in any document sent therewith) not less than 48 hours or such other period as the Board may determine, prior to the holding of the relevant meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, before the time appointed for the taking of the poll, or, in the case of a written Resolution, prior to the effective date of the written Resolution and in default the instrument of proxy or authorisation shall not be treated as valid.
86. Instruments of proxy or authorisation shall be in any common form or in such other form as the Board may approve and the Board may, if it thinks fit, send out with the notice of any meeting or any written Resolution forms of instruments of proxy or authorisation for use at that meeting or in connection with that written Resolution. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll, to speak at the meeting and to vote on any amendment of a written Resolution or amendment of a Resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy or authorisation shall, unless the contrary is stated therein, be valid as well as for any adjournment of the meeting as for the meeting to which it relates. If the terms of the appointment of a proxy include a power of substitution, any proxy appointed by substitution under such power shall be deemed to be the proxy of the Shareholder who conferred such power. All the provisions of these Bye-Laws relating to the execution and delivery of an instrument or other form of communication appointing or evidencing the appointment of a proxy shall apply, mutatis mutandis, to the instrument or other form of communication effecting or evidencing such an appointment by substitution.
87. A vote given in accordance with the terms of an instrument of proxy or authorisation shall be valid notwithstanding the previous death or unsoundness of mind of the principal, or

revocation of the instrument of proxy or of the corporate authority or of the authority under which it was executed, provided that no intimation in writing of such death, unsoundness of mind or revocation shall have been received by the Company at the Registered Office (or such other place as may be specified for the delivery of instruments of proxy or authorisation in the notice convening the meeting or other documents sent therewith) at least one hour before the commencement of the meeting or adjourned meeting, or the taking of the poll, or the day before the effective date of any written Resolution at which the instrument of proxy or authorisation is used.

88. Subject to the Companies Acts, the Board may at its discretion waive any of the provisions of these Bye-Laws related to proxies or authorisations and, in particular, may accept such verbal or other assurances as it thinks fit as to the right of any person to attend, speak and vote on behalf of any Shareholder entitled to attend and vote at general meetings or to sign written Resolutions.

### **APPOINTMENT AND REMOVAL OF DIRECTORS**

89. All Directors shall retire by rotation at the annual general meeting held in every year. All Directors retiring at such annual general meeting shall retain office until the dissolution of that meeting.
90. [Reserved]
91. [Reserved]
92. If the Company, at the meeting at which a Director retires by rotation, does not fill the vacancy the retiring Director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the reappointment of the Director is put to the meeting and lost.
93. Any contract of employment entered into by a Director with the Company shall not include a term that it is to be for a period exceeding five years unless such term is first approved by Resolution.
94. No person other than a Director retiring by rotation shall be appointed a Director at any general meeting unless:
- 94.1 he is recommended by the Board; or
- 94.2 not less than seven nor more than forty-two clear days before the date appointed for the meeting, notice executed by a Shareholder qualified to vote at the meeting (not being the person to be proposed) has been given to the Company of the intention to propose that person for appointment setting forth as to each person whom the Shareholder proposes to nominate for election or re-election as a Director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class, series and number of shares of the Company which are beneficially owned by the person, (iv) particulars which would, if he were so appointed, be required to be included in the Company's register of Directors and Officers and (v) all other information relating to that person that is required to be disclosed to the London Stock Exchange, together with notice executed by that person of his willingness to serve as a Director if so elected.

95. Except as otherwise authorised by the Companies Acts, and subject to Bye-Law 94, the appointment of any person proposed as a Director shall be effected by a separate Resolution.
96. All Directors, upon election or appointment, except upon re-election or reappointment at an Annual General Meeting, must provide written acceptance of their appointment, in such form as the Board may think fit, by notice in writing to the Registered Office within thirty days of their appointment.
97. The number of Directors shall be not less than three and not more than such number as the Board may from time to time determine. Any one or more vacancies in the Board not filled at any general meeting shall be deemed casual vacancies for the purposes of these Bye-Laws. Without prejudice to the power of the Company by Resolution in pursuance of any of the provisions of these Bye-Laws to appoint any person to be a Director, the Board, so long as a quorum of Directors remains in office, shall have power at any time and from time to time, subject to this Bye-Law, to appoint any individual to be a Director so as to fill a casual vacancy. A Director so appointed shall hold office only until the next following Annual General Meeting and shall not be taken into account in determining the Directors who are to retire by rotation at the meeting. If not reappointed at such Annual General Meeting, he shall vacate office at the conclusion thereof.
98. The Company may in a Special General Meeting called for that purpose remove a Director provided notice of any such meeting shall be served upon the Director concerned not less than 14 days before the meeting and he shall be entitled to be heard at that meeting. Any vacancy created by the removal of a Director at a Special General Meeting may be filled at the Meeting by the election of another Director in his place or, in the absence of any such election, by the Board.

#### **RESIGNATION AND DISQUALIFICATION OF DIRECTORS**

99. The office of a Director shall be vacated upon the happening of any of the following events:
  - 99.1 if he resigns his office by notice in writing delivered to the Registered Office or tendered at a meeting of the Board;
  - 99.2 if he becomes of unsound mind or a patient for any purpose of any statute or applicable law in any relevant country relating to mental health and the Board resolves that his office is vacated;
  - 99.3 if he becomes bankrupt under the laws of any country or compounds with his creditors;
  - 99.4 if he is prohibited by law from being a Director;
  - 99.5 if he ceases to be a Director by virtue of the Companies Acts or these Bye-Laws or is removed from office pursuant to these Bye-Laws;
  - 99.6 if he shall for more than six consecutive months have been absent without permission of the Board from meetings of the Board held during that period and his Alternate Director (if any) shall not during such period have attended in his stead and the Board resolves that his office be vacated; or

- 99.7 if he is requested to resign in writing by not less than three quarters of the other Directors. In calculating the number of Directors who are required to make such a request to the Director, there shall be excluded any Alternate Director appointed by him acting in his capacity as such; and the Director and any Alternate Director appointed by him and acting in his capacity as such shall constitute a single Director for this purpose, so that the signature of either shall be sufficient.

### **ALTERNATE DIRECTORS**

100. Any Director (other than an Alternate Director) may appoint any other Director, or any other person approved by resolution of the Board and willing to act, to be an Alternate Director (provided such person is not a resident of the UK) and may remove from office an Alternate Director so appointed by him. Any appointment or removal of an Alternate Director by a Director shall be effected by depositing a notice of appointment or removal with the Secretary at the Registered Office, signed by such Director, and such appointment or removal shall become effective on the date of receipt by the Secretary. Any Alternate Director may also be removed by resolution of the Board. An Alternate Director may also be a Director in his own right and may act as alternate to more than one Director.
101. An Alternate Director shall cease to be an Alternate Director:
- 101.1 if his appointor ceases to be a Director; but, if a Director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an Alternate Director made by him which was in force immediately prior to his retirement shall continue after his reappointment;
  - 101.2 on the happening of any event which, if he were a Director, would cause him to vacate his office as Director;
  - 101.3 if he is removed from office pursuant to Bye-Law 100; or
  - 101.4 if her resigns his office by notice to the Company.
102. An Alternate Director shall be entitled to receive notices of all meetings of Directors, to attend, to be counted in the quorum and vote at any such meeting at which any Director to whom he is alternate is not personally present, and generally to perform all the functions of any Director to whom he is alternate in his absence.
103. Every person acting as an Alternate Director shall (except as regards powers to appoint an alternate and remuneration) be subject in all respects to the provisions of these Bye-laws relating to Directors and shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of or for any Director for whom he is alternate. An Alternate Director may be paid expenses and shall be entitled to be indemnified by the Company to the same extent *mutatis mutandis* as if he were a Director. Every person acting as an Alternate Director shall have one vote for each Director for whom he acts as alternate (in addition to his own vote if he is also a Director). The signature of an Alternate Director to any

resolution in writing of the Board shall, unless the terms of his appointment provides to the contrary, be as effective as the signature of the Director or Directors to whom he is alternate.

### **DIRECTORS' INTERESTS**

104.

104.1 Save as otherwise provided by these Bye-Laws, a Director shall not vote at a Meeting of the Board or a committee of the Board on any resolution concerning a matter in which he has an interest (other than by virtue of his interests in shares or debentures or other securities of or otherwise in or through the Company) which is material unless his interest arises only because the case falls within one or more of the following paragraphs:

104.1.1 the resolution relates to the giving to him of a guarantee, security or indemnity in respect of money lent by him to, or an obligation incurred by him at the request of or for the benefit of, the Company or any of its subsidiaries;

104.1.2 the resolution relates to the giving to a third party of a guarantee, security or indemnity in respect of any obligation of the Company or any of its subsidiaries for which the Director has assumed responsibility (in whole or part and whether alone or jointly with others) under a guarantee or indemnity or by the giving of security;

104.1.3 his interest arises in relation to the subscription or purchase by him of shares, debentures or other securities of the company pursuant to an offer or invitation to Shareholders or debenture holders of the Company, or any class of them, or to the public or any section of the public;

104.1.4 his interest arises by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any shares, debentures or other securities of or by the Company or any of its subsidiaries for subscription, purchase or exchange;

104.1.5 the resolution relates to a proposal concerning any other body corporate in which he is interested, directly or indirectly, and whether as an officer, shareholder, creditor or otherwise howsoever, provided that he is not the holder of or beneficially interested in one per cent or more of any class of the equity share capital of such body corporate (or any other body corporate through which his interest is derived) or of the voting rights available to members of the relevant body corporate (any such interest being deemed for the purpose of this Bye-Law to be a material interest in all circumstances);

104.1.6 the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the authorities of any country for tax purposes;

104.1.7 the resolution relates to any contract or arrangement for the benefit of employees of the Company or of any of its subsidiaries and does not provide in respect of any Director as such any privilege or advantage not accorded to the employees to whom the contract or arrangement relates; and

104.1.8 any proposal concerning any insurance which the Company is empowered to purchase or maintain for or for the benefit of any Directors of the Company or for persons who include Directors of the Company provided that for the purposes of this paragraph insurance shall mean only insurance against liability incurred by a Director in respect of any such act or omission by him as is referred to in Bye-Law 164 or any other insurance which the Company is empowered to purchase or maintain for or for the benefit of any groups of persons consisting of or including Directors of the Company.

For the purpose of determining whether a proposal concerns a body corporate in which a Director is interested, there shall be disregarded any shares held by a Director as bare or custodian trustee and in which he has no beneficial interest, any shares comprised in a trust in which the Director's interest is in reversion or remainder if and so long as some other person is entitled to receive the income thereof, and any shares comprised in an authorised unit trust in which the Director is only interested as a unit holder. For the purposes of this Bye-Law, an interest of a person who is connected with a Director shall be treated as an interest of the Director and, in relation to an Alternate Director, an interest of his appointor shall be treated as an interest of the Alternate Director without prejudice to any interest which the Alternate Director has otherwise.

- 104.2 A Director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- 104.3 A Director may hold any other office or place of profit with the Company (except that of auditor) in conjunction with his office of Director for such period and upon such terms as the Board may determine, and may be paid such extra remuneration therefore (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine, and such extra remuneration shall be in addition to any remuneration provided for by or pursuant to any other Bye-Law.
- 104.4 A Director 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.
- 104.5 Subject to the provisions of the Companies Acts, a Director may notwithstanding his office be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested; and be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is interested. The Board may also cause the voting power conferred by the shares in any other company held or owned by the Company to be exercised in such manner in all respects as it thinks fit, including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors or officers of such other company, or voting or providing for the payment of remuneration to the directors or officers of such other company.
- 104.6 So long as, where it is necessary, he declares the nature of his interest at the first opportunity at a meeting of the Board or by writing to the Directors as required by the Companies Acts, a Director shall not be reason of his office be accountable to the

Company for any benefit which he derives from any office or employment to which these Bye-Laws allow him to be appointed or from any transaction or arrangement in which these Bye-Laws allow him to be interested, and no such transaction or arrangement shall be liable to be avoided on the ground of any interest or benefit.

104.7 A Director, including an Alternate Director, who is to his knowledge in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at a meeting of Directors. In the case of a proposed contract or arrangement the declaration shall be made at the meeting of the Directors at which the question of entering into the contract is first taken into consideration if he knows his interest then exists, or, if the Director was not at the date of that meeting interested in the proposed contract or arrangement, at the next meeting of Directors held after he became so interested if he knows his interest then exists. In a case where the Director becomes interested in a contract or arrangement after it is made or becomes aware of his interest the declaration shall be made at the first meeting of the Directors held after the Director becomes so interested or knows that he is or has become so interested. In a case where the Director is interested in a contract or arrangement which has been made before he was appointed a Director the declaration shall be made at the first meeting of the Directors held after he is so appointed.

104.8 Subject to the Companies Acts and any further disclosure required thereby, a general notice to the Directors by a Director or Officer declaring that he is a director or officer or has an interest in a person and is to be regarded as interested in any transaction or arrangement made with that person, shall be sufficient declaration of interest in relation to any transaction or arrangement so made.

104.8.1 A person who becomes a Director and at the time when he does so is interested in shares in, or debentures of, the Company or any other body corporate being the Company's subsidiary, is under obligation to notify the Company in writing:

- (a) of the subsistence of his interests at that time; and
- (b) of the number of shares of each class in, and the amount of debentures of each class of, the Company or other such body corporate in which each interest of his subsists at that time.

104.8.2 A Director is under obligation to notify the Company in writing of the occurrence, while he is a Director, of any of the following events:

- (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the Company or any other body corporate, being the Company's subsidiary;
- (b) the entering into by him of a contract to sell any such shares or debentures;
- (c) the assignment by him of a right granted to him by the Company to subscribe for shares in, or debentures of, the Company; and

- (d) the grant to him by another body corporate, being the Company's subsidiary, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted,

and notification to the Company must state the number of amount, and class, of shares or debentures involved.

- 104.8.3 Bye-Law 104.8.2 does not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a Director.

### **POWERS AND DUTIES OF THE BOARD**

105. Subject to the provisions of the Companies Acts and these Bye-Laws and to any directions given by the Company by Resolution the Board shall manage the business of the Company and may pay all expenses incurred in promoting and incorporating the Company and may exercise all the powers of the Company. No alteration of these Bye-Laws and no such direction shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Bye-Law shall not be limited by any special power given to the Board by these Bye-Laws and a meeting of the Board at which a quorum is present shall be competent to exercise all the powers, authorities and discretions for the time being vested in or exercisable by the Board.
106. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any other persons.
107. All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
108. The Board may from time to time appoint one or more of its body to be a managing director, joint managing director or an assistant managing director or to hold any other employment or executive office with the Company for such period and upon such terms as the Board may determine and may revoke or terminate any such appointment. Any such reservation or termination as aforesaid shall be without prejudice to any claim for damages that such Director may have against the Company or the Company may have against such Director for any breach of any contract of service between him and the Company which may be involved in such revocation or termination. Any person so appointed shall receive such remuneration (if any) (whether by way of salary, commission, participation in profit, or otherwise) as the Board may determine, and either in addition to or in lieu of his remuneration as a Director.

### **FEEES, GRATUITIES AND PENSIONS**

109. 109.1 The ordinary remuneration of the Directors office for their services (excluding amounts payable under any other provision of these Bye-Laws) shall be determined by Board and each such Director shall be paid a fee (which shall be deemed to accrue from day to day) at such rate as may from time to time be determined by the Board.



Each Director may be paid his reasonable travel, hotel and incidental expenses in attending and returning from meetings of the Board or committees constituted pursuant to these Bye-Laws or general meetings and shall be paid all expenses properly and reasonably incurred by him in the conduct of the Company's business or in the discharge of his duties as a Director. Any Director who, by request goes or resides abroad for any purposes of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine, and such extra remuneration shall be in addition to any remuneration provided for by or pursuant to any other Bye-Law.

- 109.2 In addition to its powers under Bye-Law 109.1 the Board may (by establishment of or maintenance of schemes or otherwise) provide additional benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any past or present Director or employee of the Company or any of its subsidiaries or any body corporate associated with, or any business acquired by, any of them, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.
- 109.3 No Director or former Director shall be accountable to the Company or the Shareholders for any benefit provided pursuant to this Bye-Law and the receipt of any such benefit shall not disqualify any person from being or becoming a Director of the Company.
- 109A. The ordinary remuneration and any additional benefits payable or provided to Directors pursuant to bye-law 109 shall be:
- 109A.1 made in accordance with a remuneration policy for Directors to be prepared by the Board in accordance with the requirements of The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2008 of the United Kingdom (the "2008 Regulations"); and
- 109A.2 submitted for approval by the Shareholders in accordance with the 2008 Regulations.

### **DELEGATION OF THE BOARD'S POWERS**

110. The Board may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under these Bye-Laws) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney and of such attorney as the Board may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Such attorney may, if so authorised under the Seal, execute any deed or instrument under the personal seal of such attorney, with the same effect as the affixation of the Seal.
111. The Board may entrust to and confer upon any Director, Officer or, without prejudice to the provisions of Bye-Law 112, other individual any of the powers exercisable by it upon such

terms and conditions with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time revoke or vary all or any of such powers but no person dealing in good faith and without notice of such revocation or variation shall be affected thereby.

112. When required under the requirements from time to time of any stock exchange on which the shares of the Company are listed, the Board shall appoint an Audit Committee and a Compensation Committee in accordance with the requirements of such stock exchange. The Board also may delegate any of its powers, authorities and discretions to any other committees, consisting of such person or persons (whether a member or members of its body or not) as it thinks fit. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, and in conducting its proceedings conform to any regulations which may be imposed upon it by the Board. If no regulations are imposed by the Board the proceedings of a committee with two or more members shall be, as far as is practicable, governed by the Bye-Laws regulating the proceedings of the Board.

### **PROCEEDINGS OF THE BOARD**

113. The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes. In the case of an equality of votes, the chairman shall have a casting vote. A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Board. Meetings of the board shall be in Bermuda, or such other place outside the UK as a Director (or secretary at the request of a Director) may determine. No meeting shall be convened unless it is convened for a place outside the UK.
114. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent to him by post, cable, telex, telecopier, email or other mode of representing or reproducing words in a legible and non-transitory form at his last known address or any other address given by him to the Company for this purpose and the provision of Bye-Law 152 shall apply to any notice so given as to deemed date of service of notice. A Director may retrospectively waive the requirement for notice of any meeting by consenting in writing to the business conducted at the meeting.
115. The quorum necessary for the transaction of the business of the Board may be fixed by the Board and, unless so fixed at any other number, shall be two individuals. Any Director who ceases to be a Director at a meeting of the Board may continue to be present and to act as a Director and, subject to Bye-Law 124, be counted in the quorum until the termination of the meeting if no other Director objects and if otherwise a quorum of Directors would not be present.
116. The Resident Representative shall, upon delivering written notice of an address for the purposes of receipt of notice to the Registered Office, be entitled to receive notice of, attend and be heard at and to receive minutes of all meetings of the Board.
117. So long as a quorum of Directors remains in office, the continuing Directors may act notwithstanding any vacancy in the Board but, if no such quorum remains, the continuing Directors or a sole continuing Director may act only for the purpose of calling a general meeting.

118. The Chairman (or President) or, in his absence, the Deputy Chairman (or Vice-President), shall preside as chairman at every meeting of the Board. If at any meeting the Chairman or Deputy Chairman (or the President or Vice-President) is not present within five minutes after the time appointed for holding the meeting, or is not willing to act as chairman, the Directors present may choose one of their number to be chairman of the meeting.
119. The meetings and proceedings of any committee consisting of two or more members shall be governed by the provisions contained in these Bye-Laws for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board.
120. A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Board or by an Alternate Director, as provided for in Bye-Law 100 or by all the members of a committee for the time being shall be as valid and effectual as a resolution passed at a meeting of the Board or, as the case may be, of such committee duly called and constituted. Such resolution may be contained in one document or in several documents in the like form each signed by one or more of the Directors or members of the committee concerned.
121. A meeting of the Board or a committee appointed by the Board may be held by means of such telephone, electronic or other communication facilities (including, without limiting the generality of the foregoing, by telephone or by video conferencing) as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting. Subject always to Bye-Law 113, such a meeting shall be deemed to take place where the largest group of those Directors participating in the meeting is physically assembled (which shall not be in the UK), or, if there is no such group, where the chairman of the meeting then is (which shall not be in the UK).
122. All acts done by the Board or by any committee or by any person acting as a Director or member of a committee or any person duly authorised by the Board or any committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member of the Board or such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated their office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director, member of such committee or person so authorised.
123. The Company may by resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these Bye-Laws prohibiting a Director from voting at a meeting of the Board or of a committee of the Board, or ratify any transaction not duly authorised by reason of a contravention of any such provisions.
124. Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each Director separately and in such cases each of the Directors concerned (if not debarred from voting under the provisions of Bye-Law 104.1) shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
125. If a question arises at a meeting of the Board or a committee of the Board as to the entitlement of a Director to vote or be counted in a quorum, the question may, before the conclusion of the

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

## **OFFICERS**

126. The Officers of the Company must include either a President and a Vice-President or a Chairman and a Deputy Chairman, as the Board may determine, who must be Directors and shall be elected by the Board, subject to Bye-Law 124, as soon as possible after the statutory meeting and each Annual General Meeting. In addition, the Board may appoint any person whether or not he is a Director to hold such office as the Board may from time to time determine. Any person elected or appointed pursuant to this Bye-Law shall hold office for such period and upon such terms as the Board may determine and the Board may revoke or terminate any such election or appointment. Any such revocation or termination shall be without prejudice to any claim for damages that such Officer may have against the Company or the Company may have against such Officer for any breach of any contract of service between him and the Company which may be involved in such revocation or termination. Save as provided in the Companies Acts or these Bye-Laws, the powers and duties of the Officers of the Company shall be such (if any), as are determined from time to time by the Board. The powers of the Board generally cannot be delegated to the Chairman or Deputy Chairman of the Company.
127. Any appointment of a Director to an executive office shall terminate if he ceases to be a Director but without prejudice to any rights or claims which he may have against the Company by reason of such termination. A Director appointed to an executive office shall not ipso facto cease to be a Director if his appointment to such executive office terminates.
128. The emoluments of any Director holding executive office for his services as such shall be determined by the Board, and may be of any description, and (without limiting the generality of the foregoing) may include admission to or continuance of membership of any scheme (including any share acquisition scheme) or fund instituted or established or financed or contributed to by the Company for the provision of pensions, life assurance or other benefits for employees or their dependants, or the payment of a pension or other benefits to him or his dependants on or after retirement or death, apart from membership or any such scheme or fund.

## **MINUTES**

129. The Board shall cause minutes to be made and books kept for the purpose of recording:
- 129.1 all appointments of Officers made by the Board;
  - 129.2 the names if the Directors and other persons (is any) present at each meeting of the Board and of any committee;
  - 129.3 all proceedings at meetings of the Company, of the holders of any class of shares in the Company, of the Board and of committees appointed by the Board or the Shareholders.

Shareholders shall only be entitled to see the Register of Directors and Officers, the Register, the financial information provided for in Bye-Law 149 and the minutes of meetings of the Shareholders of the Company.

### **SECRETARY AND RESIDENT REPRESENTATIVE**

130. The Secretary (including one or more deputy or assistant secretaries) and, if required, the Resident Representative, shall be appointed by the Board at such remuneration (if any) and upon such terms as it may think fit and any Secretary and Resident Representative so appointed may be removed by the Board. The duties of the Secretary and the duties of the Resident Representative shall be those prescribed by the Companies Acts together with such other duties as shall from time to time be prescribed by the Board.
131. A provision of the Companies Acts or these Bye-Laws requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

### **THE SEAL**

132. The Seal shall consist of a circular metal device with the name of the Company around the outer margin thereof and the country and year of incorporation across the centre thereof. Should the Seal not have been received at the Registered Office in such form at the date of adoption of this Bye-Law then, pending such receipt, any document requiring to be sealed with the Seal shall be sealed by affixing a red wafer seal to the document with the name of the Company, and the country and year of registration in Bermuda type written across the centre thereof.
- 132.1 The Board may authorise the production of one or more duplicate seals.
- 132.2 The Board shall provide for the custody of every Seal. A Seal shall only be used by authority of the Board or of a committee constituted by the Board. Subject to these Bye-Laws, any instrument to which a Seal is affixed shall be signed by either two Directors, or by the Secretary and one Director, or by the Secretary or by one of the Directors or by any one person whether or not a Director or Officer, who has been authorised either generally or specifically to affirm the use of a Seal; provided that the Secretary or a Director may affix a Seal over his signature alone to authenticate copies of these Bye-Laws, the minutes of any meeting or any other documents requiring authentication.

### **DIVIDENDS AND OTHER PAYMENTS**

133. Subject to the provisions of the Companies Acts the Company may by Resolution declare dividends to be paid to members in accordance with the respective rights and their interests in the profits available for distribution, but no dividend shall exceed the amount recommended by the Directors.
134. Subject to the provisions of the Companies Acts and of these Bye-Laws, the Directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the Directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but

no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear. The Directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. Provided the Directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

135.

135.1 The Directors may, with the sanction of a Resolution of the Company, offer holders of Common Shares the right to elect to receive in respect of all or part of their holdings of Common Shares additional Common Shares in the Company, credited as fully paid, instead of cash in respect of all or part of such dividend or dividends whether interim or final and (subject to the following provisions of this Bye-Law 135) upon such terms and conditions and in such manner as may be specified in such Resolution and otherwise as the Directors may determine. Any such resolution may specify a particular dividend and/or all of any dividends (or part of such dividends) declared or paid with a specified period, but no such period may end later than the beginning of the Annual General Meeting in the calendar year next following the date on which such Resolution is passed.

135.2 When any such right of election is offered to the holders of Common Shares pursuant to this Bye-Law 135, the Directors shall make such offer to such holders in writing (conditionally if the necessary Resolution has yet to be passed, upon such Resolution being passed) and shall make available to or provide such holders with forms of election (in such form as the Directors may approve) whereby such holders may exercise such right and shall notify such holders of the procedure to be followed and of the place at which and the latest date and time by which, duly completed forms of election must be lodged in order to be effective.

135.3 Each holder of Common Shares who elects to receive additional Common Shares in the Company under a right offered to him pursuant to the Bye-Law shall be entitled to receive such whole number of additional Common Shares as is as nearly as possible equal in value (calculated on the basis of the Market Value of an additional Common Share in the Company) to (but not in excess of) the cash amount that such holder would otherwise have received by way of dividend. For the purposes of this Bye-Law, the "Market Value" of an additional Common Share in the Company shall be the average of the prices at which business is done in the Common Shares (derived from the Daily Official List of the London Stock Exchange) on such five consecutive dealing days as the Directors shall determine (save that the first of such dealing days shall be on or after the day when the issued Common Shares in the Company are first quoted "ex" the relevant dividend, unless no business is done during such dealing days, when in that case the first of such dealing days should be the latest practicable date at least five days prior to the date when the issued Common Shares in the Company are first quoted "ex" the relevant dividend when business is done in the Common Shares) or the nominal value of an Common Share in the Company (whichever is the higher).

135.4 Following an election by holders of Common Shares in accordance with the Bye-Law, the relevant dividend (or that part of a dividend in respect of which a right of election has been offered) shall not be payable on the Common Shares issued

pursuant to the election, but in lieu thereof the Directors shall capitalise out of any undistributed profits of the Company not required for paying preferential dividend (whether or not they are available for distribution) or out of any sum standing to the credit of the Company's share premium account or capital reserves (including any capital redemption reserve), as the Directors may determine a sum equal to the aggregate nominal value of the number of additional Common Shares required to be allotted to the holders of Common Shares who have made such election and shall apply such sum in paying up in full such number of additional Common Shares and shall allot and distribute the same to and amongst such holders on the basis set out in paragraph 135.3 of this Bye-Law save that the foregoing provisions of this paragraph shall be subject to any right of the Directors under these Bye-Laws to retain any dividend or other monies payable on or in respect of the Common Shares of a particular member.

- 135.5 The additional new Common Shares so allotted shall rank pari passu with the fully paid Common Shares in the Company then in issue save that they shall not be entitled to participate in the dividend in relation to which the relevant election was made.
  - 135.6 A resolution of the Directors capitalising any part of the reserves or profits hereinbefore mentioned shall have the same effect as if such capitalisation had been declared by approval in accordance with Bye-Law 143.
  - 135.7 The Directors may at their discretion make any rights of election offered pursuant to this Bye-Law subject to such exclusions or arrangements as they may consider necessary or expedient to deal with any legal or other difficulties which would or may otherwise arise under laws of, or the requirements of any recognised regulatory body or any stock exchange in, any territory.
  - 135.8 Every duly effected election shall be binding on every successor in title to the Common Shares or any of the members who have effected the same.
136. Except insofar as the rights attaching to, or the terms of issue of, any share otherwise provide:
- 136.1 all dividends or distributions out of contributed surplus may be declared and paid according to the amounts paid up on the shares in respect of which the dividend or distribution is paid, and an amount paid up on a share in advance of calls may be treated for the purpose of this Bye-Law as paid-up on the share;
  - 136.2 dividends or distributions out of contributed surplus may be apportioned and paid pro rate according to the amounts paid-up on the shares during any portion or portions of the period in respect of which the dividend or distribution is paid.
137. The Board may deduct from any dividend, distribution or other monies payable to a Shareholder by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in respect of shares of the Company.
138. No dividend, distribution or other monies payable by the Company on or in respect of any share shall bear interest against the Company.

139. Any dividend, distribution or interest, or part thereof payable in cash, or any other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post or by courier addressed to the holder at his address in the Register or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the shares at his registered address as appearing in the Register or addressed to such person at such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first in the Register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company. Any one of two or more joint holders may give effectual receipts for any dividends, distributions or other monies payable or property distributable in respect of the shares held by such joint holders.
140. Any dividend or distribution out of contributed surplus unclaimed for a period of six (6) years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company and the payment by the Board of any unclaimed dividend, distribution, interest or other sum payable on or in respect of the share into a separate account shall not constitute the Company a trustee in respect thereof.
141. The Board may also, in addition to its other powers, direct payment or satisfaction of any dividend or distribution out of contributed surplus wholly or in part by the distribution of specific assets, and in particular of paid-up shares or debentures of any other company, and where any difficulty arises in regard to such distribution or dividend, the Board may settle it as it thinks expedient, and in particular, may authorise any person to sell and transfer any fractions or may ignore fractions altogether, and may fix the value for distribution or dividend purposes of any such specific assets and may determine that cash payments shall be made to any Shareholders upon the footing of the values so fixed in order to secure equality of distribution and may vest any such specific assets in trustees as may seem expedient to the Board, provided that such dividend or distribution may not be satisfied by the distribution of any partly paid shares or debentures of any company without the sanction of a Resolution.

### **RESERVES**

142. The Board may, before declaring any dividend or distribution out of contributed surplus, set aside such sums as it thinks proper as reserves which shall, at the discretion of the Board, be applicable for any purpose of the Company and pending such application may, also at such discretion, either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit. The Board may also without placing the same to reserve carry forward any sums which it may think it prudent not to distribute.

### **CAPITALISATION OF PROFITS**

143. The Board may from time to time resolve to capitalise all or any part of any amount for the time being standing to the credit of any reserve or fund which is available for distribution or to the credit of any share premium account and accordingly that such amount be set free for distribution amongst the Shareholders or any class of Shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions, on the footing that the same be not paid in cash but be applied either in or towards paying up amounts for the time being unpaid on any shares in the Company held by such Shareholders respectively or in payment up in full of unissued shares, debentures or other obligations of the Company, to be



allotted and distributed credited as fully paid amongst such Shareholders, or partly in one way and partly in the other, provided that for the purpose of this Bye-Law, a share premium account may be applied only in paying up of unissued shares to be issued to such Shareholders credited as fully paid and provided further that any sum standing to the credit of a share premium account may only be applied in crediting as fully paid shares of the same class as that from which the relevant share premium was derived.

144. Where any difficulty arises in regard to any distribution under the last preceding Bye-Law, the Board may settle the same as it thinks expedient and, in particular, may authorise any person to sell and transfer any fractions or may resolve that the distribution should be as nearly as may be practicable in the correct proportion but not exactly so or may ignore fractions altogether, and may determine that cash payments should be made to any Shareholders in order to adjust the rights of all parties, as may seem expedient to the Board. The Board may appoint any person to sign on behalf of the persons entitled to participate in the distribution any contract necessary or desirable for giving effect thereto and such appointment shall be effective and binding upon the Shareholders.

### **RECORD DATES**

145. Notwithstanding any other provisions of these Bye-Laws, the Company may fix by Resolution, or the Board may fix, any date as the record date for any dividend, distribution, allotment or issue and for the purpose of identifying the persons entitled to receive notices of general meetings. Any such record date may be on or at any time before any date on which such dividend, distribution, allotment or issue is declared, paid or made or such notice is dispatched.
146. In relation to any general meeting of the Company or of any class of Shareholder or to any adjourned meeting or any poll taken at a meeting or adjourned meeting of which notice is given, the Board may specify in the notice of meeting or adjourned meeting or in any document sent to Shareholders by or on behalf of the Board in relation to the meeting, a time and date (a "record date") which is before the date fixed for the meeting (the "meeting date") and, notwithstanding any provision in these Bye-Laws to the contrary, in such case:
- 146.1 each person entered in the Register at the record date as a Shareholder, or a Shareholder of the relevant class, (a "record date holder") shall be entitled to attend and to vote at the relevant meeting and to exercise all of the rights or privileges of a Shareholder, or a Shareholder of the relevant class, in relation to that meeting in respect of the shares, or the shares of the relevant class, registered in his name at the record date;
- 146.2 as regards any shares, or shares of the relevant class, which are registered in the name of a record date holder at the record date but are not so registered at the meeting date ("relevant shares"), each holder of any relevant shares at the meeting date shall be deemed to have irrevocably appointed that record date holder as his proxy for the purpose of attending and voting in respect of those relevant shares at the relevant meeting (with power to appoint, or to authorise the appointment of, some other person as proxy), in such manner as the record date holder in his absolute discretion may determine; and
- 146.3 accordingly, except through his proxy pursuant to Bye-Law 146.2 above, a holder of relevant shares at the meeting date shall not be entitled to attend or to vote at the

relevant meeting, or to exercise any of the rights or privileges of a Shareholder, or a Shareholder of the relevant class, in respect of the relevant shares at that meeting.

The entry of the name of a person in the Register as a record date holder shall be sufficient evidence of his appointment as proxy in respect of any relevant shares for the purposes of this paragraph, but all the provisions of these Bye-Laws relating to the execution and deposit of an instrument appointing a proxy or any ancillary matter (including the Board's powers and discretions relevant to such matter) shall apply to any instrument appointing any person other than the record date holder as proxy in respect of any relevant shares.

### **ACCOUNTING RECORDS**

147. The Board shall cause to be kept accounting records sufficient to give a true and fair view of the state of the Company's affairs and to show and explain its transactions, in accordance with the Companies Acts.
148. The records of account shall be kept at the Registered Office or at such other place or places as the Board thinks fit, and shall at all times be open to inspection by the Directors, PROVIDED that if the records of account are kept at some place outside Bermuda, there shall be kept at an office of the Company in Bermuda such records as will enable the Directors to ascertain with reasonable accuracy the financial position of the Company at the end of each three month period. No Shareholder (other than an Officer of the Company) shall have any right to inspect any accounting record or book or document of the Company except as conferred by law or authorised by the Board or by Resolution.
149. A copy of every balance sheet and statement of income and expenditure, including every document required by law to be annexed thereto, which is to be laid before the Company in general meeting, together with a copy of the auditors' report, shall be sent to each person entitled thereto in accordance with the requirements of the Companies Acts. The Company need not, subject to the provisions of the Companies Acts and the regulations of the London Stock Exchange (including the AIM Rules) so permitting and if the Board so decides, send the copies of such documents to members, but instead send them a summary financial statement derived from the Company's annual accounts and the directors report, in such form and containing such information as may be required by the Companies Acts and provided further that copies of the Company's annual accounts (together with the directors' report for the financial year and the auditor's report on those accounts) shall be sent to any Shareholder who wishes to receive them and the Company shall comply with any provisions of the Companies Acts as to the manner in which it is to ascertain whether a Shareholder wishes to receive them.

### **AUDIT**

150. Save and to the extent that an audit is waived in the manner permitted by the Companies Acts, auditors shall be appointed and their duties regulated in accordance with the Companies Acts, any other applicable law and such requirements not inconsistent with the Companies Acts as the Board may from time to time determine.

## SERVICE OF NOTICES AND OTHER DOCUMENTS

151. Any notice or other document (including a share certificate) may be served on or delivered to any Shareholder by the Company either personally or by sending it through the post (by airmail where applicable) in a pre-paid letter addressed to such Shareholder at his address as appearing in the Register or by sending it by courier to such registered address, or by sending it by email to an address supplied by such Shareholder for the purpose of the receipt of notices or documents in electronic form, or by delivering it to or leaving it at such address as appears in the Register for such Shareholders. In the case of joint holders of a share, service or delivery of any notice or other document on or to one of the joint holders shall for all purposes be deemed as sufficient service on or delivery to all the joint holders. Any notice or other document if sent by post shall be deemed to have been served or delivered forty-eight (48) hours after it was put in the post, and when sent by courier, twenty-four (24) hours after sending, or, when sent by email, twelve (12) hours after sending and in proving such service or delivery, it shall be sufficient to prove that the notice or document was properly addressed and stamped and put in the post, sent by courier or sent by email, as the case may be.
152. Any notice of a general meeting of the Company shall be deemed to be duly given to a Shareholder, or other person entitled to it, if it is sent to him by courier, cable, telex, telecopier, email or other mode of representing or reproducing words in a legible and non-transitory form at his address as appearing in the Register or any other address given by him to the Company for this purpose. Any such notice shall be deemed to have been served or delivered forty-eight (48) hours after it was put in the post, and when sent by courier, twenty-four (24) hours after sending, or, when sent by email, twelve (12) hours after sending.
- 152A. Where a Shareholder indicates his consent (in a form and manner satisfactory to the Board) to receive information or documents by accessing them on a website rather than by other means, the Board may deliver such information or documents by notifying the Shareholder of their availability and including therein the address of the website, the place on the website where the information or document may be found and instructions as to how the information or document may be accessed on the website.
- 152B. In the case of information or documents delivered in accordance with Bye-Law 152A, service shall be deemed to have occurred when:
- 152B.1 the Shareholder is notified in accordance with that Bye-Law; and
- 152B.2 the information or document is published on the website.
- 152C. If the Company intends to deliver information or documents to a Shareholder via a website in accordance with Bye-Law 152A, it must first contact such Shareholder in writing to request his consent for the use of the website to deliver such information or documents, and if such Shareholder does not object within 28 days of the date of the written notice from the Company, his consent shall be deemed to have been given. A Shareholder who has consented or has been deemed to consent under this Bye-Law 152C to receiving information and/or documents via a website may at any time after such consent or deemed consent notify the Company in writing that he requires such information and/or documents to be delivered to him in hard copy paper form.
153. Any notice or other document delivered, sent or given to a Shareholder in any manner permitted by these Bye-Laws shall, notwithstanding that such Shareholder is then dead or

bankrupt or that any other event has occurred, and whether or not the Company has notice of the death or bankruptcy or other event, be deemed to have been duly served or delivered in respect of any share registered in the name of such Shareholder as sole or joint holder unless his name shall, at the time of the service or delivery of the notice or document, have been removed from the Register as the holder of the share, and such service or delivery shall for all purposes be deemed as sufficient service or delivery of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

154. If any time, by reason of the suspension or curtailment of postal services within Bermuda or any other territory, the Company is unable effectively to convene a general meeting by notices sent through the post, a general meeting may be convened by a notice advertised in at least one national newspaper published in the territory concerned and such notice shall be deemed to have been duly served on each person entitled to receive it in that territory on the day, or on the first day, on which the advertisement appears. In any such case the Company shall send confirmatory copies of the notice by post if at least five (5) clear days before the meeting the posting of notices to addresses throughout that territory again becomes practicable.

### **DESTRUCTION OF DOCUMENTS**

155. The Company shall be entitled to destroy all instruments of transfer of shares which have been registered and all other documents on the basis of which any entry is made in the register at any time after the expiration of six (6) years from the date of registration thereof and all dividends mandates or variations or cancellations thereof and notifications of change of address at any time after the expiration of two (2) years from the date of recording thereof and all share certificates which have been cancelled at any time after the expiration of one (1) year from the date of cancellation thereof and all paid dividend warrants and cheques at any time after the expiration of one (1) year from the date of actual payment thereof and all instruments of proxy which have been used for the purpose of a poll at any time after the expiration of one (1) year from the date of such use and all instruments of proxy which have not been used for the purpose of a poll at any time after one (1) month from the end of the meeting to which the instrument of proxy relates and at which no poll was demanded. It shall conclusively be presumed in favour of the Company that every entry in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made, that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered, that every share certificate so destroyed was a valid and effective certificate duly and properly cancelled and that every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company, provided always that:
- 155.1 the provision aforesaid shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;
- 155.2 nothing therein contained shall be construed as imposing upon the Company any liability in respect of the destruction of any such document earlier than as aforesaid or in any other circumstances which would not attach to the Company in the absence of this Bye-Law; and
- 155.3 references herein to the destruction of any document include references to the disposal thereof in any manner.

## UNTRACED SHAREHOLDERS

156.

- 156.1 The Company shall be entitled to sell, at the best price reasonably obtainable, the shares of a Shareholder or the shares to which a person is entitled by virtue of transmission on death, bankruptcy, or otherwise by operation of law if and provided that:
- 156.1.1 during a period of six (6) years, no dividend in respect of those shares has been claimed and at least three (3) cash dividends have become payable on the share in question;
  - 156.1.2 on or after expiry of that period of six (6) years, the Company has inserted an advertisement in a newspaper circulating in the area of the last registered address at which service of notices upon the Shareholder or person entitled by transmission may be effected in accordance with these Bye-Laws and in a national newspaper published in the relevant country, giving notice of its intention to sell such shares;
  - 156.1.3 during that period of six (6) years and the period of three (3) months following the publication of such advertisement, the Company has not received any communication from such Shareholder or person entitled by transmission; and
  - 156.1.4 if so required by the rules of any securities exchange upon which the shares in question are listed for the time being, notice has been given to that exchange of the Company's intention to make such sale.
- 156.2 If during any six (6) year period referred to in paragraph 156.1 above, further shares have been issued in right of those held at the beginning of such period or of any previously issued during such period and all the other requirements of this Bye-Law (other than the requirement that they be in issue for six (6) years) have been satisfied in regard to the further shares, the Company may also sell the further shares.
- 156.3 To give effect to any such sale, the Board may authorise any person to execute an instrument of transfer of the shares sold (or, in the case of a share for the time being in uncertificated form, to take such other steps in the name of the holder as may be necessary to transfer the shares sold) to, or in accordance with the directions of, the purchaser and an instrument of transfer executed by that person shall be as effective as if it had been executed by the holder of, or person entitled by transmission to, the shares. The transferee shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity in, or invalidity of, the proceedings in reference to the sale.
- 156.4 The net proceeds of sale shall belong to the Company which shall be obliged to account to the former Shareholder or other person previously entitled as aforesaid for an amount equal to such proceeds and shall enter the name of such Shareholder or other person in the books of the Company as a creditor for such amount. No trust shall be created in respect of the debt, no interest shall be payable in respect of the same and the Company shall not be required to account for any money earned on the net

proceeds, which may be employed in the business of the Company or invested in such investments as the Board from time to time thinks fit.

### **WINDING UP**

157. If the Company shall be wound up, the liquidator may, with the sanction of a Resolution of the Company and any other sanction required by the Companies Acts, divide amongst the Shareholders in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may for such purposes set such values as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Shareholders or different classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trust for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Shareholder shall be compelled to accept any shares or other assets upon which there is any liability.

### **INDEMNITY AND INSURANCE**

158. Subject to the proviso below, every Indemnified Person shall be indemnified and held harmless out of the assets of the Company against all liabilities, loss, damage or expense (including but not limited to liabilities under contract, tort and statute or any applicable foreign law or regulation and all reasonable legal and other costs and expenses properly payable) incurred or suffered by him by or by reason of any act done, conceived in or omitted in the conduct of the Company's business or in the discharge of his duties and the indemnity contained in this Bye-Law shall extend to any Indemnified Person acting in any office or trust notwithstanding any defect in such appointment or election PROVIDED ALWAYS that the indemnity contained in this Bye-Law shall not extend to any matter which would render it void pursuant to the Companies Acts.
159. No Indemnified Person shall be liable to the Company for the acts, defaults or omission of any other Indemnified Person.
160. Every Indemnified Person shall be indemnified out of the funds of the Company against all liabilities incurred by him or by reason of any act done, conceived in or omitted in the conduct of the Company's business or in the discharge of his duties, in defending any proceedings, whether civil or criminal, in which such judgement is given in his favour, or in which he is acquitted, or in connection with any application under the Companies Acts in which relief from liability is granted to him by the court.
161. To the extent that any Indemnified Person is entitled to claim an indemnity pursuant to these Bye-Laws in respect of amounts paid or discharged by him, the relative indemnity shall take effect as an obligation of the Company to reimburse the person making such payment or effecting such discharge.
162. Each Shareholder and the Company agree to waive any claim or right of action he or it may at any time have, whether individually or by or in the right of the Company, against any Indemnified Person on account of any action taken by such Indemnified Person or the failure of such Indemnified Person to take any action in the performance of his duties with or for the Company PROVIDED HOWEVER that such waiver shall not apply to any claims or rights of action arising out of the fraud of such Indemnified Person or to recover any gain, personal profit or advantage to which such Indemnified Person is not legally entitled.

163. Subject to the Companies Acts, expenses incurred in defending any civil or criminal action or proceedings for which indemnification is required pursuant to Bye-Laws 158 and 160 shall be paid by the Company in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall ultimately be determined that the Indemnified Person is not entitled to be indemnified pursuant to Bye-Laws 158 and 160 PROVIDED THAT no monies shall be paid hereunder unless payment of the same shall be authorised in the specific case upon a determination that indemnification of the Director or Officer would be proper in the circumstances because he has met the standard of conduct which would entitle him to the indemnification thereby provided and such determination shall be made:

163.1 by the Board, by a majority vote at a meeting duly constituted by a quorum of Directors not party to the proceedings or matter with regard to which the indemnification is, or would be, claimed; or

163.2 in the case such a meeting cannot be constituted by lack of a disinterested quorum, by independent legal counsel in a written opinion; or

163.3 by a majority vote of the Shareholders.

Each Shareholder of the Company, by virtue of its acquisition and continued holding of a share, shall be deemed to have acknowledged and agreed that the advances of funds may be made by the Company as aforesaid, and when made by the Company under this Bye-Law 163 are made to meet expenditures incurred for the purpose of enabling such Indemnified Person to properly perform his or her duties to the Company.

164. Without prejudice to the provisions of Bye-Laws 158 and 160, the Board shall have the power to purchase and maintain insurance for or for the benefit of any Indemnified Person or any persons who are or were at any time Directors, Officers and employees of the Company, or of any other company which is its holding company or in which the Company or such holding company has any interest whether direct or indirect or which is in any way allied to or associated with the Company, or of any subsidiary undertaking of the Company or any such other company, or who are or were at any time trustees of any pension fund in which employees of the Company or any such other company or subsidiary undertaking are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the Company or any such other company, subsidiary undertaking or pension fund.

#### **AMALGAMATION**

165. Any Resolution proposed for consideration at any general meeting to approve the amalgamation of the Company with any other company, wherever incorporated, shall require the approval of:

165.1 the Board, by resolution adopted by a majority of Directors then in office; and

165.2 the Shareholders, by Resolution passed by a majority of votes cast at such meeting and the quorum for such meeting shall be that required in Bye-Law 60.

## **ALTERATION OF BYE-LAWS**

166. These Bye-Laws may be revoked or amended only by the Shareholders by Resolution passed by a majority of not less than three-fourths of such Shareholders as (being entitled to do so) vote in person or, where proxies are allowed, by proxy, at a general meeting.

## **CONTINUATION**

167. Subject to the Companies Acts, the Company may with the approval of:
- 167.1 the Board, by resolution adopted by a majority of Directors then in office; and
- 167.2 the Shareholders by Resolution passed by a majority of votes cast at the general meeting,
- approve the discontinuation of the Company in Bermuda and the continuation of the Company in a jurisdiction outside Bermuda.

## **DISCLOSURE OF SUBSTANTIAL INTERESTS IN SHARES**

168.

### *Notification of voting rights*

- 168.1 If at any time the Company shall have any of its shares admitted to trading on the AIM market of the London Stock Exchange Plc (“AIM”), the provisions of Chapter 5 of the Disclosure and Transparency Rules (as amended from time to time) of the UK Financial Services Authority Handbook (“DTR 5”) relating to the disclosure of voting rights shall apply to the Company, its shares and persons interested in those shares as if the Company were an “issuer” for the purposes of DTR 5 and as if the provisions of DTR 5 were set out in full herein and accordingly the vote holder and issuer notification rules set out in DTR 5 shall apply to the Company and each holder of shares in the Company.
- 168.2 A Shareholder shall, to the extent he is lawfully able to do so, comply with the requirements of DTR 5.
- 168.3 If it shall come to the notice of the Board that any Shareholder has not, within the requisite period, made or, as the case may be, procured the making of any notification required by Bye-Law 168.1 and 168.2, the Company may (at the absolute discretion of the Board) at any time thereafter by notice (for the purposes of Bye-Laws 168.1 to 168.13 inclusive, a “restriction notice”) to such Shareholder direct that, in respect of the shares in relation to which the default has occurred (for the purposes of Bye-Laws 168.1 to 168.13 inclusive, the “default shares” which expression shall include any further shares which are issued in respect of any default shares), the Shareholder shall not be entitled to be present or to vote on any question, either in person or by proxy, at any general meeting of the Company or separate general meeting of the holders of any class of shares, or to be reckoned in a quorum.



- 168.4 Where the default shares represent at least 0.25 per cent of the issued shares of the same class as the default shares, then the restriction notice may also direct that:
- 168.4.1 any dividend or any part thereof or other monies which would otherwise be payable on or in respect of the default shares shall be withheld by the Company; shall not bear interest against the Company; and shall be payable (when the restriction notice ceases to have effect) to the person who would but for the restriction notice have been entitled to them; and/or
- 168.4.2 where an offer of the right to elect to receive shares instead of cash in respect of any dividend or part thereof is or has been made by the Company, any election made thereunder by such Shareholder in respect of such default shares shall not be effective; and/or
- 168.4.3 no transfer of any of the shares held by such Shareholder shall be recognised or registered by the Board unless:
- (a) the transfer is a permitted transfer; or
  - (b) the Shareholder is not himself in default as regards supplying the requisite information required under Bye-Law 168.1 and 168.2 and, when presented for registration, the transfer is accompanied by a certificate from the Shareholder in a form satisfactory to the Board to the effect that after due and careful enquiry the Shareholder is satisfied that none of the shares the subject of the transfer are default shares.

Upon the giving of a restriction notice its terms shall apply accordingly.

- 168.5 The Company shall send a copy of the restriction notice to each other person appearing to be interested in the shares the subject of such notice, but the failure or omission by the Company to do so shall not invalidate such notice.
- 168.6 Any restriction notice shall have effect in accordance with its terms until not more than seven days after the Board are satisfied that the default in respect of which the restriction notice was issued no longer continues but shall cease to have effect in relation to any shares which are validly transferred by such Shareholder pursuant to Bye-Law 168.4.3. The Company may (at the absolute discretion of the Board) at any time give notice to the Shareholder cancelling, or suspending for a stated period the operation of, a restriction notice in whole or in part.
- 168.7 Notwithstanding the time limits for disclosure set out in DTR 5, the Company is required by Rule 17 of the AIM Rules for Companies to announce via a Regulatory Information Service, all the information contained in any vote holder notification “without delay”.

***Power of the Company to investigate interests in shares***

- 168.8 For the purposes of Bye-Laws 168.8 – 168.19 inclusive:

168.8.1 “Relevant Share Capital” means the Company’s issued share capital of any class carrying rights to vote in all circumstances at general meetings of the

Company; and for the avoidance of doubt (a) where the Company's share capital is divided into different classes of shares, references to Relevant Share Capital are to the issued share capital of each such class taken separately and (b) any adjustment or restriction of voting rights (whether temporary or otherwise) in respect of shares comprised in issued share capital of the Company of any such class does not affect the application of Bye-Law 168.8168.8 – 168.19 inclusive in relation to interests in those or any other shares comprised in that class;

168.8.2 “interest” means, in relation to the Relevant Share Capital, any interest of any kind whatsoever in any shares comprised therein (disregarding any restraints or restrictions to which the exercise of any right attached to the interest in the share is, or may be, subject) and without limiting the meaning of “interest”, a person shall be taken to have an interest in a share if:

- (a) he enters into a contract for its purchase by him (whether for cash or other consideration); or
- (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the share or is entitled to control the exercise or non-exercise of any such right (and for these purposes a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled); or
- (c) he is a beneficiary of a trust where the property held on trust includes an interest in the share; or
- (d) he has a right to call for delivery of the share to himself or to his order; or
- (e) he has a right to acquire an interest in the share or is under an obligation to take an interest in the share; or
- (f) he has a right to subscribe for the share,

whether in any case the contract, right or obligation is absolute or conditional, legally enforceable or not and evidenced in writing or not, and it shall be immaterial that a share in which a person has an interest is unidentifiable. Persons having a joint interest are treated as each having that interest;

168.8.3 a person is taken to be interested in any shares in which his spouse or civil partner or any infant child or step-child of his is interested; and ‘infant’ means a person under the age of 18 years;

168.8.4 a person is taken to be interested in shares if a body corporate is interested in them and:

- (a) that body or its directors are accustomed to act in accordance with his

directions or instructions; or

- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body,

and for the purposes of this sub-paragraph 4 a person is treated as entitled to exercise or control the exercise of voting power if (A) another body corporate is entitled to exercise or control the exercise of that voting power, and he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate; or (B) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled; and

168.8.5 an interest in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any one or more of them of interests in shares. Bye-Laws 168.8 to 168.19 apply to such an interest if:

- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the shares to which the agreement relates); and
- (b) an interest in the shares is in fact acquired by any of the parties in pursuance of the agreement,

and the reference above to the “use of” interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person). Once an interest in shares has been acquired in pursuance of the agreement, Bye-Laws 168.8 to 168.19 continue to apply to the agreement so long as the agreement continues to include provisions of any description mentioned above. This applies irrespective of whether or not any further acquisitions of interests in the shares take place in pursuance of the agreement, any change in the persons who are for the time being parties to it or any variation of the agreement. References in this sub-paragraph 5 to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement, and “agreement” includes any agreement or arrangement and references to provisions of an agreement include undertakings, expectations or understandings operative under an arrangement, and any provision whether express or implied and whether absolute or not. This sub-paragraph 5 does not apply to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or to an agreement to underwrite or sub-underwrite an offer of shares, provided the agreement is confined to that purpose and any matters incidental to it.

168.9 Each party to an agreement to which Bye-Law 168.8.5 applies is treated as interested in all shares in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party was acquired, or includes any

interest that was acquired, in pursuance of the agreement). For those purposes an interest of a party to such an agreement in shares is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of Bye-Law 168.8.5 (and this Bye-Law 168.9) in relation to the agreement. Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under Bye-Law 168.8.3 or 168.8.4 (family or corporate interests) or by the application of section Bye-Law 168.8.5 (and this Bye-Law 168.9) in relation to any other agreement with respect to shares to which he is a party. A notification with respect to his interest in shares made to the Company under Bye-Law 168.11 by a person who is for the time being a party to an agreement to which section Bye-Law 168.8.5 applies must:

168.9.1 state that the person making the notification is a party to such an agreement;

168.9.2 include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such; and

168.9.3 state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of Bye-Law 168.8.5 (and this Bye-Law 168.9) and, if so, the number of those shares.

168.10 The provisions of Bye-Law 168.8 - 168.19 inclusive are in addition to, and separate from, any other rights or obligations arising at law or otherwise. The Company may by notice in writing request any person whom the Company knows or has reasonable cause to believe to be interested or, at any time during the three years immediately preceding the date on which the notice is issued, to have been interested, in shares comprised in the Relevant Share Capital:

168.10.1 to confirm that fact or (as the case may be) to state whether or not it is the case; and

168.10.2 if he holds, or has during that time held, any such interest, to give such further information as may be requested in accordance with this Bye-Law 168.10.

168.11 A notice under Bye-Law 168.10 may require the person to whom it is addressed:

168.11.1 to give particulars of his own past or present interest in shares comprised in the Relevant Share Capital (held by him at any time during the three year period mentioned in Bye-Law 168.10);

168.11.2 where the interest is a present interest and any other interest in the shares subsists or, in any case, where another interest in the shares subsisted during that three year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be requested by the notice including (without limitation):

(a) the identity of persons interested in the shares in question; and

- (b) whether persons interested in the same shares are or were parties to an agreement or arrangement relating to either the acquisition by one or more of them of interests in shares or the exercise of any rights conferred by the holding of the shares; and

168.11.3 where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.

168.12 A notice under Bye-Law 168.10 shall request any information given in response to the notice to be given in writing within such time as may be specified in the notice, being a period of not less than seven days following service thereof.

168.13 The provisions of Bye-Laws 168.8 – 168.19 inclusive apply in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares which would on issue be comprised in Relevant Share Capital as it applies in relation to a person who is or was interested in shares so comprised; and references above in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.

***Failure to comply with notification requirements or a request notice***

168.14 Subject to the provisions of Bye-Laws 168.18 and 168.19, if any Shareholder, or any other person appearing to the Board to be interested in any shares held by such Shareholder, has been served with a request notice under Bye-Law 168.10 and does not within the seven day period prescribed therein supply to the Company the information thereby requested, in each case the Company may (at the absolute discretion of the Board) at any time thereafter by notice (for the purposes of Bye-Laws 168.14 to 168.17 inclusive, a “restriction notice”) to such Shareholder direct that, in respect of the shares in relation to which the default has occurred (for the purposes of Bye-Laws 168.14 to 168.17 inclusive, the “default shares” which expression shall include any further shares which are issued in respect of any default shares), the Shareholder shall not be entitled to be present or to vote on any question, either in person or by proxy, at any general meeting of the Company or separate general meeting of the holders of any class of shares, or to be reckoned in a quorum.

168.15 Where the default shares represent at least 0.25 per cent of the issued shares of the same class as the default shares, then the restriction notice may also direct that:

168.15.1 any dividend or any part thereof or other monies which would otherwise be payable on or in respect of the default shares shall be withheld by the Company, shall not bear interest against the Company, and shall be payable (when the restriction notice ceases to have effect) to the person who would but for the restriction notice have been entitled to them; and/or

168.15.2 where an offer of the right to elect to receive shares instead of cash in respect of any dividend or part thereof is or has been made by the Company, any election made thereunder by such Shareholder in respect of such default shares shall not be effective; and/or

168.15.3 no transfer of any of the shares held by such Shareholder shall be recognised or registered by the Board unless:

- (a) the transfer is a permitted transfer; or
- (b) the Shareholder is not himself in default as regards supplying the requisite information required under Bye- Law 168.1, 168.2 or 168.8 – 168.19 inclusive and, when presented for registration, the transfer is accompanied by a certificate from the Shareholder in a form satisfactory to the Board to the effect that after due and careful enquiry the Shareholder is satisfied that none of the shares the subject of the transfer are default shares.

Upon the giving of a restriction notice its terms shall apply accordingly.

168.16 The Company shall send a copy of the restriction notice to each other person appearing to be interested in the shares the subject of such notice, but the failure or omission by the Company to do so shall not invalidate such notice.

168.17 Any restriction notice shall have effect in accordance with its terms until not more than seven days after the Board are satisfied that the default in respect of which the restriction notice was issued no longer continues but shall cease to have effect in relation to any shares which are transferred by such Shareholder in accordance with Bye- Law 168.15.3 above on receipt by the Company of notice that a transfer as aforesaid has been made. The Company may (at the absolute discretion of the Board) at any time give notice to the Shareholder cancelling, or suspending for a stated period the operation of, a restriction notice in whole or in part.

168.18 For the purposes of Bye- Laws 168.8 – 168.19 inclusive a person shall be treated as appearing to be interested in any shares if:

168.18.1 the Shareholder holding such shares has given to the Company a notification whether following service of a notice under Bye-Law 168.8 – 168.19 inclusive or otherwise which names such person as being so interested; or

168.18.2 after taking into account any such notification as is referred to in paragraph 168.18.1 above or any other relevant information in the possession of the Company the Board know or have reasonable cause to believe that the person in question is or may be interested in the shares.

168.19 For the purposes of Bye- Laws 168.1, 168.2 or 168.8 – 168.19 inclusive, a transfer of shares is a “permitted transfer” if but only if:

168.19.1 it is a transfer by way of, or in pursuance of, acceptance of a takeover offer for the Company meaning an offer to acquire all the shares, or all the shares of any class or classes, (other than shares which at the date of the offer are already held by the offeror or persons acting in concert with the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class; or

168.19.2 the Board are satisfied that the transfer is made pursuant to a bona fide sale of the whole of the beneficial ownership of the shares to a third party not connected with the transferring Shareholder or with any other person appearing to the Board to be interested in such shares;

168.20 The Company shall maintain a register of interested parties to which the provisions of these Bye-Laws shall apply mutatis mutandis and whenever in pursuance of a requirement imposed on a Shareholder as aforesaid the Company is informed of an interested party, the identity of the interested party and the nature of the interest shall be promptly inscribed therein together with the date of the request. The register kept under this Bye-Law must be kept available for inspection at the Registered Office and must be open to inspection by any person without charge. Any person is entitled, on request and on payment of such reasonable fee as the Board may prescribe, to be provided with a copy of any entry in the register. A request to inspect or obtain a copy of the register must contain the following information:

168.20.1 in the case of an individual, his name and address;

168.20.2 in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation;

168.20.3 the purpose for which the information is to be used; and

168.20.4 whether the information will be disclosed to any other person, and if so:

- (a) where that person is an individual, his name and address;
- (b) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf; and
- (c) the purpose for which the information is to be used by that person.

## **TAKEOVER OFFERS**

### **169. Takeover Offers**

169.1 The provisions of Bye-Laws 169 to 172 shall apply to the Company unless the Takeover Panel has advised the Company (or a financial adviser to the Company) that the Company is subject to the Takeover Code and the Company has accepted such ruling or all such appeals against such ruling by the Company have been dismissed.

169.2 In applying Bye-Laws 169 to 172 the Company shall be entitled, without the requirement to obtain the consent of any Shareholder, to make all such announcements as would be required or permitted under the Takeover Code (if the Takeover Code applied to the Company), notwithstanding that such announcements may make reference to, or contain information about, Shareholders or persons acting in concert with Shareholders.

- 169.3 If at any time the Board is satisfied that any Shareholder is in default of any obligation imposed on it under Bye-Laws 170 to 172 then the Board shall as soon as practicable by notice (a "Direction Notice") to such Shareholder and any other Shareholder acting in concert with such Shareholder (together the "Defaulters") direct that:
- (a) in respect of the shares held by the Defaulters (the "Default shares") the Defaulters shall not be entitled to vote at a general meeting either personally or by proxy or to exercise any other right conferred by membership in relation to meetings of the Company;
  - (b) except in a liquidation of the Company, no payment shall be made of any sums due from the Company on the Default shares, whether in respect of capital or dividend or otherwise, and the Company shall not meet any liability to pay interest on any such payment when it is finally paid to the Shareholder; and
  - (c) no other distribution shall be made on the Default shares.
- 169.4 A Direction Notice may be cancelled at any time by the Board (in its absolute discretion).
- 169.5 In construing Bye-Laws 169 to 172:
- 169.5.1 "Takeover Code" means the City Code on Takeovers and Mergers;
  - 169.5.2 "Takeover Panel" means the Panel on Takeovers and Mergers;
  - 169.5.3 "Independent Shareholders" means any Shareholders other than the Offeror and any persons acting in concert with it;
  - 169.5.4 "Offeror" means:
    - (a) a Shareholder obliged to make an offer pursuant to Bye-Law 170.1 and persons acting in concert with it; or
    - (b) a Shareholder making an offer for the Company whether by means of an offer, amalgamation or other mechanism.
  - 169.5.5 "the words "acting in concert", "control", "interests" in securities, "offer", "offer period", "voting rights" and any other words and expressions used in or defined in the Takeover Code shall bear the same meanings given by the Takeover Code;
  - 169.5.6 for the avoidance of doubt, a reference to a "Shareholder" shall include a person who becomes (or upon entry in the Register would become) a Shareholder as a result of any acquisition of an interest in shares to which Bye-Laws 170 to 172 relates;
  - 169.5.7 "Group" in relation to a corporate entity means that corporate entity's subsidiaries, its holding company and any subsidiaries of such holding company; and



169.5.8 any decision to be made, or discretion to be exercised, by the Board, having received appropriate professional advice, pursuant to Bye-Laws 169 to 172 shall be made or exercised by the Board excluding any Director who is (or may be) an Offeror or who is acting in concert with any person who is (or may be) an Offeror or is deemed by the Board not to be independent for any reason.

## **170 Mandatory Offers**

170.1 Subject to Bye-Laws 170.10 to 170.12, except with the consent of a Resolution of Independent Shareholders on a poll, when:

170.1.1 any Shareholder (or person acting in concert with such Shareholder) acquires, whether in a single transaction or by a series of transactions over a period of time, an interest in shares which (taken together with shares in which such Shareholder or persons acting in concert with such Shareholder are interested) carry 30 per cent. or more of the voting rights of the Company; or

170.1.2 any Shareholder, together with persons acting in concert with such Shareholder, is interested in shares which in the aggregate carry not less than 30 per cent. of the voting rights of the Company but does not hold shares carrying more than 50 per cent. of such voting rights and such Shareholder, or any person acting in concert with such Shareholder, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested,

such Offeror shall extend an offer, on the basis set out in Bye-Laws 170.2 to 170.5, to the holders of all the issued (and to be issued) shares in the Company. An offer will not be required under this Bye-Law 170.1 where control of the Company is acquired as a result of a voluntary offer made materially in accordance with the provisions of the Takeover Code (as if the Takeover Code applied to the Company) to all holders of shares.

170.2 Save with the consent of the Board an offer made pursuant to Bye-Law 170.1 must be conditional only upon the Offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the Offeror and any person acting in concert with it holding shares carrying more than 50 per cent. of the voting rights of the Company.

170.3 An offer made pursuant to Bye-Law 170.1 must be in cash or be accompanied by a cash alternative at not less than the highest price paid by the Offeror or any person acting in concert with it for any interest in shares during the 12 months prior to the date upon which an announcement of that offer would have been required had the Takeover Code applied to the Company. If, after the obligation to make an offer pursuant to Bye-Law 170.1 arises and before the offer closes for acceptance, the Offeror or any person acting in concert with it acquires any interest in shares at above the offer price, the Offeror shall increase its offer to not less than the highest price paid for the interest in shares so acquired. The cash offer or the cash alternative must remain open after the offer has become or been declared unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired.

- 170.4 When an offer is made pursuant to Bye-Law 170.1 and the Company has convertible securities outstanding, the Offeror must make an appropriate offer or proposal, on terms equivalent to the offer made for shares, to the holders of such convertible securities to ensure that their interests are safeguarded.
- 170.5 Any offer required to be made pursuant to Bye-Law 170.1 shall be made on terms that would be required by the then current Takeover Code, save to the extent that the Board otherwise determines. In relation to any offer required to be made pursuant to Bye-Law 170.1, any matter which under the Takeover Code would fall to be determined by the Takeover Panel shall be determined by the Board, having received appropriate professional advice, in its absolute discretion or by such person appointed by the Board to make such determination.
- 170.6 No acquisition of any interest in shares which would give rise to a requirement for an offer pursuant to Bye-Law 170.1 may be made (and the Board shall be entitled to refuse to register any transfer of shares effecting such acquisition) if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the Offeror or upon any other conditions, consents or arrangements without the permission of the Board.
- 170.7 No nominee of an Offeror or persons acting in concert with it may be appointed as a Director, nor may an Offeror or any persons acting in concert with it exercise the votes attaching to any shares until the relevant offer has been declared unconditional in all respects.
- 170.8 Except with the consent of a Resolution of Independent Shareholders on a poll, Shareholders shall comply with the requirements of the Takeover Code (as if the Takeover Code applied to the Company) in relation to any dealings in any shares and in relation to their dealings with the Company in relation to all matters. Any matter which under the Takeover Code would fall to be determined by the Takeover Panel shall be determined by the Board, having received appropriate professional advice, in its absolute discretion or by such person appointed by the Board to make such determination. Any notice which under the Takeover Code is required to be given to the Takeover Panel shall be given to the Company at its registered office.
- 170.9 Without limitation to the requirements of Bye-Law 170.8 at all times when the Company is in an offer period pursuant to Bye-Law 170.1 each Shareholder shall comply with the disclosure obligations set out in Rule 8 of the Takeover Code as if the Takeover Code applied to the Company.
- 170.10 Where shares or other securities of the Company are charged as security for a loan and, as a result of enforcement of such security, the lender incurs an obligation to make an offer under Bye-Law 170.1, no such offer will be required if sufficient interests in shares are disposed of within a period of 14 days to persons unconnected with the lender, so that the percentage of shares carrying voting rights in which the lender, together with persons acting in concert with it, is interested is reduced to below 30 per cent. in a manner satisfactory to the Board (in its absolute discretion). In any case where arrangements are to be made involving a transfer of voting rights to the lender, but which do not amount to enforcement of security, no offer under Bye-Law 170.1 will be required if the lender satisfies the Board (in the Board's absolute discretion) that such arrangements are necessary to preserve the lender's security and

that the security was not given at a time when the lender had reason to believe that enforcement was likely. A receiver, liquidator or administrator of a company, or any other insolvency or bankruptcy official, is not required to make an offer under Bye-Law 170.1 when he acquires an interest in shares carrying 30 per cent. or more of the voting rights in the Company in his capacity as such, but Bye-Law 170.1 shall for the avoidance of doubt apply to a purchaser from such a person.

170.11 Where in the opinion of the Board the Company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares to, or the acquisition of existing shares by, the rescuer, without approval by Resolution of Independent Shareholders, and which would otherwise require the rescuer to make an offer pursuant to Bye-Law 170.1, the Board may waive the requirements of Bye-Law 170.1 in such circumstances provided that either:

170.11.1 approval for the rescue operation by Resolution of Independent Shareholders on a poll is obtained as soon as possible after the rescue operation is carried out; or

170.11.2 some other protection for Independent Shareholders is provided which the Board considers satisfactory in the circumstances.

170.12 If a person incurs an obligation to make an offer under Bye-Law 170.1, the Board may waive the requirement to make such an offer if sufficient interests in shares are disposed of within a limited period (being a maximum of 14 days) to persons unconnected with such person, so that the percentage of shares carrying voting rights in which the person, together with persons acting in concert with him, is interested is reduced to below 30 per cent. in a manner satisfactory to the Board.

## **171 Obligations to Offer a Minimum Level of Consideration**

171.1 Except with the consent of the Board when an Offeror (or any person acting in concert with that Offeror) has acquired an interest in shares in the Company within the three month period prior to the date upon which an announcement of an offer is made by such Offeror (or would have been required to have been announced had the Takeover Code applied to the Company) the offer to the holders of shares of the same class shall not be on less favourable terms.

171.2 If, after an announcement of the terms of an offer and before the offer closes for acceptance, an Offeror (or any person acting in concert with that Offeror) acquires any interest in shares at above the offer price (being the then current value of the offer), the Offeror shall increase its offer to not less than the highest price paid for the interest in shares so acquired.

171.3 If an acquisition of an interest in shares in the Company has given rise to an obligation under Bye-Law 172, the Board may (at its sole discretion) view compliance with that Bye-Law as satisfying any obligation under this Bye-Law 171 in respect of that acquisition.

## **172 Nature of Consideration to be Offered**

- 172.1 Except with the consent of the Board when an Offeror (or any person acting in concert with that Offeror) has acquired an interest in shares in the Company (during the offer period and within 12 months prior to the date upon which an announcement of that offer would have been required (had the Takeover Code applied to the Company)) which carry 10 per cent. or more of the voting rights currently exercisable at a class meeting of that class, an offer to the holders of shares of the same class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the Offeror (or person acting in concert with such Offeror) for any interest in shares of that class acquired during the offer period and within 12 months prior to its commencement.
- 172.2 Subject to Bye-Law 172.1, if, after an announcement of the terms of an offer and before the offer closes for acceptance, any interest in shares of any class under offer in the offeree company is acquired for cash by an Offeror (or any person acting in concert with that Offeror) the offer for that class shall be in cash or accompanied by a cash alternative at not less than the highest price paid by the Offeror (or any person acting in concert with it) for any interest in shares of that class acquired during the offer period.