

8 Draft Model Articles of Association for Private Companies Limited by Shares

(“THE PRIVATE COMPANY ARTICLES”)

GENERAL

1 DEFINITIONS

The special meanings given to certain words and phrases in the articles are set out in the index of defined terms.

DIRECTORS’ FUNCTIONS

2 DIRECTORS’ GENERAL AUTHORITY TO MANAGE THE COMPANY

(1) The directors’ functions are:

- (a) to manage the company’s business; and
- (b) to exercise all the powers of the company for any purpose connected with managing the company’s business.

(2) The directors may delegate their functions in accordance with the articles.

3 LIMITS ON DIRECTORS’ FUNCTIONS

(1) The shareholders may, by special resolution:

- (a) alter the scope of the directors’ functions; or
- (b) require the directors to act in a specified manner.

(2) No special resolution passed under paragraph (1) shall have retrospective effect.

DECISION-MAKING BY DIRECTORS

4 SCOPE OF RULES AND POSITION OF SOLE DIRECTORS

- (1) References in the articles to decisions of directors are to decisions of directors which are connected with their functions.
- (2) Except where the articles expressly provide otherwise, provisions of the articles about how the directors take decisions do not apply:
 - (a) when the company only has one director; or
 - (b) (when the company has more than one director), to decisions delegated to a single director.

5 DIRECTORS TO TAKE DECISIONS COLLECTIVELY

- (1) Any decision which the directors take:
 - (a) must be either a unanimous decision or a majority decision; and
 - (b) may, but need not, be taken at a meeting of directors.
- (2) Except where the articles specify otherwise, the directors may take either a unanimous decision or a majority decision on any matter.

6 UNANIMOUS DECISIONS

- (1) The directors take a unanimous decision when they all indicate to each other that they share a common view on a matter.
- (2) A unanimous decision need not involve any discussion between directors.

7 MAJORITY DECISIONS

- (1) The directors take a majority decision if:
 - (a) a matter to be decided has been communicated to every director (other than those whom it is not practicable to contact);
 - (b) all the directors who indicate that they wish to discuss the matter have had a reasonable opportunity to communicate their views on it to each other; and
 - (c) those directors have together reached a conclusion which a majority of them support.

(2) Directors participating in the taking of a majority decision otherwise than at a meeting of directors:

(a) may be in different places, and may participate at different times; and

(b) may communicate with each other by any means.

8 MEETINGS OF DIRECTORS

(1) Any director may call a meeting of directors.

(2) Every director must be given reasonable notice of a meeting of directors.

(3) Paragraph (2) does not require notice to be given:

(a) in writing; or

(b) to directors to whom it is not practicable to give notice, or who have waived their entitlement to notice.

(4) Directors participating at a meeting of directors:

(a) must participate at the same time, but may be in different places; and

(b) may communicate with each other by any means.

9 MAJORITY DECISIONS – VIEWS OF INTERESTED DIRECTORS NOT TO BE COUNTED

(1) This article applies to any director who has an interest of any kind in an actual or proposed transaction or arrangement with the company.

(2) Subject to paragraphs (3) and (4), when the directors take a majority decision on a matter relating to such a transaction or arrangement, they must disregard the views of any such interested director.

(3) Paragraph (2) does not apply:

(a) if the director's interest cannot reasonably be regarded as giving rise to any real possibility of a conflict between the interests of the director and the company; or

(b) if the director's interest only arises because the director has given, or has been given, a guarantee, security or indemnity in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries.

- (4) The shareholders may by ordinary resolution decide, either in relation to majority decisions generally or in relation to a particular decision, that the directors shall not disregard the views of interested directors.

10 RECORDS TO BE KEPT

- (1) The directors are responsible for ensuring that the company keeps a record of:
- (a) every unanimous or majority decision taken by the directors; and
 - (b) every declaration by a director of an interest in an actual or proposed transaction with the company.
- (2) Any record kept under paragraph (1) must be kept for at least ten years from the date of the decision or declaration recorded in it.

11 SPECIFIED NUMBER OF DIRECTORS FOR MAJORITY DECISIONS

- (1) The directors may make a rule that no majority decision shall be taken unless a specified minimum number of directors participate in the process by which it is taken (a “quorum rule”).
- (2) A decision to make a quorum rule must be a unanimous decision.
- (3) If a quorum rule is in force and the company has one or more directors, but the total number of directors is less than the specified number, the directors must not take any decision other than:
- (a) a decision to appoint further directors;
 - (b) a decision that will enable the shareholders to appoint further directors; or
 - (c) a decision to modify or abolish the quorum rule and seek the shareholders’ approval for such revocation or modification.
- (4) In the circumstances specified in paragraph (3), a decision to abolish or modify a quorum rule is of no effect unless it is approved by an ordinary resolution of the shareholders.

12 CHAIRING OF MAJORITY DECISION MAKING PROCESSES

- (1) The directors may appoint a director to chair:
 - (a) all of the processes by which a majority decision may be taken; or
 - (b) a particular process, or processes of a particular type, by which a majority decision may be taken.
- (2) The directors may terminate an appointment made under paragraph (1) at any time.

13 CASTING VOTE

- (1) The directors may make a rule (a “casting vote rule”) that if:
 - (a) a majority decision is to be taken on a matter; and
 - (b) equal numbers of directors hold differing views on the matter,then, subject to paragraph (3), the views of a specified director shall determine the majority decision which is taken on that matter.
- (2) A decision to make a rule under paragraph (1) must be a unanimous decision.
- (3) A casting vote rule shall not apply if the views of the specified director are to be disregarded as a result of an actual or potential conflict of interest.

14 DIRECTORS’ DISCRETION TO MAKE FURTHER RULES

- (1) Subject to the articles, the directors may make any rule which they think fit about how they take decisions.
- (2) The directors must ensure that any such rule is communicated to all persons who are directors while it remains in force.

DELEGATION

15 DIRECTORS’ GENERAL AUTHORITY TO DELEGATE FUNCTIONS

- (1) Subject to the articles, the directors may delegate any of their functions to any person they think fit.

- (2) The directors must not delegate to any person who is not a director any decision connected with:
 - (a) the taking of decisions by directors;
 - (b) the appointment of a director or the termination of a director's appointment; or
 - (c) the declaration of a dividend.
- (3) Any delegation under paragraph (1) may authorise further delegation of the directors' functions by any person to whom they are delegated.

16 COMMITTEES OF DIRECTORS

- (1) Two or more directors are a "committee" if the directors have:
 - (a) delegated a directors' function to them; and
 - (b) indicated that they should act together in relation to that function.
- (2) The provisions of the articles about how the directors take decisions shall apply, as far as possible, to the taking of decisions by committees.

APPOINTMENT OF DIRECTORS

17 METHODS OF APPOINTING DIRECTORS

Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:

- (a) by ordinary resolution of the shareholders; or
- (b) by a decision of the directors.

18 TERMINATION OF DIRECTOR'S APPOINTMENT

A person ceases to be a director as soon as:

- (a) that person ceases to be a director by virtue of any provision of the Acts, or is prohibited by law from being a director;
- (b) any notification to the company that that person is resigning or retiring from office as director takes effect;

- (c) the shareholders pass an ordinary resolution removing that person from office;
- (d) the directors decide that that person, having repeatedly and without reasonable excuse failed to participate in processes by which majority decisions may be taken, should cease to be a director; or
- (e) any contract under which that person was appointed as a director of, or personally performs services for, the company or any of its subsidiaries terminates, unless, immediately after its termination, the contract is renewed or replaced with another similar contract.

19 DIRECTORS' TERMS OF SERVICE

- (1) Subject to the provisions of the Acts, the directors may decide the terms (including as to remuneration) on which a director is to perform directors' functions, or otherwise perform any services for the company or any of its subsidiaries.
- (2) For the purposes of paragraph (1), "remuneration" includes any arrangements in connection with a pension, allowance or gratuity paid, or to be paid, to or in respect of any person who has been a director of the company or any of its subsidiaries, or any predecessor in business of the company or any of its subsidiaries.

20 DIRECTORS' EXPENSES

Subject to the Acts, the company may meet any expenses which the directors properly incur in connection with:

- (a) the exercise of their functions; or
- (b) the performance of any other duty which they owe to, or service which they perform for, the company or any of its subsidiaries.

SHARES

21 SHARE CERTIFICATES

The company may issue shareholders with one or more certificates for their respective shares in such form as the directors decide.

22 SHARE TRANSFERS

- (1) Shares may be transferred by means of an instrument of transfer in a form permitted by law.
- (2) Subject to the Acts, the directors may refuse to register the transfer of a share.

DIVIDENDS

23 PROCEDURE FOR DECLARING DIVIDENDS

Subject to the Acts, the directors may decide to declare and pay such dividends to shareholders as:

- (a) appear to the directors to be justified by the company's profits; and
- (b) are in accordance with shareholders' respective rights.

24 PAYMENT OF DIVIDENDS

- (1) Subject to paragraphs (2) and (3), the company shall pay any dividend or other money payable by it in respect of a share by means of:
 - (a) a transfer to a bank account specified in writing by the holder; or
 - (b) a cheque sent by post to the registered address of the holder.
- (2) If two or more persons hold a share, or are jointly entitled to it by reason of the death or bankruptcy of the holder (or one of two or more joint holders), the company shall pay any dividend or other money payable by it in respect of the share:
 - (a) by means of a transfer to a bank account specified in writing by the holder who is named first in the register of members, or a cheque sent by post to that holder's registered address; or
 - (b) (if the death or bankruptcy of the first named holder has resulted in two or more persons becoming jointly entitled to the share), by means of a transfer to a bank account specified in writing by all the persons jointly entitled to it, or a cheque sent by post to an address specified in writing by them.

- (3) The company may agree another means of paying such dividend or other money with any person entitled to specify a bank account under this article.

25 RIGHT TO DIVIDEND FORFEITED IF UNCLAIMED FOR TWELVE YEARS

Any dividend which has remained unclaimed for twelve years from the date when it became due for payment shall, if the directors so decide, be forfeited and cease to remain owing by the company.

MISCELLANEOUS

26 COMPANY SEAL

- (1) This article applies if the company has a seal (the “common seal”).
- (2) The common seal shall only be applied to a document if its use on that document has been authorised by a decision of the directors.
- (3) If the common seal is applied to a document, the document shall be:
 - (a) signed by an authorised person; and
 - (b) countersigned by another authorised person.
- (4) For the purposes of this article, an authorised person is:
 - (a) any director of the company;
 - (b) the company secretary (if any); or
 - (c) any person authorised by the directors for the purpose of signing and countersigning documents to which the common seal is applied.

27 INDEMNITY FOR CERTAIN LEGAL EXPENSES

- (1) Subject to the Acts, a director shall be indemnified out of the company’s assets against any expenses which that director incurs:
 - (a) in defending civil proceedings (unless judgment is given against the director and the judgment is final);
 - (b) in defending criminal proceedings (unless the director is convicted and the conviction is final); or

- (c) in connection with any application for relief from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company (unless the court refuses to grant the director relief, and the refusal is final).
- (2) A judgment, conviction or refusal of relief becomes final if:
- (a) the period for bringing an appeal (or any further appeal) has ended; and
 - (b) any appeal brought is determined, abandoned or otherwise ceases to have effect.
- (3) This article is without prejudice to any other indemnity to which a director may be entitled.

INDEX OF DEFINED TERMS

In the articles:

- “Acts”** means the Companies Acts (as defined in section [XX] of the [Company Law Reform] Act 200[X]), in so far as they apply to the company;
- “articles”** means the company’s articles of association;
- “director”** means a director of the company, and includes any person occupying the position of director, by whatever name called;
- “directors’ functions”** has the meaning given in article 2(1);
- “holder”** in relation to shares means the member whose name is entered in the register of members as the holder of the shares;
- “majority decision”** has the meaning given in article 7;
- “ordinary resolution”** has the meaning given in section [XX] of the [Company Law Reform] Act 200[X];
- “shares”** means shares in the company;
- “shareholder”** means a person who is the holder of a share;
- “special resolution”** has the meaning given in section [XX] of the [Company Law Reform] Act 200[X];
- “subsidiary”** has the meaning given in [section 736 of the Companies Act 1985 (as amended and in force when the articles became binding on the company)]; and
- “unanimous decision”** has the meaning given in article 6.